

## **PROPANE SUPPLY AGREEMENT & DISPENSING EQUIPMENT LEASE**

This Propane Supply Agreement and Dispensing (Equipment) Lease ("Agreement") is between AmeriGas Propane, L.P., (the "Company"), Address: 1030 N. Skokie Hwy., Gurnee, IL 60031 and the County of McHenry ("Customer") and will be in effect for an initial term of three (3) years from the date of execution, with an optional extension term(s) which shall run from year to year thereafter.. This contract may be terminated pursuant to the terms contained in this Agreement.

Customer: County of McHenry  
Address: 2200 N. Seminary Avenue, Woodstock, IL 60098  
Phone: 815-334-4818  
Fax: 815-334-4680  
Primary Contact: Mr. Donald A. Gray, CPPB Director of Purchasing  
Email: dagray@co.mchenry.il.us

### **TERMS & CONDITIONS**

1. Equipment. The Company agrees to install and to lease to Customer at Customer's delivery address the propane dispensing unit and related equipment listed in Attachment B (the "Equipment"). The Equipment making up the dispensing unit together with all replacements, repairs, substitutions, additions and accessories (collectively referred to as "Equipment") will be of size, make and model that Company, in its sole judgment, deems necessary and appropriate for Customer's business operation. Customer shall be liable for all loss of and damage to the Equipment while in Customer's possession, normal wear and tear excepted. Customer will promptly surrender, at Company's expense to the Company all of the Equipment when this Agreement is terminated for any reason. Any Equipment that is lost or damaged during the term or is not surrendered at the end of this Agreement will be billed to Customer at replacement cost. Customer authorizes the Company to replace its Equipment at any time with no changes in the obligations of this Agreement.

2. Propane Supply. Customer will purchase from the Company all of the propane Customer requires for use at Customer's premises, or the delivery address listed above, during the term of this Agreement. FOR SAFETY AND OTHER REASONS, CUSTOMER AGREES THAT ONLY PROPANE SOLD BY THE COMPANY SHALL BE USED WITH THE EQUIPMENT.

3. Services to be Performed by Customer. Customer will provide a suitable location for the Equipment and will be responsible for the payment for any and all required Crash Protection, Electrical Supply to the Equipment, Pad Preparation if required and/or fire safety devices as mandated by the National Fire Protection Association Pamphlet 58, the local authority having jurisdiction and any and all state or local laws, rules, regulations and/or ordinances. All service performed by Customer shall be done in a neat and workmanlike manner and in compliance with all federal, state and local laws, statutes, rules and regulations/ordinances, as well

as all applicable safety codes, standards and regulations, and must meet the Company's reasonable satisfaction. Notwithstanding the foregoing, Company will provide certain installation services and pay for all necessary state and local permits subject to the terms and conditions in the attached quote and applicable early termination fees.

4. Fees, Pricing and Charges. A) Propane Pricing – Customer agrees to pay the Company's applicable non-refundable prices in effect on the date that propane or Equipment is delivered or services are rendered. Pricing structure is outlined in Attachment A.

Customer will pay rent to Company in the amount of \_\$0.00\_\_ per month for the use of the Equipment. Customer agrees to pay any taxes and licenses, or inspection fees associated with the sale or use of the propane and the Equipment covered by this Agreement.

#### 5. Payment Terms.

Propane: Customer agrees to pay all fees, rates, and charges required by this Agreement within thirty days after the invoice date or on the due date, whichever is later, to the Company at the following address (AmeriGas, P.O. Box 0371473, Pittsburgh, PA 15250-7473. Customer will receive a Monthly Consolidated Invoice for all propane deliveries. Where permitted by law, Customer agrees that Company may send Customer an invoice instead of a delivery ticket. If Customer fails to pay any fees, rates, or charges within 60 days after the invoice or due date, Company may, unless prohibited by law, add a monthly late charge of one and one-half percent of the average daily balance or a late charge of \$36.00, whichever is greater. Company reserves the right to require Customer to pay for propane deliveries or services in advance or to post a cash deposit, which may be applied by Company at any time in whole or in part to the outstanding balance. If Customer receives a delivery ticket or service/work order and is billed-on-the-road, Customer agrees to pay within ten days of the delivery or service.

Conversion Kits: 50% of the Conversion Kit fee is due upon the order placement. The remaining 50% is due net 10 days from receipt of the completed order.

Mechanic Training: Payment is due net 10 days from the completion of the training.

6. Title to Equipment. All Equipment leased by the Company to Customer will remain the property of the Company and shall not become a fixture or a part of Customer's real property. Customer will not, nor will it allow anyone other than Company, to pump-out or make any adjustments, connections or disconnections to the Equipment or remove the Equipment without written permission from the Company. Customer shall notify the Company immediately if the Equipment is damaged, appears defective, malfunctions or if Customer experiences any problems with the Equipment.

