

BOARD OF EDUCATION
NORTON CITY SCHOOL DISTRICT
COUNTY OF SUMMITT, OHIO

Following is an excerpt from the minutes of a meeting of the Board of Education duly held on _____, 2013 at _____ o'clock __.m. at the (insert location of meeting) _____, with the following members present (list members in attendance):

Member _____ moved, seconded by member _____ that the following Resolution be adopted:

RESOLUTION

AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDED AND RESTATED AGREEMENT REGARDING THE NATURAL GAS PURCHASE PROGRAM IN CONNECTION WITH THE NATURAL GAS PROGRAM OF THE OHIO SCHOOLS COUNCIL AND AUTHORIZING AND APPROVING RELATED MATTERS.

WHEREAS, the boards of education of certain school districts located in northeastern Ohio, including the board of education of this School District (the "District") have established the Ohio Schools Council as a regional council of governments, pursuant to Revised Code Chapter 167 ("Council"), for the purpose of carrying out a cooperative program for the purchase of natural gas, carrying out cooperative purchase programs and promoting cooperative arrangements and agreements among its member school districts and government agencies or private persons; and

WHEREAS, pursuant to the Agreement Regarding the Natural Gas Purchase Program, the Council has undertaken and operated a program on a cooperative basis for the purchase of natural gas on behalf of its members of the Council and others whose governing Boards approved participation in the natural gas purchase program under the terms of that Agreement; and

WHEREAS, the Council has determined to secure a firm supply of natural gas through a prepaid purchase of natural gas for participating boards of education under contractual terms favorable to such participating boards, including but not limited to, financial security to assure performance and to undertake and operate a program on a cooperative basis for the purchase of natural gas pursuant to such arrangements (the "Program"); and

WHEREAS, the Board of Education (the "Board") of the District wishes to participate in the Program and now desires to authorize the execution and delivery by the District of an Amended and Restated Agreement Regarding the Natural Gas Purchase Program between the Council or its designee, and the District (the "Program Agreement"), pursuant to which the District, along with members of the Council and certain others (the "Participants"), will purchase substantially all of the natural gas it uses for participating school facilities through the Program and will share the administrative and operating costs of the Council in establishing, operating and administering the Program; and

WHEREAS, the Program Agreement provides that each participating school district will make monthly payments to the Council or its designee and that the rights in such payments will be assigned to a trustee authorized to exercise trust powers under Ohio law (the "Trustee") under the terms of a trust agreement to be entered into between the Council, or its designee, and the Trustee in (the "Trust Agreement"); and

WHEREAS, the Program provides for the Council to assist in arranging for the issuance and sale of securities the proceeds of which will be used to prepay for a firm long-term supply of natural gas, and debt service payments associated with such securities will be paid, in part from the gas purchase payments by participating school districts which have been assigned to the Trustee pursuant to the Trust Agreement;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF EDUCATION OF THE NORTON CITY SCHOOL DISTRICT, COUNTY OF SUMMIT, STATE OF OHIO, as follows:

Section 1. The Board authorizes and directs the Treasurer to execute and deliver, in the name of the District and on its behalf, the Program Agreement, substantially in the form now on file with this Board, with any changes that are not inconsistent with this resolution and that may be acceptable to the Treasurer whose acceptance shall be conclusively evidenced by the execution of such document by the Treasurer.

Section 2. The Treasurer is authorized and directed to take any and all actions necessary or proper in connection with the Program and to carry out the actions contemplated by the Program Agreement, including, without limitation, the preparation, execution and delivery of such other documents, certificates and agreements as may be necessary or proper to the above-stated purposes or other agreements not inconsistent with this Resolution or as may be required by the Ohio Revised Code to set forth assurances and representations with respect to the District's ability to meet its obligations under the Program Agreement.

Section 3. Following execution on behalf of this Board of the Program Agreement, the Treasurer is authorized and directed to make monthly payments to the Fiscal Agent of the

Council or its designee in accordance with the terms of such Program Agreement. The Fiscal Agent of the Council is hereby appointed to act as payment servicer for natural gas purchased by the District pursuant to the Program Agreement and report to this Board concerning all payments made on behalf of this Board under the Agreement.

Section 4. The Board of Directors of the Council is hereby authorized to establish additional procedures which are not inconsistent with the Program Agreement and are not substantially adverse to the interests of the District and which it determines are necessary to implement the Program, including procedures to be followed by this Board in the determination of amounts of, and payments for, this District's natural gas requirements and to enter into cooperative agreements with other Participants, including, the Bay Area Council of Governments and Lake Erie Regional Council of Governments, to assist in implementing the Program.

