

**WOODFORD COUNTY BOARD OF EDUCATION
AGENDA ITEM**

ITEM #: **DATE:** April 22, 2024

TOPIC/TITLE: FY25 Propane Renewal

PRESENTER: Shane Smith

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:

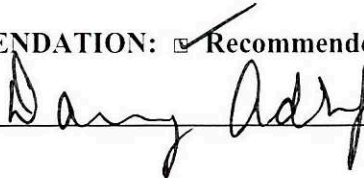
FY25 propane contract renewal.

SUMMARY OF MAJOR ELEMENTS:

IMPACT ON RESOURCES:

TIMETABLE FOR FURTHER REVIEW OR ACTION:

SUPERINTENDENT'S RECOMMENDATION: Recommended Not Recommended



MASTER AGREEMENT FOR AUTOGAS SERVICES



This Master Agreement For Autogas Services ("Master Agreement") is entered into April 30 20 24 by and between Woodford Co Schools ("Customer") and Ferrellgas, L.P., a Delaware limited partnership headquartered in Overland Park, Kansas ("Company") (collectively the "Parties").

WHEREAS, Company desires to sell to Customer and Customer desires to purchase from Company liquefied petroleum gas (LPG), also known as propane or autogas, for use by Customer in its motor vehicle fleet.

WHEREAS, the Parties desire to have an agreement in place that includes the general terms and conditions of their business relationship and will govern the rights and obligations of the Parties with respect to potential autogas locations that may be installed and/or serviced by Company now or in the future;

WHEREAS, that in consideration of the mutual promises, covenants, obligations and benefits set forth in this Agreement, the Parties agree as follows:

