

ILLINOIS MUNICIPAL ELECTRIC AGENCY

POWER SALES CONTRACT

This Contract entered into as of the 6th day of February, 2007, between ILLINOIS MUNICIPAL ELECTRIC AGENCY ("IMEA" or "Agency"), a body politic and corporate, municipal corporation and unit of local government of the State of Illinois, and the CITY OF NAPERVILLE, ILLINOIS ("Member"), a municipal corporation created and existing under the laws of the State of Illinois.

WITNESSETH:

WHEREAS, Public Act 83-997 (the "Act") enables municipalities owning and operating electric utilities, furnishing retail electric service to the public to jointly plan, finance, own and operate electric generation and transmission facilities; and

WHEREAS, pursuant to the Act, 40 such municipalities have joined together to form IMEA to acquire and construct projects or participate in projects with investor-owned utilities, generation and transmission cooperatives and others which may be used or useful in the generation, production, distribution, transmission, purchase, sale, exchange or interchange of electric energy; and

WHEREAS, under the Act the Member is a municipality owning or operating an electric utility which furnishes retail electric service to the public and may enter into and carry out contracts and agreements for the purchase from IMEA of power supply and energy transmission services, power supply development services and other services; and

WHEREAS, in order to secure an adequate, reliable and economic long term supply of electrical power and energy for the Member, IMEA and Member hereby enter into this Power Sales Contract under the terms of which the Agency will sell to the Member and the Member will purchase from the Agency all of the Member's power and energy requirements and transmission services.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements set forth in this Contract, the Agency and the Member agree as follows:

Attached to this Power Sales Contract is an Addendum. It is agreed between the parties that in the event there is a conflict between the provisions of this Power Sales Contract and the attached Addendum, the provisions of the Addendum shall prevail and control. To the extent there is any inconsistency between the terms and conditions set forth in this Power Sales Contract and the attached Addendum, the terms and conditions set forth in the Addendum shall prevail. To the extent that the provisions in the Power Sales Contract and the Addendum are not inconsistent, they shall be read together.

Definitions

The following terms shall, for all purposes of this Contract, have the following meanings unless the context expressly or by necessary implication requires otherwise:

"Board of Directors" shall mean the corporate authority of the Agency with powers as provided in the Act.

"Bonds" shall mean any revenue bonds, notes and other evidences of obligations of the Agency issued under the provisions of the Act to finance any cost, expense or liability relating to the Power Supply System or service under the Power Sales Contracts.

"Bond Ordinance" shall mean any one or more ordinances, resolutions, indentures or other similar instruments of the Agency providing for the issuance of Bonds.

"Delivery Point" shall mean a presently existing metered connection or connections of IMEA's or another party's transmission or distribution system with Member's transmission or distribution system as set forth in Schedule A or a new connection as Member may request and IMEA or another party is willing to provide in the future.

"Member" shall be the city, village or town executing this Contract.

"Participating Members" shall mean those Members that are or hereafter become parties to Power Sales Contracts, as defined below.

"Party" shall mean a party to this Contract and its successors and permitted assigns.

"Point of Measurement" shall mean any point at which metering equipment is located for purposes of measuring power and energy deliveries to the Member as set forth in Schedule A hereof as amended from time to time.

"Power Sales Contracts" shall mean this Contract and other contracts providing for the sale of power and energy by IMEA to the other Participating Members as amended from time to time (excepting therefrom the contracts entered into by the Agency and Participating Members for power supplies which are specifically superseded by the Power Sales Contracts and any other contracts which the Agency designates as being excepted).

"Power Supply System" shall be broadly construed to mean, encompass and include all Projects and all electric production, transmission, distribution, conservation, load management, general plant and related facilities, equipment or property, and any mine, well, pipeline, plant, structure or other facility for the development, production, manufacture, storage, transportation, fabrication or processing of fossil, nuclear or other fuel of any kind or any facility or rights with respect to the supply of water, in each case for use, in whole or in major part, in any of the Agency's generating plants, now existing and hereafter acquired by lease, contract, purchase or otherwise or constructed by the Agency, including any interest or participation of the Agency in any such facilities or any rights to the output or capacity thereof, together with all additions,

betterments, extensions and improvements to said Power Supply System or any part thereof hereafter made and together with all lands, easements and rights-of-way of the Agency and all other works, property or structures of the Agency and contract rights and other tangible and intangible assets of the Agency used or useful in connection with or related to said Power Supply System, including without limitation a contract right or other contractual arrangement for the long term or short term interconnection, interchange, exchange, pooling, wheeling, transmission, purchase or sale of electric power and energy and other similar arrangements with entities having generation and transmission capabilities and located within or without the State of Illinois. Power Supply System shall not include (1) any properties or interest in properties of the Member, except with respect to any contract rights the Agency may have in such properties pursuant to any contract between the Member and the Agency other than this Contract, and (2) any properties or interest in properties of the Agency which the Board of Directors determines shall not constitute a part of the Power Supply System for the purposes of the Power Supply Contracts with the Participating Members.

"Project" means (i) any plant, works, system, facility, and real and personal property of any nature whatsoever, together with all parts thereof and appurtenances thereto, used or useful in the generation, production, distribution, transmission, purchase, sale, exchange or interchange of electrical energy and in the acquisition, extraction, conversion, transportation, storage or reprocessing of fuel of any kind for any such purposes, or (ii) any interest in, or right to the use, services, output or capacity, of any such plant, works, system or facilities.

"Prudent Utility Practice" shall mean, any of the practices, methods and acts which, in the exercise of reasonable judgment and in light of the facts (including, but not limited to, any practices, methods and acts engaged in or approved by a significant portion of electrical utility industry prior thereto) known at the time the decision was made, could have been expected to accomplish the desired result at reasonable cost consistent with reliability, safety and expediency. In applying the standard of Prudent Utility Practice to any matter under this Contract, equitable considerations shall be given to the circumstances, requirements and obligations of each of the Parties, and there shall be taken into account the fact that the Agency and the Member are both political subdivisions and municipal corporations of the State of Illinois with prescribed statutory powers, duties and responsibilities. Prudent Utility Practice is not intended to be limited to the optimum practice, method or acts to the exclusion of all others, but rather to a spectrum of possible practices, methods or acts which could have been expected to accomplish the desired result at reasonable cost consistent with reliability, safety and expediency. Prudent Utility Practice includes due regard for manufacturer's warranties and the requirements of governmental agencies which have jurisdiction.

"Rate Schedule" shall mean the rate schedule or schedules setting forth the rates and charges for payments by Participating Members, including the Member, for all services rendered by the Agency pursuant to the Power Sales Contracts. The existing Rate Schedules are Schedule B and Schedules B-2, B-3, B-4, B-5 and B-6 attached hereto as revised. The Rate Schedules may be revised from time to time by new schedules adopted by the Agency in the manner provided for in Section 3 of this Contract, including, without limitation, any amendment, change, deletion or addition to any of the rates and charges, billing components, terms or conditions, or any adjustment set forth therein, including, but not limited to, amending the billing demand

provision to impose a minimum demand whether or not based on prior demand measurements, which schedules may be applicable to any one or more Participating Members.

"Revenue Requirements" shall mean all costs and expenses paid or incurred or to be paid or incurred by the Agency resulting from the ownership, operation, maintenance, termination, retirement from service and decommissioning of, and repairs, renewals, replacements, additions, improvements, betterments and modifications to, the Power Supply System or otherwise relating to the acquisition and sale of power and energy, transmission, load management, conservation or related services hereunder and performance by the Agency of its obligations under the Power Sales Contracts for Participating Members, including, without limitation, the following items of cost:

- (1) payments of principal of and premium, if any, and interest on all Bonds issued by the Agency and payments which the Agency is required to make into any debt service reserve fund or account under the terms of any Bond Ordinance or other contract with holders of Bonds; provided, however, that Revenue Requirements shall not include any principal of or premium, if any, or interest on Bonds due solely by virtue of the acceleration of the maturity of such Bonds;
- (2) amounts required under any Bond Ordinance to be paid or deposited into any fund or account established by such Bond Ordinance (other than funds and accounts referred to in clause (1) above), including any amounts required to be paid or deposited by reason of the transfer of moneys from such funds or accounts to the funds or accounts referred to in clause (1) above including any Rate Stabilization Fund or Account;
- (3) amounts which the Agency may be required to pay for the prevention or correction of any loss or damage to the Power Supply System or for renewals, replacements, repairs, additions, improvements, betterments, and modifications which are necessary to keep any facility of the Power Supply System, whether owned by the Agency or available to the Agency under any contract, in good operating condition or to prevent a loss of revenues therefrom;
- (4) costs of operating and maintaining the Power Supply System and of producing and delivering power and energy therefrom (including, without limitation, fuel costs, administrative and general expenses and working capital, for fuel or otherwise, regulatory costs (including but not limited to wholesale rate case intervention costs), insurance premiums, and taxes or payments in lieu thereof) not included in the costs specified in the other items of this definition, costs of power supply and demand-side planning and implementation associated with meeting the Agency's power supply obligations and costs of load management and conservation;
- (5) the cost of any electric power and energy purchased for resale by the Agency to the Participating Members and the costs of transmission, scheduling, dispatching

and controlling services for delivery of electric power and energy under the Power Sales Contracts for Participating Members;

- (6) all costs incurred or associated with the salvage, discontinuance, decommissioning and disposition or sale of properties;
- (7) all costs, settlements and expenses relating to injury and damage claims asserted against the Agency;
- (8) any additional cost or expense not specified in the other items of this definition imposed or permitted by any regulatory agency or which is paid or incurred by the Agency relating to the Power Supply System or relating to the provision of services to Participating Members (including any amounts to be paid into any reserve account established by the Agency under the terms of any Bond Ordinance for the payment of Revenue Requirements in the future and any provision for depreciation) which is not otherwise included in any of the costs specified herein;
- (9) amounts required to be paid by the Agency including:
 - (i) any reserves the Agency shall determine to be necessary for the payment of those items of costs and expenses referred to in this definition to the extent not already included in any other clause of this definition; and
 - (ii) additional amounts which must be realized by the Agency in order to meet the requirement of any rate covenant with respect to coverage of principal and interest on Bonds contained in any Bond Ordinance or contract with holders of Bonds or which the Agency deems advisable in the marketing of its Bonds or under any contract to which it is a party.

Section 1. Term

(a) Initial Term and Termination

This Contract shall take effect on June 1, 2011 and shall remain in effect for an initial term through September 30, 2035 and thereafter from year to year until terminated by five (5) years prior written notice. In no event shall this Contract extend beyond September 30, 2040.