Section 5. Monies adequate to pay amounts due under the Program Agreement for the fiscal year ending June 30, 2013 are hereby appropriated for that purpose.

Section 6.. The Board expressly acknowledges that it is the intention of the Council to assist in arranging for the Trustee and Seasongood & Mayer, Cincinnati, Ohio (the Underwriter) to structure and complete the issuance, sale to others and public underwriting of the securities to be used to prepay a firm long-term supply of natural gas, to be repaid, in part by the District as set forth in the Program Agreement and, to the extent required by the Ohio Revised Code, the Board hereby approves the Council's actions in assisting in arranging for such issuance and sale.

Section 7. It is hereby found and determined that all formal actions of the Board concerning and relating to the adoption of this resolution were adopted in an open meeting of the Board, and that all deliberations of the Board 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.

After discussion, a roll call vote was taken and the results were:

Voting Aye: _____

Voting Nay: _____

The Resolution was adopted.

BOARD OF EDUCATION,
NORTON CITY SCHOOL DISTRICT
SUMMIT COUNTY, OHIO

Treasurer

Attest: _____

CERTIFICATE OF DISTRICT TREASURER

The undersigned hereby certifies that the Resolution to which this Certificate is attached was adopted at a duly convened meeting of the Board of Education of the School District held an open session on _____, 2013.

Dated: _____, 2013

Treasurer, Board of Education,
Norton City School District
Summit County, Ohio

**AMENDED AND RESTATED AGREEMENT REGARDING THE
NATURAL GAS PURCHASE PROGRAM
OF THE
OHIO SCHOOLS COUNCIL**

This Amended and Restated Agreement Regarding the Natural Gas Purchase Program of the Ohio Schools Council (the "Council") is entered into as of _____, 2013, between the Ohio Schools Council and the boards of education and other parties identified below (the "Participants").

RECITALS

WHEREAS, the boards of education of certain school districts located within northeastern Ohio have entered into an agreement dated as of December 6, 1986, pursuant to Revised Code Chapter 167, establishing a regional council of governments known as the Ohio Schools Council for the purpose of carrying out a cooperative program for the purchase of natural gas, and promoting cooperative agreements and activities among those school districts and providing services and dealing with matters of mutual concern; and

WHEREAS, pursuant to the Agreement Regarding the Natural Gas Purchase Program (the "Base Program Agreement") the Council undertook and has operated a program on a cooperative basis for the purchase of natural gas on behalf of those members of the Council and certain county boards of education and/or mental retardation who are served by Columbia Gas of Ohio, Inc. ("Columbia") or The East Ohio Gas Company ("East Ohio") and whose governing boards approved participation in the natural gas purchase program under the terms of that Agreement; and

WHEREAS, the Council has determined to secure a long-term, firm supply of natural gas for Participants through a prepaid purchase of natural gas under contractual terms favorable to Participants including financial security to assure performance by the gas supplier(s) and financed by the issuance and sale of securities with debt service payments associated with such securities to be paid, in part, from the payments by participating school districts; and

WHEREAS, the Council and the Participants agree that it is necessary and desirable for the Base Program Agreement to be amended and restated in its entirety to create and adopt comprehensive guidelines for the funding, management and

administration of the Council's natural gas purchase program which includes the prepaid gas purchase arrangements;

NOW, THEREFORE, it is agreed by and among the Ohio Schools Council and the Participants identified below, on behalf of whom their representatives have executed this Agreement in accordance with the authorizing resolution of their governing boards, that:

SECTION 1. DEFINITIONS

As used in this Agreement, capitalized words and phrases shall have the meanings given to them in the Agreement Establishing the Ohio Schools Council, herein called the "Council Agreement", and the Bylaws Governing the Ohio Schools Council, herein called the "Bylaws." Reference to the singular means plural and vice versa. In addition, the following words shall have the following meanings:

"Administrator" means the Administrator of the Ohio Schools Council or, if there is no person designated as Administrator of the Council, the person or persons designated by the Board of Directors to carry out the responsibilities and duties assigned to the Administrator under this Agreement. The Administrator may be the same person employed by the Council to perform the duties of the Fiscal Agent.

