



# AGENDA

## REGULAR VILLAGE BOARD MEETING

June 15, 2021  
7:00 PM

### 1. CALL TO ORDER

### 2. PLEDGE OF ALLEGIANCE

INVOCATION (PASTOR ROBYN TABB, PRINCE OF PEACE UNITED METHODIST CHURCH)

### 3. APPROVAL OF MINUTES OF MAY 25, 2021

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

5. ACCOUNTS PAYABLE WARRANT: MAY 31, 2021 \$4,308,871.48  
JUNE 15, 2021 \$ 554,161.86

### 6. CONSENT AGENDA

- a. Consideration of a request from the Prince of Peace United Methodist Church, located at 1400 Arlington Heights Road, to waive FY 2021-22 business license fees in the amount of \$100.

(Prince of Peace United Methodist Church is seeking a waiver of FY2021-22 business license fees related to the Church's annual Pumpkin Patch.

(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 HCR ManorCare, to waive FY 2021-22 business license fees in the amount of \$200.

(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 Park District to waive permit fees to install electric scoreboards at Audubon Park, 300 E. Elk Grove Boulevard, in the amount of \$275.

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

(The Director of Community Development recommends approval.)

- d. Consideration of a request from Elk Grove Township, 600 Landmeier Road, to waive permit fees for the installation of an asphalt bike safety course in the amount of \$3,583.

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

(The Director of Community Development recommends approval.)

- e. Consideration of a request from Meet Chicago Northwest Convention Bureau for payment of annual dues for FY 2021-22 in the amount of \$42,786.97.

(The annual dues rate is based on 10% of the 4% hotel/motel taxes collected.

(Compared to last year, this year's distribution to the Meet Chicago Northwest decreased by \$46,524 due to the impact from COVID19.)

- f. Consideration to award a construction contract to the lowest responsive and responsible bidder, Colfax Corporation of Chicago, IL for the Pre-Demolition Asbestos and Universal Waste Building Components Abatement at 1550 E. Higgins Road, in an amount not to exceed \$53,100 from the Busse-Elmhurst TIF.

(On Tuesday May 25, 2021, the Village opened sealed bids for the Pre-Demolition Asbestos and Universal Waste Building Components Abatement at 1550 E. Higgins Road. (Fifteen (15) contractors obtained bid documents and six (6) bids were submitted.

(The lowest responsive and responsible bid was received from Colfax Corporation of Chicago in the amount of \$53,100.

(Adequate funds are available in the Busse-Elmhurst TIF.

(The Director of Community Development recommends approval.)

- g. Consideration to award a professional service contract to Engineering Enterprises Inc. of Sugar Grove, Illinois for Design Engineering Services for the Devon Avenue and Busse Road Intersection Rehabilitation project in the amount of \$104,959 from the Busse-Elmhurst TIF Fund.

(The Village has secured seventy-five (75%) in Federal funding for the construction and construction engineering for the resurfacing of Devon Avenue and Busse Road Intersection.

(Engineering Enterprises Inc. of Sugar Grove, Illinois submitted a proposal to provide Design Engineering Services for the Devon Avenue and Busse Road Intersection Rehabilitation project. Engineering Enterprises Inc. submitted a proposal in the amount of \$104,959.

(Funds for the project have been allocated in the FY22 Busse-Elmhurst TIF Fund.

(The Director of Public Works recommends approval.)

- h. Consideration to increase the construction contract with Strada Construction Company of Addison, IL as part of the 2021 Village-Wide Concrete Replacement Program for additional concrete restoration work within the Village right-of-way in the amount not to exceed \$151,000 for a total contract amount of \$275,000 from the Capital Project and

Water & Sewer Funds.

(The Village Board approved the 2021 Village-wide Concrete Replacement Program contract to Strada Construction Company of Addison, Illinois in the amount of \$124,000 on April 27, 2021.

(Since the award of this contract the Village has identified several additional areas that can be addressed this spring.

(The Director of Public Works recommends approving an increase to the 2021 Village Wide Concrete Replacement Contract to Strada Construction Company in the amount not to exceed \$151,000 for a total contract amount of \$275,000.

