RESOLUTION NO.: 86-2009
INTRODUCED BY: Mayor Ursu

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH INTERSTATE GAS SUPPLY, INC. FOR THE PURCHASE OF NATURAL GAS FOR CITY FACILITIES.

WHEREAS, Interstate Gas Supply, Inc. has made a proposal to supply natural gas to the City for the period of January 2010 through December 2010 with subsequent one-month increments thereafter unless cancelled by either party; and

WHEREAS, the Mayor and Director of Finance recommend that the City enter into a contract with Interstate Gas Supply, Inc. for purchase of natural gas for City facilities pursuant to said proposal;

NOW, THEREFORE, Be It Resolved by the Council of the City of Richmond Heights, State of Ohio, that:

Section 1: The Mayor is authorized to execute a contract with Interstate Gas Supply, Inc. for the purchase of natural gas for City facilities in a form as set forth in Exhibit A, attached hereto and incorporated into this Resolution as if fully rewritten herein.

Section 2: The Director of Finance is directed to appropriate from a proper account the funds necessary for the contract authorized in Section 1 of this Resolution.

Section 3: It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 4: This Resolution shall take effect and be in force from and after its passage and signature by the Mayor.

PASSED: ____________________________  ____________________________
Daniel J. Ursu, Mayor

APPROVED: ____________________________

ATTEST: ____________________________  ____________________________
Betsy Traben
Clerk of Council
David H. Roche
President of Council

{00848325 - 1}
IGS Natural Gas Purchase Confirmation V4CH-IND

Attention: Interstate Gas Supply, Inc. ("Seller")

Industrial/Commercial Sales Division

Company Name: City of Richmond Heights

Contact Name: Lynda Rossiter

Mailing Address: 26789 Highlund Road

Billing Address: see exhibit "A"

Facility Address: see exhibit "A"

(“Buyer”)  

City: Richmond Heights  
State: OH  
Zip: 44143

Critical Day Volume: 100% of Usage determined by the NGDC

Initial Term:

The contract will begin effective with the January 2010 billing cycle and continue through the December 2010 billing cycle ("Primary Term"), and will renew in one month increments thereafter ("Secondary Term"), unless cancelled by either party as described herein.

For notice purposes December 31st of each Year will be the Anniversary Date. At the end of the Primary Term, and at the end of each Secondary Term thereafter, the contract will automatically renew on a year-to-year basis unless either party provides the other with written notice at least sixty (60) days prior to the Anniversary Date. Buyer recognizes that because Seller needs to contract for supplies and transportation each year in advance of the Anniversary Date, Buyer's timely termination of this contract will harm Seller as detailed herein.

Option 1  [] Variable Price:

Beginning with the ________ billing cycle through the ________ billing cycle the price per MCF for all gas delivered to the burner-tip will be determined monthly by 100% of the applicable ________ (depending on your billing cycle), plus $____ which shall include all interstate transportation, pipeline and distribution shrinkage, BTU conversion and pooling fees and excluding all applicable taxes and NGDC distribution and transportation charges. After the Price Expiration Date, the pricing will be as described under Renewal Variable Pricing in V4CH-IND Terms and Conditions. Subject to Credit Approval, Buyer shall have the option to request the Fixed Price option at a mutually agreeable price, which shall be effective only upon written acceptance by Seller of a new Confirmation.

Option 2  [] Fixed Price:

Beginning with the January 2010 billing cycle through the December 2010 billing cycle, the price per MCF for all gas delivered to the burner-tip will be fixed at $6.99 per MCF, plus all applicable taxes and NGDC distribution and transportation charges. After the Price Expiration Date, the pricing will be as described under Renewal Variable Pricing in V4CH-IND Terms and Conditions.

Option 3  [] Partial Fixed Price:

Beginning with the ________ billing cycle through the ________ billing cycle, the price per MCF delivered to the burner-tip for all gas described under “Partial Fixed Volumes” listed below, will be fixed at $____, plus all applicable taxes and NGDC distribution and transportation charges. The price per MCF delivered to the burner-tip for the Reported Volumes in excess of the Partial Fixed Volumes shall be determined using the Variable Price described in Option 1 above. After the Price Expiration Date, the pricing will be as described under Renewal Variable Pricing in V4CH-IND Terms and Conditions.

MCF Volumes at Burner-tip: ("Full Contract Volumes") ("Partial Fixed Volumes")

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Other Terms and Conditions: All gas sold under this contract shall be subject to the terms and conditions of the attached IGS Form V4CH-IND, a copy of which is attached hereto and incorporated herein by reference. Seller has provided Buyer with a copy of the terms and conditions, and by executing this contract, Buyer acknowledges receipt thereof. Should Buyer and Seller execute more than one Natural Gas Purchase Confirmation, the terms and conditions of the most recent Confirmation shall supersede and take priority over any previous Confirmations.