"Agreement" means this Amended and Restated Agreement Regarding the Natural Gas Purchase Program of the Ohio Schools Council, as the same may be amended, modified or supplemented in accordance with Section 14 hereof.

"Authorized Estimator" means the person designated by the governing board of each Participant to make the estimate of natural gas to be purchased for each Participant, as well as other nominations of natural gas supply for the Participant. With respect to Members of the Council, the Authorized Estimator may, but need not be, the Participant's representative in the Council and the Assembly.

"Columbia" means Columbia Gas of Ohio, Inc., the natural gas utility company serving certain of the Participants.

"East Ohio" means The East Ohio Gas Company, the natural gas utility company serving certain of the Participants.

"Fiscal Agent" means Fiscal Agent of the Ohio Schools Council, which, for this Program, shall be the Ohio Schools Council.

"Fiscal Year" means the Council's twelve (12) month fiscal period of July 1 through June 30 of each year, unless such period is subsequently changed by law.

"Gas Purchase Contract" means the Natural Gas Purchase Agreement(s) between a Supplier and the Council (or its designee), effective for a period of not more than twelve (12) years from the commencement date thereof (unless previously terminated), subject to the terms and conditions thereof.

"LDC" means the applicable local gas distribution utility company serving Participant's facilities which shall be either Columbia or East Ohio.

"Operating Fund" means the Natural Gas Purchase Program Account established by the Council and maintained by the Fiscal Agent as a separate fund pursuant to Section 11 of this Agreement, into which the Fiscal Agent shall place any and all moneys received from the Participants for Program Administrative Costs. All investment earnings on monies in the Operating Fund shall be credited and paid to that Fund.

"Participants" means those Members of the Council and such other persons that are participating in the Program.

"Prepayment Financing" means the financing arrangements and documents pursuant to which securities will be issued to fund one or more prepayments to one or more Suppliers for the amount of natural gas to be prepaid for all of the Participants as estimated by such Participants for the Program Term commencing with the commencement date set forth in the Gas Purchase Contract(s) and which may include, if applicable, prepayment to one or more Utility Transporters and/or LDCs for the amount of natural gas transported and/or stored for the Participants.

"Program" means the Natural Gas Purchase Program of the Ohio Schools Council.

"Program Administrative Costs" means all reasonable administrative costs incurred by the Council and the Fiscal Agent in connection with the Program and approved by the Board of Directors.

"Program Gas Costs" means all natural gas costs under the Gas Purchase Contracts, the contracts with Utility Transporters and/or LDCs, if applicable, and this Agreement.

"Program Costs" means the Program Administrative Costs and the Program Gas Costs.

"Program Term" means the period commencing with the commencement date set forth in the Gas Purchase Contract and ending on the last day of the Participant's then current Fiscal Year, subject to annual renewal thereafter for successive annual periods not more than twelve (12) years from such commencement date.

"Supplier" means any person, corporation, partnership or other organization with whom the Council (or its designee) may contract for the purchase of natural gas.

"Trustee" means the bank retained by the Council or its designee to serve as trustee in connection with the Prepayment Financing.

"Utility Transporter" means any interstate and/or intrastate pipeline transporter of natural gas, including any local gas distribution company.

SECTION 2. ARRANGEMENTS FOR SUPPLY OF NATURAL GAS

(A) **Prepayment of Natural Gas.** On or about the date hereof, each Authorized Estimator shall certify to the Council the estimated natural gas consumption for the Program Term for the Participant's facilities that will be participating in the Program (the "Participant Estimate"). The Council shall aggregate all of the Participants' Estimates to calculate a defined quantity of natural gas to be purchased (the "Prepayment Quantity"). The prepayment amount to be paid to the Supplier(s) shall be equal to the Prepayment Quantity described above multiplied by the Supplier(s)' applicable rates. The Council shall use its best efforts to cause the Prepayment Financing to occur after the date hereof. Each Participant authorizes the Council to enter into the Gas Purchase Contract in connection with the Prepayment Financing.