7. Access to Equipment. The Dispensing Equipment must be secured at all times to prevent the unauthorized use of the Equipment. Customer grants the Company the irrevocable right to enter Customer's premises at any time to deliver propane or to install, repair, service or remove any or all of the Equipment, or to perform any other services that the Company deems necessary under this Agreement, without prior notice, judgment or other process of law. Customer agrees to provide safe and unimpeded access to the Dispensing Equipment,

including but not limited to access that is free of ice, snow, water, mud, debris and other hazards. -Customer acknowledges that failure to ensure safe and unimpeded access to the Equipment may cause an interruption in service. The Customer agrees that the Company shall have no obligation to contact Customer to request access to the Equipment, but instead may suspend service until Customer has provided access as required by this Agreement. Customer agrees to promptly surrender to the Company the leased Equipment when Customer terminates the Agreement for any reason.

8. Disclaimer of Warranties. TO THE EXTENT PERMITTED BY APPLICABLE STATE LAW, THE COMPANY DISCLAIMS ALL REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO ANY PROPANE, EQUIPMENT OR SERVICE NOW OR HEREAFTER SUPPLIED PURSUANT TO THIS AGREEMENT, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

9. Limitation of Liability. UNDER NO CIRCUMSTANCES SHALL THE COMPANY BE LIABLE FOR INCIDENTAL CONSEQUENTIAL OR SPECIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS AND BUSINESS INTERRUPTION DAMAGES. THIS LIMITATION SHALL APPLY REGARDLESS OF WHETHER A CLAIM OR REMEDY IS SOUGHT IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE. THE COMPANY IS NOT LIABLE FOR ANY LOSS SUSTAINED BY CUSTOMER AS A RESULT OF THE TEMPORARY EXHAUSTION OF CUSTOMER'S SUPPLY OF PROPANE.

10. Indemnification. Customer agrees to indemnify, defend and hold Company harmless from and against any and all claims, liens, demands, suits, damages and liabilities for personal injuries and/or property damage, arising out of or caused by any negligent act or omission on the part of Customer, its agents or employees.

11. Hold Harmless Clause: The Company agrees to indemnify, save harmless and defend the County of McHenry, their agents, servants, and employees, and each of them against and hold them harmless from any and all lawsuits, claims, demands, liabilities, losses and expenses, including court costs and attorney's fees, for or on account of any injury to any person, or any death at any time resulting from such injury, or any damage to property, which may arise or which may be alleged to have arisen out of or in connection with the work covered by this contract. The foregoing indemnity shall apply except if such injury, death or damage is caused directly by the willful or wanton conduct of the County of McHenry, their agents, servants, or employees or any other person indemnified hereunder.

12. Insurance. The Company, at its sole expense, will comply with the Insurance Requirements outlined in the County of McHenry Request for Proposal RFP # 14-17 dated January 17, 2014 and summarized below:

Commercial General Liability in a broad form, to include, but not limited to, coverage for the following where exposure exists: Bodily Injury and Property Damage, Premises/Operations, Independent Vendors, Products/Completed Operations, Personal Injury and Contractual Liability;

limits of liability not less than: \$500,000 per occurrence and \$1,000,000 in the aggregate;

Business Auto Liability to include, but not be limited to, coverage for the following where exposure exists: Owned Vehicles, Hired and Non-Owned Vehicles and Employee Non-Ownership; limits of liability not less than:

\$1,000,000 per occurrence combined single limit for: Bodily Injury Liability and Property Damage Liability;

Workers' Compensation Insurance to cover all employees and meet statutory limits in compliance with applicable state and federal laws. The coverage must also include Employer's Liability with minimum limits of \$100,000 for each incident.

Professional Liability Insurance with \$1,000,000 per occurrence and \$1,000,000 in aggregate.

Company agrees that with respect to the above-required insurance that County shall be provided with Certificates of Insurance evidencing the above required insurance, prior to commencement of the Agreement and thereafter with certificates evidencing renewals or replacements of said policies of insurance at least fifteen (15) days prior to the expiration or cancellation of any such policies. The contractual liability arising out of the Agreement shall be acknowledged on the Certificate of Insurance by the insurance company.

In addition to being named as an additional insured on the Certificate of Insurance, each liability policy shall contain an endorsement naming County as an additional insured. A copy of the endorsement shall be provided to County along with the Certificate of Insurance.

County shall be named as an additional insured and the address for certificate holder must read exactly as:

County of McHenry, a body politic  
2200 N. Seminary Avenue  
Woodstock, IL 60098

Insurance Notices and Certificates of Insurance shall be provided to:

McHenry County, Purchasing Department  
2200 N. Seminary Avenue, Room 200  
Woodstock, Illinois 60098

Customer will maintain   -comprehensive general liability insurance in the amount not less than \$1,000,000 combined single limits, naming Company as an additional

insured. Customer will maintain worker's compensation coverage in the amount required by law.

Customer shall furnish a certificate of insurance to Company evidencing all required coverage's and Company's status as an additional insured. All such policies of insurance shall provide the insurance coverage thereunder shall not be reduced or cancelled or otherwise changed prior to the 30th day following the delivery by the insurer of a written notice of such action to the Customer and Company. . The failure by Company to request proof of such insurance shall not constitute a waiver of Customer's obligation to maintain such insurance.

