

## **ORDINANCE NO. 03-82 AC CMS**

### **AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO A MASTER SERVICES AGREEMENT WITH INTERSTATE GAS SUPPLY, INC. FOR COMPETITIVE RETAIL NATURAL GAS SERVICES AND DECLARING AN EMERGENCY**

WHEREAS, Ohio Revised Code Section 4929.26 permits a municipality to aggregate customers within its jurisdiction in order to facilitate customer choice of natural gas power suppliers and to promote lower cost natural gas utility services within the City; and

WHEREAS, on May 6, 2003, the electors of the City of Oberlin authorized the City to aggregate customers located within the boundaries of the City; and

WHEREAS, the City entered into an agreement with AMP-Ohio, Inc. to provide management services for the natural gas aggregation program; and

WHEREAS, the City adopted a *Plan of Operation and Governance* on July 15, 2003, for the implementation of the City's Municipal Natural Gas Aggregation Program in accordance with the Ohio Revised Code Section 4929.26 (C); and

WHEREAS, the City was certified by the PUCO as a Governmental Aggregator pursuant to Chapter 4901:1-27-01, et. seq. OAC and Ohio Revised Code Section 4929.20; and

WHEREAS, AMP-Ohio, Inc. recommends that the City enter into a Master Services Agreement for the provision of competitive retail natural gas aggregation services from Interstate Gas Supply, Inc. for a period of two (2) years; and

WHEREAS, Interstate Gas Supply, Inc. is certified by the Public Utilities Commission of Ohio ("PUCO") as a competitive retail natural gas service ("CRNGS") provider to sell competitive retail natural gas and related services to consumers and governmental aggregation programs in the State of Ohio.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, State of Ohio, five-sevenths (5/7ths) of all members elected thereto concurring:

SECTION 1. That the City Manager is hereby authorized and directed to enter into a Master Services Agreement with Interstate Gas Supply, Inc., of Columbus, Ohio for a period of two (2) years for the provision of competitive retail natural gas aggregation services, a copy of said agreement being attached hereto as "Exhibit A" and incorporated herein by reference.

**SECTION 2.** It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

**SECTION 3.** That this ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the citizens of the City of Oberlin, Ohio, or to provide for the usual daily operations of a municipal department, to wit:

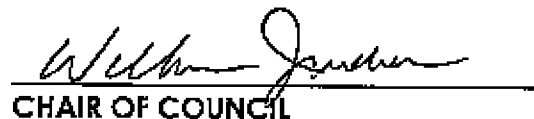
"to take advantage of the most desirable rates, terms and conditions of competitive natural gas aggregation services for the City"

and shall take effect immediately upon passage.

**PASSED:** 1<sup>st</sup> Reading – October 6, 2003 (E)  
2<sup>nd</sup> Reading –  
3<sup>rd</sup> Reading –

**ATTEST:**

  
CLERK OF COUNCIL

  
CHAIR OF COUNCIL

**POSTED:** October 7, 2003

**EFFECTIVE DATE:** October 7, 2003

**Master Services Agreement  
Between  
City of Oberlin  
And  
Interstate Gas Supply, Inc.**

This Master Services Agreement (the "Agreement") is entered into as of October 6, 2003, ("Effective Date") between **Interstate Gas Supply, Inc. ("IGS")** and the **City of Oberlin, Ohio ("Municipality")**. Capitalized terms not defined in the Sections of this Agreement shall have the respective meanings ascribed to them in **Exhibit A**, hereto, "Definitions."

**WHEREAS**, IGS is certified by the Public Utilities Commission of Ohio ("PUCO") as a Competitive Retail Natural Gas Service ("CRNGS") Provider, to sell competitive retail Natural Gas and related service to consumers and governmental aggregation programs in the State of Ohio.

**WHEREAS**, the Parties desire to enter into certain transactions associated with IGS's provision of CRNGS gas supply and related services (collectively, "Retail Natural Gas Services") necessary to serve the Natural Gas accounts of Aggregation Members within the Natural Gas service territory of Columbia Gas of Ohio ("COH") enrolled in the Municipality's Governmental Aggregation program.

**WHEREAS**, IGS provides, among other things, CRNGS and related services to inhabitants of municipal corporations, inhabitants of boards of township trustees, and inhabitants of boards of county commissioners acting as Governmental Aggregators for the provision of competitive retail Natural Gas service-under authority conferred by, inter alia, Section 4929.26, Revised Code.

**WHEREAS**, The Municipality has been or will be certified by the Commission as a Governmental Aggregator pursuant to Chapter 4901:1-27-01, et. seq. OAC .

**WHEREAS**, the Municipality has established or desires to establish a Governmental Aggregation program whereby the Municipality, as Governmental Aggregator, will arrange for the provision of competitive retail Natural Gas and related service to certain eligible inhabitants that do not opt-out of or otherwise elect to participate in the Governmental Aggregation program.

