RESOLUTION NO.: 73 -2011
INTRODUCED BY: Alexander

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. ("IGS") has made a proposal to supply natural gas to the City for the period of January 2012 through December 2012 with subsequent one-year increments thereafter unless cancelled by either party; and

WHEREAS, the Mayor and Director of Finance recommend that the City enter into a contract with IGS 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, effective January 1, 2012.

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

EXHIBIT A

IGS Natural Gas Purchase Confirmation V4.2CH-IND

Attention: Interstate Gas Supply, Inc. ("Seller") **IGS Fax #: 614-659-5125**

Commercial & Industrial Sales Division

Company Name City of Richmond Heights **("Buyer")**

Contact Name Lynda Rossister **Tel** 216-486-2474 **Fax** 216-383-6320

	Street Address	City	State	Zip
Mailing	26789 Highland Rd.	Richmond Heights	OH	44143
Billing	Utility Billing **Facility**			
	See Exhibit A			

Dominion East Ohio ("NGDC") **Account Number/s** **See Exhibit A**

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

Initial Term:
This contract will begin with the **January 2012** billing cycle and continue through the **December 2012** billing cycle (the "Primary Term"), and it will automatically renew on an annual basis thereafter (with each such year constituting a "Secondary Term"). Any automatic renewal may be cancelled by Buyer or Seller delivering written notice to the other at least 60 days before the automatic renewal date. The automatic renewal date at the end of the Primary Term will be the last day of **December 2012,** and the automatic renewal date for each of the following Secondary Terms, if any, will be last day of each **December** thereafter. Because Seller needs to contract for supplies and transportation in advance, Buyer's early termination of this contract will harm Seller.

Option 1 **Variable Price:**
Beginning with the billing cycle and continuing through the billing cycle, the price per **Mcf** for all gas delivered to the **burnertip** will be determined monthly as **100%** of the applicable ____ (depending on Buyer's billing cycle) plus $. The price includes all interstate transportation charges, pipeline and distribution shrinkage, BTU conversion, and pooling fees, but it does not include the applicable taxes or NGDC distribution and transportation charges. After the Variable Price expires, the price will be as described under the Renewal Variable Pricing section in the attached Form V4.2CH-IND Terms and Conditions. **Subject to Credit approval by Seller, Buyer may select a Fixed Price option at a mutually-agreed price, which will be effective only upon written acceptance by Seller of a new Purchase Confirmation.**

Option 2 **Fixed Price:**
Beginning with the **January 2012** billing cycle and continuing through the **December 2012** billing cycle, the price per **Mcf** for all gas delivered to the **burnertip** will be fixed at **$5.29 per Mcf.** The price includes all interstate transportation charges, pipeline and distribution shrinkage, BTU conversion, and pooling fees, but it does not include the applicable taxes or NGDC distribution and transportation charges. After the Fixed Price expires, the price will be as described under the Renewal Variable Pricing section in the attached Form V4.2CH-IND Terms and Conditions.

Full Contract Volumes in Mcf at the Burnertip

Month	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sept	Oct	Nov	Dec
	1083	697	549	194	181	171	147	166	168	230	306	957

Other Terms and Conditions: All gas sold under this contract will be subject to the terms and conditions of the attached IGS Form V4.2CH-IND, a copy of which is attached and incorporated herein by reference. By signing this contract, Buyer acknowledges receipt of Form V4.2CH-IND. If Buyer and Seller execute more than one Purchase Confirmation, the terms of the most recent Confirmation will supersede and take priority over all previous Confirmations.
Any signature on this Confirmation will be considered valid for all purposes and have the same effect whether it is an ink-signed original or a photocopy or a facsimile representation of the original document.

Accepted by Buyer:	Name: Daniel J Ursu	Mayor Title	11/16/11 Date
Agreed to by Seller:	Name: Scott Arthur	Title	Date

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SUPPLY: Seller will supply the commodity portion of Buyer's natural gas, and the utility will be Buyer's Natural Gas Distribution Company ("NGDC").

CANCELLATION: This contract may be cancelled according to the process set forth in the Confirmation. If Buyer discontinues 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 upon 10 days written notice, and Buyer will pay to Seller all damages as set forth under this contract. If Buyer transfers service to the NGDC, Buyer may be charged a price other than the NGDC's standard rate. Buyer acknowledges that it make take up to two billing cycles to transfer service.

RENEWAL VARIABLE PRICE: Unless otherwise agreed to in writing by the parties, for each Secondary Term(s), the price per applicable unit of measure delivered to the applicable delivery point for all volumes will be determined monthly by the first of the month index price of gas delivered to the delivery point, plus all of the following: transportation, demand charges, shrinkage, BTU conversion, pooling fees, and a service fee. The price will not include the applicable taxes or NGDC distribution and transportation charges.

BILLING: The NGDC's monthly invoices will contain Seller's gas charges plus applicable taxes and all of the NGDC's distribution and transportation and other applicable charges. Buyer will pay to the NGDC the entire amount of each gas bill under the NGDC's payment terms and conditions. If Buyer fails to pay either the NGDC or Seller timely, a late fee of 1.5% per month will apply for all past-due amounts. The NGDC and not Seller is solely responsible for reading Buyer's meter(s), and all dispute(s) that Buyer has with respect to volumes or adjustments will be addressed solely to the NGDC. Adjusted volumes will be priced at either the contract or market price in effect at the time of adjustment by the NGDC.

