



# CITY of NOVI CITY COUNCIL

## Agenda Item J October 20, 2014

**SUBJECT:** Approval to award the purchase of natural gas supply for the November 2014 through the March 2017 billing cycle to Interstate Gas Supply, Inc (IGS)

**SUBMITTING DEPARTMENT:** Finance

**CITY MANAGER APPROVAL:** 

**BACKGROUND INFORMATION:**

Over the past four years, the City of Novi has entered into three twelve month fixed rate natural gas contracts for City facilities with Interstate Gas Supply, Inc.(IGS). Calendar year 2010, 2012, and 2013 provided fixed rates of \$6.49, \$4.74, and \$4.29, respectively. An analysis of Novi's variable rates from March 2011 – February 2012 and March 2014 – August 2014 generated average rates of \$4.764 and \$5.108, respectively.

Interstate Gas Supply Rates					
	2014	2013	2012	2011	2010
January	\$ 4.290	\$ 4.740	\$ 4.186	\$ 6.490	\$ 5.990
February	4.290	4.740	4.064	6.490	5.990
March	5.298	4.290	4.740	4.691	5.241
April	5.342	4.290	4.740	4.954	6.490
May	5.191	4.290	4.740	4.996	6.490
June	5.487	4.290	4.740	5.327	6.490
July	4.889	4.290	4.740	5.296	6.490
August	4.441	4.290	4.740	4.774	6.490
September		4.290	4.740	4.628	6.490
October		4.290	4.740	4.703	6.490
November		4.290	4.740	4.553	6.490
December		4.290	4.740	4.415	6.490
Mar 2011/Feb 2012 Avg	\$ 4.764				
Mar-Aug 2014 Average	\$ 5.108				

Over the last six months, the average rate for natural gas was \$5.1080. IGS is offering a fixed rate of \$4.74 (over a three year billing cycle). As we enter into a winter season, it is expected gas prices will continue to rise. We recommend locking into a three year contract to capture the early season heating demand prices.

**RECOMMENDED ACTION:** Approval to award the purchase of natural gas supply for the November 2014 through the March 2017 billing cycle to Interstate Gas Supply, Inc. (IGS).

	1	2	Y	N
<b>Mayor Gatt</b>				
<b>Mayor Pro Tem Staudt</b>				
<b>Council Member Casey</b>				
<b>Council Member Fischer</b>				

	1	2	Y	N
<b>Council Member Markham</b>				
<b>Council Member Mutch</b>				
<b>Council Member Wrobel</b>				

**Gas Customer Choice Contract**

**Purchase Confirmation V4.2.1 CH-IND Michigan**

**Interstate Gas Supply, Inc. ("Seller")**

**Attn: Commercial & Industrial Sales Division**

**IGS Fax #: 614-659-5126**

**Office Use Only: TB**

**Company Name ("Buyer")** City of Novi **Contact Name** Sue Morianti

**Confirmation Email** smorianti@cityofnovi.org **Tel** 248-347-0446 **Fax** \_\_\_\_\_

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

**Mailing** 45175 W 10 Mile Rd. Novi MI 48375

**Billing** Utility Billing

**Facility** See Facility Exhibit A

**Consumers Energy ("NGDC")** **Account Number/s** See Facility Exhibit A

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

**Initial Term:**

This contract will begin with the **November 2014** billing cycle and continue through the **March 2017** billing cycle (the "Primary Term"), and it will automatically renew on a month-to-month basis thereafter (with each such month constituting a "Secondary Term"). Any automatic renewal may be cancelled by Buyer or Seller delivering written notice to the other at least 30 days before the automatic renewal date. The automatic renewal date at the end of the Primary Term will be the last day of **March 2017**, and the automatic renewal date for each of the following Secondary Terms, if any, will be last day of each month 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 for all gas delivered to the **burnertip** will be determined monthly as **100%** of the applicable \_\_\_\_\_ (depending on Buyer's billing cycle) plus \$ \_\_\_\_\_ 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 Variable Price expires, the price will be as described under the Renewal Variable Pricing section in the attached Form V4.2.1CH-IND Terms and Conditions. Subject to credit approval, Buyer may elect to request the Fixed Price option at a mutually agreeable price, which will include any related storage discount or premium, and will be effective only upon written acceptance by Seller of a new Purchase Confirmation.

