

**NATURAL GAS CO-OPERATIVE PURCHASING AGREEMENT**

**Pursuant to Article 5-G of the General Municipal Law**

This **NATURAL GAS CO-OPERATIVE PURCHASING AGREEMENT** (“**AGREEMENT**”) made this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ by and between the County of Erie, a municipal corporation of the State of New York, having its place of business at 95 Franklin Street, Buffalo, New York 14202 (hereinafter called the “**County**”); and

The \_\_\_\_\_ a municipal corporation of the State of New York, having its principal place of business at \_\_\_\_\_ (hereinafter called the “**Municipality**”).

**W I T N E S S E T H**

**WHEREAS**, both the County and the Municipality are municipal corporations as defined by Section 119-n of the General Municipal Law; and

**WHEREAS**, both the County and the Municipality wish to secure lower prices for natural gas purchases through aggregation of purchases in the open market; and

**WHEREAS**, the New York State Public Service Commission, through orders issued in Case 93-G-0932 has established rules for small customer aggregation services; and

**WHEREAS**, it is expected that joint purchase of natural gas by the County and the Municipality will result in lower prices than would otherwise be available to either party; and

**WHEREAS**, Article 5-G of the General Municipal Law authorizes municipal governments to contract to perform together that which each government is authorized to perform individually; and

**WHEREAS**, both the County and the Municipality are empowered to purchase natural gas by open public bid for their respective fuel needs; and

**WHEREAS**, the governing bodies of the County and of the Municipality have authorized a joint municipal contract for the purpose of joint purchase of natural gas for their respective governmental purposes.

**NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

1. The County and Municipality shall from time to time purchase natural gas for supply of fuel to public facilities of the County and the Municipality.
2. The County shall not bear any risk of financial loss from the transactions that it oversees, including, preparation of bid documents and the awarding of any bid under this Agreement. Although the County is the party responsible for letting all bids for natural gas, the parties agree the County does not take title to nor bear the risk of loss for any of the Municipality's natural gas under this Agreement and that all parties to the Agreement are solely responsible for their respective taxes that are imposed upon them by law.
3. Such purchases shall be by competitive bid consistent with Erie County Charter and Erie County Administrative Code and rules governing purchases made by the County and laws governing the Municipality.
4. After the initial bid, the County shall notify the Municipality in writing sixty (60) days prior to advertising for bids that such bids will be sought on a specified date, and request a nomination of the Municipality's natural gas needs for its governmental purposes to be included in the County bid. If the Municipality wishes to make revisions to its natural gas nominations, it shall notify the County no later than thirty (30) days prior to the date specified for advertisement for bids.
5. The County shall include the Municipality's nomination of natural gas needs in its advertisement for bids, and in its awarded contracts for the purchase of natural gas.
6. The Municipality's natural gas requirements shall be delivered by the County's contract supplier to the Utility city gate serving the Municipality.
7. The County will bill the Municipality for natural gas supply, including the County's administrative charge and delivery services provided by the Utility (i.e. National Fuel Gas). The County will bill the Municipality on a monthly basis, and the Municipality agrees to pay the County on a monthly basis,

for the cost of natural gas and the County's administrative fee and delivery services. The County will pay the Utility, and will bill the Municipality, for all delivery services provided and billed by the Utility. By entering this Agreement the Municipality acknowledges that it shall continue to be responsible to the Utility for all services provided by the Utility to the Municipality. The Utility shall be deemed a third-party beneficiary to this Agreement solely for the purpose of maintaining its right to recover payment from the Municipality for services provided by the Utility.