(B) **Payments by Participants.** Subject to the provisions set forth in this Section 2, and the other terms and conditions of this Agreement, the Administrator shall determine the amount of each Participant's monthly payment for Gas Program Costs. The amount of such monthly payment for a Participant shall be based upon the Participant's actual consumption. Each Participant agrees to pay to the Fiscal Agent or its designee for its monthly Gas Program Costs on or before the twenty-fifth (25th) day of the calendar month after the month in which the natural gas is to be consumed by the Participant (for example, payment must be made by November 25th for natural gas consumed in October) or within ten (10) days of the date of the invoice to Participant, whichever is later. Time is of the essence in all payments by Participants hereunder. Any Participant failing to transmit timely payment to the Fiscal Agent or its designee of any amount due hereunder, whether in this Section 2 or in any other Section of this Agreement, shall be, to the extent permitted by law, subject to an interest charge of 1.5% per month on the overdue amount. Such interest rate on overdue amounts shall be subject to change without the consent of the Participants by the Board of Directors, but in no event will such interest rate exceed the maximum rate permitted by law. In the event the Council takes legal action against any Participant to collect any amounts due the Council under this Agreement, to the extent permitted by law, the Participant agrees to pay all of the Council's fees, costs and expenses (including reasonable legal fees to the extent permitted by law) incurred by the Council in connection therewith.

(C) **Supply and Purchase; True-up Provisions.** During the Program Term, subject to Sections 12 and 21 hereof and the other provisions of this Agreement, the Council or its designee agrees to supply and each Participant agrees to purchase all of

its gas requirements for participating facilities pursuant to this Agreement. It is understood that differences between the Participant Estimate and the Participant's actual consumption may occur. Adjustment for differences between estimated and actual consumption for each Participant and for all of the Participants, as a group taken as a whole, will be calculated by the Council.

The Administrator will make adjustments for differences in actual rates and consumption for each Participant, compared with the Participant Estimate on a monthly basis. In the event a Participant consumes more natural gas during a monthly period than the Participant Estimate, as prorated, the Participant shall pay the Council for such excess amount. In the event a Participant consumes less natural gas during a monthly period than the Participant Estimate, as prorated, the Council shall invoice Participant only for the actual quantities consumed by Participant subject to Section 2(E) and the other terms and conditions of the Agreement.

(D) Other Purchases of Natural Gas by Council; Price. On behalf of the Participant, the Council may enter into one or more contracts with one or more Suppliers for the purchase of natural gas to supplement the Prepayment Quantity or as otherwise required in connection with the operation of the Program. The selection of each Supplier and the terms of each contract between the Council (or its designee) and the Supplier shall be determined and approved by the Board of Directors. Estimates for natural gas supplies under each Supplier's contract shall be made by the Administrator, from time to time, based on the amount of the Prepayment Quantity, the aggregation of the separate consumption amounts of each Participant, the terms of the Council's contracts with the Supplier and the policies and procedures established by the Board of Directors. For all gas consumed by Participant under this Agreement, the Council shall charge each Participant a monthly weighted average cost of natural gas purchased by the Council on a Program basis. The Council's calculation shall be deemed conclusive and binding on the Participants absent manifest error.

(E) Imbalances in Supply of Natural Gas. In the event that the natural gas consumed by a Participant in any month exceeds the amount of natural gas estimated by that Participant for such month, the Participant shall purchase such additional natural gas from the Council or its designee or LDC, unless other arrangements have been made satisfactory to the Council. In the event that the natural gas consumed by a Participant in any month is less than the amount of natural gas estimated by that Participant for such month, the Participant shall only be responsible for the Program Gas Costs with respect to the amount of gas actually consumed by Participant. To the extent that any imbalance charges or penalties are incurred by the Council as a result of imbalances between volumes of gas consumed and volumes of gas estimated by a Participant, the Participant or Participants responsible for such imbalance shall pay any such charges or penalties in accordance with the procedures established by the Board of Directors. In the event that the Supplier(s) fail to deliver the volume of natural gas nominated by the Council, the Council will appropriately prorate volumes actually delivered to the Participants and each Participant shall, consistent with the LDC's rules and regulations in effect at the time,

purchase any additional volumes of natural gas required from alternate suppliers or the LDC. The Administrator, with notice to the Participants, may change the procedures for dealing with imbalances to be consistent with LDC's policies dealing with volumes consumed and nominated.

(F) **Notice of Significant Change in Usage.** During the Program Term, a Participant may make material changes or additions to its physical facilities or heating systems, or experience closure of facilities, planned or unplanned. Each Participant agrees to notify the Administrator as soon as possible when it becomes aware of circumstances which are likely to increase or decrease natural gas usage by ten percent (10%) or more per year for such Participant.

