

ORDINANCE NO. 14-15-12

An Ordinance Authorizing Execution of the Northern Illinois Purchasing Cooperative ("NIPC") 2014 Intergovernmental Agreement for the Purchase of Power Supplies and Other Goods and Services ; Waiving Local Bidding Requirements for Purchases Made through NIPC; and Authorizing Purchase Agreements Made through NIPC

WHEREAS, in the fall of 2006 several local governmental entities entered into an intergovernmental agreement for the purchase of electrical power creating the Northern Illinois Governmental Energy Cooperative ("NIGEC") and that agreement was renewed in 2008 and renewed and amended again in 2013; and

WHEREAS, by working through NIGEC, the participants have been able to secure competitively priced electrical power; and

WHEREAS, by acting cooperatively through NIGEC, each member has sought to reduce the total transaction costs of identifying and negotiating power purchase arrangements with third party suppliers; and

WHEREAS, the NIGEC members wish to continue their cooperative association and to streamline their operations to facilitate cooperative purchasing for both power as well as for other goods and services in instances where group purchasing will result in lower rates or improved efficiencies for the members; and

WHEREAS, in order to better reflect the mission and purpose of the group the members have proposed changing their name to the **Northern Illinois Purchasing Cooperative ("NIPC")**; and

WHEREAS, the current NIGEC members have negotiated an Intergovernmental Agreement to govern their relationship as NIPC which is attached as Exhibit A, and also have agreed to allow new members to join under those terms and conditions; and

WHEREAS, units of local government may contract and associate among themselves pursuant to Article VII, Section 10, of the Illinois Constitution of 1970 and the Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*; and

WHEREAS, some of the proposed NIPC members have local codes or rules that require that certain purchases must be solicited for bids pursuant to their local rules, but under the proposed NIPC intergovernmental agreement the NIPC purchasing rules shall apply instead; and

WHEREAS, the NIPC agreement contemplates authorizing certain specific parties to execute contracts on behalf of the members; and

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

SECTION 1: The President be, and is hereby authorized and directed to execute, and the Clerk is authorized and directed to attest, duplicate original copies of the *NIPC Intergovernmental Agreement for the Purchase of Power Supplies and Other Goods and Services* ("Agreement"), a copy of which is attached hereto and made a part hereof as Exhibit A. This approval includes explicit waiver of any conflict of interest, if any, for the law firm of Zukowski, Rogers, Flood and McArdle to represent NIPC in this matter.

SECTION 2: The administration is directed to take all actions necessary to implement the terms of the Agreement and to execute contracts negotiated under the Agreement in a manner consistent with its terms, and any local ordinances or rules governing purchases that will instead be made through NIPC are hereby waived and those purchases will instead be subject to NIPC's procedures.

SECTION 3: 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 4: All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict and the Intergovernmental Agreement establishing NIGEC is hereby replaced by this new Agreement.

SECTION 5: 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.

Voting Aye: Trustees Janusz, McEvoy, Sisk, Huemann and Klemstein

Voting Nay: None

Abstain: None

Absent: Trustee Hutchinson

APPROVED:



Village President

(SEAL)

ATTEST:


Village Clerk

Passed: Ordinance 21, 2014

Approved: Ordinance 21, 2014

Published: Ordinance 21, 2014

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**NORTHERN ILLINOIS PURCHASING COOPERATIVE ("NIPC")
2014 INTERGOVERNMENTAL AGREEMENT
FOR THE PURCHASE OF POWER SUPPLIES
AND OTHER GOODS AND SERVICES**

This Intergovernmental Agreement ("Agreement") is entered into between the signatory parties below, all Illinois municipal corporations or other governmental entities, (collectively, "Members") for purposes of creating the Northern Illinois Purchasing Cooperative ("NIPC"). It is explicitly contemplated that additional local governmental entities may join this Agreement at a later date on the same terms as the signatory parties, with the permission of the Administrator, as defined below, and without additional approval from the original contracting Members. This Agreement shall be binding on any signatories.

WHEREAS, the Members have agreed that there may be economies of scale, reduced administrative costs and improved commodity prices by purchasing goods and services, electricity and other power supplies as a group; and

WHEREAS, in order to obtain these economies, several municipalities have previously joined together to create the Northern Illinois Governmental Energy Cooperative ("NIGEC") and several of those municipalities wish to continue that association in the newly form NIPC as the successor entity to NIGEC; and

WHEREAS, such cooperation is one of the purposes of the Intergovernmental Cooperation Agreement Act ("Act") (5 ILCS 220/1 *et seq.*); and

WHEREAS, this Agreement satisfies the requirements of that Act and of the Illinois State Constitution provisions authorizing Intergovernmental Agreements (Article 7, Section 10).