(Funds for the project have been allocated in the FY22 Capital Project and Water & Sewer Funds.)

i. Consideration to adopt the following:

- Ordinance No. 3709 rescinding Ordinance No. 3708 and Resolution No. 28-21 with respect to the Municipal Gas Use Tax;
- Ordinance No. 3710 amending Paragraph C Tax of Section 3-2-12 Municipal Gas Use Tax of the Village Code with regard to the tax imposed on the sale of Gas; and
- Resolution No. 30-21 authorizing the Mayor and Village Clerk to Execute an Agreement between the Village of Elk Grove Village and Northern Illinois Gas Company (Nicor).

(This item rescinds Ordinance No. 3708 and Resolution No. 28-21 that was passed and approved on May 25, 2021.

(It is recommended and deemed necessary by Village staff that the tax imposed by Section 3-2-12-C of the Village Code be increased from \$0.02 per therm to \$0.05 per therm in order to provide funding for capital maintenance programs.

(The distribution will be allocated as \$.01 per therm for the General Fund, \$.03 per therm for the Business Leaders Forum Fund and \$.01 per therm for the 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.)

j. Consideration to adopt Resolution No. 31-21 authorizing the Mayor and Village Clerk to execute a real estate sale contract between the Village of Elk Grove and Jay & Harry Corporation (1920-32 E. Higgins Road).

(This property is being purchased with the intent of future redevelopment within the Higgins-Oakton TIF District.

(There are no plans for redevelopment at this time.

(A copy of the Real Estate Contract will be available at the Village Board Meeting.)

k. Consideration to adopt Resolution No. 32-21 authorizing the Mayor and Village Clerk to execute a Joint Amendment, Modification, and Termination of Annexation Agreement between the Village of Elk Grove Village and the Metropolitan Water Reclamation District of Greater Chicago (2110-2550 Higgins Road).

(A public hearing on the Joint Amendment, Modification, and Termination of Annexation Agreement was held before the Village Board on Tuesday, June 15, 2021 at 6:20 p.m.)

- I. Consideration to adopt Resolution No. 33-21 amending Resolution No. 35-14 and authorizing the Mayor and Village Clerk to execute an amendment to the Development and Operating Agreement-Cultivation Facility between the Village of Elk Grove Village and 4Front Ventures Corp.

(This resolution amends the September 9, 2014 Development and Operating Agreement-Cultivation Facility between the Village and IL Grown Medicine LLC.

(IL Grown Medicine LLC sold its interest to 4Front Ventures Corp, including the assignment of its interests in the Developing and Operating Agreement with the Village.

(This item provides for an Amendment to this Agreement, which was requested by 4Front Ventures Corp. in consideration of present circumstances.)

## **7. REGULAR AGENDA**

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

- a. Consideration of a petition submitted by Riverpoint Property Trust, LLC for Rezoning from I-1 to I-2 for property located at 751 Pratt Blvd. (A Public Hearing date is yet to be established.)
- b. PC Docket 21-4 - Consideration of a petition submitted by Syska Hennessy Group, on behalf of Microsoft Corporation for a variation to permit multiple principal buildings on one lot for property located at 101 Innovation Drive. (PH 06-21-21)

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

- a. ZBA Docket 21-2 - Consideration of a petition submitted by Kimley-Horn and Associates for a variation from the Elk Grove Village Zoning Ordinance as it pertains to permitted locations and heights for fences in industrial zoning districts for property located at 800 E. Devon Avenue. (Public Hearing date is yet to be established.)
- b. 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 RESCINDING ORDINANCE NO. 3708 AND RESOLUTION NO. 28-21  
WITH RESPECT TO THE MUNICIPAL GAS USE TAX**

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**WHEREAS**, on May 25, 2021, the Village of Elk Grove Village adopted Ordinance No. 3708 amending Section 3-2-12-C of the Village Code and adopted Resolution 28-21 authorizing the Mayor and Village Clerk to Execute an Agreement with the Northern Illinois Gas Company; and

**WHEREAS**, said Ordinance and Resolution inadvertently established an incorrect rate of the tax to be imposed and thus it is deemed necessary and appropriate to rescind same.

**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 Ordinance No. 3708 and Resolution No. 28-21, both being passed and approved on May 25, 2021 are hereby rescinded.

