

**KENDALL COUNTY BOARD AGENDA  
ADJOURNED SEPTEMBER MEETING**

**Kendall County Office Building, Rooms 209 & 210  
Tuesday, June 2, 2020 at 6:00 p.m.**

1. Call to Order
2. Roll Call
3. Determination of a Quorum
4. Approval of Agenda
5. Special Recognition
  - A. Dr. Amaal Tokars
  - B. Mars Wrigley Foundation
6. Public Comment
  - A. Todd Milliron
7. Public Hearing

Public Hearing for proposed Downstate Small Business Stabilization applications funded by Community Development Block Grant (CDBG) funds
8. Consent Agenda
  - A. Approval of County Board Minutes from April 27, 2020 and May 5, 2020
  - B. Standing Committee Minutes Approval
  - C. Approval of Claims in an amount not to exceed \$ 835,918.45
  - D. Approval of a Proclamation to Recognize National Nurse Appreciation Month, May 2020
  - E. Approval of a Proclamation to Recognize Law Enforcement Appreciation Week
  - F. Approval of a Proclamation to Recognize National Poppy Day, May 22, 2020
9. Old Business
10. New Business
11. Executive Session
12. Elected Official Reports & Other Department Reports
13. Standing Committee Reports
  - A. Finance
    1. Approval of Master Power Supply Agreement Between Kendall County and Eligo Energy IL, LLC
    2. Approval of a Resolution Establishing the Salary for the Kendall County Coroner
    3. Approval of a Resolution Establishing the Salary for the Kendall County Circuit Court Clerk
  - B. Economic Development
    1. Approval of a Resolution of Support for Blackberry Golf Inc. Downstate Small Business Stabilization Program Application
    2. Approval of a Participation Agreement between Kendall County and Blackberry Golf Inc.
14. Special Committee Reports
  - A. ISACo, UCCI, NACO, and other County Organizations
15. Other Business
16. Chairman's Report

**Appointments**

Ken Johnson – reappointment Bristol Kendall Fire District Trustee – Expires April 30, 2023  
Marty Schwartz – reappointment Bristol Kendall Fire District Trustee – Expires April 30, 2023

17. Public Comment
18. Questions from the Press
19. Executive Session
20. Adjournment

If special accommodations or arrangements are needed to attend this County meeting,  
please contact the Administration Office at 630-553-4171, a minimum 24-hours prior to the meeting time.

**KENDALL COUNTY BOARD  
SPECIAL MEETING  
April 27, 2020**

STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF KENDALL    )

The Kendall County Board Meeting was held remotely at the Kendall County Office Building, Room 209, in the City of Yorkville on Monday April 27, 2020 at 9:00 a.m. The Clerk called the roll. Members present: Chairman Scott Gryder, Amy Cesich, Elizabeth Flowers, Scott Gengler, Judy Gilmour, Audra Hendrix, Matt Kellogg, and Robyn Vickers. Members absent: Tony Giles and Matt Prochaska.

The Clerk reported to the Chairman that a quorum was present to conduct business.

**THE AGENDA**

Member Cesich moved to approve the agenda. Member Vickers seconded the motion. Chairman Gryder asked for a voice vote on the motion. All members present voting aye except Kellogg who opposed. **Motion carried.**

**NEW BUSINESS**

**Tax Abatement**

Member Hendrix moved to approve the FY2020 Tax Abatement Ordinance. Member Kellogg seconded the motion. Chairman Gryder asked for a roll vote on the motion. All members present voting aye. **Motion carried.**

A complete copy of Ordinance 20-07 is available in the Office of the County Clerk.

**Chairman's Report**

Chairman Gryder spoke about the Governor's extended stay at home order. New EMA Director Roger Bonuchi starts today. Chairman Gryder informed the board that there will be a conference call with the Elected Officials about extending the April 30 designation of the closing of the County Office Building. Mr. Gryder asked that for the safety of our employees those coming into the building to please wear a mask. Chairman Gryder has a call with Mayors and Managers where they discussed what is being done during this time. Chairman Gryder stated that they will be discussing the property tax waiver with stakeholders, school and other districts once tax dates finalized. The courts are at reduced operations until June 3, 2020.

**ADJOURNMENT**

Member Hendrix moved to adjourn the County Board Meeting until the next scheduled meeting. Member Vickers seconded the motion. Chairman Gryder asked for a voice vote on the motion. All members present voting aye. **Motion carried.**

Approved and submitted this 4th day of May, 2020.

Respectfully submitted by,  
Debbie Gillette  
Kendall County Clerk

**KENDALL COUNTY BOARD  
ADJOURNED SEPTEMBER MEETING  
May 5, 2020**

STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF KENDALL    )

The Kendall County Board Meeting was held remotely at the Kendall County Office Building, Room 209, in the City of Yorkville on Tuesday May 5, 2020 at 6:00 p.m. The Clerk called the roll. Members present: Chairman Scott Gryder, Amy Cesich, Elizabeth Flowers, Scott Gengler, Tony Giles, Judy Gilmour, Audra Hendrix, Matt Kellogg, Matt Prochaska and Robyn Vickers. Members absent: None.

The Clerk reported to the Chairman that a quorum was present to conduct business.

**THE AGENDA**

Member Flowers moved to approve the agenda. Member Kellogg seconded the motion. Chairman Gryder asked for a voice vote on the motion. All members present voting aye. Motion carried.

**PUBLIC COMMENT**

Steve Hindi called with concerns regarding a farm on Hollenbeck Road, the cows are very thin, injured, skin problem and one is dead. The fence is leaning and they are getting out. The Department of Agriculture is investigating but more action is needed to take care of the situation.

**PUBLIC HEARING**

**Downstate Small Business Stabilization**

Chairman Gryder opened the public hearing for proposed Downstate Small Business Stabilization applications funded by Community Development Block Grant (CDBG) funds. Mr. Gryder explained that this is a program from the Illinois Department of Commerce and Economic Opportunity that is providing funds for 60 days of working capital to small businesses. Non-essential for profit private small businesses with 50 or fewer employees are allowed to apply with some exceptions. The application must be through a unit of local government in order to administer the funds. A participation agreement between the County and the businesses is to be put in place to define the partnership. Funds will not need to be repaid as long as the business remain open for at least 60 days or reopen and retained or reemploy current jobs next year. Applications received from Top Notch Kennels and Kennedy Pointe Restaurant. No comments from the public, Chairman Gryder closed the public hearing.

**CONSENT AGENDA**

Member Hendrix moved to approve the consent agenda of **A)** county board minutes from April 7, 2020; **B)** standing committee minutes; **C)** claims in an amount not to exceed \$755,309.59; **D)** contract with University of Chicago for Professional Service Contract for \$85,000.00 from May 1, 2020 to April 30, 2021; **E)** resolution granting the Kendall County Sheriff authority to enter into agreement for towing services; **F)** lease agreement with Oswego Township for office space at 99 Boulder Hill Pass for \$200.00 a month with an increase of \$10.00 per month annually not to exceed \$300.00 per month **G)** Kendall County Fair Housing resolution. Member Giles seconded the motion. Chairman Gryder asked for a roll vote on the motion. All members present voting aye. Motion carried.

**C) COMBINED CLAIMS:** ADMIN \$147.16; ANML CNTRL WRDN \$34,060.58; ASSMT \$158.33; BEHAV HLTH \$8,033.19; CIR CT CLK \$656.53; CIR CRT JDG \$3,519.49; COMB CRT SVS \$10,280.50; COMM ACTN SVS \$36,596.34; COMM HLTH SVS \$3,034.05; CRNR \$213.74; CORR \$22,826.51; CNTY BRD \$1,340.92; CNTY CLK \$1,936.85; HIGHWAY \$79,403.38; TRSR \$5,294.80; ELCTNS \$1,713.07; EMA \$128.66; EMPL BNFTS \$383,887.01; ENVIRO HLTH \$262.89; FCLT MGMT \$16162.58; JRY COMM \$64.76; MERIT \$465.00; PBZ \$350.00; PRSDG JDGE \$1,708.00; PROB SVS \$4,898.30, PRGM SUPP \$956.65; SHF \$21,929.97; ST ATTY \$486.26; TECH \$35,918.78; TRSR \$17,500.00; UTIL \$36,984.84; VET \$3,311.11; SHF \$898.56; FP \$14,230.78

**E)** A complete copy of Resolution 20-22 is available in the Office of the County Clerk.

**F)** A complete copy of IGAM 20-28 is available in the Office of the County Clerk.

**E)** A complete copy of Resolution 20-23 is available in the Office of the County Clerk.

**NEW BUSINESS**

## **Delinquency Date**

Member Kellogg moved to approve Kendall County Ordinance repealing Ordinance #2020-04 and revising the procedure for postponing delinquency date interest and penalties for the first installment of 2019 (Payable 2020) property tax payment. Member Gengler seconded the motion. Chairman Gryder asked for a roll call vote on the motion. All members present voting aye. **Motion carried.**

A complete copy of Ordinance 20-08 is available in the Office of the County Clerk.

## **ELECTED OFFICIAL REPORTS & OTHER DEPARTMENT REPORTS**

### **Emergency Management Agency**

Roger Bonuchi reported on the calls he has participated in and daily briefings regarding Covid-19. They have received thousands of PPE and distributed them. Mr. Bonuchi reported on the emergency alert system.

## **STANDING COMMITTEE REPORTS**

### **Highway**

#### **Vacate Right-of-Way**

Member Prochaska moved to approve a resolution to vacate a no longer used highway right-of-way near the intersection of Plainfield Road and Ridge Road. Member Gilmour seconded the motion. Chairman Gryder asked for a roll call vote on the motion. All members present voting aye. **Motion carried.**

A complete copy of Resolution 20-24 is available in the Office of the County Clerk.

#### **Agreed Order**

Member Gilmour moved to approve the agreed order setting preliminary just compensation in the amount of \$49,500 for the acquisition of right-of-way from the Wayne Borneman Trust for the Eldamain Road extension project. Member Hendrix seconded the motion. Chairman Gryder asked for a roll call vote on the motion. All members present voting aye. **Motion carried.**

### **Economic Development**

#### **Resolution - Kennedy Pointe Restaurant**

Member Kellogg moved to approve a Resolution of Support for Kennedy Pointe Restaurant Downstate Small Business Stabilization Program application. Member Prochaska seconded the motion. Chairman Gryder asked for a roll call vote on the motion. All members present voting aye. **Motion carried.**

A complete copy of Resolution 20-25 is available in the Office of the County Clerk.

#### **Resolution - Top Notch Kennels**

Member Hendrix moved to approve a Resolution of Support for Top Notch Kennels Downstate Small Business Stabilization Program application. Member Flowers seconded the motion. Chairman Gryder asked for a roll call vote on the motion. All members present voting aye. **Motion carried.**

A complete copy of Resolution 20-26 is available in the Office of the County Clerk.

#### **Participation Agreement - Top Notch Kennels**

Member Hendrix moved to approve a Participation Agreement between Kendall County and Top Notch Kennels. Member Flowers seconded the motion. Chairman Gryder asked for a roll call vote on the motion. All members present voting aye. **Motion carried.**

A complete copy of IGAM 20-29 is available in the Office of the County Clerk.

#### **Participation Agreement - Kennedy Pointe Restaurant**

Member Hendrix moved to approve a Participation Agreement between Kendall County and Kennedy Pointe Restaurant. Member Flowers seconded the motion. Chairman Gryder asked for a roll call vote on the motion. All members present voting aye. **Motion carried.**

A complete copy of IGAM 20-30 is available in the Office of the County Clerk.

## **Promissory Note**

Member Cesich moved to approve a Promissory Note for Kendall County, Illinois, to borrow \$200,000 from the Kendall County Revolving Loan Fund to secure emergency working capital grant funding, under the Downstate Small Business Stabilization Program, for local businesses facing hardship due to the COVID-19 pandemic. Member Flowers seconded the motion. Chairman Gryder asked for a roll call vote on the motion. All members present voting aye. **Motion carried.**

A complete copy of IGAM 20-31 is available in the Office of the County Clerk.

## **Finance**

Member Kellogg stated that they are taking a wait and see approach to the impact the virus will have on the budget. Expenses to date are \$23,000 for COVID claims, more to come.

## **SPECIAL COMMITTEE REPORTS**

### **ISACo, UCCI, NACO, and other County Organizations**

Member Prochaska reported that NACO is continuing its efforts to educate the public on COVID and equal treatment of counties if there is relief bill. ISACo and UCCI are working on a joint plan for lobbying of CARES Act money. Roberts Rules of Order has been updated for electronic meetings.

## **OTHER BUSINESS**

Members discussed what action or authority can the County Board can do to open up the county, who determines what is and is not essential and who will enforce. There will be communication with Dr. Tokars at the Health Department and the County's lobbyist.

## **QUESTIONS FROM THE PRESS**

Jim Wyman from WSPY asked if the Sheriff will intervene when there are large gathering or those not wearing masks. Can the County Board pass an ordinance to allow certain small businesses to be open? The Eldamain Road item is that for the Bridge or the North Side? Is Kennedy Pointe inside of Blackberry Creek Golf Course?

