

ORDINANCE NO. 18-O-0038

AN ORDINANCE ADDING A NEW ARTICLE TO CHAPTER 9, LICENSES, PERMITS AND BUSINESS REGULATIONS, OF THE WEST CHICAGO CODE OF ORDINANCES – CHAPTER 9, ARTICLE XII - RELOCATORS AND REPOSSESSORS

WHEREAS, the City of West Chicago (hereinafter referred to as “City”) is a body politic and corporate, organized and existing pursuant to the Illinois Municipal Code, 65 ILCS 5/1-1-1 *et seq.*; and

WHEREAS, the City is authorized and empowered, under the Illinois Municipal Code, 65 ILCS 5/11-20-5 to regulate for the public health; and

WHEREAS, the City is authorized, pursuant to its police power, 65 ILCS 5/11-1-1, to carry out the powers delegated to it under its grants of authority.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Council of the City of West Chicago, DuPage County, Illinois, as follows:

Section 1: That Chapter 9, LICENSES, PERMITS AND BUSINESS REGULATIONS, of the Code of Ordinances of the City of West Chicago be amended to add Article XII. – RELOCATORS AND REPOSSESSORS.

Section 2: That the following Sections 9-231 through 9-241, inclusive, of the Code of Ordinances of the City of West Chicago are hereby added as follows:

“ARTICLE XII. RELOCATORS AND REPOSSESSORS

Sec. 9-231. - Definitions.

For the purposes of this article, the following words shall have the meanings indicated unless their context clearly requires otherwise:

Commission: Illinois Commerce Commission.

Collateral: Any motor vehicle, boat, recreational vehicle, motor home, motorcycle or other property that is subject to a security, lease or rental agreement.

Dispatcher: Any person who, as an employee or agent of a relocater or repossession agency, dispatches vehicles for operators who perform removal activities.

Operator: Any person who, as an employee of a relocater or reposessor, removes trespassing vehicles from private property by means of towing or otherwise recovers vehicles for collateral. This term includes the driver of any vehicle used in removing a trespassing vehicle from private property as well as any person other than the driver who assists in the removal of a trespassing vehicle from private property.

Owner: A person to whom title to equipment has been issued or who, without title, has the right to exclusive use of equipment, for a period longer than 30 days, or who has lawful

possession of equipment, registered and licensed in any state in the name of that person.

Relocator: Any person or entity engaged in the business of removing trespassing vehicles from private property by means of towing or otherwise, and thereafter relocating and storing such vehicles.

Repossessor: Any person or entity conducting business, or an employee of the business, who, for any type of consideration, engages in the business of, accepts employment, or agrees to provide collateral vehicle recovery.

Sec. 9-232. - Declaration of City policy.

It is hereby declared to be the policy of the city to regulate the collateral recovery of vehicles and removal of trespassing vehicles from private property and the subsequent relocation and storage of such vehicles in such manner as to fairly distribute rights and responsibilities among vehicle owners, private property owners and relocators and repossessors. For this purpose, the city's regulations herein are for the purpose of complementing and supplementing the regulatory process of the Commission pursuant to 225 ILCS 422 and 625 ILCS 5/18a-100 et seq., and any amendments thereto, and its enforcement efforts thereunder. The laws and regulations adopted hereunder are adopted pursuant to the home rule authority of the city as well as the express authority conferred by the state legislature on local units of government pursuant to 225 ILCS 422 and 625 ILCS 5/18a-100 et seq.

Sec. 9-233. - Towing performed pursuant to police order.

Nothing contained in this article shall be construed to regulate or otherwise affect towing performed by any relocator pursuant to the order of a law enforcement official or agency in accordance with 625 ILCS 5/4-201 through 5/4-204 of the Illinois Vehicle Code.

Sec. 9-234. - General powers and duties of the City Administrator.

The Administrator or his designee shall:

- (1) Regulate relocators and repossessors and their employees or agents in accordance with this article and to that end, may establish reasonable requirements with respect to proper service and practices relating thereto;
- (2) Require the maintenance of a uniform systems of accounts, and records and their preservation;
- (3) Require all drivers and other personnel used in relocation and repossession to be employees of a relocator or repossessor;
- (4) Issue permits to relocators and repossessors in accordance with the requirements of this article; and
- (5) Upon receiving a verified complaint in writing by any person, organization or body politic, or upon its own initiative, may investigate whether any relocator, repossessor, operator, dispatcher or person otherwise required to comply with any provision of this article or any rule promulgated hereunder has failed to comply with any such provision or rule.