**WHEREAS**, by this Agreement, IGS desires to enter into a relationship with Municipality whereby IGS shall provide the Retail Natural Gas Services necessary to serve the Aggregation Members of the Municipality's Governmental Aggregation.

**WHEREAS**, Municipality is or will be duly authorized to act for the Aggregation Group to purchase the Retail Natural Gas Services hereunder; and

**WHEREAS**, the Parties have established herein the terms and conditions governing IGS's provision of the Retail Natural Gas Services for the Governmental Aggregation.

WHEREAS, the Parties have established herein the terms and conditions governing IGS's provision of the Retail Natural Gas Services for the Governmental Aggregation.

NOW, THEREFORE, the Parties, intending to be bound hereby and in consideration of the mutual promises and covenants herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agree as follows:

## Article One. Provision of Service

### 1.1 Obligations and Duties

(a) Authority to Purchase: The Municipality, as Governmental Aggregator, is or will be authorized to arrange from IGS the Retail Natural Gas Services for and on behalf of the Aggregation Members of the Aggregation Group pursuant to the terms of this Agreement and the Operation Plan set forth in Section 1.7 below herein. IGS shall be the sole and exclusive provider of Retail Natural Gas Services for those Aggregation Members of the Aggregation Group.

(b) Governmental Aggregator. Municipality shall obtain and maintain a certificate from the Commission to perform the functions of the Governmental Aggregator. IGS will provide the Municipality with all necessary data that is reasonably available to IGS to assist the Municipality with filings or any other information required by the Commission.

(c) Opt-Out Provisions. IGS, with the reasonable cooperation of the Municipality, will be responsible for administering the initial and ongoing "opt-out" procedures to eligible customers. The Municipality and IGS shall cooperate in the developing, review, approval, printing, posting and issuance of all opt-out correspondence to assure that the initial opt-out notices with the agreed upon pricing, terms, and procedures can be sent out by IGS to the eligible customers at the earliest time practicable, but no later than October 24, 2003 unless the parties mutually consent to a different date.

(d) Administration and Assignment. IGS shall be responsible for the administration of the accounts of the Aggregation Members. IGS will build and maintain a database of all Aggregation Members. The database will include the name, address and local utility account number and may include other pertinent information as agreed upon by the Municipality and IGS. The database will be provided to the Municipality on a quarterly basis. The Municipality will have the right to access the information in the database for purposes of auditing.

1.2 Firm Natural Gas Supply. IGS will provide sufficient firm natural gas supply to the Delivery Point of the Local Utility, as defined in Section 1.3 hereof, to serve the requirements of the Aggregation Group. If IGS has arranged for firm transportation service for the delivery to the Delivery Point of the Local Utility, the Parties acknowledge that any failure or interruption after the Local Utility's Delivery Point, including any failure or interruption in distribution service to the Aggregation Group, is solely the responsibility of the Local Utility and IGS shall not be responsible for any such failure or interruption, including any losses or costs to the Municipality or the Aggregation Group as the result of such interruption by the Local Utility.

1.3 Delivery Point. The "Delivery Point" for applicable Retail Natural Gas Services supplied by IGS to the Aggregation Group shall be the Local Utility's city gate(s) or any interface with the Local Utility for direct redelivery to the Aggregation Group by the Local Utility.

1.4 Responsibility for Delivery Costs. IGS will be responsible for obtaining or providing firm interstate pipeline transportation service up to the Delivery Point, and shall be responsible for all costs, liabilities, taxes, losses and charges of any kind to the Delivery Point. The Local Utility shall provide the natural gas distribution service from the Delivery Point to the meters of the Aggregation Members. Responsibility for all costs, liabilities, taxes, losses and charges of any kind after the Delivery Point is governed by the Local Utility's distribution tariff.

1.5 Municipality as Governmental Aggregator. The Municipality as Governmental Aggregator has no financial responsibility whatsoever, except that associated with securing and maintaining its status as a governmental aggregator.

1.6 Other Assistance. IGS will endeavor to assist Municipality with other matters as mutually agreed to by the parties.

1.7 Plan of Operation and Governance. The Municipality shall develop a Plan of Operation and Governance ("Operation Plan") for the provision of the Retail Natural Gas Services. The Municipality shall comply with all material terms of the Operation Plan, which Operation Plan shall comply with the commission's requirements.

## **Article Two. Customer & Usage Information**

2.1 Customer Data and Load Forecast Information. Municipality hereby authorizes IGS to obtain from the Local Utility all applicable Customer Data and Historical Load information regarding the consumption characteristics of the Aggregation Group (collectively, the "Load Forecast Information") when available and necessary. Municipality will assist IGS in obtaining any Load Forecast Information including, but not limited to, planned or unplanned reductions or increases in the natural gas consumption of the Aggregation Group. Upon request by IGS, Municipality shall provide to the Local Utility the authorizations and/or approvals necessary for IGS to obtain the Load Forecast Information.