Katie Finlon asked when the date of the first installment of property taxes is due.

## **ADJOURNMENT**

Member Giles moved to adjourn the County Board Meeting until the next scheduled meeting. Member Hendrix seconded the motion. Chairman Gryder asked for a voice vote on the motion. All members present voting aye. **Motion carried.**

Approved and submitted this 6th day of May, 2020.

Respectfully submitted by,  
Debbie Gillette  
Kendall County Clerk

**COUNTY OF KENDALL, ILLINOIS  
BUDGET & FINANCE COMMITTEE  
Meeting Minutes for Thursday, May 14, 2020**

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**Call to Order**

Committee Chair Matt Kellogg called the Budget and Finance Committee to order at 5:10 p.m.

**Roll Call**

<b>Attendee</b>	<b>Status</b>	<b>Arrived</b>	<b>Left Meeting</b>
Amy Cesich	Present		
Scott Gryder	Here		
Audra Hendrix	Aye		
Matt Kellogg	Yes		
Matthew Prochaska	Here		

**Others Present** - Latreese Caldwell, Scott Koeppel

**Approval of Agenda** – Member Hendrix made a motion to approve the agenda, striking # 4 approval of claims, from the agenda since it was already approved at the Committee of the Whole meeting, second by Member Prochaska seconded the motion. **With five members present voting aye, motion passed by a vote of 5-0.**

**Department Head and Elected Official Reports** - None

**Items from Other Committees** – Mr. Koeppel stated that Governor JB Pritzker announced DCEO Grant Program to Counties and local municipalities for \$25 Million. Mr. Koeppel stated that staff from Facilities along with other County Offices and Departments have been working together to identify and submit projects for grant funding to the state as soon as possible.

**Items of Business**

- *Discussion of Promissory Note for Municipalities and Downstate Small Business Grant Stabilization Program* - Scott Koeppel reviewed the documentation that is required for the resolution discussed at the Committee of the Whole meeting regarding the grant stabilization program. Promissory Notes will be with The City of Yorkville, The City of Plano, The Village of Montgomery, and The Village of Oswego now. As other municipalities are interested in participating in the program, promissory notes will be created with them. The promissory notes are to provide backup for municipalities in reimbursing the state should a grant recipient fail to comply with the requirements for utilization. Discussion suspending the Recapture Strategy in regard to these loans, the County’s liability in ensuring compliance, the provisions of the Recapture Strategy, the State’s Attorney’s Office concern about using Revolving Loan funds for this type of funding, and the proposed changes by The City of Yorkville. **There was consensus to**

**remove the suggested highlighted areas from the promissory note, and that this item to be forwarded to the May 19, 2020 County Board meeting.**

- *Discussion Illinois State Association of Counties (ISACo) COVID-19 Related Questions* – Latreese Caldwell reported that ISACo has asked for data supporting the following:

1. *Total Dollar amount loss through April 30, 2020*
2. *Total Dollar amount loss through May 31, 2020*

Ms. Caldwell, and stated that she can estimate data for the County. Ms. Caldwell explained estimating that is being done by other Counties, and the models they are using for those estimates. Ms. Caldwell said she’s had difficulty in gathering data and creating estimates by the deadline of May 15, 2020, and that she can provide an estimate, but asked for direction from the Committee before proceeding. **There was consensus by the committee to estimate the reduction of most revenues at twenty-five percent, exclude the Sheriff’s Inmate Revenue revenue, estimate five percent loss on Property Tax, and estimate fifty percent on the Motor Fuel Tax.**

- *COVID19 Expenditure Report* – Latreese Caldwell reviewed the running total for Covid-19 unexpected expenditures from mid-March through April 30, 2020, of \$50,152.37. Discussion on including voting expense of postage, postal supplies, and equipment.

**Public Comment** – None

**Questions from the Media** – None

**Items for the May 19, 2020 County Board Meeting**

1. Approval of Promissory Note for Municipalities and Downstate Small Business Stabilization Program
2. Discussion of Covid-19 related costs

**Executive Session** – Not needed

**Adjournment** – Member Hendrix made a motion to adjourn the Budget and Finance Committee meeting, Member Cesich seconded the motion. **The meeting was adjourned at 5:54p.m. by a 5-0 vote.**

Respectfully submitted,

Valarie McClain  
Administrative Assistant

**COUNTY OF KENDALL, ILLINOIS  
COMMITTEE OF THE WHOLE  
REMOTE MEETING MINUTES  
Thursday, May 14, 2020**

**CALL TO ORDER AND PLEDGE OF ALLEGIANCE** - The meeting was called to order at 4:00p.m. by County Board Chair Scott Gryder, and Member Prochaska lead the Pledge of Allegiance to the American Flag.

**ROLL CALL:**

<b>Attendee</b>	<b>Status</b>	<b>Arrived</b>	<b>Left Meeting</b>
Amy Cesich	Present		
Elizabeth Flowers	<b>ABSENT</b>		
Scott Gengler	Here		
Tony Giles	<b>ABSENT</b>		
Judy Gilmour	Here		
Scott Gryder	Here		
Audra Hendrix	Aye		
Matt Kellogg	Present		
Matthew Prochaska	Here		
Robyn Vickers	Here		

**APPROVAL OF AGENDA** – Member Hendrix made a motion to approve the agenda, second by Member Prochaska. **With eight members present voting aye, the motion carried by a vote of 8-0.**

**APPROVAL OF SUPPLEMENTAL CLAIMS** – Member Hendrix made a motion to forward claims to the County Board for approval, second by Member Kellogg. **With eight members voting aye, the motion carried.**

**ROLL CALL:**

<b>Attendee</b>	<b>Status</b>
Amy Cesich	Yes
Scott Gengler	Yes
Judy Gilmour	Yes
Scott Gryder	Yes
Audra Hendrix	Aye
Matt Kellogg	Yes
Matthew Prochaska	Yes
Robyn Vickers	Yes

Member Flowers and Giles were absent. **With eight members present voting aye the motion to forward the Claims to the County Board on May 19, 2020 for approval, the motion carried.**



**OLD BUSINESS – None**

**NEW BUSINESS**

- *Discussion of Kendall County Electric Aggregation Bid Results* – Chris Childress, reviewed the bids, the process, and the timeline for the Electric Aggregation Program with vendor. Mr. Childress stressed the mandatory requirement of notifying unincorporated citizens of the program, the new vendor, the rate, and sending two letters (one from ComEd, and one from vendor) to citizens one-month apart.

Mr. Childress explained the County becoming an EPA Green Power Community, which then qualifies the County for a Civic Grant of \$157,878 per year.

**There was consensus by the Board to forward the item to the June 2, 2020 County Board meeting for approval.**

- Discussion of Resolution Regarding Loans to Municipalities – Scott Koeppel shared that some municipalities are concerned about participation in the Downstate Small Business Grant Stabilization program because they don't have the funds to backup any repayment of funds if a recipient doesn't utilize grant funds appropriately, and is required by the state to repay the grant. Mr. Koeppel stated that the resolution was written by the State's Attorney's Office on behalf of the County. This item was first discussed at the Economic Development Committee meeting in April, and the loan amounts approved at the Finance Committee for the City of Yorkville, the Village of Oswego, the City of Plano and the Village of Montgomery. Funds have also been set aside for the smaller municipalities interested in participating in the program. **There was consensus to forward item to the May 19, 2020 Board meeting for approval.**

- *Discussion of Elected Officials Salaries*

- Circuit Clerk Salary – Chairman Gryder reported that due to potential conflict of interest, Member Prochaska recused himself from this discussion. Mr. Kellogg reviewed the Resolution for the KC Circuit Clerk Salary at zero percent increase for the next 4 years. **There was consensus to forward the Resolution for the Kendall County Circuit Clerk Salary to the June 2, 2020 County Board meeting for approval.**

- *Coroner Salary* – Member Kellogg also stated there was consensus and recommendation by the Finance Committee to recommend salary increase of:

<i>FY 21</i>	<i>15%</i>	<i>\$67,974</i>
<i>FY22</i>	<i>2%</i>	<i>\$69,334</i>
<i>FY23</i>	<i>2%</i>	<i>\$70,720</i>
<i>FY 24</i>	<i>2%</i>	<i>\$72,135</i>

Comments by Finance Committee members, and discussion of the proposed salary increase for the Coroner position. **There was consensus by the**

**Committee to forward the item to the June 2<sup>nd</sup> Board meeting for discussion and final approval.**

**PUBLIC COMMENT** – None

**QUESTIONS FROM THE MEDIA** – Jim Wyman, had a question on the Solar Panel installation near the Courthouse, will be energized (functioning) in a November/December timeframe. The County received an extension by the Illinois Solar Authority, delay caused by Covid-19 restrictions, and delays and problems with the City of Yorkville Zoning Department.

Mr. Wyman asked for further explanation of the EPA Green Power Community grant funds of \$157,878, and where it might go. Member Kellogg stated the fund would be discussed at the next Finance meeting.

**CHAIRMAN’S REPORT** – Chairman Gryder updated the group on discussions with other Counties Chairs and personnel on the effects of Covid-19, the revenue loss, the effect on small businesses, as well as the Governor’s 5-stage Reopen Illinois Plan, and the desire for Kendall County to be reclassified out of the Northwest Region 1 for reopening plans.

Member Cesich stated that any reopening should be based on the health data, and the most appropriate region for Kendall County, a more densely populated, and AG classified County.

Chairman Gryder wanted to ensure the following groups were recognized in the month of May, and said that the Proclamations will be presented to each group formally at a future County Board meeting.

Proclamation National Poppy Day  
Proclamation National Nurses Month  
Proclamation National Law Enforcement Week

**REVIEW BOARD ACTION ITEMS** – Chairman Gryder asked the committee to review the draft County Board agenda.

**EXECUTIVE SESSION** – NONE.

**ADJOURNMENT** – Member Kellogg made a motion to adjourn the meeting, second by Member Hendrix. **With nine members voting aye, the meeting was adjourned at 5:06p.m.**

Respectfully Submitted,

Valarie McClain  
Administrative Assistant and Recording Secretary

**COUNTY OF KENDALL, ILLINOIS  
PROCLAMATION**



**PROCLAMATION \_\_\_\_\_ - \_\_\_\_\_**

**To recognize National Nurse Appreciation Month, May 2020**

WHEREAS, The World Health Organization (WHO) designated 2020 as the Year of the Nurse to advance nurses' vital position in transforming health care around the world; and

WHEREAS, National Nurses Week was first observed in October 1954, and 2020 is the 200<sup>th</sup> anniversary celebrating the birth of the "first nurse" Florence Nightingale; and

WHEREAS, the County of Kendall, Illinois celebrates and honors the Nurses, Midwives, Nurse Anesthetists, and Certified Nursing Assistants throughout the County of Kendall, including the dedicated nurses of the Kendall County Health Department; and

WHEREAS, National Nurses Day is celebrated annually on May 6 to raise awareness of the important role nurses play in society, especially under these extremely challenging times of the Covid-19 Pandemic; and

WHEREAS, whether it is a national health emergency or routine daily care, nurses' vital contributions impact the health and well-being of our community on a daily basis; and

WHEREAS, now more than ever, it is important to raise the visibility of the critical work nurses do by honoring nurse heroes, innovators and leaders ; and

WHEREAS, the Kendall County Board is grateful for the service and nurses who serve and protect Kendall County, and for the sacrifices made by their families; and

THEREFORE, BE IT RESOLVED that the Kendall County Board formally designates May 2020, as **NURSE APPRECIATION MONTH** in Kendall County, and publically salutes their service in our county and in communities across the nation.

Adopted by the Kendall County Board on this \_\_\_\_\_ day of June, 2020

Approved:

Attest:

\_\_\_\_\_  
Scott R. Gryder, County Board Chair

\_\_\_\_\_  
Debbie Gillette, County Clerk & Recorder

**COUNTY OF KENDALL, ILLINOIS  
PROCLAMATION**



**PROCLAMATION \_\_\_\_\_ - \_\_\_\_\_**

**LAW ENFORCEMENT APPRECIATION WEEK**

To recognize National Police Week 2020 and to honor the service and sacrifice of those local, state, and federal law enforcement officers who have died, or have been disabled, in the line of duty.

WHEREAS, there are more than 900,000 law enforcement officers serving in communities across the United States, including dedicated members of the Kendall County Sheriff's Office;

WHEREAS, nearly 60,000 assaults against law enforcement officers are reported each year, resulting in approximately 16,000 injuries;

WHEREAS, since the first recorded death in 1791, over 23,000 law enforcement officers in the United States have made the ultimate sacrifice and been killed in the line of duty;

WHEREAS, the names of these dedicated public servants are engraved on the walls of the Law Enforcement Officers Memorial in Washington, D.C.;

WHEREAS, at least 150 federal, state, and local names of fallen law enforcement heroes are being added to the National Law Enforcement Officers Memorial this spring, sadly reminding us that public safety comes at a very steep price;

WHEREAS, the service and sacrifice of all officers killed in the line of duty will be honored during the National Law Enforcement Officers Memorial Fund 31<sup>st</sup> Annual Candlelight Vigil, on the evening of Friday, May 15, 2020;

WHEREAS, the Candlelight Vigil is part of National Police Week, which takes place this May 10-16, 2020;

WHEREAS, each year, May 15<sup>th</sup> is designated as Peace Officers Memorial Day, in honor of all fallen officers and their families, and U.S. flags should be flown at half-staff;

WHEREAS, the Kendall County Board is grateful for the service and dedication of the 52 Patrol Deputies, 46 Corrections Deputies, 14 Part-Time Deputies, 2 K-9 Unit Dogs, 15 Auxiliary Officers and 12 Civilian Staff who serve and protect Kendall County, and for the sacrifices made by their families;

THEREFORE, BE IT RESOLVED that the Kendall County Board formally designates May 10-16, 2020, as **LAW ENFORCEMENT APPRECIATION WEEK** in Kendall County, and publically salutes the service of law enforcement in our county and in communities across the nation.

