

**WOODFORD COUNTY BOARD OF EDUCATION  
AGENDA ITEM**

**ITEM #: IV A DATE:** July 15, 2020

**TOPIC/TITLE:** Propane Tank Lease Agreement

**PRESENTER:**

**ORIGIN:**

- ☐ TOPIC PRESENTED FOR INFORMATION ONLY (No board action required.)
- ☒ ACTION REQUESTED AT THIS MEETING
- ☐ ITEM IS ON THE CONSENT AGENDA FOR APPROVAL
- ☐ ACTION REQUESTED AT FUTURE MEETING: (DATE)
- ☐ BOARD REVIEW REQUIRED BY

- ☐ STATE OR FEDERAL LAW OR REGULATION
- ☐ BOARD OF EDUCATION POLICY
- ☐ OTHER:

**PREVIOUS REVIEW, DISCUSSION OR ACTION:**

- ☐ NO PREVIOUS BOARD REVIEW, DISCUSSION OR ACTION
- ☐ PREVIOUS REVIEW OR ACTION

- ☐ DATE:
- ☐ ACTION:

**BACKGROUND INFORMATION:**

**SUMMARY OF MAJOR ELEMENTS:**

Approve lease agreement for propane tank. Approving both a one (1) year and two (2) year lease based on availability of propane at time lease is signed by the vendor. Note the maximum amount we will spend in a year is only \$23,000 so it is under the threshold for bidding.

**IMPACT ON RESOURCES:**

**TIMETABLE FOR FURTHER REVIEW OR ACTION:**

**SUPERINTENDENT'S RECOMMENDATION:** ☐ Recommended ☐ Not Recommended

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District No. 9648

Account No.

## ATTACHMENT A

### FIXED PRICING AND VOLUME COMMITMENT FOR PROPANE

This Fixed Pricing Attachment ("Attachment") is entered into between AmeriGas Propane, L.P. ("Company") and Woodford County School ("Customer") with a billing address of . Company and Customer agree as follows:

**1. Supplemental Terms.** This Attachment supplements and is subject to the Company's [CIRCLE ONE] Non-Residential / Dispenser / Temp Heat / Motor Fuel Agreement entered into between Customer and Company (the "Customer Agreement"), and the Company's standard Terms and Conditions for propane-related services and equipment rental contained in the Customer Agreement (the "Terms and Conditions"), which are incorporated herein by reference. Except for the Fixed Price, Volume, and Volume Commitment, the terms of the Customer Agreement control over the terms of this Attachment.

**2. Fixed Pricing Term and Price.** From 8/1, 2020 to 4/30, 2022, ("Fixed Pricing Term") Customer agrees to purchase 35000 gallons of propane (the "Volume") and the Company agrees to provide Customer with a fixed price of \$1.339 per gallon (the "Fixed Price"), plus all applicable taxes, fees and charges for the Volume during the Fixed Pricing Term.

**3. Excess Gallons.** Gallons purchased by Customer in excess of the Volume will be priced pursuant to the pricing terms of the Customer Agreement.

**4. Volume Commitment.** Customer understands that this is a take-or-pay obligation and that Customer is obligated to purchase 100% the Volume during the Fixed Pricing Term, regardless of usage ("Volume Commitment.") If at the end of the Fixed Pricing Term Customer has not satisfied the Volume Commitment, payment for the balance will be due within 30 days of receipt of Company's invoice. If the Company and Customer agree, Company may elect to waive Customer's obligation to purchase up to 20% of the Volume by rolling over up to 20% of the Customer's Volume Commitment in the Attachment into a new fixed pricing agreement.

For example, if the Volume is 1,000 gallons and Customer only purchases 700 gallons during the Fixed Pricing Term, Customer will pay Company the Fixed Price multiplied by 300 gallons at the conclusion of the Fixed Pricing Term. But if Customer enters into a new fixed pricing agreement, Company may reduce the 1,000-gallon Volume Commitment by up to 20% (200 gallons), resulting in Customer then owing Company payment for only 100 gallons, and the remaining 200-gallon obligation deferred into a new fixed pricing agreement.

The parties have agreed to the terms of this Attachment as of the latest date signed by both Parties below. This Attachment may only be executed by a manager, director, or corporate officer of Company. The individual signing below on behalf of Customer represents that he or she is authorized to do so.