2.2 Release of Customer Information. The Municipality will cooperate with IGS and provide appropriate authorization and documentation to enable the Local Utility to release to IGS the applicable and necessary Load Forecast Information and Customer data from the Local Utility, including for customers moving into or within the Municipality's corporate limits as they are as of the date of this agreement or as they may change from time to time during the term hereof. IGS shall use all such information solely in connection with its service to the Governmental Aggregation.

2.3 Addition of "Opt-in" customers during "Opt-out Period". Within the Municipal geographic boundaries, Consumers served by CRNGS suppliers and other consumers not

receiving an "Opt-out Notice" may join or "opt-in" to the Aggregation Group during the "Opt-out Period".

2.4 Addition of Aggregation Members. Consumers that become part of the Aggregation Group after completion of the "Opt-out Period" will be accepted by IGS at the Aggregation Contract Price at the sole discretion of IGS. Consumers that leave the Aggregation Group at any time and desire to re-join the Aggregation Group may, during the term of this Agreement, be accepted by IGS and served at the aggregation price at IGS's sole and absolute discretion. IGS may develop an alternative rate for eligible consumers that have exited and desire to reenter the Aggregation Group.

2.5 Except as otherwise provided in this Agreement, prior to the termination of this agreement IGS shall not intentionally target by direct mail or direct telemarketing any residential consumer within the Municipality's geographic boundaries without the prior consent of the Municipality.

Aggregation Members that move from one location to another within the Municipality's boundary, and who notify IGS of such move, will retain their participant status at their then-existing price. If the consumer moves out of the Municipality's corporate limits, all obligations, except for the consumer's obligation to pay all amounts owed, shall cease as between that consumer, IGS, and the Municipality, effective with the consumer's termination of service with the Local Utility relative to its participation in the Governmental Aggregation.

Consumers that opt-out of or otherwise leave the Aggregation Group will default to the appropriate Local Utility's Standard Service Offer or other appropriate service.

### **Article Three. Operations**

3.1 Scheduling. IGS, either directly or through its designee shall be perform any and all Scheduling necessary to provide service to the Aggregation Group. IGS shall be responsible for all scheduling for delivery to the Aggregation Members.

3.2 Metering. Metering shall continue to be done by the Local Utility or other entity approved by the Commission.

3.3 Start Date. The "Start Date" for service to each Aggregation Member shall be the first appropriate meter-read date.

3.4 End Date. Upon the conclusion or termination of this Agreement, the end date for service to each Aggregation Member shall be the next immediate metering date after the effective date of such conclusion or termination subject to the Local Utility's procedures. Upon the conclusion of the opt-out term between each Aggregation Member and IGS, the end date for service for the Aggregation Member shall be pursuant to the opt-out procedures.

#### **Article Four. Prices and Fees**

4.1 Price. IGS shall charge the rates for service provided to Aggregation Members based on the pricing terms and conditions as set forth in Exhibit B hereto.

4.2 Switching Fee Reimbursement. The Municipality shall not be responsible for the payment of any consumer-switching fee or other fees imposed by the Local Utility as a result of the transfer of the Customers to IGS retail natural gas service.

4.3 Early Termination Fee. Customers that join the Aggregation Group and then leave during the term of this service period may be charged a \$25 Early Termination Fee by IGS at IGS's sole and absolute discretion.

#### **Article Five. Billing**

5.1 Billing. The Local Utility will provide consolidated billing for the services provided hereunder. Notwithstanding the foregoing, if offered by the Local Utility in the future, IGS may at its sole option provide consolidated billing to Aggregation Members. Under no circumstances will a dual billing option be offered absent the Municipality's consent; but such option may be offered if the Local Utility no longer offers consolidated billing.

#### **Article Six. Contingencies and Force Majeure**

##### **6.1 Contingencies.**

(a) Regulatory Events. The following events constitute a "Regulatory Event" hereunder:

- (i) Illegality. Due to the adoption of, or change in, any applicable law, or in the interpretation of any applicable law by any judicial or government authority with competent jurisdiction, it becomes unlawful for a party to perform any obligation under this Agreement.
- (ii) Adverse Government Action. (A) Any regulatory agency or court having jurisdiction over the Agreement requires a material change to the terms of this Agreement that materially and adversely affects a party's ability to perform hereunder or other provide the Retail Natural Gas Services, or (B) Regulations or court action adversely and materially impacts a party's ability to perform hereunder or otherwise provide the Retail Natural Gas Services.
- (iii) New Taxes. Any ad valorem, property, occupation, severance, generation, first use, conservation, Btu or energy, transportation, utility, gross receipts, privilege, sales, use, consumption, excise, lease, transaction or other governmental charge, license, fee or assessment (other than such charges based on net income or net

worth), or increase in such charges, or application of such charges to a new or different class of parties, enacted and effective after the Effective Date.