Adopted by the Kendall County Board on this \_\_\_\_\_ day of June, 2020

Approved:

Attest:

\_\_\_\_\_  
Scott R. Gryder, County Board Chair

\_\_\_\_\_  
Debbie Gillette, County Clerk & Recorder

**COUNTY OF KENDALL, ILLINOIS  
PROCLAMATION \_\_\_\_\_ - \_\_\_\_\_**

**NATIONAL POPPY DAY  
May 22, 2020**

Expressing support for the designation of National Poppy Day in honor of our fallen in Kendall County, and recognizing the importance of honoring those who have worn our nation’s uniform; and

**WHEREAS**, poppies are worn and displayed as a symbolic tribute to our fallen and the future of living veterans and service members; and

**WHEREAS**, at the end of World War I, the poppy became the symbol of the blood shed by those who fought and those who continue to fight for our country, following the publication of the wartime poem “In Flanders Fields, “written by Lieutenant Colonel John McCrae, M.D. while serving on the front line in World War I, to honor soldiers killed in battle; and

**WHEREAS**, National Poppy Day is an initiative supported by the United States of America, led by the American Legion Auxiliary, whose members distribute poppies throughout the Country to garner support of future of veterans, active-duty military personnel and their families with medical and financial needs; and

**WHEREAS**, wearing a poppy will unite citizens from across the county to show their patriotism and support; and

**NOW THEREFORE, BE IT RESOLVED THAT THE COUNTY OF KENDALL, ILLINOIS**

1. Supports the designation of May 22, 2020 as National Poppy Day; and
2. Encourages all citizens, residents and visitors throughout Kendall County to join in observing this day to honor every service member who has died in the name of liberty, freedom and democracy, and we provide support of veterans for generations to come, while also showing support for living veterans, service members and their families.

Signed and approved this \_\_\_\_\_ day of June, 2020 by:

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Scott R. Gryder  
County Board Chair

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Debbie Gillette  
County Clerk and Recorder

## **MASTER POWER SUPPLY AGREEMENT**

This Master Power Supply Agreement ("Agreement") is entered into as of the June 2, 2020 ("Effective Date") by and between Eligo Energy IL, LLC, an Illinois limited liability company with its mailing address at 201 W. Lake St., Ste 151, Chicago, IL 60606 ("Eligo" or "Vendor"), and Kendall County, an Illinois County and Government Aggregator, with its principal place of business at 111 W Fox St, Yorkville, IL 60560 (the "County" or "Governmental Aggregator") (each a "Party" and collectively, "Parties").

### **RECITALS**

A. WHEREAS, Section 1-92 of the Illinois Power Agency Act, 20 ILCS 3855/1-92 ("Act") authorizes the corporate authorities of the County to establish a program to aggregate electrical loads of residential and Small Commercial Retail Customers, as defined below, and to solicit bids and enter into service agreements to facilitate the sale and purchase of electricity and related services and equipment for those electrical loads; and

B. WHEREAS, pursuant to the Act, municipalities may, if authorized by referendum, operate an Aggregation Program as an "opt-out" program that applies to all residential and Small Commercial Retail Customers who do not affirmatively choose not to participate; and

C. WHEREAS, County sought competitive quotes to operate an Aggregation Program for its residents and duly adopted an ordinance to operate the Aggregation Program as an opt-out program under the Act and has complied with all the requirements of the Act to operate an opt-out program; and

D. WHEREAS, County conducted a request for proposals pursuant to which licensed alternative retail electric suppliers were invited to participate in a public bidding process, and the Governmental Aggregator has selected Vendor as the winning bidder; and

E. WHEREAS, Vendor is registered with and certified by the ICC pursuant to an Order issued in Docket No. 13-0293 as an Alternate Retail Electric Supplier to sell competitive retail electric service to customers in the State of Illinois utilizing the existing transmission and distribution systems; and

F. WHEREAS, Vendor is certified by the ICC to operate as an Alternate Retail Electric Supplier in the service areas of Commonwealth Edison Company; and

G. WHEREAS, County and Vendor desire to establish the rights and obligations of the Parties with respect to the Aggregation Program; and

H. WHEREAS, County and the Vendor agree that the provision of renewable energy should be promoted in order to reduce pollution and reduce the use of limited natural resources of the United States; and

I. WHEREAS, the Vendor is willing and able to supply electricity for the Aggregation Program with corresponding Renewable Energy Certificates at a price which does not exceed the residential Price to Compare ("PTC") for ComEd electricity supply charges.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### **DEFINITIONS**

Whenever used in this Agreement, the following terms shall have the meanings defined below except where the context indicates otherwise:

“Act” shall refer to the Illinois Power Agency Act, 20 ILCS 3855/1-1 *et seq.*

“Affiliate” shall mean any person, firm, corporation (including, without limitation, service corporation and professional corporation), partnership (including, without limitation, general partnership, limited partnership and limited liability partnership), limited liability company, joint venture, business trust, association or other entity that now or in the future directly or indirectly controls, is controlled by, or is under common control with Vendor.

“Aggregation” shall mean the pooling of residential and small commercial retail electrical loads located within County for the purpose of soliciting bids and entering into service agreements to facilitate for those loads the sale and purchase of electricity and related services and equipment all in accordance with Section 1-92 of the Act.

“Aggregation Area” shall have the meaning set forth in Section 1.1.1 of this Agreement.

“Aggregation Consultant” or “Consultant” shall refer to any independent consultant with demonstrated expertise in electric supply contracting that is retained by County to assist with the implementation of the Program.

“Aggregation Group” shall mean all the residential and small commercial retail customers of ComEd in the corporate limits of County that are permitted under the terms of the Act to participate in the Program.

“Aggregation Member” or “Member” shall mean a person or legal entity enrolled in the Kendall Municipal Aggregation Program for competitive retail electric services and a member of the Aggregation Group.

“Aggregation Program” or “Program” means the program developed and implemented by the Kendall County, as a Municipal Aggregator under the Act, to provide ComEd residential and small commercial retail customers in County with retail electric generation services.

“Alternative Retail Electric Supplier” or “ARES” shall mean an entity certified by all required authorities of the State of Illinois to provide competitive retail electric supply service(s), and which is duly selected by County to be the entity responsible to provide the required retail electrical supply service related to an Aggregation Program as defined in the Act, County or County Ordinances and applicable rules and regulations of any authorized agency of the State of Illinois and has duly executed a Power Supply Agreement with County. For purposes of this Plan,

the definition of Alternative Retail Electric Supplier is more completely set forth in 220 ILCS 5/16-102.

“Ancillary Services” shall mean the necessary services that shall be provided in the generation and delivery of electricity, and shall include, without limitation: coordination and scheduling services (load following, energy imbalance service, control of transmission congestion); automatic generation control (load frequency control and the economic dispatch of plants); contractual agreements (loss compensation service); and support of system integrity and security (reactive power, or spinning and operating reserves).

“County” shall mean the Kendall County, Illinois, acting by and through its corporate authorities, and authorized County employees.

“County Designee” shall mean the person (or persons) authorized to act on behalf of County Board.

“County Event of Default” shall have the meaning set forth in Section 5.1.1 of this Agreement.

“Commonwealth Edison” or “ComEd” or “Electric Utility” shall mean the Commonwealth Edison Utility Company as the entity that has a franchise, license, permit or right to distribute, furnish or sell electricity to retail customers within the Consortium Cities.

“Confidential Information” shall have the meaning set forth in Section 9.2 of this Agreement.

“Default Tariff Service” shall mean the electricity supply services available to eligible retail customers of Commonwealth Edison.

“Early Termination Date” shall have the meaning set forth in Section 5.2.1 of this Agreement.

“Eligible Customer” shall mean residential and small commercial electricity customers receiving Full Electricity Requirements within County who are eligible to participate in the Aggregation Program. Eligible Customers exclude customers served by other alternative retail electric suppliers (including those “with RES” status on ComEd lists) and customers served under ComEd hourly and net metering tariffed supply service. Eligible Customers will be serviced by Vendor or ComEd based on certain Vendor criteria, including but not limited to customer usage patterns, transmission and capacity indicators as provided by ComEd, and wholesale market conditions. Eligible Customers will pay the same PTC and will continue to receive bills from ComEd regardless of whether they are served by Vendor or ComEd.

“Energy” shall mean generated electricity.

“Fixed Price” shall mean a non-variable and guaranteed Full Commodity Price for a specified period. This price includes all costs associated with delivering electricity to the Delivery Point and ComEd's Utility Consolidated Billing and Purchase of Receivables services (presently set at zero and subject to pass-through if changed to non-zero).



“Force Majeure Event” is defined in Section 6.2 of this Agreement.

“Full Commodity Price” shall mean the all-inclusive costs associated with delivering electricity to the Delivery Point plus costs associated with ComEd's Utility Consolidated Billing and Purchase of Receivables services. Such costs include, but are not limited to: tariff charges, rates and rate adjustments, transportation costs, capacity charges, ancillary service costs and credits, hedging and risk management fees, losses, and all other surcharges, taxes, custom duties/charges and balancing costs.

“Full Electricity Requirements” shall mean a sale of electricity supplies and services by the supplier in which the seller pledges to meet all of the each Member's requirements, and the Members pledge to buy all of their electricity requirements from the supplier, for the delivery period identified in the RFP.

“Governmental Aggregator” or “Municipal Aggregator” shall mean County operating an Aggregation Program under the legislative authority granted County to act as an aggregator to provide a competitive retail electric service to residential and small commercial retail customers of ComEd in County. Pursuant to the Act, an Aggregator is not a public utility or an alternative retail electric supplier.

"ICC" shall mean the Illinois Commerce Commission as described in 220 ILCS 5/2-101.

“Insurance” shall mean the insurance policy (if required) enclosed in Exhibit D.

“Load” shall mean the total demand for electric energy required to serve County residential and small commercial customers in the Aggregation Program.

“Opt-Out” shall mean the process by which a Member who would be included in the Program chooses not to participate in the Program.

“Opt-Out Notice” shall mean the notice delivered to each Member by County, identifying the procedures and protocols for the Member to opt out or: and choose not to participate in, the Program

“Participating Customers” the Eligible Customers that do not opt out of the Aggregation Program. Participating Customers may be served by Vendor or remain on Tariffed Service with ComEd.

“PIPP” shall mean a Percentage of Income Payment Plan created by the Emergency Assistance Act, 305 ILCS 20•1 8, to provide a bill payment assistance program for low-income residential customers.

“PJM” shall mean PJM Interconnection, L.L.C., a regional transmission organization that coordinates the movement of wholesale electricity in all or parts of 13 states and the District of Columbia, including the Commonwealth Edison service territory.

“Plan” or “Plan of Operation and Governance” shall mean this Aggregation Plan of Operation and Governance adopted by County pursuant to the requirements set forth in Section 1-92 of the Act.

“Point of Delivery” shall mean the interconnection between the RTO and the Electric Utility to which Vendor shall deliver the electricity under the Aggregation Program for delivery by the Electric Utility to the Participating Customers.

“Power Supply Agreement” shall mean the contract between County and the Alternative Retail Electric Supplier.

“Power Supply Bid” shall mean the procurement process utilized by County on behalf of Eligible Retail Customers to solicit prices for services from certified Alternative Retail Electric Suppliers.

“Price to Compare” or “PTC” shall mean the unit price for ComEd electricity supply services which is the sum of the electricity supply charge plus the transmission services charge, including the purchased electricity adjustment (“PEA”), for non-electric space heating customers as established by ComEd Rider PE (Purchased Electricity) and Rate BES (Basic Electricity Service) or their successor Rates and Riders.

“Renewable Energy Certificate(s)” or “RECs” are market-based instruments that represent the legal property rights to the environmental attributes of renewable electricity generation sources.

“Retail Customer Identification Information” shall mean the retail customer information supplied by Commonwealth Edison to the Supplier in connection with the implementation of the Aggregation Program.

“RTO” shall have the meaning set forth in Section 2.1.1 of this Agreement.

“Regulatory Event” is defined in Section 2.6.1 of this Agreement.

“Retail Electric Supply” shall mean the unbundled sale and delivery of electric generation service to a single entity using electric power or energy at a single premises that is receiving tariffed transmission and distribution services from an electric utility.

“Services” is defined in Section 2.1 of this Agreement.

