

RESOLUTION NO. 12-11
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER John Beals ON THE
18th DAY OF April, 2011.

**A RESOLUTION RATIFYING THE ACTION OF THE CITY
MANAGER TO ENTER INTO A NATURAL GAS SUPPLY
AGREEMENT WITH INTERSTATE GAS SUPPLY, INC. (IGS)
FOR MUNICIPAL ACCOUNTS.**

WHEREAS, the City is part of a consortium of nine municipalities formed to collectively negotiate a natural gas supply agreement with Interstate Gas Supply, Inc., and

WHEREAS, the cooperative negotiating process has produced an agreement with rates that will significantly reduce the City's cost for natural gas generation and transmission services, and

WHEREAS, the savings for natural gas supply under the agreement will lower the City's operating costs.

NOW, THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

Section 1. That the action of the City Manager in signing the natural gas supply agreement on behalf of the City of Centerville with Interstate Gas Supply, Inc. for the period from April 1, 2011 to March 31, 2012, a copy of said agreement is attached hereto, marked Exhibit "A" and incorporated herein, is hereby ratified.

Section 2. This resolution becomes effective on the earliest date allowed by law.

PASSED this 18th day of April, 2011.

C. Mark Keene
Mayor of the City of Centerville, Ohio

ATTEST:

Debra A. James
Clerk of Council, City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of the Council of the City of Centerville, Ohio hereby certifies that the foregoing is a true and correct copy of Resolution Number 12-11 passed by the Council of the City of Centerville, Ohio on the 18th day of April, 2011.

Debra A. James
Clerk of Council

Approved as to form, consistency with existing ordinances, the Charter and Constitutional Provisions.

Department of Law
Scott A. Liberman
Municipal Attorney

IGS Natural Gas Purchase Confirmation V4CH-IND - Guaranteed Savings:

Attention: Interstate Gas Supply, Inc. (Seller)

IGS Fax #: 614-923-1010

Industrial/Commercial Sales Division

Company Name	Centerville		(Buyer)			
Contact Name	Greg Horn	Tel	937-433-7151	Fax	937-433-0310	
Mailing Address	100 W Spring Valley Rd	City	Centerville	State	OH	Zip 45458
Billing Address	100 W Spring Valley Rd	City	Centerville	State	OH	Zip 45458
Facility Address	See Exhibit A	City		State		Zip
Vectron Energy Delivery of Ohio	Account Number/s ("NGDC")		See Exhibit A			

Critical Day Volume 100% of Usage determined by the NGDC

Initial Term:

The contract will begin effective with the first billing cycle after submittal to the NGDC and continue through the March, 2012 billing cycle (Primary Term). Thereafter this contract will renew on a month to month basis (Secondary Term), unless cancelled as provided herein by either party giving 60 days prior written notice of termination.

Variable Price:

The price per MCF for all gas delivered to the burnertip will be determined monthly by the applicable Nymex closing settlement price of gas multiplied by the NGDC Btu conversion factor plus \$1.29 per MCF. This pricing methodology will guarantee a \$0.06 per MCF savings compared to the NDGC SOG price each month. This price excludes all applicable taxes and NGDC distribution and transportation charges.

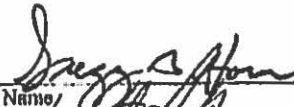

Subject to Credit Approval, Buyer shall have the option to request the Fixed Price option at a mutually agreeable price, which shall be effective only upon written acceptance by Seller of a new Term Sheet.

MCF Volumes at Burnertip: ("Full Contract Volumes")

Month	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sept	Oct	Nov	Dec
Full Volumes	1187	1484	1053	746	617	550	395	440	348	414	602	818
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 Guaranteed Savings 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 Natural Gas Purchase Confirmations.

Accepted by Buyer:		<u>CITY MANAGER</u>	<u>3-24-11</u>
	Name	Title	Date
Agreed to by Seller:		<u>Duane Johnson</u>	<u>3/30/11</u>
	Name	Title	Date

SUPPLY: Interstate Gas Supply, Inc. (IGS) 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 canceled 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 Sheet. If I discontinue service with IGS 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 IGS 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.

BILLING: For my convenience I will receive only one bill, which will be issued by the NGDC and will contain IGS' 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 Sheet, 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 IGS with a security deposit equal to my two months highest consumption times my contract price, within 10 days of such a demand by IGS.

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 IGS have any liability for any early termination or for any months that I was unable to participate in the program.

LIMITATION OF LIABILITY: IGS 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 IGS 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 Burnertip" 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 (howsoever 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 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. Nothing herein limits Buyer's obligation to pay Seller for all volumes metered by the NGDC as otherwise detailed herein. IGS 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 IGS exercises such right, IGS 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 release 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.

Exhibit A						
Location Name	LDC Account Number	Service Address	City	State	Zip	
Centerville	4001584842240791	100 W Spring Valley Road	Centerville	OH	45458	
Centerville	4001881432291268	155 W Spring Valley Rd	Centerville	OH	45458	
Centerville	4003794862123943	7970 S Suburban Dr	Centerville	OH	45458	
Centerville	4003794862392044	166 N Main St	Centerville	OH	45459	
Centerville	4003794862307503	166 N Main St	Centerville	OH	45459	
Centerville	4004928662259709	10000 Yankee St	Centerville	OH	45458	
Centerville	4003794862628783	7970 S Suburban Dr Unit New	Centerville	OH	45458	

account closed Spring 2010