(b) Conditions for Effectiveness of Contract

[This subsection left blank intentionally]

(c) Commencement of Service

Service to the Member under this Contract shall commence on June 1, 2011.

All other power supply or transmission contracts between the Member and any entity other than the Agency shall be terminated or assigned by the Member to the Agency no later than the date upon which the Agency commences service to the Member as provided in this subparagraph or such other action is taken as mutually agreeable by the Agency and the Member.

If the Member is taking power or transmission service from a supplier other than IMEA on such commencement date, the providing of power by IMEA shall commence only if that Member's obligations from such supplier have ceased pursuant to an assignment or termination of an existing contract.

Section 2. Sale Delivery and Purchase of Electricity

(a) Sale and Purchase

The Agency agrees to provide and sell and the Member agrees to take and pay for all of the electric power and energy required for the operation of the Member's electric utility during the term of this Contract and utilized in the operation of its municipal electric system.

(b) Restrictions on Other Sources

Except as provided in Section 2(c), the Member shall not obtain electric power and energy required for the operation of its electric utility system from any other source; provided, however, if the Member is required by law to purchase power and/or energy from a small power production facility, a cogeneration facility or other facility, the Member shall immediately inform the Agency of such requirement whereupon the Member and the Agency shall use their best efforts to arrange for such purchases to be made by the Agency. If such arrangements cannot be made, then the Member shall make the required purchase and sell the power and energy to the Agency at the same price and on the same terms and conditions under which it was purchased by the Member. The Member hereby appoints the Agency to act as its agent in all dealings with the owner or operator of any such facility from which power or energy is to be purchased by the Agency directly or indirectly and in connection with all other matters relating to any such purchase and agrees unless ordered to do so by a court of competent jurisdiction not to make any such purchase at prices or on terms and conditions not approved by the Board of Directors.

(c) Shortages

In the event that the Agency is not able to supply all of the power and energy requirements of its Participating Members because of an event of Force Majeure as defined in Section 2(d) or because of an outage of all or any part of Agency's Power Supply System or because of an event beyond Agency's control, and after such reasonable notice as the Agency may be able to give, the Agency shall allocate the power and energy available to it during any billing period among the Participating Members on a pro rata basis in accordance with the Participating Members' respective power and energy requirements supplied by the Agency during the corresponding billing period of the preceding calendar year. Where a Participating Member did not purchase power and energy from the Agency during the corresponding billing period of the preceding calendar year, that Participating Member's purchases during such billing period from its supplier replaced by the Agency shall be used.

Although the Agency agrees to use its best efforts to avoid a shortage in supply, during any period when the Agency is unable to supply all of the Member's electric power and energy requirements, the Member shall be permitted to acquire from other sources the amount of electric power and energy which is not supplied by the Agency; provided, however, that at such time as the Agency is again able to supply all of the Member's electric power and energy requirements, the Member shall be required to take and pay for such electric power and energy in accordance with the provisions of this Contract. Before entering into any arrangement to acquire power and energy from any source other than the Agency for any period in excess of 48 hours, the Member will notify and consult with Agency as to the terms and length of such purchases and obtain Agency's consent before contracting for such supply, which consent shall not be unreasonably withheld.

(d) Continuity of Service

The Agency shall employ its best efforts, in accordance with Prudent Utility Practice, to provide a constant, adequate and uninterrupted supply of power and energy to the Member (except where the Member is purchasing interruptible or curtailable power or non-firm energy from the Agency under a separate interruptible, curtailable or non-firm rate schedule adopted by the Board of Directors) and shall seek to restore service promptly and diligently on any interruption, but the Agency does not guarantee that service hereunder will be uninterrupted or at all times constant.

If the supply of electric power and energy to the Member hereunder shall fail, be interrupted, be reduced, or become defective through an event of Force Majeure, which shall include but not be limited to an act of God, nature, common enemy, failure of any power and energy or transmission service supplier of the Agency or any public authority, or because of accident, riot, insurrection, war, explosion, labor dispute, fire, flood or prudent actions taken to prevent or limit the extent or duration of disturbances of service on Agency's system, or if one or more of its

suppliers, or that of systems through which electric service is rendered to the Agency or the Member is interrupted, or for any other cause beyond the reasonable control of the Agency, the Agency shall not be liable for damages caused thereby and such events shall not constitute a breach of the Agency's obligations under this Contract. No cause or contingency, however, including any failure of the Agency to supply electric power and energy to the Member for any period because of any of the aforesaid conditions, shall relieve the Member of its obligation to make all payments to the Agency required by this Contract, when due, for power and energy supplied by the Agency during any other period.

The Agency may interrupt service hereunder as necessary for repairs to, or changes of, equipment or facilities needed to provide service hereunder, or for installation of new equipment or facilities, but only for such reasonable times as may be unavoidable, and to the extent possible, with reasonable advance notice to, and in coordination with, the Member.

Section 3. Rates and Charges

The Member shall pay the Agency for all power and energy and other services furnished under this Contract from the date that service commences as provided in Section 1(c) at the rates and on the terms and conditions set forth in the Rate Schedule, as the Rate Schedule may be changed and supplemented by the Agency's Board of Directors from time to time.

The Agency's Board of Directors shall establish and maintain its rates and charges under its Power Sales Contracts with its Participating Members to provide revenues which are sufficient, but only sufficient, together with other available revenues of the Agency, to cover the estimated Revenue Requirements of the Agency. In determining rates and charges necessary to produce sufficient revenues, the Agency shall take into account any anticipated (or actual) delinquency or default in payments by Participating Members. The Agency's rates and charges shall be set generally on a uniform postage stamp basis so as to recover all production and transmission costs in providing service to all Participating Members; provided, however, that the rates and charges may vary between Participating Members to reflect contracts with Participating Members having varying lengths of terms, the effect on rates for Participating Members selecting the option provided for in Section 1(d) of the 1990 Power Sales Contracts, differences in delivery voltage level, delivery facilities costs, different load factors, and variances in service provided to Participating Members which enter into Capacity Purchase Agreements and Participating Members which do not (including a phase-in of postage stamp rates to reflect load factors of certain Participating Members) and may contain ratchets, load factor requirements and other provisions which affect all Participating Members or only Participating Members which obtain a portion of their requirements from any other source. Rates and charges may also vary between the Member and Participating Members who executed Power Sales Contracts after 1998 (the rates and charges for such Participating Members include an individualized fixed Debt Service Payment associated with the Agency's 1990 bonds, which were refinanced in 1998, based among other factors on when their Power Sales Contracts were executed) and between the Member and Participating Members who executed Power Sales Contracts in 1990 (such Participating Members will have paid a full proportionate share of debt service for the Agency's 1990 bond

financing that was refinanced in 1998). The Member shall pay a fixed Debt Service Payment associated with the Agency's 1990 bonds, which were refinanced in 1998. Prior to the effective date of this Contract, the Agency Board of Directors shall establish a schedule of such payments based on the Agency's then current 30 year debt service demand charge set forth in Schedule B and the Member's monthly billing demands for the most recent twelve months. Such calculation shall establish the monthly fixed Debt Service Payment associated with such bonds which shall be paid each month by the Member until such time as the debt service associated with the 1998 Power Supply System Revenue Refunding Bonds are fully paid and retired by the Agency. The methodology for establishing rates and charges used by the Agency may be modified by the Agency from time to time.

The Agency shall place into effect initial rates and charges applicable on commencement of service by the Agency to the Participating Members and thereafter at such intervals as it shall determine appropriate, but in any event not less frequently than once in each calendar year, the Agency shall review and, if necessary, revise its rates and charges under the Power Sales Contracts, to ensure that the rates and charges thereunder cover the Agency's estimated Revenue Requirements.

The Agency's rates and charges hereunder may include one or more automatic adjustment clauses which may be modified or changed periodically to insure that the Agency is protected against changing cost of fuel, purchased power, taxes, and other costs of service. The automatic adjustment clauses may use estimated costs, with a later true-up to actual costs. The Agency may place an automatic adjustment clause in effect to recover costs from the date they were incurred upon thirty (30) days notice to the Member and shall provide the Member supporting information which need not be the same detailed analysis as for base rate changes.

In connection with any revision of the Rate Schedule, except as to automatic adjustment clause rate changes, the Agency shall cause a notice in writing to be given to all Participating Members which shall set out any proposed revision of the Rate Schedule with the effective date thereof, which shall be not less than sixty (60) days after the date of the mailing of the notice, and which shall be accompanied by an analysis of the estimated Revenue Requirements for which the Rate Schedule is proposed to be revised and the derivation of the proposed rate. The Member agrees to pay for electric power and energy made available by the Agency to it hereunder after the effective date of any revisions in the Rate Schedule in accordance with the Rate Schedule as so revised.

Section 4. Payment Obligation

(a) Nature of Obligation to Pay.

The obligation of the Member to pay all rates and charges established by the Agency under Section 3 of this Contract for the delivery of power and energy and for other services provided by the Agency shall not be subject to any reduction, whether by offset, counterclaim, recoupment or otherwise, and shall not be otherwise conditioned upon the performance by the Agency of its obligations under the Power Sales Contracts for Participating Members or any other

instrument or agreement. It is expressly understood that the Member shall be obligated to pay all rates and charges imposed for power and energy supplied hereunder regardless of whether any one or more projects or other facilities of the Agency constructed, purchased or undertaken to provide service hereunder are operating or operable at any time; provided, however, that except as provided by this subsection (a) nothing herein shall be construed to prevent or restrict the Member from asserting any rights which it may have against the Agency under this Contract or under any provision of law, including the institution of legal proceedings for specific performance or recovery of damages.

(b) Limitation on Obligation to Pay.

All payments made by the Member for services hereunder shall be made as operating expenses from the revenues of the Member's electric utility system, or any integrated utility system of the Member of which, the Member's electric utility system may be a part, and from other funds of such system legally available therefor and shall be in addition to, and not in substitution for, any other payments, whether on account of dues or otherwise, owed by the Member to the Agency. The Member shall not be required to make payments under this Contract except from the revenues of the Member's electric system, or other integrated public utility system of which the electric system is a part, and from other funds of such system legally available therefor. In no event shall the Agency, or any other person or entity, including any person or entity to which revenues under this Contract have been assigned or pledged, be entitled to look to, or seek to recover from, any other revenues, monies or property of the Member for payment of any amounts due hereunder. The obligation of the Member to make payments for services hereunder shall not constitute a general obligation of the Member and shall not constitute indebtedness of the Member for the purpose of any statutory limitation and the Member shall not be required to make such payments from any source other than the revenues and funds referred to in the first two sentences of this paragraph. In no event shall the Member be required to make payments under this Contract from tax revenues or to impose any new tax or adjust any existing tax for such purpose.