“Small Commercial Retail Customer” shall mean a retail customer with an annual electricity consumption of less than 15,000 kilowatt-hours; provided, however, that the definition of Small Commercial Retail Customer shall include such other definition or description as may become required by law or tariff.

“Supplier” or “Vendor” shall mean the Alternative Retail Electric Supplier, Eligo Energy IL, LLC, selected by County to provide electricity supplies and services to Aggregation Members.

“Tariffed Service” shall have the meaning set forth in Section 2.5 of this Agreement.

“Term” is defined in Section 2.4.1 of this Agreement.

“Terms of Service” is defined in Section 2.1.1.

“Vendor Event of Default” shall have the meaning set forth in Section 5.1.2 of this Agreement.

“Withdrawing Customer” shall have the meaning set forth in Section 3.4 of this Agreement.

## **ARTICLE 1 GENERAL REQUIREMENTS**

### **1.1 Governmental Aggregator Obligations and Authority**

1.1.1 The Governmental Aggregator: (1) shall take all necessary action as required by the Act to develop, adopt and maintain an Aggregation Program for all applicable residential and Small Commercial Retail Customers within its boundaries (the "Aggregation Area") that the Governmental Aggregator has determined are eligible to participate in the Aggregation Program and which meet the definition of Eligible Customers set forth in this subsection; (2) shall request the names and addresses of Eligible Customers from the Electric Utility; (3) shall hold and publish notice of any required public meetings regarding the Aggregation Program; and (4) hereby authorizes Vendor to contract for Retail Electric Supply with those Eligible Customers that did not opt out of the previous aggregation program, do not opt-out of the present Aggregation Program, do not rescind their switch to Vendor as part of their enrollment in the Aggregation Program, do not otherwise terminate their participation in the Aggregation Program, or do not have their participation terminated by the Governmental Aggregator, or their Retail Electric Supply terminated by Vendor or the Electric Utility ("Aggregation Program Customer" or "Participating Customer").

1.1.2 The Governmental Aggregator shall, on a commercially reasonable basis and in a timely manner, forward to Vendor all notices from the Electric Utility concerning Participating Customers' accounts served pursuant to this Agreement, including but not limited to verbal or written notices regarding transition costs, changes in the terms and conditions of tariffs, rates or riders, and notices concerning the operation and reliability of the Electric Utility's system.

1.1.3 Governmental Aggregator has the authority to designate, and has designated, Vendor as its full requirements ARES for the Eligible Customers for the Term of this Agreement.

1.1.4 During the Term of this Agreement, the Governmental Aggregator hereby grants Vendor the exclusive rights to provide Retail Electric Supply to the Eligible Customers.

1.1.5 Customer Data and Load Forecast Information. Vendor and Governmental Aggregator shall cooperate to obtain the consent of Participating Customers to obtain all available Eligible Customers' data and historical load and load forecast information, related to the Participating Customer's load and consumption, from any entity in possession of such data, subject to the limitations on disclosure of customer information described in Section 16-122 of the Public Utilities Act and Section 2HH of the Consumer Fraud and Deceptive Business Practices Act and

any other applicable laws or regulations. Additional costs for Participating Customers that are interval metered shall be borne by the Participating Customers.

1.1.6 Service Inquiries and Service Notices to Participating Customers. Participating Customers may direct inquiries regarding this Agreement, and Retail Electric Supply provided hereunder, and any electric generation supply or billing questions, to Vendor at the address and phone number provided in Section 10.1, which address and phone number shall be provided in communications with Participating Customers regarding the Aggregation Program. Participating Customers should direct inquiries concerning Electric Utility related emergency, power outage, wire or service maintenance, metering, Electric Utility service billing or other similar Electric Utility related concerns to the Electric Utility.

1.1.7 Point of Sale. Governmental Aggregator and Participating Customers acknowledge and agree that Vendor shall have no responsibility for damage to any property, equipment or devices connected to the Participating Customers' electrical system. Notwithstanding the foregoing, Vendor shall act in such a manner so as to minimize the risk of damage to any Participating Customer's property.

1.1.8 Governor Aggregator will assist Vendor in providing periodic refresh mailings during the Term of this Agreement to Eligible Customers by requesting updated customer account lists from ComEd. All Eligible Customers who have previously exercised their right to opt-out or rescind from the Aggregation Program shall be omitted from all subsequent refresh mailing lists during the Term. All Eligible Customers enrolled pursuant to a refresh mailing or opted-in pursuant to this Agreement shall receive Retail Electric Supply at the prices set forth in Attachment A, which attachment is made part of this Agreement.

## **ARTICLE 2 VENDOR OBLIGATIONS**

### **2.1 Vendor Obligations.**

2.1.1 Vendor shall supply all of the following services in support of the Program (collectively, the "Services"): Commencing on the Effective Date and during the Term, subject to the terms of this Agreement and the Terms of Service applicable to the Participating Customers (as set forth in Attachment B hereto, which attachment is made part of this Agreement) (the "Terms of Service"), Vendor shall provide Retail Electric Supply (subject to the terms of the appropriate transmission and/or distribution tariffs of the Electric Utility) sufficient to serve the total electric generation needs of the Participating Customers. Vendor shall arrange for the delivery of Retail Electric Supply in accordance with the requirements of the Participating Customers' respective Electric Utility and Independent System Operator ("ISO") or Regional Transmission Organization ("RTO") according to the rules, regulations, and tariffs governing Retail Electric Supply from an alternative supplier to the Point of Delivery, recognizing that the Electric Utility provides utility distribution service from the Point of Delivery to the Point of Sale. To the extent that any services or requirements are provided by the Electric Utility, Vendor shall not be responsible for the provision of such services. Notwithstanding the foregoing, Vendor is not responsible for the performance or failure to perform of the provider of such transmission, distribution, or ancillary services, or the consequences of such performance or failure to perform. Notwithstanding the

foregoing, County shall coordinate and operate with electric utilities in such a manner so as to not jeopardize the transmission, distribution or ancillary services.

2.1.2 Vendor shall be responsible for all acts necessary for Vendor to perform its obligations hereunder, including but not limited to the scheduling of delivery of Retail Electric Supply hereunder.

2.1.3 Vendor shall provide Aggregation Program Customers with the environmental disclosure data and other data it is required to provide, if any, to comply with applicable law and the rules of the ICC or other applicable authority.

2.1.4 Vendor may provide periodic refresh mailings or send Participating Customers back to ComEd default service during the Term of this Agreement to all Eligible Customers at Vendor's sole discretion and with cooperation from County. All Eligible Customers who have previously exercised their right to opt-out or rescind from the Aggregation Program shall be omitted from all subsequent refresh mailing lists during the Term. All Eligible Customers enrolled pursuant to a refresh mailing or opted-in pursuant to this Agreement shall receive Retail Electric Supply at the prices set forth in Attachment A.

2.1.5 Vendor shall purchase Renewable Energy Certificates ("RECs") to enable County to apply for the EPA Green Power Community program. Vendor will prepare the necessary paperwork and submit the Green Power Community application on County's behalf; however, the decision to qualify County as a Green Power Community rests entirely with the EPA.

2.2 Subcontracting. Vendor may subcontract the performance of its obligations under this Agreement upon receiving written approval from County. However, no subcontract shall relieve Vendor of any of its obligations and/or liabilities under this Agreement. Vendor shall be responsible for all payments and obligations as between Vendor and subcontractors, and Governmental Aggregator shall not be responsible for payments to any such subcontractor. Notwithstanding the foregoing, any subcontractor must perform the services described herein and no subcontract shall be utilized by Vendor unless and until County has approved of the subcontractor in writing.

2.3 Compliance with Plan of Operation and Governance. Vendor shall comply with all the terms and conditions of the Act and shall comply with the Plan of Operation and Governance adopted by County, a copy of which Plan is marked as Attachment C and made a part hereof as if fully set forth by this reference. In the event of a conflict between this Agreement and the Plan, this Agreement shall control.

## 2.4 Term and Termination

2.4.1 Term of Agreement and Termination. The term of this Agreement shall commence for twenty-four (24) months / billing cycles starting with the first meter reading in September 2020 (the "Term"). The Term may be renewed by mutual agreement by the Parties. If the Parties cannot agree upon a renewal, then this Agreement shall terminate at the end of the Term, and Vendor, upon receiving notice from the Government Aggregator, shall facilitate the switch of the Participating Customers to default ComEd service. This Agreement may be terminated prior to the expiration of the Term in compliance with this Agreement's provisions, if: (1) a Party exercises

its right under Article 5 to terminate this Agreement; or (2) a Regulatory Event occurs and the Parties are unable to mutually negotiate modification(s) to this Agreement so that the adversely-affected Party may be restored to a reasonably similar economic position that the adversely-affected Party would have been in but for the occurrence of the Regulatory Event. Vendor shall have the obligation to provide electricity for the full period of the Term regardless of the start date in which the power begins to flow.

2.4.2 Term of Enrollment. Vendor warrants that it will enroll Eligible Customers to start flowing as of the beginning of the Term. As provided for in the Terms of Service, Participating Customers shall remain enrolled in the Aggregation Program until the Participating Customer exercises the right to opt-out, or they otherwise terminate their participation in the Aggregation Program, their Retail Electric Supply is terminated by Vendor or the Electric Utility, or their electric service is terminated by the Electric Utility, whichever occurs first. In any case, the supply shall occur for the Term as contracted.

2.5 Interaction Between Termination Dates of this Agreement and Contracts with the Participating Customer. Participating Customers initially enrolled in the Aggregation Program shall receive Retail Electric Supply at the rate(s) set forth in this Agreement. If this Agreement is terminated prior to the end of the Term due to a Regulatory Event, then Retail Electric Supply will terminate early and the Participating Customers will be switched to the applicable tariffed services provided by the Electric Utility as required by 220 ILCS 5/16-103 and defined by its rates on file with the ICC pursuant to 220 ILCS 5/Art. IX. ("Tariffed Service") in accordance with the standard switching rules and applicable notices. If this Agreement is terminated pursuant to the terms of Article 5, the Retail Electric Supply will terminate early, and the Participating Customers may choose another ARES Provider or will be switched to Tariffed Service in accordance with the standard switching rules and applicable notices. If this Agreement is terminated prior to the end of the Term pursuant to Article 5 and a Participating Customer has not selected another supplier, such Participating Customer will be switched to Tariffed Service from its Electric Utility.

## 2.6 Regulatory Contingencies.

2.6.1 Regulatory Events. The following as well as the events described in Section 2.6.3 will constitute a "Regulatory Event" governing the rights and obligations of the Parties under this Agreement:

(i) Illegality. If, due to the issuance of an order, or adoption of, or change in, any applicable law, rule, or regulation, or in the interpretation of any applicable law, rule, or regulation, by any judicial, regulatory, administrative or government authority with competent jurisdiction, it becomes unlawful for a Party to perform any obligation under this Agreement.

(ii) Material Adverse Government Action. If (A) any regulatory agency or court having competent jurisdiction over this Agreement requires a change to the terms of this Agreement that materially adversely affects a Party, or (B) any regulatory or court action adversely and materially impacts a Party's ability to perform or otherwise provide services pursuant to this Agreement.

2.6.2 Notice, Negotiation, and Early Termination. If the ICC shall take Regulatory action against Vendor, causing a Regulatory Event, Vendor shall give notice to the other County that such event has occurred. The Parties will mutually attempt to negotiate modification(s) to this Agreement so that the adversely-affected Party may be restored to a reasonably similar economic position that the adversely-affected Party would have been in but for the occurrence of the Regulatory Event. If the Parties are unable, within thirty (30) days of entering into negotiations, to agree upon modification(s) to this Agreement, the adversely affected Party shall have the right, upon thirty (30) days notice, to terminate this Agreement without liability and close out its obligations hereunder.

2.6.3 Regulatory Events Defined. Regulatory changes or rulings, legislative and agency acts, and judicial rulings covered by preceding Section 2.6.1, include but are not limited to: (i) material changes (including by PJM) affecting Vendor's ability to provide services ICC Certification applicable to this Agreement/franchise status, fees, costs, or requirements; (ii) other material changes or clarifications of federal, state or local government certification, licensing or franchise requirements for Alternative Retail Electric Suppliers in Illinois.

2.7 Termination Obligations. Termination of this Agreement shall not relieve either Party of the obligation(s) to pay amounts owed for actual performance of obligations rendered prior to the termination of this Agreement. No consequential damages or lost profits shall be paid as damages under this Agreement.

2.8 Termination Notices. In the event of termination hereunder, the terminating Party shall exercise its commercially reasonable efforts to communicate to the non-terminating Party the upcoming possibility of termination. In the event that this Agreement is terminated prior to the end of the Term, each individual Participating Customer of the Aggregation Program will be provided written notification from the terminating Party of the termination of this Agreement at least thirty (30) days prior to termination, and in compliance with other regulatory or legal requirements, and Participating Customers will also be notified of their right to return to the Electric Utility or to select an Alternate Retail Electric Supplier. All other notification(s) shall be in accordance with ICC requirements.