The Company will comply with the Insurance Requirements outlined in the County of McHenry Request for Proposal RFP # 14-17 dated January 17, 2014.

13. Termination. Either party may terminate this Agreement at the expiration of the initial term, or any anniversary thereof, by giving the other party at least sixty (60) days prior written notice. The Company may terminate this Agreement at any time and without prior notice or take such other action as may be permitted by law if Customer fails to satisfy any of the terms and conditions of this Agreement or if there are safety concerns that cannot be remedied after consultation between the parties. At the termination of the Agreement, Customer agrees to promptly pay all outstanding installation, propane, rental, late charges and other amounts due to the Company. If the Company files suit and prevails against

Customer to enforce any of the terms and conditions of this Agreement, or to recover possession of any of its Equipment, Customer shall pay the Company's reasonable costs, including all of the Company's attorneys' fees, to the maximum extent permitted by law. The foregoing shall be in addition to all other remedies that Company shall have either at law or in equity.

14. Non-Appropriation of funds. This Agreement is made subject to available budgetary appropriations and shall not create any obligation on behalf of the County in excess of such appropriations. In the event that no funds or insufficient funds are appropriated and budgeted, this Agreement shall terminate without penalty or expense to the County thirty (30) days after written notification of termination from the County.

15. Termination by County. Pursuant to requirements imposed under Illinois law, the County shall have 120 days after each election of county board members to terminate this Agreement, without cause and without penalty.

16. Excused Performance. The Company shall not be responsible for any delay or damages caused by events or circumstances beyond its reasonable control, including without limitation, acts of God, fires, storms, floods, wars, hostilities, terrorism, compliance with laws or regulations, the Company's inability to obtain propane from its

customary suppliers, terminal, refinery or pipeline disruptions, allocation programs, lack of or inadequate transportation facilities, or other similar causes.

Under any of these circumstances, the Company may in its sole discretion allocate propane and equipment among its customers.

17. Restoration of Property. Customer acknowledges that installing, servicing or removing propane service can result in disruption to the Customer's property and grounds. Customer also releases Company from any responsibility for resurfacing or restoring its Premises unless Company is grossly or intentionally negligent.

18. Assignability. Customer may not assign this Agreement without the prior written consent of the Company. The Company may not assign or pledge this Agreement as collateral without notice to or written consent of Customer, which will not be unreasonably withheld.

19. Training. Customer will properly train each of its employees who handle propane or use the Equipment as to how to safely use propane and propane equipment and fill cylinders. Customer will not allow anyone to handle or use the Equipment unless and until that individual has been properly trained to do so. It is Customer's responsibility to provide Company with written notice if Customer, or any of its employees or agents, need additional training in order to comply with this provision. If Customer fails to comply with any portion of this provision, then Customer agrees it shall be solely responsible for any and all injuries or damages that result, and Customer will indemnify, defend and hold Company harmless from all claims, suits, demands and judgments, including those claims brought by Customer's employees or agents.

20. Modifying the Agreement. This Agreement is the final understanding between the parties and may not be modified orally. Any modification to this Agreement must be in writing and agreed to by both parties.

21. Arbitration/Claims. Intentionally omitted.

22. Severability. If any part of this Agreement is determined to be invalid or unenforceable, the remainder of this Agreement will continue to be valid and enforceable.

23. Notice. Any notice by Customer under this Agreement shall be sent by U.S. mail, postage prepaid, to the Company at the address of the Company shown on invoices received by Customer. Notice to Customer may be in the form of a bill insert, stand-alone mailing, or other written notification.

24. Waiver. If the Company delays in exercising any of its rights under this Agreement, the Company will not be prevented from exercising its rights at a later date. The Company's waiver of any breach of this Agreement at any time shall not excuse future breaches by Customer.

25. Authority to Sign. The undersigned individuals warrant that each is a representative of his or her respective party and has been duly authorized and empowered to execute this Agreement on behalf of the party they represent.

26. Survival. All covenants, conditions and indemnification contained in this Agreement which may involve performance subsequent to any termination of this Agreement, or which cannot be ascertained or fully performed until after termination of this Agreement, shall survive.

27. Warnings. Customer hereby acknowledges that Customer has read and understands the safety warnings it has received. Customer shall distribute a copy of

the safety warnings to anyone who will be handling propane or Equipment or filling cylinders or other propane containers. Company's safety warnings are also contained on its website and we strongly advise Customer to regularly visit our website to view those important safety warnings.

28. Governing Law. This Agreement shall be interpreted, construed and enforced in accordance with laws of the State of Illinois. Venue for any action arising out of this Agreement shall be in the 22<sup>nd</sup> Judicial Circuit, McHenry County, Illinois.. The language of this Agreement shall in all cases be construed as a whole according to its fair meaning and shall not be strictly construed for or against either party.

CUSTOMER

AMERIGAS PROPANE, L.P.

By: AmeriGas Propane, Inc., its general partner

BY: \_\_\_\_\_

BY: \_\_\_\_\_

Print Name: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_