The Member's electric utility system shall be deemed to be a part of an integrated utility system for purposes of this Contract if the revenues of the electric utility system (i) are commingled with the revenues of one or more utility systems owned by the Member, or (ii) are utilized to pay operating expenses of the Member's electric utility system and one or more other utility systems owned by the Member, or (iii) are pledged to secure any bonds or other evidences of indebtedness issued to finance one or more utility systems owned by the Member. For purposes of this paragraph, the term "commingled" shall not be deemed to include the keeping of funds in one bank account so long as such funds are separately accounted for on the books and records of the Member. An integrated utility system shall not be deemed to exist hereunder merely (i) because the Member's electric utility and another utility of the Member are managed by the

same commission or other public body, have common employees or facilities, the costs of which are shared, or undertake joint projects or (ii) where surplus funds from one utility which are legally available for transfer to the general fund of the Member are transferred or loaned to the other utility.

Section 5. Billing

(a) Billing Procedure

The calendar month shall be the standard period for all settlements under this Contract. The Agency may, from time to time, adopt another standard period for settlements. It is understood that, as soon as practicable after the end of each billing period, IMEA shall prepare and transmit a detailed statement to Member which shows amounts due from the Member.

Billing period statements for charges under this Contract shall be rendered by IMEA in the month following the billing period in which the charges were incurred. Each payment shall be due, and payment of each bill shall be made to IMEA by electronic transfer or such other means as shall cause payment to be available for the use of IMEA on the first banking day following the tenth (10th) day after the date of invoice. Interest on unpaid amounts shall accrue daily at the then current published prime interest rate per annum of JP Morgan Chase or its successor to the extent permitted by law from the due date of such unpaid amount and until the date paid.

(b) Billing Disputes

In the event that the Member takes exception to a bill rendered by the Agency, the Member shall pay the disputed amount and promptly inform the Agency in writing of the basis for the dispute. The Member will not be entitled to any adjustment on account of any disputed charges which are not brought to the attention of the Agency in the manner herein specified within thirty (30) days of when the Member first learns of the basis for the dispute.

Within thirty (30) days of receipt of the notice of the dispute, including an explanation by the Member of the nature of the dispute, the Agency shall respond to the Member's protest in writing. In the event it is determined that all or part of the disputed payment was not properly payable, then the Agency shall refund such amount together with interest thereon from the date the amount was paid until the refund is made at an annual rate equal to that established pursuant to subsection (a) above.

In addition, any billing adjustment sought by the Member which is related to the Agency obtaining a similar billing adjustment from any transmission or power or energy supplier to the Agency shall be dependent upon the Agency obtaining a corresponding adjustment from its supplier. The Agency shall pursue any such

corresponding adjustment with due diligence, provided that the Agency considers such adjustment to be appropriate.

(c) Service Discontinuance and Contract Termination for Failure to Pay.

Whenever any amount due remains unpaid after the due date, the Agency may take all steps available to it under applicable law to collect such amount and, subject to any applicable regulatory requirements, after giving thirty (30) days advance notice in writing of its intention to do so, discontinue service hereunder if the amount remains unpaid at the end of said 30-day period. Whenever any amount due remains unpaid for one hundred twenty (120) or more days after the due date and after giving thirty (30) days advance notice in writing of its intention to do so, the Agency may terminate this Contract. No such discontinuance or termination shall relieve the Member from liability for payment for electric power and energy furnished hereunder, or made available to the Member where the Member has an obligation to take such power and energy and has not, or for damages suffered by the Agency, or any other Participating Member, as a consequence of default by the Member. The Agency may, either at law or in equity, by suit, action, mandamus, or other proceedings, enforce and compel the performance of the covenants, agreements, and obligations of the Member under this Contract to be performed by the Member or any officer thereof.

(d) Partial Month Bill

In the event that the initial or final month's service under this Contract is for less than a full month's service, the Member shall be billed for such partial month. The bill for such fractional part of a billing period shall be proportionately adjusted by IMEA in the ratio that the number of hours that electric service is furnished to the Member (in such fractional billing period) bears to the total number of hours in the billing period involved. Except as provided in this subsection with respect to fractional billing periods at the beginning and end of service, there shall be no proration of demand charges under the Rate Schedule for any billing period during any part of which power is made available to the Member.

Section 6. Delivery Conditions and Metering

(a) Electric Characteristics

The electric service furnished under this Contract shall be 60 Hertz, three phase alternating current and shall be delivered to the Delivery Points and metered by the Agency, or its designee, at such location or locations and such voltages as are shown on Schedule A. The Delivery Points, the Points of Measurement, the Delivery Voltage, and Special Conditions of Service shall be as set forth in Schedule A which may be amended by the Agency from time to time to include such other Delivery Points and Points of Measurements and other provisions as

may be established by the Agency. In the event the Agency and the Member agree on the need for an additional Delivery Point, the Agency will use its efforts to obtain it, exercising Prudent Utility Practice in doing so. When electricity is measured at more than one (1) point of measurement, the maximum total coincident demand of the Member's system shall be determined by combining the recorded demand at each Point of Measurement during the same 60-minute interval. The Member shall maintain its system power factor in accordance with Schedule A.

The Member shall install, own and maintain or cause to be installed and maintained at Delivery Point(s) established pursuant to this Contract or elsewhere at a location mutually agreeable to the parties hereto such facilities as may be necessary to protect the system of the delivering entity, including such transformation, control, switching and protective equipment as meets Prudent Utility Practice.

The Member shall provide or cause to be provided and maintained suitable protective devices on its system to prevent any loss, injury or damage that might result from single phasing conditions or any other fluctuation or irregularity in the supply of electrical power and energy. IMEA shall not be liable for any loss, injury or damage resulting from a single phasing condition or any other fluctuation or irregularity in the supply of energy which could have been prevented by use of such protective device.

(b) Responsibility for Facilities

The Agency's undertaking shall be complete upon the delivery of electric power and energy to the Delivery Points. Beyond the Delivery Points, except as the parties may agree otherwise, the Member shall furnish and maintain all devices, equipment and appliances, including but not limited to, control, protection, regulation and load shedding equipment, required to utilize safely and efficiently the power and energy delivered by the Agency.

If load growth or other power supply requirements or construction of facilities necessitate upgrading the Delivery Point(s) or adding new Delivery Point(s), unless otherwise agreed between the Agency and the Member, the Member shall be responsible for construction of, and the costs of, the new Delivery Point(s). The location of any new Delivery Point shall be subject to approval by the Agency, which approval shall not be unreasonably withheld. Upon request by the Member, the Agency may (but shall not be obligated to) fund the construction of new Delivery Points. In such event the cost thereof, with interest and supervisory costs, shall be recovered from the Member through the Agency's charges.

The Member shall provide, free of charge, suitable and sufficient space on its premises, including but not limited to all structures, enclosures and access facilities, for all electric facilities reasonably necessary for the Agency to deliver

and measure power and energy to the Member hereunder and shall grant to the Agency, or the Agency's designee, a right-of-way over the Member's premises and property for the construction and maintenance of all such facilities as shall be placed thereon which are reasonably necessary for the provision of service to the Member.

The design and operating characteristics of the Member's electrical equipment at the Delivery Points shall be coordinated with the Agency and shall be subject to the Agency's approval, which approval shall not be unreasonably withheld.

(c) Metering

All electric power and energy delivered under this Contract shall be measured as to real and reactive demand and energy by suitable metering equipment, including any needed area interchange, totalizing or remote metering equipment located, furnished, installed, maintained and tested by the Agency or its designated power or transmission supplier. All energy will be measured at the service voltage at the Delivery Point by IMEA or the delivering party. In cases where IMEA or the delivering party elects to measure at a secondary voltage, IMEA or delivering party may at its option adjust the reading to a primary basis by the use of compensating meters.

It is understood that in some instances the metering equipment may not be located at the Delivery Points. All meters shall be kept under seal, such seals to be broken only when the meters are to be tested and maintained.

The Member shall provide at no cost to IMEA or delivering party suitable space, if necessary, for the installation of meters and metering equipment at the Delivery Points or Points of Measurement.

The Agency's meters shall measure and record the electrical power and energy furnished hereunder at such Point of Measurement. Such metering equipment shall provide a continuous record of the 60-minute integrated total demand to the Member at such Point of Measurement during each billing period throughout the term of the Contract. Such records shall be available at all reasonable times to authorized agents of the Member.

(d) Meter Testing

IMEA shall test and calibrate meters or cause meters to be tested and calibrated by comparison with accurate standards at intervals not to exceed the periodic test schedule approved by the Illinois Commerce Commission for such meters. IMEA shall make or cause to be made special meter tests at any time at the Member's request. The cost of all tests shall be borne by IMEA, except that if any special meter test made at the Member's request shall disclose that the meters are recording accurately, the Member shall reimburse IMEA for the cost of such tests.

Meters registering not more than 2% above or below normal shall be deemed to be accurate. The readings for any meter which shall have been disclosed by test to be inaccurate shall be corrected in accordance with the percentage of inaccuracy found by such test for the period, not exceeding ninety (90) days, that such inaccuracy is estimated to have existed. Should any meter fail to register, the electric power and energy delivered during such period of failure shall for billing purposes be estimated by IMEA and the Member from the best information available. IMEA shall notify the Member or cause the Member to be notified in advance of the time of any meter test so that the Member's representative may be present at such meter test.

Testing procedures may be changed by the Agency from time to time to reflect current electric industry practice and such change shall be incorporated by the Agency within Schedule B. The Member shall be entitled to install its own backup parallel metering.

Section 7. Additional Covenants of the Agency.

The Agency covenants and agrees as follows:

(a) Performance

The Agency shall perform all of its obligations under this Contract promptly with due diligence in accordance with Prudent Utility Practice. The Agency shall employ its best efforts to provide adequate, reliable and reasonable cost electric service to the Member under this Contract. To this end the Agency shall plan to have such power and energy and such transmission resources available by contract or otherwise as are necessary and desirable to meet the requirements of all Participating Members, including reasonably anticipated growth as projected by the Agency.

The Agency will perform or cause to be performed services, including but not limited to, (i) coordinating and monitoring the investigating, studying, planning, engineering, designing, financing, installing, constructing, acquiring, operating, maintaining, retiring, decommissioning or disposing of any part of its Power Supply System; (ii) issuing and selling Bonds; (iii) planning, undertaking, coordinating and monitoring the economic dispatching and scheduling of power and energy to the Participating Members but only to the extent that the Agency possesses at the time its own load control capability; and (iv) providing such other services as the Agency from time to time shall determine to be appropriate or necessary to provide to the Member and enable the Member to utilize an adequate, reliable and economic supply of power and energy.