Sec. 9-235. - Relocators – unlawful practices.

It shall be unlawful for any relocator to:

- (1) Relocate vehicles from authorized spaces. No vehicle shall be relocated if it is parked in a space on private property where it is authorized to be parked.
- (2) Relocate vehicles from private property without authorization from a property owner. No vehicle shall be relocated from private property without express, written authorization from the property owner, lessee or agent. The authorization must either direct the relocator to remove the specific vehicle in question or authorize the relocator to remove all unauthorized vehicles from the property.
- (3) Relocate vehicles not in accordance with proper posting. No vehicle shall be relocated from a lot which does not, at the time of the tow and for at least twenty-four (24) hours prior thereto, have signs posted in compliance with this article. Furthermore, no vehicle shall be relocated to a storage lot or facility that is not identified on signs posted in compliance with this article at the location from which the vehicle is relocated. No vehicle shall be relocated and/or stored even temporarily at any other location than the location advertised on the relocator's sign. Once a vehicle is picked up from private property it must be towed immediately to the storage lot or facility that is identified on the sign posted on the private property. No vehicle shall be subsequently transported to any other lot or facility.
- (4) Relocate vehicles where the owner of the vehicle or the owner's agent is present or arrives on scene before the vehicle is completely removed from the private property, produces the ignition key to the vehicle, and the owner or agent is able and does immediately remove the vehicle from the private property.
- (5) Engage in the removal of a commercial motor vehicle that requires a commercial driver's license to operate, as required under 625 ILCS 5/6-500 et seq, if the operator does not have the appropriate driver's license classification.
- (6) Transact any part of its business at any location until after the relocator has obtained and remitted payment for a permit from the city, through its police department. The city is authorized to establish an electronic method for relocators to obtain a permit online using the internet.
- (7) Post signs at locations where the relocator is not authorized to operate or tow beyond a maximum distance. No relocator shall remove any vehicle otherwise in accordance with this article more than ten (10) air miles from its location when towed nor shall it post a sign at a location more than ten (10) air miles from the storage lot to which the relocator can relocate vehicles.
- (8) Relocate vehicles unless the relocation lot is open during certain prescribed hours. No vehicle shall be relocated to a lot which is not open to allow the vehicle owner to retrieve the vehicle within two (2) hours following the tow.

Sec. 9-236. - Relocators – Prerequisites to operating within the City.

It shall be unlawful for any relocator to:

- (1) Employ as an operator or otherwise use the services of any person who has not been duly licensed by the Commission and the Illinois Secretary of State pursuant to the applicable laws, rules and regulations.
- (2) Operate a business other than in conformance with the laws of the Commission and the rules and regulations adopted thereunder.
- (3) Operate any towing vehicle which does not carry a copy of 625 ILCS 5/18A of the Illinois Vehicle Code, a copy of this article of the City Code of Ordinances and sufficient copies of the Commission complaint form. All documents shall be made available to any complainant at his request in the event of a dispute regarding vehicle relocation.
- (4) Operate any vehicle which has not passed a safety test as required in 625 ILCS 5/13-101.
- (5) Operate any vehicle which does not have the proper identification, equipment and insurance for that vehicle.
- (6) Relocate any vehicle prior to obtaining and remitting payment for an online permit, using the internet. This permit must be displayed in either paper or electronic form to any police officer upon request. The city will establish the form and determine the content of the online permit.
- (7) Relocate a vehicle unless the operator has a valid operator's permit issued from the Commission. Each vehicle operator under authority of a rellocator's license must carry a copy of the license in its cab. The copy shall be presented to any investigator or enforcement officer of the Commission on request.

Sec. 9-237. - Relocators – responsibilities.

A relocator must:

- (1) Notify the City prior to such removal by purchasing a permit as described in 9-236-(6). Notification shall include, but is not limited to, a complete description of the vehicle, including the year, make, model vehicle identification number (VIN) and state license plate number, the registration numbers, the locations from which and to which the vehicle is to be removed and taken and the time of removal and any other information required by state or local regulations, statute or ordinance.
- (2) Make a telephone number available to the city at which the relocator or an employer of the relocator may be contacted at any time, twenty-four (24) hours each day. This phone number shall be advertised for the purpose of effectuating the release of a towed vehicle. The relocator must have an employee available at all times on the premises owned or controlled by the relocator for the purposes of arranging for the immediate release of the vehicle.

