

COUNCIL WORKSHOP ITEM

ITEM: Gas Use Tax Ordinance
DATE: April 2, 2003
PREPARED BY: Michael Baker, Asst. to the Village Manager
PURPOSE: Adoption of an Ordinance replacing the existing Natural Gas Utility Tax with the Gas Use Tax and approval of a Tax Collection Agreement between Nicor Gas Company and the Village of Downers Grove

DISCUSSION:

This item proposes the adoption of a Gas Use Tax, as authorized by State Statute, to replace the Village's existing Utility Tax for Natural Gas. The following background is provided to explain the current and proposed arrangements as well as the justification for adopting the Gas Use Tax.

Existing Utility Tax

The Village's existing utility tax, currently set at 2.3%, is applied to the gross receipts generated by the utility (Nicor) for sale and distribution of natural gas in Downers Grove. In FY2001-02, the utility tax generated a total of \$200,155, which was split 70%/30% between the General Fund and Capital Projects Fund.

Natural Gas Usage and Application of Utility Tax

As a result of the deregulation in this industry, Downers Grove gas customers have the option of purchasing natural gas from Nicor or from one of several out-of-state suppliers. Based on a report from Nicor, slightly more than half of the natural gas delivered to Downers Grove customers between December 2001 and November 2002 was sold by out-of-state suppliers. However, since the existing utility tax of 2.3% can only be applied to the revenues that Nicor generates directly, the Village is unable to recover tax revenue from the sale of gas by the out-of-state suppliers.

Nicor is responsible for the distribution of all natural gas to Village customers and, as such, all of the revenue that Nicor receives in the form of delivery charges is taxable at the 2.3% utility rate. The delivery charges make up approximately $\frac{1}{4}$ of a customer's bill, which means that $\frac{3}{4}$ of that bill received by customers who've selected an out-of-state supplier is not being taxed.

The Gas Use Tax

The Gas Use Tax is applied to the usage of gas, measured in therms, as opposed to the revenues generated from sale and distribution, and can apply to gas sold by both Nicor and out-of-state suppliers. As indicated in the attached chart, municipalities that have adopted the gas use tax charge between 0.60 cents and 2.50 cents per therm.

In considering adoption of the Gas Use Tax the Village was presented with two options: either to apply the Gas Use Tax only to natural gas sold by out-of-state suppliers (known as "Transportation Gas") and maintain the current Utility Tax, or to eliminate the utility tax and

apply the Gas Use Tax to natural gas sold by Nicor (known as “Sales Gas”) as well as out-of-state suppliers.

These options were fully discussed at the Finance Committee level, and the recommendation was made to bring the second option (replacing the utility tax with a use tax that applies to both sales and transportation gas) for consideration by the Village Council. The first option was discarded because it leaves a slight inequity in place, in that customers who purchased gas from out-of-state suppliers would still be paying the utility tax on the distribution of the gas, as well as the use tax on the consumption of gas. In addition, this option would have required staff to calibrate the two rates, since fluctuations in the cost of gas would disrupt any attempt to make the burden on both groups of customers comparable.

Effect of Gas Use Tax Implementation

This recommendation to adopt the Gas Use Tax would remove the tax on the amount of a customer’s bill and instead tax their natural gas consumption. The amount of tax a customer pays, therefore, would not be susceptible to fluctuations in the cost of natural gas. They would pay taxes based on the amount of natural gas they use. This option also allows all of the natural gas delivered to Downers Grove to be taxed at the same equitable rate and not just the gas sold and delivered by Nicor.

The attached analysis shows the projected revenues from the Gas Use Tax, as compared to the revenues generated by the utility tax at 2.3% and 3.5%. The 3.5% utility tax is equivalent to the 1.5 cents/therm proposed Gas Use Tax rate.

Agreement with Nicor for Collection of Tax

Collection and distribution of the Gas Use Tax will be administered by Nicor, provided that the Council adopts the attached agreement. This agreement will allow Nicor to retain 3% of the Gas Use Tax it collects as an administrative fee.

ATTACHMENT:

Ordinance replacing the existing Natural Gas Utility Tax with the Gas Use Tax
Tax Collection Agreement between Nicor Gas Company and the Village of Downers Grove
Illinois Municipalities that have adopted the Gas Use Tax
Revenue Analysis Spreadsheet

RECOMMENDATION:

Staff recommends that these items be placed on the active agenda for approval by the Village Council at its regular Meeting on April 15, 2003.

ORDINANCE NO. _____

AN ORDINANCE REPEALING THE DOWNERS GROVE MUNICIPAL UTILITY TAX AND ESTABLISHING A DOWNERS GROVE MUNICIPAL GAS USE TAX

WHEREAS, the Village of Downers Grove is a home rule unit under subsection (a) of Section 6 of Article VII of the Illinois Constitution of 1970; and

WHEREAS, subject to 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 Village of Downers Grove to amend its ordinances regarding taxation by repealing its municipal utility tax and creating a municipal gas use tax.