- 1. AUTOGAS SALES AND PURCHASES.** During the Term of this Agreement, and subject to the terms and conditions herein, the Parties may, but are not required, to enter into one more Autogas Installation and Pricing Agreements ("AIP Agreement"), an exemplar of which is attached hereto as Exhibit "A". By entering into an AIP Agreement, Company agrees to sell to Customer, and Customer agrees to buy from Company, all of Customer's current and future autogas requirements at the location(s) and for the term specified in the AIP Agreement, and subject to the terms and conditions set forth in this Master Agreement. All invoices for autogas purchases shall be payable within 30 days from the date of the invoice unless other prior written arrangements have been made. Customer gives Company permission to obtain its credit information from credit reporting agencies as needed and agrees that all purchases shall be subject to Company's credit approval policies.
- 2. TERM.** This Master Agreement shall begin upon execution by both parties and shall govern the rights and obligations of the Parties with respect to any location(s) specified in any AIP Agreement(s) and shall continue in full force with respect to those locations until the earlier of: (a) the expiration of the Initial Term (or any renewal term) of the AIP Agreement applicable to the autogas location(s) being serviced; or (2) the termination of this Master Agreement pursuant to Paragraph 14 below.
- 3. PRICING.** The prices to Customer at the location(s) shall be as specified in the AIP Agreement(s). In cases where traditional supply is disrupted or constrained, Company may use alternative supply points to meet delivery expectations during which time(s) the price(s) to Customer shall be calculated by reference to the costs associated with the use of the alternative supply point. Pricing under the AIP Agreement(s) will be exclusive of state and federal highway taxes which are subject to change by the authority having jurisdiction. Additional delivery charges may apply. Unless otherwise agreed in the AIP Agreement, payment terms shall be net (30) from the date of the invoice.
- 4. EQUIPMENT LEASE OR PURCHASE.** The AIP Agreement(s) shall describe the equipment to be installed at the location(s), whether the equipment is leased or purchased, the annual rental amount (if applicable), and any other material terms or conditions. In the case of leased equipment, Customer shall take all reasonable precautions to protect the leased equipment from damage or decrease in value, shall routinely inspect the leased equipment, and cease use of any leased equipment that is defective or in substandard condition and shall immediately notify Company thereof. Customer shall pay for any repairs or replacement of leased equipment at current market price from any loss or damage to the leased equipment caused by abuse, tampering, vandalism, fire, wind or any other casualty. Company shall pay for any repairs or replacement to leased equipment caused by normal wear and tear. Upon termination of the AIP Agreement for any reason, Customer shall be responsible for all costs necessary to excavate and remove the leased equipment and shall return all leased equipment to Company in good condition and free from any liens or encumbrances or pay Company for damage, lien clearance expense, or losses at the current market price of the leased equipment. In the case of purchased equipment, Customer shall assume all risk of loss upon installation of the equipment. Title to purchased equipment shall pass to Customer upon payment in full. Customer shall be solely responsible for all damage, loss, repairs or maintenance to purchased equipment.
- 5. ELECTRICAL/TELECOMMUNICATIONS.** Unless otherwise agreed in the AIP Agreement(s), Customer shall, at its own cost, supply the appropriate electrical connection (single phase 220v) to the autogas dispenser and, if applicable, fuel management system. Customer is responsible for monthly service fees for electrical and/or telecommunications service for the Equipment and/or Leased Equipment hereunder.
- 6. INSTALLATION COSTS.** Company, at its own expense, will conduct a complete site evaluation to ensure that the Customer location is suitable for the equipment described in the AIP Agreement(s) and will install the equipment and ensure that the installation complies with all local, state and federal propane requirements. The AIP Agreement will include an estimate of Company's total installation costs with respect to the location(s) where the equipment will be installed ("Total Installation Costs"). Customer acknowledges that Company has agreed to install the equipment at its own expense in reliance on the gas sales contemplated during at least the Initial Term of applicable AIP Agreement. Termination of an AIP Agreement by Customer, or by Company because of a default by Customer, prior to the completion of the full Initial Term shall result in the Customer paying Company for installation costs at the location(s) specified in the AIP Agreement according to the following formula: the Total Installation Costs shown in the applicable AIP Agreement(s), multiplied times the total number of full and partial years remaining in the Initial Term of the applicable AIP Agreement(s) when termination or breach occurs, divided by the number of years in the Initial Term of the applicable AIP Agreement(s).
- 7. DELIVERY SCHEDULING.** Company shall provide Customer a supply of propane on a "Keep Full" basis, meaning that Company will schedule deliveries when it estimates that propane will be required and on a schedule it establishes. Customer understands that it will not be contacted in advance of the delivery. Customer authorizes Company to make delivery of propane whether or not it is present.
- 8. INSURANCE.** Customer shall purchase and maintain throughout the term of this Agreement Commercial General Liability Insurance, including Products/Completed Operations and Contractual Liability coverage with a combined single limit for bodily injury or property damage of not less than \$2,000,000 per occurrence. This insurance shall specifically cover Customer's indemnification obligation herein and the storage, handling, and sales of propane by Customer. Customer agrees to provide Company with a certificate of insurance or a copy of the policy(es) and agrees that the insurance will not be canceled or materially changed without 30 days' advance written notice to Company. If a certificate of insurance is not provided by Customer in a timely manner, Company may, at its option, obtain the required insurance coverage for Customer and Customer will reimburse Company for the cost. Customer shall not engage in operations under this Agreement unless the insurance required hereunder is in force.
- 9. LIABILITY; INDEMNIFICATION; HOLD HARMLESS.** Each party ("Indemnitor") shall indemnify and hold harmless the other party and any of the other party's employees, contractors and agents (collectively the "Indemnitees"), from and against any and all claims, losses, damages, causes of action, suits, liabilities, and judgments of every kind and character, including all expenses of litigation, court costs, and reasonable attorneys' fees, for bodily injury, death, or damage to or destruction of property, that Indemnitees may sustain, to the extent proximately caused by the Indemnitor's employees, contractors or agents negligent or unlawful conduct. In cases of joint or concurrent negligence, each party shall be responsible to the extent of its respective negligence.