- (3) Accept certain types of compensation:
 - a. Except as provided in subsection (b) below, no relocator shall demand, collect or receive anything of value or compensation in relation to its relocation business;
 - b. From the property owner, lessee or their agents or from any person other than the owner or owner's agent of the relocated vehicle, except according to terms in the contract entered into between the property owner or lessee and the relocator;
 - c. From the vehicle owner, lessee or their agents:
 - i. Greater than the amount posted on the signs on the private property from which the vehicle was relocated;
 - ii. Greater than or other than the rates prescribed by the Commission; or
 - iii. Where the relocation was not performed in compliance with the law and in this article.
- (4) Release the vehicle provided payment is either in cash or through a valid major credit card, including, but not limited to, VISA, American Express, Discovery or MasterCard

Sec. 9-238. - Relocators - posting of signs; sign specifications.

- (1) *Generally.* It shall be unlawful for an owner or other person in lawful possession or control of private property to remove, or employ a relocator to remove, an unauthorized vehicle from such property unless written notice is provided pursuant to the administrative rules of the Commission. Such notice shall consist of a sign posted in a conspicuous place in the affected area of a size and content as required by the Commission. Such sign shall state the amount of the towing charges to which the person parking may be subject. Such signs must be posted at least twenty-four (24) hours before any vehicle is relocated from the lot.
- (2) *Application to residential property.* No express notice shall be required under this section upon residential property which, paying due regard to the circumstances in the surrounding area, is clearly reserved or intended exclusively for the use or occupation of residents or their vehicles.
- (3) *Sign specifications:*
 - a. Those portions of the sign warning that unauthorized vehicles will be relocated must be formatted in accordance with the administrative rules of the Commission.
 - b. Each sign must contain:

- i. A warning that unauthorized vehicles will be relocated;
 - ii. The full legal name of the relocator as it appears on the relocator's license, the address and telephone number of the relocator, and the address and telephone number of the location to which the vehicle will be relocated and at which it can be reclaimed, if different from the address of the relocator;
 - iii. The maximum fee which the relocator will charge the vehicle's owner or owner's agent as a condition of reclaiming the vehicle, and any restrictions on the form of payment which will be accepted by the relocator, provided that no sign shall indicate a restriction on the form of acceptable payment that is contrary to section 9-237(4);
 - iv. The hours during which the owner or owner's agent can reclaim the vehicle, and when the relocator is closed to the public due to observation of holidays or otherwise. To the extent that a sign does not show limitation on hours or days when the vehicle can be reclaimed, the sign shall constitute a representation that the vehicle can be reclaimed at any time or on any day. No sign shall include hours of doing business contrary to the restrictions contained in section 9-235(8).
- c. Such signs must be visible and readable from all entrances and exits, both during the day and at night, free of any natural or man-made interference.
 - d. No more than one (1) location where the vehicle may be relocated shall be identified on any posted sign at any lot from where the vehicle was relocated.

Sec. 9-239. - Repossessors- unlawful practice.

It shall be unlawful for any reposessor:

- (1) To repossess a vehicle prior to obtaining a valid permit issued by the city.
- (2) To violate any other provision of this article, Commission regulations or orders adopted under this article or pursuant to 225 ILCS 422 et.seq.
- (3) No reposessor may remove a vehicle from private property where trespassing signs have been erected prohibiting a reposessor from entering and remaining on the property.

Sec. 9-240 – Permit Fee

The fee to be paid by the applicant at the time of issuance of the permit shall be as prescribed in Appendix G.

Sec. 9-241. - Penalties

In addition to any other relief granted by the courts or the Administrative Law Judge, any relocater, reposessor, operator, dispatcher or employee of a relocater or reposessor who violates any of the provisions of this section shall be subject to a fine per section 1-8, general penalty, of this Code.

Secs. 9-242—9-250. – Reserved.”

Section 2. That Section 2.1 of Appendix G of the Code of Ordinances of the City of West Chicago is hereby amended to add the following language:

“Repossession of Relocation Fee (per vehicle).....\$15.00”

Section 4. That all ordinances and resolutions, or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

Section 5. That this Ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

PASSED this 16th day of July 2018.