**Section 2:** That this Ordinance shall be in full force and effect from and after its passage, approval and publication 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**

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

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

**AN ORDINANCE AMENDING PARAGRAPH C TAX OF SECTION 3-2-12 MUNICIPAL GAS USE TAX OF THE VILLAGE CODE WITH REGARD TO THE TAX IMPOSED ON THE SALE OF GAS**

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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**, it is recommended and deemed necessary by staff that the tax imposed by Section 3-2-12-C of the Village Code be increased from two (cents (0.020) per therm to five cents (0.050) per therm.

**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 Section 3-2-12-C of the Village Code of the Village of Elk Grove Village be and is hereby amended to read 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 five cents (\$0.050) 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 par tor 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 "Village or Municipality"), a municipal corporation and home rule unit of local government existing under the Illinois Constitution.

### RECITALS

**WHEREAS**, the Village and Contractor have previously entered into Municipal Gas Use Tax Collection Agreements to impose a Municipal Gas Use Tax (the Tax) on gas purchased at retail for use and consumption in the Municipality, the most recent amendment thereto dated June 1, 2017; and

**WHEREAS**, the 2017 Agreement provided for a tax of two cents (\$0.02) per therm; and

**WHEREAS**, Village staff has determined a need to provide funding for revised capital maintenance programs with respect to streets, sidewalks and back yard drainage issues, which programs will enhance property values in the Village and provide for quality infrastructure; and

**WHEREAS**, the Mayor and Board of Trustees after having reviewed the recommendation of staff, find and believe that additional funding through an increase in the Tax is warranted and have therefor advised the Contractor of the need for an amendment to the existing contract; and

**WHEREAS**, the Village 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 five cents (\$.05) 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 30, 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 June 1, 2017 to June 30, 2021, 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, 2021. 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 NO. \_\_\_\_\_

**A RESOLUTION AUTHORIZING THE MAYOR AND VILLAGE CLERK TO EXECUTE A REAL ESTATE SALES CONTRACT BETWEEN THE VILLAGE OF ELK GROVE VILLAGE AND JAY & HARRY CORPORATION (1920-32 E. HIGGINS ROAD)**

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

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

**REAL ESTATE SALES CONTRACT**

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 documents 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**



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

**A RESOLUTION AUTHORIZING THE MAYOR AND VILLAGE CLERK TO EXECUTE A JOINT AMENDMENT, MODIFICATION, AND TERMINATION OF ANNEXATION AGREEMENT BETWEEN THE VILLAGE OF ELK GROVE VILLAGE AND THE METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO (2110-2550 HIGGINS ROAD)**

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**WHEREAS**, on June 15, 2021, a public hearing was held pursuant to Section 65 ILCS 5/11-15.1, et seq. of the Illinois Municipal Code to consider the approval of a Joint Amendment, Modification, and Termination of Annexation Agreement between the Village of Elk Grove Village and the designated owners of property to be annexed to the Village; and

**WHEREAS**, as a result of the testimony and evidence presented at said public hearing, the Mayor and Board of Trustees of the Village of Elk Grove Village find and believe it to be in the best interest of the Village that the Joint Amendment, Modification, and Termination of Annexation Agreement between the Village and designated owners be approved.

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

**Section 1:** That the Mayor be and is hereby authorized to sign a Joint Amendment, Modification, and Termination of Annexation Agreement between the Village of Elk Grove Village and the designated owners which is attached hereto and made a part hereof 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:**

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

**ATTEST:**

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**Loretta M. Murphy, Village Clerk**

**P.I.N.**

08-26-102-037-0000

08-26-200-016-0000

08-26-400-012-0000

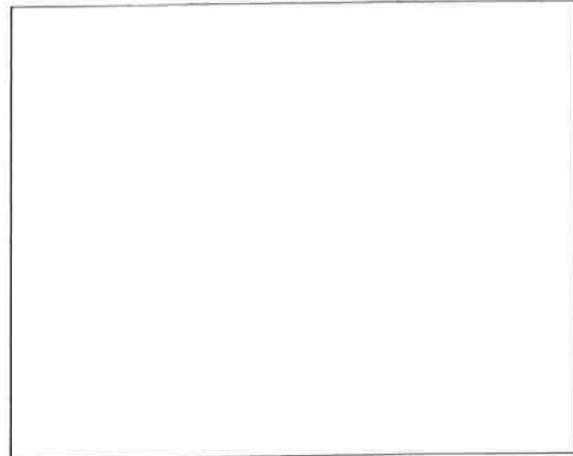
**Return to:**

Village Clerk

Elk Grove Village

901 Wellington Avenue

Elk Grove Village, Illinois 60007



(For Recorder's Use Only)

