



# AGENDA

## REGULAR VILLAGE BOARD MEETING

May 25, 2021

7:00 PM

### 1. CALL TO ORDER

### 2. PLEDGE OF ALLEGIANCE

INVOCATION (ELDER CARMELO BLANCAFLOR, TRINITY GOSPEL CHURCH)

### 3. APPROVAL OF MINUTES OF MAY 11, 2021

### 4. MAYOR & BOARD OF TRUSTEES' REPORT

### 5. ACCOUNTS PAYABLE WARRANT: MAY 25, 2021 \$ 1,441,433.45

### 6. CONSENT AGENDA

- a. Consideration of a request from Queen of the Rosary School, located at 690 Elk Grove Blvd., to waive the FY 2021-22 business license fees in the amount of \$50.

(The Queen of the Rosary School is respectfully requesting the Business License fee in the amount of \$50 to be waived for one vending machine that is located at 690 W. Elk Grove Blvd.

(It has been past practice of the Village Board to grant fee waivers for governmental and non-profit organizations.

(The Director of Finance recommends approval.)

- b. Consideration of a request from the Prairie Lake School, located at 408 E. Devon Ave., to waive FY2021-22 business license fees in the amount of \$100.

(The Prairie Lake School is seeking a waiver of FY2021-22 business license fees related to the school's resale of food.

(It has been past practice of the Village Board to grant fee waivers for governmental and non-profit organizations.

(The Director of Finance recommends approval.)

- c. Consideration of a request from the Elk Grove Farmers Market to waive business license fees for the annual Farmers Market taking place on the Municipal parking lot in the amount of \$100.

(Elk Grove Farmers Market is requesting a waiver for a general retail license fee (\$100)

for its annual Farmers Market event to be held from June 5, 2021 through October 16, 2021.

(It has been past practice of the Village Board to grant fee waivers for governmental and non-profit organizations.

(The Director of Finance recommends approval.)

- d. Consideration of a request from The Salvation Army, located at 1000 Pratt Blvd., to waive FY 2021/22 vehicle sticker fees in the amount of \$1,475.

(It has been past practice of the Village Board to grant fee waivers for governmental and non-profit organizations.

(The Director of Finance recommends approval.)

- e. Consideration of a request from the Elk Grove Park District, located at 499 Biesterfield Road, to waive FY 2021/22 business license fees in the amount of \$3,135.

(It has been past practice of the Village Board to grant fee waivers for governmental and non-profit organizations.

(The Director of Finance recommends approval.)

- f. Consideration to authorize payment in the amount of \$16,895 for FY 2021-2022 membership dues to the Northwest Municipal Conference (NWMC).

(The Membership dues rate to the Northwest Municipal Conference is based on population and is assessed at a per capita rate of \$0.51.

(This is the same rate from the previous year's dues.)

- g. Consideration to award a professional service contract to Engineering Enterprises, Inc. of Sugar Grove, IL, for construction and design engineering services for the 2021 Sanitary Manhole Rehabilitation project in the amount of \$54,354 from the Water & Sewer Fund.

(A proposal was solicited from Engineering Enterprises, Inc. (EEI) of Sugar Grove, IL for construction and design engineering services for the 2021 Sanitary Manhole Rehabilitation project

(106 Sanitary manholes were inspected and found to be in need of repair to comply with the Metropolitan Water Reclamation District's Inflow and Infiltration Program.

(EEI will provide services to prepare contract documents, review post construction manhole videos, review shop drawings and inspection reports, prepare pay estimates, and oversee all construction observations.

(The Director of Public Works recommends approval.)

- h. Consideration to award a professional services contract to Johnny Rockets Fireworks Display Corporation of Chicago, IL to design and produce fireworks displays in an amount not to exceed \$104,000.

(The company's performance over the past twenty years has been satisfactory.

(The Village administers fireworks displays each year.

(This year's displays will include: Rotary Fest (\$12,000), Fourth of July (\$75,000), Oktoberfest (\$12,000) and Tree Lighting Ceremony (\$5,000).

(The contract cost will be offset depending on the contribution of funds by residents

through utility billing for the July 4th display.

(Sufficient funds are budgeted for this purpose in the General Fund.)

- i. Consideration to award a contract through the Municipal Partnering Initiative Joint Bid pricing to Corrective Asphalt Materials, LLC of South Roxana, IL for the Preventative Street Maintenance - 2021 project in the amount of \$168,806.28 from the General and Business Leader Forum Funds.

(A proposal for applying Reclamite maltene based rejuvenation agent to Village roadways was submitted by Corrective Asphalt Materials, LLC.

(The proposal extends the unit prices from the Municipal Partnering Initiative Joint Bid opened by the Village of Winnetka on March 11, 2021.

(In 2021, the Village will be placing Reclamite on the 9.8 miles of roadways that were resurfaced in 2020.

(The Director of Public Works recommends approval.)

- j. Consideration of the following:

- To adopt Ordinance No. 3708 amending Chapter 2, Section 12, Municipal Gas Use Tax of Title 3 Business and License Regulations of the Village of Elk Grove Village; and
- To adopt Resolution No. 28-21 authorizing the Mayor and Village Clerk to Execute a Tax Collection Agreement between Northern Illinois Gas Company (Nicor) and the Village of Elk Grove Village.

(This item was discussed at the Committee of the Whole Meeting on May 11, 2021.

(This ordinance increases of the Municipal Gas Use Tax in the amount of \$0.030 per therm for a total tax rate of \$0.050 per therm in order to provide funding for capital maintenance programs.

(The \$0.030 per therm increase will be earmarked for the Business Leaders Forum Fund and Capital Projects Fund.

(The Tax Collection Agreement formalizes the necessary procedures for the tax collection process and is an update to the existing agreement for the collection of the Municipal Gas Use Tax by Nicor.)

- k. Consideration of the following:

- To adopt Resolution No. 29-21 authorizing the Maintenance of Streets and Highways by a Municipality Under the Illinois Highway Code and appropriating Motor Fuel Tax Funds (MFT) from the REBUILD Illinois Bond allotment in the amount of \$350,024

for the Biesterfield Road/Wise Road Resurfacing project.

- To award a professional service contract to Civiltech Engineering, Inc. of Itasca, Illinois for design engineering services for the resurfacing project on Biesterfield Road / Wise Road from west Village limits to Meacham Road in an amount to not exceed \$99,553.78.

(The Village has secured funding for the Biesterfield Road Resurfacing project through the Federal Highway Administration's Surface Transportation Program in the amount of \$751,410. The amount is equal to 75% of the total construction and construction engineering cost for the project.

(The project will consist of pavement patching and resurfacing with HMA surface course, storm structure adjustments, crosswalk improvements, sidewalk and ADA ramps, concrete curb repairs, pavement markings, detector loop replacement, pedestrian signal modifications and landscape restoration.

(This resolution appropriates Motor Fuel Tax (MFT) funds from the REBUILD Illinois Bond allotment for the full design engineering and remaining the twenty-five percent (25%) construction and construction engineering match, which totals the amount of \$350,024, to be utilized for this project.

(The professional design engineering service contract to be executed with Civiltech Engineering, Inc. will provide for the Design Engineering Services for the resurfacing of Biesterfield Road/Wise Road from west Village limits to Meacham Road in the amount to not exceed \$99,553.78.

