

Resolution No. 24-16

**A RESOLUTION OF THE VILLAGE OF EAST DUNDEE, ILLINOIS
APPROVING A MUNICIPAL GAS USE TAX COLLECTION AGREEMENT
WITH NORTHERN ILLINOIS GAS COMPANY**

WHEREAS, the Village of East Dundee (the "Village") is a duly organized and validly existing home-rule municipality created in accordance with the Constitution of the State of Illinois of 1970 and the laws of the State; and,

WHEREAS, The Village has adopted a Municipal Gas Use Tax replacing the Village's Municipal Gas Utility Tax but has not changed the amount of the tax; and,

WHEREAS, the Village has negotiated with Northern Illinois Gas Company terms and conditions of a gas use tax collection agreement for the collection of said gas use tax.

NOW THEREFORE, BE IT RESOLVED, by the President and Board of Trustees of the Village of East Dundee, Kane and Cook Counties, Illinois, as follows:

Section 1: That the *Municipal Gas Use Tax Collection Agreement between the Village of East Dundee, Illinois and Northern Illinois Gas Company, d/b/a Nicor Gas Company*, attached hereto and made a part hereof by reference as Exhibit A, is hereby approved, and Lael Miller, Village President, be and is hereby authorized to execute said agreement on behalf of the Village of East Dundee.

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

PASSED this 5th day of Dec, 2016, pursuant to a roll call vote as follows:

AYES: Trustees Gorman, Lynam, Selep and Wood

NAYS: Trustee Skillicorn

ABSENT: Trustee Hall

APPROVED this 5th day of Dec, 2016

Attest: Daphne Holt
Village Clerk

L. Miller
Village President

Municipal Gas Use Tax Collection Agreement

between

the Village of East Dundee, 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 March 1, 2017, by and between Northern Illinois Gas Company, d/b/a Nicor Gas Company, an Illinois corporation (the “Contractor”), and the Village of East Dundee, Illinois (the “Municipality”), a municipal corporation and home rule unit of local government existing under the Illinois Constitution.

RECITALS

WHEREAS, on _____, 2016, the Municipality adopted Ordinance No. _____ (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, 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.

“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 (\$0.05) 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 March 1, 2017.

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 February 28, 2018 (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 March 1, 2017 and shall cease (unless otherwise extended hereunder) with respect to bills issued on or after March 1, 2018.

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.

9.16 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 East Dundee
120 Barrington Avenue
East Dundee, Illinois 60118

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 EAST DUNDEE

By: 

Its: Village President

Date: December 5, 2016

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

By: _____

Its: _____

Date: _____