The duration and term of all contracts entered into by the Agency for the acquisition of facilities or for the acquisition of power and energy shall be determined by the Agency in light of its analysis of the power markets and

determination of an appropriate mix of short, intermediate and long term resources.

(b) Enforcement of Obligations

The Agency shall promptly collect all amounts due and enforce all provisions of the Power Sales Contracts and shall at all times maintain and promptly and vigorously enforce its rights against any Member which does not pay sums when due or perform the contract obligations pursuant to the provisions of Section 5 of this Contract.

(c) Records and Accounts

The Agency shall keep accurate records and accounts of its operations in connection with this Contract in accordance with generally accepted accounting practices. The Agency's books and records shall be audited independently once a year. The Member shall have the right at any reasonable time to examine and audit such records at the Member's expense.

(d) Prudent Utility Practice

The Agency shall, in accordance with Prudent Utility Practice: (1) at all times operate and conduct its business in connection with this Contract in an efficient manner, (ii) maintain the Power Supply System in good repair, working order and condition, and (iii) from time to time make all necessary and proper repairs, renewals, replacements, additions, betterments and improvements with respect to the Power Supply System so that at all times the business carried on in connection therewith shall be properly conducted.

(e) Other Services

The Agency may (but shall not be obligated to) provide such other services to the Member as the Member may request, including but not limited to, maintenance of the Member's system, billing of the Member's customers, safety training, load management, and meter reading. For any such service so provided by the Agency, the Agency will adopt charges therefor includable within its Rate Schedule, which charges shall be paid only by those Members requesting such service.

(f) Marketing Power.

After satisfying, to the extent provided for herein, the total requirements of all Participating Members, IMEA shall use its best-efforts to market and dispose of under the most economically advantageous terms and conditions obtainable, all its surplus electric power and energy which in the sole judgment of IMEA can be

disposed of without adversely affecting performance by IMEA under this Contract.

(g) Sales to Non-Participating Members

The Agency may provide power and energy to Members which are not Participating Members at rates and under terms and conditions to be prescribed by the Board of Directors.

Section 8. Additional Covenants of the Member.

The Member covenants and agrees as follows:

(a) Maintenance of Rates

The Member shall maintain rates for electric power and energy to its customers so that such rates shall provide revenues which, together with other funds estimated to be available, will be sufficient to meet the Member's obligations to the Agency under this Contract, and all other operating expenses of the Member's electric system, and to pay all obligations of the Member payable from, or constituting a charge or lien on, the revenues of its electric system.

If the Member establishes or maintains an integrated utility system of which the electric system is a part for its electric, water, sanitary sewer, wastewater or similar utility systems (or any combination of two or more thereof which includes its electric system), it shall maintain its rates for the services provided to the customers of its integrated utility system so that such rates shall provide revenues, which, together with other funds estimated to be available, will be sufficient to meet the Member's obligations to the Agency under this Contract, and all other operating expenses of the Member's integrated utility system, and to pay all obligations payable from, or constituting a charge or lien on, the revenues of its integrated utility system.

(b) No Sale or Lease

The Member shall not sell, lease or otherwise dispose of all or substantially all of its electric system except on one hundred twenty (120) days' prior written notice to the Agency and, in any event, shall not so sell, lease or otherwise dispose of the same unless all of the following conditions are met: (i) at the sole option of the Agency either (x) the Member shall assign this Contract and its rights and interests hereunder to the purchaser, assignee or lessee of the electric system and such purchaser, assignee or lessee shall assume all obligations of the Member under this Contract in such a manner as shall assure the Agency to its sole satisfaction that the amount of electric power and energy to be purchased hereunder and the amounts to be paid therefor will not be reduced, and if and to the extent deemed necessary by the Agency in its sole discretion to reflect such

assignment and assumption, the Agency and such purchaser, assignee or lessee shall enter into an agreement supplemental to this Contract to clarify the terms on which power and energy are to be sold hereunder by the Agency to such purchaser, assignee or lessee; or (y) such purchaser, assignee or lessee shall enter into a new contract with the Agency for the purchase of electric power and energy in amounts, at prices and on terms which the Agency in its sole discretion determines not to be less beneficial to it and the other Participating Members than this Contract is and, upon such sale, lease or other disposition and the entering into of such new contract, this Contract shall be terminated; (ii) the senior debt, if any, of such purchaser, assignee or lessee, if such purchaser, assignee or lessee is not a Participating Member, shall be rated in one of the three highest whole rating categories by at least one nationally-recognized bond rating agency; and (iii) the Agency shall by resolution determine that such sale, lease or other disposition will not adversely affect the other Participating Members of the Agency or the value of this Contract, or any new contract entered into pursuant to clause (i) (y) above, as security for the payment of Bonds and interest thereon or adversely affect the eligibility of interest on Bonds (then outstanding or thereafter to be issued) for federal tax-exempt status. The Agency shall make the determinations required by this subsection (b) within one hundred twenty (120) days of receipt by the Agency of the notice referred to in the first sentence of this subsection (b) and shall set forth those determinations in writing to the Member.

In the event any sale, lease or other disposition is permitted pursuant to this subsection (b), Agency may request as additional security to preserve the flow of revenues under this Contract, and Member shall provide the funds to establish an escrow deposit equivalent to the Member's pro rata contribution to the Agency's Revenue Requirements for the balance of the Contract's initial term. Every five years, after the establishment of such escrow deposit, Agency will release to the Member such of the funds in the escrow equivalent to those paid to the Agency by the Member's purchaser, assigns or lessee during such previous five years.

(c) Prudent Utility Practice

The Member shall, in accordance with Prudent Utility Practice, (1) at all times operate its electric system, or integrated utility system of which the electric system is a part, and the business in connection therewith in an efficient manner, (2) maintain its electric system, or integrated utility system of which the electric system is a part, in good repair, working order and condition, and (3) from time to time make all necessary and proper repairs, renewals, replacements, additions, betterments and improvements with respect to the electric system, or integrated utility system of which the electric system is a part, so that at all times the business carried on in connection therewith shall be properly conducted.

(d) Operating Expenses.

The Member represents, warrants and covenants that all payments to the Agency pursuant to this Contract shall constitute operating expenses of the Member's electric system (and should so provide in any future ordinance authorizing borrowing by the Member) payable from any operating and maintenance fund established for such system, or for such integrated utility system of which the electric system is a part, and that such operating expenses are and shall remain payable from the revenues of the Member's electric system, or integrated utility system, prior (except to the extent that any provision in any existing bond ordinance or borrowing resolution of the Member governing outstanding obligations of the Member provides to the contrary) to payment of any debt service payable from such revenues.

(e) Tax Status

- (i) The Member shall not use or permit to be used any of the electric power and energy acquired under this Contract or operate its system in any manner or for any purpose or take any other action or omit to take any action which could, either alone or in conjunction with any other similar actions by the Member or other Participating Members of the Agency, result in loss of the exclusion from gross income for federal income tax purposes of the interest on any Bond or Bonds issued by the Agency, or which could be issued by the Agency in the future, as that status is governed by the federal income tax laws, as amended from time to time, including but not limited to, Section 141 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations or any rulings promulgated thereunder or as affected by a decision of any court of competent jurisdiction (collectively, the "Tax Laws").
- (ii) At the time of execution of this Contract, the Member has no contracts whereby any person, corporation, partnership or other non-governmental entity agrees to purchase from the Member electric power and/or energy provided to the Member under this Contract for a period of more than thirty (30) days except as shown on Schedule D hereto, and the Member has no current expectation of entering into any such contracts, except as set forth in Schedule D hereto. At least sixty (60) days prior to entering into any contract whereby any person, corporation, partnership or other non-governmental entity agrees to purchase from the Member electric power and/or energy provided to the Member under this Contract for a period of more than thirty (30) days, the Member shall notify the Agency of its intent to enter into such contract and provide copies of such contract to the Agency. Within sixty (60) days after receipt of such notice, the Agency shall advise the Member as to whether, in the opinion of counsel of recognized standing in the field of law relating to municipal bonds selected by the Agency, the entering into of such contract would result in a

violation of the covenant in clause (i) above. The cost of this opinion shall be borne by the Member. Any determination by the Agency that any such contract would violate the covenant set forth in clause (i) above shall be made by the Agency based upon the aforementioned opinion. In the event that allocations are necessary under the Tax Laws to determine whether entering into any such contract violates the covenant set forth in clause (i) above, the Agency shall make such allocations, in its sole discretion, after receipt of an opinion of counsel of recognized standing in the field of law relating to municipal bonds selected by the Agency and paid for by the Member.

(f) Sale of Power.

The Member shall not sell at wholesale any of the electric power and energy delivered to it hereunder by the Agency to any customer of the Member or any other entity for resale by that customer or entity, unless it has first given the Agency 60 days written notice of its intent to sell such power and energy. The Agency, after receipt of such notice, shall have 30 days in which to impose limits on the amount of power and energy to be sold or to veto such sale if the sale will jeopardize the Agency's availability of resources to serve its Participating Members or increase the cost of power and energy to the Agency.

- (g) Member Rate Design. Nothing in this Contract shall be construed to diminish or surrender the power of the Member to regulate the rate design for public services rendered by the Member to its ratepayers.

Section 9. Cooperation.

If it becomes necessary by reason of any emergency or extraordinary condition for either the Agency or the Member to request the other Party to furnish personnel, materials, tools, or equipment for the accomplishment of its obligations hereunder, the other Party shall cooperate with the requesting Party and render such assistance as the other Party may determine to be available. The Party making such request, upon receipt of itemized bills from the other Party, shall promptly reimburse the other Party for all costs reasonably associated with providing assistance, including but not limited to costs of labor, supplies, facilities and equipment and may include an amount not to exceed ten percent (10%) of the total for administrative and general expenses; such costs are to be determined on the basis of current charges or rates used in its own operations by the Party rendering the assistance.

Section 10. Assignment of Contract.