(The Director of Public Works recommends approval.)

## **7. REGULAR AGENDA**

### **8. PLAN COMMISSION - Village Manager Rummel**

- a. Consideration of a petition submitted by Riverpoint Property Trust, LLC for Rezoning from I-2 to I-1 for property located at 751 Pratt Blvd. (A public hearing date is yet to be established.)
- b. PC Docket #21-4 - Consideration of a request for a variation to allow multiple principal buildings on a single lot for property located in the I-1 Industrial District at 101-201 Innovation Drive. (PH 06-21-2021)

### **9. ZONING BOARD OF APPEALS - Village Manager Rummel**

- a. ZBA Docket 21-3- A Public Hearing for a variation from the Elk Grove Village Zoning Ordinance as it pertains to permitted projections of a primary structure in the required front yard in residential zoning districts for property located at 1147 Warwick Lane (PH 05-27-2021).

### **10. YOUTH COMMITTEE - Trustee Franke**

### **11. BUSINESS LEADERS FORUMS - Trustee Lissner**

### **12. CABLE TELEVISION COMMITTEE - Trustee Lissner**

### **13. HEALTH & COMMUNITY SERVICES - Trustee Czarnik**

### **14. INFORMATION COMMITTEE - Trustee Lissner**

- a. Newsletter Redesign

**15. RECYCLING & WASTE COMMITTEE - Trustee Feichter**

**16. PARADE COMMITTEE - Trustee Czarnik**

**17. PERSONNEL COMMITTEE - Trustee Franke**

**18. JUDICIARY, PLANNING AND ZONING COMMITTEE - Trustee Prochno**

**19. CAPITAL IMPROVEMENTS COMMITTEE - Trustee Czarnik**

**20. AIRPORT UPDATE**

**21. MID-SUMMER CLASSICS CONCERT SERIES UPDATE - Mayor Johnson**

**22. SPECIAL EVENTS COMMITTEE - Mayor Johnson**

**23. LIQUOR COMMISSION - Mayor Johnson**

**24. REPORT FROM VILLAGE MANAGER**

**25. REPORT FROM VILLAGE CLERK**

**26. UNFINISHED BUSINESS**

**27. NEW BUSINESS**

**28. PUBLIC COMMENT**

**29. ADJOURNMENT**

In compliance with the Americans with Disabilities Act and other applicable Federal and State laws, the meeting will be accessible to individuals with disabilities. Persons requiring auxiliary aids and/or services should contact the Village Clerk, preferably no later than five days before the meeting.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AMENDING CHAPTER 2, SECTION 12, MUNICIPAL GAS USE TAX OF TITLE 3 BUSINESS AND LICENSE REGULATIONS OF THE VILLAGE OF ELK GROVE VILLAGE**

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**WHEREAS**, the Village of Elk Grove Village is a home rule unit under subsection (a) of Section 6 of Article VII of the Illinois Constitution of 1970; and

**WHEREAS**, subject to said Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs of the protection of the public health, safety, morals and welfare; and

**WHEREAS**, in furtherance of its home rule power, it is necessary and desirable for the Village of Elk Grove Village, Counties of Cook and DuPage to amend its ordinance regarding taxation as follows:

**NOW, THEREFORE, BE IT ORDAINED** by the Mayor and Board of Trustees of the Village of Elk Grove Village, Counties of Cook and DuPage, Illinois as follows:

**Section 1:** That the Village Code of the Village of Elk Grove Village be and is hereby amending Chapter 3-2-12-C as follows:

**CHAPTER 3-2-12. MUNICIPAL GAS USE TAX**

C. Tax:

1. Except as otherwise provided by this Chapter, a tax is imposed on the privilege of using or consuming gas in the Village that is purchased in a Sale at Retail at the rate of three cents (\$0.030) per therm.

2. The ultimate incidence of and liability for payment of the tax is on the retail purchaser, and nothing in this section shall be construed to impose a tax on the occupation of distributing, supplying, furnishing, selling or transporting gas.

3. The retail purchaser shall pay the tax, measured by therms of gas delivered to the retail purchaser's premises, to the public utility designated to collect the tax pursuant subsection D of this section on or before the payment due date of the public utility's bill first reflecting the tax, or directly to the Village Treasurer on or before the fifteenth day of the second month following the month in which the gas is delivered to the retail purchaser if no public utility has been designated to collect the tax pursuant to subsection D or if the gas is delivered by a person other than a public utility so designated.

4. Nothing in this section shall be construed to impose a tax upon any person, business or activity which, under the constitutions of the United States or State of Illinois, may not be made the subject of taxation by the Village.

5. A person who purchases gas for resale and therefore does not pay the tax imposed by this section with respect to the use or consumption of the gas, but who later uses or consumes part or all for the gas, shall pay the tax directly to the Village Treasurer on or before the fifteenth day of the second month following the month in which the gas is used or consumed.

6. The tax shall apply to gas for which the delivery to the retail purchaser is billed by a public utility on or after July 1, 2021.

7. If it shall appear that an amount of tax has been paid which was not due under the provisions of this section, whether as a result of mistake of fact or an error of law, then such amount

shall be (i) credited against any tax due, or to become due, under this section from the taxpayer who made the erroneous payment or (ii) subject to a refund if no such tax is due or to become due; provided that no amounts erroneously paid more than three (3) years prior to the filing of a claim therefore shall be so credited or refunded.

8. No action to recover any amount of tax due under the provisions of this section shall be commenced more than three (3) years after the due date of such amount.

9. Reserved.

**Section 2:** That this Ordinance shall be in full force and effect, and shall be controlling, upon its passage, approval and publication, and shall apply to any amounts billed on or after July 1, 2021; provided, however, that any amounts due or payable for any tax periods ending prior to July 1, 2021 are nevertheless to remain payable as if this ordinance had not been adopted from and after its passage and approval according to law.

**Section 3:** All ordinances or parts of ordinances thereof in conflict with this ordinance are hereby repealed to the extent of any such conflict.

**Section 4:** Any section or provision of this ordinance that is construed to be invalid or void shall not affect the remaining sections or provisions which shall remain in full force and effect thereafter.

**VOTE: AYES: \_\_\_\_\_ NAYS: \_\_\_\_\_ ABSENT: \_\_\_\_\_**

**PASSED this \_\_\_\_\_ day of \_\_\_\_\_ 2021.**

**APPROVED this \_\_\_\_\_ day of \_\_\_\_\_ 2021.**

**APPROVED:**

\_\_\_\_\_  
**Mayor Craig B. Johnson**  
**Village of Elk Grove Village**

**ATTEST:**

\_\_\_\_\_  
**Loretta M. Murphy, Village Clerk**

**PUBLISHED this \_\_\_\_\_ day of \_\_\_\_\_ 2021 in pamphlet form.**

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION AUTHORIZING THE MAYOR AND VILLAGE CLERK TO EXECUTE AN AGREEMENT BETWEEN THE VILLAGE OF ELK GROVE VILLAGE AND NORTHERN ILLINOIS GAS COMPANY (NICOR)**

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NOW, THEREFORE, BE IT RESOLVED by the Mayor and Board of Trustees of the Village of Elk Grove Village, Counties of Cook and DuPage, Illinois as follows;

**Section 1:** That the Mayor be and is hereby authorized to sign the attached document marked:

**MUNICIPAL GAS USE TAX COLLECTION AGREEMENT  
BETWEEN  
THE VILLAGE OF ELK GROVE VILLAGE, IL  
AND  
NORTHERN ILLINOIS GAS COMPANY,  
D/B/A NICOR GAS COMPANY**

a copy of which is attached hereto and made a part hereof as if fully set forth and the Village Clerk is authorized to attest said document upon the signature of the Mayor.