CUSTOMER:

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

COMPANY:

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

(updated 2.05.20)

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2. **Fixed Pricing Term and Price.** From 8/1, 2020 to 7/31, 2021, ("Fixed Pricing Term") Customer agrees to purchase 20,000 gallons of propane (the "Volume") and the Company agrees to provide Customer with a fixed price of \$1.469 per gallon (the "Fixed Price"), plus all applicable taxes, fees and charges for the Volume during the Fixed Pricing Term.

3. **Excess Gallons.** Gallons purchased by Customer in excess of the Volume will be priced pursuant to the pricing terms of the Customer Agreement.

4. **Volume Commitment.** Customer understands that this is a take-or-pay obligation and that Customer is obligated to purchase 100% the Volume during the Fixed Pricing Term, regardless of usage ("Volume Commitment.") If at the end of the Fixed Pricing Term Customer has not satisfied the Volume Commitment, payment for the balance will be due within 30 days of receipt of Company's invoice. If the Company and Customer agree, Company may elect to waive Customer's obligation to purchase up to 20% of the Volume by rolling over up to 20% of the Customer's Volume Commitment in the Attachment into a new fixed pricing agreement.

For example, if the Volume is 1,000 gallons and Customer only purchases 700 gallons during the Fixed Pricing Term, Customer will pay Company the Fixed Price multiplied by 300 gallons at the conclusion of the Fixed Pricing Term. But if Customer enters into a new fixed pricing agreement, Company may reduce the 1,000-gallon Volume Commitment by up to 20% (200 gallons), resulting in Customer then owing Company payment for only 100 gallons, and the remaining 200-gallon obligation deferred into a new fixed pricing agreement.

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CUSTOMER:

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

COMPANY:

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_



# PROPANE SUPPLY AGREEMENT & DISPENSING EQUIPMENT LEASE

District # \_\_\_\_\_

This Propane Supply Agreement and Dispensing (Equipment) Lease ("Agreement") is between \_\_\_\_\_, (the "Company"), Address: \_\_\_\_\_ and the Customer identified below ("Customer") and will be in effect for a minimum of \_\_\_\_\_ (\_\_\_\_) years from the date it is signed by the Customer and from year-to-year thereafter or until terminated in accordance with paragraph 13 of this Agreement.

Customer: _____	Business Phone: _____	Fax: _____	eMail: _____
Primary Contact: _____	Business Phone: _____		
Mobile: _____	Fax: _____	eMail: _____	
Installation/Delivery Address: _____			
City: _____	State: _____	Zip Code: _____	
Billing Address: _____			
City: _____	State: _____	Zip Code: _____	

## TERMS & CONDITIONS

**1. Equipment.** The Company agrees to install and to lease to Customer at Customer's delivery address the propane dispensing unit and related equipment listed in Attachment B (the "Equipment"). The Equipment making up the dispensing unit together with all replacements, repairs, substitutions, additions and accessories (collectively referred to as "Equipment") will be of size, make and model that Company, in its sole judgment, deems necessary and appropriate for Customer's business operation. The Company may charge rent for the Equipment and Customer agrees to pay all Equipment rental charges in accordance with Company's Schedule of Charges. Customer shall be liable for all loss of and damage to the Equipment while in Customer's possession, normal wear and tear excepted. Customer will promptly surrender to the Company all of the Equipment when this Agreement is terminated for any reason. Any Equipment that is lost or damaged during the term or is not returned at the end of this Agreement will be billed to Customer at replacement cost. Customer authorizes the Company to replace its Equipment at any time with no changes in the obligations of this Agreement. If the Company replaces the Equipment with equipment of different capacity, the annual rental charges, if any, shall be adjusted to those that are currently being charged for the Equipment which is substituted.

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

**3. Services to be Performed by Customer.** Customer will provide a suitable location for the Equipment and will be responsible for the payment for any and all required scales, fencing and/or fire safety devices as mandated by National Fire Protection Association Pamphlet 58, the local authority having jurisdiction and any and all state or local laws, rules, regulations and/or ordinances. All service performed by Customer shall be done in a neat and workmanlike manner and in compliance with all federal, state and local laws, statutes, rules and regulations/ordinances, as well as all applicable safety codes, standards and regulations, and must meet the Company's reasonable satisfaction. Notwithstanding the foregoing, Company will provide certain installation services and pay for all necessary state and local permits subject to the terms and conditions in the attached quote and applicable early termination fees.