NOW, THEREFORE, BE IT ORDAINED by the Council of the Village of Downers Grove, in DuPage County, Illinois, as follows: (Additions are indicated by shading; deletions by ~~strikeout~~.)

SECTION 1. Effective, May 1, 2003, Chapter 21, Article VII of the Downers Grove Municipal Code is hereby amended as follows:

21-700ART. Article VII. Municipal ~~Utility~~Gas Use Tax

21-700SEC. ~~Definitions~~Short Title.

_____ For purposes of this Article, the following definitions shall apply:

_____ (1) "~~Gross receipts~~" means the consideration received for the transmission of messages, the consideration received for distributing, supplying, furnishing or selling gas for use or consumption and not for resale, and the consideration received for distributing, supplying, furnishing or selling electricity for use or consumption and not for resale, and for all services rendered in connection therewith valued in money, whether received in money or otherwise, including cash, credit, services and property of every kind and material and for all services rendered therewith, and shall be determined without any deduction on account of the cost of transmitting such messages, without any deduction on account of the cost of the service, product or commodity supplied, the cost of materials used, labor or service cost, or any other expenses whatsoever.

_____ (2) "Ordinance", except where other provisions are clearly intended, the term "Ordinance" as used in this Article shall mean Downers Grove Utility Tax Ordinance as set forth in Article VII, Sections 21-700, et seq. as now or hereafter amended.

~~———— (3) "Person" means any natural individual, firm, trust, estate, partnership, association, joint stock company, joint adventure, corporation, municipal corporation or political subdivision of this State, or a receiver, trustee, guardian or other representative appointed by order of any court.~~

~~———— (4) "Transmitting Messages", in addition to the usual and popular meaning of person to person communication, shall include the furnishing, for a consideration, of services or facilities (whether owned or leased), or both, to persons in connection with the transmission of messages where such persons do not, in turn, receive any consideration in connection therewith, but shall not include such furnishing of services or facilities to persons for the transmission of messages to the extent that any such services or facilities for the transmission of messages are furnished for a consideration, by such persons to other persons, for the transmission of messages.~~

~~———— (5) "Village" means the Village of Downers Grove.~~

The tax imposed by this Article shall be known as the "Municipal Gas Use Tax" and is imposed in addition to all other taxes imposed by the Village of Downers Grove, State of Illinois, or any other municipal corporation or political subdivision thereof.

21-701. Tax Imposed Definitions .

~~———— A tax to be known as the Downers Grove Utility Tax is imposed on all persons engaged in the following occupations or privileges:~~

~~———— (1) Persons engaged in the business of transmitting messages by means of electricity or radio magnetic waves, or fiber optics, at the rate of three and one-half percent (3.5%) of the gross receipts from such business originating within the corporate limits of the Village. Provided, the tax imposed under this Section shall not apply with respect to gross receipts pertaining to bills for telecommunications where the telecommunication activity is subject to the Telecommunications Tax imposed under Article VIII of this Chapter. In the event the Telecommunications Tax imposed by Section 21-802(1)(b) is declared unconstitutional or otherwise invalid, but the tax provided for in Section 21-802(1)(a) remains in full force and effect, the tax provided for pursuant to this Section on the business of transmitting messages as aforesaid, shall not be imposed.~~

~~———— (2) Persons engaged in the business of distributing, supplying, furnishing, or selling gas for use or consumption within the corporate limits of the Village, at the rate of two and three-tenths percent (2.3%) of the gross receipts therefrom.~~

~~———— (3) Persons engaged in the business of distributing, supplying, furnishing, or selling electricity for use or consumption within the corporate limits of the Village, at the rate of two and three-tenths percent (2.3%) of the gross receipts therefrom. Provided, the tax imposed under this Section shall not apply with respect to gross receipts pertaining to bills for the distribution, supply, furnishing or sale of electricity where the use or consumption of the electricity is subject to the Electricity Tax imposed under Article X.~~

For the purpose of this Article, the following definitions shall apply:

(1) "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.

(2) "Public Utilities Act" means the Public Utilities Act as amended, (220 ILCS 5/1-101 *et seq.*

(3) "Public Utility" means a public utility as defined in Section 3-105 of the Public Utilities Act. (1996).

(4) "Retail Purchaser" means any person who purchases gas in a Sale at Retail.

(5) "Sale at Retail" means any sale of gas by a retailer to a person for use or consumption, and not for resale. For this purpose, the term "retailer" means any person engaged in the business of distribution, supplying, furnishing or selling gas.

21-702. Interstate Exemption Tax.

~~—No tax is imposed by this Ordinance with respect to any transaction in interstate commerce or otherwise to the extent to which such business may not, under the constitution and statutes of the United States, be made the subject of taxation by this State or any political subdivision thereof; nor shall any persons engaged in the business of distributing, supplying, furnishing or selling gas, water or electricity, or engaged in the business of transmitting messages be subject to taxation under the provisions of this Ordinance for such transactions as are or may become subject to taxation under the provisions of the "Municipal Retailers' Occupation Tax Act" authorized by Section 8-11-1 of the Illinois Municipal Code.~~

(a) Except as otherwise provided by this Article, a tax is imposed on the privilege of using or consuming gas in the Village that is purchased in a Sale at Retail at the rate of 1.5 cents per therm.