**Section 2:** That this Resolution shall be in full force and effect from and after its passage and approval according to law.

VOTE: AYES: \_\_\_\_\_ NAYS: \_\_\_\_\_ ABSENT: \_\_\_\_\_

PASSED this \_\_\_\_\_ day of \_\_\_\_\_ 2021.

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_ 2021.

APPROVED:

\_\_\_\_\_  
Mayor Craig B. Johnson  
Village of Elk Grove Village

ATTEST:

\_\_\_\_\_  
Loretta M. Murphy, Village Clerk



**Municipal Gas Use Tax Collection Agreement**

**between**

**the Village of Elk Grove Village, Illinois**

**and**

**Northern Illinois Gas Company,**

**d/b/a Nicor Gas Company**

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## MUNICIPAL GAS USE TAX COLLECTION AGREEMENT

This Municipal Gas Use Tax Collection Agreement (this "Agreement") is entered into to be effective as of July 1, 2021, by and between Northern Illinois Gas Company, d/b/a Nicor Gas Company, an Illinois corporation (the "Contractor"), and the Village of Elk Grove Village, Illinois (the "Municipality"), a municipal corporation and home rule unit of local government existing under the Illinois Constitution.

### RECITALS

**WHEREAS**, on December 16, 2003, the Municipality adopted Ordinance No. 2965, which was subsequently amended by Ordinance No. \_\_\_\_\_ and Ordinance No. \_\_\_\_\_ adopted by the Municipality on May \_\_\_\_\_, 2021 (collectively, the "Tax Ordinance") pursuant to which the Municipality found that:

(a) the Municipality is a home rule unit under subsection (a) of Section 6 of Article VII of the Illinois Constitution of 1970;

(b) subject to said Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs for the protection of the public health, safety, morals and welfare; and

(c) in furtherance of its home rule powers, it is necessary and desirable for the Municipality to amend its ordinances regarding taxation by creating a municipal gas use tax; and

**WHEREAS**, as a result of such findings, the Municipality adopted the Tax Ordinance imposing a Municipal Gas Use Tax (the "Tax") on gas purchased at retail for use or consumption in the Municipality; and

**WHEREAS**, the Municipality authorized the execution of an agreement with the Contractor to provide for the collection of the Tax; and

**WHEREAS**, the Municipality entered into an agreement with the Contractor to provide for the collection of the Tax dated January 1, 2004 (the "Prior Agreement"); and

**WHEREAS**, the Municipality and the Contractor agree to terminate the Prior Agreement with respect to bills issued on or after July 1, 2021, and the Municipality and the Contractor now desire to enter into this Agreement; and

**WHEREAS**, pursuant to Section 10 of Article VII of the Illinois Constitution of 1970, the Municipality is authorized to contract and otherwise associate with individuals, associations, and corporations in any manner not prohibited by law or by ordinance; and

**WHEREAS**, the Municipality and the Contractor have negotiated the terms and conditions pursuant to which the Contractor shall collect the Tax and render other related services.

**NOW, THEREFORE**, in consideration of the mutual promises contained in this Agreement, the Municipality and the Contractor agree as follows:

**ARTICLE 1.  
INCORPORATION OF RECITALS**

The recitals set forth above are incorporated by reference as if fully set forth herein.

**ARTICLE 2.  
DEFINITIONS**

The following terms shall have the meanings ascribed to them for the purposes of this Agreement:

**“Account”** means an account that a Person has with the Contractor.

**“Agreement”** means this Municipal Gas Use Tax Collection Agreement, including all exhibits attached hereto and incorporated herein by reference, and all amendments, modifications or revisions hereto made in accordance with the terms hereof.

**“Contractor”** has the meaning set forth in the first paragraph of this Agreement.

**“Customer”** means a Person on the Customer Account List who has a Customer Account.

**“Customer Account”** means an Account that a Customer has with the Contractor.

**“Customer Account List”** means a list of addresses of Customer Accounts from which the Contractor will collect the Tax.

**“Exempt Customer List”** means a document issued by the Municipality listing the names, addresses, account numbers, facilities and meter locations of (i) the Municipality, (ii) Persons exempt by law from the payment of the Tax (other than by an ordinance of the Municipality), and (iii) Persons who are exempt from payment of the Tax pursuant to an ordinance of the Municipality.

**“Fee”** means the compensation payable to the Contractor for the services provided under this Agreement as more specifically defined in Article 5 of this Agreement.

**“Municipality”** has the meaning set forth in the first paragraph of this Agreement.

**“Person”** means any individual, firm, trust, estate, partnership, association, joint stock company, joint venture, corporation, limited liability company, municipal corporation or political subdivision of this state, or a receiver, trustee, conservator or other representative appointed by order of any court.

**“Prior Agreement”** has the meaning set forth in the Recitals to this Agreement.

**“Records”** means those records and accounts with respect to the Tax on each Customer Account on the Customer Account List, which are kept by the Contractor in the ordinary course of its business.

**“State”** means the State of Illinois.

**“Tax”** has the meaning set forth in the Recitals to this Agreement

**“Tax Collection Services”** means the services described in Article 3 of this Agreement.

**“Tax Ordinance”** has the meaning set forth in the Recitals to this Agreement.

### **ARTICLE 3. SERVICES OF THE CONTRACTOR**

#### **3.1 Tax Collection General Provisions**

The Contractor shall perform the services (the “Tax Collection Services”) described in Section 3.2.

The Contractor is acting as an independent contractor in performing under this Agreement and nothing herein is intended or should be construed as in any way creating or establishing the relationship of partners or joint venturers between the Municipality and the Contractor, or as constituting the Contractor or any officer, owner, employee or agent of the Contractor as an agent, representative, fiduciary or employee of the Municipality for any purpose or in any manner whatsoever.

The relationship of the parties with respect to the subject matter of this Agreement, including without limitation the performance of the Tax Collection Services, is strictly contractual and neither party shall have any rights or obligations with respect to the Tax Collection Services other than as are expressly provided in this Agreement. Without limiting the generality of the foregoing, it is specifically understood and agreed that the rights and obligations of the Contractor with respect to the subject matter of this Agreement shall not be deemed to incorporate or be amended, modified or varied in any respect by (i) the provisions of any ordinance (including the Tax Ordinance), mandate or directive that the Municipality has adopted or may adopt in the future even if such ordinance, mandate or directive purports to amend, modify or vary any rights or obligations of the Contractor or to impose any performance standards, charges, damages, assessments, fines or penalties on the Contractor with respect to, or in connection with, the subject matter of this Agreement or (ii) the provisions of any existing or future license, franchise, grant or other agreement.

#### **3.2 Tax Collection Services**

##### **A. Collection From Customers**

The Contractor will bill the Tax to each Customer on the Customer Account List by including the Tax on the bills issued to the Customer for the Customer Account. The Tax will be billed at the rate of three cents (\$.03) per therm of gas delivered and billed by the Contractor to

such Customer Account. The Contractor will collect the Tax remitted along with any other amounts owed to the Contractor, including any gas and service charges, and any charges pursuant to Sections 9-221 and 9-222 of the Public Utilities Act.