**4. Fees, Pricing and Charges.** A) Propane Pricing – Customer agrees to pay the Company's applicable non-refundable prices in effect on the date that propane or Equipment is delivered or services are rendered. Customer acknowledges that the Company's fees, rates, pricing and charges include its various procurement costs and may vary depending upon, among other things, the volume of propane purchased, customer classification, derivative activity to reduce price volatility, ownership of equipment, and competitive conditions. If Customer has a fixed price contract, Customer's price for propane will not change during the term of this Agreement. If this Agreement does not contain a fixed price, Customer's price for propane may move either up or down, as it does with other energy commodities. Similarly, if Customer has no agreement that governs the price for propane, Customer's price may likewise move either up or down. For those Customers without a fixed price agreement, the Company reserves the right to change its prices without prior written notice to Customer. For our Area Index customers, from time to time the geographic areas and supply points that comprise our Area Index may change slightly. In some instances these changes may result in slight price increases or decreases, depending on the unique market circumstances.

B) The fees and charges include a Hazardous Material & Safety Compliance Fee and Fuel Recovery Fee. The Hazardous Material & Safety Compliance Fee, which is assessed for propane deliveries and service calls, helps to offset a portion of the cost the Company must incur to comply with federal, state and local government regulations, including, but not limited to, hazardous materials, homeland security, emergency preparedness and workplace safety. It is also used to fund, among other things, vital employee safety training and inspections, cylinder re-qualification, and environmental compliance. The fee is not government imposed, nor is any portion of it paid to any governmental agency. The Fuel Recovery Fee is assessed for propane deliveries and service calls and helps to offset the significant expenses incurred by Company in fueling its fleet of commercial motor vehicles. This fee fluctuates on a monthly basis as the Company's cost of fuel fluctuates. For a complete listing of Company's fees and charges, visit Company's website. The Company reserves the right to change its fees, rates and charges from time to time without prior notice to Customer. By accepting delivery of propane or by paying any changed fee, rate or charge, Customer will be deemed to have agreed to the changes. Customer agrees to pay any taxes, licenses, permit or inspection fees associated



**16. Assignability.** Customer may not assign this Agreement without the prior written consent of the Company. The Company may assign or pledge this Agreement as collateral without notice to or consent of Customer.

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

**18. Modifying the Agreement.** This Agreement is the final understanding between the parties and may not be modified orally. Any attempt by Customer to enforce a prior representation or warranty, whether it was written or oral shall be null and void. Company reserves the right to change the applicable terms and conditions (other than fees, rates and other charges which may be changed without prior notice) at any time by giving Customer thirty (30) days prior written notice of the change. The notice of change may be in the form of a bill insert, email or other written notification. By accepting delivery of propane or by paying any fees, rates or other charges after Customer has been given notice of changes, Customer will be deemed to have agreed to the changes.

**19. Arbitration/Claims.** Aside from credit or collection matters, Customer and Company agree that upon the request of either party, any dispute or controversy between the parties that in any way arises out of or relates to this Agreement or Company's provision of goods or services to Customer, will be decided by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Neither Customer nor Company shall be entitled to arbitrate joint or consolidated claims by or against other customers, or arbitrate any claim as a representative or member of a class or in or as part of a private attorney general capacity. Judgment upon any arbitration award shall be final and binding on Customer and Company and may be entered in any court having jurisdiction. If a court of competent jurisdiction, or an arbitrator with authority to adjudicate the matter, should declare all or any part of this arbitration provision invalid or unenforceable, then the remainder of this arbitration provision shall be valid and enforceable to the fullest extent permitted by law. In the absence of this arbitration provision, Customer may have otherwise had an opportunity to litigate claims in court and/or to have claims decided by a jury.

*Within thirty days of receipt of this arbitration provision, Customer can elect to opt out of this provision (that is, exclude it from this Agreement) by sending a written notice to Company by certified mail at Box 965, Valley Forge, PA 19482, Attn: General Counsel stating that Customer wishes to opt out of this arbitration provision.*

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

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

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

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

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

**25. Warnings.** Customer hereby acknowledges that Customer has read and understands the safety warnings it has received. Customer shall distribute a copy of the safety warnings to anyone who will be handling propane or Equipment or filling cylinders or other propane containers. Company's safety warnings are also contained on its website and we strongly advise Customer to regularly visit our website to view those important safety warnings.

**26. Governing Law.** This Agreement shall be interpreted, construed and enforced in accordance with laws of the State which the Company's District office is located. The language of this Agreement shall in all cases be construed as a whole according to its fair meaning and shall not be strictly construed for or against either party.