(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 21-701 of this Article on or before the payment due date of the Public Utility's bill first reflecting the tax, or directly to the Village Treasurer 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 21-703 or if the gas is delivered by a person other than a Public Utility so designated.

(d) Reserved.

(e) A purchaser 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 all or part of the gas, shall pay the tax directly to the Village Treasurer 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 May 1, 2003.

21-703. Other Municipal Charges Collection of Tax.

~~—The taxes enumerated in this Ordinance shall be in addition to the payment of money, or value of products or services furnished to the Village by the taxpayer as compensation for the use of its streets, alleys, or other public places, or installation and maintenance therein, thereon or thereunder of poles, wires, pipes or other equipment used in the operation of the taxpayer's business.~~

(a) The Village Treasurer 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 Village. The contract shall include and substantially conform with the following provisions:

(1) the Public Utility will collect the tax with respect to gas delivered by it to its customers as an independent contractor;

(2) the Public Utility will remit collected taxes to the Village Treasurer no more often than once each month;

(3) the Public Utility will be entitled to withhold from tax collections a service fee not to exceed three percent (3%) of the amounts collected and timely remitted to the Village Treasurer.

(4) the Public Utility shall not be liable to the Village for any tax not actually collected from a Retail Purchaser; and

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

(b) A Public Utility designated to collect the tax imposed by this Article from its customers shall bill each customer for the tax on all gas delivered to the customers unless (i) the customer's use or consumption is exempt from the tax pursuant to a duly passed and authorized ordinance of the Village, or (ii) the Public Utility has received written notification from the Village that the customer is exempt from the tax.

21-704. Effective Date Books and Records .

~~———— This Ordinance shall take effect after publication and the tax provided for herein shall be based on the gross receipts, as herein defined, actually paid to the taxpayer for services billed on or after July 1, 1995.~~

Every taxpayer shall keep accurate books and records, including original source documents and books of entry, denoting the activities or transactions that gave rise, or may have given rise to any tax liability or exemption under this Article. All such books and records shall, at all times during business hours, be subject to and available for inspection by the Village.

21-705. Filing Dates; Method of Payment through 21-799. Reserved.

~~———— (1) On or before the last day of August, each taxpayer shall make a return to the Village Treasurer for the month of July stating:~~

- ~~———— (a) Taxpayer's name;~~
- ~~———— (b) Taxpayer's principal place of business;~~
- ~~———— (c) Taxpayer's gross receipts during that month upon the basis of which the tax is imposed.~~
- ~~———— (d) Amount of tax;~~
- ~~———— (e) Such other reasonable and related information as the corporate authorities may require.~~

~~———— (2) On or before the last day of every month thereafter, each taxpayer shall make a like return to the Village Treasurer for a corresponding preceding one month period.~~

~~———— (3) The taxpayer making the return herein provided for shall, at the time of making such return, pay to the Village Treasurer, the amount of tax herein imposed; provided that in connection with any return the taxpayer may, if he so elects, report and pay an amount based upon his total billings of business subject to the tax during the period for which the return is made (exclusive of any amount previously billed) with prompt adjustments of later payments based upon any differences between such billings and the taxable gross receipts.~~

21-706. Mistakes and errors:

~~———— If it shall appear that an amount of tax has been paid which was not due under the provisions of this Ordinance, whether as the result of a mistake of fact or an error of law, then such amount shall be credited against any tax due, or to become due, under this Ordinance from the taxpayer who made the erroneous payment; provided that no amounts erroneously paid more than three (3) years prior to the filing of a claim therefor shall be so credited. No action to recover any amount of tax due under the provisions of this Ordinance shall be commenced more than three (3) years after the due date of such amount. If a taxpayer under this Chapter is unable to use a credit authorized by this section solely because the tax imposed by this Chapter has been replaced by the tax imposed under Articles X or IX, then the taxpayer may apply such credit against any tax due under Articles X or IX.~~

21-707. Penalty:

~~———— Any taxpayer who fails to make a return, or who makes a fraudulent return, or who wilfully violates any other provision of this Ordinance is guilty of an offense and, upon conviction thereof, shall be fined not more than five hundred dollars (\$500) and in addition shall be liable in a civil action for the amount of tax due.~~

21-708. Severability:

~~———— If any provision of this Ordinance or the application thereof is held unconstitutional or otherwise invalid, such occurrence shall not affect other provisions of this Chapter, or their application, that can be given effect without the unconstitutional or invalid provision or its application. Each unconstitutional or invalid provision, or application of such provision, is severable, unless otherwise provided by this Chapter.~~

~~21-709. through 21-799. Reserved.~~

21-800SEC. Telecommunications Tax.