8. The Utility will read the Municipality's gas meter or meters monthly to calculate monthly use. The Utility may, in the alternative, calculate monthly use based upon an estimate. The Utility will then assess charges to the Municipality's account based upon the actual measured or estimated use and the County will use the Utility's reported usage to calculate the Municipality's monthly charge for natural gas as provided in paragraph 10, *infra*. The Municipality will make its gas meters available for reading and inspection by the Utility.
9. The County will contract, by request for proposal, as provided in section 19.08 of the Erie County Administrative Code, with a technical services provider to manage the apportionment of natural gas costs to each participating Municipality. The cost of such contractual services shall be apportioned to the Municipality as the amount of natural gas delivered to the Municipality, as adjusted for shrinkage and heat value as provided in paragraph 10, *infra*, divided by the total of all such natural gas purchased by the County.
10. Once each month, the County, through its Department of Public Works, will bill the Municipality, and the Municipality will pay the County, for its proportionate share of natural gas delivered to the Municipality's facilities through the Utility's delivery system. Bills will be based upon the Municipality's use of natural gas as metered by the Utility, and as adjusted for shrinkage and for value of heat by the technical services provider; plus the Municipality's proportionate cost of the administrative services provided by the County's contracted technical services provider; including all adjustments; plus the actual amount billed by the Utility for local natural gas transportation services to the Municipality's facilities.

11. The Municipality agrees to pay the County within thirty (30) days of the issue date of the monthly bill. The County shall be entitled to charge, and the Municipality shall pay, a late payment charge of 1.5% of the Municipality's outstanding balance for each month or part thereof during which the Municipality's account is in arrears.
12. This term of this Agreement shall commence on \_\_\_\_\_ (the "Commencement Date") and shall end on \_\_\_\_\_, a ten (10) year term. The Municipality shall have the option to renew this Agreement for one (1) additional ten (10) year term, upon the same terms and conditions as agreed upon in the original term. In order to exercise the renewal option, the Municipality shall provide written notice to the County at least one hundred twenty (120) days prior to the end of the original term.

Either party may terminate this Agreement upon sixty (60) days' written notice to the other, except that notice of termination and termination will not relieve either party of its obligation to purchase, deliver or receive natural gas contracted under any current contract awarded pursuant to a nomination for its governmental use prior to termination of this Agreement. The Municipality may terminate this Agreement by responding to a notice under paragraph 4 of this Agreement, requesting nominations of natural gas, by stating, at least thirty (30) days prior to Erie County's advertisement for bids for natural gas, that the Municipality's natural gas needs are "zero" (0).

13. The Municipality agrees to purchase its full nominations included in natural gas purchase contracts awarded by the County, subject to and reserving all rights contained in applicable Utility tariffs. In the event that a contracted natural gas supplier fails to deliver any natural gas under its contract with the County, through no fault of the County, the County shall not be liable to the Municipality in any fashion. In the event that a natural gas supplier under contract with the County shall deliver less than the full amount of natural gas necessary to fulfill the nominations awarded under such contract, through no fault of the County, the County shall not be held in any manner liable to the Municipality, but shall cause the Municipality's proportional share of natural gas to be delivered to the Municipality from the amount of natural gas delivered by such contractor.

14. The County and the Municipality agree to waive any requirement for filing of notice of claim with respect to any action arising out of the performance of this contract.
15. In the event that the Municipality shall be thirty (30) or more days delinquent in payment for gas delivered or for delivery services billed by the County, the County may, upon thirty (30) days' written notice to the Municipality and the Utility, terminate this Agreement with the Municipality.
16. The Erie County Energy Supply Disclosure Statement is attached hereto and incorporated herein as Schedule "A". The terms of Schedule A are supplemental to the Agreement set out herein. Wherever the terms of Schedule A are found to be contrary to or inconsistent with the terms of this Agreement, the terms of this Agreement will be deemed to prevail.
17. This Agreement shall be executory only to the extent that funds are appropriated to and made available for the purposes hereof, and neither the County nor the Municipality shall be made liable beyond such sums as are so appropriated and made available.
18. This Agreement may not be assigned in whole or in part by the County or the Municipality.
19. All required notices under this contract shall be directed as follows:

To the COUNTY:

County of Erie  
Commissioner of Public Works  
95 Franklin Street, 14<sup>th</sup> Floor  
Buffalo, New York 14202

To the MUNICIPALITY:

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20. This Agreement shall not be changed, amended or altered in any way except in a writing executed by both Parties.
21. Failure on the part of either Party to insist, in any one or more instances, upon strict performance of any term or condition herein contained shall not be deemed a waiver or relinquishment of such term or condition, but the same shall remain in full force and effect.
22. This Agreement shall be governed by and interpreted under the laws of the State of New York. The Parties agree that any action concerning the terms of this Agreement must be brought in the County of Erie, State of New York. The Parties hereby consent to the exclusive jurisdiction and venue of such courts, and agree to accept service of process pursuant to New York rules and procedures.
23. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which shall together constitute but one and the same instrument.

