

**INTERGOVERNMENTAL AGREEMENT
FOR AN APRENTICE EMPLOYEE PROGRAM
BETWEEN THE CITY OF NAPERVILLE AND THE CITY OF GENEVA**

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is entered into by and between the City of Naperville, ("Naperville"), a municipal corporation and home rule unit of local government under the laws and Constitution of the State of Illinois, with offices at 400 South Eagle Street, Naperville, IL 60540, and the City of Geneva ("Geneva"), municipal corporation and non-home rule unit of local government under the laws and Constitution of the State of Illinois, with offices at 22 S. First Street, Geneva, IL 60134, together referred to herein as the "Parties" and individually as "Party".

RECITALS

- A. Each Party is a unit of local government under Illinois law and each Party owns and operates its own municipal electric utility.
- B. Each Party has instituted in its electric utility an electric lineman apprenticeship training program ("Apprentice Program").
- C. Each Party has determined that it would be mutually beneficial, and in the best interest of the citizens and the electric utility rate payers they serve, to cooperate with the other Party in training their respective employees employed as electric lineman apprentices ("Apprentice Employee(s)").
- D. The Parties desire to engage in cooperative activities, including but not limited to having the Apprentice Employees of each Party perform work at and on the property and electric utility system of the other Party.
- E. Article VII, Section 10, of the Illinois Constitution of 1970 authorizes and encourages cooperation between and among units of local government to obtain or share services and to exercise, combine, or transfer any power or function in any manner not prohibited by law or ordinance.
- F. Each Party is a unit of local government within the meaning of the Illinois Intergovernmental Corporation Act, 5 ILCS 220/1 *et seq.*
- G. The Intergovernmental Cooperation Act provides that any powers, privileges or authority exercised or which may be exercised by a unit of local government may be exercised jointly with any other unit of local government except where prohibited by law.
- H. The Intergovernmental Cooperation Act authorizes local governmental entities to enter into agreements to perform any governmental service or activity or undertaking, which any of them is authorized by law to perform, provided that such agreements shall be authorized by the governing body of each party to the agreement.
- I. The Intergovernmental Cooperation Act further provides that all personnel rules applicable to an employee of a local governmental entity shall continue to apply to such employee if

the employee is loaned to perform services for another local governmental entity pursuant to an intergovernmental agreement.

- J. The Parties desire to allocate responsibilities, risk, and defense and indemnification obligations for each Party hereunder when Apprentice Employees of one Party are loaned to work with the Apprentice Program of the other Party as provided herein.

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, the Parties agree that:

1 RECITALS INCORPORATED.

- 1.1 The foregoing Recitals are incorporated herein and made part of this Agreement as if fully set forth herein.

2 CONTENT OF THE APPRENTICESHIP PROGRAMS.

- 2.1 Apprenticeship Program. Each Party operates its own separate Apprenticeship Program for the purpose of educating and training apprentice employees to become skilled journeyman electric linemen.
- 2.2 Content of the Apprenticeship Programs. Each Party agrees to operate its respective Apprenticeship Program through the program established by the American Line Builders Apprenticeship Training operated by the International Brotherhood of Electrical Workers and the National Electrical Contractors Association (“hereinafter ALBAT”). Each Party further agrees to operate its respective Apprenticeship Program applying the safety practices and rules in the current edition of the safety manual published by the American Public Power Association (hereinafter “APPA Safety Manual”) as that publication is amended from time to time and as may be amended by Geneva and Naperville, severally in order to accommodate utility specific accepted work procedures.
- 2.3 Operation of the Apprenticeship Programs. Except as specifically provided in Section 2.2 above, and subject to the provisions set forth in Section 4 below, each Party shall operate its Apprenticeship Program as determined by its respective management and officials. The Employer Representative of each Party agrees to communicate with the Employer Representative of the other Party prior to implementation of any change in their Apprenticeship Program that would be material to the Parties’ cooperative activities hereunder.
- 2.4 Contact and Ongoing Collaboration. The Parties agree that ongoing collaboration and communication regarding cooperative activities is essential to achieving the objective of this Agreement. The Parties agree to each designate a contact person (“Employer Representative”) through whom communication regarding cooperative activities hereunder shall be coordinated and implemented.