Alderman J. Beifuss	_____	Alderman L. Chassee	_____
Alderman J. Sheahan	_____	Alderman H. Brown	_____
Alderman A. Hallett	_____	Alderman Ferguson	_____
Alderman Birch Ferguson	_____	Alderman S. Dimas	_____
Alderman K. Meissner	_____	Alderman M. Garling	_____
Alderman R. Stout	_____	Alderman G. Garcia	_____
Alderman N. Ligino-Kubinski	_____	Alderman B. Gagliardi	_____

APPROVED as to form: _____
City Attorney

ADOPTED this 16th day of July 2018.

Mayor Ruben Pineda

ATTEST:

City Clerk Nancy M. Smith

PUBLISHED: _____

CITY OF WEST CHICAGO

FINANCE COMMITTEE
AGENDA ITEM SUMMARY

ITEM TITLE:

Ordinance No. 18-O-0043 – Increasing the Natural Gas Use Tax

Resolution No. 18-R-0054 – Authorizing the City Administrator to Execute a Municipal Gas Use Tax Collection Agreement with Nicor

AGENDA ITEM NUMBER: 8.L+M.

FILE NUMBER: _____

COMMITTEE AGENDA DATE: 2/22/18 & 4/26/18

COUNCIL AGENDA DATE: 7/16/18

STAFF REVIEW:

SIGNATURE _____

APPROVED BY CITY ADMINISTRATOR:

SIGNATURE _____

ITEM SUMMARY:

This Ordinance is the last in a series of municipal adjustments to bridge the very large budget gap created by the State withholding money historically given to local governments.

The Ordinance increases the natural gas use tax from \$0.025/therm to \$0.035/therm, and becomes effective October 1, 2018.

STAFF RECOMMENDATION:

Consideration of Ordinance No. 18-O-0043 and Resolution No. 18-R-0054.

COMMITTEE RECOMMENDATION:

The Finance Committee unanimously recommended adoption of Ordinance No. 18-O-0043 and Resolution No. 18-R-0054.

ORDINANCE NO. 18-O-0043

AN ORDINANCE AMENDING THE CITY OF WEST CHICAGO'S "MUNICIPAL GAS USE TAX", CHAPTER 16, SECTION 16-77—16-78.

WHEREAS, the City of West Chicago is a home rule unit under subsection (a) of Section 6 of Article VII of the Illinois Constitution of 1970; and

WHEREAS, 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

WHEREAS, in furtherance of its home rule powers, it is necessary and desirable for the City of West Chicago to amend its ordinances regarding its municipal gas use tax.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST CHICAGO, ILLINOIS, IN REGULAR SESSION ASSEMBLED AS FOLLOWS:

SECTION 1. That Section 16-77 "Tax" of the Code of Ordinances of West Chicago (the "Code") be and is hereby amended to read in its entirety as follows:

Sec.16-77. - Tax

- (a) Except as otherwise provided by this article, a tax is imposed on the privilege of using or consuming gas in the city that is purchased in a sale at retail at the rate of (1) two and one-half cents (\$0.025) per therm with respect to all bills issued on or after November 1, 2004 through and including September 30, 2018 and (2) three and one-half cents (\$0.035) per therm with respect to all bills issued on or after October 1, 2018; provided, however, that any amounts due or payable for any tax periods ending prior to October 1, 2018 are nevertheless to remain payable as if the rate had not been increased for bills issued on or after October 1, 2018.

- (b) The ultimate incidence of and liability for payment of the tax is on the retail purchaser, and nothing in this article shall be construed to impose a tax on the occupation of distributing, supplying, furnishing, selling or transporting gas.
- (c) The retail purchaser shall pay the tax, measured by therms of gas delivered to the retail purchaser's premises, to the public utility designated to collect the tax pursuant to section 16-78 of this article on or before the payment due date of the public utility's bill first reflecting the tax, or directly to the city clerk on or before the fifteenth day of the second month following the month in which the gas is delivered to the retail purchaser if no public utility has been designated to collect the tax pursuant to section 16-78 or if the gas is delivered by a person other than a public utility so designated.
- (d) Nothing in this article shall be construed to impose a tax upon any person, business or activity which, under the constitutions of the United States or State of Illinois, may not be made the subject of taxation by the city.
- (e) A person who purchases gas for resale and therefore does not pay the tax imposed by this article with respect to the use or consumption of the gas, but who later uses or consumes part or all of the gas, shall pay the tax directly to the city clerk on or before the fifteenth day of the second month following the month in which the gas is used or consumed.
- (f) The tax shall apply to gas for which the delivery to the retail purchaser is billed by a public utility on or after November 1, 2004.
- (g) If it shall appear that an amount of tax has been paid which was not due under the provisions of this article, whether as a result of mistake of fact or an error of law,

then such amount shall be (i) credited against any tax due, or to become due, under this article from the taxpayer who made the erroneous payment or (ii) subject to a refund if no such tax is due or to become due; provided that no amounts erroneously paid more than three (3) years prior to the filing of a claim therefore shall be so credited or refunded.