The Contractor will include the Tax on any bill issued to a Customer on the Customer Account List on or after July 1, 2021.

**B. Review of Customer Accounts**

**1. Municipality Cooperation with Respect to Customer Accounts**

During the Term, the Municipality shall cooperate with the Contractor with respect to the review of Customer Accounts subject to the Tax, including, but not limited to, reviewing Customer Account Lists as described herein.

**2. Initial Customer Account List**

The Contractor shall provide the Municipality with the Contractor's initial Customer Account List prior to, or shortly following, commencement of the Tax Collection Services. The Municipality shall promptly review the Customer Account List provided by the Contractor and inform the Contractor in writing of changes to (including additions to, deletions from or other changes to) the Customer Account List within thirty (30) days of receipt of such Customer Account List. If the Municipality informs the Contractor of changes to the Customer Account List and provides supporting information for such changes, the Contractor shall use reasonable efforts to implement any such changes, unless it disputes any such changes from the Municipality, in which case it shall notify the Municipality of the same and the Contractor and the Municipality shall use their best efforts to promptly resolve the same.

**3. Changes to Customer Account List**

The Municipality acknowledges that, during the Term, the Contractor will add Customer Accounts to, delete Customer Accounts from and make other changes to the Customer Account List as the Contractor is informed of changes related to Customer Accounts. In addition, if the Municipality informs the Contractor in writing of suggested changes to the Customer Account List and provides supporting information for such changes, the Contractor shall use its reasonable efforts to implement any such changes, unless it disputes any such changes from the Municipality, in which case it shall notify the Municipality of the same and the Contractor and the Municipality shall use their best efforts to promptly resolve the same.

As a means of assisting the Municipality to confirm the accuracy of the Customer Account List on an ongoing basis during the Term, the Contractor may periodically provide to the Municipality a current Customer Account List. The Municipality shall promptly review such Customer Account List and inform the Contractor in writing of changes to (including additions to, deletions from or other changes to) the Customer Account List within thirty (30) days of receipt of such Customer Account List. If the Municipality informs the Contractor in writing of changes to the Customer Account List and provides supporting information for such changes, the Contractor shall use reasonable efforts to implement any such changes, unless it disputes any such changes suggested by the Municipality, in which case it shall notify the Municipality of the

same and the Contractor and the Municipality shall use their best efforts to promptly resolve the same. If the Municipality fails to so inform the Contractor in writing of changes to the Customer Account List, the Contractor shall be entitled to assume that the Municipality does not propose any changes to the current Customer Account List.

#### **4. Accuracy of Customer Account List**

The Customer Account Lists shall be compiled by the Contractor from information contained in the Contractor's customer records as such records exist from time to time based on information received by the Contractor from the Municipality in accordance with this Section 3.2B and from other sources of information normally used by the Contractor in the ordinary course of its utility business. The Customer Account Lists are intended to contain the accurate addresses of all Customers who use or consume gas within the Municipality. However, the Municipality specifically acknowledges that the Customer Account Lists compiled by the Contractor in the ordinary course of its business may include mistakes, errors and omissions and that, as a consequence, the Customer Account Lists may fail to include some Persons who use or consume gas within the Municipality or they may include some Persons who do not use or consume gas within the Municipality. The Contractor makes no representation or warranty that the Customer Account Lists will be free from mistakes, errors and omissions. The Contractor shall have no responsibility or liability to the Municipality for any such mistakes, errors or omissions in any Customer Account Lists including, without limitation, any responsibility or liability related to the collection of the Tax from Accounts on the Customer Account Lists or related to the failure to collect the Tax from Accounts not on the Customer Account Lists.

### **C. Responsibility for Providing Exempt Customer List**

#### **1. Initial Exempt Customer List**

It shall be the obligation of the Municipality to provide the Contractor in writing with the Exempt Customer List before the commencement of the Tax Collection Services. In the event the Municipality does not provide the Contractor with an initial Exempt Customer List before the commencement of the Tax Collection Services, the Contractor thereafter may, but shall not be obligated to, compile an initial Exempt Customer List based upon its judgment, made in good faith, of Persons who would qualify as exempt from the Tax and, if the Contractor elects to compile an initial Exempt Customer List, the Contractor shall promptly provide the Municipality in writing with such Exempt Customer List. Upon receipt of the Exempt Customer List by the Contractor, the Contractor shall not include the Tax on any bill issued to a Person on the Exempt Customer List from and after the first day of the second month following the date of receipt of the Exempt Customer List, unless the Contractor disputes the inclusion of any Person on the Exempt Customer List, in which case it shall notify the Municipality of the same and the Contractor and the Municipality shall use their best efforts to promptly resolve the same. In the event the Municipality does not timely provide the Contractor with an initial Exempt Customer List and the Contractor elects to compile an Exempt Customer List, the Contractor may exclude the Tax on any bill issued to a Person on the Exempt Customer List from and after the date the Contractor compiles such Exempt Customer List. The Municipality shall be responsible for updating the Exempt Customer List and shall promptly notify the Contractor of any such updates as they occur.



## **2. Addition of Persons to Exempt Customer List**

Upon receipt by the Contractor of any written update to the Exempt Customer List from the Municipality adding Persons to the Exempt Customer List, the Contractor shall not include the Tax on any bill issued to a Person added to the Exempt Customer List from and after the first day of the second month following the date of receipt of the updated Exempt Customer List, unless the Contractor disputes the addition of any such Person to the Exempt Customer List, in which case it shall notify the Municipality of the same and the Contractor and the Municipality shall use their best efforts to promptly resolve the same.

## **3. Removal of Persons from Exempt Customer List**

Upon receipt by the Contractor of any written update to the Exempt Customer List from the Municipality removing Persons from the Exempt Customer List, the Contractor shall include the Tax on any bill issued to a Person removed from the Exempt Customer List from and after the first day of the second month following the date of receipt of the updated Exempt Customer List, unless the Contractor disputes the removal of any such Person from the Exempt Customer List, in which case it shall notify the Municipality of the same and the Contractor and the Municipality shall use their best efforts to promptly resolve the same.

## **4. Accuracy of Exempt Customer List**

The Contractor makes no representation or warranty that the Exempt Customer Lists will be free from mistakes, errors and omissions including, without limitation, mistakes, errors or omissions by the Contractor in (i) compiling an initial Exempt Customer List in the event the Municipality fails to timely provide the Contractor with an initial Exempt Customer List or (ii) incorporating information received from the Municipality in the preparation or update of the Exempt Customer Lists. The Contractor shall have no responsibility or liability to the Municipality for any such mistakes, errors or omissions in any Exempt Customer Lists including, without limitation, any responsibility or liability related to the failure to collect the Tax from Accounts on the Exempt Customer Lists or related to the collection of the Tax from Accounts not on the Exempt Customer Lists.