3. LOANED APPRENTICE EMPLOYEES - EMPLOYER RELATIONSHIP.

3.1 Each Party shall, from time to time, as provided herein, loan their respective Apprentice Employees to the other Party to work under the supervision of the other Party in order to provide a broader base of experience to the Apprentice Employees. A Party who loans an Apprentice Employee hereunder shall be referenced herein as the “Loaning Employer”, and the Party to whom an Apprentice Employee is loaned shall be referenced herein as the “Borrowing Employer”.

3.2 The Parties intend and agree that each shall be considered the sole employer of the Apprentice Employees enrolled in their respective Apprenticeship Programs. The terms and conditions of employment for Apprentice Employees, including but not limited to personnel policies and rules, and any applicable collective bargaining agreement, shall be determined by the Party which hired the Apprentice Employee irrespective of where such Apprentice Employee is working.

3.3 All compensation and benefits of Apprentice Employees, including but not limited to paid time off, vacation time, holidays, personal days and sick time, shall be provided for solely by the Party who hired them. Further, that Party shall be solely responsible for withholding federal and state income taxes and other mandated withholdings (e.g. child support, wage garnishments, etc.), paying Federal Social Security taxes, maintaining unemployment insurance, and maintaining worker’s compensation in an amount and under such terms as required by Illinois law.

Apprentice Employees shall not be entitled to any compensation or benefits from the Borrowing Employer, and shall not be subject to the personnel policies or practices of the Borrowing Employer.

4. OPERATIONAL RESPONSIBILITIES OF LOANING AND BORROWING EMPLOYERS.

4.1 The Employer Representatives for each of the Parties shall coordinate the nature of the work to be performed by the Apprentice Employees. The Borrowing Employer shall be responsible for the specific work tasks assigned to Apprentice Employees on a daily basis and shall take all precautions necessary to ensure the safety of the Apprentice Employee. The Loaning Employer shall require all Apprentice Employees loaned to a Borrowing Employer to comply with the direction and operational rules of the Borrowing Employer in the performance of their duties.

4.2 The Parties’ respective Employer Representatives shall agree upon the timing and number of Apprentice Employees loaned and any other relevant operational issues. The Employer Representative of the Borrowing Employer shall provide the Employer Representative of the Loaning Employer with a schedule of work for loan Apprentice Employees which shall be approved by the Loaning Employer. The agreed upon schedule of work for one or more Apprentice Employees may be modified by written agreement (which may be by email) of the Employer Representatives.

The Employer Representative of the Borrowing Employer shall maintain accurate records of the days worked, hours worked, time off (e.g. vacation/sick time/holidays) and type of work

performed by each loaned Apprentice Employee and shall report the same to the other Party's Employer Representative on a weekly basis.

4.3 While assigned to a Borrowing Employer, an Apprentice Employee shall wear the uniform and insignia of the loaning employer.

4.4 The Borrowing Employer will supply or make available adequate equipment to allow the assigned Apprentice Employee to safely perform his/her duties for the Borrowing Employer.

4.5 If a Borrowing Employer believes that disciplinary action in some form should be taken with respect to an Apprentice Employee, the Employer Representative of the Borrowing Employer shall contact the Employer Representative of the Loaning Employer and communicate the conduct of the Apprentice Employee which is the basis for a recommendation of disciplinary action, and shall provide the Loaning Employer with all information and documentation necessary to support the recommendation. The decision as to whether and what disciplinary action should be taken shall be the Loaning Employer's. The Employer's Representative of a Borrowing Employer may notify the Employer's Representative of the Loaning Employer of its decision not to accept an Apprentice Employee on loan and shall summarize the reasons for its decision.

5. ALLOCATION OF LIABILITY.

5.1 Workers' Compensation. As provided in Section 3 above, and to the extent permitted by law, the Party who hires an Apprentice Employee shall be responsible for his/her salary and benefits irrespective of where such Apprentice Employee is working. Therefore, an Apprentice Employee of one Party working on the property or electric utility system of the other Party shall be considered a loaned or borrowed employee under Section 1(a)(4) of the Illinois Workers' Compensation Act. [820 ILCS 305/1(a)(4)].

The Parties agree that as the sole employer of their respective Apprentice Employees, the Loaning Employer shall be solely liable for any Workers' Compensation obligations for its Apprentice Employees who claim to have experienced a job-related injury, regardless of where the injury occurred.