- (a) This Contract shall inure to the benefit of and shall be binding upon the respective successors and assigns of the Parties to this Contract provided, however, that, except for any assignment by the Agency authorized by subsection (b) of this section, and except for any assignment by the Member in connection with the sale, lease or other disposition of all or substantially all of its electric system as

provided for in Section 8(b) above, neither this Contract nor any interest herein shall be transferred or assigned by either Party, except with the consent in writing of the other Party, which consent shall not be unreasonably withheld, it being understood that it would be reasonable for the Agency to withhold such consent if such transfer or assignment would (i) reduce the total amount of electric power or energy being sold hereunder; (ii) be to a party (other than a Participating Member of the Agency) with senior debt, if any, not rated in one of three highest whole rating categories by at least one nationally recognized bond rating agency; or (iii) adversely affect the value of this Contract or any new contract entered into pursuant to clause (i) (y) of Section 8(b) hereof as security for the payment of Bonds and interest thereon or affect the eligibility of interest on Bonds (whether then outstanding or thereafter to be issued) for federal tax-exempt status. No assignment or transfer of this Contract shall relieve the Parties of any obligation hereunder, unless specifically agreed to in writing by the other Party. It is understood and agreed that if this Contract is assigned or pledged by the Agency pursuant to subsection (b) of this section 10, no proposed assignment of this Contract by the Member shall be consented to by the Agency except in accordance with the terms of such assignment and pledge by the Agency and any applicable Bond Ordinance or other governing instrument of the Agency, in addition to the foregoing.

- (b) It is understood and agreed that the Agency is likely to issue Bonds in connection with meeting its obligations under this Contract. The Member acknowledges and agrees that the Agency may assign and pledge to any trustee or similar fiduciary designated in any Bond Ordinance all of, or any interest in, the Agency's right, title and interest in, to and under this Contract and all payments to be made to the Agency under the provisions of this Contract as security for the payment of the principal (including sinking fund installments) of, premium, if any, and interest on any Bonds and all other payments as required by the Bond Ordinance and may deliver possession of this Contract to such trustee in connection therewith, and, upon such assignment, pledge and delivery, the Agency may grant to such trustee any rights and remedies herein provided to the Agency and thereupon any reference herein to the Agency shall be deemed, with the necessary changes in detail, to include such trustee. The Member agrees to take all steps necessary to facilitate any such assignment and pledge.

Section 11. Insurance.

The Parties to this Contract shall each procure and maintain such policies of general liability insurance and other insurance or self insurance as shall be necessary in accordance with Prudent Utility Practice to insure themselves against any claim or claims for damages arising by reason of property damage, personal injury or death occasioned directly or indirectly in connection with the operation of its electric system, or integrated utility system of which the electric system is a part, or the performance of activities undertaken by it in connection with this Contract.

The Agency and the Member shall maintain insurance, if available, or self insurance on their electric facilities to cover damage or accident to those facilities in an amount consistent with Prudent Utility Practice.

Each Party agrees to defend, indemnify and hold harmless the other Party against any and all claims, liability, loss, damages or expense, including attorneys' fees, caused by or resulting solely from the operation of the indemnifying Party's electric facilities, or integrated utility system facilities, or solely from the negligent acts or omissions of the indemnifying Party, its employees or agents. This provision is not intended to be, and shall not be construed to constitute, a waiver for any purpose as to any person or entity of any statutory claims procedure or statutory limitation on liability applicable to either Party.

Section 12. Opinions as to Validity.

Upon the execution and delivery of this Contract, the Member shall furnish the Agency with an opinion by an attorney or firm of attorneys and a certificate from the Member to the effect that (i) the Member is a political subdivision and municipal corporation of the State of Illinois and is fully authorized and empowered under the laws of the State of Illinois to enter into this Contract and to perform its obligations hereunder, (ii) based upon the attorney's knowledge and due investigation, no consent, order, waiver or any other action by any person, board or body, public or private, is required as of the date of execution of this Contract by the Member for the Member to enter into this Contract and to perform its obligations hereunder, (iii) based upon the attorney's knowledge and due investigation, there is no action, suit or proceeding at law or in equity or by or before any court, administrative agency, governmental instrumentality or other agency pending or threatened against or affecting the Member or its electric utility system (or, if the Member's electric utility system shall be deemed to be a part of an integrated utility system, such integrated utility system) which seeks to prohibit, restrain or enjoin the Member from entering into or complying with its obligations contained in this Contract, including payment of obligations to the Agency, or in any way affects or questions the validity or enforceability of this Contract, or in any way might materially adversely affect the Member's ability to carry out the transactions contemplated by this Contract, (iv) this Contract has been duly and validly authorized, executed and delivered by the Member and constitutes a legal, valid and binding obligation of the Member enforceable against it in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization and similar laws of general application relating to the rights and remedies of creditors, and (v) the execution and delivery of this Contract and compliance by the Member with its terms will not conflict with, or constitute on the part of the Member a breach of or a default under, any existing statute, law, governmental rule, regulation, decree, resolution, ordinance, charter or order, or any agreement, indenture, mortgage, lease or instrument to which the Member is subject or by which it is or its properties are or may be bound.

The Member shall at its sole expense furnish the Agency, in form and substance satisfactory to and at such time requested by the Agency, such additional legal opinions, certificates, instruments and other documents as the Agency may reasonably request.

Section 13. Dispute Resolution/Procedure.

Should any dispute arise under this Contract concerning the interpretation or application of the Contract or should any controversy, claim or counterclaim arise before the initiation of litigation, such dispute shall then be submitted to the chief executive officers of the Parties for resolution. Each Party shall designate its chief executive officer. In the event no agreement is reached, the parties shall have all remedies provided by law.

Section 14. General Provisions.

(a) Regulation.

This Contract, and the respective obligations of the parties hereunder, are subject to all valid laws, orders, rules, and regulations of duly constituted authorities having jurisdiction.

(b) Access and Information.

Duly authorized representatives of the Agency and the Member shall be permitted to enter the other's premises at all reasonable times in order to carry out the provisions of this Contract.

The Agency and the Member will promptly furnish each other such information as may be reasonably requested from time to time in order to carry out more effectively the intent and purpose of this Contract, or as may be reasonably necessary and convenient in the conduct of the operations of the party requesting such information. Without limiting the generality of the foregoing, the Member shall, upon request, furnish to the Agency all such information, certificates, engineering reports, feasibility reports, information relating to load forecasting and power supply planning, financial statements, opinions of counsel (including the opinion required by Section 12 hereof), official statements and other documents as shall be reasonably necessary in connection with financing of the Agency.

Each Party may audit the books and records of the other Party upon reasonable request, and the cost shall be paid by the requesting Party.

The Member shall assist the Agency in forecasting the Member's power and energy requirements to be provided under this Contract. To this end the Member shall promptly provide the Agency with notice of all anticipated changes in the Member's electric load and shall provide the Agency with the Member's projected future power and energy requirements in such form or for such periods as the Agency may from time to time request. The Member also shall provide the Agency with all other information reasonably sought by the Agency for the purpose of load forecasting and planning.

The Member further agrees to provide such certificates and opinions as may be required by the Agency for any financing.

(c) Compliance with Terms of Service.

The Member agrees to comply with all terms and conditions of service applicable to sales of power and energy and/or transmission service to the Agency by any supplier for the Member's load. The Agency shall provide the Member with a copy of all such terms and conditions of service.

(d) Demand-Side Programs.

The Member agrees to cooperate with and endeavor to implement at the Member's cost any demand-side, conservation, load management and similar programs of the Agency adopted in connection with the provision of service hereunder.

(e) Relationship to and Compliance with Other Instruments.

It is recognized by the parties hereto that, in undertaking, or causing to be undertaken, the planning, financing, construction, acquisition, operation and maintenance of the Power Supply System, the Agency must comply with the requirements of any Bond ordinance, any agreements for the purchase or transmission of power and energy, any agreement with any owner or co-owner of or participant or co-participant in any facility included in the Power Supply System relating to the construction, operation or maintenance thereof and all licenses, permits and regulatory approvals necessary for such planning, financing, construction, acquisition, operation and maintenance, and it is therefore agreed that the Agency's performance under this Contract must be consistent with the terms and provisions of any Bond Ordinance, any such agreements for the purchase or transmission of power and energy (including any provisions for the curtailment or interruption of power and energy or transmission service contained therein), any such agreement with any owner or co-owner of or participant or co-participant in any facility included in the Power Supply System and all such licenses, permits, and regulatory approvals.

(f) No Relationship Created

None of the provisions of this Contract is intended to create, nor shall it be deemed to create, any relationship between the Parties other than that of independent entities contracting with each other solely for the purpose of effectuating the provisions of this Contract. Neither Party, nor any of their respective officers, agents or employees, shall be construed to be an officer, agent or employee of the other, solely by reason of the existence of this Contract. Neither Party shall make any contract or representation, or incur any liability or obligation whatsoever, on behalf of or in the name of the other Party.

(g) Amendment.

Except as provided for expressly herein, neither this Contract nor any terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing executed by each party to this Contract.

(h) Governing Law.

This Contract shall be governed by, and construed in accordance with, the laws of the State of Illinois.

(i) Delays and Waivers.

The failure of either Party to insist in any one or more instances upon the performance of any of the terms, covenants or conditions of this Contract shall not be construed as a waiver or relinquishment of the future performance of any other term, covenant or condition, but the defaulting Party's obligation with respect to future performance of any other term shall continue in full force and effect. The failure of either Party to take any action permitted to be taken by it by this Contract shall not be construed as a waiver or relinquishment of that Party's right thereafter to take such action.

(j) Headings; References.

The headings used in this Contract are for convenience only and shall not constitute a part of this Contract. Unless the context clearly requires otherwise, all references to "Sections" and other subdivisions are to the sections and subdivisions of this Contract.

(k) Severability.

In the event that any of the terms, covenants or conditions of this Contract, or the application of any such term, covenant or condition, shall be held invalid as to any person or circumstance by any court having jurisdiction under the circumstances, the remainder of this Contract and the application of its terms, covenants or conditions to such persons or circumstances shall not be affected thereby. If any provision of this Contract is held invalid, the Parties agree to negotiate a revision to this Contract which to the extent possible restores the original intent of this Contract with respect to the invalid provision.

In the event that any of the terms, covenants or conditions of any Power Supply Contract for Participating Members (other than this Contract), or the application of any such term, covenant or condition, shall be held invalid as to any person or circumstance by any court having jurisdiction under the circumstances, it is

agreed by the Parties hereto that such invalidity shall have no effect whatsoever upon any of the terms, covenants or conditions of this Contract.

(l) Notices.

Any notice required or permitted under this Contract shall be in writing and shall be given by personal delivery or certified mail, return receipt requested, addressed as follows:

To the Agency: Illinois Municipal Electric Agency
Attention: General Manager & CEO
919 S. Spring Street
Springfield, Illinois 62704

To the Member: City of Naperville
Attention: City Manager
400 S. Eagle
Naperville, IL 60566

Either Party may, by written notice, designate a different or additional address for notices to it. All notices hereunder shall be effective only upon receipt by the Party to which notice is being given.

(m) Survivorship of Obligations.