- 10. SAFETY.** Company agrees to provide Customer and Customer's designated employees safety training materials for the proper handling, storage, and transportation of propane, and to make available to Customer an adequate supply of the Company's Propane Safety Plan brochure (form OPR-1171 or its replacement) at the established price plus shipping to give to each person who will purchase, use, dispense or otherwise handle propane delivered hereunder. Customer shall (i) complete all safety training required by Company and ensure all employees, agent or contractor of Customer who handle or sell propane are properly trained before handling propane (all such training shall be documented); (ii) provide each such employee, agent or contractor the Company's Propane Safety Plan brochure; (iii) perform all propane-related activities in accordance with NFPA 58 and all federal, state, and local codes, (iv) warn every employee, agent, contractor or user of propane by directing attention to the safety warning in the written warnings given to the Customer; (v) warn employees, agents, contractors or users of propane about the hazards of storing, using, and transporting propane. Customer specifically covenants to Company that it will not allow anyone to dispense propane who has not been trained to do so safely.
- 11. RECORD KEEPING.** Customer shall keep accurate and complete records of its compliance with Paragraph 10, including all training and warnings provided by Customer to employees, agents, contractors or users of propane. Company may reasonably request and furnish a copy of these records to Company upon termination of this Agreement and at other times upon reasonable request of Company.
- 12. NON-DISCLOSURES.** Customer, of necessity, will have access to confidential Information (defined below) of Company to perform this Agreement. Company has undertaken reasonable efforts to keep this information confidential. It is Customer's duty to keep this information confidential, not disclose it to others, and not use it in competition with Company. Company's confidential information shall include all information not generally known to others that has economic value if used in competition or disclosed to others, including but not limited to, purchaser or customer lists, purchaser or customer information (location, use of product, etc.), pricing information, marketing strategies, and budgets. Customer shall not use, transfer, assign, or disclose to any person or company any list of customers, trade secret, or confidential information relating to the business of Company other than for or on behalf of Company. All confidential information (including copies of such information no matter what media is used for recording) shall be promptly returned to Company upon termination of this Agreement.
- 13. SURVIVAL.** The provisions of Paragraphs 4, 6, 8-9, 11-12, 14, 17 and 18 shall survive termination of this Agreement.
- 14. DEFAULT.** An event of default shall occur if Company or Customer fails to perform or observe any covenant, condition, or agreement to be performed or observed hereunder including the obligation to make prompt payment for product delivered, and such failure continues uncured for fifteen (15) days after written notice of such default is sent by the non-defaulting party to the defaulting party, or in the event that Customer purchases propane from another supplier at any location subject to an AIP Agreement. Upon the occurrence of any uncured default under this Agreement or any AIP Agreement, Company may withhold further performance under either agreement until such conditions have been complied with or, at its option, immediately terminate and cancel this Agreement or any AIP Agreement as to further shipments. If Company terminates this Agreement or any AIP Agreements upon default by Customer or Customer terminates this Agreement or any AIP Agreement without cause prior to the end of the Initial Term, Company is entitled to take possession of all leased equipment from Customer and Customer will be assessed damages for the lost margins of Company based upon past usage and pricing, computed for the remainder of the Initial Term (or renewal term if applicable) of the AIP Agreement(s), together with the equipment removal (if applicable) and installation costs as described in Paragraphs 4 and 6 above. To the extent litigation or arbitration (if applicable) is necessary to enforce any provision of this Agreement or any AIP Agreement(s), the prevailing party shall be entitled to reimbursement for the cost thereof, including reasonable attorney's fees. Except as otherwise expressly stated in this Agreement or any AIP Agreement(s), neither party shall be liable for any special, indirect or consequential damages for breach of this Agreement or any AIP Agreement(s) except as due to a third-party under the indemnity provisions herein.
- 15. FORCE MAJEURE.** Except with respect to the obligation of Customer to make payment for propane received, each party shall be excused for delay or failure in performance by reason of any cause beyond the party's control, including war, fire, strikes, revolutions, riot, acts of hostility, governmental acts and requests, governmental interference, flood, storm, or any act of God, or any other extraordinary cause over which neither party has control, whether or not similar to any of the foregoing, including, but not limited to, pipeline allocations and shortages of product. Upon cessation of the cause or causes for any such failure or delay, performance hereof shall be resumed, but such failure or delay shall not operate to extend the term of this Agreement or any AIP Agreement(s) nor obligate either party to make up deliveries or receipts, as the case may be. Nothing herein contained shall excuse Customer from paying Company, when due, any amounts payable hereunder or pursuant hereto or any AIP Agreement(s). Company shall not be obligated to purchase propane for delivery and sale hereunder from others in order to replace the quantities of propane so curtailed or cut off by reason of circumstances beyond its control. Notice of party's claims of excused performance due to circumstances beyond its control shall be given to the other party as soon as reasonably possible after the occurrence of the cause upon which nonperformance is based.
- 16. TAXES.** Customer shall pay all applicable sales and state and highway taxes on the sale of autogas to Customer unless Customer provides appropriate and sufficient documentation of its tax exempt status.
- 17. WARRANTY.** Company warrants that it has title to the propane delivered to Customer, that the propane shall be of standard commercial grade at the time of delivery, and that it shall be delivered free and clear from any liens, encumbrances or adverse claims. **EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, COMPANY MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED OR STATUTORY, WITH RESPECT TO THE PROPANE OR OTHERWISE, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. COMPANY EXPRESS DISCLAIMS AND EXCLUDES ALL SUCH REPRESENTATIONS AND WARRANTIES.**
- 18. ARBITRATION.** Except with respect to claims by Company for payment of amounts due for propane purchases, equipment rental, or installation costs (including all applicable fees, late payment charges, returned check charges and collection costs), Customer and Company agree that any claim, dispute or controversy, whether in contract, tort (intentional or otherwise), including without limitation, product liability, property damage, personal injury claims, or claims based on strict liability, whether pre-existing, present or future, and including constitutional, statutory, common law, regulatory, and equitable claims in any way related to (a) the services or equipment leased or sold herein, (b) the propane delivered or sold hereunder, (c) this Agreement, or (d) the safety materials, advertisements or any other materials provided by Company in any way relating to the services, equipment or business dealings of the parties, including the validity, enforceability or scope of this arbitration provision (collectively a "Claim") shall be resolved, upon the election of either party by binding arbitration administered by and under the applicable rules of either the American Arbitration Association, JAMS/Endispute or the National Arbitration Forum in effect at the time the Claim is filed. The number of arbitrators shall be three, including at least one attorney with at least 10 years' experience. The place of arbitration shall be Overland Park, KS. Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. **NO CLASS ACTIONS OR JOINDER OR CONSOLIDATION OF CLAIMS WITH OTHER PERSONS SHALL BE PERMITTED IN THE ARBITRATION WITHOUT THE CONSENT OF BOTH COMPANY AND CUSTOMER.**
- 19. GENERAL PROVISIONS.** The provisions of this Agreement and any AIP Agreement(s) are separate and severable and do not have to be enforced at all times to preserve the right to enforce any other provision of this Agreement or any AIP Agreement(s). This Agreement and the AIP Agreement(s) contain all the terms and conditions between the parties and no change in the terms of this Agreement or the AIP Agreement(s) shall be valid unless made in writing and signed by both parties. This Agreement and the AIP Agreement(s) shall be governed by and construed under the laws of the State of Kansas. This Agreement and the AIP Agreement(s) shall be assignable by Company only. Notice hereunder shall be deemed received three (3) days after deposit in the U.S. Mail with postage prepaid and addressed set forth under each party's signature or upon the date notice was delivered to such address if delivered personally or by overnight courier. Customer shall be deemed an independent contractor.