**[END TEXT]**

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their duly authorized officers and/or agents as of the day and year first set forth above.

**COUNTY OF ERIE**

**MUNICIPALITY**

By: \_\_\_\_\_  
Name: Mark C. Poloncarz/Maria Whyte  
Title: County Executive/Deputy County Executive  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

APPROVED AS TO CONTENT

By: \_\_\_\_\_  
Name: William Geary  
Title: Commissioner of Public Works

APPROVED AS TO FORM

By: \_\_\_\_\_  
Name: Kristen M. Walder  
Title: Assistant County Attorney  
Document No.: \_\_\_\_\_  
Date: \_\_\_\_\_

**SCHEDULE A**  
**ENERGY SUPPLY DISCLOSURE STATEMENT**



## **ENERGY SUPPLY DISCLOSURE STATEMENT**

This disclosure statement contains important information you need to know before you commit to natural gas or electricity service. The County of Erie, through its Department of Public Works, provides energy procurement services to county and other energy end user accounts. The County's purpose is to provide local government users the lowest cost alternative for reliable supplies of natural gas or electricity. This is accomplished by the joint purchasing of wholesale energy supplies and services and then disaggregating those supplies and services to participating municipal accounts. The County welcomes new local government accounts upon approval by the Erie County Legislature.

The County of Erie will provide energy procurement services of natural gas and/or electricity to local government facilities on an annual basis. The agreement may be terminated by notifying the County of cancellation sixty (60) days prior to the end of the term of the current year's contract or by designating your following year's nominations as "zero". All energy supplies will be provided to your facilities through the local utility's pipelines or wires.

The County shall not bear any risk of financial loss from the transactions that it oversees, including, preparation of bid documents and the awarding of any bid under this Agreement. Although the County is the party responsible for letting all bids for natural gas and electricity, the parties agree the County does not take title to nor bear the risk of loss for any of the Municipality's natural gas or electricity under this Agreement and that all parties to the Agreement are solely responsible for all applicable taxes imposed by law.

A local government is a county, town, city, village, school district, fire district, board of cooperative educational services, or Town or County Water or Sewer Districts within the State of New York. For the purpose of this Disclosure Statement, the term "local government" shall also include public authorities and public benefit corporations.

### **SERVICE ARRANGEMENTS**

#### **Natural Gas**

Natural gas supply will be provided to your facilities by the County of Erie on a cost per Decatherm (Dth) basis. This price shall be: (a) the County's weighted average commodity price for a given month; plus (b) a basis price; plus (c) an administrative fee not to exceed eight cents (\$0.08) per thousand cubic feet (Mcf). All applicable adjustments will also be included. The local natural gas utility will provide transportation of that natural gas at rates approved by the New York State Public Service Commission. The local natural gas utility is also required by law to serve you as a provider of last resort for natural gas supply.

#### **Electricity**

Electricity supply will be provided to your facilities on a cost per Kilowatt-hour (KWh) basis. This price shall be: (a) the County's weighted average commodity price for a given month; plus (b) an administrative fee not to exceed six hundredths of a cent (\$0.0006) per kWh. All applicable adjustments will also be included. The local electric utility will provide transmission and distribution of that electricity at rates approved by the New York State Public Service Commission. The local electrical utility is also required by law to serve as provider of last resort for electricity supply.

## **POLICIES**

The County of Erie's offices are located at 95 Franklin Street in the City of Buffalo, New York, 14202, and are open between the hours of 9:00 a.m. to 5:00 p.m., Monday through Friday, exclusive of legal holidays.

### **Bill Payment**

**For natural gas:** The County of Erie will bill for both natural gas supplied by the contract bidder, including the County's administrative fee and the local natural gas utility's delivery services to the local government's facilities. County of Erie bills will be rendered monthly and payment is due as indicated on the bill.

