

09-14-94
10-04-94

101-0-94

AN ORDINANCE

Evanston Gas Use Tax

WHEREAS, on February 28, 1994, the Evanston City Council adopted Ordinance 1-0-94;

WHEREAS, pursuant to Ordinance 1-0-94, the City exercised its home rule power to tax the use of tangible personal property such as gas purchased from sellers not subject to the municipal occupation tax; and

WHEREAS, Ordinance 1-0-94 authorized the Director of Finance of the City of Evanston to contract with any public utility providing the gas service in the City for the collection of the tax imposed by the ordinance; and

WHEREAS, pursuant to ordinance, the Director contracted with Northern Illinois Gas Company for the collection of said tax; and

WHEREAS, Northern Illinois Gas has collected the tax pursuant to said agreement and on a monthly basis remitted the taxes collected to the City; and

WHEREAS, Northern Illinois Gas has requested a change in the method of posting customer partial payments; and

WHEREAS, such change in the method of the posting customer payments will provide an efficient mechanism for the collection of said tax;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE

CITY OF EVANSTON, COOK COUNTY, ILLINOIS:

SECTION 1: That Section 3-2-9-7-3 subsection G is amended to read as follows:

- G. The tax shall apply to gas for which the delivery to the customer is billed by a public utility on or after May 1, 1994.

SECTION 2: That Section 3-2-9-7-5(A) be amended to read as follows:

3-2-9-7-5 Collection of tax.

- A. The director is authorized to enter into a contract for collection of the tax imposed by this chapter with any public utility providing gas service in the city. 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 department no more often than once each month; (3) the public utility will be entitled to withhold from tax collections a service fee equal to 3% of the amounts collected and timely remitted to the department; (4) the public utility will treat partial payments received from a customer as payment first, to each of the items set forth on the bill of any outstanding bill and then to the tax; (5) the public utility shall not be liable to the city for any tax not actually collected from a retail purchaser; and (6) such additional terms as the parties may agree upon.

SECTION 3: That the City Manager is authorized to sign and the City Clerk is authorized to attest the collection agreement entered into by the City's Finance Director and Northern Illinois Gas. Such agreement, marked as Exhibit A is attached hereto and incorporated by reference.

SECTION 4: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Introduced: September 26, 1994

Adopted: October 10, 1994

Approved: October 12, 1994
Lorraine H. Norton
Mayor

ATTEST:
Kristen J. Davis
City Clerk (M.P.H. Deputy)

Approved as to form:
[Signature]
Corporation Counsel.



Tax Collection Agreement
between
the City of Evanston, Illinois
and
Northern Illinois Gas Company

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TAX COLLECTION AGREEMENT

This Tax Collection Agreement is entered into as of this first day of May, 1994, by and between Northern Illinois Gas Company, an Illinois corporation (the "Contractor"), and the City of Evanston, Illinois (the "City"), a municipal corporation and home rule unit of local government existing under the Constitution of the State of Illinois, acting through its Department of Finance (the "Department").

RECITALS

WHEREAS, on February 28, 1994, the City Council found that:

(a) recent changes in federal law have permitted and encouraged large purchasers of gas to buy gas directly from out-of-state sellers rather than from local public utilities;

(b) the municipal occupation tax authorized by section 8-11-2 (2a) of the Illinois Municipal Code and imposed by section 3-2-9-2 (B) of the Municipal Code of the City applies to sales of gas by local public utilities but not to sales by sellers outside the state of Illinois; and

(c) the City has the home rule power to tax the use of tangible personal property such as gas purchased from sellers not subject to the municipal occupation tax; and

WHEREAS, as a result of such findings, the City Council passed an ordinance imposing the Evanston Gas Use Tax (the "Tax") on gas purchased at retail for use or consumption in the City the sale of which is not otherwise subject to a tax (and subsequent amendment); and

WHEREAS, the City Council authorized the Director (the "Director") of the Department to enter into an agreement with any public utility providing gas service in the City 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 City and to perform such other related services as are required to perform its duties under this Agreement; and

WHEREAS, the City and the Contractor have negotiated the terms and conditions pursuant to which the contractor shall collect the Tax and render such other related services, and the Contractor represents that it will perform in accordance with the terms and provisions hereinafter set forth.

NOW THEREFORE, in consideration of the mutual promises contained in this Agreement, the City 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 capitalized terms shall have the following meanings for 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.

"City" has the meaning set forth in the first paragraph of this Agreement.

"Contractor" has the meaning set forth in the first paragraph of this Agreement.

"Customer" means a Person who has an account with the Contractor and who uses or consumes gas within the City.