Option 2  **Fixed Price:**

Beginning with the **November 2014** billing cycle and continuing through the **March 2017** billing cycle, the price for all gas delivered to the **burnertip** will be fixed at **\$4.74** 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 V4.2.1CH-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
	4015	4152	3518	2922	1701	970	649	649	658	1004	2190	3150

**Other Terms and Conditions:** All gas sold under this contract will be subject to the terms and conditions of the attached IGS Form V4.2.1CH-IND, a copy of which is attached and incorporated herein by reference. By signing this contract, Buyer acknowledges receipt of Form V4.2.1CH-IND. If Buyer and Seller execute any further Purchase Confirmations, 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.

**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 \$12,600.00. 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: Joanthan Liba 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. Seller will promptly submit to the NGDC any such cancellation request, but all transfers of service are subject to utility deadlines and could take up to two billing cycles. 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 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, which can be reached at the telephone number on its invoices. For questions or disputes about price, Buyer may contact Seller by phone, toll-free at 1-800-280-4474, or by mail at 6100 Emerald Parkway, Dublin OH 40316. Seller will attempt to resolve all questions and disputes; however, if a complaint cannot be resolved, Seller will refer Buyer to the utilities commission or its staff.

**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 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. Throughout every Term of this contract, Seller may pass through to Buyer any additional charges/fees imposed on suppliers through a regulatory proceeding, including but not limited to MPSC Case U-17131. If the choice program is terminated, this contract may 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 to Natural Gas Purchase Confirmation V4.2 CH-IND  
Account Numbers and Facility Addresses**

**Seller:** Interstate Gas Supply, Inc. d.b.a. IGS Energy  
**Buyer:** City of Novi

Following are the Account Numbers and Addresses included under the above-mentioned contract between Seller and Buyer:

NGDC	Street Address	City	State	Zip	Account Number
Consumers Energy	42785 W 9 Mile Rd	Novi	MI	48375	000000002939
Consumers Energy	25694 Wixom Rd	Novi	MI	48375	0000003537112
Consumers Energy	1919 Paramount St	Novi	MI	48375	0000003379123
Consumers Energy	26300 Delwar Dr Bldg Maint	Novi	MI	48375	0000003537065
Consumers Energy	26350 Delwar Dr	Novi	MI	48375	0000003537062
Consumers Energy	49375 W 10 Mile Rd	Novi	MI	48375	0000000006732
Consumers Energy	45275 W 10 Mile Rd	Novi	MI	48375	0000003914662
Consumers Energy	21303 Haggerty Rd	Novi	MI	48375	0000000035435
Consumers Energy	23660 Meeting Hall Ln	Novi	MI	48375	0000000007894
Consumers Energy	25804 Beck Rd	Novi	MI	48375	0000003967377
Consumers Energy	26300 Delwar Dr	Novi	MI	48375	0000000005795
Consumers Energy	601 S Lake Dr	Novi	MI	48375	0000003028578
Consumers Energy	45175 W 10 Mile Rd	Novi	MI	48375	0000000007249
Consumers Energy	20926 E Glen Haven Cir	Northville	MI	48167	0000000033649
Consumers Energy	42975 Grand River Ave	Novi	MI	48375	0000000005874
Consumers Energy	45125 W 10 Mile Rd	Novi	MI	48375	0000000007247
Consumers Energy	42400 Arena Dr	Novi	MI	48335	0000003537104
Consumers Energy	25075 Meadowbrook Rd	Novi	MI	48375	0000003537100
Consumers Energy	25059 Meadowbrook Rd	Novi	MI	48375	0000000009004
Consumers Energy	25075 Meadowbrook #HSE 1	Novi	MI	48375	0000000009126
Consumers Energy	25075 Meadowbrook #HSE 3	Novi	MI	48375	0000000009127
Consumers Energy	25075 Meadowbrook Rd	Novi	MI	48375	0000003537099
Consumers Energy	21687 Beck Rd	Novi	MI	48167	0000003955547
Consumers Energy	25489 Island Lake Rd	Novi	MI	48374	0000003957629
Consumers Energy	22735 Evergreen Ct	Novi	MI	48374	0000003968428
Consumers Energy	24489 Wixom Rd	Novi	MI	48375	0000004049162
Consumers Energy	22342 Roberts Rd	Novi	MI	48375	0000004049163

**AGREED.**

**Seller:**

**Buyer:**

\_\_\_\_\_  
**Name:** Jonathan Liba  
**Title:** Senior Sales Manager

\_\_\_\_\_  
**Name:**  
**Title:**