The termination of this Contract shall not discharge either Party hereto from any obligation it owes to the other Party under this Contract by reason of any transaction, loss, cost, damage, expense, or liability which shall occur or arise (or the circumstances, events, or basis of which shall occur or arise) prior to such termination. It is the intent of the parties hereby that any such obligation owed (whether the same shall be known or unknown at the termination of this Contract or whether the circumstances, events, or basis of the same shall be known or unknown at the termination of this Contract) shall survive the termination of this Contract.

Section 15. No Adverse Distinction

IMEA agrees that there shall be no adverse distinction and no pattern of undue discrimination in carrying out its obligations under this Contract relating to the Member as compared to other Participating Members; provided, however, that differences in treatment between Participating Members based on variances in cost of service determined by IMEA and other criteria as provided for in Section 3 shall not be considered an adverse distinction or undue discrimination for purposes of this Contract. The Member's sole remedy for adverse distinction is pursuant to this Contract.

Section 16. Intergovernmental Freeze.

This Contract and the obligations hereunder shall not be subject to the Local Government Financial Planning and Supervision Act of the State of Illinois, or, to the extent permitted, to any other stay, moratorium, freeze or bankruptcy law.

IN WITNESS WHEREOF, the Parties have caused this Contract to be executed by their proper officials, respectively, being thereunto duly authorized, and their respective corporate seals to be hereto affixed, as of the day, month and year first above written.


ILLINOIS MUNICIPAL ELECTRIC AGENCY

By: 
General Manager & CEO

ATTEST:


Administrative Manager

CITY OF NAPERVILLE, ILLINOIS

By: 
Mayor

ATTEST:


City Clerk



Schedules A & B in separate files

SCHEDULE C

[This Schedule C intentionally left blank]

SCHEDULE D

MEMBERS LONG TERM POWER CONTRACTS FOR SALES

ADDENDUM TO POWER SALES CONTRACT

This Addendum to the Power Sales Contract Between the Illinois Municipal Electric Agency and the City of Naperville, dated the same day as this Addendum, is made this 6 day of Feb, 2007, by and between the ILLINOIS MUNICIPAL ELECTRIC AGENCY, a municipal corporation and unit of local government of the State of Illinois, and the CITY OF NAPERVILLE, an Illinois municipal corporation.

WHEREAS, the Illinois Municipal Electric Agency ("IMEA" or "Agency") has heretofore entered into long-term Power Sales Contracts with twenty-nine of its member municipalities to provide the full requirements of their respective municipal electric systems ("Participating Members"); and

WHEREAS, the non-coincident peak demand of the twenty-nine Participating Members was approximately 626 Megawatts ("MW") for 2005 and is estimated to be approximately 700 MW (800 MW including reserve requirement) by 2012, while the energy requirements of the twenty-nine Participating Members was 2,679,559 Megawatt-hours ("MWh") in 2005 and is estimated to be approximately 3,200,000 MWh by 2012; and

WHEREAS, IMEA has planned for and executed contracts to create a mix of resources, including asset ownership, projects under construction, dedicated capacity, and short-term and long-term power purchase contracts, necessary to supply the capacity and energy requirements of the twenty-nine Participating Members into the future; and

WHEREAS, the City of Naperville ("Naperville") owns and operates its own municipal electric utility, which had a peak demand of approximately 355 MW and energy requirements of approximately 1,519,000 MWh in 2005, and which is estimated to have a peak demand of approximately 400 MW and energy requirements of approximately 1,740,000 MWh in 2012; and

WHEREAS, Naperville has requested and IMEA is willing to provide power and energy for the long-term, full requirements of Naperville's municipal electric system, provided however, IMEA would need to secure additional capacity and energy resources to add to its existing mix of resources in order to be able to serve Naperville and its existing twenty-nine Participating Members; and

WHEREAS, IMEA has evaluated the potential acquisition of an ownership interest in the Prairie State Project (sometimes referred to hereinafter as the "Project") being developed in Washington and St. Clair Counties, Illinois by Prairie State Generating Company, LLC, an affiliate of Peabody Energy Corporation, or its successors, assigns, affiliates or Lively Grove Energy, LLC (hereinafter collectively referred to as "PSGC") and other public power project participants, as a source of additional baseload capacity and energy to add to its existing mix of resources in order to be able to serve the City of Naperville and its existing twenty-nine Participating Members; and

WHEREAS, the Prairie State Project is currently being developed as a two unit, mine mouth coal plant with a total contractual capacity for the purpose of determining ownership percentages and eventual ownership entitlements in the final net rated capability of the Project of 1,582 MW, with a presently projected commercial operation date for Unit 1 by the end of 2011 and for Unit 2 by the end of 2012; and

WHEREAS, the contractual ownership interest sought to be acquired by IMEA will be at a minimum contractual level of 240 MW, or 15.17 percent, and a maximum contractual level of 300 MW, or 18.96 percent, such capacity levels being based on a total contractual capacity for the Project of 1,582 MW as defined in the Project Development Agreement between PSGC and the other project participants dated February 9, 2005 ("Project Development Agreement"); and

WHEREAS, the Project Development Agreement allows IMEA and other project participants to withdraw from participation in the Project prior to the Project Closing as described in the Project Development Agreement ("Project Closing"); and

WHEREAS, IMEA and Naperville have entered into a Power Sales Contract, dated the same day as this Addendum, pursuant to which Naperville has agreed to purchase and IMEA has agreed to provide and sell, subject to certain limitations, all of the electric power and energy required for the operation of Naperville's municipal electric utility for a term commencing on June 1, 2011 and extending through September 30, 2035; and

WHEREAS, the Power Sales Contract between IMEA and Naperville was executed with full knowledge by both parties that the obligations thereunder were to be expressly subject to the provisions of this Addendum; to the extent that there is any inconsistency between the term or conditions of this Addendum and the Power Sales Contract, the terms and conditions of this Addendum shall prevail; to the extent that provisions in the Addendum and the Power Sales Contract are not inconsistent, they shall be read together; and

WHEREAS, Naperville understands that IMEA's obligations to sell and provide power and energy to Naperville under the Power Sales Contract would need to include an off-ramp for the contingency that: (1) IMEA may not be able to secure the right to participate as an owner in the Prairie State Project under terms and conditions acceptable to IMEA prior to July 1, 2007; or (2) the Prairie State Project may not proceed to the Project Closing; or (3) IMEA may withdraw from the Project prior to the issuance of the Proceed Notice under Section 7.8(c) of the Project Development Agreement, as defined therein ("Proceed Notice") (a) after a determination by the Board of Directors of IMEA that the Project is no longer an economical resource to serve Naperville and the Participating Members or (b) at Naperville's request; and

WHEREAS, in the event that the Prairie State Project does not proceed to Project Closing or IMEA withdraws from the Project prior to the issuance of the Proceed Notice as set forth above, this Addendum would provide an independent obligation requiring Naperville to reimburse IMEA for (1) all amounts actually paid or incurred by the Agency in connection with participation in the development and construction of the Prairie State Project to PSGC, its contractors or vendors; (2) all amounts actually incurred by the Agency in connection with the

Put Option Agreement with Lively Grove Energy, LLC; and (3) all amounts paid or incurred for services rendered to IMEA by third party consultants, including attorneys, or service providers; plus (4) actual interest costs incurred by the Agency related to financing such payments, calculated based on the All-In True Interest Cost on IMEA's Revenue Bonds, provided all such amounts except the \$20,000 deposit on the MISO transmission study shall have been incurred subsequent to January 16, 2007 and are directly attributable to the Prairie State Project or to transmission studies that are required in order to plan for the delivery of power and energy from the Project to Naperville (hereinafter collectively referred to as "Agency Project Costs"); and

WHEREAS, the acquisition of the additional capacity and energy resources necessary to serve Naperville is projected to cause an increase to the average power supply costs of IMEA's twenty-nine existing Participating Members, and it will require IMEA to issue an additional series or multiple series of revenue bonds for which all Participating Members will be responsible to pay rates sufficient to cover their proportionate share thereof; and

WHEREAS, the Power Sales Contract was executed with full knowledge by both parties that Section 3 thereof would be amended by this Addendum to provide for Naperville to pay a premium over and above the uniform postage stamp rates and charges to offset projected increases to the average power supply costs of the Agency's twenty-nine existing Participating Members resulting from acquisition of the resources necessary to serve Naperville and to provide a marginal benefit to the Agency's existing Participating Members from adding Naperville as a new Participating Member of the Agency and that the premium would be set at different levels for different time periods and ownership levels as described in the body of this Addendum; and

WHEREAS, IMEA and Naperville have agreed contemporaneously with the execution of the Power Sales Contract to amend the Power Sales Contract as set forth herein to address the matters set forth above.

NOW, THEREFORE, the Illinois Municipal Electric Agency and the City of Naperville hereby agree as follows:

1. **Preamble.**

The recitals in the foregoing preamble are incorporated in this Addendum as though fully set forth in this Section 1.

2. **Acquisition of Ownership Interest in Prairie State Project.**

IMEA shall take steps to acquire on terms and conditions acceptable to IMEA an ownership interest in the Prairie State Project as a source of additional baseload capacity and energy to add to its existing mix of resources in order to be able to serve the City of Naperville and its existing twenty-nine Participating Members, including payment of all costs associated with participation in the development and/or construction of the Project. The contractual ownership interest sought to be acquired by IMEA will be at a minimum contractual level of 240 MW, or 15.17 percent, and a maximum contractual level of 300 MW, or 18.96 percent, such

capacity levels being based on a total contractual capacity for the Project of 1,582 MW as defined in the Project Development Agreement. As a condition of allowing IMEA to participate as an owner in the Prairie State Project, PSGC is requiring that IMEA execute a separate Put Option Agreement with Lively Grove Energy, LLC granting an ownership backstop option to “put” some portion of PSGC’s ownership to IMEA at a later date in the event that PSGC is not able to secure power purchase agreements with other third-party entities for all of its contractual ownership interest. The “put option” would be exercisable by PSGC after Project Closing but not later than December 31, 2010. The final determination of the level of IMEA’s contractual ownership interest in the Project above 240 MW will depend on whether PSGC requires IMEA to purchase the additional contractual ownership interest in the Project.

