



## CONTRACT FOR SURVEY AND MAINTENANCE OF COMMERCIAL AND INDUSTRIAL CUSTOMER-OWNED GAS FACILITIES

***This Service is not regulated by the Michigan Public Service Commission.***

Agreement, entered into this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, between \_\_\_\_\_, herein referred to as the “Owner,” and CONSUMERS ENERGY COMPANY, a Michigan corporation having its principal office at One Energy Plaza, Jackson, Michigan 49201, herein referred to as the “Company.”

WITNESSETH:

WHEREAS, the Company is presently furnishing natural gas service to the Owner’s centrally metered installation at \_\_\_\_\_ in the  City  Village  Township of \_\_\_\_\_, Michigan, which is hereinafter referred to as the “Owner’s premises,” and

WHEREAS, the Owner operates certain natural gas facilities on said premises consisting of buried service lines, buried fuel lines, fittings and aboveground shutoff valves (all of which are hereinafter referred to as the Installation), and

WHEREAS, the Company has offered to assist the Owner in performing survey and maintenance work on the Installation, and

WHEREAS, the Owner desires to enter into an agreement pursuant to which the Company would perform an Initial Survey and such other survey and maintenance work on the Installation as the Owner may from time to time request.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. For the purpose of this agreement, the Installation shall be deemed to include all buried natural gas service lines, buried natural gas fuel lines from the outlet side of the Company’s meter located on the Owner’s premises, up to the outlet of the aboveground shutoff valve, regulator or security immediately adjacent to the outside building wall of each building served with gas within the Owner’s premises.
2. The Company shall furnish all supervision, labor, materials, tools and equipment necessary to perform the Initial Survey described in the following paragraph, and such other survey and maintenance work that the Owner requests the Company to perform hereunder. Unless otherwise agreed, all such work will be scheduled for the earliest practicable time.
3. The Company shall perform the Initial Survey at the Owner’s premises to determine and establish a record of the location and condition of the Installation. To establish this record the Company may find it necessary to expose the service or fuel lines. Included as a part of the Initial Survey, the Company shall inspect the Installation for immediate safety considerations including: accessible outside valves, regulator vents extended to outside, and the adequate securing of unused service locations. The Company shall also perform a leak survey of the Installation unless an adequate leak survey was performed since \_\_\_\_\_. Upon completion of the Initial Survey a written copy of the Company’s findings will be sent to the Owner(s), manager, (occupants, if affected) by registered mail, with a return receipt requested. Should said survey indicate that maintenance work is needed; the Company will provide the Owner with its estimate of the cost of performing such work. Upon receipt of such estimate, the Owner shall notify the Company within thirty (30) days of any maintenance work which the Owner requests the Company to perform on the Installation.
4. Subsequent to the Initial Survey, and continuing during the term of this agreement, the Company shall from time to time suggest conducting leakage surveys, cathodic protection surveys or other “maintenance work” and will furnish the Owner with an estimate of the cost of performing such work. Pursuant to the terms of this agreement, the Company will perform such work if requested by the Owner.
5. For purposes of this agreement “maintenance work” shall be deemed to include but not be limited to: leak repairs; coating repairs; valve repairs or replacement; the addition or replacement of cathodic protection appurtenances and facilities; the modification, replacement or retirement of existing service lines; the staking and location of the Installation for construction activities when advised; the observation of construction activities affecting service lines when advised; the installation of additional service lines on the premises (providing the Owner has obtained a valid permit for the additional gas use) and the initiation of gas service to new buildings on the premises.
6. The Owner shall pay the Company the actual cost of the work performed hereunder, based on the rates that the Company charges third parties for similar work. The estimated cost of the Initial Survey is \$\_\_\_\_\_. Payment of all amounts due shall be made by Owner within thirty (30) days after receipt of an invoice therefore.