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## DESCRIPTION OF LEASED DISPENSING EQUIPMENT

Dispensing Unit: \_\_\_\_\_

Pump: \_\_\_\_\_

Scale: \_\_\_\_\_

Other: \_\_\_\_\_

Tank Serial Number: \_\_\_\_\_

Regulator(s): \_\_\_\_\_

Liquid Meters: \_\_\_\_\_

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CUSTOMER \_\_\_\_\_

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

PRINT NAME: \_\_\_\_\_

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

COMPANY: \_\_\_\_\_

Print name of Company

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

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

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



Cooper, Angel <angel.cooper@woodford.kyschools.us>

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## Fwd: Propane

1 message

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Smith, Amy M. <amy.smith@woodford.kyschools.us>  
To: Angel Cooper <angel.cooper@woodford.kyschools.us>

Fri, Jul 10, 2020 at 8:51 AM

This is a request for the Board to enter into a 2 year lease for a Propane tank - it will need board approval, can you add this to the July Board meeting please.

Thanks,

**Amy M. Smith, CPA**

Chief Operating/Financial Officer

Woodford County Public Schools

----- Forwarded message -----

From: **Penn, Kay** <kay.penn@woodford.kyschools.us>  
Date: Wed, Jul 8, 2020 at 10:25 AM  
Subject: Propane  
To: Amy M. Smith <amy.smith@woodford.kyschools.us>

*Kay Penn*  
*Director of Transportation*



*Woodford County Public Schools*  
*859-879-4647*

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2 attachments



**Pricing Contract 2 Year.pdf**  
49K



**Propane Supply Agreement & Dispensing Equipment Lease 7-2020.pdf**  
154K



Cooper, Angel <angel.cooper@woodford.kyschools.us>

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## Fwd: AmeriGas Propane Tank Installation

1 message

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**Smith, Amy M.** <amy.smith@woodford.kyschools.us>  
To: Angel Cooper <angel.cooper@woodford.kyschools.us>

Fri, Jul 10, 2020 at 1:59 PM

This detail may be helpful in regards to the lease I sent you earlier, the max amount projected we will spend in a year is only \$23,000 - so under the threshold for bidding.

**Thanks,**

**Amy M. Smith, CPA**

*Chief Operating/Financial Officer*

Woodford County Public Schools

----- Forwarded message -----

From: **Kay Penn** <kay.penn@woodford.kyschools.us>  
Date: Wed, Jul 8, 2020 at 5:01 PM  
Subject: Re: AmeriGas Propane Tank Installation  
To: Smith, Amy M. <amy.smith@woodford.kyschools.us>

I'd estimate 23,000\$

Thank you,  
Kay Penn  
Transportation Director  
Woodford County Public Schools  
859-879-4647

On Jul 8, 2020, at 4:56 PM, Kay Penn <kay.penn@woodford.kyschools.us> wrote:

We used a little under 8500 gallons 19-20. I don't see anyway we would go over 30,000\$

Thank you,  
Kay Penn  
Transportation Director  
Woodford County Public Schools  
859-879-4647

On Jul 8, 2020, at 4:49 PM, Smith, Amy M. <amy.smith@woodford.kyschools.us> wrote:

IF we start school on August 26th and actually go all year, how much would you estimate our total cost of propane would be....and if that is difficult, can you tell me if it would be less than \$30,000?

**Thanks,**



Amy M. Smith, CPA

Chief Operating/Financial Officer

Woodford County Public Schools

On Wed, Jul 8, 2020 at 11:19 AM Penn, Kay <[kay.penn@woodford.kyschools.us](mailto:kay.penn@woodford.kyschools.us)> wrote:

I met with the AmeriGas rep this morning concerning a propane tank for our location.

AmeriGas Will:

Apply for the permit \$200

Pay the cost of the fuel dispenser \$12,000

Pay for and install the tank and dispenser.

Train our staff and provide yearly training at no cost to us.

A 2 year lease will lock us in at \$1.339 per gallon cost for propane.

No minimum usage for this agreement.

The cost per gallon is today's price and could change if we wait to sign the contract/lease agreement.

Our responsibility:

Electric - Lowest bid is \$6425.00 from Blue Sky Electric

Concrete Jersey Barriers to go around the tank - \$3800

(Original concrete bid was \$14,790)

The Fire Marshall suggested we go with the jersey barriers because the cost is so much less than the ballards and with the barriers there is no digging as they just sit around the tank.

*Kay Penn*

*Director of Transportation*