**Joint Amendment, Modification, and Termination of  
Annexation Agreement**

This JOINT AMENDMENT, MODIFICATION, AND TERMINATION OF ANNEXATION AGREEMENT (this "Agreement") is entered into as of the \_\_\_ day of \_\_\_\_\_, 2021 (the "Effective Date"), by and between the VILLAGE OF ELK GROVE VILLAGE, an Illinois home rule municipal corporation (the "Village"), and the METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO, a body corporate and politic (the "MWRD") (collectively, the "Parties").

**RECITALS**

WHEREAS, the Village and the MWRD entered into that certain Annexation Agreement on March 15, 2018 (the "Annexation Agreement") relating to approximately 41 acres of District real estate commonly known as the Majewski Reservoir Site ("Subject Property");

WHEREAS, on April 15, 2021, the MWRD's Board of Commissioners authorized the MWRD to mutually terminate the Annexation Agreement with the Village and to take the necessary steps to effectuate the disconnection of the Subject Property from the Village (MWRD File No. 21-0357);

WHEREAS, in accordance with the terms and conditions hereinafter provided, the Village and the MWRD mutually desire to modify, amend, and terminate the Annexation Agreement effective as of the Effective Date.

## AGREEMENT

NOW, THEREFORE, in consideration of the above recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by all Parties, the Parties hereby agree as follows:

1. **Recitals.** The above recitals are hereby incorporated into the body of this Agreement, as though separately and specifically set forth herein.
2. **Defined Terms.** Any capitalized terms used, but not defined, in this Agreement shall be deemed to have the same meanings respectively ascribed to those terms in the Annexation Agreement.
3. **Recordation.** Within 30 days after the full execution and delivery of this Agreement, the Village shall record this Joint Amendment, Modification, and Termination of the Agreement against the Subject Property with the office of the Cook County Recorder of Deeds.
4. **Amendment, Modification, and Termination.** Pursuant to 15.1 of the Annexation Agreement, the Parties hereby agree to the following amendments and modifications:

a. Section 14.1 shall be revised to permit MWRD to disconnect from the Village pursuant to 65 ILCS 5/7-3-4 upon execution of this Agreement by the Parties, provided that MWRD file a petition for said disconnection within thirty (30) days of the execution of this Agreement by the Parties. Upon receipt of a petition for disconnection from MWRD that is in compliance with 65 ILCS 5/7-3-4, the Village shall place the disconnection on its Board agenda for the first meeting that occurs after thirty (30) days from the filing of the petition by the Village Clerk for vote on the ordinance approving said disconnection.

b. Section 16.1 of the Notice provision shall be amended and modified such that the Notice to the Village shall be directed to the attention of the Village Corporation Counsel.

Further, with a copy to: Cynthia S. Grandfield  
Del Galdo Law Group, LLC  
111 N. Wabash, Suite 908  
Chicago, Illinois 60602  
Fax: (708) 222-7001  
grandfield@dlglawgroup.com

c. Section 8.1 of the Annexation Agreement shall be modified and amended from a term of twenty (20) years to a term to end immediately upon the completion of any disconnection by MWRD from the Village. The MWRD's disconnection shall be deemed complete, and the Annexation Agreement terminated, upon the Village's

passing of an ordinance with respect to the disconnection pursuant to 65 ILCS 5/7-3-4.

5. **Petition for Disconnection.** The Petition for Disconnection to be filed by the MWRD is attached hereto as Exhibit A.

6. **Authority.** Each of the Village and the MWRD represent and warrant to the other that it has full power and authority to enter into this Agreement.