(b) Notice, Negotiation, and Early Termination. Upon the occurrence of a Regulatory Event or Termination Event, the adversely affected party shall within ten (10) days give notice to the other party that such event has occurred. Within thirty (30) days, or such other period as the Parties may agree to in writing, each party will enter into good faith negotiations with the other party to amend or replace this Agreement. In the case of a Regulatory Event, the Parties shall attempt to amend this Agreement so that the adversely affected party is restored as nearly as possible to the economic position it would have been in but for the occurrence of the Regulatory Event. In either case, if the Parties are unable, within thirty (30) days of initiating negotiations, or such other period as the Parties may agree to in writing, to agree upon an amendment to the Agreement, the adversely affected party shall have the right, upon subsequent additional thirty (30) days prior written notice, to terminate and close out its obligations under the Agreement pursuant to the terms of Section 9.1 hereof.

## 6.2 Force Majeure.

(a) Neither party shall be considered to be in default in the performance of its obligations under this Agreement, if its failure to perform results directly from a Force Majeure event. In the event that either party is unable, wholly or in part, to meet its obligations under this Agreement due to conditions of a Force Majeure event, the obligations of each party, , so far as they are affected by such Force Majeure, shall be suspended during the period of Force Majeure.

In the event any party hereto is rendered unable, wholly or in part, by Force Majeure to carry out its obligations hereunder, it is agreed that upon such party's (the "Claiming Party") giving notice and full particulars of such Force Majeure within three (3) Business Days after becoming aware of the cause relied upon, such notice to be confirmed in writing to the other Party, then the obligations of the Claiming Party shall, other than the obligation to make payments due hereunder and to the extent they are affected by such Force Majeure, be suspended during the continuance of said inability but for no longer period. The party receiving such notice of Force Majeure shall have until the end of the second (2nd) Business Day following such receipt to notify the Claiming Party that it objects to or disputes the existence of an event of Force Majeure.

(b) The Claiming Party affected by an event of Force Majeure shall use due diligence to fulfill its obligations hereunder and to remove any disability caused by such event at the earliest practicable time. Nothing contained in this section shall be construed as requiring a party to settle any strike or labor dispute in which it may be involved.

## Article Seven. Term

7.1 Initial and Renewal Terms. The term of this Agreement shall commence on the Effective Date hereof and terminate on November 30, 2005. This initial term will be extended for consecutive one (1) year terms unless written notice to terminate is given by either party, in the case of the initial term, at least two (2) months prior to the end of any renewal term.

## **Article Eight. Representations and Warranties**

8.1 Mutual Representations and Warranties. Each party represents and warrants to the other party, as of the Effective Date of this Agreement and of each delivery of natural gas hereunder, that:

(a) It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, is in good standing;

(b) It has the corporate, governmental and/or other legal capacity, authority and power to execute and deliver this Agreement and any other document relating hereto to which it is a party, and to perform its obligations under this Agreement and any other document relating hereto to which it is a party, and has taken all necessary action to authorize such execution, delivery and performance;

(c) Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;

(d) All governmental and other authorizations, approvals, consents, notices and filings that are required to have been obtained or submitted by it with respect to this Agreement or any other document relating hereto to which it is a party have been obtained or submitted and are in full force and effect, and it has complied with all conditions and terms of any such authorizations, approvals, consents, notices and filings;

(e) Its obligations under this Agreement and any other document relating hereto to which it is a party are legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application regardless of whether enforcement is sought in a proceeding in equity or at law);

(f) No Bankruptcy Event has occurred and is continuing, and that a Bankruptcy Event would neither occur as a result of its entering into or performing its obligations under this Agreement or any other document relating hereto to which it is a party nor is presently or otherwise threatened;

(g) There is not pending or, to its knowledge, threatened against it or any of its Affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or any other document relating hereto to which it is a party or its ability to perform its obligations under this Agreement or such document;

(h) It has entered into this Agreement with a full understanding of the material terms and risks of transaction contemplated hereunder, and it is capable of assuming those risks;

(i) The other party is not acting as a fiduciary or in an advisory capacity to the other party; and

(j) All applicable information that is furnished in writing by or on behalf of it to the other party is, as of the date of the information, true, accurate and complete in every material respect.

8.2 Additional Representations of Municipality. Relative to this Agreement, Municipality further represents to IGS, as of the Effective Date, that:

(a) The Municipality has or shall have a valid certificate as a Governmental Aggregator and will maintain such certificate at all times during the term hereof; and,

(b) All acts necessary to the valid execution, delivery and performance of this Agreement including, without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Act, Regulations and the Municipality's ordinances, bylaws, policies or other regulations.

8.3 Additional Representations of IGS. IGS further represents that it will transfer to the Aggregation Group good title, as applicable at the Delivery Point or otherwise of all Retail Natural Gas Services delivered hereunder, that it has the right to sell such Retail Natural Gas Services, that such Retail Natural Gas Services shall be free from all taxes, liens, encumbrances and claims, and that such Retail Natural Gas Services complies with the technical specifications and will be in a form and quality specified by the Local Utility's distribution system.