The telecommunications tax imposed by the following Sections of this Ordinance shall be known as the "Downers Grove Simplified Municipal Telecommunications Tax" and is imposed in addition to all other taxes imposed in this Chapter, or elsewhere in this Village, the State of Illinois or any other political subdivision thereof. ~~The Downers Grove Utility Tax found in Article VII, Sections 21-700, et seq. of the Downers Grove Municipal Code shall not apply to transactions or activities included in the Downers Grove Telecommunications Tax.~~

SECTION 2. This Ordinance shall be in full force and effect, and shall be controlling, upon its passage and approval, provided, however, that Section 1 of this Ordinance shall be effective as to gross receipts actually paid to the taxpayer for services billed on or after May 1, 2003, and provided further, however, that any amounts due or payable for any tax periods ending prior to May 1, 2003, are nevertheless to remain payable as if this Ordinance had not been adopted.

SECTION 3. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 4. That 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.

Mayor

Passed:

Published:

Attest: _____
Village Clerk

[utiltax]

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING EXECUTION OF A TAX COLLECTION AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE AND NORTHERN ILLINOIS GAS COMPANY D/B/A NICOR GAS COMPANY

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That the form and substance of a certain Agreement (the “Agreement”), between the Village of Downers Grove (the “Municipality”) and Northern Illinois Gas Company d/b/a Nicor Gas Company (the “Contractor”), for collection of municipal gas use taxes, as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Village Manager and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

Mayor

Passed:

Attest: _____
Village Clerk

Tax Collection Agreement
between
the Village of Downers Grove, Illinois
and
Northern Illinois Gas Company,
d/b/a Nicor Gas Company

TAX COLLECTION AGREEMENT

This Tax Collection Agreement (this "Agreement") is entered into as of this ___ day of _____, 2003, by and between Northern Illinois Gas Company, d/b/a Nicor Gas Company, an Illinois corporation (the "Contractor"), and the Village of Downers Grove, Illinois (the "Municipality"), a municipal corporation and home rule unit of local government existing under the Illinois Constitution.

RECITALS

WHEREAS, on _____, 2003, the Municipality adopted Ordinance No. _____ (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 Contractor represents and warrants that it has the resources and ability to collect the Tax on behalf of the Municipality and to perform such other related services as are required to perform its duties under 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, and the Contractor represents that it will perform in accordance with the terms and provisions set forth in this Agreement.

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:

“Agreement” means this 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 not on the Exempt Customer List who has an account with the Contractor and who uses or consumes gas within the Municipality which gas is not exempt from the Tax under the terms of the Tax Ordinance.

“Customer Account” means an account that a Customer has with the Contractor.

“Exempt Customer List” means a document issued by the Municipality directing the Contractor not to collect the Tax from the Exempt Customers listed therein.

“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 adventure, corporation, limited liability company, municipal corporation, the State or any of its political subdivisions, any State university created by statute, or a receiver, trustee, conservator or other representative appointed by order of any court.

“Records” has the meaning set forth in Article 3 of this Agreement.

“State” means the State of Illinois.

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

“Tax Collection Services” means, collectively, the services, duties and responsibilities described in Article 3 of this Agreement.

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

ARTICLE 3.
DUTIES AND RESPONSIBILITIES OF THE CONTRACTOR

3.1 Tax Collection General Provisions

The Contractor shall perform all the services (the “Tax Collection Services”) described in Section 3.2. The Contractor’s duty to perform the Tax Collection Services shall begin with bills issued to Customers on the first day of May, 2003. The Contractor shall perform the Tax Collection Services in accordance with the standard of performance set forth in Section 3.3 of this Agreement.

The Contractor agrees that, notwithstanding anything in this Agreement to the contrary, it 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.

3.2 Tax Collection Services

A. Collection From Customers

The Contractor will collect the Tax for each Customer Account by including the Tax on the bills issued to the Customer for the Customer Account. The Tax will be billed and collected at the rate of 1.5 cents (\$0.015) per therm of gas delivered and billed by the Contractor to such Customer Account. The Contractor will collect the Tax 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 not collect the Tax from any Person who is not a Customer with a Customer Account.

The Contractor will include the Tax on any bill issued to a Customer Account for a Customer on or after May 1, 2003.

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 amended ordinance; or (ii) three months after the date on which the amended ordinance is passed, whichever is later.

B. Responsibility for Providing Exempt Customer List

If applicable, it shall be the obligation of the Municipality to provide the Contractor with the 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 an Exempt Customer on the Exempt Customer List from and after the first day of the month next following the date of receipt of the Exempt Customer List.

C. 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.

D. Customer Payments; Assessment by Municipality; Bankruptcy Filings by Customers of the Contractor.

1. Payments and Assessments by Municipality

The Tax shall be due and payable 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. 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.

2. Bankruptcy Filings

In the event a proceeding in bankruptcy court is commenced with respect to a Customer and the Contractor becomes aware of such bankruptcy, the Contractor shall use its best efforts to notify the Municipality of such proceeding, and the Municipality shall be entitled to file its own claim in the bankruptcy court for any Tax owed by such Customer. A failure to provide notice under this paragraph shall not constitute a default under this Agreement.

