

CITY of NOVI CITY COUNCIL

Agenda Item L
January 24, 2011

SUBJECT: Approval to Award the Purchase of Natural Gas Supply for the April 2011 through the March 2012 billing cycle to Interstate Gas Supply, Inc. (IGS).

SUBMITTING DEPARTMENT: Finance

CITY MANAGER APPROVAL: 

BACKGROUND INFORMATION: The generation of natural gas represents the highest cost component of an energy bill and typically equates to approximately 70-80 percent of an annual bill. Pricing natural gas futures and procuring gas supply using alternative gas suppliers has become an essential tool for reducing energy expenditures.

Last Thursday's NYMEX (New York Mercantile Exchange) natural gas futures dropped 2.5% after storage reports released by the U.S. Energy Information Administration (www.eia.doe.gov) revealed less than expected storage withdrawals despite colder temperatures this winter. Storage withdrawals do not seem to be picking up and the market is still significantly oversupplied given current demands.

Given the downward market trend this week, we secured pricing through IGS to lock down our natural gas costs for our upcoming contract year starting April 2011 through March 2012 as follows: Variable agreement (NYMEX + \$0.75 cents per MCF – locked in at the fixed adder of \$0.75 per MCF for one year. With this variable rate option, we also have the ability to switch to a fixed rate contract at any time with no extra charges during the year.

An analysis of the actual Consumers Energy natural gas rate for the past eight months compared to the NYMEX shows on average the variable rate option produces savings of 28% over Consumers:

	Actual Consumers Rate/mcf	NYMEX Rate/mcf	Variable Rate Agreement	Total Variable Rate Rate/mcf	City of Novi Current Fixed Rate Rate/mcf
Apr-10	\$ 6.956	\$ 4.391	+ \$ 0.750 =	\$ 5.141	\$ 6.490
May-10	\$ 6.843	\$ 3.985	+ \$ 0.750 =	\$ 4.735	\$ 6.490
Jun-10	\$ 6.869	\$ 4.312	+ \$ 0.750 =	\$ 5.062	\$ 6.490
Jul-10	\$ 6.993	\$ 5.189	+ \$ 0.750 =	\$ 5.939	\$ 6.490
Aug-10	\$ 6.993	\$ 4.586	+ \$ 0.750 =	\$ 5.336	\$ 6.490
Sep-10	\$ 6.993	\$ 4.328	+ \$ 0.750 =	\$ 5.078	\$ 6.490
Oct-10	\$ 6.993	\$ 3.995	+ \$ 0.750 =	\$ 4.745	\$ 6.490
Nov-10	\$ 6.935	\$ 3.535	+ \$ 0.750 =	\$ 4.285	\$ 6.490
Average Rate	\$ 6.947	\$ 4.290	+ \$ 0.750 =	\$ 5.040 *	\$ 6.490

Attached are the variable rate contracts with IGS which have been reviewed by our City Attorney.

RECOMMENDED ACTION: Approval to Award the Purchase of Natural Gas Supply for the April 2011 through the March 2012 billing cycle to Interstate Gas Supply, Inc. (IGS).

	1	2	Y	N
Mayor Landry				
Mayor Pro Tem Gatt				
Council Member Fischer				
Council Member Margolis				

	1	2	Y	N
Council Member Mutch				
Council Member Staudt				
Council Member Wrobel				

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

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

IGS Fax #: 614-659-5126

Commercial & Industrial Sales Division

Company Name ("Buyer") City of Novi Contact Name Marina Neumaier
 Confirmation Email mneumaier@cityofnovi.org Tel 248.347.0468 Fax _____
 Street Address 45175 W 10 Mile Rd City Novi State MI Zip 48375
 Mailing Per Utility
 Billing See Attachment A
 Facility Consumers Energy ("NGDC") Account Number/s See Attachment A
 Critical Day Volume 100% of Usage determined by the NGDC

Initial Term:

This contract will begin with the April 2011 billing cycle and continue through the March 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 March 2012, and the automatic renewal date for each of the following Secondary Terms, if any, will be last day of each March 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 April 2011 bill cycle through the October 2011 bill cycle the price will be determined monthly by the NYMEX settlement on the 15th of each month, prior to the month of delivery plus \$.75 MCF ("Primary Term"). (Should the 15th fall on a week-end or holiday then price will be determined by the settlement on the first business day prior to the 15th). Beginning with the November 2011 bill cycle through the March 2012 bill cycle, 50% of the Buyer's Variable Price will be determined monthly by the NYMEX settlement on the 15th of each month, prior to the month of delivery plus \$.75 MCF, and 50% will be determined monthly by the average price for the months of April 2011 through October 2011. Subject to credit approval, Buyer shall have the option to request the Fixed Price option at a mutually agreeable price, which shall include any related storage discount or premium, and shall be effective only upon written acceptance by Seller of a new Purchase Confirmation. Buyer is responsible for LDC's delivery charges and applicable taxes, which are not included in Buyer's price.

Option 2 Fixed 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 fixed at \$ _____ 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 Mef at the Burnertip

Month	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sept	Oct	Nov	Dec
	3100	3040	2116	992	601	312	147	211	287	411	1123	1833

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. Subject to Council approval.