NOW, THEREFORE, the Members agree as follows:

1. **PURPOSE.** To act together as NIPC in order to negotiate economical purchase agreements for goods and services as well as for power purchase agreements ("Purchase Agreements") all as directed by the Governing Board (as that term is defined below).

2. **GOVERNANCE.** The NIPC membership shall be governed by one representative of each Member (the "Governing Board"). Each Member shall have one vote, and unless otherwise specifically provided for elsewhere in this Agreement, the Governing Board shall require a majority vote for any binding decisions. All votes by the membership may be taken by telephone, e-mail or other electronic or digital communication.

3. **ADMINISTRATION.**

a. The NIPC membership agrees to place administrative responsibility for its operations, including approval of any new members, with the Director of the McHenry County Council of Governments ("MCCG") (the "Administrator"), who will report to the Governing Board on administrative matters. By a majority vote, the NIPC Governing Board shall agree upon an appropriate level of compensation to MCCG (or any subsequent Administrator) for these administrative services.

b. The Governing Board may elect a new Administrator at any time by a majority vote.

4. **SOLICITING AND SELECTING SUPPLIERS.**

a. **Solicitation.**

i. NIPC shall seek to obtain supplies that are competitively priced or that are supplied on terms that are in the best interests of the Affected Members (as that term is defined in Section 4.a.ii below). To meet this goal NIPC may rely upon a variety of methodologies including using a Request for Proposal solicitation, by the use of an on-line auction format or by using such other methodology as the Affected Members determine are appropriate and consistent with applicable law.

ii. The Administrator is responsible for ensuring that each Member is on notice of each new bidding opportunity. Each NIPC Member may choose, prior to the issuance of any bid request or other solicitation for purchase, whether or not to participate in the specific bid request. Those members who participate in each bid request shall be referred to as the "Affected Members". In cases where less than the full NIPC membership is participating in a bid request or solicitation for purchase, then only the Affected Members and not the entire Governing Board shall be permitted to vote on that

particular bid request or solicitation.

1) The Administrator may require Members to indicate whether they intend to participate in any specific bid solicitation or purchasing effort and may require that the Members give written notice to the Administrator of their intent to withdraw from participation, provided that no withdrawal from participation shall be permitted if a solicitation is outstanding at the time of such withdrawal notice or if bids already have been received and are being considered or negotiated by NIPC.

2) If a Member has not provided notice of withdrawal from a specific bid when so required by the Administrator and if the Member has been included in any bid solicitation announcement or process, then the Member must complete and execute any related Purchase Agreement that is ultimately approved by the Affected Members. Such Member also shall be counted in any tally of Affected Members for purposes of calculating the number of votes required for approval of any matter related to a specific purchase initiative. However, the Administrator shall have discretion to permit withdrawal of that member if, in the sole determination of the Administrator, such withdrawal will not affect the price or terms offered to the balance of the Affected Members.

3) This limitation on withdrawal is imposed in order to ensure that the Affected Members benefit from any bulk purchasing advantages resulting from guaranteeing to supply bidders a defined customer base because this has an impact on the bid prices for supplies.

iii. For each bid solicitation, in the discretion of the Administrator, bidding may exclude accounts that are not likely to offer significant financial advantages to members. This includes, but is not limited to, situations in which bidding some or all of the electric power accounts of some members will not offer significant financial advantages over Commonwealth Edison rates or other existing or potential rates, such as for instance accounts for street lights and any franchise accounts.

iv. NIPC may waive bidding or solicitation for a non-public works purchase by a two-thirds vote of the Affected Members provided that the Affected Members determine that this will result in a competitive price or that such waiver is in the best interests of the Affected Members. Such

bid-waiver option shall include, but not be limited to, the extension of existing agreements without additional solicitation or bidding.

v. By approving this Agreement, all Members agree that this process shall apply to all purchasing by NIPC and any Member regulations governing purchasing to the contrary are hereby waived for purchases made through NIPC. Nothing in this Agreement is intended to waive any applicable Illinois law governing bidding or purchasing or the supply of services.