E. Records and Audits

1. Records

The Contractor will keep accurate records and accounts with respect to each Customer Account that will include the number of therms of gas delivered and billed with respect to the Customer Account, the amounts billed to the Customer Account, and the payments received with respect to the Customer Account (collectively, the "Records"). Also, the Records will show the dates which correspond to the Customer Account information: the dates on which bills were issued, the due dates of bills and the dates on which payments were received. The Contractor will make the Records available at all reasonable times for inspection and examination by the Municipality, subject to the Contractor's customer confidentiality policies. Any Records required to be provided or kept under this paragraph shall be retained by the Contractor for a three-year period. Also, Records in existence at the time of termination of this Agreement shall be retained for a period of three years from the creation of such Records.

2. Audits

The Municipality shall have the right to audit, at the Municipality's expense, all collections of Tax made by the Contractor and remitted to the Municipality pursuant to this Agreement and all Fees deducted by the Contractor under this Agreement.

The Contractor shall keep the Records open to audit, inspection, copying and abstracting by the Municipality, at the Municipality's expense, and shall make the Records available to the Municipality at reasonable times during the term of this Agreement.

The Contractor shall maintain the Records in accordance with accounting procedures and practices sufficient to reflect properly all 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. The system of accounting shall be in accordance with generally accepted accounting principles and practices, consistently applied throughout.

F. 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. 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.

3.3 Standard of Performance

The Contractor shall perform the Tax Collection Services with that degree of skill, care and diligence normally shown by a Person performing services of a scope, purpose and magnitude comparable with the Tax Collection Services. The Contractor shall exercise necessary and appropriate expertise and judgment in performing the Tax Collection Services.

3.4 Subcontracts and Assignments

A. Municipality Approval Required

Without the express written consent of the Municipality, such consent not to be unreasonably withheld, the Contractor 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 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. In addition, the Contractor may, without the consent of the Municipality, subcontract, assign or delegate 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.

All subcontracts or assignments 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 shall fail to observe or perform the terms and conditions of this Agreement to the satisfaction of the Municipality, 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 consent to any subcontract or assignment with respect to this Agreement, 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.

3.5 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 3.5 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 general information regarding the Tax provided to the public and/or to Customers, (h) disclosure to the Illinois Commerce Commission, and (i) disclosure required under the Illinois Freedom of Information Act.

3.6 Compliance with Laws

The Contractor and the Municipality shall at all times observe and comply, in all material respects, with all applicable laws, ordinances, rules, regulations, policies and executive orders of the federal, state and local government which may affect the performance of this Agreement.

**ARTICLE 4.
TIME OF PERFORMANCE**

4.1 Term of Agreement

A. Original Term

This Agreement shall take effect as of the date hereof and shall continue until May 1, 2006 (subject to paragraph B below) or until this Agreement is terminated in accordance with its terms, whichever occurs first.

The Contractor's duty to perform the Tax Collection Services shall begin with bills issued to Customers on May 1, 2003 and shall cease (unless otherwise extended hereunder) with respect to bills issued on or after May 1, 2006.

B. Extension

This Agreement shall automatically extend for successive one-year periods after the original three-year term unless either party elects to terminate this Agreement by written notice delivered to the other party no later than six months prior to the end of the then current term.

**ARTICLE 5.
COMPENSATION**

As compensation for the Tax Collection Services provided hereunder, the Contractor shall be paid a fee (the "Fee") equal to 3% of the amount of Tax collected by the Contractor, its subcontractors or its authorized agents and remitted in accordance with Section 3.2D. The Contractor shall be entitled to deduct the applicable Fee from each remittance of Tax to the Director. Payment of the Fee for any Tax actually collected and remitted to the Municipality in accordance with Section 3.2D, whether before or after the effective date of the termination of this Agreement, shall be in accordance with this Article 5.

**ARTICLE 6.
DISPUTES**

The Municipality and the Contractor shall use their best efforts to resolve any disputes arising under this Agreement including disputes as to whether the Contractor failed to remit or timely remit any Tax collected. During any period of dispute resolution, the Contractor shall continue to perform the Tax Collection Services and will be entitled to collect its Fee under Article 5.

**ARTICLE 7.
REPRESENTATIONS AND WARRANTIES**

7.1 Contractor's Representations and Warranties

In connection with the execution of this Agreement, the Contractor hereby represents and warrants to the Municipality the statements set forth in this Section 7.1.

A. Ability to Perform

The Contractor is financially solvent; it is legally authorized to execute this Agreement and to perform or cause to be performed the Tax Collection Services; and it is competent to perform the Tax Collection Services.

B. Agreement Feasible

The Contractor has carefully examined and analyzed the provisions and requirements of this Agreement; it understands the nature of the Tax Collection Services; from its own analysis it has satisfied itself as to the nature of all things needed for the performance of this Agreement; to the best of the Contractor’s knowledge the Agreement is feasible of performance in accordance with all of its provisions and requirements; and the Contractor can and shall perform, or cause to be performed, the Tax Collection Services in accordance with the provisions and requirements of this Agreement.