Accepted by Buyer:

Name ________________________________  Title ________________________________  Date __________

Agreed to by Seller:

Name ________________________________  Title ________________________________  Date __________

EXHIBIT A

THE END
SUPPLY: Interstate Gas Supply, Inc. (Seller) will supply the commodity portion of any natural gas and my utility will be my Natural Gas Distribution Company (NGDC).

CANCELLATION: This contract may be cancelled by either party at the end of each Primary or at the end of any subsequent Secondary term by giving 60 days prior written notice as detailed on the Confirmation. If I discontinue service with Seller at any other time, including but not limited to switching to another supplier or being switched back to the NGDC as a result of late payments, this contract may automatically be terminated by Seller with no notice and I agree to pay Seller any applicable amounts due as incurred under the Damages section of this contract, plus all other damages to which Seller is entitled. Also, I understand that if I switch my service back to the NGDC, then I may be charged a price other than the GCR rate.

RENEWAL VARIABLE PRICING: Unless otherwise agreed to in writing by the parties, for each Secondary Term, the price per MCF delivered to the delivery point for all volumes excluding the NGDC distribution transportation charges and all applicable taxes, will be determined monthly by the first of the month index price of gas delivered to the delivery point, plus transportation, demand charges and shrinkage, BTU conversion, pooling fees and a service fee.

BILLING: For my convenience I will receive only one bill, which will be issued by the NGDC and will contain Seller’s price plus applicable taxes and all of the NGDC’s transportation and other applicable charges. I agree to continue to pay the NGDC for the entire gas bill under the NGDC’s payment terms and conditions. Notwithstanding the foregoing, as long as I meet timely payments to Seller, Seller may elect to bill me separately from the NGDC for the commodity portion of my natural gas bill, which may also include applicable taxes and NGDC charges. In such event, I agree to pay Seller directly, within the terms set forth on the invoice(s). In the event I fail to pay either the NGDC or Seller timely, I agree that Seller may pass along amounts due me to the NGDC. Seller shall be liable to the NGDC for all amounts due the NGDC. I acknowledge that the NGDC and Seller is mutually responsible for reading my meter(s) and that any dispute(s) that I have with respect to volumes or adjustments shall be addressed to the NGDC. Adjusted volumes may be priced by Seller, in Seller’s sole discretion, at the contract price, or at the then current market price. In the event I fail to timely pay Seller for invoices issued by Seller, Seller shall have the right to put me on a rate code that is billed and collected by the NGDC, and that such rate code may result in a different price than that on the Confirmation, which I agree to pay. As an alternative, if I fail to pay any invoice(s) timely, I agree to pay any late charges and interest thereon, and I will pay all past due amounts and provide Seller with a security deposit equal to my two months highest consumption times my current contract price, within 10 days of such demand by Seller.

ELIGIBILITY: Participation in the program is subject to the rates of the NGDC. Customers are sometimes terminated from the program due to inactivity or failure to bill in a timely manner. In such instances, I may be able to contact the NGDC to correct the problem and be reinstated in the program. Regardless of the reason for termination, no event will the original term be extended for months that I was unable to participate nor will Seller have any liability for any early termination or for any months that I was unable to participate in the program.

LIMITATION OF LIABILITY: Seller assumes no liability or responsibility for losses or consequential damages arising from items associated with the NGDC including, but not limited to, loss of operations and maintenance of its systems; any interruption of service; termination of service; events of force majeure; or deprivation of service, nor does Seller assume responsibility or liability for damages arising from any inherent, latent, or concealed damage resulting from the use of natural gas and Seller shall not be responsible for any indirect, consequential, special or punitive damages whether arising under contract, tort (including negligence or strict liability) or otherwise.

SEVERABILITY: In the event that any of the terms, covenants, or conditions of this contract or the application of any such term, covenant, or condition shall be held invalid by any person or by any court of competent jurisdiction, it shall not affect the validity or enforceability of any other part of this contract, and their application shall not be affected thereby and shall remain in full force and effect unless a court holds that the provisions are not separable from all other provisions of the contract.

ENTIRE CONTRACT: This contract contains the present understanding between both parties with respect to the subject matter hereof, supersedes any prior understanding, and all prior or contemporaneous representations, statements, negotiations, understandings, and inducements are fully merged and incorporated in this contract. This contract cannot be amended or modified except by a writing executed by both parties.