SECTION 3. ARRANGEMENTS FOR TRANSPORTATION AND STORAGE OF NATURAL GAS

(A) **Transportation/Storage Arrangements by Council.** On behalf of the Participants, the Council may enter into one or more contracts with one or more Utility Transporters and/or LDCs for the transportation and/or storage of the natural gas purchased by the Council from Suppliers to the distribution lines of the LDC. In lieu of entering into separate agreements with Utility Transporters and/or LDCs, the Council may enter into agreements with one or more Suppliers under which the Supplier will make arrangements for the transportation and/or storage of the natural gas from its origin to the distribution lines of the LDC and/or Participant's facilities. The selection of each Utility Transporter and/or LDC and the terms of each contract between the Council and the Utility Transporter and/or LDC (or Supplier, if the arrangements are made by the Supplier) shall be determined and approved by the Board of Directors of the Council. Such transportation and/or storage arrangements may include, if applicable, a prepayment to the Supplier(s), Utility Transporter(s) and/or LDC(s) which may be included in the Prepayment Financing.

(B) **Payments for Transportation/Storage of Natural Gas.** The Fiscal Agent of the Council shall transmit payments from the Operating Fund to the Utility Transporters and/or LDC for the transportation and/or storage services provided by the Utility Transporters and/or LDCs under agreements with the Council. In the event transportation and/or storage is provided by one or more Suppliers, payments shall be made to the Supplier(s) for such transportation and/or storage services. Each Participant agrees to transmit payment to the Fiscal Agent for transportation and/or storage of its monthly consumption of natural gas on or before the 25th day of the calendar month after the month in which the natural gas is transported on behalf of the Participant (for example, payment must be made by November 25 for gas received in October) or within ten (10) days of the date of the invoice to Participant, whichever is later. Each Participant's share of transportation and/or storage costs shall be based upon the volumes of natural gas consumed by that Participant taking into consideration any unaccounted for gas allowance charges or other similar charges by the Utility Transporters and/or LDCs. Any Participant failing to timely transmit payment to the Fiscal Agent for its share of

transportation and/or storage costs shall be subject to the interest charges and collection costs set forth in Section 2(B) hereof.

(C) **Arrangements with the LDC.** In the event that the LDC requires each Participant to enter into a separate agreement with the LDC for the transportation of natural gas to the facilities of the Participant, each Participant shall consult with the Council concerning the terms of the proposed agreement prior to entering into any such agreement. If the Board of Directors determines that the terms of the proposed agreement between the Participant and the LDC are consistent with the Program, the Participant shall cooperate with the Council to secure approval of that agreement from the Public Utilities Commission of Ohio, if required. During the Program Term, Participant shall perform all of its obligations under any such separate agreement with the LDC.

SECTION 4. DETERMINATION OF NATURAL GAS CONSUMPTION BY PARTICIPANTS

Each Participant shall promptly provide the Administrator with a copy of any statements received by the Participant concerning consumption of natural gas by the Participant. In the event that the LDC fails to provide a Participant with a monthly statement of the volumes of natural gas consumed by the Participant at each of its facilities serviced by the Program, the Authorized Estimator shall ascertain and certify to the Administrator, within ten (10) days after the end of each calendar month, the amount of natural gas consumed at each facility serviced by the Program.

SECTION 5. ARRANGEMENTS WITH THE GAS SUPPLIER(S)

The Council will use its best efforts to assist in arranging for the Prepayment Financing and for the proceeds thereof to be utilized to make one or more prepayments to the Supplier(s) pursuant to the Gas Contract(s) and, if applicable, to the Utility Transporter(s) and/or LDC(s) under related agreements. Pursuant to and as more specifically described in the Gas Contract(s) and related agreements, the Supplier(s) and, if applicable, Utility Transporter(s) and/or LDC(s), will agree to be obligated to reimburse the Council or its designee, in the event of a termination of the Gas Contract(s), to acquire natural gas in substitution for the Prepayment Quantity not received under the Gas Contract(s) or related agreements and/or to pay debt service amounts. Each Participant hereby assigns all of its right to any such payments by the Supplier(s), and if applicable, the Utility Transporter(s) and/or or LDC(s), to the Council, as payment servicer, or its designee.

SECTION 6. REMARKETING

To the maximum extent permitted by law, each Participant hereby appoints the Council and/or its designee as gas remarketing agent to remarket volumes of the gas included in the Participant Estimate as part of the Prepayment Quantity that Participant does not consume, and hereby assigns and allocates all such natural gas to Council and/or

its designee to remarket. Neither Participant nor Council and/or its designee shall use or permit the use of such gas which would cause interest on any of the obligations issued pursuant to the Prepayment Financing to finance the purchase of such gas not to be excludable from gross income for federal income tax purposes.