"Customer-owned Gas" means gas purchased by a Customer from a seller other than the Contractor, which gas is used or consumed within the City.

"Department" has the meaning set forth in the first paragraph of this Agreement.

"Director" has the meaning set forth in the Recitals to this Agreement.

"Fee" means the compensation payable to the Contractor for the services provided hereunder as more specifically defined in Article 5 of this Agreement.

"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.

"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 and in Exhibit 1 and any and all work necessary to fully perform the services set forth therein.

"Transportation Customer" means a Customer for whom Customer-owned Gas is delivered by the Contractor.

ARTICLE 3. DUTIES AND RESPONSIBILITIES OF THE CONTRACTOR

3.1 Tax Collection Services

The Contractor shall perform all the services (the "Tax Collection Services") described in Exhibit 1 attached hereto and incorporated by reference as if fully set forth herein. The Contractor's duty to perform the Tax Collection services shall begin with bills issued to Transportation Customers on May 1, 1994. The contractor shall perform the Tax Collection Services in accordance with the standard of performance set forth in Section 3.2 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 City 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 City for any purpose or in any manner whatsoever.

3.2 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.

3.3. Subcontracts and Assignments

A. City Approval Required

Without the express written consent of the City, 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 city, 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 City, 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 City, 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 that require the City's consent shall, regardless of their form, 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 City, the City shall have the absolute right upon written notification to rescind its consent forthwith and to require the performance of this Agreement by the Contractor personally or through any other City approved subcontractor or assignee.

B. Effect of City 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 City shall relieve the Contractor of any of its obligations hereunder.

C. Assignment by the City

Without the express written consent of the Contractor, such consent not to be unreasonably withheld, the City 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 City 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.

3.4 Confidentiality

A. General

The Contractor and the City hereby agree not to disclose to third parties any information provided to either the Contractor or the City 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 3.4 shall not apply to the following: (a) information available from public sources, (b) information made public by a party other than the City 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 a lender providing financing to the Contractor or the City or from whom such financing is sought, (f) disclosure to a Transportation Customer regarding his Tax liability or payment, (g) general instructions and/or general information regarding the Tax provided to the public and/or to Transportation Customers, (h) disclosure to the Illinois Commerce Commission, and (i) disclosure required under the Illinois Freedom of Information Act.

3.5 Compliance with Laws

The Contractor and the City 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 April 30, 1997 (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 Transportation Customers on May 1, 1994 and shall cease (unless otherwise extended hereunder) with respect to bills issued on or after May 1, 1997.

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 5 of Exhibit 1. The Contractor shall be entitled to deduct the applicable Fee from each remittance of Tax to the Department. Payment of the fee for any Tax actually collected and remitted to the City in accordance with Section 5 of Exhibit 1, 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 City 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 City 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.

C. City's Representations and Warranties

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

- (1) The City is a municipality duly constituted and validly existing within the meaning of Section 1 of Article VII of the 1970 Constitution of the State of Illinois, having a population of more than 25,000 and is a home rule unit of government under Section 6(a) of Article VII of said Constitution.
- (2) The City has full power and authority as a home rule unit of government to impose the Tax and to execute this Agreement.
- (3) The City 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 City;
- (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. City Events of Default Defined

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

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

C. Declaration of default

(1) **City's Declaration of Default.**

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

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

8.2 Remedies

A. City Remedies Defined

Upon declaring the Contractor in default as provided herein, the City 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 City;
- (2) the right to seek specific performance, an injunction or any other appropriate equitable remedy; and/or
- (3) the right to seek money damages.

B. Contractor Remedies Defined

Upon declaring the City 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. City

In addition to termination pursuant to Sections 4.1B and 8.2A, the City shall have the absolute right to terminate this Agreement by a notice in writing from the City 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 City elects to terminate this Agreement under this subsection A, all Tax collection Services to be provided hereunder shall cease.

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.

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 to the City 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 Contractor elects to terminate this Agreement under this subsection B, 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 City acknowledge that this Agreement, together with the exhibits hereto, 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 City agree that, except for those representations, statements or promises expressly contained in this Agreement and the exhibits hereto, 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. 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 Director of 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 of 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 Transportation Customer from whom the Tax was collected and remitted to the City in accordance with Exhibit 1 to this Agreement, it shall be the City's responsibility to make any necessary refunds; the Contractor shall not be responsible for any refunds to the transportation Customer, nor shall the Contractor be required to refund to the City any Fee retained by the Contractor with respect to the Tax collected from that Transportation Customer.