7.2 Municipality’s Representations and Warranties

In connection with the execution of this Agreement, the Municipality hereby represents and warrants to the Contractor the statements set forth in this Section.

- (A) The Municipality is a municipality duly constituted and validly existing within the meaning of Section 1 of Article VII of the 1970 Constitution of the State and is a home rule unit of government under Section 6(a) of Article VII of said Constitution.
- (B) The Municipality has full power and authority as a home rule unit of government to impose the Tax and to execute this Agreement.
- (C) The Municipality has duly authorized all necessary action to be taken by it for the imposition of the Tax and the execution and performance of this Agreement.

**ARTICLE 8.
EVENTS OF DEFAULT AND REMEDIES**

8.1 Events of Default

A. Contractor Events of Default Defined

The following shall constitute events of default on the part of the Contractor:

- (1) any material misrepresentation made in this Agreement, whether negligent or willful and whether in the inducement or in the performance, made by the Contractor to the Municipality;
- (2) the Contractor’s failure to perform any of its material obligations under this Agreement; and

- (3) the inability of the Contractor to perform the Tax Collection Services satisfactorily as a result of its insolvency, filing for protection under any bankruptcy law or assignment for the benefit of creditors.

B. Municipality Events of Default Defined

The following shall constitute events of default on the part of the Municipality:

- (1) any material misrepresentation made in this Agreement, whether negligent or willful and whether in the inducement or in the performance, made by the Municipality to the Contractor; and
- (2) the Municipality's failure to perform any of its material obligations under this Agreement.

C. Declaration of Default

(1) Municipality's Declaration of Default

The Municipality shall notify the Contractor in writing of any circumstance which the Municipality believes to be an event of default and the Contractor shall have 30 calendar days to cure such event of default. The occurrence of any event of default which the Contractor has failed to cure within such 30-day period shall permit the Municipality to declare the Contractor in default.

Written notification of any decision to declare the Contractor in default shall be provided to the Contractor, and such decision shall be final and effective upon the Contractor's receipt of such notice.

(2) Contractor's Declaration of Default

The Contractor shall notify the Municipality in writing of any circumstance which the Contractor believes to be an event of default and the Municipality shall have 30 calendar days to cure such event of default. The occurrence of any event of default which the Municipality has failed to cure within such 30-day period shall permit the Contractor to declare the Municipality in default.

Written notification of any decision to declare the Municipality in default shall be provided to the Municipality, and such decision shall be final and effective upon the Municipality's receipt of such notice.

8.2 Remedies

A. Municipality Remedies Defined

Upon declaring the Contractor in default as provided herein, the Municipality may invoke any or all of the following remedies:

- (1) the right to terminate this Agreement as to any or all of the Tax Collection Services yet to be performed effective at a time specified by the Municipality;
- (2) the right to seek specific performance, an injunction or any other appropriate equitable remedy; and/or
- (3) other remedies available under the law.

B. Contractor Remedies Defined

Upon declaring the Municipality in default as provided herein, the Contractor may invoke any or all of the following remedies:

- (1) the right to terminate this Agreement effective at a time specified by the Contractor;
- (2) the right to seek an injunction or any other appropriate equitable remedy; and/or
- (3) the right to seek money damages. The Contractor shall not seek Fees that would have been earned in the future, had the Agreement not been terminated.

C. Remedies Nonexclusive

The remedies provided for in this Agreement are not intended to be exclusive of any other remedies, but each and every such remedy shall be cumulative and shall be in addition to all other remedies, now or hereafter existing at law, in equity or by statute.

No delay in exercising or failure to exercise any right or power accruing upon any event of default shall impair any such right or power nor shall it be construed as a waiver of any event of default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

8.3 Absolute Right to Terminate

A. Municipality

In addition to termination pursuant to Sections 4.1B and 8.2A, the Municipality shall have the absolute right to terminate this Agreement by a notice in writing from the Municipality to the Contractor setting forth the effective date of such termination if the Tax is preempted, repealed, or determined by a court of competent jurisdiction to be unconstitutional or otherwise invalid.

If the Municipality elects to terminate this Agreement under this Section 8.3A, all Tax Collection Services to be provided hereunder shall cease with respect to bills issued on and after the effective date stated in the notice.

B. Contractor

In addition to termination pursuant to Sections 4.1B and 8.2B, the Contractor shall have the absolute right to terminate this Agreement by a notice in writing from the Contractor setting forth the effective date of such termination if the Illinois Commerce Commission issues an order prohibiting the Contractor from performing all or part of the Tax Collection Services or if the Tax is preempted, repealed, or determined by a court of competent jurisdiction to be unconstitutional or otherwise invalid.

If the Contractor elects to terminate this Agreement under this Section 8.3B, all Tax Collection Services to be provided hereunder shall cease with respect to bills issued on and after the effective date stated in the notice.

ARTICLE 9. GENERAL CONDITIONS

9.1 Entire Agreement

A. General

The Contractor and the Municipality acknowledge that this Agreement shall constitute the entire agreement between the parties and no other warranties, inducements, considerations, promises or interpretations shall be implied or impressed upon this Agreement that are not expressly addressed herein and therein.