## **D. Remittance**

The Contractor will remit the Tax collected, net of its Fee, to the Municipality on or before the last day of the first calendar month following the calendar month in which the Tax is collected. The Contractor may remit payment for a calendar month on the basis of estimates made by the Contractor in good faith of the Tax to be billed and collected, and the Fee due, for that calendar month and, in such case, the Contractor will adjust as soon as reasonably practicable subsequent monthly remittances to account for differences between the Contractor's initial estimate of Tax collections, and Fee due, for such calendar month and Contractor's actual Tax collections and the actual Fee due for such calendar month. The Contractor may from time to time change its methodology for estimating in good faith the Taxes to be billed and collected, and the Fee due, for a calendar month. The Contractor ultimately shall only be responsible for remitting to the Municipality the actual amount of Tax collected by the Contractor, net of the Fee applicable thereto, and shall have no obligation to pursue collection efforts on behalf of the

Municipality to collect any Tax billed by the Contractor that is not paid. If the Contractor's remittances for a calendar month are based on estimates and the amounts of such estimates are less than the actual Tax ultimately collected for such calendar month, the Contractor shall be responsible for remitting to the Municipality (if not otherwise accomplished through the adjustment procedure above) the amount, without interest, by which the Tax actually collected for such month, net of the Fee applicable thereto, exceeded the Contractor's previous remittances for such month. If the Contractor's remittances for a calendar month are based on estimates and the amounts of such estimates are more than the actual Tax ultimately collected for such calendar month, the Municipality shall be responsible for remitting to the Contractor (if not otherwise accomplished through the adjustment procedure above) the amount, without interest, by which the Tax actually collected for such month, net of the Fee applicable thereto, is less than the Contractor's previous remittances for such month.

**E. Customer Payments; Collection of Tax by Municipality**

The Tax shall be due and payable by a Customer to the Contractor by the due date of the bill on which the Tax is included. The Municipality shall not assess or attempt to collect any Tax from a Customer, provided, however, that the Municipality may attempt to collect the Tax from Accounts subject to dispute between the Municipality and the Contractor pursuant to Section 3.2B., but only during such period as a dispute exists between the Municipality and the Contractor related to such Accounts and, provided, further, that the Municipality shall assume all liability related to the collection of the Tax from such Accounts and the Contractor shall have no responsibility or liability related to the collection of the Tax from such Accounts or related to the failure to collect the Tax from such Accounts. In the event that a Customer attempts to pay the Tax to the Municipality, the Municipality shall use its best efforts to direct the Customer to pay the Tax to the Contractor.

**F. Records and Audits**

**1. Records**

The Contractor shall use good faith efforts to retain for a three-year period from the date any billing of the Tax Records sufficient to reflect properly such Tax due, billed, collected and/or remitted to the Municipality, and the amount of any Fees deducted by the Contractor as payment for the Tax Collection Services.

Any Records transmitted, disclosed or otherwise made available to the Municipality pursuant to this Agreement shall not include identifying information pertaining to the Customer.

**2. Audits**

The Contractor shall keep the Records open to reasonable audit, inspection, copying and abstracting by the Municipality at the Contractor's office at reasonable times during business hours that are agreed to by the Contractor, at the Municipality's expense (which shall include reimbursement of all costs of the Contractor related to any such audit, inspection, copying or abstracting, including labor and overhead charges for employees and agents of the Contractor responding to audit requests) and subject to the Contractor's customer confidentiality policies. Audit requests shall be provided to the Contractor in writing and shall be limited in scope to

Records relating to billing and collection of Tax from Customers for the three-year period preceding the date of the audit request. The Contractor shall determine, in its discretion, the manner and format in which such Records are provided to the Municipality. Each employee or agent of the Municipality participating in the audit shall agree in writing to comply with the confidentiality obligations of the Municipality as specified in Section 3.4 of this Agreement.

If, after conducting an audit, the Municipality believes that the Tax should have been collected from certain Accounts or that the Tax should not have been collected from certain Accounts, the Municipality shall notify the Contractor in writing and provide supporting information as appropriate. The Contractor shall use reasonable efforts to commence or discontinue collection of the Tax from such Accounts, as applicable, on a prospective basis, unless it disputes the Municipality's position with respect to any such Account, in which case it shall notify the Municipality of the same and the Contractor and the Municipality shall use their best efforts to promptly resolve the same. The Municipality shall be solely responsible for collecting the Tax from or refunding the Tax to such Accounts, as applicable, for periods prior to the date that the Contractor commences or discontinues collection of the Tax from such Accounts. Upon the request of the Municipality, the Contractor may provide reasonable assistance to the Municipality in the Municipality's collection or refunding of the Tax.

#### **G. Liability for Tax Refunds, Disputes**

Liability for the Tax shall rest exclusively with the Customer. The Contractor shall not be liable to remit any Tax not actually collected. To the extent a subcontractor or assignee that collects the Tax pursuant to this Agreement is required to transfer the amount of the Tax collected to the Contractor for remittance to the Municipality, the Contractor is responsible for remitting to the Municipality only that portion of the Tax actually received by the Contractor from the subcontractor or assignee.

Any Customer's claim for a refund or other dispute regarding the amount of Tax owed or collected shall be directed to and handled by the Municipality, not the Contractor. In no case shall the Contractor be liable to refund any Tax to a Customer or other amount collected and remitted to the Municipality pursuant to this Agreement. The foregoing shall not limit the Contractor's ability to refund the Tax in such cases where the Contractor reasonably determines that a refund is appropriate and, in any such case, the Contractor shall be entitled to reimbursement from the Municipality for such refund to the extent the amount of the refunded Tax previously had been remitted by the Contractor to the Municipality.

#### **H. Amendments to Tax Ordinance**

In the event that the Tax Ordinance is amended, the Municipality shall provide notice to the Contractor within 14 days of the date that any amended ordinance is passed. If the amended ordinance changes the rate of the Tax, then the Contractor shall collect the Tax at the new rate with respect to bills issued for a Customer Account on or after: (i) the effective date of the new rate of the Tax pursuant to the amended ordinance, which shall be the first day of a calendar month; or (ii) the first day of the calendar month following that date which is three months after the date on which the amended ordinance is passed, whichever is later. If the Tax Ordinance is amended without the prior written concurrence of the Contractor in any manner other than to

change the rate of the Tax, the Contractor may at any time from and after the date such amended ordinance is passed terminate this Agreement upon thirty (30) days' written notice to the Municipality.

### **3.3 Subcontracts and Assignments**

#### **A. Assignment by Contractor**

##### **1. Merger or Asset Sale**

The Contractor may, without the consent of the Municipality, transfer its rights and obligations under this Agreement, in whole, but not in part, in connection with a merger or a sale, transfer or conveyance of all or substantially all of the Contractor's assets.

##### **2. Collection Agencies**

The Contractor may, without the consent of the Municipality, subcontract, assign or delegate all or any portion of the Tax Collection Services to one or more collection agencies or law firms in the ordinary course of the Contractor's business and consistent with the requirements of this Agreement. Furthermore, the Contractor may, without the consent of the Municipality, permit any of its authorized agents listed on the Contractor's published "Directory of Company Authorized Collection Agents and Company Offices", for example, a bank or a savings and loan, to accept payments from Customers on behalf of the Contractor.