8.4 Limitation of Warranties. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARE DISCLAIMED BY THE PARTIES.

## **Article Nine. Default and Early Termination**

9.1 If either party fails to comply with any material term or condition of this Agreement and such failure is not excused as Force Majeure, such party shall be in default under this Agreement. If a party is in default under this Agreement, the party claiming that the other party is in default shall give notice to the defaulting party in writing detailing the alleged default and requesting specific relief that is in accord with the terms and conditions of this Agreement. The party receiving such notice of default shall respond in writing within five (5) business days affirming or denying the alleged default and detailing how any such default under this Agreement will be cured. If the party claiming the default is not reasonably satisfied that such default has been cured within thirty (30) days following the date that the notice of default has been received by the defaulting party, the claiming party shall be free to seek legal redress and take such other actions, including termination of this Agreement, as it sees fit.

9.2 Enforcement of Remedies. The party claiming default under Section 9.1 above may enforce any of its remedies under this Agreement successively or concurrently at its option. All

of the remedies and other provisions of this Article shall be without prejudice and in addition to any right of setoff, recoupment, combination of accounts, lien or other right to which any party or any of its Affiliates is at any time otherwise entitled (whether by operation of law or in equity, under contract or otherwise).

#### **Article Ten. Liability**

10.1 Limitation of Liability. TO THE FULLEST EXTENT PERMISSIBLE BY LAW, NEITHER PARTY, NOR THEIR RESPECTIVE REPRESENTATIVES, SUCCESSORS OR ASSIGNS, SHALL BE LIABLE TO THE OTHER PARTY OR ITS REPRESENTATIVES, SUCCESSOR OR ASSIGNS, FOR CLAIMS, SUITS, ACTIONS OR CAUSES OF ACTION, UNDER ANY THEORY OF RECOVERY, FOR INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, MULTIPLE OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF PROFITS OR REVENUE OR THE LOSS OF USE OF EITHER, COSTS OF REPLACEMENT RETAIL NATURAL GAS SERVICES OR OF CAPITAL, OR CLAIMS OF CUSTOMERS OF THE OTHER PARTY RELATING TO LOSS OF RETAIL NATURAL GAS SERVICES SUPPLY, EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT. THE PROVISIONS OF THIS SECTION 10.1 SHALL APPLY REGARDLESS OF FAULT AND SHALL SURVIVE TERMINATION, CANCELLATION, SUSPENSION, COMPLETION OR EXPIRATION OF THIS AGREEMENT.

#### **Article Eleven. Notices**

11.1 Unless otherwise specified, all notices, requests, statements or payments under this Agreement shall be made to the following:

**Interstate Gas Supply, Inc.**

**City of Oberlin**

All Notices:

All Notices:

Street: 5020 Bradenton Avenue

Street: 289 South Professor Street

City and State: Columbus, Ohio

City and State: Oberlin, Ohio

Zip: 43017

Zip: 44074

Attn: Vice President, Marketing

Attn: Steve Dupee, Utility Director

11.2 Notices shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service. Notice by hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a business day, and otherwise shall be effective at the close of business on the next business day after receipt. Notice by overnight United States mail or courier shall be effective two (2) business day upon delivery. Notice by regular US mail shall be effective five (5) business days following delivery. A party may change its addresses or the contact person by providing notice of same in accordance herewith.

## **Article Twelve. Confidentiality**

12.1 Obligation of Confidentiality. The parties agree for themselves and their respective Representatives to keep confidential all Confidential Information provided hereunder and to use the Confidential Information solely for purposes related to this Agreement. Except as provided herein, Confidential Information shall not be disclosed by the receiving party ("Receiving Party") to any third party without the prior written consent of the disclosing party ("Disclosing Party"); and such third party shall be requested to treat the Confidential Information in accordance with this Agreement.

12.2 Disclosure. In the event either party is required to disclose such Confidential Information by a law, court, agency or other governing body having, or purporting to have, jurisdiction over the party, such party shall notify the other party prior to any disclosure, if such notice is, in the determination of the Receiving Party's counsel, permitted by law, so as to allow the other party an opportunity to resist such disclosure and/or to seek appropriate protection from further disclosure. If the Disclosing Party, in the determination of counsel, is compelled to disclose Confidential Information, the Disclosing Party may disclose that portion of the Confidential Information which the Disclosing Party's counsel advises that the Disclosing Party is compelled to disclose.

12.3 Proprietary Rights, Survival. Each party acknowledges the proprietary rights of the other party in and to the Confidential Information. The obligations under this Article Twelve shall survive the conclusion or termination of this Agreement for two (2) years.

## **Article Thirteen. General Terms**

13.1 Entire Agreement, Amendments and Counterparts. The terms of this Agreement (including any exhibits, schedules and attachments hereto) constitute the entire agreement between the parties with respect to the matters set forth in this Agreement and may be changed only by written agreement executed after the date hereof by the Parties. All exhibits, schedules and addendums attached hereto are incorporated herein by reference. This Agreement and any modification hereof may be executed and delivered in counterparts, including by a facsimile transmission thereof, each of which shall be deemed an original.