B. No Collateral Agreements

The Contractor and the Municipality agree that, except for those representations, statements or promises expressly contained in this Agreement, no representation, statement or promise, oral or in writing, of any kind whatsoever, by either party, its officials, its agents or its employees has induced the other party to enter into this Agreement or has been relied upon by either party including any with reference to (i) the meaning, correctness, suitability or completeness of any provisions or requirements of this Agreement; (ii) the nature of the Tax Collection Services to be performed; (iii) the nature, quantity, quality or volume of any materials, labor or other facilities needed for the performance of this Agreement; (iv) the general conditions which may in any way affect this Agreement or its performance; (v) the compensation provisions of this Agreement; or (vi) any other matters, whether similar to or different from those referred to in clauses (i) through (v) above, affecting or having any connection with this Agreement or the negotiation or performance hereof.

9.2 Counterparts

This Agreement is comprised of several identical counterparts, each to be fully executed by the parties and each to be deemed an original having identical legal effect.

9.3 Amendments

No changes, amendments, modifications or discharge of this Agreement, or any part hereof, shall be valid unless in writing and signed by the authorized agent of the Contractor and by the Municipality or their respective successors and assigns.

9.4 Governing Law and Jurisdiction

This Agreement shall be governed as to performance and interpretation in accordance with the laws of the State of Illinois without regard to principles of conflicts of law.

9.5 Severability

The invalidity of any one or more phrases, sentences, clauses or sections contained in this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement.

9.6 Interpretation

Any headings of this Agreement are for convenience or reference only and do not define or limit the provisions hereof. Words of any gender shall be deemed and construed to include correlative words of the other genders. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise indicate. All references to any exhibit or document shall be deemed to include all supplements and/or amendments to any such exhibits or documents entered into in accordance with the terms and conditions hereof and thereof. All references to any person or entity shall be deemed to include any person or entity succeeding to the rights, duties and obligations of such persons or entities in accordance with the terms and conditions of this Agreement.

9.7 Assigns

All of the terms and conditions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors, transferees and assigns.

9.8 Responsibility for Refunds

In the event that it is determined by a court or administrative agency of competent jurisdiction that the Tax does not apply to the use of gas by a Customer from whom the Tax was collected and remitted to the Municipality in accordance with this Agreement, it shall be the Municipality's responsibility to make any necessary refunds; the Contractor shall not be responsible for any refunds to the Customer, nor shall the Contractor be required to refund to the Municipality any Fee retained by the Contractor with respect to the Tax collected from that Customer.

In the event that the Tax is found to be invalid or unconstitutional by a court of competent jurisdiction, it shall be the Municipality's responsibility to make any necessary refunds; the Contractor shall not be responsible for any refunds of the Tax to Customers, nor

shall the Contractor be required to refund to the Municipality any Fee retained by the Contractor with respect to Tax collected.

9.9 Miscellaneous Provisions

Whenever under this Agreement the Municipality by a proper authority waives the Contractor's performance in any respect or waives a requirement or condition to either the Municipality's or the Contractor's performance, the waiver so granted, whether express or implied, shall only apply to the particular instance and shall not be deemed a waiver forever or for subsequent instances of the performance, requirement or condition. No such waiver shall be construed as a modification of this Agreement regardless of the number of times the Municipality may have waived the performance, requirement or condition.

Whenever under this Agreement the Contractor by a proper authority waives the Municipality's performance in any respect or waives a requirement or condition to either the Municipality's or the Contractor's performance, the waiver so granted, whether express or implied, shall only apply to the particular instance and shall not be deemed a waiver forever or for subsequent instances of the performance, requirement or condition. No such waiver shall be construed as a modification of this Agreement regardless of the number of times the Contractor may have waived the performance, requirement or condition.

9.10 Nonliability of Public Officials

No official, employee or agent of the Municipality shall be charged personally by the Contractor or by any assignee or subcontractor of the Contractor with any liability or expenses of defense or be held personally liable to them under any term or provision of this Agreement or because of the Municipality's execution or attempted execution thereof or because of any breach hereof.

9.11 Nonliability of the Contractor's Officers, Directors, Employees and Agents

No officer, director, employee or agent of the Contractor shall be charged personally by the Municipality or by any assignee or subcontractor of the Municipality with any liability or expenses of defense or be held personally liable to them under any term or provision of this Agreement or because of the Contractor's execution or attempted execution thereof or because of any breach hereof.

9.12 Indemnification

A. Indemnification by Contractor

The Contractor agrees to indemnify, defend and hold harmless the Municipality, including its officers, agents and employees, against any liability, loss, costs and expenses, including all costs of litigation and all reasonable attorneys' fees, that the Municipality, including its officers, agents and employees, incur, sustain or are subject to which arise from the Contractor's gross negligence, wilful misconduct, or intentionally tortious acts or omissions, in performing under this Agreement, as determined by a court of competent jurisdiction.