ELIGIBILITY: Participation in the choice program is subject to the rules of the NGDC. Customers are rarely but sometimes terminated from the choice program either in error or for being in arrears. In such instances, Buyer may be reenrolled into the program by contacting the NGDC. In such event, the affected Term will not be extended for any months that Buyer was unable to participate, nor will Seller have any liability for any such termination.

LIMITATION OF LIABILITY: Seller will not be liable for losses arising from the NGDC, including but not limited to: operations and maintenance of the NGDC's system; any NGDC interruption of service; NGDC termination of service; NGDC events of force majeure; or deterioration of NGDC service. Further, Seller will not be liable for any losses arising from the use of natural gas or any indirect, consequential, special, or punitive damages, whether arising under contract, tort (including negligence or strict liability), or any other legal theory.

SEVERABILITY: If any provision of this contract is held unenforceable by any court having jurisdiction, all other provisions will not be affected, and the court will modify the invalid provision to the minimum extent necessary to render it enforceable.

ENTIRE CONTRACT: This contract contains the entire understanding between both parties with respect to the subject matter described herein, and it supersedes all prior and contemporaneous representations, statements, negotiations, understandings, and inducements. This contract cannot be modified in any way except by a writing signed by both parties.

CREDIT: Buyer will provide to Seller financial statements and other credit-related information, upon seller's reasonable request all of which will be treated as confidential by Seller. If Seller reasonably deems Buyer's financial condition inadequate to extend credit for gas sales, including the risk associated with a fixed price under this contract, Seller may require security sufficient to cover volumes for the two largest months listed under "Full Contract Volumes" in the form of either a deposit, a standby irrevocable letter of credit, a performance bond, or a perfected security interest in an asset acceptable to Seller. Furthermore, if Buyer (i) makes an assignment or general contract for the benefit of creditors, (ii) defaults in any payment or other obligation to Seller (including any obligation to provide security as provided above), (iii) files a petition or acquiesces in the commencement of a case under any bankruptcy or similar law for the protection of creditors or has such petition filed against it, or (iv) is unable to pay its debts as they fall due or fails to pay its obligations as required under this contract according to the payment terms, then Seller may suspend deliveries and terminate this contract upon its delivery to Buyer of 10 days prior written notice. Seller's rights under this credit section are in addition to all other remedies available under this contract.

CROSS DEFAULT: If Buyer is a party to another gas purchase contract with Seller, a default by Buyer under such other contract may be treated by Seller as a default by Buyer under this contract.

DAMAGES. Seller may hedge its obligations under this contract by purchasing delivered gas and pipeline transportation, as well as gas futures and/or swaps, or any combination thereof. If Buyer terminates any or all accounts under this contract before the expiration of any Term, or if Seller terminates this contract as to any or all accounts before the expiration of any Term as a result of Buyer's default, then: (1) if under a Variable Price option or the Renewal Variable Price, Buyer will pay to Seller damages equal to $0.20 per Mcf multiplied times the Full Contract Volumes remaining under the then-current Term; or (2) if under a Fixed Price option, Buyer will pay to Seller damages equal to the positive difference, if any, between the then-current contract Fixed Price minus the then-current market price multiplied times the Full Contract Volumes remaining under the then-current Term. Seller may increase the price charged to Buyer for accounts that have not defaulted in order to cover the damages described above; in such instance, Seller will send to Buyer an informational invoice to supplement the NGDC's bill. Nothing herein limits Buyer's obligation to pay for all gas delivered as metered by the NGDC. If Seller fails to perform its delivery obligations under this contract, Seller will pay to Buyer the amount equal to the positive difference, if any, between Buyer's reasonable cost of cover minus the then-current contract price for all volumes Seller failed to deliver. The prevailing party in any lawsuit under this contract will be entitled to collect from the breaching party the prevailing party's costs of enforcing this contract, including reasonable attorneys' fees and all other litigation expenses.

GOVERNING LAW: This contract will be governed by the applicable laws of the State of Ohio, without regard to Ohio's principles of or conflicts of law. All legal actions involving all disputes arising under this contract will be brought exclusively in a court of the State of Ohio sitting in Franklin County, Ohio, or in the United States District Court for the Southern District of Ohio sitting in Columbus, Ohio.

REGULATORY: The choice program is subject to ongoing utilities commission jurisdiction. If the choice program is terminated, this contract will be terminated without penalty to either party.

ASSIGNMENT: This contract may be assigned by Buyer only with express written consent of Seller, which consent will not be unreasonably withheld or delayed.

RELATIONSHIP OF THE PARTIES: The gas market is volatile, and historical trends may not be indicative of future trends. Buyer will make decisions regarding pricing and volumes in Buyer's sole discretion, whether with or without advice or recommendation from Seller, and Seller will not be liable for Buyer's acting or failure to act upon Seller's advice or recommendations.