13.2 No Waiver. No failure on the part of any party to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver thereof, nor shall any partial exercise of any such right preclude the exercise of any other right. No waiver shall be valid unless set forth in a mutually signed writing, and any such waiver shall not operate as a waiver of the same or any other right on another occasion, unless otherwise agreed to mutually in writing.

13.3 Headings. The headings used for the articles and sections herein are for convenience only and shall not affect the meaning or interpretation of the provisions of this Agreement.

13.4 No Partnership. Nothing in this Agreement shall constitute or be construed as constituting or tending to create an agency, partnership, master-servant or employer-employee relationship between the Parties.

13.5 Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the law of the State of Ohio without regard to principles of conflict of laws. The parties agree that any actions to be brought between them shall be brought only in Franklin County, Ohio, or where required by Ohio law, directly before the Commission. The parties consent to and shall not challenge the jurisdiction over this Agreement of Franklin County, Ohio.

13.6 Jury Trial Waiver. Both Parties waive any right to trial by jury in any action arising hereunder.

13.7 No Third Party Beneficiaries. This Agreement confers no rights or remedies whatsoever upon any person or entity other than the Parties and shall not create, or be interpreted as creating, any standard of care, duty or liability to any person or entity not a party hereto. Neither party shall be liable to a third party not a party to this Agreement for any unauthorized act or omission on the part of the other party, nor for any unauthorized obligation or debt incurred by the other party.

13.8 Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties and their respective successors and permitted assigns, except as expressly provided in this Agreement.

13.9 Assignment. This Agreement shall not be assigned by either party without the written consent of the other, which consent shall not be unreasonably withheld.

13.10 Authorization. Each party to this Agreement represents and warrants that it has full and complete authority to enter into and perform this Agreement. Each person who executes this Agreement on behalf of either party represents and warrants that he or she has full and complete authority to do so and that such party will be bound by the Agreement.

13.11 Prefatory Statements. The parties hereto agree and acknowledge that the prefatory statements in this Agreement are intended to be and shall be a part of the provisions of this Agreement.

13.12 Severability. If any provision of this Agreement is determined to be invalid, void, or unenforceable by any court having jurisdiction, such determination shall not invalidate, void or make unenforceable any other provision, agreement or covenant of this Agreement.

13.13 Agent. The Municipality may designate an agent or Representative to act on its behalf, which agent or Representative Municipality may change from time-to-time upon notice to IGS.

## Execution of Agreement

The Parties acknowledge their agreement to the terms herein by their signatures below.

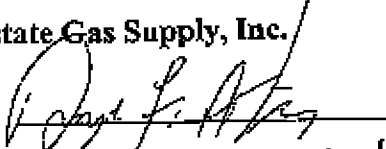
### City of Oberlin

By:   
Name: Robert F. DiSpirito  
Title: CITY MANAGER

Approved as to form

  
Eric Severs, City Solicitor

### Interstate Gas Supply, Inc.

By:   
Name: Douglas E. Austin  
Title: Vice President

## Exhibit A

### Definitions

**"Act"** means Ohio Revised Code, Chapter 4929, as amended.

**"Affiliate"** means, in relation to any person, any entity controlled, directly or indirectly, by such person, any entity that controls, directly or indirectly, such person, or any entity directly or indirectly under common control with such person. For this purpose, "control" of any entity or person means ownership of a majority of the voting power of the entity or person. With respect to Municipality, the term Affiliate shall include but not be limited to any political subdivision of Municipality, or an instrumentality agency or department of Municipality.

**"Aggregation Group"** means the collection of Aggregation Members.

**"Aggregation Member(s)"** means those retail residential and commercial customers whose meters are read on a cycle basis by the Local Utility, are within the corporate limits of the Municipality, and who are eligible to and do become members of the Municipality's Governmental Aggregation program.

**"Authorizing Resolutions & Ordinances"** means the resolutions and ordinances authorizing the Municipality to act as a Governmental Aggregator.

**"Bankruptcy Event"** means either party:

- (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger), becomes insolvent, is unable to pay its debts or admits in writing its inability generally to pay its debts as they become due, or makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (ii) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation;
- (iii) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or substantially all its assets, or has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets;
- (iv) in the case of the Municipality, there is appointed or designated any entity such as a board, commission, authority or agency to monitor, review, oversee, recommend or declare a financial emergency or similar state of financial distress;

- (v) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (iv) inclusive; or
- (vi) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

**"Btu"** means British thermal unit.

**"Commission"** means the Public Utilities Commission of Ohio.

**"Confidential Information"** means any and all data and information of whatever kind or nature (whether written, electronic or oral) which is disclosed by one party (the "Disclosing Party") to the other party (the "Receiving Party") regarding itself, its business, and/or the business of its Affiliates. Information that is disclosed by one party to the other which the disclosing party believes is confidential and is clearly designated as confidential shall be deemed Protected Information, only if such claim of confidentiality is conspicuously disclosed in writing or other tangible form that is marked "confidential" at the time of transmittal or if disclosed verbally is described as confidential or proprietary at the time of the conversation and the disclosing party also supplements the verbal transmittal with a transmittal in writing or other tangible form that is conspicuously marked "confidential" or "proprietary" within five (5) days of the verbal disclosure. Each party shall have the right to correct any inadvertent failure to designate information as Confidential Information by providing the other party with timely written notification of the error, and the designated information shall be treated as Confidential Information from the time a party receives the written notification. Confidential Information does not include information: (a) in the public domain at the time of disclosure; (b) which after disclosure passes into the public domain, except by a wrongful act of the Receiving Party; (c) disclosed to the Receiving Party by a third party not under an obligation of confidentiality; (d) already in the Receiving Party's possession prior to disclosure by the Disclosing Party; or (e) subject to disclosure pursuant to Revised Code Section 149.43 or any other applicable law.