7. **Counterparts.** This Agreement may be executed and delivered in two or more counterparts, each of which shall be deemed an original document and all of which together shall constitute a single binding agreement. A fully executed .pdf or facsimile copy of this Agreement shall be effective as an original.

8. **Costs.** Any costs, fees, and expenses necessary to carry out this Agreement and to disconnect the Subject Property shall be paid for by the Village.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement, by their duly authorized representatives, as of the date first written above.

**VILLAGE OF ELK GROVE**  
VILLAGE, an Illinois home rule  
municipal corporation

By: \_\_\_\_\_  
Craig B. Johnson  
Mayor

**ATTEST**

By: \_\_\_\_\_  
Loretta Murphy  
Village Clerk

The foregoing instrument was acknowledged before me by \_\_\_\_\_, Mayor, and \_\_\_\_\_, Village Clerk, this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

-seal-

\_\_\_\_\_  
Notary Public

**METROPOLITAN WATER  
RECLAMATION DISTRICT OF  
GREATER CHICAGO, a body  
corporate and politic**

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

Marcelino Garcia  
Chairman, Committee on Finance

**ATTEST**

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

Jacqueline Torres  
Clerk

The foregoing instrument was acknowledged before me by Marcelino Garcia,  
Chairman, Committee on Finance, and Jacqueline Torres, Clerk, this  
26<sup>th</sup> day of May, 2021.

-seal-

\_\_\_\_\_  
Michelle M. Valdez  
Notary Public

**APPROVED AS TO FORM AND LEGALITY:**



Margaret T. Conway  
Head Assistant Attorney BJD

Lisan T. Morakalis /ama  
General Counsel

**APPROVED:**

Brian Beckwith  
Executive Director

## Exhibit A

### PETITION FOR DISCONNECTION FROM THE VILLAGE OF ELK GROVE VILLAGE COOK COUNTY, ILLINOIS

To: The Village President and Board of Trustees  
Village of Elk Grove Village, Cook County, Illinois  
c/o Village Clerk  
901 Wellington Avenue  
Elk Grove Village, IL 60007

Pursuant to 65 ILCS 5/7-3-4 and the Joint Amendment, Modification, and Termination of Annexation Agreement entered into between the parties, the undersigned petitioner ("Petitioner") hereby files this petition ("Petition") with the Clerk of the Village of Elk Grove Village (the "Village") requesting that the property legally described on Exhibit A attached hereto (the "Property") be disconnected from the Village. In support of this Petition, Petitioner further states, to the best of its knowledge, as follows:

1. The Petitioner is the owner of record of the Property;
2. The Property is located upon the border but within the boundary of the Village;
3. Attached to this Petition is a certificate from the Clerk of Cook County showing that the Property is exempt from real property taxes and, therefore, that all Village taxes or assessments due up to the time of presenting this Petition are fully paid; and
4. This Petition is filed at least 30 days before it will be considered by the Village President and Board of Trustees.

NOW, THEREFORE, PETITIONER HEREBY REQUESTS THAT:

A. Pursuant to 65 ILCS 5/7-3-4, the Village President and Board of Trustees disconnect the Property by adopting an ordinance by a majority of the members elected to the Board of Trustees;

B. Pursuant to 65 ILCS 5/7-3-5, the Village Clerk file for recordation with the office of the Cook County Recorder of Deeds a certified copy of the ordinance disconnecting the Property from the Village; and

C. The Village and its officials take such further actions as may be necessary or appropriate to cause the Property to be legally, validly, and effectively disconnected from the Village in all respects.

Respectfully submitted this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

[SIGNATURE PAGE FOLLOWS]

PETITIONER

**METROPOLITAN WATER  
RECLAMATION DISTRICT OF  
GREATER CHICAGO**, a body corporate  
and politic

By: \_\_\_\_\_  
Marcelino Garcia  
Chairman, Committee on Finance

**ATTEST**

By: \_\_\_\_\_  
Jacqueline Torres  
Clerk

The foregoing instrument was acknowledged before me by \_\_\_\_\_,  
Chairman, Committee on Finance, and \_\_\_\_\_, Clerk, this \_\_\_\_\_  
day of \_\_\_\_\_, 2021.