If an Apprentice Employee is injured while working on the property or electric utility system of the Borrowing Employer and files a Workers' Compensation claim against the Borrowing Employer (and/or against the Borrowing Employer's officers, agents, or employees), the Borrowing Employer shall promptly tender the defense thereof to the Loaning Employer. The Loaning Employer shall defend, indemnify and hold harmless the Borrowing Employer and its officers, agents, and employees as to such Workers' Compensation claim.

Each Party shall carry worker's compensation insurance as required by the State of Illinois, with statutory Limits and employer's liability insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease. Each Party agrees, and shall include in any insurance policy or self-insurance policy, a waiver of any right to subrogation which any insurer of said Party may acquire against the other Party by virtue of the payment of any loss under such insurance. Each Party agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation,

but this provision applies regardless of whether or not the Party has received a waiver of subrogation endorsement from the insurer.

5.2 Automobile/Vehicle Liability. The Parties contemplate that from time to time an Apprentice Employee of a Loaning Employer may operate a vehicle of the Borrowing Employer in the performance of their job duties for the Borrowing Employer.

5.2.1 Damage to Borrowing Employer's Vehicles. If a loaned Apprentice Employee causes damage to a vehicle of the Borrowing Employer, the Loaning Employer shall promptly compensate the Borrowing Employer for all reasonable costs associated with the replacement or repair of such property.

5.2.2 Third Party Liability. If an Apprentice Employee of a Loaning Employer operates a vehicle of the Borrowing Employer and becomes involved in an accident or any other type of incident attributable to operation of the vehicle which results in any claim or legal action by a third party, the Parties agree that the Loaning Employer shall bear sole liability for the matter. In such event, the Borrowing Employer shall provide prompt notice of any suit or claim to the Loaning Employer and the Loaning Employer shall defend, indemnify, and hold and the Borrowing Employer and its officers, agents, and employees harmless from any claims of injuries, liabilities, causes of action, losses, damages, fines, and expenses (including, without limitation, attorneys' fees, whether in-house or outside counsel, and costs) claimed by any person or entity alleged to have been caused by the negligent, willful or wanton, or intentional act or omission of the Apprentice Employee in operating a Loaning Employer's vehicle.

5.3 Equipment: An Apprentice Employee shall use a Borrowing Employer's equipment to perform his/her duties and will return such equipment on a daily basis. If the Apprentice Employee damages, breaks or loses the Borrowing Employer's equipment due to his/her intentional or negligent acts or omissions, the Loaning Employer shall promptly compensate the Borrowing Employer for all reasonable costs associated with the replacement or repair of such property. However, if an Apprentice Employee damages, breaks or loses the Borrowing Employer's equipment through no fault of his/her own, the Borrowing Employer shall be responsible for such equipment repairs or replacement costs.

5.4 System Outages and Other System-Related Liability. To the extent permitted by law, each Party shall bear sole liability for all aspects of its own electric distribution system, including but not limited to the operation of that system. The Party owning the electric distribution system shall defend, indemnify, and hold harmless the other Party, and its officers, agents and employees (including but not limited to Apprentice Employees) from any claims of injuries, liabilities, causes of action, losses, damages, fines, and expenses (including, without limitation, attorneys' fees, whether in-house or outside counsel, and costs) claimed by any person or entity alleged to have been caused by the negligent, willful or wanton, or intentional act or omission of a loaned Apprentice Employee.

5.5 No Waiver of Protections of Tort Immunity Act. Nothing contained herein shall be construed as a limitation or waiver of defenses available to the Loaning Employer and its officers,

agents, and employees, including, but not limited to the Illinois Local Government and Local Governmental Employees Tort Immunity Act.

5.6 Insurance. Each Party shall carry commercial general liability insurance covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit. Each Party shall name the other Party, and its officers, agents and employees as additional insureds on its insurance policies, in its endorsements and on its certificates for the purposes and activities covered by this Agreement. Each Party agrees, and shall include in any insurance policy or self-insurance policy, a waiver of any right to subrogation which any insurer of said Party may acquire against the other Party by virtue of the payment of any loss under such insurance.