**"Customer Data"** includes, without limitation: the customer's name, billing address, meter address and usage information, account number, rate classification, and similar information that is applicable and necessary for IGS to provide its Retail Natural Gas Services hereunder.

**"Force Majeure"** for purposes of this Agreement means an uncontrollable force that is not within the control of the party relying thereon and could not have been prevented or avoided by such party through the exercise of due diligence. Subject to the foregoing, Force Majeure shall include flood, earthquake, storm, drought, fire, pestilence, lightning, hurricanes, washouts, landslides and other natural catastrophes and acts of God; strikes, lockouts, labor or material shortage, or other industrial disturbances; acts of the public enemies, epidemics, riots, civil disturbance or disobedience, sabotage, terrorist acts, wars or blockades; governmental actions such as necessity to comply with any court order, law, statute, ordinance or regulation promulgated by a governmental authority; or any other unplanned or non-scheduled occurrence, condition, situation or threat not covered above, which renders either party unable to perform its obligations hereunder, provided such event is beyond the reasonable control through the exercise

of due diligence of the party claiming such inability. A change in economic Natural Gas or other market conditions or economic hardship unrelated to an uncontrollable force shall not constitute a Force Majeure event. Failures or interruptions, including government ordered interruptions, on the transmission or distribution systems relied upon for supplying Retail Natural Gas Services under this Agreement will constitute Force Majeure, provided that IGS has arranged for firm transportation service as noted in this Agreement.

**"Governmental Aggregator"** means an eligible governmental entity certified by the Commission to act as a governmental aggregator for the provision of competitive retail Natural Gas service under authority conferred by, inter alia, Section 4929.26, Revised Code.

**Governmental Aggregation"** means a program certified by the Commission for the provision of competitive retail Natural Gas service under authority conferred by, inter alia, Section 4929.26, Revised Code.

**"Historical Load"** means the most recent history of natural gas consumption for the Aggregation Group and/or Aggregation Member(s).

**"Local Utility"** means the natural gas distribution utility providing services to the Aggregation Group of the Governmental Aggregation program.

**"Mcf"** means one thousand (1,000) cubic feet of natural gas.

**"NYMEX Strike Price"** means the historical IGS twelve (12) month consumption average for Columbia Gas of Ohio residential gas customers, weighted against the NYMEX natural gas twelve (12) month price of gas per Mmbtu trading during the months of December through November each year, on any day designated by Municipality's agent prior to October 15, 2003 for year one and prior to October 15, 2004 for year two.

**"Opt-out Period"** means the period of twenty-one (21) calendar days from the post-mark date of the Opt-out Notice, plus the seven (7) calendar day rescission period.

**"Regulations"** means Public Utilities Commission of Ohio and Federal Energy Regulatory Commission rules, regulations and precedent, to the extent of their respective jurisdictions.

**"Representative"** means, as to a party, any Affiliate, or any shareholder, officer, director, employee, agent, attorney, or advisor of the party or its Affiliate.

**"Retail Adder"** means [\$2.58] per Mcf.

## **Exhibit B**

### **Prices**

- 1) Year one (January 2004 through December 2004) and Year two (January 2005 through December 2005), the price for all natural gas delivered by IGS to the local utility's city gate and billed by the Local Utility in any given billing cycle shall be equal to the sum of the following: a) the Retail Adder plus b) NYMEX strike price.
- 2) In the event that Municipality's agent does not designate a day as defined in the NYMEX Strike Price, then the price of all gas delivered under this agreement will be determined each month by the closing monthly NYMEX price of gas plus \$2.80 per Mcf.

*For Council's information.  
- Rob*



OBERLIN MUNICIPAL LIGHT AND POWER SYSTEM ♦ 289 SOUTH PROFESSOR STREET ♦ OBERLIN, OHIO 44074

Phone (440)775-7260

Fax (440)775-1546

MEMORANDUM

To: Rob DiSpirito, City Manager

Re: Gas Price for Municipal Gas Aggregation Program

From: Steve Dupee, Director

Date: November 18, 2003



I recently sent you a memorandum regarding the status of our opt-out natural gas aggregation program. As a follow-up to that memorandum, I wanted to inform you that all issues were resolved between Interstate Gas Supply and NOPEC. Therefore, IGS has committed to serving our community gas aggregation program. I was informed this afternoon that AMP-Ohio struck a gas price and we will be able to offer 74.5 cents per ccf (100 cubic feet) for the gas commodity. Our gas aggregation program will begin on January 1<sup>st</sup>, and notifications will be going out to our customers very quickly.