20. WARNINGS. Some suggest that the odor of ethyl mercaptan can fade in certain circumstances, which are described in the warning materials Company shall provide to Customer. Customer agrees to warn all of its employees, agents, contractors and users of the LP gas ("autogas") of this possibility. Customer further agrees to comply with the duty to warn its employees and customers of the propensities of LP gas itself.

Dated this day of , 20 .

Customer	<input type="text" value="Woodford Co Schools"/>	<input type="text"/>
By	<input type="text"/>	By <input type="text"/>
Name	<input type="text"/>	Name <input type="text"/>
Title	<input type="text"/>	Title <input type="text"/>
Address for notice	<input type="text"/>	Address for notice <input type="text"/>
<input type="text"/>		<input type="text"/>

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This Autogas Installation and Pricing Agreement ("AIP Agreement") is entered into by and between Woodford Co Schools ("Customer") and Ferrellgas, L.P., a Delaware limited partnership headquartered in Overland Park, Kansas ("Company") (collectively the "Parties") and is subject to that certain Master Agreement for Autogas Services ("Master Agreement") entered into previously by the Parties.

In consideration of the mutual promises, covenants, obligations and benefits set forth in herein, the Parties agree that autogas equipment shall be installed by Company at the following location(s) and further serviced in accord with the terms and conditions set forth herein and in the Master Agreement:

LOCATION(S):

Woodford Co Bus Garage, Ky.