##### **3. Gas Supplier Agreements**

The Contractor may enter into an agreement with a gas supplier to provide billing services to the Contractor. In the event the Contractor enters into such an agreement with a gas supplier, the Contractor may, at the Contractor's sole discretion, (a) continue to collect the Tax with respect to Customers purchasing gas from the gas supplier, (b) subcontract, assign or delegate, without the consent of the Municipality, all or any portion of the Tax Collection Services to the gas supplier with respect to Customers purchasing gas from the gas supplier, or (c) provide notice to the Municipality that those Customers purchasing gas from the gas supplier will not be considered Customers for purposes of this Agreement and will be removed from the Customer Account List on the first day of the month following such notice, in which case the Municipality may enter into a separate agreement with the gas supplier to collect the Tax from such Customers.

##### **4. Other Assignments**

Except as otherwise permitted pursuant to this Section 3.3A., the Contractor shall not subcontract, assign, delegate or otherwise transfer all or any part of its rights or obligations under this Agreement without the express written consent of the Municipality, such consent not to be unreasonably withheld. Any attempted subcontract, assignment, delegation or transfer made without such express written consent shall be void and of no effect.

##### **5. Conditions of Assignment**

All subcontracts or assignments permitted pursuant to this Section 3.3A. (with the exception of transfers permitted pursuant to Section 3.3A.1. and Section 3.3A.3 and subcontracts or assignments where the Municipality approves otherwise pursuant to section 3.3A.4.) shall be deemed conditioned upon performance by the subcontractor or assignee in accordance with the terms and conditions of this Agreement. If any such subcontractor or assignee approved by the Municipality pursuant to Section 3.3A.4. shall fail to observe or perform the terms and conditions of this Agreement, the Municipality shall have the right upon written notification to require the performance of this Agreement by the Contractor personally or through any other Municipality-approved subcontractor or assignee.

**B. Effect of Municipality Consent**

No subcontract or assignment with respect to this Agreement (with the exception of transfers permitted pursuant to Section 3.3A.1. and subcontracts or assignments where the Municipality approves otherwise pursuant to Section 3.3A.4.), nor any acceptance of or payment for any Tax Collection Services by the Municipality, shall relieve the Contractor of any of its obligations hereunder.

**C. Assignment by the Municipality**

Without the express written consent of the Contractor, such consent not to be unreasonably withheld, the Municipality shall not subcontract, assign, delegate or otherwise transfer all or any part of its rights or obligations under this Agreement. Any attempted subcontract, assignment, delegation or transfer made without such express written consent shall be void and of no effect.

Notwithstanding the foregoing, the Municipality may, without the consent of the Contractor, (i) assign or otherwise transfer, in whole or in part, its rights to receive the Tax collected hereunder in connection with any debt financing transaction, and (ii) subcontract, assign or delegate all or any part of its rights of assessment and enforcement with respect to the Tax.

**3.4 Confidentiality**

The Contractor and the Municipality hereby agree not to disclose to third parties any information provided to either the Contractor or the Municipality by the other (or by such other party's agents, contractors, or subcontractors), or obtained by either party in the performance of its obligations under this Agreement. This Section 3.4 shall not apply to the following: (a) information available from public sources, (b) information made public by a party other than the Municipality or the Contractor, (c) disclosure by the Contractor to affiliates of the Contractor, or to the Contractor's agents or subcontractors which is necessary for the Contractor to perform its obligations under this Agreement, (d) disclosure required, in the opinion of the disclosing party's legal counsel, by law, judicial or administrative order or where such disclosure is necessary to comply with Federal or state securities laws, (e) disclosure required by any lender providing financing to the Contractor or the Municipality or from whom such financing is sought, (f) disclosure to a Customer regarding his Tax liability or payment, (g) general instructions and/or general information regarding the Tax provided to the public and/or to Customers, (h) disclosure

to the Illinois Commerce Commission, and (i) disclosure required under the Illinois Freedom of Information Act.

Furthermore, the Municipality acknowledges that the Contractor's obligations pursuant to this Agreement, including its obligations to provide information or access to information, particularly Records, to the Municipality, are subject to the Contractor's customer confidentiality policies. The Municipality further acknowledges that such customer confidentiality policies may limit the Municipality's access to such information. The Municipality also acknowledges that any Records transmitted, disclosed or otherwise made available to the Municipality pursuant to this Agreement shall not include identifying information pertaining to the Customer.

### **3.5 Compliance with Laws**

The Contractor and the Municipality shall at all times observe and comply, in all material respects, with all applicable laws, ordinances, rules, regulations, policies and executive orders of the federal, state and local government which may affect the performance of this Agreement.

## **ARTICLE 4. TERM**

### **4.1 Term of Agreement**

#### **A. Original Term**

This Agreement shall take effect as of the date hereof and shall continue until June 30, 2022 (subject to paragraph B below) or until this Agreement is terminated in accordance with its terms, whichever occurs first.

The Contractor's duty to perform the Tax Collection Services shall begin with bills issued to Customers on July 1, 2021 and shall cease (unless otherwise extended hereunder) with respect to bills issued on or after June 1, 2022.

#### **B. Extension**

This Agreement shall automatically extend for successive one-year periods after the original one-year term unless either party elects to terminate this Agreement by written notice delivered to the other party no later than thirty (30) days prior to the end of the then current term or this Agreement is otherwise terminated in accordance with its terms.

## **ARTICLE 5. COMPENSATION**

As compensation for the Tax Collection Services provided hereunder, the Contractor shall be paid a fee (the "Fee") equal to 3% of the amount of Tax collected by the Contractor, its subcontractors or its authorized agents and remitted in accordance with Section 3.2D. The Contractor shall be entitled to deduct the applicable Fee from each remittance of Tax to the Municipality. Payment of the Fee for any Tax actually collected and remitted to the

Municipality in accordance with Section 3.2D., whether before or after the effective date of the termination of this Agreement, shall be in accordance with this Article 5.

## **ARTICLE 6. DISPUTES**

The Municipality and the Contractor shall use their best efforts to resolve any disputes arising under this Agreement including disputes as to whether the Contractor failed to remit or timely remit any Tax collected. During any period of dispute resolution, the Contractor shall continue to perform the Tax Collection Services and will be entitled to collect its Fee under Article 5.

## **ARTICLE 7. REPRESENTATIONS AND WARRANTIES**

### **7.1 Contractor's Representations and Warranties**

In connection with the execution of this Agreement, the Contractor hereby represents and warrants to the Municipality that the Contractor is legally authorized to execute this Agreement and to perform or cause to be performed the Tax Collection Services.

### **7.2 Municipality's Representations and Warranties**

In connection with the execution of this Agreement, the Municipality hereby represents and warrants to the Contractor that the Municipality:

- (A) is a municipality duly constituted and validly existing within the meaning of Section 1 of Article VII of the 1970 Constitution of the State and is a home rule unit of government under Section 6(a) of Article VII of said Constitution;
- (B) has full power and authority as a home rule unit of government to impose the Tax and to execute this Agreement; and
- (C) has duly authorized all necessary action to be taken by it for the imposition of the Tax and the execution and performance of this Agreement.

## **ARTICLE 8. TERMINATION**

### **8.1 Termination Right of Municipality**

The Municipality shall have the absolute right to terminate this Agreement by a notice in writing from the Municipality to the Contractor setting forth the effective date of such termination:

- (A) if the Tax is preempted, repealed, or determined by a court of competent jurisdiction to be unconstitutional or otherwise invalid; or

- (B) upon thirty (30) days' written notice to the Contractor.