We will place a public notice in the News-Tribune regarding the gas price we will have to offer. Please share this information with City Council.

In the meantime, if you have any questions, please let me know.

Thanks.

/sd



*For Council's information.  
- Rob*

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## MEMORANDUM

**To:** Rob DiSpirito, City Manager  
**Re:** Municipal Opt-Out Natural Gas Aggregation Program  
**From:** Steve Dupce, Director  
**Date:** November 6, 2003



### Status:

Attached is an e-mail from Greg Slone regarding the status of our Opt-out Gas Aggregation Program. Unfortunately, it appears that Interstate Gas Supply (IGS) will not be able to supply our gas aggregation program due to a dispute with NOPEC. NOPEC is a collection of northeast Ohio communities who banded together to aggregate their loads for purchasing electricity through Ohio's Electric Choice Program (electric deregulation) and purchasing gas for the Columbia Gas Choice Program (gas deregulation). NOPEC's gas supplier is IGS who had signed an exclusive contract with NOPEC that would prohibit IGS from supplying any other municipal aggregation programs. AMP-Ohio was aware of this exclusive contract and had addressed the issue by obtaining a waiver for those AMP-Ohio communities who had passed aggregation ordinances in the fall of last year. However, when AMP-Ohio tried to obtain a waiver for communities who passed aggregation in the spring, NOPEC would not allow it. Therefore, we do not have a supplier at this time to our gas aggregation program.

### Plan of Action:

AMP-Ohio is feverishly working with two (2) other gas suppliers to secure a gas supply contract for our aggregation program and they are still hopeful that they can strike a deal for the upcoming heating season. If they are unsuccessful, I will recommend waiting until next spring/summer to find a supplier for the 2004 heating season. I will keep you abreast of further developments. In the meantime, we are preparing an article for the News-Tribune advising citizens of the gas aggregation status. We have been fielding numerous calls for several weeks.

The good news is that Columbia Gas has recently dropped their "Gas Recovery Charge" (GCR) to .69 cents per ccf. Therefore, Oberlin residents who still receive their gas commodity from Columbia Gas are paying a lower rate when compared to the IGS offer. The caveat is that this .69 cent rate will only be available for the last quarter of the year and will change in January. Historically, Columbia Gas has raised the GCR for the first quarter of each year.

Please feel free to share this information with City Council. Thanks Rob.

## Steve Dupee

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From: gslone@amp-ohio.org  
Sent: Friday, October 31, 2003 10:33 AM  
To: sdupee@omlps.org  
Cc: rsimmers@amp-ohio.org  
Subject: IGS Contract Issue

Steve,

As you know, AMPO, Inc. has been negotiating with a number of gas suppliers to serve our Municipal Gas Aggregation programs, including the City of Oberlin's gas program. After a thorough evaluation of the suppliers' proposals, including proposed contract language, AMPO determined that Interstate Gas Supply (IGS) offered the best value for the City's gas aggregation program. While attending an Oberlin City Council meeting on October 6, I recommended that the City sign a two-year contract with IGS.

Since the meeting on October 6, we moved forward with the intent of completing a deal with IGS. AMPO began obtaining customer address lists from Columbia Gas and continued to watch the gas market for an opportunity to strike a price for the aggregation. Because the gas market took a significant up-turn on October 9, we put a hold on completing the contract and waited for more favorable gas prices.

IGS also has a contract with NOPEC to provide gas service to all NOPEC communities in nine counties in Northeast Ohio, including Lorain County. The contract that IGS signed with NOPEC in 2002 includes language that prohibits IGS from serving aggregation programs, other than NOPEC, in any county where NOPEC has a member community. This includes communities in Lorain County.

AMPO was aware of the contractual issues IGS has with NOPEC, however, IGS was able to get a waiver from NOPEC to serve several AMPO communities that developed gas aggregation programs last winter and IGS felt they would be able to do the same for Oberlin. Unfortunately, relations between NOPEC and IGS have become strained over the past month. NOPEC signed a contract with IGS that set the gas rate at 5% below the utility's GCR rate. Last winter this worked fine. However, this summer the transition rider that customers must pay for the first 12 months after they move to a transportation program increased drastically. So much so, that customers who are new to the program and have to pay the transition rider for the first 12 months are actually paying more than they would had they stayed with Dominion.

>From what little I can understand about the issue, it appears IGS has done their best to mitigate a bad situation, but NOPEC is still unhappy with the deal. Bottom line is IGS is not in a position of being assured of receiving a waiver from their NOPEC contract to serve Lorain County communities other than Amherst, (NOPEC okayed Amherst earlier this summer).

AMPO is moving forward with negotiations to finalize a contract with an alternate supplier, which we hope to have completed within the week.

Greg