EQUIPMENT: Select the option desired below.

LEASE. Company agrees to lease the following equipment to Customer for Customer's use at the location specified above during the term of this AIP Agreement. Unless otherwise agreed in writing, Customer agrees to pay the designated annual rental payment in advance, in a single installment, and within 30 days from the date of the invoice. Customer agrees that the leased equipment shall only be used to store or dispense autogas purchased from Company.

Description/Special Provisions (attach exhibit if necessary)

Annual Rent: \$ 0.00
Equipment Description:

PURCHASE. Customer agrees to purchase, and Company agrees to sell, the following equipment at the designated purchase price. Unless otherwise agreed in writing, Customer agrees to pay the designated purchase price, in a single installment, and within 30 days from the date of invoice.

Description/Special Provisions (attach exhibit if necessary)

Purchase Price: \$ _____
Equipment Description:

PRICING: Select the option desired below.

BULK. Your price will be set by adding a fixed margin of ___ cents per gallon to the basing point.

Special Provisions/Definition of basing point:

\$2.299 per gallon plus Federal & State tax- our equipment is already in place. Term of this fixed price agreement is for 12 months or if 35,000 gallons are used prior to 12 months from April 30,2025. All lease fees, Hazmat and fuel surcharge fees have been waived.

TRANSPORT. Your price will be set by adding a fixed margin of ___ cents per gallon to the basing point.

Special Provisions/Definition of basing point:

Your price shall be set and adjusted in reference to the cost at the basing point defined above. Select the option desired below.

- DAILY.** Your price shall be set in reference to the cost at the basing point on the day this AIP Agreement is signed and adjusted daily with the cost at the basing point.
- WEEKLY.** Your price shall be set in reference to the cost at the basing point on the day this AIP Agreement is signed and adjusted, if the cost at the basing point has changed, every seven days after that.
- MONTHLY.** Your price shall be set in reference to the cost at the basing point on the day this AIP Agreement is signed. It will be adjusted, if the cost at the basing point has changed, on the [] of each month (1st, 15th, etc.).

For the weekly and monthly pricing options, if during the pricing period the daily cost at the relevant basing point varies by more than 15 percent from the cost being used for the current pricing period (whether the variation reflects an increase or decrease in the cost of the product), your price shall be adjusted to reflect the current market cost and future purchases during that period will be priced in reference to the cost at the time of the adjustment.

TOTAL INSTALLATION COSTS: The Company's estimated total installation costs for the equipment described above are \$ ("Total Installation Costs").

INITIAL TERM: The initial term of this AIP Agreement shall be five years beginning on the Effective Date specified below and thereafter shall automatically renew for additional one (1)-year periods thereafter unless either party gives written notice of its intent not to renew no later than 30 days before the end of the Initial Term or any renewal term.

PRICING ADJUSTMENT: Customer acknowledges that the pricing established in this AIP Agreement has been computed based upon Customer's total estimated usage of at least gallons annually at the location(s) specified above. The Parties agree that the fixed margin dollars earned on all gallons delivered to the Locations specified herein shall remain on pace for Company to recover the Total Installation Costs within years from the Effective Date of this Agreement. Accordingly, beginning on the 1st day of the month following the 6 month anniversary of the effective date of this AIP Agreement, and continuing every six months thereafter, Company shall review the total fixed margin dollars on gallons delivered to Customer during the preceding six month period to determine whether Customer's delivered gallons are on pace and will adjust the fixed margins upward if necessary. The parties agree that these margin adjustments, if any, shall take effect immediately and remain in effect until or unless changed based on the next scheduled review of gallons delivered. Once Company has recovered its Total Installation Costs any fixed margins that were adjusted upward shall be adjusted downward to the original fixed margin amounts specified herein for the remainder of the Initial Term.

The parties agree that the effective date of this AIP Agreement shall be , 20 ("Effective Date").

Customer	<input type="text" value="Woodford Co Schools"/>	<input type="text" value="Ferrellgas"/>
By	<input type="text"/>	<input type="text"/>
Name	<input type="text"/>	<input type="text" value="Sabra Rutherford"/>
Title	<input type="text"/>	<input type="text" value="Regional Acct Mgr."/>