### **ARTICLE 3**

#### **ENERGY SCHEDULING, TRANSMISSION, PRICING AND DELIVERY**

3.1 Scheduling, Transmission and Delivery of Power. During the Term, Vendor shall schedule Energy as required by the RTO or other transmission provider and the Electric Utility, and shall arrange for transmission and distribution service to the Participating Customers. Vendor will arrange for necessary electric distribution and transmission rights for delivery of such Energy to provide the Retail Electric Supply hereunder and subject to the understanding that Vendor has an obligation to make deliveries to Participating Customer as set forth in Section 2.1 except pursuant to Section 2.6 or Article 6 of this Agreement. Vendor does not take responsibility for any delivery of services supplied by the Electric Utility or RTO, or for the consequences of the failure to provide such services. Vendor shall not be responsible to Participating Customer in the event the Electric Utility or RTO disconnects, suspends, curtails or reduces service to Participating Customer (notwithstanding whether such disconnection is directed by the ISO) in order to facilitate construction, installation, maintenance, repair, replacement or inspection of any of the Electric

Utility's facilities, or to maintain the safety and reliability of the Electric Utility's electrical system, or due to emergencies, forced outages, potential overloading of the Electric Utility's transmission and/or distribution circuits, or a Force Majeure Event or for any other reason permitted by the Electric Utility's tariff or any other acts or omissions of the Electric Utility.

### 3.2 Pricing

3.2.1 During the Delivery Period, Vendor shall provide Retail Electric Supply to all Participating Customers at the pricing set forth on Attachment A, Initial Term Pricing. The Vendor shall receive the price in full payment for all Services, and shall not be entitled to any additional costs, adjustments, charges, fees, or any other payments or compensation. County acknowledges that the price does not include sales or other consumer-based taxes applicable to Participating Customers or other taxes that are not applicable to the Vendor.

3.3 Failure of Delivery. In the event that Vendor fails to schedule all or part of the Retail Electric Supply as set forth herein and Vendor's failure is not due to a Force Majeure Event, and a Participating Customer is required to obtain and pays for Tariffed Service or other Energy supply arrangement necessary to cure such Energy deficiency, Vendor shall reimburse Participating Customer, no later than ten (10) days after receipt of invoice or the date payment would otherwise be due to Vendor, an amount determined by multiplying (a) the aggregate deficiency in the Retail Electric Supply by (b) the Replacement Price. IN THE EVENT OF VENDOR'S FAILURE TO PERFORM DUE TO A NON-FORCE MAJEURE EVENT, VENDOR'S OBLIGATION TO PAY SUCH AMOUNT DURING THE PERIODS OF NON-DELIVERY SHALL BE THE GOVERNMENTAL AGGREGATOR'S AND THE PARTICIPATING CUSTOMERS' SOLE REMEDY FOR VENDOR'S FAILURE TO DELIVER ENERGY PURSUANT TO THE TERMS OF THIS AGREEMENT.

3.4 Participating Customer Early Termination. As set forth in Attachment A, the Aggregation Program includes a fixed price per Participating Customer for the Term of the Aggregation Program. As set forth in the Terms of Service, in the event that a Participating Customer terminates (a "Withdrawing Customer") its participation in the Aggregation Program while a fixed price is in effect, Vendor may not charge the Withdrawing Customer an early termination fee, except Vendor may, at any time, contact each Withdrawing Customer for purposes of maintaining such Withdrawing Customer as a Vendor customer.

## **ARTICLE 4 BILLING AND PAYMENTS**

4.1 Payment of Switching Fees. The Vendor shall reimburse Participating Customers for any switching fee imposed by the Electric Utility related to the enrollment of a Participating Customer in the Program within 30 days of receiving notice of such switching fee. The Vendor shall not be responsible to pay any switching fees imposed on Participating Customers who switch service from another Alternative Retail Electric Supplier.

4.2 Billing. The Electric Utility shall provide consolidated billing and Purchase of Receivables services pursuant to the Electric Utility's tariff provisions and ICC rules applicable to Participating Customers. The Governmental Aggregator acknowledges and agrees that the Electric Utility will



bill Participating Customers for Retail Electric Supply and all applicable charges as part of its billing for the distribution of such supply, and that Vendor shall not be responsible for billing Participating Customers. Vendor retains the right to assess late payment fees on, or deem such non-payment a default of Participating Customer, if a Participating Customer fails to pay amounts due within the specified time period for said payments. Vendor may not convert Participating Customer from consolidated billing to dual billing, or from dual billing to consolidated billing, without the prior written consent of the Governmental Aggregator, which consent shall not be unreasonably withheld, conditioned or delayed.

## **ARTICLE 5 DEFAULT AND REMEDIES**

### **5.1 Event of Default.**

5.1.1 A "County Event of Default" shall mean the occurrence of any of the following and the passage of any cure period set forth therein:

(i) Any representation or warranty made by County in Article 8 hereunder is false or misleading in any material respect when made or when deemed made; and

(ii) The non-excused failure to perform any material covenant or obligation set forth in this Agreement (other than that set forth in (i) above) and such failure is not remedied within thirty (30) days after written notice thereof unless the cure requires longer than the thirty (30) days to effect and County is diligently working towards such cure.

5.1.2 A "Vendor Event of Default" shall mean the occurrence of any of the following and the passage of any cure period set forth therein:

(i) the failure to make, when due, any undisputed payment required pursuant to this Agreement if such failure is not fully remedied within ten (10) business days after written notice;

(ii) any representation or warranty made by Vendor in Article 8 hereunder or elsewhere in this Agreement is false or misleading in any material respect when made or when deemed made; and

(iii) the non-excused failure to perform any material covenant or obligation set forth in this Agreement (other than that set forth in (i) above) if such failure is not remedied within thirty (30) days after written notice thereof, unless the cure period reasonably requires more than thirty (30) days to effect and Vendor is diligently working towards such cure.

### **5.2 Rights and Remedies.**

5.2.1 Rights and Remedies for a County Event of Default. Subject to other provisions of this Agreement, if County is the defaulting Party hereunder, so long as such County Event of

Default shall have occurred and be continuing, Vendor shall have the right to (i) designate a date ("Early Termination Date"), no earlier than the day such notice is effective and no later than sixty (60) days after such notice is effective, on which this Agreement shall terminate and to terminate this Agreement on the Early Termination Date, (ii) suspend performance under this Agreement, or (iii) have all other rights and remedies available at law and in equity. In addition to the foregoing remedies, Vendor shall have the right to seek the remedies of specific performance of County's and Participating Customers' obligations hereunder and/or injunctive relief to continue to provide Retail Electric Supply hereunder.

5.2.2 Rights and Remedies for a Vendor Event of Default. Subject to other provisions of this Agreement, if Vendor is the defaulting Party hereunder, so long as such Vendor Event of Default shall have occurred and be continuing, County shall have the right to (i) designate an Early Termination Date, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, and to terminate this Agreement on the Early Termination Date, (ii) suspend performance under this Agreement, and/or (iii) have all rights available at law and in equity. In addition to the foregoing remedies, County shall have the right to seek the remedies of specific performance and/or injunctive relief.

Notwithstanding any other provision of this Agreement, the remedies set forth in Section 3.3 shall be the sole and exclusive remedies for any failure of Vendor to deliver Retail Electric Supply. As long as Vendor is supplying Retail Electric Supply to the Participating Customers at the price and upon the terms and conditions of this Agreement, County shall not have the right to terminate this Agreement, suspend performance or pursue other remedies, and Vendor shall have no liability to Participating Customers for damages.

5.2.3 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize damages it may incur as a result of the other Party's failure to perform pursuant to this Agreement.

## **ARTICLE 6 FORCE MAJEURE**

6.1 Excused Failure to Comply. Neither Party shall be considered to be in default in the performance of its obligations under this Agreement, if its failure to perform results directly and specifically from a Force Majeure Event related to the operation of this Agreement. If despite its commercially reasonable efforts, either Party is unable, wholly or in part, to meet its obligations under this Agreement due to a Force Majeure Event, the obligations of each Party, other than the obligation to make payments due for performance rendered hereunder, so far as they are affected by such Force Majeure Event, shall be suspended during such period of the Force Majeure Event. The Party claiming excuse due to a Force Majeure Event shall exercise best efforts and due diligence to remove the inability to perform as soon as reasonably possible so that the affected period shall be no longer than that necessarily affected by the Force Majeure Event and shall exercise best efforts and due diligence to mitigate the effects of the Force Majeure Event. Nothing contained in this Section 6.1 shall be construed as requiring a Party to settle any strike or labor dispute in which it may be involved. The occurrence of Force Majeure Events shall automatically extend the Term and any relevant Cure Period on a day to day basis equal to but not exceeding the length of the Force Majeure Event.

6.2 Force Majeure Event. For purposes of this Agreement, a "Force Majeure Event" shall mean any non-economic cause beyond the reasonable control of the Party affected and shall include, but not be limited to, Acts of God, winds, floods, earthquakes, storms, droughts, fires, pestilence, rapture, destructive lightning, hurricanes, washouts, landslides, tornadoes and other natural catastrophes; labor or material shortage, or other industrial disturbances; acts of the public enemies, epidemics, riots, civil disturbances or disobedience, sabotage, wars or blockades; alien (i.e., extraterrestrial) invasion; the failure of facilities, governmental actions such as necessity to comply with any court order, law, statute, ordinance or regulation promulgated by a governmental or ISO authority, a change in law or court order; provided, however, that any such discretionary acts, failure to act or orders of any kind by Governmental Aggregator may not be asserted as a Force Majeure Event by Governmental Aggregator; or any other reasonably unplanned or non-scheduled occurrence, condition, situation or threat not covered above and not caused by a Party's action or inaction, which renders either Party unable to perform its obligations hereunder, provided such event is beyond the reasonable control of the Party claiming such inability. Failure or interruptions, including without limitation, government ordered interruptions, on the systems of generation, transmission or distribution relied upon for supplying Energy under this Agreement shall constitute a Force Majeure Event provided that Vendor has arranged for service on these systems at a level of firmness as required to provide the Retail Electric Supply agreed upon herein.

6.3 Notification. If either Party is unable to perform any of its obligations under this Agreement due to a Force Majeure Event, then said Party shall notify the other Party in writing as soon as possible, but no later than seventy-two (72) hours after the start of the Force Majeure Event. Notwithstanding the foregoing, in the event of an anticipated Force Majeure Event, notice must be provided as soon as possible. The written notice shall include a specific description of the cause and expected duration of the Force Majeure Event.

## **ARTICLE 7 LIMITATION OF LIABILITY**

7.1 LIABILITY. IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT TO THE OTHER FOR INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES CONNECTED WITH OR RESULTING FROM PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER SUCH CLAIMS ARE BASED UPON A STATUTE, BREACH OF WARRANTY, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE OF ANY DEGREE), STRICT LIABILITY, CONTRACT, OPERATION OF LAW OR OTHERWISE.

THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN SECTION 3.3 AND ARTICLE 5 OF THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH SECTION 3.3 OR ARTICLE 5 PROVIDES THE EXPRESS REMEDY OR MEASURE OF DAMAGES, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISIONS AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. FOR ALL OTHER PROVISIONS OF THIS AGREEMENT FOR WHICH NO REMEDY OR MEASURE OF DAMAGES IS

EXPRESSLY PROVIDED, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.

7.2 DISCLAIMER. VENDOR DOES NOT WARRANT OR GUARANTEE THE UNINTERRUPTED DELIVERY OF RETAIL ELECTRIC SUPPLY TO AGGREGATION PROGRAM CUSTOMERS DURING FORCE MAJEURE EVENTS. VENDOR WILL HAVE NO LIABILITY OR RESPONSIBILITY FOR THE OPERATIONS OF THE ELECTRIC UTILITY, INCLUDING BUT NOT LIMITED TO, THE INTERRUPTION, TERMINATION, FAILURE TO DELIVER, OR DETERIORATION OF ELECTRIC UTILITY'S TRANSMISSION OR DISTRIBUTION SERVICE.

7.3 COUNTY SHALL NOT BE LIABLE FOR OR CHARGED ANY COSTS OR FEES UNDER THIS AGREEMENT OR FOR DISCHARGING ITS OBLIGATIONS THEREUNDER (INCLUDING, WITHOUT LIMITATION, THE OBLIGATION TO PROVIDE INFORMATION OR COOPERATE).

7.4 VENDOR SHALL FULLY REIMBURSE ALL PARTICIPATING CUSTOMERS FOR ALL REPLACEMENT EXPENSES NO LATER THAN TEN (10) DAYS AFTER RECEIPT OF INVOICE FOR ALL EXPENSES INCURRED.

## **ARTICLE 8 REPRESENTATIONS AND WARRANTIES**

8.1 Representations and Warranties by Vendor.

8.1.1 Vendor hereby represents and warrants to County as of the Effective Date as follows:

(i) Vendor is a limited liability company, duly formed, validly existing and in good standing under the laws of the State of Illinois and certified as an Alternative Retail Electric Supply in the State of Illinois pursuant to ICC Docket No. 13-0293;

(ii) Vendor has all authorizations from any governmental authority necessary for it to legally perform its obligations under this Agreement or will obtain such authorizations in a timely manner prior to when any performance by it requiring such authorization becomes due;

(iii) Vendor only retains and shall only retain experience and financially qualified subcontractors that are not governmentally disbarred or otherwise prohibited from performing work for public entities;

(iii) The execution and delivery of, and performance under, this Agreement are within Vendor's powers, have been duly authorized by all necessary action and do not violate, conflict with or breach any of the terms or conditions in its governing documents or any contract to which it is a party or any governmental rule applicable to it;

(iv) This Agreement has been duly executed and delivered by Vendor, and this Agreement (assuming due authorization, execution and delivery of all Parties) constitutes legal, valid and binding obligations of Vendor enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization and other laws affecting creditor's rights generally and general principles of equity, regardless of whether such enforceability is considered in a proceeding in equity or at law; and

(v) No Bankruptcy is pending against it or to its knowledge threatened against it.

