



**DISPENSING UNIT AGREEMENT**

DATE: 1/24/07

CUSTOMER NAME AND BILLING ADDRESS	AMERIGAS PROPANE, LP. DISTRICT OFFICE LOCATION
City of Peoria (Fleet services) 8850 N. 79th Ave. Peoria, AZ 85323	5140 W. Bethany Home Rd. Glendale, AZ 85301
("CUSTOMER")	("AMERIGAS" OR "DISTRICT OFFICE")

LOCATION OF DISPENSING UNIT
8850 N. 79th Ave. Peoria, AZ 85323
("CUSTOMER FACILITY")

1. **Equipment to be Provided by AmeriGas.** AmeriGas will lease to Customer for Customer's use at the Customer Facility a propane dispensing unit. The equipment making up the dispensing unit together with all replacements, repairs, substitutions, additions and accessories (collectively referred to as "Equipment") shall be used only for the dispensing of propane purchased from AmeriGas, and shall at all times be and remain personal property and title to the Equipment shall at all times be and remain in AmeriGas. The Equipment will be of a size, make and model that AmeriGas, in its sole judgment, deem necessary and appropriate for Customer's business operation. Customer shall sign and deliver to AmeriGas financing statements and/or other documents in form reasonably satisfactory to AmeriGas evidencing AmeriGas' ownership of the Equipment. Customer shall return the Equipment upon the expiration or termination of this Agreement in the same condition as it was originally received, reasonable wear and tear excepted.

2. **Rental Payments for Equipment.** Customer will pay to AmeriGas the amount of 75 per year Dollars (\$) per month for the use of the Equipment.

3. **Services to be Performed by Customer.** Customer at its sole expense will provide a suitable location and electrical service for the Equipment. All services 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, as well as all applicable safety codes, standards and regulations, and must meet with AmeriGas' reasonable satisfaction. Customer at its sole expense shall obtain all necessary state and local permits and zoning approvals.

4. **Term.** The term of this Agreement shall be for (5) years beginning on the date set forth above ("Original Term") and will automatically renew from year-to-year thereafter until terminated by either party as provided hereinafter. Either party may terminate this Agreement upon the expiration of the Original Term or any anniversary thereafter by giving the other party at least thirty (30) days' prior written notice of termination.

5. **Propane Supply.** During the term of this Agreement, Customer agrees to purchase from AmeriGas and AmeriGas agrees to sell to Customer all of Customer's propane requirements at the Customer Facility.

6. **Price of Propane.** Customer agrees to pay AmeriGas' fees, rates and charges in effect on the date that propane is delivered or services are rendered. AmeriGas reserves the right to change its fees, rates and charges from time-to-time without prior notice to Customer.

7. **Minimum Purchases.** In the event Customer does not purchase — gallons ("annual minimum gallons") during any twelve-month period after the commencement of this Agreement, AmeriGas has the option to remove the Equipment and terminate this Agreement, AmeriGas may install smaller Equipment, or AmeriGas may bill Customer the price in effect on the date of invoice for the difference between the annual minimum gallons and the number of gallons purchased during the preceding twelve (12) months.

8. **Payment Terms.** Payment for all propane delivered and services rendered during any calendar month shall be due and payable on the tenth (10th) day of the following month at the District Office. All rental payments for the use of AmeriGas' Equipment shall be due and payable on the first of each month. If Customer fails to pay any amount when due, AmeriGas may add a late charge of 1 1/2% or the maximum legal interest rate to all past due balances and will be entitled to recover all reasonable costs of collection, including attorney's fees.

9. **Installation and Repairs.** Customer will promptly notify AmeriGas when repairs to the Equipment are required. AmeriGas at its sole expense will install the Equipment at the Customer Facility. All repairs made to the Equipment shall be made at AmeriGas' usual and customary rates, which are subject to change from time-to-time without notice. Customer shall use the Equipment with reasonable care at all times and in conformity with all federal, state and local laws, statutes, rules and regulations as well as applicable safety codes and standards. CUSTOMER WILL NOT REMOVE THE EQUIPMENT FROM THE CUSTOMER FACILITY OR MAKE ANY ALTERATIONS, CONNECTIONS OR DISCONNECTIONS TO THE EQUIPMENT UNLESS WRITTEN PERMISSION IS RECEIVED IN ADVANCE FROM AMERIGAS.