If the Municipality elects to terminate this Agreement under this Section 8.1., all Tax Collection Services to be provided hereunder shall cease with respect to bills issued on and after the effective date stated in the notice, which date shall be the first day of a calendar month.

## **8.2 Termination Right of Contractor**

The Contractor shall have the absolute right to terminate this Agreement by a notice in writing from the Contractor setting forth the effective date of such termination:

- (A) if the Illinois Commerce Commission issues an order prohibiting the Contractor from performing all or part of the Tax Collection Services;
- (B) if the Tax is preempted, repealed, or determined by a court of competent jurisdiction to be unconstitutional or otherwise invalid; or
- (C) upon thirty (30) days' written notice to the Municipality.

If the Contractor elects to terminate this Agreement under this Section 8.2., all Tax Collection Services to be provided hereunder shall cease with respect to bills issued on and after the effective date stated in the notice, which date shall be the first day of a calendar month.

## **ARTICLE 9. GENERAL CONDITIONS**

### **9.1 Entire Agreement**

#### **A. General**

The Contractor and the Municipality acknowledge that this Agreement shall constitute the entire agreement between the parties and no other warranties, inducements, considerations, promises or interpretations shall be implied or impressed upon this Agreement that are not expressly addressed herein and therein.

#### **B. No Collateral Agreements**

The Contractor and the Municipality agree that, except for those representations, statements or promises expressly contained in this Agreement, no representation, statement or promise, oral or in writing, of any kind whatsoever, by either party, its officials, its agents or its employees has induced the other party to enter into this Agreement or has been relied upon by either party including any with reference to (i) the meaning, correctness, suitability or completeness of any provisions or requirements of this Agreement; (ii) the nature of the Tax Collection Services to be performed; (iii) the nature, quantity, quality or volume of any materials, labor or other facilities needed for the performance of this Agreement; (iv) the general conditions which may in any way affect this Agreement or its performance; (v) the compensation provisions of this Agreement; or (vi) any other matters, whether similar to or different from those



referred to in clauses (i) through (v) above, affecting or having any connection with this Agreement or the negotiation or performance hereof.

## **9.2 Counterparts**

This Agreement is comprised of several identical counterparts, each to be fully executed by the parties and each to be deemed an original having identical legal effect.

## **9.3 Amendments**

No changes, amendments, modifications or discharge of this Agreement, or any part hereof, shall be valid unless in writing and signed by the authorized agent of the Contractor and by the Municipality or their respective successors and assigns.

## **9.4 Governing Law and Jurisdiction**

This Agreement shall be governed as to performance and interpretation in accordance with the laws of the State of Illinois without regard to principles of conflicts of law.

## **9.5 Severability**

The invalidity of any one or more phrases, sentences, clauses or sections contained in this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement.

## **9.6 Interpretation**

Any headings of this Agreement are for convenience or reference only and do not define or limit the provisions hereof. Words of any gender shall be deemed and construed to include correlative words of the other genders. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise indicate. All references to any exhibit or document shall be deemed to include all supplements and/or amendments to any such exhibits or documents entered into in accordance with the terms and conditions hereof and thereof. All references to any person or entity shall be deemed to include any person or entity succeeding to the rights, duties and obligations of such persons or entities in accordance with the terms and conditions of this Agreement.

## **9.7 Assigns**

All of the terms and conditions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors, transferees and assigns.

## **9.8 Invalid Tax or Exemption from Tax; Responsibility for Refunds and Collection**

In the event that it is determined by a court or administrative agency of competent jurisdiction that the Tax does not apply to the use of gas by a Customer from whom the Tax was collected and remitted to the Municipality in accordance with this Agreement, it shall be the

Municipality's responsibility to make any necessary refunds; the Contractor shall not be responsible for any refunds to the Customer, nor shall the Contractor be required to refund to the Municipality any Fee retained by the Contractor with respect to the Tax collected from that Customer. If, notwithstanding the foregoing, the Contractor is ordered by a court or administrative agency of competent jurisdiction to make any necessary refunds, the Municipality shall reimburse the Contractor for any such refunds made by the Contractor.

In the event that any aspect of the Tax is found to be invalid or unconstitutional by a court of competent jurisdiction, it shall be the Municipality's responsibility to make any necessary refunds; the Contractor shall not be responsible for any refunds of the Tax to Customers, nor shall the Contractor be required to refund to the Municipality any Fee retained by the Contractor with respect to Tax collected. If, notwithstanding the foregoing, the Contractor is ordered by a court or administrative agency of competent jurisdiction to make any necessary refunds, the Municipality shall reimburse the Contractor for any such refunds made by the Contractor.

In the event that any exemption from the Tax is found to be invalid or unconstitutional by a court of competent jurisdiction, it shall be the Municipality's responsibility to collect any amounts of the Tax then due; the Contractor shall not be responsible to collect any such amounts. If, notwithstanding the foregoing, the Contractor is ordered by a court or administrative agency of competent jurisdiction to collect any amounts of the Tax then due, the Municipality shall reimburse the Contractor for any costs of the Contractor related to the collection of such Tax.

#### **9.9 Miscellaneous Provisions**

Whenever under this Agreement the Municipality by a proper authority waives the Contractor's performance in any respect or waives a requirement or condition to either the Municipality's or the Contractor's performance, the waiver so granted, whether express or implied, shall only apply to the particular instance and shall not be deemed a waiver forever or for subsequent instances of the performance, requirement or condition. No such waiver shall be construed as a modification of this Agreement regardless of the number of times the Municipality may have waived the performance, requirement or condition.

Whenever under this Agreement the Contractor by a proper authority waives the Municipality's performance in any respect or waives a requirement or condition to either the Municipality's or the Contractor's performance, the waiver so granted, whether express or implied, shall only apply to the particular instance and shall not be deemed a waiver forever or for subsequent instances of the performance, requirement or condition. No such waiver shall be construed as a modification of this Agreement regardless of the number of times the Contractor may have waived the performance, requirement or condition.

#### **9.10 Nonliability of Public Officials**

No official or employee of the Municipality shall be charged personally by the Contractor or by any assignee or subcontractor of the Contractor with any liability or expenses of defense or be held personally liable to them under any term or provision of this Agreement or because of the Municipality's execution or attempted execution thereof or because of any breach hereof.

### **9.11 Nonliability of the Contractor's Officers, Directors, Employees and Agents**

No officer, director, employee or agent of the Contractor shall be charged personally by the Municipality or by any assignee or subcontractor of the Municipality with any liability or expenses of defense or be held personally liable to them under any term or provision of this Agreement or because of the Contractor's execution or attempted execution thereof or because of any breach hereof.

### **9.12 Consequential Damages; Fines; Etc.**

Notwithstanding any other provision in this Agreement, neither the Municipality nor the Contractor, or their respective officers, directors, employees, representatives or agents shall be liable to the other for consequential losses or damages, including punitive or exemplary damages, arising out of or incurred in connection with the Tax Collection Services. The Municipality and the Contractor each hereby release each other and their subcontractors, officers, directors, employees, representatives and agents from any such liability.

The Contractor shall not be liable to the Municipality for any fine, assessment, penalty, forfeiture, fee, interest payment or other charge in connection with the Tax Collection Services or this Agreement notwithstanding any present or future ordinance, mandate or directive adopted by the Municipality that may purport to authorize the Municipality to assess any such fine, assessment, penalty, forfeiture, fee, interest payment or other charge to the Contractor in connection with the Tax Collection Services or this Agreement.