(vi) None of the documents or other written information furnished by or on behalf of Vendor to County contains any untrue statement of a material fact or omits to state any material fact or is misleading;

(vii) Vendor is not in default with any order, writ, injunction or decree of any court or federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, which would prevent Vendor from complying with the terms and conditions of this Agreement;

(viii) That there are no actions, proceedings or investigations, either threatened or anticipated, pending or threatening Vendor before any court or before any governmental department, commission, board, agency or instrumentality, nor does Vendor know or have reasonable ground to know of any basis for any such action, proceeding or investigation against Vendor which would prevent Vendor from complying with the terms and conditions of this Agreement;

(ix) There are no reasonably anticipated Regulatory Events.

## 8.2 Representations and Warranties by County.

8.2.1 County hereby represents and warrants to Vendor as of the Effective Date as follows:

(i) County has complied with all of the requirements under the Act for County to provide for the aggregation of electrical loads for residential and Small Commercial Retail Customers within the corporate limits of County as an opt-out program;

(ii) County has all authorizations from any governmental authority necessary for it to legally perform its obligations under this Agreement;

(iii) The execution and delivery of, and performance under, this Agreement are within County's powers, have been duly authorized by all necessary action and do not

violate, conflict with or breach any of the terms or conditions in its governing documents or any contract to which it is a party or any governmental rule applicable to it; and

(iv) This Agreement has been duly executed and delivered by County, and this Agreement (assuming due authorization, execution and delivery of all Parties) constitutes legal, valid and binding obligations of County, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization and similar laws affecting creditors' rights and remedies generally, to general principles of equity, regardless of whether such enforceability is considered in a proceeding in equity or at law.

## **ARTICLE 9 CONFIDENTIAL INFORMATION**

9.1 Confidential Information. To the extent permitted by law, any Confidential Information made available pursuant to this Agreement and conspicuously marked or stamped as "Confidential" shall be held in confidence by each of the Parties to protect the legitimate business needs and/or privacy interests of the Parties. With respect to multi-page documents that contain Confidential Information, the Parties may make such a designation by marking or stamping only the first page thereof. The Parties shall identify any matter deemed to be Confidential Information at the time the information is provided. Any information not designated as Confidential Information shall not be covered by the protection contemplated herein, provided, however, that the inadvertent provision of information without a confidential designation shall not itself be deemed a waiver of the Party's claim of confidentiality as to such information, and the Party may thereafter designate the same as confidential, if the information is deemed confidential as set forth herein.

9.2 Confidential Information Defined. "Confidential Information" means any and all data and information of whatever kind or nature (whether written, electronic or oral) which is disclosed by one Party (the "Disclosing Party") to the other Party (the "Recipient") regarding itself, its business, the business of its Affiliates, and/or the Aggregation Program. Confidential Information does not include information that: (a) is in the public domain at the time of disclosure; (b) passes into the public domain after disclosure, except by a wrongful act of the Recipient; (c) is disclosed to the Recipient by another not under an obligation of confidentiality; (d) is already in the Recipient's possession prior to disclosure by the Disclosing Party; or (e) is subject to disclosure by County pursuant to the Illinois Freedom of Information Act. (5 ILCS 140/1, *et. seq.*)

9.3 Obligation of Confidentiality. Each Party agrees, for itself and its authorized representatives, to keep confidential all Confidential Information provided hereunder and to use the Confidential Information solely for purposes in connection with this Agreement, except to the extent that the Recipient determines that release of Confidential Information is required by law or regulation. The obligations for Confidentiality set forth in this Agreement, including but not limited to the non-disclosure obligations and the duty to return Confidential Information upon written request, shall survive the termination of this Agreement for a period of one (1) year thereafter. Nothing in this Section 9.3 shall limit, hinder, or restrict County from complying with the State Records Act, 5 ILCS 160/1 *et seq.*, the Open Meetings Act, 5 ILCS 120/1 *et seq.*, the Freedom of Information Act, 5 ILCS 140\1 *et seq.*, and any and all subpoenas, orders, directives,

or similarly valid requests for documents or information issued by any court of law, governmental entity or administrative entity nor shall County be found to have violated this provision, or any other provisions of this Agreement, for having fulfilled a valid Public Records Request, Freedom of Information Request or any subpoenas, orders, directives or similarly valid requests for documents or information issued by any court of law, governmental entity or administrative entity.

**ARTICLE 10  
MISCELLANEOUS**

10.1 Notices. Any notices, requests or demands regarding the services provided under this Agreement and the Attachments shall be deemed to be properly given or made (i) if by hand delivery, on the day and at the time on which delivered to the intended recipient at its address set forth in this Agreement; (ii) if sent by U.S. Postal Service mail certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient at its address shown below; or (iii) if by Federal Express or other reputable express mail service, on the next business day after delivery to such express service, addressed to the intended recipient at its address set forth in this Agreement. The address of a Party to which notices or other communications shall be mailed may be changed from time to time by giving written notice to the other Party.

Eligo Energy IL, LLC

County

For Notices or Inquiries Regarding this Agreement:

For Notices or Inquiries Regarding this Agreement:

Alexander Rozenblat

Name:

General Counsel

Title:

Eligo Energy IL, LLC

Kendall County

201 W. Lake St., Ste 151,  
Chicago, IL 60606

Phone: 312-600-3763

Phone:

Fax: 312-600-3763

Fax:

Email: [arozenblat@eligoenergy.com](mailto:arozenblat@eligoenergy.com)

Email:

10.2 Entire Agreement. This Agreement, including all Attachments hereto, contains all of the terms and conditions of this Agreement reached by the Parties, and supersedes all prior oral or written agreements with respect to this Agreement. This Agreement may not be modified, amended, altered or supplemented, except by written agreement signed by all Parties hereto.

10.3 Indemnification. Notwithstanding any other provision of this Agreement, Vendor shall indemnify, hold harmless and defend with counsel of County's own choosing, County, its past, present and future elected officials, department heads, employees, insurers, and agents (hereinafter collectively referred to as "Releasees") from and against all liability, claims, suits, causes of action, demands, proceedings, set-offs, liens, attachments, debts, expenses, judgments, or other liabilities

including costs, reasonable fees and expense of defense, arising from any loss, damage, injury, death, or loss or damage to property, of whatsoever kind or nature as well as for any breach of any covenant in the Agreement or ancillary documents and any breach by Vendor of any representations or warranties made within the contract documents (collectively, the "Claims"), to the extent such Claims result from any act or omission, neglect, willful acts, errors, or misconduct of Vendor in its performance under this Agreement. Pursuant to 55 ILCS 5/3-9005, no attorney may be assigned to represent the Releasees pursuant to this Section of the Agreement unless the attorney has been approved in writing by the Kendall County State's Attorney. Releasees' participation in its defense shall not remove Vendor's duty to indemnify, defend, and hold Releasees harmless, as set forth above. Releasees do not waive their defenses or immunities under the Local Government and Governmental Employees Tort Immunity Act (745 ILCS 10/1 et seq.) by reason of this indemnification provision. Indemnification shall survive the termination of this Agreement.

10.4 Independent Contractor Relationship. It is understood and agreed that Vendor is an independent contractor and is not an employee of, partner of, agent of, or in a joint venture with County. Vendor understands and agrees that Vendor is solely responsible for paying all wages, benefits and any other compensation due and owing to Vendor's officers, employees, and agents for the performance of services set forth in the Agreement. Vendor further understands and agrees that Vendor is solely responsible for making all required payroll deductions and other tax and wage withholdings pursuant to state and federal law for Vendor's officers, employees and/or agents who perform services as set forth in the Agreement. Vendor also acknowledges its obligation to obtain appropriate insurance coverage for the benefit of Vendor, Vendor's officers, employees and agents and agrees that County is not responsible for providing any insurance coverage for the benefit of Vendor, Vendor's officers, employees and agents. Vendor hereby agrees to defend with counsel of County's own choosing, indemnify and waive any right to recover alleged damages, penalties, interest, fees (including attorneys' fees), and/or costs from County, its past, present and future board members, elected officials, employees, insurers, and agents for any alleged injuries that Vendor, its officers, employees and/or agents may sustain while performing services under the Agreement.

10.5 Non-Discrimination. Vendor, its officers, employees, and agents agree not to commit unlawful discrimination and agree to comply with all applicable provisions of the Illinois Human Rights Act, Title VII of the Civil Rights Act of 1964, as amended, the Americans with Disabilities Act, the Age Discrimination in Employment Act, Section 504 of the Federal Rehabilitation Act, and all applicable rules and regulations.

10.6 Conflict of Interest. Both Parties affirm no Kendall County officer or elected official has a direct or indirect pecuniary interest in Vendor or this Agreement, or, if any Kendall County officer or elected official does have a direct or indirect pecuniary interest in Vendor or this Agreement, that interest, and the procedure followed to effectuate this Agreement has and will comply with 50 ILCS 105/3.

10.7 Compliance with State and Federal Laws. Vendor agrees to comply with all applicable federal, state and local laws and regulatory requirements and to secure such licenses as may be required for its employees and to conduct business in the state, municipality, county and location.



Such obligation includes, but is not limited to, environmental laws, civil rights laws, prevailing wage and labor laws.

10.8 Waivers. Any request for a waiver of the requirements and provisions of this Agreement shall be in writing and must be approved in writing by the non-waiving Party. The failure of either Party to insist upon strict performance of such requirements or provisions or to exercise any right under this Agreement shall not be construed as a waiver or relinquishment of such requirements, provisions or rights.

10.9 Applicable Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Illinois, without regard for the conflicts of law provisions thereof. Jurisdiction and the venue for any cause of action between the Parties relating to the terms of this Agreement shall be solely and exclusively filed in the Circuit Court of Kendall County, Illinois.

10.10 Controlling Provisions. In the event of any inconsistency between the terms herein and the terms of the Attachments hereto, the provisions of this Agreement shall control. Vendor shall be entitled to use its Terms of Service as its terms of service for any Participating Customer.

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

10.12 Non-Assignability. This Agreement shall not be transferred or assigned by either Party without the express written authorization of the non-assigning Party, which authorization shall not be unreasonably withheld, conditioned or delayed; provided, however, that such authorization may be withheld upon a reasonable determination that the proposed assignee does not have at least the same financial and technical abilities. Notwithstanding the foregoing, Vendor may, without the consent of County, (a) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangement; (b) transfer or assign this Agreement to an Affiliate of Vendor; or (c) transfer or assign this Agreement to any person or entity succeeding to all or a substantial portion of the assets of Vendor. Either Party's assignee shall agree in writing to be bound by the terms and conditions of this Agreement, including the Attachments. Subject to the foregoing, this Agreement and its Attachments shall be binding upon and inure to the benefit of any permitted successors and assigns, to the extent permitted by law.

10.13 Forward Contract. The Parties acknowledge and agree that (a) this Agreement constitutes a forward contract within the meaning of the United States Bankruptcy Code, and (b) Vendor is a forward contract merchant.

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

10.15 Authority To Execute Agreement. The County and Vendor each hereby warrant and represent that their respective signatures set forth below have been and are on the date of this

Agreement duly authorized by all necessary and appropriate corporate and/or governmental action to execute this Agreement.

*[Signature page follows]*

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

**ELIGO ENERGY IL, LLC**

**KENDALL COUNTY, ILLINOIS**

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Name: Scott R. Gryder

Title: \_\_\_\_\_

Title: County Board Chairman

Date: \_\_\_\_\_

Date: June 2, 2020

**Term:**

Initial Term: As defined in Section 2.4.1 of this Agreement.

Renewal Terms\*: Renewed by Mutual Agreement

**Initial Term Pricing:** ComEd Price to Compare (“PTC”) in effect for each billing cycle (“kWh Rate” or “Price”) during the Term of this Agreement.

**Fees & Obligations:**

1. **Green Grant.** Vendor will provide a **\$157,878 civic fee** to County per twelve (12) months of the Term. The Civic Contribution will be payable in equal quarterly installment payments to the County starting within 30 days after the last meter read cycle of the first delivery month.
2. **Renewable Energy Certificates.** During the Term of this Agreement, Vendor shall purchase Renewable Energy Certificates to enable County to be certified as an EPA Green Power Community. Vendor will prepare and file the EPA Green Power Community application on County’s behalf; however, the decision to qualify County as a Green Power Community rests solely with the EPA.
3. **Termination.** Participating Customers may terminate service from Vendor at any time after the Rescission Period without penalty or an early termination fee.
4. **Switching Fee.** Vendor shall continue service at the same rate and under the same terms and conditions for any Participating Customer who relocates within County prior to the expiration of the Initial Term. Moving within County may cause the Participating Customer to be served for a brief period of time by ComEd.

