
ORDINANCE NO. 13-14-21

*An Ordinance Authorizing the Village of Johnsburg
to Enter into an Intergovernmental Agreement
with the City of McHenry*

AN ORDINANCE PASSED BY THE
PRESIDENT AND BOARD OF TRUSTEES
OF THE VILLAGE OF JOHNSBURG
AT THEIR REGULAR MEETING ON OCTOBER 17, 2013
PUBLISHED IN PAMPHLET FORM BY AUTHORITY OF THE
PRESIDENT AND BOARD OF TRUSTEES
OF THE VILLAGE OF JOHNSBURG

President

Edwin P. Hettermann

Board of Trustees

John Huemann
Mary Lou Hutchinson
Rich Janusz
Greg Klemstein
Kevin McEvoy
Janice Sisk

Village Administrator

Claudett E. Peters

ORDINANCE NO. 13-14-21

An Ordinance Authorizing the Village of Johnsburg to Enter into an Intergovernmental Agreement with the City of McHenry

WHEREAS, the Village of Johnsburg, an Illinois municipal corporation located in McHenry County, Illinois (the "Village") wishes to enter into an intergovernmental agreement with the City of McHenry, attached hereto as Exhibit A, to improve their respective communication systems.

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Johnsburg, McHenry County, Illinois, as follows:

SECTION 1: That the Agreement attached hereto as Exhibit A, is hereby approved and the President is authorized to execute same on behalf of the Village and the Village Clerk is authorized to attest such signature and apply the Village seal to same.

SECTION 2: If any section, paragraph, subdivision, clause, sentence or provision of this Ordinance shall be adjudged by any Court of competent jurisdiction to be invalid, such judgment shall not affect, impair, invalidate or nullify the remainder thereof, which remainder shall remain and continue in full force and effect.

SECTION 3: All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 4: This Ordinance shall be in full force and effect upon its passage, approval and publication in pamphlet form (which publication is hereby authorized) as provided by law.

Ayes: Trustees Klemstein, McEvoy, Huemann, Sisk and Janusz

Nays: None

Absent: Trustee Hutchinson

Abstain: None

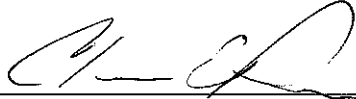
APPROVED:



President Edwin P. Hettermann

(SEAL)

ATTEST:



Village Clerk Claudett Peters

Passed: October 17, 2013

Approved: October 17, 2013

Published: October 17, 2013

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**INTERGOVERNMENTAL AGREEMENT
BY AND BETWEEN
THE VILLAGE OF JOHNSBURG
AND
THE CITY OF MCHENRY**

This Intergovernmental Agreement ("Agreement"), made and entered into this _____ day of October, 2013, by and between the Village of Johnsburg ("Village") and the City of McHenry ("City"), both of which are units of local government and are authorized to enter into intergovernmental agreements pursuant to the Intergovernmental Cooperation Act [5 ILCS 220/1 et. seq.]; and

WHEREAS, Article VII, Section 10, of the Constitution of the State of Illinois, 1970, authorizes units of local government to contract or otherwise associate between and among themselves in any manner not prohibited by law or ordinance, for the purpose of contracting with one another to perform any governmental service or activity authorized by law; and

WHEREAS, both the Village and the City wish to improve their respective communication systems by enhancing their VHF emergency communication backup radio channels to provide for the backup files of all police reports to an offsite location which would be facilitated by installing a link on the Village's water tower no. 1 ("Tower") located at the intersection of Grant Road and Route 31.

NOW, THEREFORE, in consideration of the mutual promises and undertakings exchanged in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, both parties agree as follows:

1. Grant of License to the City. The Village hereby grants to the City a non-exclusive license on an unused portion of the Tower to enable the City, at the City's cost, to install a microwave based communication system to enhance VHF emergency communication backup radio channels and to enable the parties to transmit their backup files of all police reports to an offsite location ("System").

The City shall operate the System using twenty four gigahertz frequencies for a microwave data transfer network.