The Municipality shall not seek to impose any lien or encumbrance upon any property of the Contractor, or seek to revoke, modify or refuse to renew or grant any license, right or franchise of the Contractor as a means, directly or indirectly, to seek to compel compliance by the Contractor with this Agreement or in connection with any dispute relating to the performance of the Tax Collection Services or any obligations of the Contractor relating thereto.

### **9.13 Limitation of Liability**

To the fullest extent permitted by law, the cumulative maximum liability of the Contractor to the Municipality with respect to claims and costs arising out of the performance or nonperformance of the Tax Collection Services shall not exceed the amount of the Contractor's Fee paid to the Contractor during the period that is one year prior to the date on which the Municipality commences an action against the Contractor.

### **9.14 Indemnification by Municipality Related to Imposition of Tax**

The Municipality agrees to indemnify, defend and hold harmless the Contractor, including its officers, agents and employees, against any liability, loss, costs and expenses, including all costs of litigation and all reasonable attorneys' fees, that the Contractor, including its officers, agents and employees, incur, sustain or are subject to that results from or arises out of any claim, cause of action or litigation wherein another party asserts that any aspect of the Tax (including any exemption from the Tax) is unconstitutional under the United States or Illinois constitutions or otherwise invalid.

### **9.15 Limitation Period on Actions**

No action, regardless of form, arising out of this Agreement, or alleging any breach of this Agreement, may be brought by either the Contractor or the Municipality against the other party more than three years after such an action accrued; provided, however, that any action arising with respect to the Prior Agreement shall be limited pursuant to Section 9.16 and 9.17 herein.

### **9.16 Release of Claims**

The Municipality knowingly and voluntarily waives its rights with respect to any liability of the Contractor related to the collection of municipal gas use taxes or noncompliance by the Contractor with any obligations relating to the collection of municipal gas use taxes during the period July 1, 2017 to June 30, 2020, and releases and forever discharges the Contractor and each and all of its present and former parents, subsidiaries, officers, employees, directors, predecessors, successors, agents, affiliates and assigns from any liability whatsoever to the Municipality with respect to such municipal gas use tax collection. Furthermore, the Municipality agrees not to seek any fine, assessment, penalty, forfeiture, fee, interest payment or other charge from, seek to impose any lien or encumbrance upon any property of, or seek to revoke, modify or refuse to renew or grant any license, right or franchise of, the Contractor and each and all of its present and former parents, subsidiaries, officers, employees, directors, predecessors, successors, agents, affiliates and assigns as a result of the Contractor not having collected, paid, remitted or otherwise reported any municipal gas use taxes, or complied with any obligation of the Contractor relative thereto, during the period January 1, 2004 to June 30, 2020. The provisions of this Section 9.16 shall survive the termination of this Agreement.

### **9.17 Termination of Prior Agreement; Claims Related to Prior Agreement**

The Municipality and the Contractor agree to terminate the Prior Agreement with respect to bills issued on or after June 1, 2017.

The Municipality and the Contractor agree that all claims related to the Prior Agreement that are not released pursuant to Section 9.16 shall be governed by the terms of this Agreement. The provisions of this Section 9.17 shall survive the termination of this Agreement.

### **9.18 Survival**

All provisions that by their inherent character should survive termination of this Agreement, shall survive the termination of this Agreement.

## **ARTICLE 10. NOTICES**

Notices provided for herein, unless expressly provided for otherwise in this Agreement, shall be in writing and may be delivered personally or by placing in the United States mail, first class and certified, return receipt requested, with postage prepaid and addressed as follows:

If to the Municipality: Village of Elk Grove Village  
901 Wellington Avenue  
Elk Grove Village, Illinois 60007  
Attention: Finance Director

If to the Contractor: Nicor Gas Company  
1844 Ferry Road  
Naperville, Illinois 60563-9600  
Attention: Billing Manager

With a Copy to: Nicor Gas Company  
1844 Ferry Road  
Naperville, Illinois 60563-9600  
Attention: Community Relations Manager

Changes in the above-referenced addresses must be in writing and delivered in accordance with the provisions of this Article 10. Notices delivered by mail shall be deemed received three days after mailing in accordance with this Article 10. Notices delivered personally shall be deemed effective upon receipt.

## **ARTICLE 11. AUTHORITY**

### **11.1 Municipality's Authority**

This Agreement is entered into by virtue of the home rule authority conferred on the Municipality under Section 6(a), Article VII of the 1970 Constitution of the State.

### **11.2 Contractor's Authority**

Execution of this Agreement by the Contractor is authorized by bylaws or a resolution of its Board of Directors, and the signature of each person signing on behalf of the Contractor have been made with complete and full authority to commit the Contractor to all terms and conditions of this Agreement.

IN WITNESS WHEREOF, the Municipality and the Contractor have executed this Agreement to be effective as of the date first set forth above.

VILLAGE OF ELK GROVE VILLAGE

ATTEST

\_\_\_\_\_  
Loretta M. Murphy, Village Clerk

By: \_\_\_\_\_

Craig B. Johnson

Its: Mayor

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

NORTHERN ILLINOIS GAS COMPANY, d/b/a/  
NICOR GAS COMPANY

By: \_\_\_\_\_

Its: \_\_\_\_\_

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



Resolution for Improvement Under the Illinois Highway Code



Is this project a bondable capital improvement?

Yes No

Resolution Type: Original, Resolution Number, Section Number: 21-00074-00-RS

BE IT RESOLVED, by the President and Board of Trustees of the Village of Elk Grove Village Illinois that the following described street(s)/road(s)/structure be improved under the Illinois Highway Code. Work shall be done by Contract

For Roadway/Street Improvements:

Table with columns: Name of Street(s)/Road(s), Length (miles), Route, From, To. Row: Biesterfield Road, 0.5, 1338, West Village Limits, Meacham Road

For Structures:

Table with columns: Name of Street(s)/Road(s), Existing Structure No., Route, Location, Feature Crossed

BE IT FURTHER RESOLVED,

1. That the proposed improvement shall consist of

The resurfacing project of Biesterfield Road/Wise Road from the west Village limit to Meacham Road. The project will consist of pavement patching and resurfacing with HMA surface course, storm structure adjustments, crosswalk improvements, sidewalk and ADA ramps, concrete curb repairs, pavement markings, detector loop replacement, pedestrian signal modifications and landscape restoration.

2. That there is hereby appropriated the sum of Three Hundred Fifty Thousand Twenty Four and 00/100 Dollars (\$350,024.00) for the improvement of said section from the Local Public Agency's allotment of Motor Fuel Tax funds.

BE IT FURTHER RESOLVED, that the Clerk is hereby directed to transmit four (4) certified originals of this resolution to the district office of the Department of Transportation.

I, Loretta M. Murphy Village Clerk in and for said Village

of Elk Grove Village in the State aforesaid, and keeper of the records and files thereof, as provided by statute, do hereby certify the foregoing to be a true, perfect and complete original of a resolution adopted by

President and Board of Trustees of Elk Grove Village at a meeting held on May 25, 2021

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal this 25th day of May, 2021

(SEAL)

Clerk Signature and Date fields

Approved

Regional Engineer and Date fields