**Vendor Administrative Services:**

- Design, print and mail opt-out letters and/or informational letters to all Eligible Customers and/or customers staying on ComEd default service
- Administer opt-out process
- Provide a call center to handle information calls
- Maintain a database that will include the name, address, Commonwealth Edison account number, and Retail Electric Suppliers’ account number of each active Member, and other pertinent information such as rate code, rider code (if applicable), most recent 12 months of usage and demand, and meter reading cycle. The database will be updated at least quarterly. Accordingly, the Vendor will develop and implement a program to accommodate Members who (i) leave the Aggregation Group due to relocation, opting out, etc. (ii) decide to join the Aggregation Group; (iii) relocate anywhere within the corporate limits of County, or (iv) move into County and elect to join the Aggregation Group. This database shall also be capable of removing a Member from the Aggregation Group who has duly opted out of the Program. The Vendor will use this database to perform audits for clerical and mathematical accuracy of

Member electric supply bills. The Vendor will make the database available to County at any time County requests it.

- **Member Education:** The Vendor shall develop and implement, with the assistance of County and its consultant, as County may determine in its sole discretion, an educational program that generally explains the Aggregation Program to all residential and small commercial retail customers in County and the Aggregation Group, provides updates and disclosures mandated by Illinois law and applicable rules and regulations, and implements a process to allow any Member the opportunity to opt out of the Aggregation Program according to the terms of the Power Supply Agreement.

**Kendall County  
Electric Aggregation Program**

The Kendall County, pursuant to the municipal aggregation authority, which passed by a majority of the vote, selected Eligo Energy IL, LLC ("Vendor" or "Supplier") to supply the aggregation and to administer enrollments as described below. You, the account holder (also referred to as "Customer") for the utility account ("Account") applicable to the service address referenced on the letter accompanying this Opt Out Notice (the "Account"), and Vendor agree to the following terms and conditions. Vendor and Customer (individually referred to as "Party" and collectively as "Parties") agree to the following Terms of Service ("Agreement"), as of first meter read date in September 2020 (the "Effective Date"). This Agreement authorizes Vendor to change Customer's electric supplier in the territory of Commonwealth Edison (the "Utility").

**1. Price and Service:** For the Initial Term, Customer shall pay the ComEd Price to Compare ("kWh Rate" or "Price"), multiplied by the billing cycle usage for the Utility account numbers ("Accounts"). Both Parties recognize that components of Vendor's charges include electric tariff charges that are authorized by the Illinois Commerce Commission, Independent System Operator, other state or governmental agencies having jurisdiction, and/or the Federal Energy Regulatory Commission. Any new tariff charges that become effective after the Utility completes Customer's enrollment and Vendor's services commence (the commencement of the "Delivery Period") may be directly passed through to Customer by a corresponding increase in the Price. Vendor shall not impose any fees or charges on Customer other than the Price set forth above. While Vendor does not charge Customer a separate fee to switch to Vendor's service, if Customer is currently receiving electricity pursuant to an agreement with another alternative retail electric supplier, that supplier may charge Customer for switching electricity providers. Customer may compare the fixed price terms herein to market conditions by looking at the rates posted on Vendor's website and on Customer's monthly bill. In addition, Customer shall pay and be responsible for all other amounts related to the purchase and delivery of electricity, including applicable taxes and charges. If Customer is interval metered, Customer shall also be responsible for additional costs resulting therefrom. Please see Vendor's website [www.eligoenergy.com](http://www.eligoenergy.com) for current market conditions and updates.

**2. Enrollment:** (a) Opt-Out Enrollment (Automatic Enrollments due to non-action within 21 days after mailing). Enrollment is automatic if (i) the account(s) to be served is/are eligible and (ii) Customer does not opt-out of County's electric aggregation program. **IF YOU DO NOT WISH TO PARTICIPATE IN THE AGGREGATION PROGRAM, YOU MUST OPT-OUT WITHIN 21 DAYS OF MAILING. YOU CAN OPT-OUT BY RETURNING THE POSTCARD.** (b) Opt-In Enrollment (Affirmative Enrollments). Enrollment for the remainder of the current program is open to those who opt-out or are otherwise not automatically enrolled if (i) the account(s) to be served is/are eligible and (ii) Customer chooses to opt-in to the program. You can Opt-In by (1) calling Vendor toll free at 1-888-744-8125 or (2) contacting Vendor online at [www.eligoenergy.com/cities/il/Kendall](http://www.eligoenergy.com/cities/il/Kendall).

**3. Eligibility:** Customer and the Accounts to be served (i) must be located within the jurisdictional boundaries of County, (ii) must be served by the Utility on one of the following rate classes: BES,

BESH, and RDS (which in general terms apply to residential non-electric space heat service and small commercial customers), (iii) may not be under agreement with another Alternative Retail Electric Supplier, and (iv) must be in good credit standing with the Utility.

4. **Term:** This Agreement shall become binding on the Effective Date, however, this Agreement is contingent upon: (a) successful enrollment by the Utility and (b) the passage of the Rescission Period without effective cancellation by Customer. Successful enrollment by the Utility is dependent upon (i) the eligibility of Customer's Utility accounts, as determined by the Utility, to take service from an alternative retail electric supplier and to participate in the Utility's purchase of receivables program, and (ii) the accuracy and completeness of the information submitted for enrollment. Service will commence on the later of (a) the meter read in September 2020 or (b) the first meter read date following successful enrollment by the Utility. Service shall remain in effect for twenty-four (24) months / billing cycles ("Initial Term"), unless terminated pursuant to the terms of this Agreement. This Agreement will start when Vendor provides confirmation to Customer's local distribution company and the local distribution company initiates the change.

5. **Rescission Period:** Customer may cancel enrollment by contacting the Supplier at 312-260-0885 without penalty up to 10 calendar days after the Utility processes the enrollment request (the "Rescission Period").

6. **Termination; Remedies:** If either Party defaults on its obligations under this Agreement (which may include Customer's switching to another electric supplier or the Utility or Customer's failure to pay the Utility), the other Party may terminate this Agreement, as applicable. In addition, if Customer chooses to terminate this Agreement based on a recommendation from County in the event that Vendor has materially breached the Aggregation Program Agreement between Vendor and County, then Vendor shall not be liable to Customer for any damages or penalties resulting from such termination of this Agreement, including claims related to the price received from the Utility or an alternate retail electric supplier being higher than the Price herein, unless Vendor has also materially breached these Terms of Service.

7. **Renewal:** In the event that Vendor enters into an agreement with County to renew the municipal aggregation agreement before the expiration of the Initial Term, between 30 and 60 days prior to the end of the Initial Term or a Renewal Term (whichever is in effect, hereinafter the "Current Term"), Vendor may send Customer an offer for a Renewal Term. This offer will include, without limitation, the new Price, any applicable early termination fees (if any), and the Renewal Term ("Offer"). In the event Vendor does not receive Customer's rejection of the Offer within 21 days, the Offer will be deemed accepted by Customer without the need for further signature or other affirmative action by Customer. If Customer rejects the Offer in the manner directed in the Offer, Customer's Accounts will be returned to Utility service at the end of the Current Term.

8. **Billing and Payment:** Customer will continue to receive one monthly electric bill processed and provided by the Utility for Vendor's charges and Utility's delivery charges on the invoice(s) Customer receives from the Utility, and such billing and payment shall be subject to the applicable Utility rules regarding billing and payment procedures. Vendor's charges or credits not invoiced through the Utility shall be invoiced or credited, respectively, directly by Vendor. Vendor may cause the Utility to correct previous invoices in the event of invoicing errors. In the event of a Customer bankruptcy, late payment or nonpayment, Vendor has the right to cancel this Agreement.

9. **Taxes:** Any tax levied against Vendor by any governmental entity, exclusive of Vendor's income tax or taxes levied on Vendor's real or personal property, which must be paid by Vendor shall be passed through to and borne and reimbursed by Customer. Customer must provide Vendor with any applicable exemption certificates. Customer shall pay any such taxes unless Vendor is required by law to collect and remit such taxes, in which case Customer shall reimburse Vendor for all amounts so paid.

10. **Contact Information:** For any service question or in the event of an emergency such as a power failure or downed power line, Customer should contact ComEd at 800-334-7661. Customer may contact Vendor at 888-744-8125. For issues concerning this Agreement, Vendor will attempt to resolve the matter within 5 business days of receiving a call or the complaint from Customer. If Customer is not satisfied with the response, or to obtain consumer education materials, Customer may contact the Illinois Commerce Commission at 800-524-0795 or 800-858-9277 for TTY hearing-impaired Customers or visit its website at [www.icc.illinois.gov](http://www.icc.illinois.gov). Customer may also contact the Illinois Attorney General's Office at 1-800-386-5438. Customer shall contact Vendor with any change in Customer's email address and/or withdrawal of consent for electronic retention of customer information.

11. **Customer Relocation:** Vendor will waive any fees if Customer moves to a new address outside County's boundaries and provides notice to Vendor that Customer is moving prior to termination.

12. **Assignment:** Customer may not assign this Agreement without Vendor's written consent. Vendor may transfer, assign or sell this Agreement: (a) in connection with any financing; (b) to any of its affiliates; (c) to anyone succeeding to all or substantially all of Vendor's assets or business; or (d) to another supplier licensed by the Illinois Commerce Commission. This Agreement is binding upon Customer and Vendor, and each party's heirs, successors and permitted assigns. Any required assignment notice will be considered to have been made if mailed to the address in Vendor's records for Customer's account. There are no third-party beneficiaries to this Agreement.

13. **Exclusion of Cash Back Bonus:** As a municipal aggregation Customer, Customer is not eligible to participate in Vendor's promotional cash-back or rebate bonus program.

14. **Limitations:** ALL ELECTRICITY SOLD HEREUNDER IS PROVIDED "AS IS", AND VENDOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE. IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT, WHETHER IN AGREEMENT, IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE, FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES.

15. **Force Majeure:** Except for Customer's obligation under this Agreement to pay Vendor for its services, neither Vendor nor Customer will be liable to the other for failure to perform an obligation either was prevented from performing due to an event beyond its reasonable control, that could not be remedied by the exercise of due diligence and that was not reasonably foreseeable, including without limitation, acts of God, a condition resulting from the curtailment



of electricity supply or interruption or curtailment of transmission on the electric transmission and/or distribution system, interruption of utility service, terrorist acts or wars, and force majeure events of the utility or independent system operator.

16. **Miscellaneous:** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, without regard for the conflicts of law provisions thereof. Title, possession, control of the electricity, and risk of loss will pass from Vendor to Customer at the delivery point, which shall be the Utility. Customer appoints Vendor as its agent for the purposes of effectuating delivery, including for receipt of billing and usage data from the Utility. This Agreement shall be considered a Letter of Agency and constitutes the entire agreement between the Parties, superseding all verbal and written understandings. This Agreement shall only be amended in a writing signed by both Parties or with notice from Vendor to Customer as described above. Customer should contact the Utility in the event of an electric emergency at the following numbers: for ComEd residential customers, 1-800-Edison-1; for ComEd business customers, 1-877-4-ComEd-1. Future correspondence may be sent by Vendor to Customer via first class mail and/or electronic mail.

**ACCEPTANCE OF AGREEMENT:** This Agreement is hereby unconditionally accepted. Eligo Energy IL, LLC is authorized to switch Customer's utility supplier for the generation service charge. I will notify and/or cancel any previous agreement I may have in place with any other supplier, if applicable.

## **Plan of Operation and Governance Adopted by County**

## **Attachment D to Master Agreement**

### **Insurance Policies**

Within 30 days of Effective Date of this Agreement, Vendor will add County to any Vendor insurance policy necessary to provide services to County under this Agreement, and Vendor will provide an copy of the updated policy to County.

COUNTY OF KENDALL

RESOLUTION 2020-\_\_\_\_\_

**RESOLUTION ESTABLISHING THE SALARY FOR  
THE KENDALL COUNTY CORONER**

WHEREAS, 50 ILCS 145/2 requires the salary of elected officers for local governments to be established at least 180 days prior to the start of their term; and

WHEREAS, 55 ILCS 5/5-1010 requires the County Board to establish the salary of County officers prior to the election of the officers whose salary is being established; and

WHEREAS, the Kendall County Board must balance its duty to fairly and adequately compensate all elected officials with its duty to protect and appropriate public dollars and provide County services effectively and efficiently.