**For electricity:** The County of Erie will bill directly for electricity supply (consisting of the contract quantity and the electricity needs over and above the contract quantity) and the local electric utility will bill directly for its delivery services. County of Erie bills will be rendered monthly and the local electric utility's bills will be rendered per their normal practice.

The local electric and/or natural gas utility will read your meter monthly to calculate monthly usage. The local utility may, in the alternative, calculate monthly usage based upon an estimate. The utility will then assess charges to your account based upon the actual measured or estimated usages and the County of Erie will use the utility's reported usages to calculate your monthly charges for energy usage. You shall be responsible to provide access to your meter by the local utility's meter reader.

### **Complaint and Dispute Resolution**

If you have any complaints regarding your natural gas or electricity service or your monthly bill, please contact the Erie County Department of Public Works at (716) 858-8069. Until any dispute is resolved, you are obligated to pay any disputed invoice in full, with the exception of obvious errors. If the dispute cannot be resolved within forty-five (45) days, the matter may be submitted to a court of suitable jurisdiction within the County of Erie.

### **Amendment, Cancellation or Expiration of Agreement**

The County of Erie's agreement with its participants may be amended from time to time upon the approval of the Erie County Legislature and the governing body of the participating municipality. The County of Erie may terminate your contract upon thirty (30) days' written notice only for failure to pay as set out under the caption "Allocation of Partial Payments", below. Upon termination or cancellation of the Agreement, you may choose another provider of energy or have your local utility provide energy to you. The County of Erie will give you and your local utility a minimum of thirty (30) days' written notice prior to any termination of natural gas or electricity service.

### **Allocation of Partial Payments**

If you do not pay your monthly bill in full, the County of Erie will credit the amount received to your outstanding balance. Delinquencies of thirty (30) days or more may be cause for the County of Erie to terminate the Agreement upon thirty (30) days written notice. The County of Erie will charge a late payment penalty of 1.5% of the outstanding balance for each month that your account is in arrears. Cancellation or termination of the Agreement shall not relieve you of your obligation to pay for energy supplies and services provided under the Agreement. Cancellation or termination may not relieve you of

obligations to purchase or pay for denominated amounts of natural gas or electricity purchased under an existing contract entered into pursuant to an authorized bid. By signing the contract, the municipality waives any right to notice of claim for failure to pay under the contract.

### **Historic Billing Information**

Erie County will generally consider the billing information of a local government to be public information held by the County in the ordinary course of business and subject to public disclosure under the New York State Freedom of Information Law. The only exception shall be billing information concerning individual households receiving natural gas/electricity through a county department of social services. Such residential billing records shall be deemed confidential and available only to the contracting social services client or social services district, but not subject to public disclosure.

### **Calls for Service Problems**

If you become aware of a natural gas or electricity emergency condition or experience an unanticipated loss of natural gas or electricity service, you should contact your utility at:

National Fuel Gas Corporation: 1-800-365-3234  
New York State Electric & Gas: 1-800-572-1131  
National Grid: 1-800-642-4272

## **CUSTOMER'S RIGHTS AND OBLIGATIONS**

### **Amendment of Agreement or Change of Providers**

If you wish to terminate this agreement with the County of Erie and change energy providers, you must notify the County in writing at least thirty (30) days before the expiration date of supplier contracts. The County will notify your local utility of your change of energy supplier. Any such change of energy supplier must take place at a scheduled meter reading date; otherwise, there will be a meter reading charge as determined by your local utility.

If the County should terminate this agreement, your natural gas or electricity supply will be provided automatically by your local utility under its standard tariff unless, or until, you choose another supplier. Natural gas or electricity may be shut off by your local utility only under procedures approved by the Public Service Commission.

### **Third Party Notification**

You may direct that your bills be sent to a third party.

### **Department of Public Service Complaint Number**

The New York State Department of Public Service monitors complaints against energy service providers. An excessive number of complaints may result in an energy supply company no longer being allowed to supply energy. The Department of Public Service telephone number is 1-888-697-7728. You may write to the Department of Public Service at:

Office of Consumer Services  
New York State Public Service Commission  
Empire State Plaza  
Agency Building 3  
Albany, New York 12223-1350;  
or by e-mail at: [web.questions@dps.ny.gov](mailto:web.questions@dps.ny.gov)