- (h) No action to recover any amount of tax due under the provisions of this article shall be commenced more than three (3) years after the due date of such amount.
- (i) Reserved.

SECTION 2. That Section 16-78 “Collection of Tax” of the Code, be and is hereby amended to read in its entirety as follows:

Sec. 16-78. - Collection of tax.

The director of administrative services is authorized to enter into a contract for collection of the tax imposed by this article with any public utility providing gas service in the City. The contract shall include and substantially conform with the following provisions:

- (1) the public utility will collect the tax from Retail Purchasers as an independent contractor;
- (2) the public utility will remit collected taxes to the city clerk no more often than once each month;
- (3) the public utility will be entitled to withhold from tax collections a service fee equal to 3% of the amounts collected and timely remitted to the city clerk;

(4) the public utility shall not be responsible to the city for any tax not actually collected from a retail purchaser; and

(5) such additional terms as the parties may agree upon.

SECTION 3. This Ordinance shall be in full force and effect, and shall be controlling, upon its passage and approval and publication in pamphlet form as provided by law.

SECTION 4. All ordinances or parts of ordinances thereof in conflict with this ordinance are hereby repealed to the extent of any such conflict.

SECTION 5. Any section or provision of this ordinance that is construed to be invalid or void shall not affect the remaining sections or provisions which shall remain in full force and effect thereafter.

PASSED this ____ day of _____, 2018

Alderman J. Beifuss	_____	Alderman L. Chassee	_____
Alderman J. Sheahan	_____	Alderman H. Brown	_____
Alderman A. Hallett	_____	Alderman Ferguson	_____
Alderman Birch Ferguson	_____	Alderman S. Dimas	_____
Alderman K. Meissner	_____	Vacant – Ward 5	_____
Alderman R. Stout	_____	Alderman G. Garcia	_____
Alderman N. Ligino-Kubinski	_____	Alderman B. Gagliardi	_____

APPROVED as to form: _____
Patrick K. Bond, City Attorney

APPROVED this ____ day of _____, 2018.

Mayor Ruben Pineda

ATTEST:

City Clerk Nancy M. Smith

PUBLISHED: _____

RESOLUTION NO. 18-R-0054

A RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A MUNICIPAL GAS USE TAX COLLECTION AGREEMENT WITH THE NORTHERN ILLINOIS GAS COMPANY

BE IT RESOLVED by the City Council of the City of West Chicago, in regular session assembled, that the City Administrator is hereby authorized to execute a Municipal Gas Use Tax Collection Agreement Between the City of West Chicago and the Northern Illinois Gas Company (d/b/a Nicor Gas Company), in substantially the form attached hereto and incorporated herein as Exhibit "A".

APPROVED this 16th day of July, 2018.

AYES: _____

NAYES: _____

ABSTAIN: _____

ABSENT: _____

Mayor Ruben Pineda

ATTEST:

City Clerk Nancy M. Smith

Municipal Gas Use Tax Collection Agreement

between

the City of West Chicago, 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 [●] 1, 2018, by and between Northern Illinois Gas Company, d/b/a Nicor Gas Company, an Illinois corporation (the “Contractor”), and the City of West Chicago, Illinois (the “Municipality”), a municipal corporation and home rule unit of local government existing under the Illinois Constitution.

RECITALS

WHEREAS, on September 7, 2004, the Municipality adopted Ordinance No. 04-O-0094, which was subsequently amended by Ordinance No.18-O- 0043 adopted by the Municipality on July 16, 2018 (collectively, 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, the Municipality entered into an agreement with the Contractor to provide for the collection of the Tax dated [November 1, 2004] (the “Prior Agreement”); and

WHEREAS, the Municipality and the Contractor agree to terminate the Prior Agreement with respect to bills issued on or after October 1, 2018, and the Municipality and the Contractor now desire to enter into this Agreement; 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.

“Prior Agreement” has the meaning set forth in the Recitals to this Agreement.

“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 three and one-half cents (\$0.035) 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 October 1, 2018.

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