NOW, THEREFORE, BE IT RESOLVED that the annual salary for the elected Kendall County Coroner shall be as follows:

Effective December 1, 2020	\$67,974
Effective December 1, 2021	\$69,334
Effective December 1, 2022	\$70,720
Effective December 1, 2023	\$72,135

**Approved and adopted by the County Board of Kendall County, Illinois,  
on this 2nd day of June, 2020.**

\_\_\_\_\_  
Scott R. Gryder, Chairman  
Kendall County Board

Attest:

\_\_\_\_\_  
Debbie Gillette  
Kendall County Clerk

COUNTY OF KENDALL

RESOLUTION 2020-\_\_\_\_\_

**RESOLUTION ESTABLISHING THE SALARY FOR  
THE KENDALL COUNTY CIRCUIT COURT CLERK**

WHEREAS, 50 ILCS 145/2 requires the salary of elected officers for local governments to be established at least 180 days prior to the start of their term; and

WHEREAS, 55 ILCS 5/5-1010 requires the County Board to establish the salary of County officers prior to the election of the officers whose salary is being established; and

WHEREAS, the Kendall County Board has historically established the compensation for the Kendall County Circuit Court Clerk in accordance with these two statutes; and

WHEREAS, the Kendall County Board must balance its duty to fairly and adequately compensate all elected officials with its duty to protect and appropriate public dollars and provide County services effectively and efficiently.

NOW, THEREFORE, BE IT RESOLVED that the annual salary for the elected Kendall County Circuit Court Clerk shall be as follows:

Effective December 1, 2020	\$91,554
Effective December 1, 2021	\$91,554
Effective December 1, 2022	\$91,554
Effective December 1, 2023	\$91,554

**Approved and adopted by the County Board of Kendall County, Illinois,  
on this 2nd day of June, 2020.**

\_\_\_\_\_  
Scott R. Gryder, Chairman  
Kendall County Board

Attest:

\_\_\_\_\_  
Debbie Gillette  
Kendall County Clerk

**COUNTY OF KENDALL, ILLINOIS**  
**RESOLUTION 20 – \_\_\_\_\_**

**Resolution of Support for Blackberry Golf Inc. Downstate Small Business Stabilization  
Program Application**

**WHEREAS**, Kendall County is applying to the State of Illinois for a Community Development Block Grant Program grant, and

**WHEREAS**, it is necessary that an application be made, and agreements entered with the State of Illinois.

**NOW, THEREFORE, BE IT RESOLVED** as follows:

- 1) that Kendall County apply for a grant under the terms and conditions of the State of Illinois and shall enter in to and agree to the understandings and assurances contained in said application.
- 2) that the County Board Chairman and County Clerk on behalf of Kendall County execute such documents and all other documents necessary for the carrying out of said application.
- 3) that the County Board Chairman and the County Clerk are authorized to provide such additional information as may be required to accomplish the obtaining of such grant.

PRESENTED and ADOPTED by the County Board, this 2nd day of June 2020.

Approved:

Attest:

\_\_\_\_\_  
Scott R. Gryder, County Board Chairman

\_\_\_\_\_  
Debbie Gillette, County Clerk and Recorder



## **PARTICIPATION AGREEMENT**

**THIS AGREEMENT** is made as of the 2nd day of June, 2020 by and between the County of Kendall, Illinois (“Unit of Local Government”) and Blackberry Golf Inc., (Benefiting “Business”).

**WHEREAS**, the Unit of Local Government is interested in maintaining its economic base with the primary emphasis on retaining jobs.

**WHEREAS**, the Unit of Local Government has entered into an agreement with the Illinois Department of Commerce and Economic Opportunity to implement an economic development program that significantly impacts upon the Unit of Local Government’s economic base; and

**WHEREAS**, the Business is interested in maintaining its employment base; and

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, the parties agree as follows:

### **I. GENERAL DEFINITIONS**

- 1.1 "Application" shall mean all materials submitted by the Business to the Unit of Local Government or the State of Illinois in connection with this Agreement.
- 1.2 "DCEO Funds" shall mean the sum of \$25,000 representing the grant received by the Unit of Local Government pursuant to its agreement with the Illinois Department of Commerce and Economic Opportunity (DCEO).

### **II. PERFORMANCE**

- 2.1 The Unit of Local Government agrees, subject to the terms and conditions of this Agreement, to provide grant funds to the Business for the purpose of working capital.
- 2.2 Grant funds shall be paid with Community Development Block Grant funds through DCEO.
- 2.3 Business must remain open or reopen and retain or re-employ permanent jobs prior to the grant end date (one year from grant award).
- 2.4 In the event the Unit of Local Government fails to receive the DCEO funds, for any reason, this Agreement shall be terminated, at the sole option of the Unit of Local Government, without fault as to either party.

### **III. COVENANTS, REPRESENTATIONS AND WARRANTIES OF THE BUSINESS**

- 3.1 On or prior to the date of this Agreement, all legal matters incident to this Agreement and the transactions contemplated hereby shall be satisfactory to the Unit of Local Government.

3.2 Business represents and warrants that:

(a) Business is a sole proprietorship, corporation or partnership, as the case may be, duly formed, validly existing and in good standing under the laws of Illinois, is duly licensed and duly qualified as a foreign corporation or partnership, as the case may be, in good standing in all the jurisdictions in which the character of the property owned or leased or the nature of the business conducted by it requires such licensing or qualification and has all proprietorship, corporate or partnership powers, as the case may be, and all material governmental licenses, authorizations, consents and approvals required to carry on its business as now conducted.

(b) The execution, delivery and performance by Business of this Agreement, are within Business's proprietorship, corporate or partnership powers, have been duly authorized by all necessary proprietorship, corporate or partnership action, require no action by or in respect of, or filing with, any governmental body, agency or official and do not contravene any provision of applicable law or regulation or of the Articles of Incorporation or By-Laws or Partnership Agreement of Business, as the case may be.

(c) This Agreement constitutes a valid and binding agreement of Business.

(d) The Application is in all respects true and accurate and there are no omissions or other facts or circumstances which may be material to this Agreement or the Project.

(e) The financial information delivered to Unit of Local Government pursuant to the Application fully and accurately present the financial condition of the Business. No material adverse change in the condition, financial or otherwise, of Business has occurred since the date of the financial statements most recently delivered to the Unit of Local Government.

(f) Neither Business nor, to the best of Business's knowledge, any of Business's employees have been convicted of bribing or attempting to bribe an officer or employee of the Unit of Local Government, nor has the Business made an admission of guilt of such conduct which is a matter of record.

3.3 The Business shall keep detailed records of all matters related to this Agreement (including the Exhibits hereto). The Business shall provide to the Unit of Local Government all materials necessary for the Unit of Local Government to meet reporting and other requirements of this grant.

3.4 The Business shall comply with all applicable state and federal law and regulations promulgated thereunder. Business shall comply with all applicable laws and regulations prohibiting discrimination on the basis of race, sex, religion, national origin, age or handicap, including but not limited to the Illinois Human Rights Act,



as now or hereafter amended, and the Equal Employment Opportunity Clause promulgated pursuant thereto.

- 3.5 Business shall fully and completely indemnify, defend with counsel of the Unit of Local Government's own choosing and hold harmless the Unit of Local Government and the State of Illinois and their officers, directors, employees and agents against any liability, judgment, loss, cost, claim, damage (including consequential damage) or expense (including attorney's fees and disbursements, settlement costs, consultant fees, investigation and laboratory fees) to which any of them may become subject insofar as they may arise out of or are based upon this Agreement or any agreement or document executed by Business and Unit of Local Government as part of the transaction described herein.

Pursuant to 55 ILCS 5/3-9005, no attorney may be assigned to represent the Unit of Local Government pursuant to this Section unless the attorney has been pre-approved in writing by the Kendall County State's Attorney. The Unit of Local Government's participation in its defense shall not remove the Business's duty to indemnify, defend and hold harmless the Unit of Local Government, as set forth above. The Unit of Local Government does not waive its defenses or immunities under the Local Government and Governmental Employees Tort Immunity Act (745 ILCS 10/1 et seq.) by reason of this indemnification provision. Indemnification shall survive the termination of this Agreement.

- 3.6 The Unit of Local Government shall have the right of access, at all reasonable hours, to Business's premises and books and records for purpose of determining compliance with this Agreement. In addition to the reporting specifically required hereunder, Business shall furnish to the Unit of Local Government such information as the Unit of Local Government may reasonably request with respect to this Agreement.

#### **IV. DEFAULT AND REMEDIES**

- 4.1 If one or more of the following events ("Defaults") occurs and is not timely cured, then, the Unit of Local Government may declare Business in default under this Agreement and seek any of the enumerated remedies described in this Section.

(a) Business fails to observe or perform any covenant or agreement contained in this Agreement, including the Exhibits hereto, for 10 days after written notice to cure thereof has been given to Business by the Unit of Local Government;

(b) Any representation, warranty, certificate or statement made by Business in this Agreement, including the Exhibits hereto, or in any certificate, report, financial statement or other document delivered pursuant to this Agreement shall prove to have been incorrect when made in any material respect;

(c) Business shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it

or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any corporate action to authorize any of the foregoing;

(d) An involuntary case or other proceeding shall be commenced against Business seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceedings shall remain undismissed and unstayed for a period of 60 days; or an order for relief shall be entered against Business under the federal bankruptcy laws as now or hereafter in effect;

(e) Business ceases the conduct of active trade or business in the Unit of Local Government's community for any reason, including, but not limited to, fire or other casualty; and does not reopen prior to the end date of the grant agreement.

- 4.2 If a Default occurs and is not timely cured, then the Unit of Local Government shall seek reimbursement from the Business for all funds (including DCEO funds) expended by the Unit of Local Government on or related to the Project, including, but not limited to working capital, equipment, architectural engineering, construction, administrative, real estate and incidental costs related thereto.
- 4.3 Upon notice of a Default and if said Default is not timely cured, the Unit of Local Government shall notify the Business that reimbursement shall be made to the Unit of Local Government within 30 days after said notice. If the Business fails to reimburse the Unit of Local Government within 30 days after the date of the notice, the Unit of Local Government shall have the right to collect interest on the unpaid balance beginning on the 31<sup>st</sup> day after notice at a rate equal to 12% per annum.
- 4.4 If the Unit of Local Government is successful in any proceeding to enforce the terms of this Agreement, then the Unit of Local Government shall have the right to obtain from the Business, as an additional remedy, attorney fees, costs and expenses, related to the proceeding.

## **V. TERMINATION**

- 5.1 This Agreement may be terminated at any time by written, mutual agreement of the parties, provided the Unit of Local Government has obtained written consent from the Illinois Department of Commerce and Economic Opportunity as to such termination.

- 5.2 This Agreement may be terminated by the Unit of Local Government whenever it issues a notice of Default to the Business and the Business does not timely cure the Default pursuant to Section IV.
- 5.3 This Agreement will terminate when the Project has been completed and when all of the terms and conditions of this Agreement (including the Exhibits thereto) creating duties upon the Business, have been satisfied by the Business.

## **VI. GENERAL PROVISIONS**

- 6.1 Notice required hereunder shall be in writing and shall be deemed to have validly served, given or delivered upon deposit in the United States mail, by registered mail, return receipt requested, at the address set forth on the signature page hereof or to such other address as each party may specify for itself by like notice.
- 6.2 All covenants, agreements, representations and warranties made herein and, in the certificates, delivered pursuant hereto shall survive the execution of the Agreement and shall continue in full force and effect so long as the Agreement shall be in force.
- 6.3 No failure or delay by the Unit of Local Government in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.
- 6.4 Wherever possible each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision shall be invalid under applicable law, such provision shall be ineffective to the extent of such invalidity without invalidating the remaining provisions of this Agreement.
- 6.5 This Agreement represents the full and complete agreement between the parties with respect to the matters addressed herein and there are no oral agreements or understandings between the parties.
- 6.6 This Agreement shall be construed in accordance with and governed by the law of the State of Illinois.
- 6.7 This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.
- 6.8 No modification of or waiver of any provision of this Agreement shall be effective unless the same shall be in writing and signed by the parties hereto, and provided further, that the Unit of Local Government shall obtain written consent of the Illinois Department of Commerce and Economic Opportunity prior to executing any such modification or waiver.

- 6.9 The Business certifies that it has not been barred from bidding on or receiving State contracts as a result of a violation of Section 33E-3 or 33E-4 of the Criminal Code of 1961 (bid rigging or bid rotating, respectively) (720 ILCS 5/33E-3 and 5/33-4).
- 6.10 The Business certifies that it has not been barred from being awarded a contract or subcontract under Section 50-5 of the Illinois Procurement (Code 30 ILCS 500).
- 6.11 The Business acknowledges that receipt of benefits under this agreement may require compliance with the Prevailing Wage Act (820 ILCS 130). Persons willfully failing to comply with or violating this act may be in violation of the Criminal Code. Questions concerning compliance with the Prevailing Wage Act should be directed to the Illinois Department of Labor.
- 6.12 The Unit of Local Government acknowledges that if the project as proposed by this Agreement is completed in accordance with this Agreement and the Agreement executed between the Unit of Local Government and the Department of Commerce and Economic Opportunity then the provisions cited above in 6.9; 6.10; and 6.11 do not apply to the Business but do apply to the activities to be completed by the Unit of Local Government.

**IN WITNESS WHEREOF**, the parties executed this Agreement the day and year first above written.

Blackberry Golf Inc.

Kendall County, Illinois

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By: Gary Blocker  
Its: President

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By: Honorable Scott Gryder,  
Chairman of the Kendall County  
Board

Address:  
2245 Kennedy Rd.  
Bristol, IL 60512

Address:  
111 W. Fox Street  
Yorkville, Illinois 60560