Village personnel shall provide any necessary access by the City to the Tower upon notice to the Village. The City shall keep the portion of the Tower to which its System is attached or otherwise utilizes in a good state of maintenance and repair. The City agrees that the installation of the System will be completed in a workmanlike manner consistent with good engineering practices. No portion of the System shall be located so as to impair the operation of the Tower. All cable connections to the System shall be placed and secured in a safe manner so as not to interfere with any preexisting antennas. The City shall be responsible for securing and maintaining the System in a safe and secure manner. The System shall have its own, separate antenna mount on the Tower.

The parties agree that the City shall pay no rental fee to the Village for the license granted herein.

2. Personal Property. The System placed upon the Tower by the City shall remain the personal property of the City and may be repaired or replaced by the City during the term of this Agreement. The City, whether during the term of this Agreement or after the cancellation or expiration thereof, shall not damage any part of the Tower or its improvements or the facilities of Wonderwave, U.S. Cingular or any other tenant in installing, removing, repairing or replacing the System. The Tower shall be returned to its original condition that existed prior to the commencement of this Agreement upon the termination or expiration of this Agreement.

3. Elimination of Interference. The City shall peaceably and quietly hold and enjoy that portion of the Tower occupied by the System. The System shall be designed, installed and operated so as not to disrupt any wireless internet service or telecommunication service transmission or other operation of any other tenant on the Tower. The City acknowledges that it has been made aware that the Tower presently has facilities thereon owned by Wonderwave and U.S. Cellular. The City represents to the Village that the System will not interfere with Wonderwave's or U.S. Cellular's facilities on the Tower. If the operation of the System causes such interference, the Village shall provide notice to the City and the City shall use its best efforts to promptly eliminate such interference. If such interference cannot be eliminated, the parties agree that the City shall remove the System in a timely but responsible manner so as not to disrupt public safety.

4. Hold Harmless. The City agrees to indemnify, defend, and hold the Village harmless from any and all liabilities, claims, demands, suits, damages, actions, recoveries, judgments and expenses (including court costs and attorney's fees) resulting from a breach by the City of any provision contained in this Agreement or resulting from the City's occupancy of any portion of the Tower and/or negligent, willful and wanton or intentional acts of the City, the City's agents, employees, contractors, subcontractors or representatives in the construction, maintenance, repairs, changes, removal or operation of the System. The provisions, undertakings and indemnifications set out in this Section 4 shall survive the termination of this Agreement.

5. Insurance. The City, at the City's cost, shall maintain commercial general liability ("CGL") insurance covering bodily injury and property damage with a combined single limit of at least One Million and 00/100 Dollars (\$1,000,000.00) per occurrence. Such insurance shall insure, on an occurrence basis, against all liability of the City, its employees and agents arising out of or in connection with the City's use of the Tower, all as provided for herein. Within thirty (30) days following the date of this Agreement, the City shall provide the Village with a policy and certificate of insurance ("COI") evidencing the coverage required by this Section 5. The Village shall be named as an additional insured on the City's policy using an additional insured endorsement or blanket provision acceptable to the Village. Such coverage shall apply as primary insurance with respect to any other insurance or self insurance programs of the Village.

6. Obligations. The City has inspected the Tower and has found it to be satisfactory for the purpose of attaching the System. The City agrees to operate the System in accordance with all applicable laws governing the operation of radio transmitters and antennas. The City agrees to settle any interference claims pertaining to the System with the FCC or other applicable

regulatory body and hold the Village harmless of any penalties. The City will also be responsible for securing any permits or licenses necessary for operating the System on the Tower. The City agrees to maintain the System in a good and safe condition and in a manner that complies with all applicable federal, state and local laws. The City, upon 30 days written notice from the Village, shall make all portions of the Tower available for maintenance or repair, including, but not limited to, repainting and related work. The Village has the option of removing and replacing any Tower to which the System is attached to, as long as the City is given thirty (30) days written notice to arrange any temporary facilities so as not to interrupt or hinder service provided by the System. The Village shall use a good faith effort to keep service uninterrupted, but shall not be responsible if use of the Tower is destroyed by casualty.