B. General Indemnification by Municipality

The Municipality agrees to indemnify, defend and hold harmless the Contractor, including its officers, agents and employees, against any liability, loss, costs and expenses, including all costs of litigation and all reasonable attorneys' fees, that the Contractor, including its officers, agents and employees, incur, sustain or are subject to which arise from the Municipality's gross negligence, wilful misconduct, or intentionally tortious acts or omissions, in performing under this Agreement, as determined by a court of competent jurisdiction.

C. Indemnification for Invalid Tax

The Municipality agrees to indemnify, defend and hold harmless the Contractor, including its officers, agents and employees, against any liability, loss, costs and expenses, including all costs of litigation and all reasonable attorneys' fees, that the Contractor, including its officers, agents and employees, incur, sustain or are subject to that results from or arises out of any claim, cause of action or litigation wherein another party asserts that the Tax is unconstitutional under the United States or Illinois constitutions or otherwise invalid.

**ARTICLE 10.
NOTICES**

Notices provided for herein, unless expressly provided for otherwise in this Agreement, shall be in writing and may be delivered personally or by placing in the United States mail, first class and certified, return receipt requested, with postage prepaid and addressed as follows:

If to the Municipality: Village of Downers Grove
801 Burlington
Downers Grove, Illinois 60515

If to the Contractor: Nicor Gas Company
1844 Ferry Road
Aurora, Illinois 60563-9600
Attention: Director, Community Relations

With a Copy to: Nicor Gas Company
90 North Finley Road
Glen Ellyn, Illinois 60137
Attention: Regional Community Relations Director

Changes in the above-referenced addresses must be in writing and delivered in accordance with the provisions of this Article 10. Notices delivered by mail shall be deemed received three days after mailing in accordance with this Article 10. Notices delivered personally shall be deemed effective upon receipt.

**ARTICLE 11.
AUTHORITY**

11.1 Municipality's Authority

This Agreement is entered into by virtue of the home rule authority conferred on the Municipality under Section 6(a), Article VII of the 1970 Constitution of the State.

11.2 Contractor's Authority

Execution of this Agreement by the Contractor is authorized by bylaws or a resolution of its Board of Directors, and the signature of each person signing on behalf of the Contractor have been made with complete and full authority to commit the Contractor to all terms and conditions of this Agreement.

IN WITNESS WHEREOF, the Municipality and the Contractor have executed this Agreement on the date first set forth above.

VILLAGE OF DOWNERS GROVE, ILLINOIS

By: _____

Its: _____

NORTHERN ILLINOIS GAS COMPANY, d/b/a/
NICOR GAS COMPANY

By: _____

Its: _____

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Municipal Gas Use Tax

<u>COMMUNITY</u>	<u>EFFECTIVE WITH BILLS ISSUED ON OR AFTER</u>	<u>RATE (PER THERM)</u>	<u>TAX APPLICABLE TO</u>	
			<u>TRANSPORTATION GAS</u>	<u>SALES GAS</u>
Aurora	April 1, 1998	1.00 ¢	Yes	Yes
Bloomington	October 1, 1998	0.75 ¢	Yes	No
Chicago	February 1, 2001	1.40 ¢	Yes	No
Des Plaines	September 1, 2002	2.50 ¢	Yes	No
Evanston	May 1, 1994	0.95 ¢	Yes	No
Hanover Park	June 1, 2002	1.50 ¢	Yes	Yes
Morton Grove	July 1, 2002	2.00 ¢	Yes	Yes
Niles	February 1, 1999	1.50 ¢	Yes	No
Normal	June 1, 1998	1.50 ¢	Yes	No
Park Ridge	November 1, 1998	2.00 ¢	Yes	No
Wheaton	October 1, 2002	2.00 ¢	Yes	Yes
Wheeling	September 1, 2002	0.60 ¢	Yes	Yes
Wilmette	March 1, 2002	2.20 ¢	Yes	Yes
Woodridge	December 1, 1998	2.15 ¢	Yes	Yes

Projected Revenues - Natural Gas Utility and Use Tax

Based on information provided by Nicor for period December 2001 through November 2002

		Conversion Factor*
Utility Tax Rate:	3.5%	1.52
Use Tax Rate (cents/therm):	1.5	1.50

	From Sales Gas (R6 Therms)	From Transportation Gas (R25 Therms)	Total Revenues/ Therms
Total Usage (in Therms)			
Dec 2001 - Nov 2002	15,083,432	16,800,392	31,883,824
Nicor Revenues			
Dec 2001 - Nov 2002	\$ 6,755,870	\$ 1,757,880	\$ 8,513,749
TOTAL REVENUES			
Under Current Utility Tax			
Utility Tax Revenues @ 2.3% (Current Rate)	155,385	40,431	195,816
Utility Tax Revenues @ 3.5% (Equivalent of proposed 1.5 cents/therm Gas Use Tax Rate)	236,455	61,526	297,981
Under Proposed Gas Use Tax			
Use Tax on Sales and Distribution Gas	226,251	252,006	478,257
Less Nicor Admin Fee	(6,788)	(7,560)	(14,348)
Subtotal	219,464	244,446	463,910