CREDIT: At any time at the sole discretion of Seller, in Seller’s sole discretion, demand Buyer’s financial condition inadequate to extend credit for gas sales including the performance risk associated with a fixed price commitment under this contract, Seller may require security sufficient to cover volumes for the two largest months listed under “Full Contract Volumes at Bunsby” in the form of either a deposit, standby irrevocable letter of credit, performance bond or security interest in an asset acceptable to Seller. Furthermore, in the event that Buyer shall (i) make an assignment or partial transfer of the contract for the benefit of creditors, (ii) default in any payment or other obligation to Seller (including any obligation to provide additional security as provided above), (iii) file a petition or otherwise commence, authorize, or acquiesce in the commencement of a proceeding of or cause to be commenced against it, (iv) otherwise become bankrupt or insolvent (however evidenced), or (v) be unable to pay its debts as they fall due or fail to pay its obligations as required under this contract according to the payment terms, then Seller shall have the right, in Seller’s sole discretion, to immediately withhold and/or suspend deliveries, and, in addition, to terminate this contract upon ten (10) days written notice unless such default is cured within such ten (10) day period. Seller’s rights hereunder are in addition to any and all other remedies available hereunder. Notwithstanding anything to the contrary herein, Seller may immediately suspend deliveries to Buyer hereunder in the event Buyer has not paid any amount due to Seller on or before the second day following the date such payment is due. CREDIT DEFAULT: in the event Buyer is party to another gas purchase contract with Seller (i.e., for a separate facility), a default by Buyer under such other contract may, at Seller’s option, be treated as a default by Buyer hereunder.

DAMAGE LIMITATION OF LIABILITY: Buyer recognizes that Seller may hedge its obligations under this contract by purchasing delivered gas, pipeline transportation or gas futures. Also, Buyer acknowledges that, due to the volatility of the gas market, determination of damages is uncertain as to amount and difficult to prove. Therefore, Buyer agrees that in the event of Buyer’s default which results in early termination of this contract, including but not limited to Buyer’s failure to complete the Primary or any Secondary Term of this contract, Buyer shall be liable to Seller, as liquidated damages, for an amount equal to the result of the following calculation: Six percent (6.0%) of the highest monthly Contract Volumes multiplied by $300 multiplied by the number of months remaining in the Primary or Secondary Term. If this contract continues past a Primary or Secondary Term, if this contract continues past a Primary or Secondary Term, it shall be considered a multiple service location, in which case, in the event of an individual location or locations terminate service with Seller (except as stated under Cancellation) prior to the end of a Primary or Secondary Term or otherwise default, the proportional amount of the above formula will be used for the individual location(s) that so terminate. Also, in addition to the damages specified in the previous two sentences, if Buyer is on a Price Fixed option and any and all of the locations fail to complete a Primary or Secondary Term, in addition to the foregoing liquidated damages, Buyer shall be liable for any difference between the contract fixed rate for the volume not purchased by the defaulting location(s) and, in Seller’s sole discretion, either (i) the then current Market Rate or, (ii) if Seller is able to liquidate the gas future(s) or physical gas, the price at which Seller is able, in the exercise of its reasonable business judgment, to sell such gas or gas futures in mitigation of its damages, noting nothing limits Buyer’s obligation to pay Seller for all volumes mandated by the NGDC as otherwise detailed herein. SELLER reserves the right, and Buyer agrees to permit Seller to temporarily increase the monthly price charged to Buyer to cover any such damages for service locations that have not defaulted. In the event SELLER exercises such right, SELLER will send Buyer an informational invoice separate from the NGDC billing the charges. Neither Party shall be liable for any special, consequential, or indirect damages, and Buyer agrees and acknowledges that the damages detailed in this contract are not special, consequential, or indirect damages. All remittances of Seller hereunder are cumulative and also in addition to any other legal remedies. In the event of the Buyer’s default under the terms of this contract or breach of this contract, the Buyer shall be obligated to Seller for the cost to Seller associated with the Buyer’s default in breach, including costs incurred in mitigating its damages, costs of collection, reasonable attorneys’ fees and litigation costs.

REVENUE LAW: This contract shall be governed by the applicable laws of the United States of America and the State of Ohio, without regard to Ohio’s principles of, or conflicts of, law, in accordance with the rules of the American Arbitration Association. Any legal action involving any and all disputes arising from or relating to this contract shall be brought in the State of Ohio, including, but not limited to, any legal action involving any and all disputes arising from or relating to this contract shall be brought in the State of Ohio, Franklin County, Ohio or in the United States District Court for the Southern District of Ohio sitting in Columbus, Ohio.

ENFORCEMENT: The Energy Choice Program is subject to ongoing Public Utilities Commission of Ohio (PUCO) jurisdiction and understanding that if the Energy Choice Program is terminated this contract will be terminated without penalty to either party.

ASSIGNMENT: This contract may be assigned only with express written consent of Seller, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, either the Buyer or Seller may, without the need for further consent, transfer or assign this contract to any person succeeding to all or substantially all the assets of the transferee, whether by merger or otherwise, so long as such person shall, as part of such succession, assume all the obligations of the transferee under this contract. However, no such transfer shall relieve the Buyer of any obligations hereunder.

RELATIONSHIPS OF THE PARTIES: Seller may, based upon its knowledge of the industry, consult with Buyer regarding the natural gas market, including pricing expectations, and may give advice or make recommendations to Buyer. However, Buyer recognizes that the gas market is volatile and historical trends may not be indicative of future trends. Buyer will make decisions regarding pricing and other terms in its sole discretion, whether with or without advice or recommendations from Seller, and Seller shall have no liability for Buyer’s acting (or failure to act) upon Seller’s advice or recommendations.
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