3. **Naperville’s Right to Cause IMEA to Withdraw from Prairie State Project and to Participate in Project Meetings.**

Naperville shall have the right to request that IMEA withdraw as a participant in the Project prior to the issuance of the Proceed Notice under Section 7.8(c) of the Project Development Agreement, and IMEA agrees to withdraw from the Project within 3 (three) business days after receipt of Naperville’s written request that IMEA withdraw, provided that any such request is received no less than 10 (ten) business days before the date on which the Confirming Notice from IMEA is due to be delivered under Section 7.8(c) of the Project Development Agreement, as defined therein (“Confirming Notices”). No later than 10 (ten) days following receipt of each invoice from PSGC each month between the execution of this Addendum and the issuance of the Proceed Notice, IMEA shall provide Naperville with a copy of such invoice and an accounting of all payments made to PSGC to date in connection with the Project. In addition, IMEA will cause PSGC to deliver to Naperville periodic project updates at the same time that such information is delivered to IMEA. Prior to the issuance of the Proceed Notice, IMEA will not cast its vote at any meeting of project participants to approve any financial obligation that will cause the Agency Project Costs paid or incurred before the issuance of the Proceed Notice (excluding interest) to exceed \$20,000,000 without the Naperville City Manager’s prior written approval. IMEA will use its best efforts to comply with the foregoing, provided however, failure to deliver such accounting or Project update information shall not constitute a breach of this Addendum. Naperville shall have the right, but not the obligation, to have a representative in attendance at meetings among participants in the Prairie State Project and IMEA will provide Naperville with written notice of such meetings promptly after IMEA receives such notice or learns of such meetings.

4. **Pre-Project Closing Costs if Closing does not occur or IMEA withdraws and Naperville Right of Assignment.**

IMEA and Naperville acknowledge that the Prairie State Project may be cancelled or otherwise abandoned by PSGC and/or the project participants prior to the Project Closing, or IMEA may withdraw from the Project prior to the issuance of the Proceed Notice if: (1) the Board of Directors of IMEA determines that the Project is no longer an economical resource to serve Naperville and the Participating Members, or (2) Naperville requests pursuant to Section 3 above, which request must be received by IMEA no later than 10 (ten) business days before the

date on which the IMEA Confirming Notice is due to be delivered. The various agreements regarding participation, development, construction, operation and ownership of the Prairie State Project may not provide for a refund of all or any portion of the payments made to the developers of the Prairie State Project or other financial obligations to the developers of the Prairie State Project incurred by IMEA as an equity owner in connection with the development and construction of the Prairie State Project. Naperville shall bear the risk of loss for all Agency Project Costs and shall reimburse IMEA therefor if the Prairie State Project is cancelled or otherwise abandoned by PSGC prior to Project Closing, or if IMEA withdraws from the Project prior to the issuance of the Proceed Notice. If any such event occurs, Naperville shall reimburse the Agency Project Costs to IMEA within 60 days following notice thereof from IMEA, provided that such notice shall be accompanied by complete documentation of the basis for the requested reimbursement. If IMEA is able to participate in the Project, but subsequently determines prior to the issuance of the Proceed Notice that the Project is no longer an economical resource to serve Naperville and other Participating Members of IMEA such that it intends to withdraw from the Project, then at Naperville's option, IMEA shall transfer all of its rights, obligations and interests in the Project, including its rights, obligations and interests under the Put Option Agreement with Lively Grove Energy LLC, to Naperville. Under such circumstances, IMEA shall take all reasonable steps necessary to obtain approval of such transfer, if required, from PSGC and/or the other project participants pursuant to the various Project transaction agreements and to effectuate the transfer of all of IMEA's rights, obligations and interests in the Project to Naperville. IMEA will use its best efforts to include provisions in the agreements between IMEA and PSGC whereby PSGC will consent in advance to such assignment to Naperville on the same terms and conditions as exist between IMEA and PSGC, and IMEA will otherwise use its best efforts to cause PSGC to seek and obtain any necessary approvals of such assignment to Naperville in advance from other project participants, all subject only to reasonable conditions such as (1) Naperville having a long-term, unsecured debt rating of A or better at the time of the proposed transfer, and (2) Naperville assuming in writing all obligations under the IMEA Fee Agreement and the IMEA Put Option Agreement and executing such other assurances as PSGC and the other project participants may reasonably request with respect to such assignment.

5. **Explicit Amendments of Power Sales Contract.**

a. **Amendment to Section 1(b) of Power Sales Contract.**

Section 1 of the Power Sales Contract is hereby amended by deleting the entire text of subsection (b) and replacing it with the following:

(b) **Conditions for Effectiveness of Contract**

Notwithstanding any other provision hereof, the obligations of the Agency to provide and sell power and energy to Naperville and the obligations of Naperville to take and pay for power and energy from the Agency under this Contract shall not become effective unless: (1) IMEA is able to secure the right to participate as an owner in the Prairie State Project under terms and conditions acceptable to IMEA prior to July 1, 2007; and (2) the

Project Closing of the Prairie State Project occurs with IMEA as a Project Participant, provided however in the event the Project fails to proceed to the Project Closing or IMEA withdraws from the Project prior to the issuance of the Proceed Notice under Section 7.8(c) of the Project Development Agreement, as defined therein, either (a) after a determination by the Board of Directors of IMEA that the Project is no longer an economical resource to serve Naperville and the Participating Members, or (b) at Naperville's request pursuant to Section 3 of the Addendum to Power Sales Contract, Naperville shall nevertheless be liable to reimburse the Agency for the Agency Project Costs (as defined in the Addendum to Power Sales Contract). If it becomes apparent that IMEA will not be able to secure the right to participate as an owner in the Project under terms and conditions acceptable to IMEA prior to July 1, 2007, the Agency shall provide Naperville with prompt written notice that the obligations under this Contract will not become effective. If IMEA is able to participate in the Project, but it becomes apparent that the Project Closing will not occur due to the cancellation or abandonment of the Project by PSGC and/or the project participants or if IMEA withdraws from the Project prior to the issuance of the Proceed Notice as set forth above, the Agency shall provide Naperville with prompt written notice that the obligations under the Contract will not become effective along with an accounting of the Agency Project Costs for which Naperville is obligated to reimburse the Agency.

b. **Amendment to Section 3 of Power Sales Contract if PSGC exercises the "put option".**

If the contractual ownership interest ultimately acquired by IMEA in the Prairie State Project after final exercise of any "put option" by PSGC or its successors is at a level greater than 240 MW, Section 3 of the Power Sales Contract is amended by adding the following text in the second full paragraph immediately preceding the last sentence which now reads and shall continue to read "The methodology for establishing rates and charges used by the Agency may be modified by the Agency from time to time.":

Naperville shall pay debt service demand charges based on a regular amortization period to 2035, rather than the accelerated amortization period, in connection with the Agency's Series 2006 Revenue Bonds. Notwithstanding any other provision of this Section 3 and in addition to all other rates and charges then in effect for the Participating Members, Naperville shall pay a premium over and above the Agency's uniform postage stamp rates and charges then in affect for the Participating Members to offset projected increases to the average power supply costs of the Agency's twenty-nine existing Participating Members resulting from acquisition of the resources necessary to serve Naperville and to provide a marginal benefit to the Agency's existing Participating Members from

adding Naperville as a new Participating Member of the Agency. For the period prior to the first day of the month following the date of commercial operation of Prairie State Unit 1, the amount of the premium shall be \$0.00575 per kilowatt-hour (“kWh”). For the period commencing with the first day of the month following the date of commercial operation of Prairie State Unit 1 through the last day of the month in which the date of commercial operation of Prairie State Unit 2 occurs, the amount of the premium shall be \$0.00450 per kWh. For the period commencing with the first day of the month following the date of commercial operation of Prairie State Unit 2 and for 96 months thereafter, the amount of the premium shall be \$0.00325 per kWh. For any additional monthly billing periods through December 31, 2025, the amount of the premium shall be \$0.00125 per kWh.

c. **Amendment to Section 3 of Power Sales Contract if PSGC does not exercise the “put option”.**

If the contractual ownership interest ultimately acquired by IMEA in the Prairie State Project is at the 240 MW level, Section 3 of the Power Sales Contract is amended by adding the following text in the second full paragraph immediately preceding the last sentence which now reads and shall continue to read “The methodology for establishing rates and charges used by the Agency may be modified by the Agency from time to time.”:

Naperville shall pay debt service demand charges based on a regular amortization period to 2035, rather than the accelerated amortization period, in connection with the Agency’s Series 2006 Revenue Bonds. Notwithstanding any other provision of this Section 3 and in addition to all other rates and charges then in effect for the Participating Members, Naperville shall pay a premium over and above the uniform postage stamp rates and charges then in affect for the Participating Members to off-set projected increases to the average power supply costs of the Agency’s twenty-nine existing Participating Members resulting from acquisition of the resources necessary to serve Naperville and to provide a marginal benefit to the Agency’s existing Participating Members from adding Naperville as a new Participating Member of the Agency. For the period prior to the first day of the month following the date of commercial operation of Prairie State Unit 1, the amount of the premium shall be \$0.00575 per kilowatt-hour (“kWh”). For the period commencing with the first day of the month following the date of commercial operation of Prairie State Unit 1 through the last day of the month in which the date of commercial operation of Prairie State Unit 2 occurs, the amount of the premium shall be \$0.00450 per kWh. For the period commencing with the first day of the month following the date of commercial operation of Prairie State Unit 2 through the later of 96 months thereafter or December 31, 2025, the amount of the premium shall be \$0.00250 per kWh.

d. **Amendment to Section 2(b) of Power Sales Contract.**

Section 2 of the Power Sales Contract is amended by deleting the entire text of subsection (b) and replacing it with the following:

(b) Restrictions on Other Sources

Except as provided in this Section 2(b) and Section 2(c), the Member shall not obtain electric power and/or energy required for the operation of its electric utility system from any other source.

If the Member is required by law to purchase power and/or energy from a small power production facility, a cogeneration facility or other electric generating facility after the effective date of this Contract, the Member shall promptly inform the Agency of such requirement whereupon the Member and the Agency shall use their best efforts to arrange for such purchases to be made by the Agency. If such arrangements cannot be made, then the Member shall make the required purchase and sell the power and/or energy to the Agency at the same price and on the same terms and conditions under which it was purchased by the Member; provided however, the price to be paid by the Agency to the Member for such power and/or energy shall not exceed an amount equal to the Agency's average Energy Charge to the Member, adjusted for Energy Cost Adjustment Factors, for its previous fiscal year without regard to the premiums paid by Member pursuant to Section 3 of this Contract, as amended by Section 5.b. or 5.c. of the Addendum to Power Sales Contract, plus the Agency's avoided capacity costs, if any. For the first year of service to the Member under this Contract (when there is no average Energy Charge to the Member for the Agency's previous fiscal year), the price to be paid by the Agency to the Member for such energy shall not exceed an amount equal to the Agency's average Energy Charge to all Participating Members, adjusted for Energy Cost Adjustment Factors, for the Agency's previous fiscal year, plus the Agency's avoided capacity costs, if any. The Member shall serve as primary contact in all dealings with Member's customers with respect to such purchases.