-seal-

\_\_\_\_\_  
Notary Public

**APPROVED AS TO FORM AND LEGALITY:**

\_\_\_\_\_  
Head Assistant Attorney

\_\_\_\_\_  
General Counsel

**APPROVED:**

\_\_\_\_\_  
Executive Director

**EXHIBIT A**

**LEGAL DESCRIPTION OF SUBJECT PROPERTY**

**PIN #: 08-26-200-016-0000**

THAT PART (EXCEPT THE EAST 60 FEET OF THE WEST 610.41 FEET) AND (EXCEPT THE SOUTHWESTERLY 82.5 FEET OF THE NORTHEASTERLY 132.5 FEET OF THE WEST 610.41 FEET) LYING SOUTHERLY OF THE TOLL ROAD AND NORTH OF THE SOUTH LINE OF THE NORTH 100 FEET OF THE SOUTHWEST  $\frac{1}{4}$  OF THE NORTHEAST  $\frac{1}{4}$  OF SECTION 26 ALL LYING IN THE WEST  $\frac{1}{2}$  OF THE NORTHEAST  $\frac{1}{4}$  OF SECTION 26 TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

**PIN #: 08-26-102-037-0000**

THAT PART OF LOT 1 (EXCEPT THE WEST 340 FEET) AND (EXCEPT THE EAST 175 FEET OF THE WEST 515 FEET LYING SOUTH OF THE NORTH 1231 FEET) AND (EXCEPT THAT PART TAKEN FOR HIGGINS ROAD AS WIDENED PER DOCUMENT 1202758) AND (EXCEPT PART TAKEN PER CONDEMNATION NUMBER 72L9032) LYING SOUTH OF THE FOLLOWING DESCRIBED LINE BEGINNING AT A POINT 1153 FEET SOUTH OF THE NORTHEAST CORNER OF THE NORTHWEST  $\frac{1}{4}$  THENCE NORTHWESTERLY IN A STRAIGHT LINE 122.33 FEET TO A POINT ON A LINE 82.5 FEET SOUTHWESTERLY OF AND PARALLEL WITH THE SOUTHWESTERLY LINE OF THE TOLLWAY THENCE NORTHWESTERLY ALONG LAST DESCRIBED LINE TO THE WEST LINE OF THE EAST  $\frac{1}{2}$  OF THE NORTHWEST  $\frac{1}{4}$  AND LYING NORTH OF HIGGINS ROAD IN ASSESSOR'S DIVISION OF THE EAST  $\frac{1}{2}$  OF THE NORTHWEST  $\frac{1}{4}$  OF SECTION 26 TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

**PIN #: 08-26-400-012-0000**

LOT 1 (EXCEPT THAT PART BEGINNING AT A POINT ON AN EASTERLY LINE 20 FEET SOUTH OF THE NORTH LINE AS MEASURED PARALLEL WITH THE NORTH LINE THENCE WEST TO A POINT 715.5 FEET WEST OF THE EAST LINE OF THE WEST  $\frac{1}{2}$  OF THE SOUTHEAST  $\frac{1}{4}$  OF SECTION 26 THENCE NORTH 20 FEET THENCE WEST 60 FEET THENCE SOUTH 35 FEET THENCE EAST TO THE EASTERLY LINE THENCE NORTHERLY ALONG SAID EASTERLY LINE TO THE POINT OF BEGINNING) OF ASSESSOR'S DIVISION OF THE WEST  $\frac{1}{2}$  OF THE SOUTHEAST  $\frac{1}{4}$  OF SECTION 26 TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COOK COUNTY CLERK CERTIFICATION:



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

**A RESOLUTION AMENDING RESOLUTION NO. 35-14 AND AUTHORIZING THE MAYOR AND VILLAGE CLERK TO EXECUTE AN AMENDMENT TO THE DEVELOPMENT AND OPERATING AGREEMENT - CULTIVATION FACILITY BETWEEN THE VILLAGE OF ELK GROVE VILLAGE AND 4FRONT VENTURES CORPORATION**

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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, State of Illinois as follows:

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

**AMENDMENT TO THE SEPTEMBER 9, 2014  
DEVELOPMENT AND OPERATING AGREEMENT -  
CULTIVATION FACILITY**

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

**AMENDMENT TO THE SEPTEMBER 9, 2014  
DEVELOPMENT AND OPERATING AGREEMENT – CULTIVATION FACILITY**

**WHEREAS**, on September 9, 2014, the Village and IL GROWN MEDICINE LLC (CULTIVATOR) entered into a Development and Operating Agreement (AGREEMENT) for the purpose of cultivating cannabis; and

**WHEREAS**, Since that time, Cultivator has sold its interest to 4FRONT VENTURES CORP. (CULTIVATOR 2) including the assignment of its interests in the Agreement; and

**WHEREAS**, Present day circumstances are such that Cultivator 2 has requested a change in Section VI Fees/Contributions and the Village has agreed to such changes in consideration of Cultivator 2 agreeing to related additional changes submitted by the Village; and

**WHEREAS**, The reference to future expectations, requirements or acts in the Agreement are no longer operative as superseded by the present existence and operation of the facility, it being the primary intent of this Amendment to adjust the original percentage payments as well as certain future obligations of Cultivator 2.

**NOW, THEREFORE**, It Is Agreed by and between the Village and 4FRONT VENTURES CORP., in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, as follows:

1. That Section 6.01 of the Agreement which currently requires a payment to the Village of 3.0% of the gross sales, be amended to read as follows:

6.01 Village Fee. Effective July 1, 2021, Cultivator agrees to pay to the Village a fee of 2% of the gross sales of the Cultivator to all approved dispensing facilities, payable monthly.

Cultivator shall submit to the Village a copy of the tax return required to be filed with the Illinois Department of Revenue with respect to its operations at the Building, which return shall set forth the gross sales for each monthly period submitted. The return shall be accompanied by payment to the Village of the Village Fee.

2. Section 6.02 shall be amended to read as follows:

6.02 Community Contributions. Cultivator 2 shall provide an annual donation in the amount of Thirty Thousand U.S. dollars (\$30,000) to the Village of Elk Grove Village for community events and outreach. In addition, Cultivator 2 shall provide annual donations in the amount of Fifteen Thousand U.S. dollars (\$15,000) to each of the following organizations or programs:

- Kenneth Young Youth Center for Drug and Mental Health Treatment Programs;
- Elk Grove CARES Program; and
- Elk Grove Police Drug Education Program.

The Village reserves the right to reallocate the annual donations based upon need and requirements. While the initial community groups are listed above, the Village reserves the right to modify the list of community organizations, and may also add additional community organizations while redistributing the allocation allotment, provided that such additional community organizations are consistent with the spirit and intent of the charity designations specified in Cultivator's application for the License.

3. Section 7.05 NOTICE. Shall be amended with respect to notice to Cultivator 2, as follows:

TO CULTIVATOR:

4Front Ventures  
Attn: Legal Department  
5060 N. 40<sup>th</sup> Street, Suite 120  
Phoenix, AZ 85018

4. That Section 7.08 TERM / RENEWAL. shall be amended to read as follows:

7.08 A. TERM. The term of the original Agreement which commenced September 9, 2014 and terminates on September 8, 2024, unless otherwise extended, shall remain in effect.

B. TERMINATION. Cultivator shall have the right to terminate this Agreement by giving the Village written notice of its intention to terminate at least ninety (90) days prior to the termination date in effect; provided, however, that in the event that Cultivator terminates this Agreement prior to September 8, 2024, Cultivator covenants and agrees not to relocate the Cultivation Center outside of the corporate limits of the Village for a period of one year after the date of such termination. Cultivator shall have the option, however, of relocating outside of the corporate limits by subleasing or providing evidence of new leases for 100% of the current facility to craft cultivators or the like under similar terms as set forth in the Agreement.

In Witness Whereof, the Parties have duly executed this Agreement this \_\_\_\_\_ day of June, 2021.

4FRONT VENTURES CORP.

VILLAGE OF ELK GROVE VILLAGE

BY: \_\_\_\_\_  
IT'S CHIEF EXECUTIVE OFFICER

BY: \_\_\_\_\_  
ITS MAYOR

WITNESS \_\_\_\_\_

ATTEST: \_\_\_\_\_  
VILLAGE CLERK