7. **Term.** The terms of this agreement shall be for so long as the City provides dispatch services to the Village of Johnsborg.

8. **Entire Agreement.** This Agreement contains the entire understanding between and among the parties and supersedes any prior understandings and agreements among them respecting the subject matter of this Agreement.

9. **Binding Effect.** It is expressly understood by the parties hereto that neither is bound by any stipulations, representations or agreements not expressly contained herein and that this Agreement shall inure to the benefit of and be binding upon the personal representatives, heirs, successors, and assigns of the parties hereto.

10. **License Interpretation.** This Agreement shall be construed in accordance with the laws of the State of Illinois. In the event that any provision of this Agreement is deemed legally unenforceable by a court of competent jurisdiction, the provision shall be struck from this Agreement and the remaining provisions shall continue in full force and effect.

11. **Notices.** All notices, requests and other writings required under this Agreement (including any notices of renewal, or termination rights) must be in writing and shall be deemed validly given upon the earlier of (a) actual receipt, or (b) the second business day after the date posted if sent by certified mail, return receipt requested, addressed to the other party as follows:

If to the Village: Village Administrator, Claudett Peters, 1515 Channel Beach Drive, Johnsborg, Illinois 60051, or at any other location designated by the Village;

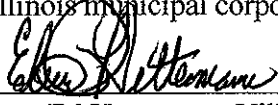
If to the City: City Clerk, 333 S. Green Street, McHenry, Illinois 60050, or at any other location designated by the City by like notice.

12. **Performance.** Time is of the essence in this Agreement.

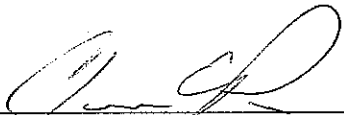
13. **Waiver.** Failure of either party at any time to require performance of any provision of this Agreement shall not limit the party's right to enforce the provision, nor shall any waiver of any breach of any provision be a waiver of any succeeding breach of any provision or a waiver of the provision itself for any other provision.

14. **Attorney's Fees.** The prevailing party in any action or proceeding to enforce the terms of this Agreement shall be entitled to receive its reasonable attorney's fees and other reasonable enforcement costs and expenses from the non-prevailing party.

VILLAGE OF JOHNSBURG,
an Illinois municipal corporation

By 
Ed Hetterman, Village President

ATTEST:

By 
Claudett Peters, Administrator

CITY OF McHENRY,
an Illinois municipal corporation

By _____
Susan E. Low, Mayor

ATTEST:

By _____
Janice C. Jones, Clerk

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CERTIFICATION

I, CLAUDETT PETERS, do hereby certify that I am the duly appointed, acting and qualified Clerk of the Village of Johnsburg, McHenry County, Illinois, and that as such Clerk, I am the keeper of the records and minutes and proceedings of the President and Board of Trustees of said Village of Johnsburg.

I do hereby further certify that at a regular meeting of the President and Board of Trustees of the Village of Johnsburg, held on the 17th day of October, 2013 the foregoing Ordinance entitled *An Ordinance Authorizing the Village of Johnsburg to Enter into an Intergovernmental Agreement with the City of McHenry* was duly passed by the President and Board of Trustees of the Village of Johnsburg.

The pamphlet form of Ordinance No. 13- 14-21, including the Ordinance and a cover sheet thereof, was prepared, and a copy of such Ordinance was available from the Village Clerk, commencing on the 17th day of October, 2013, and will continue for at least 10 days thereafter. Copies of such Ordinance are also available for public inspection upon request in the office of the Village Clerk.

I do further certify that the original, of which the attached is a true and correct copy, is entrusted to me as the Clerk of said Village for safekeeping, and that I am the lawful custodian and keeper of the same.

Given under my hand and the official seal of the Village of Johnsburg this 17th day of October, 2013.



Claudett Peters, Village Clerk
Village of Johnsburg,
McHenry County, Illinois

(SEAL)