b. Selection and Execution of Agreements.

i. The Administrator may negotiate the terms for any Purchase Agreement in preparation for consideration by the Affected Members.

ii. Each Affected Member shall be given one vote for purposes of determining whether to enter into a specific Purchase Agreement.

iii. A majority vote of the Affected Members shall be required to authorize entry into any specific Purchase Agreement except in cases subject to Section 4(a)(iv) of this agreement involving waiver of bids or solicitation when a two-thirds vote of the Affected Members shall be required to authorize entry into a Purchase Agreement.

iv. All Affected Members agree to be bound by the vote of the Affected Members in favor of entering into a specific Purchase Agreement.

v. Following approval of a Purchase Agreement as required by this Section, the Administrator may verbally commit the Affected Members to accept the Purchase Agreement, and each Affected Member agrees to execute a Purchase Agreement binding their respective unit of government within the time period approved by the Administrator. The Members acknowledge that the rapidly shifting commodity price nature of many goods and some services, including but not limited to prices in the power market, necessitates this structure, and that by approving this Agreement, they are authorizing any of the following representatives of the Members to execute the Purchase Agreement:

- 1) President or Mayor

- 2) Board Member or Council Members designated by the President or Mayor
- 3) Manager or Chief Administrator
- 4) Authorized Staff Person designated by Manager, Chief Administrator, President or Mayor

5. **USE OF CONSULTANTS BY NIPC.** By a majority vote of the membership, NIPC, through the Administrator, may negotiate with and retain a consultant or advisor who may coordinate the purchasing process on behalf of NIPC and its Members. Any agreement between NIPC and any such consultant must be approved by a majority vote of the Governing Board. The Exchange Agreement between NIGEC and World Energy Solutions dated July 12, 2013 is hereby approved as the current agreement for NIPC for purposes of energy and related services purchases and with the consent of World Energy Solutions may be assigned to NIPC as the successor to NIGEC.

6. **MEMBER COOPERATION REQUIRED.** The NIPC membership agrees to provide the necessary information required to develop bid specifications or to identify electric power supply opportunities or goods and services in a timely manner in response to any request being made by the Administrator or Consultant. Failure to provide this information in a timely manner may result in exclusion from a particular Purchase Agreement or bid for such Purchase Agreement at the discretion of the Administrator.

7. **ALLOCATION OF NIPC COSTS.** The NIPC membership agrees to share all costs associated with the Administration of this Agreement, which costs shall be allocated among them by the Administrator based on the number of Affected Members participating in a specific matter.

8. **LEGAL REPRESENTATION.** By executing this Agreement, each Member hereby waives any conflict of interest, permitting the law firm of Zukowski, Rogers, Flood & McArdle ("ZRFM") to represent them individually as well as serving as counsel to NIPC. This representation may be changed by a majority vote of the Governing Board.

9. **AGREEMENT REPLACES EARLIER NIGEC AGREEMENTS.** By executing this Agreement, a Member that belonged to any previous Agreement governing NIGEC agrees, instead, to be

bound by the terms of this Agreement effective January 1, 2015.

10. TERM. This Agreement will be effective commencing on January 1, 2015. The Members agree to be bound by this Intergovernmental Agreement through January 30, 2020 regardless of the date any individual Member initially approved the Agreement.

11. INDEMNIFICATION.

a. To the extent permitted by law, each Member hereby agrees to indemnify, hold harmless, and defend any other Member from and against any and all losses, claims, expenses and damages (including reasonable attorney's fees) made against or incurred by the other Member for any actions taken or failures to act by the indemnifying Member in connection with or arising out of this Agreement, to the extent that such claims were caused by actions, or failures to act, of the indemnifying Member.

b. To the extent permitted by law, each Member agrees to indemnify, hold harmless, and defend the Administrator and any of its officers, employees or agents from and against any and all losses, claims, expenses and damages (including reasonable attorneys' fees) made against or incurred by the Administrator or any of the Administrator's officers, employees and agents for actions taken or failures to act under this Agreement in its role as Administrator except to the extent such actions or failures to act were willful and wanton.

12. COUNTERPARTS. This Agreement may be executed by all of the parties in identical original duplicates and each of the duplicates shall, individually and taken together, constitute one and the same Agreement.