10. **Access to Equipment.** Customer grants AmeriGas the right, privilege and authority to enter the Customer Facility at any time to deliver propane or to install, repair, service or remove any or all of the Equipment or to perform any other services that AmeriGas deems necessary under this Agreement. If Customer denies AmeriGas access to the Customer Facility or refuses to surrender the Equipment upon the expiration or termination of this Agreement, AmeriGas shall be entitled to recover from Customer all costs, including attorney's fees, that AmeriGas incurs to gain access to the Customer Facility or to recover possession of the Equipment.

11. **Indemnity.** Customer shall indemnify, defend and hold AmeriGas harmless from and against all claims and suits for personal injury (including death) and property damage arising out of or in any way relating to the Equipment, or the use, sale or transportation of any propane sold hereunder, except only where such personal injury or property damage is caused by the sole negligence of AmeriGas. This indemnification obligation shall survive the termination of this Agreement.

12. **Insurance.** Customer will maintain comprehensive general liability insurance in the amount not less than \$1,000,000 combined single limits. Customer will maintain worker's compensation coverage in the amount required by law. Customer shall furnish a certificate of insurance to AmeriGas evidencing all required coverages. All such policies of insurance shall provide that the insurance coverage thereunder shall not be reduced or cancelled or otherwise changed prior to the 30th day following the delivery by the insurer of a written notice of such action to the Customer and AmeriGas. The

coverage under Customer's policies of insurance shall be primary to any other insurance maintained by AmeriGas that may be in effect. The failure by AmeriGas to request proof of such insurance shall not constitute a waiver of Customer's obligation to maintain such insurance.

13. **Assignment.** Neither this Agreement nor any interest herein may be transferred or assigned by Customer without the prior written consent of AmeriGas. Subject to this restriction, this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties.

14. **Force Majeure.** AmeriGas shall be excused from delay or nonperformance if AmeriGas is unable to meet the demand for propane or equipment from its normal and usual source points for supplying Customer (regardless of whether or not AmeriGas may have been forced to divert certain supplies from such source points in order to alleviate shortages at other distribution points), or in the event of failure or delay in delivery due to exhaustion, reduction or unavailability of propane or equipment. AmeriGas shall be excused from delay or nonperformance in the event of any condition beyond its reasonable control, including without limitation, Acts of God, labor difficulties, fire, riots, war conditions in this or any other country, and compliance with any governmental order, regulation, recommendation, request or allocation program (whether voluntary or involuntary) affecting directly or indirectly its ability to perform hereunder. In the event of any of the contingencies or conditions set forth above, AmeriGas shall have the right to allocate its supply of propane and equipment for sale among all of its customers in any manner which in its sole discretion is fair and reasonable under the circumstances and Customer shall not hold AmeriGas responsible in any manner for any losses or damages which Customer may claim as a result of such allocation by AmeriGas.

15. **Disclaimer of Warranties.** THERE IS NO REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO ANY PROPANE OR EQUIPMENT NOW OR HEREAFTER SUPPLIED BY AMERIGAS, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR AN INTENDED PURPOSE OR LIABILITY FOUNDED IN SECTION 402A OF THE RESTATEMENT (SECOND) OF TORTS OR OTHERWISE. UNDER NO CIRCUMSTANCES SHALL AMERIGAS BE LIABLE FOR CONSEQUENTIAL OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION, DAMAGES FOR BUSINESS INTERRUPTION DAMAGES AND LOST PROFITS.