In the event that the Tax is found to be invalid or unconstitutional by a court of competent jurisdiction, it shall be the City's responsibility to make any necessary refunds; the Contractor shall not be responsible for any refunds of the Tax to Transportation customers, nor shall the Contractor be required to refund to the City any Fee retained by the Contractor with respect to Tax collected.

9.9 Miscellaneous Provisions

Whenever under this Agreement the City by a proper authority waives the Contractor's performance in any respect or waives a requirement or condition to either the city'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 City may have waived the performance, requirement or condition.

Whenever under this Agreement the contractor by a proper authority waives the City's performance in any respect or waives a requirement or condition to either the City'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 City 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 City'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 City or by an assignee or subcontractor of the City 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.

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 City: City of Evanston
 Department of Finance
 2100 Ridge Avenue
 Evanston, Illinois 60201-2798
 Attention: Director

With a Copy to: City of Evanston
 City Manager
 2100 Ridge Avenue
 Evanston, Illinois 60201-2798

If to the Contractor: Northern Illinois Gas Company
100 Shermer Road
Glenview, Illinois 60025
Attention: District Superintendent

With a Copy to: Northern Illinois Gas Company
1844 Ferry Road
Aurora, Illinois 60563-9600
Attention: Julian Brown

Changes in the above-referenced addresses must be in writing and delivered in accordance with the provisions of this Section 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 City Authority

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

11.2 Contractor's Authority

Execution of this Agreement by the Contractor is authorized by bylaws or a resolution of its Board of Directors, if a corporation, and the signature(s) 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 City and the Contractor have executed this Agreement on the date first set forth above.

CITY OF EVANSTON

By: _____

Its _____

NORTHERN ILLINOIS GAS COMPANY

By: _____

Its _____

EXHIBIT 1

TAX COLLECTION SERVICES

SECTION 1 - DEFINITIONS.

The following capitalized terms shall have the following meanings for purposes of this Exhibit. The Definitions set forth in Article 2 of the Agreement shall also apply to this Exhibit.

"Certificate" means a document issued by the City directing the Contractor not to collect the Tax on deliveries of Customer-owned Gas to a Transportation Customer with respect to one or more Transportation Accounts. The form for the Certificate has been agreed upon by the City and the Contractor and is attached hereto as Exhibit 2 to the Agreement.

"Certificated Transportation Account" means a Transportation Account that is listed on the Governmental Body List or on a Certificate presented to the Contractor.

"Fee" has the meaning set forth in Article 2 of the Agreement.

"Customer" has the meaning set forth in Article 2 of the Agreement.

"Customer-owned Gas" has the meaning set forth in Article 2 of the Agreement.

["Governmental Body List" means a document issued by the City and presented to the Contractor that lists the Transportation Accounts, by account number(s) and corresponding account address(es), of those Transportation Customers who qualify as "governmental bodies" under Ordinance 1-0-94 of the Municipal Code of Evanston as amended by 101-0-94]

"Non-certificated Transportation Account" means a Transportation Account that is not a Certificated Transportation Account

"Records" has the meaning set forth in Section 7 of this Exhibit 1.

"Transportation Account" means an account that a Transportation Customer has with the Contractor for the delivery of Customer-owned Gas.

"Transportation Customer" has the meaning set forth in Article 2 of the Agreement.

Transportation Service" means the delivery of Customer-owned Gas by the Contractor to a Transportation Customer.

SECTION 2 - COLLECTION FROM CUSTOMERS.

The Contractor will collect the Tax for each Non-certificated Transportation Account by including the Tax on the bills issued to the Transportation Customer for the Transportation Account. The Tax will be billed and collected at the rate of .95 cents per therm of Customer-owned Gas delivered and billed by the Contractor to such Transportation Account. The Contractor will collect the Tax along with any other amounts owed to the Contractor with respect to the Transportation Account, 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 Transportation Customer.

The Contractor will include the Tax on any bill issued to a Non-certificated Transportation Account on or after May 1, 1994.

In the event that the Evanston Gas Use Tax Ordinance is amended so as to change the rate of the Tax, then the Contractor shall collect the Tax at the new rate with respect to bills issued to Non-certificated Transportation Accounts 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.

SECTION 3 - RESPONSIBILITY FOR GOVERNMENTAL BODY LIST AND CERTIFICATES.

It shall be the obligation of the City to notify the Contractor of those Transportation Accounts for which the Contractor shall not collect the Tax. The City may notify the Contractor directly, by including the Transportation Account on the Governmental Body List, or indirectly, by issuing a Certificate to the Transportation Customer for that Transportation Account.