7. The Company shall provide the Owner with a description of all inspections, surveys and completed maintenance work on standard Company forms. It is expressly understood that the Company is not "the operator" of the Installation and that the Company, with the exception of the Initial Survey, will only perform that survey and maintenance work that the Owner has requested the Company to perform.
8. The Company shall not be held responsible for any restoration expenses, including but not limited to the restoration of paving or landscaping disturbed, during its performance of the work provided for herein on any portion of the Owner's premises.
9. The Owner hereby grants to the Company, its agents and employees, the free right of ingress to and egress from the Owner's premises at all reasonable hours for the purpose of performing the Initial Survey and any other inspection or maintenance work that the Owner, pursuant to the terms of this agreement, requests the Company to perform.
10. The Company shall have the right to operate any and all valves of the Installation necessary to shut off the supply of natural gas and to purge the same, or any part thereof, whenever such action is deemed necessary by the Company in the performance of the Initial Survey or any subsequent survey and maintenance work that the Owner may request the Company to perform, provided that the Company shall give the Owner reasonable notice of its intention, including the approximate time and duration of such interruption in the supply of gas. In the event of emergencies, the Company shall not be required to give any notice to the Owner before operating such valves. In all cases where the supply of gas to the Installation is interrupted by the Company, the Company and the Owner shall cooperate and render all necessary assistance to each other to assure that all gas appliances in each building affected by such interruption have been turned off and are ready for restoration of gas service.
11. The Owner shall be responsible for all inspections and maintenance work on all fuel lines within the Owner's buildings from the outlet side of the aboveground shutoff valve, regulator or security immediately adjacent to the outside building walls.
12. Neither party shall be liable for loss, damage or delay resulting from causes beyond its reasonable control including, but not limited to, losses, damages or delays due to fire, explosion, flood, freezing, accident, labor controversy, civil, governmental or military authority, insurrection, riot, embargo, unavoidable delay in transportation, act of God or the public enemy, or inability or delay in procuring labor or materials; and in no event shall the Company be responsible for loss or damage arising out of preexisting conditions of the Owner's Installation which could not reasonably have been disclosed during the Initial Survey or subsequent survey and maintenance of the Owner's Installation.
13. All notices which under the terms of this agreement are to be given by or issued to the Owner shall be given by or issued to: \_\_\_\_\_, whose address is \_\_\_\_\_, Michigan, \_\_\_\_\_. All notices which under the terms of this agreement are to be given by or issued to the Company shall be given by or issued to: \_\_\_\_\_, Consumers Energy Company, Michigan, \_\_\_\_\_. Unless otherwise provided herein, all notices required or authorized to be given under this agreement shall be given in writing and mailed by first class mail, postage prepaid. Notices shall be effective upon receipt.
14. With respect to the subject matter hereof, this agreement supersedes all previous representations, understandings, negotiations and agreements, either written or oral, between the parties hereto or their representatives (including specifically the contract dated \_\_\_\_\_) and constitutes the entire contract between the parties. No part of any purchase order, request for proposal or other document issued by Owner shall be binding upon Company or affect its rights or obligations hereunder unless signed by a duly authorized representative of Company. The terms of this agreement shall not be changed, superseded or supplemented except in writing executed by authorized representatives of Company and Owner. This agreement and its interpretation shall be governed by the laws of the State of Michigan, exclusive of its conflict of law principles. This agreement is intended for the benefit of the parties and does not grant any rights to any third parties unless otherwise specifically stated herein.
15. This agreement shall become effective on the date first set forth above and shall continue in effect until terminated (i) by mutual consent, (ii) at the option of either party following sixty (60) days' written notice to the other party (iii) upon ten (10) days' written notice by the non-defaulting party if a party is in default of a material obligation herein undertaken and does not cure such default to the non-defaulting party's satisfaction within thirty (30) days after receiving notice of the default, (it being specifically agreed that in terminating under the latter provision, there shall be no waiver of other equitable and legal relief otherwise available as a result of the default).
16. Company warrants that any work performed under this agreement shall be performed in accordance with accepted industry standards. The sole liability of Company under this warranty shall be limited to re-performing any such work on the same conditions as the original work. **EXCEPT AS EXPRESSLY STATED HEREIN, THERE ARE NO OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING THE WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE WHICH ARE HEREBY EXPRESSLY DISCLAIMED.** In no event shall Company be liable for any loss or damage, whatever, by reason of its

failure to discover, report or modify latent defects or defects inherent in the design of Owner's Installation. The aforementioned warranty is subject to the following conditions:

- a. Company shall not be responsible for repairs, replacement or corrections made by others with respect to the work performed by Company.
  - b. Company shall be notified in writing of any breach of warranty with respect to the work within thirty (30) days after the completion of the work.
17. The warranty remedy of the Owner set forth herein is its exclusive remedy. The total liability of Company, its agents and employees with respect to any and all claims arising out of the performance of obligations in connection with the work provided hereunder, shall not exceed in the aggregate the price paid by the Owner for the work provided by Company and shall in no event include incidental and consequential damages including, but not limited to, loss of revenue or loss of use, loss by reason of facility or equipment shutdown or inability to operate at rated capacity, increased expense of operations of plant or equipment, increased costs of purchasing or providing equipment, materials, supplies outside of Company's scope of supply, costs of replacement gas or capital, claims of the Owner's tenants, inventory or use charges, or any other incidental or consequential damages of any nature. This Limitation of Liability provision shall prevail over any conflicting or inconsistent provisions contained herein or in any other applicable document.
18. The Owner agrees to indemnify and hold Company harmless from and against, and shall at Company's option, undertake the defense of, any and all claims, losses, liability and damage, including reasonable attorneys' fees, which Company might sustain or incur or which might be asserted by any third party against Company as a result of the services provided under this Agreement, whether based on warranty, contract, tort (including negligence), strict liability, or otherwise, unless caused solely by Company's negligence.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in duplicate either in person or by their duly authorized representatives, respectively, the day and year first above written.

CONSUMERS ENERGY COMPANY

\_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print or Type Name)

\_\_\_\_\_  
(Print or Type Name)

Title: \_\_\_\_\_

Title: \_\_\_\_\_