

**CLEVELAND PUBLIC LIBRARY**

**Finance Committee**  
October 16, 2008

**RESOLUTION RATIFYING THE PURCHASE OF NATURAL GAS**

- WHEREAS Deregulation of the natural gas industry in Ohio allows Dominion East Ohio Gas 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 reviews; and
- WHEREAS, The Library purchases natural gas for 29 locations at an annual cost of over \$300,000.00; and
- WHEREAS, IGS Energy is offering one-year contract pricing of \$9.99 per thousand cubic feet for a savings of \$.78 per thousand cubic feet compared to the price the current provider will offer; and now therefore be it
- RESOLVED, That the Board of Library Trustees ratify a one-year agreement for the purchase of natural gas covering the Library's 29 locations with IGS Energy.

# Cleveland Public Library

**To** Sandra Kuban  
**From** Myron Scruggs  
**Date** October 7, 2008  
**Subject** Natural Gas Supplier

After researching natural gas prices I find that IGS Energy's one (1) year fixed rate of \$9.99 MCF is the most economical plan.



**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 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 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.

**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 LDC 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 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 Bumerip" 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 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 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.

**Exhibit A**

<b>Account #</b>	<b>Facility Name</b>	<b>Service Address</b>	<b>City</b>	<b>State</b>	<b>Zip Code</b>
9500033259589	Addison	6901 Superior Ave	Cleveland	OH	44103
9441300128461	Broadway	5417 Broadway Ave	Cleveland	OH	44127
5440100134456	Brooklyn	3706 Pearl	Cleveland	OH	44109
1441200117751	Carnegie West	1900 Fulton Rd	Cleveland	OH	44113
5440100134480	Collinwood	856 E 152 St	Cleveland	OH	44110
5441200134469	East 131 St	3830 E 131 St	Cleveland	OH	44120
0441300126508	Eastman	11601 Lorain Ave	Cleveland	OH	44111
4500034001378	Fleet	7200 Broadway Ave	Cleveland	OH	44105
9440100134533	Fulton	3545 Fulton Ave	Cleveland	OH	44109
9442000134540	Glenville	11900 St. Clare Ave	Cleveland	OH	44108
8441400134563	Harvard-Lee	16918 Harvard Ave	Cleveland	OH	44128
9440500128428	Hough	1525 Crawford Ave	Cleveland	OH	44106
6440400134412	Jefferson	850 Jefferson Ave	Cleveland	OH	44113
9440200128439	Lake Shore Facility	17001 Lake Shore	Cleveland	OH	44110
5441200134473	Lorain	8216 Lorain Ave	Cleveland	OH	44102
5440600134497	M.L. King, JR	1962 Stokes Blvd	Cleveland	OH	44106
5440100401530	(Old) Memorial	15212 Lake Shore Blvd	Cleveland	OH	44110
5441400134434	Mt. Pleasant	14000 Kinsman RD	Cleveland	OH	44120
6441100117764	Rice	2820 E 116 St	Cleveland	OH	44120
9441800128459	Rockport	4421 W 140 St	Cleveland	OH	44135
5442000128370	South	3096 Scranton Ave	Cleveland	OH	44113
5440300134441	South Brooklyn	4303 Pearl Rd	Cleveland	OH	44109
5440600134500	Sterling	2200 E 30 St	Cleveland	OH	44115
9441200134526	Union	<b>3483 E 93 St</b>	Cleveland	OH	44104
9440900128412	Walz	7910 Detroit Ave	Cleveland	OH	44102
8441800118115	West Park	3805 W 157 St	Cleveland	OH	44111
4441100128402	Woodland Branch	5806 Woodland Ave	Cleveland	OH	44104
4441100128399	Woodland Garage	5806 Woodland Ave	Cleveland	OH	44104
500035872369	Garden Valley	7201 Kinsman Suite 101	Cleveland	OH	44104



IntegrYS Energy Services, Inc.

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[www.integrYSenergy.com](http://www.integrYSenergy.com)

September 25, 2008

Myron Scruggs  
Cleveland Public Library  
325 Superior Ave  
Cleveland OH 44114

Dear COSE Member Employee:

Thank you for selecting IntegrYS Energy Services, Inc. as your natural gas supplier through the COSE Natural Gas Program. We appreciate your past business and look forward to continuing as your natural gas supplier for many years to come. Our records show that our current fixed price agreement is set to expire with your November 2008 billing.

As a member of COSE (Council of Smaller Enterprises) your discounted fixed price natural gas rate for the 12-month term is about to expire. We're pleased to offer you another discounted fixed price of \$10.775/mcf for the new 12-month term of December 2008 billing through November 2009 billing! As of 9/21/2008, this is the lowest fixed rate advertised on the PUCO Apples to Apples chart.

If you wish to continue with your COSE member fixed pricing plan and automatically receive the new discounted rate from IntegrYS Energy for the upcoming contract year, you do not need to notify us. The new rate will automatically be reflected on the bill you receive in December 2008. Your current terms and conditions of service will continue to apply to your new agreement period with the lower fixed price of \$10.775 per mcf.

If you are interested in making changes to your agreement, please call toll-free, 1-888-878-5420 and speak to one of our friendly customer service representatives. If you wish to cancel and return to Dominion East Ohio Gas, please contact us or Dominion as soon as possible.

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Again, thank you selecting IntegrYS Energy Services, Inc. as your natural gas supplier and being a part of the COSE natural gas member program.

Sincerely,

Darrell Bragg, President  
RD Energy/Exclusive agent for IntegrYS Energy

Nicole Stika  
COSE