16. **Training.** Customer will train each of its employees who handle propane or uses the Equipment in the safe filling procedures set forth in How to Safely Fill An LP-Gas Container. If Customer does not have sufficient quantities of How to Safely Fill An LP-Gas Container, Customer will notify AmeriGas in writing and AmeriGas will provide copies to Customer. Customer will not allow any of its employees to handle propane or use the Equipment unless and until the employee has been properly trained to do so. If Customer wants AmeriGas to train Customer's new employees, then Customer must notify AmeriGas in writing, requesting this training.

17. **Promotional and/or Safety Materials, Decals, Etc.** Customer agrees that it will distribute to each of its customers any and all promotional and/or safety materials provided to it by AmeriGas and that it will place the safety decals provided by AmeriGas on each propane cylinder Customer fills. In the event Customer exhausts the supply of promotional and/or warning materials or safety decals, Customer will notify the District Office immediately and will make arrangements for the replenishment of its supply.

18. **Termination Fee.** If this Agreement is terminated because of a default or breach by Customer prior to the expiration of the Original Term, Customer shall bear the costs to remove and relocate the Equipment.

19. **Waiver or Estoppel.** The failure of either party to insist on strict performance of this Agreement or any provision of this Agreement shall not constitute a waiver of or estop any party from asserting the right to require such performance in the future, nor shall a waiver in any one instance constitute a waiver with respect to a later breach of a similar nature or otherwise.

20. **Notices.** Any notice required by this Agreement shall be in writing and shall be deemed to have been made when delivered by overnight courier or when placed in the United States mail, postage prepaid, by certified mail, return receipt requested, addressed to AmeriGas at the District Office and to Customer at the Customer Facility. From time-to-time, either party may designate another address by delivering to the other party a written notice of such change of address in accordance with the above provisions.

21. **Governing Law.** This Agreement shall be interpreted, construed and enforced in accordance with the laws of the state in which the 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.

22. **Severability.** If any provision of this Agreement or its application to any person or circumstance is declared to be invalid or unenforceable to any extent, then the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected and shall be enforceable to the extent permitted by law.

23. **Headings.** The headings used in this Agreement are included for the convenience of the parties only and shall not affect the construction or interpretation of any of its provisions.

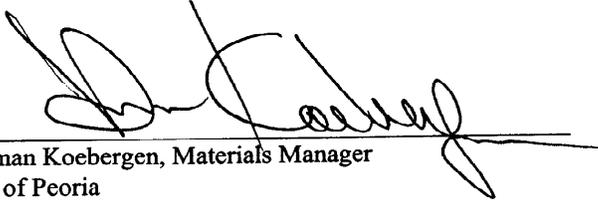
24. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and supercedes any and all prior and contemporaneous agreements, representations and understandings, either oral or written, relating in any way to the subject of this Agreement. This Agreement may not be modified, supplemented or amended in any way except in a written document executed by all parties.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement on the date first above written.

CUSTOMER  
BY: [Signature]  
ITS: Materials Manager

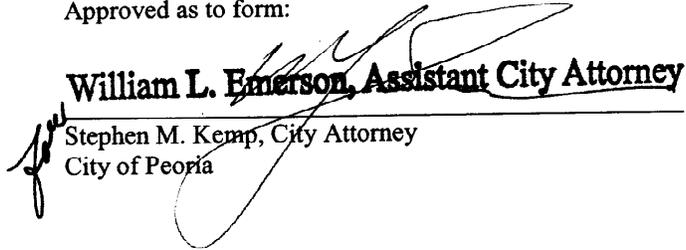
AMERIGAS PROPANE, LP.  
BY: [Signature]  
ITS: MANAGER **A CON 04507**

CITY OF PEORIA, ARIZONA  
A Municipal Corporation



Herman Koebergen, Materials Manager  
City of Peoria

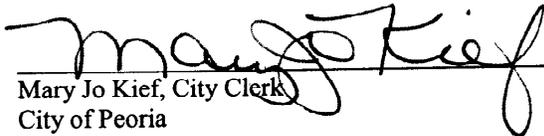
Approved as to form:



**William L. Emerson, Assistant City Attorney**

Stephen M. Kemp, City Attorney  
City of Peoria

Attested by:



Mary Jo Kief, City Clerk  
City of Peoria