The Parties acknowledge that as of the date of execution of this Contract the Member has a number of arrangements to purchase power and/or energy directly from certain customer-owned cogeneration facilities within its service area, and for such grandfathered arrangements the Parties agree that the Member shall purchase the power and/or energy generated by such grandfathered facilities and sell the power and/or energy to the Agency at the same price and on the same terms and conditions under which it was

purchased by the Member, provided however, the price to be paid by the Agency to the Member for such power and/or energy shall not exceed an amount equal to the Agency average cost of power supply delivered to the Member for its previous fiscal year without regard to the premiums paid by Member pursuant to Section 3 of this Contract, as amended by Section 5.b. or 5.c. of the Addendum to Power Sales Contract. For the first year of service to the Member under this Contract (when there is no average cost of power supply delivered to the Member for the Agency's previous fiscal year), the price to be paid by the Agency to the Member for such power and/or energy shall not exceed an amount equal to the Agency's average cost of power supply delivered to all Participating Members for the Agency's previous fiscal year. The Member shall serve as primary contact in all dealings with Member's customers with respect to such purchases. Member shall have the right to continue purchasing power and/or energy generated by such grandfathered facilities during the term of this Agreement, without regard to whether such purchases are required by law.

6. **Addendum Supersedes Power Sales Contract if a Conflict Exists.**

It is agreed between the parties that in the event there is a conflict between the provisions of this Addendum and provisions of the Power Sales Contract that the provisions of this Addendum shall prevail and control. To the extent that there is any inconsistency between the terms or conditions of this Addendum and the Power Sales Contract, the terms and conditions set forth in this Addendum shall prevail. To the extent that provisions in the Addendum and the Power Sales Contract are not inconsistent, they shall be read together.

7. **Effectiveness and Survival of Naperville Reimbursement Obligation.**

Naperville's obligation to reimburse the Agency for payments related to the Prairie State Project pursuant to Sections 3 and 4 of this Addendum is effective as of the date of execution notwithstanding any contingency with respect to the effectiveness of the obligations of the Agency to provide and sell power and energy to Naperville and the obligations of Naperville to take and pay for power and energy from the Agency under the Power Sales Contract. If and to the extent that the obligations of the Agency to provide and sell power and energy to Naperville and the obligations of Naperville to take and pay for power and energy from the Agency under the Power Sales Contract do not become effective due to one or more of the reasons set forth in Section 1(b) of the Power Sales Contract, as amended by Section 5.a. above, the obligation of Naperville to reimburse IMEA under this Addendum as set forth above shall survive.

[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS THEREOF the parties have authorized the execution of this Addendum and have caused their duly authorized representatives to sign as of the day and year first written above.

ILLINOIS MUNICIPAL ELECTRIC AGENCY



General Manager & CEO

ATTEST:



Administrative Manager

CITY OF NAPERVILLE, ILLINOIS

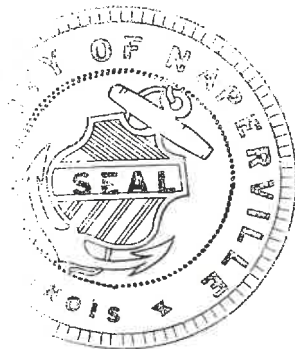


Mayor

ATTEST:



City Clerk



SECOND ADDENDUM TO POWER SALES CONTRACT

This Second Addendum to the Power Sales Contract between the Illinois Municipal Electric Agency and the City of Naperville, dated February 6, 2007, is made this 1st day of May, 2007, by and between the ILLINOIS MUNICIPAL ELECTRIC AGENCY ("IMEA"), a municipal corporation and unit of local government of the State of Illinois, and the CITY OF NAPERVILLE ("Naperville"), an Illinois municipal corporation.

WHEREAS, IMEA and Naperville have entered into a Power Sales Contract, dated February 6, 2007, pursuant to which Naperville has agreed to purchase and IMEA has agreed to provide and sell, subject to certain limitations, all of the electric power and energy required for the operation of Naperville's municipal electric utility for a term commencing on June 1, 2011 and extending through September 30, 2035, and an Addendum to Power Sales Contract ("First Addendum"), dated the same day, which contained provisions regarding the acquisition by IMEA of an ownership interest in the Prairie State Project, as defined in the First Addendum ("Project"), as well as other amendments to IMEA's standard form Power Sales Contract; and

WHEREAS, pursuant to the First Addendum, the effectiveness of the Power Sales Contract was subject to IMEA being able to secure the right to participate as an owner in the Prairie State Project under terms and conditions acceptable to IMEA prior to July 1, 2007 and the occurrence of the Project Closing at the end of the development phase with IMEA as a Project Participant; and,

WHEREAS, under the First Addendum, the parties agreed that prior to the Proceed Notice which was to be issued during the development phase, either IMEA or Naperville could initiate a withdrawal from the Project; and

WHEREAS, IMEA has continued to monitor the progress of the Prairie State Project and conducted due diligence in furtherance of the potential acquisition of an ownership interest therein, however during this further evaluation process IMEA had not yet executed the documents necessary to become a participant in the Project; and

WHEREAS, as the Prairie State Project has proceeded through the development phase, it has become apparent that the Project Development Agreement and Transaction Agreements will need to be revised in order to avoid significant delays in the project schedule and potential increases in the project costs; and

WHEREAS, it is anticipated that the Project Development Agreement will be amended such that IMEA and other project participants will no longer be allowed to withdraw from participation in the Project as originally contemplated by the First Addendum, and certain trigger events within the Project Development Agreement such as "Confirming Notices" and "Proceed Notice" will be eliminated; and

WHEREAS, due to the anticipated changes to the Project Development Agreement and Transaction Agreements, certain provision of the First Addendum are no longer feasible and therefore the parties have agreed to amend the Power Sales Contract and the First Addendum as set forth herein.

NOW, THEREFORE, the Illinois Municipal Electric Agency and the City of Naperville hereby agree as follows:

1. The recitals in the foregoing preamble are incorporated in this Second Addendum as though fully set forth in this Section 1.

2. Section 2 of the Addendum to Power Sales Contract between IMEA and Naperville dated February 6, 2007 remains in full force and effect.

3. Section 3 of the Addendum to Power Sales Contract between IMEA and Naperville dated February 6, 2007 is hereby deleted in its entirety and replaced with the following:

3. [Reserved]

4. Section 4 of the Addendum to Power Sales Contract between IMEA and Naperville dated February 6, 2007 is hereby deleted in its entirety and replaced with the following:

4. **Pre-Project Closing Costs if Project Closing does not occur.**

IMEA and Naperville acknowledge that the Prairie State Project may be cancelled or otherwise abandoned by PSGC and/or the project participants prior to the Project Closing. The various agreements regarding participation, development, construction, operation and ownership of the Prairie State Project may not provide for a refund of all or any portion of the payments made to the developers of the Prairie State Project or other financial obligations to the developers of the Prairie State Project incurred by IMEA as an equity owner in connection with the development and construction of the Prairie State Project. Naperville shall bear the risk of loss for all Agency Project Costs and shall reimburse IMEA therefor if the Prairie State Project is cancelled or otherwise abandoned prior to Project Closing. If such event occurs, Naperville shall reimburse the Agency Project Costs to IMEA within 60 days following notice thereof from IMEA, provided that such notice shall be accompanied by complete documentation of the basis for the requested reimbursement.

5.a. Section 1 of the Power Sales Contract, as amended by Section 5.a. of the Addendum to Power Sales Contract between IMEA and Naperville dated February 6, 2007, is hereby amended by deleting the entire text of subsection (b) and replacing it with the following:

(b) Conditions for Effectiveness of Contract

Notwithstanding any other provision hereof, the obligations of the Agency to provide and sell power and energy to Naperville and the obligations of Naperville to take and pay for power and energy from the Agency under this Contract shall not become effective unless: (1) IMEA is able to secure the right to participate as an owner in the Prairie State Project under terms and conditions acceptable to IMEA prior to July 1, 2007; and (2) the Project Closing of the Prairie State Project occurs, provided however in the event the Project fails to proceed to the Project Closing, Naperville shall nevertheless be liable to reimburse the Agency for the Agency Project Costs (as defined in the Addendum to Power Sales Contract). If it becomes apparent that IMEA will not be able to secure the right to participate as an owner in the Project under terms and conditions acceptable to IMEA prior to July 1, 2007, the Agency shall provide Naperville with prompt written notice that the obligations under this Contract will not become effective. If IMEA is able to participate in the Project, but it becomes apparent that the Project Closing will not occur due to the cancellation or abandonment of the Project by PSGC and/or the project participants, the Agency shall provide Naperville with prompt written notice that the obligations under the Contract will not become effective along with an accounting of the Agency Project Costs for which Naperville is obligated to reimburse the Agency.

5.b. Section 5.b. of the Addendum to Power Sales Contract between IMEA and Naperville dated February 6, 2007 remains in full force and effect.

5.c. Section 5.c. of the Addendum to Power Sales Contract between IMEA and Naperville dated February 6, 2007 remains in full force and effect.

5.d. Section 5.d. of the Addendum to Power Sales Contract between IMEA and Naperville dated February 6, 2007 remains in full force and effect.

6. It is agreed between the parties that in the event there is any conflict or inconsistency between the provisions of this Second Addendum and provisions of either the Power Sales Contract or the First Addendum, the provisions of this Second Addendum shall prevail and control.

7. Section 7 of the Addendum to Power Sales Contract between IMEA and Naperville dated February 6, 2007 is hereby deleted in its entirety and replaced with the following:

7. **Effectiveness and Survival of Naperville Reimbursement Obligation.**

Naperville's obligation to reimburse the Agency for payments related to the Prairie State Project pursuant to Section 4 of this Addendum (as amended by Section 4 of the Second Addendum) is effective as of the date of execution notwithstanding any contingency with respect to the effectiveness of the obligations of the Agency to provide and sell power and energy to Naperville and the obligations of Naperville to take and pay for power and energy from the Agency under the Power Sales Contract. If and to the extent that the obligations of the Agency to provide and sell power and energy to Naperville and the obligations of Naperville to take and pay for power and energy from the Agency under the Power Sales Contract do not become effective due to one or more of the reasons set forth in Section 1(b) of the Power Sales Contract, as amended by Section 5.a. of the Second Addendum, the obligation of Naperville to reimburse IMEA under this Addendum as set forth above shall survive.

IN WITNESS THEREOF the parties have authorized the execution of this Second Addendum and have caused their duly authorized representatives to sign as of the day and year first written above.



General Manager & CEO

ATTEST:



Administrative Manager

CITY OF NAPERVILLE, ILLINOIS



Mayor

ATTEST:



City Clerk