6. **TERM AND TERMINATION.**

6.1 Term. This Agreement shall be effective from the Effective Date set forth in Subsection 8.10 herein through December 31, 2018 and shall be automatically renewed for successive one (1) year periods thereafter unless terminated as provided herein.

6.2 Termination. This Agreement may be terminated by either Party hereto by providing not less than thirty (30) days’ written notice to the other Party. Notice shall be given in accord with the provisions of Section 7 below.

7. **NOTICES.**

Notice. Whenever notice is required to be given pursuant to this Agreement, the same shall be in writing, and either personally delivered, sent by a nationally recognized overnight delivery service, postage prepaid, or sent via United States certified mail, return receipt requested, postage prepaid, and addressed to the Parties at their respective addresses set forth below, or at such other addresses as any Party, by written notice in the manner specified above to the other Parties hereto, may designate from time to time. All notices shall be deemed to have been given upon receipt (or refusal of receipt) thereof.

FOR THE CITY OF NAPERVILLE

Director, Department of Public Utilities - Electric
400 South Eagle Street
Naperville, IL 60540

FOR THE CITY OF GENEVA

Superintendent of Electrical Services
City of Geneva
1800 South Street
Geneva, Illinois 60134

8. GENERAL PROVISIONS.

8.1 Choice of Law/Venue. This Agreement shall in all respects be subject to and construed in accordance with and governed by the laws of the State of Illinois. Venue for any action arising out of the terms or conditions of this Agreement shall be based upon the party's principal office, to-wit: in the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois for Naperville and in the Circuit Court for the Sixteenth Judicial Circuit, Kane County, Illinois for Geneva. The venue shall be determined by the respondent/defendant's principal office

8.2 No Assignment. This Agreement shall be binding upon the Parties hereto and may not be assigned to any other person or entity.

8.3 Amendment. Except as otherwise provided herein, this Agreement may be modified or amended only by a written amendment to this Agreement fully executed by the Parties hereto.

8.4 Ambiguity. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the Party causing this Agreement to be drafted.

8.5 Third Parties. This Agreement is not intended to give or confer any benefits, rights, privileges, claims, actions, or remedies to any person or entity as a third-party beneficiary under this Agreement or any statutes, laws codes, ordinances, rules regulations, orders, decrees, or otherwise.

8.6 No Waiver. No Party hereto shall be deemed, by any act of omission or commission, to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by the waiving Party and, then only to the extent specifically set forth in the writing. A waiver with reference to one event shall not be construed as continuing or as a bar to or waiver of any right or remedy as to a subsequent event.

8.7 Severability. If any provision of this Agreement is held to be unenforceable or invalid for any reason, the enforceability thereof shall not affect the remainder of the Agreement. The remainder of this Agreement shall be construed as if not containing the particular provision and shall continue in full force, effect, and enforceability, in accordance with its terms.

8.8 Surviving Provisions. The provisions of Sections 5 and 8 of this Agreement and any outstanding monetary obligations owed by one Party to the other Party that are incurred or accrue prior to the date of termination of this Agreement shall survive the termination or expiration of this Agreement and shall constitute continuing obligations until satisfied in full.

8.9 Compliance with all Laws. The Parties shall at all times observe and comply with the laws, ordinances, regulations and codes of Federal, State, County and other local government agencies, which may in any manner affect the performance of this Agreement.

8.10 Effective Date. This Agreement shall be effective on the last date it is executed by either Party hereto.

8.11 Entire Agreement. This Agreement sets forth the entire understanding of the parties relative to the subject hereof and supersedes any and all prior agreements, express or implied, oral or written with regard to the subject matter of this Agreement

8.12 No Assignment. This Agreement may not be assigned to any other person or entity.

8.13 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors in interest.

8.14 Authority. The undersigned warrant and represent that they are authorized to execute this Agreement.

THE PARTIES TO THIS AGREEMENT by their signatures acknowledge that they have read and understand this Agreement and intend to be bound by its terms.

/Signatures on Following Pages/

CITY OF NAPERVILLE

Douglas A. Krieger
City Manager

ATTEST

Pam Gallahue, Ph.D.
City Clerk

DATE: _____

CITY OF GENEVA

Kevin R. Burns
Mayor

ATTEST

Roger Godskesen
City Clerk

DATE: _____