

**CLEVELAND PUBLIC LIBRARY**

**Finance Committee**

November 15, 2011

**RESOLUTION RATIFYING THE PURCHASE OF NATURAL GAS**

WHEREAS, Deregulation of the natural gas industry in Ohio allows Dominion East Ohio customers to select a natural gas supplier, and

WHEREAS, The PUCO-East Ohio Energy Choice Program provides listings of participating suppliers which the Facilities Department review; and

WHEREAS, There Library purchases natural gas for 29 locations at an annual cost of over \$300,000.00; and

WHEREAS, Interstate Gas Supply, Inc. is offering a one-year fixed rate contract pricing of \$5.29 per thousand cubic feet for a savings of \$.70 per thousand cubic feet compared to the price the Library is currently paying; now therefore be it

RESOLVED, That the Board of Library Trustees ratifies and approves a one-year agreement for the period of December 2011 through November 2012 for the purchase of natural gas covering the Library's 29 locations with Interstate Gas Supply, Inc. at the rate of \$5.29 per one thousand cubic feet and approves the execution of such an agreement by the Property Manager.

## Cleveland Public Library

**To** Carrie Krenicky  
**From** Myron Scruggs  
**Date** November 7, 2011  
**Subject** Natural Gas Supplier

After researching natural gas prices I find that Interstate Gas Supply's one (1) year fix rate of \$5.29/MCF is the most economical plan.



**IGS Natural Gas Purchase Confirmation V4.2CH-IND**

**Attention: Interstate Gas Supply, Inc. ("Seller")  
Commercial & Industrial Sales Division**

**IGS Fax #: 614-659-5125  
Office Use Only: JL**

Company Name Cleveland Public Library ("Buyer")

Contact Name Myron Scruggs Tel 216-623-2903 Fax 216-623-6951

Street Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Mailing 325 Superior Ave Cleveland OH 44114

Facility See Exhibit A

Facility \_\_\_\_\_

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 December 2011 billing cycle and continue through the November 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 November 2012, and the automatic renewal date for each of the following Secondary Terms, if any, will be last day of each November 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 December 2011 billing cycle and continuing through the November 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
	4778	4923	3849	1639	1144	266	266	266	275	900	2155	4121

**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: Myron Scruggs PROPERTY MANAGEMENT 10/21/11  
 Name: Myron Scruggs Title Date

Agreed to by Seller: Scott Arthur Director of Sales 10/25/11  
 Name: Scott Arthur Title Date

Form V4.2CH-IND

Terms and Conditions

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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 may 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 applicable 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 re-enrolled 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.

Exhibit A				
LDC Account Number	Service Address	City	State	Zip
5442000128370	3096 Scranton Ave	Cleveland	OH	44113
5440600134500	2200 E 30th St	Cleveland	OH	44115
5440300134441	4303 Pearl Rd	Cleveland	OH	44109
5440100401530	15212 Lake Shore Blvd	Cleveland	OH	44110
5441400134434	14000 Kinsman Rd	Cleveland	OH	44120
9441800128459	4421 W 140th St	Cleveland	OH	44135
9441200134526	3463 E 93 St	Cleveland	OH	44104
5500035872369	7201 Kinsman Sulte 101	Cleveland	OH	44104
4500042167332	11535 Shaker Blvd	Cleveland	OH	44120
0500041159131	5813 Griswold Ave	Cleveland	OH	44104
4441100128399	5806 Woodland Ave	Cleveland	OH	44104
9440900128412	7910 Detroit Ave	Cleveland	OH	44102
8441800118115	3805 W 157 St	Cleveland	OH	44111
4441100128402	5806 Woodland Ave	Cleveland	OH	44104
5440600134497	1962 Stokes Blvd	Cleveland	OH	44106
5440100134480	856 E 152 St	Cleveland	OH	44110
5441200134469	3830 E 131 St	Cleveland	OH	44120
0441300126508	11601 Lorain Ave	Cleveland	OH	44111
1441200117751	1900 Fulton Rd	Cleveland	OH	44113
9500033259589	6901 Superlor Ave	Cleveland	OH	44103
9441300128461	5417 Broadway Ave	Cleveland	OH	44127
5440100134456	3706 Pearl	Cleveland	OH	44109
4500034001378	7200 Broadway Ave	Cleveland	OH	44105
6440400134412	850 Jefferson Ave	Cleveland	OH	44113
9440200128439	17001 Lake Shore	Cleveland	OH	44110
5441200134473	8216 Lorain Ave	Cleveland	OH	44102
9440500128428	1525 Crawford Ave	Cleveland	OH	44106
9440100134533	3545 Fulton Ave	Cleveland	OH	44109
9442000134540	11900 St. Clare Ave	Cleveland	OH	44108
8441400134563	16918 Harvard Ave	Cleveland	OH	44128