I acknowledge that I am the account holder or legally authorized person to execute a contract and legally bind the business in this contract. I understand that by signing this contract, I am switching the gas Supplier for this commercial account to Interstate Gas Supply, Inc. I understand that gas purchased for this commercial account by Interstate Gas Supply, Inc., will be delivered through the utility's delivery system. The legally authorized person to execute this contract and legally bind the business in this contract has 14-days after today to cancel this contract for any reason through written or verbal notification to Interstate Gas Supply, Inc. I may waive this right of cancellation by affirmatively agreeing to this waiver on the contract. If you terminated your contract today, and if the unconditional cancellation period did not apply, based on current gas prices and your historical usage, a good-faith estimate of your termination fee would be \$2820. This termination fee is subject to change as your usage and the market price of gas fluctuate.

Buyer hereby expressly waives the right of cancellation described in the preceding paragraph.

Accepted by Buyer:

Name: _____ Title _____ Date _____

Agreed to by Seller:

Name: Scott Arthur Title _____ Date _____

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.

LDC Account Number	Service Address	City	State	Zip
000000002939	42785 W 9 Mile Rd	Novi	MI	48375
0000003537112	25694 Wixom Rd	Novi	MI	48375
0000003379123	1919 Paramount St	Novi	MI	48375
0000003537065	26300 Delwar Dr Bldg Maint	Novi	MI	48375
0000003537062	26350 Delwar Dr	Novi	MI	48375
0000000006732	49375 W 10 Mile Rd	Novi	MI	48375
0000000007250	45255 W 10 Mile Rd	Novi	MI	48375
0000003914662	45275 W 10 Mile Rd	Novi	MI	48375
0000000035435	21303 Haggerty Rd	Novi	MI	48375
0000000007894	23660 Meeting Hall Ln	Novi	MI	48375
0000003967377	25804 Beck Rd	Novi	MI	48375
0000000005795	26300 Delwar Dr	Novi	MI	48375
0000003028578	601 S Lake Dr	Novi	MI	48375
0000000007249	45175 W 10 Mile Rd	Novi	MI	48375
0000000005874	42975 Grand River Ave	Novi	MI	48375
0000000007247	45125 W 10 Mile Rd	Novi	MI	48375
0000000009004	25059 Meadowbrook Rd	Novi	MI	48375
0000000009126	25075 Meadowbrook #HSE 1	Novi	MI	48375
0000000009127	25075 Meadowbrook #HSE 3	Novi	MI	48375
0000003537099	25075 Meadowbrook Rd	Novi	MI	48375
0000003537104	42400 Arena Dr	Novi	MI	48335

January 20, 2011

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P.O. Box 3040
Farmington Hills, MI 48333-3040
Tel: 248-851-9500
Fax: 248-851-2158
www.secretwardle.com

THOMAS R. SCHULTZ
Direct: 248-539-2847
tschultz@secretwardle.com

Clay Pearson, City Manager
City of Novi
45175 W. Ten Mile Road
Novi, MI 48375

Re: *Agreement for Purchase of Natural Gas through Gas Choice Program*

Dear Mr. Pearson:

You asked our office to review the proposed IGS Natural Gas Purchase Agreement with Interstate Gas Supply, Inc. The Gas Choice Program allows a gas customer to purchase gas directly from a supplier instead of Consumers Energy, even though Consumers would distribute the gas to the customer and still be considered the "gas company" for the customer. As the memo from the Finance Department indicates, the arrangement can result in a lower cost for the commodity (the natural gas) itself.

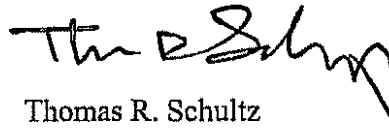
The only real legal issue is who approves the agreement. The document is required to be signed by somebody who is "legally authorized" to sign it and "legally bind" the City. Because the agreement contains penalty clauses in the event of cancellation and takes the City from the MPSC-regulated utility rate arrangement (with Consumers) into essentially a market-price arrangement, we believe that it requires some formal approval. As the purchasing policy and ordinance are currently written, approval would be the province of the City Council. We have advised that to the extent Interstate Gas Supply, Inc. has required the City to sign the agreement in advance of such approval, in order to "lock in" favorable rates, Mayor Landry can sign the agreement, but the 14-day cancellation provision should not be waived. This would allow the matter to be placed on a consent agenda for the City Council.

The Finance Department has suggested a minor amendment to the purchasing policy to allow these sorts of favorable utility/commodity agreements to be reviewed and approved administratively. Since they are based on market pricing, they can require immediate action. We agree that this would be permissible and entirely appropriate. *

Clay Pearson, City Manager
January 20, 2011
Page 2

If you have any questions, please do not hesitate to call.

Very truly yours,

A handwritten signature in black ink, appearing to read "Thomas R. Schultz". The signature is stylized with a large, sweeping "T" and "S".

Thomas R. Schultz

TRS/jec

cc: Maryanne Cornelius, City Clerk
Marina Neumaier, Assistant Finance Director
Victor Cardenas, Assistant City Manager

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