

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

IGS Natural Gas Purchase Confirmation V4CH-IND**Attention: Interstate Gas Supply, Inc. ("Seller")****IGS Fax #: 614-659-5125****Industrial/Commercial Sales Division**

Company Name	City of Richmond Heights	("Buyer")					
Contact Name	Lynda Rossiter	Tel	216-486-2474	Fax	216-383-6320		
Mailing Address	26789 Highland Road	City	Richmond Heights	State	OH	Zip	44143
Billing Address	see exhibit "A"	City		State		Zip	
Facility Address	see exhibit "A"	City		State		Zip	
Dominion East Ohio ("NGDC")	Account Number/s	see exhibit "A"					

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 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 untimely 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 burnertip 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 burnertip 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 burnertip for all gas described under "**Partial Fixed Volumes**" listed below, without regard for Monthly Tolerance will be fixed at \$_____, plus all applicable taxes and NGDC distribution and transportation charges. The price per MCF delivered to the burnertip 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 Burnertip: ("Full Contract Volumes") ("Partial Fixed Volumes")

Month	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sept	Oct	Nov	Dec
Full Volumes	1260	1111	1331	909	381	386	184	499	86	74	246	759
Partial Volumes												
Partial Vols Year												

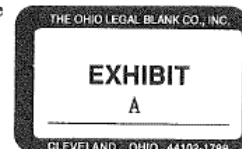
Other Terms and Conditions: All gas sold under this contract shall be subject to the terms and conditions of the attached IGS Form V4CH-IND, a copy of which is attached hereto and incorporated herein by reference. Seller has provided Buyer with a copy of the terms and conditions, and by executing this 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 _____
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Agreed to by Seller:

Name _____	Title _____	Date _____
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SUPPLY: Interstate Gas Supply, Inc. (Seller) will supply the commodity portion of my 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 to Seller any applicable amounts due as described 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(s), 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 gas 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 make 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 or the NGDC may charge me a late fee of 1.5% per month for all past-due amounts. I acknowledge that the NGDC and not Seller is solely 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 and I do not want to go onto a NGDC billed rate code, I must pay all past due amounts and provide Seller with a security deposit equal to my two months highest consumption times my contract price, within 10 days of such a demand by Seller.

ELIGIBILITY: Participation in the program is subject to the rules of the NGDC. Customers are sometimes terminated from the choice program either in error or for being in arrears. 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, in 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: operations and maintenance of their system; any interruption of service; termination of service; events of force majeure, or deterioration of service, nor does Seller assume responsibility or liability for damages arising from any in-home or building damages resulting from the use of natural gas and in addition shall not be responsible for any indirect, consequential, special or punitive damages whether arising under contract, tort (including negligence or strict liability) or any other legal theory.

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 as to any person or circumstance by any court having jurisdiction, all other terms, covenants, or conditions of this contract and their application shall not be affected thereby but 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 should Seller, in Seller's sole discretion, deem 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 Burntup" 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 general 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 or case under any bankruptcy or similar law for the protection of creditors or have such petition filed or proceeding 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 Seller on or before the second day following the date such payment is due.

CROSS DEFAULT: In the event Buyer is a party to another gas purchase contract with Seller (e.g. 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.

DAMAGES/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 \$9.00 multiplied by the number of months remaining in the Primary or Secondary Term. If this contract includes multiple service locations and 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, Buyer shall be liable to Seller for the proportional amount of aforementioned formula prorated 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 Fixed Price option and any or 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 volumes 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 futures 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. Nothing herein limits Buyer's obligation to pay Seller for all volumes metered 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, detailing 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 remedies of Seller hereunder are cumulative and 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 the Seller for the cost to Seller associated with the Buyer's default or breach, including costs incurred in mitigating its damages, costs of collection, reasonable attorneys' fees and litigation costs.

GOVERNING LAW: This contract shall be governed by the applicable laws of the United States and of the State of Ohio, without regard to Ohio's principles of, or conflicts of, law. Any legal action involving any and all disputes arising under or relating to this contract shall be brought 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 Energy Choice Program is subject to ongoing Public Utilities Commission of Ohio (PUCO) jurisdiction and I understand 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 transferor, whether by merger or otherwise, so long as such person shall, as part of such succession, assume all the obligations of the transferor under this contract. However, no such transfer shall relieve the Buyer of its obligations hereunder.

RELATIONSHIP OF THE PARTIES: Seller may, based upon its knowledge of the industry, consult with Buyer regarding the natural gas market, including pricing options, 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 volumes in its sole discretion, whether with or without advice or recommendation from Seller, and Seller shall have no liability for Buyer's acting (or failure to act) upon Seller's advice or recommendations.

City of Richmond Heights Exhibit "A" 12/8/09

Account Number	Service Address	City	State	Zip
9500009449915	27201 Highland Rd	Richmond Heights	OH	44143
9441700488984	26262 Chardonview Dr	Richmond Heights	OH	44143
1441700488942	26003 Highland Rd	Richmond Heights	OH	44143
9500034200587	434 Richmond Rd	Richmond Heights	OH	44143
9500030022512	422 Richmond Rd	Richmond Heights	OH	44143
1500036786591	264 Richmond Rd	Richmond Heights	OH	44143
9440600121730	27285 Highland Rd	Richmond Heights	OH	44143
9441700121743	27285 Highland Rd	Richmond Heights	OH	44143
9441700121757	27285 Highland Rd	Richmond Heights	OH	44143