[SIGNATURE PAGES FOLLOW]

<p>VILLAGE OF ALGONQUIN</p> <p>By _____ John C. Schmitt, President</p> <p>DATE: _____, 2014</p>	<p>ATTEST:</p> <p>_____ Gerald S. Kautz, Clerk</p>
<p>CITY OF GENOA</p> <p>By _____ Mark Vicary, Mayor</p> <p>DATE: _____, 2014</p>	<p>ATTEST:</p> <p>_____ Wendy Shaneen, Clerk</p>
<p>VILLAGE OF HAMPSHIRE</p> <p>By _____ Jeffrey Magnussen, President</p> <p>DATE: _____, 2014</p>	<p>ATTEST:</p> <p>_____ Linda R. Vasquez, Clerk</p>
<p>VILLAGE OF HUNTLEY</p> <p>By _____ Charles Sass, President</p> <p>DATE: _____, 2014</p>	<p>ATTEST:</p> <p>_____ Rita McMahon, Clerk</p>
<p>VILLAGE OF JOHNSBURG</p> <p>By <u><i>Edwin P. Hettermann</i></u> Edwin P. Hettermann, President</p> <p>DATE: <u>10-21-</u> _____, 2014</p>	<p>ATTEST:</p> <p><u><i>Claudett E. Peters</i></u> Claudett E. Peters, Clerk</p>
<p>VILLAGE OF LAKE IN THE HILLS</p> <p>By _____ Paul Mulcahy, President</p> <p>DATE: _____, 2014</p>	<p>ATTEST:</p> <p>_____ Denise L. Wasserman, Clerk</p>

<p>VILLAGE OF LAKEWOOD</p> <p>By _____ Mary Erin Smith, President</p> <p>DATE: _____, 2014</p>	<p>ATTEST:</p> <p>_____</p> <p>Janice S. Hansen, Clerk</p>
<p>CITY OF McHENRY</p> <p>By _____ Susan E. Low, President</p> <p>DATE: _____, 2014</p>	<p>ATTEST:</p> <p>_____</p> <p>Janice C. Jones, Clerk</p>
<p>VILLAGE OF RICHMOND</p> <p>By _____ Peter Koenig, President</p> <p>DATE: _____, 2014</p>	<p>ATTEST:</p> <p>_____</p> <p>Karla L. Thomas, Clerk</p>
<p>CITY OF WOODSTOCK</p> <p>By _____ Brian Sager, PhD, Mayor</p> <p>DATE: _____, 2014</p>	<p>ATTEST:</p> <p>_____</p> <p>Dianne Mitchell, Clerk</p>
<p>WOODSTOCK FIRE AND RESCUE DISTRICT</p> <p>By _____ Robert Kristensen, President</p> <p>DATE: _____, 2014</p>	<p>ATTEST:</p> <p>_____</p> <p>Kenneth Marunde, Secretary</p>

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CERTIFICATION

I, CLAUDETT E. PETERS, do hereby certify by my signature affixed below that I am the duly appointed, acting and qualified Clerk of the Village of Johnsburg, County of McHenry, Illinois. I do further certify that a regular meeting of the President and Board of Trustees of the Village of Johnsburg, held on the 21st day of October, 2014 the foregoing Ordinance entitled: ***An Ordinance Authorizing Execution of the Northern Illinois Purchasing Cooperative ("NIPC") 2014 Intergovernmental Agreement for the Purchase of Power Supplies and Other Goods and Services ; Waiving Local Bidding Requirements for Purchases Made through NIPC; and Authorizing Purchase Agreements Made through NIPC*** was duly passed by the President and Board of Trustees of the Village of Johnsburg, a true and correct copy of which is attached hereto. The passage of said Ordinance was on a roll call vote, on which the vote was as follows:

Voting Aye: Trustees Janusz, McEvoy, Sisk, Huemann and Klemstein

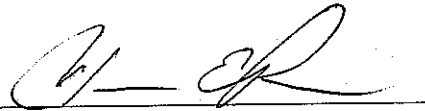
Voting Nay: None

Absent: Trustee Hutchinson

Abstain: None

I do further certify that said Ordinance was duly published on October 21, 2014 in pamphlet form.

IN WITNESS WHEREOF, I have above set my hand and caused to be affixed the seal of the VILLAGE OF JOHNSBURG, Illinois, on the 21st day of October, 2014.



Claudett E. Peters, Village Clerk
Village of Johnsburg

(SEAL)