By the execution date hereof, the Contractor will provide the City with a list of Transportation Accounts which, in the judgment of the Contractor, could possibly qualify as Transportation Accounts of governmental bodies. From this list, the City will develop the Governmental Body List and will provide the Governmental Body List to the Contractor by May 1, 1994. A Transportation Account of a governmental body that is not included on the Governmental Body List can nevertheless become a Certificated Transportation Account if the governmental body obtains a Certificate from the City which includes that Transportation Account and presents the Certificate to the Contractor.

The Contractor will not include the Tax on any bill issued with respect to a certificated Transportation Account and will not collect any Tax with respect to the Certificated Transportation Account. A Transportation Account that is listed on the Governmental Body List will become a Certificated Transportation Account on the effective date of the Tax. A Transportation Account that is listed on a Certificate that is presented to the Contractor will become a Certificated Transportation Account for bills issued on or after 30 days after the Contractor receives the Certificate.

SECTION 4 - POSTING OF CUSTOMER PAYMENTS AND CREDITS

Partial payment of a bill received from, and credits issued to, each Non-certificated Transportation account will be applied, including any gas and service charges, any charges pursuant to sections 9-221 and 9-222 of the Public Utilities Act, as payment first, to each of the items set forth on the bill of any outstanding bill and then to the Tax. The Tax shall be treated as collected by the Contractor for the purposes of this Agreement to the extent applied pursuant to this Section 4.

SECTION 5 - REMITTANCE.

The Contractor will remit the Tax collected, net of its Fee, to the Department on or before the last day of the second calendar month following the calendar month in which the Tax is collected. The Contractor shall provide a statement along with each remittance. The form for such statement shall include the Tax due the City. The calculation of the Tax due shall be shown on the statement. The calculation shall present the total taxable therms multiplied by the rate of .95 cents per therm, less the 3% collection fee to be retained by Northern Illinois Gas.

SECTION 6 - CUSTOMER PAYMENTS; ASSESSMENT BY CITY; PENALTIES AND INTEREST; BANKRUPTCY FILINGS BY TRANSPORTATION CUSTOMERS OF THE CONTRACTOR.

A. The tax shall be due and payable to the Contractor by the due date of the bill on which the Tax is included. Except as provided in this Section 6, the City shall not assess or attempt to collect any Tax from a Transportation Customer. In the event that a Transportation Customer attempts to pay the Tax to the City, the City shall use its best efforts to direct the Transportation Customer to pay the Tax to the Contractor.

B. The City may bill and collect from a Transportation Customer, any penalties and interest due with respect to the Tax liability of such Transportation Customer under Section 3-2-9-7-5 of the Evanston Municipal Code. The Contractor shall not be responsible for administering, billing, collecting or accounting for any of the City's penalty and interest due from a Transportation Customer.

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

D. Upon written notice provided to the Contractor no later than November 1, 1996, the City may elect to attempt to collect Tax owed with respect to any Transportation Account written off by the Contractor as a bad debt. Such election shall take effect upon the end of the initial term of this Agreement and shall remain in effect until this Agreement is terminated. Once such election has taken effect, the Contractor shall notify the City each month in writing of the Transportation Accounts written off during the previous month and the amount of Tax owed with respect to each Transportation Account written off. At the time of write off, the Contractor will remove the Tax amount from the amount owed the Contractor on the Transportation Account. The Contractor shall thenceforth have no obligation to collect any Tax owed with respect to such Transportation Accounts, or to administer or account for such Tax. If the City elects under this subsection to attempt to collect Tax owed, the contractor will not, after the end of the initial term of this Agreement, refer any Transportation Account that includes delinquent Tax to a collection agency or law firm for collection until after the Transportation Account has been written off and the Tax removed from the Transportation Account.

SECTION 7 - RECORDS AND AUDITS.

A. Records

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

Upon request, the Contractor will inform the City whether a particular Transportation Account has been referred to a collection agency or law firm.

B. Audits

The City shall have the right to audit, at the City's expense, all collections of Tax made by the Contractor and remitted to the City 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 City, at the City's expense, and shall make the Records available to the City 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 City, 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.

No provision in this Exhibit granting the City a right of access to Records is intended to impair, limit or affect any right of access to such Records which the City would have had in the absence of such provisions.

Section 8 - LIABILITY FOR TAX REFUNDS, DISPUTES.

Liability for the Tax shall rest exclusively with the Transportation Customer. The Contractor shall not be liable to remit any Tax not actually collected. Any Transportation 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 City, not the Contractor. In no case, shall the Contractor be liable to refund any Tax to a Transportation Customer or other amount collected and remitted to the City pursuant to this Agreement.

EXHIBIT 2

The form of the Certificate shall be a letter on the City of Evanston letterhead executed by its Finance Director.