SECTION 7. MANAGEMENT AND OPERATION OF PROGRAM

(A) Board of Directors. The Board of Directors of the Council, established pursuant to the Council Agreement, shall have, in addition to its powers and duties under the Council Agreement and the Bylaws adopted by the representatives to the Council, the following powers and duties in connection with the management and operation of the Program:

- (1) It shall oversee and manage the operation of the Program.
- (2) It may adopt policies and procedures supplementing the general terms of this Agreement concerning the purchase of natural gas supplies, transportation and/or storage of gas, payment for purchase, transportation and/or storage of gas, accounting for such gas among the Participants, the allocation among the Participants of any charges incurred in connection with the over or underconsumption of natural gas purchased or changes in rates by Supplier(s), and the method by which gas usage will be reported to the Council.
- (3) It shall consider and recommend to the Participants any additional services which are or are proposed to be a part of the Program.
- (4) It may direct the employment or contracting by the Council with such persons or organizations as it deems necessary to assist in the administration and management of the Program, including, but not limited to, consultants, Program administrators or managers, advisors and legal counsel, provided that the compensation to be paid by the Council for those services is within the total estimated Program Administrative Costs approved by the Assembly.
- (5) It shall determine the necessity of and timing for any adjustments in each Participant's share of Program Administrative Costs pursuant to Section 9 of this Agreement.
- (6) It shall select the Supplier(s) and Utility Transporters and authorize any agreements under them upon terms it approves.
- (7) It shall authorize any agreements or settlements between the Council and the Gas Supplier(s) upon terms it approves.

- (8) It shall consider applications for admission to the Program and determine whether and at what time those applicants should be included in the Program.
- (9) It shall make recommendations to the Assembly concerning any matter relating to the operation of the Program, including, but not limited to:
 - (a) amendments to or modifications of this Agreement;
 - (b) Program Administrative Costs and Program Gas Costs; and
 - (c) each Participant's share of Program Administrative Costs and Program Gas Costs.
- (10) It shall perform such other functions as may be necessary or incidental to carrying out the purposes of the Program.

The Board of Directors may direct the Administrator to assist the Board in performing any of the foregoing duties relating to the operation and management of the Program and may delegate to the Administrator such of the foregoing duties to the fullest extent permitted under Ohio law.

(B) Assembly. The representatives of the Members in the Assembly of the Council, the legislative body established pursuant to the Council Agreement, who are representatives of Participants in this Program, shall have the powers and duties they have under the Council Agreement and Bylaws.

Whenever this Agreement provides for an approval or determination to be made by the Assembly, the approval or determination made by the Member Participants' representatives shall constitute the approval or determination of the Assembly in accordance with the Council Agreement. Unless otherwise specified in this Agreement or the Council Agreement, actions to be taken by the Assembly under this Agreement shall require the affirmative vote of at least a majority of the representatives of all Member Participants. It is understood, however, that failure of the Council to strictly follow the provisions of Sections 7(A) or (B) will not be deemed to be a breach of this Agreement by the Council.

SECTION 8. REPORTS AND RECORDS

The Council shall maintain records and data concerning the amount of natural gas purchased and consumed on behalf of each Participant, the amount paid for the purchase and, if applicable, transportation and/or storage of such gas, the allocation of the costs thereof among the Participants and such other records and data as the Board of Directors deems necessary or appropriate. The Council shall maintain records and conduct operations of the Program based on a Fiscal Year beginning July 1 and ending June 30.

SECTION 9.

ESTIMATE OF COSTS; PAYMENTS BY PARTICIPANTS

On or before the November meeting of the Assembly in the Fiscal Year preceding the Fiscal Year for which the following estimates are made, the Board of Directors of the Council shall submit to the Assembly a written estimate of (a) Program Costs for the next Fiscal Year of the Council and (b) each Participant's share of those Program Costs, as described in Section 9 hereof. Such estimates shall be presented in sufficient detail to permit the Assembly to determine their sufficiency to maintain the soundness of the Operating Fund.

The Assembly shall instruct the Fiscal Agent to deliver to the Participants, on or before the 15th day of December, an estimated budget of the Program for the next Fiscal Year, evidencing each Participant's share of the Program Costs.

The Board of Directors shall timely provide any Participant that is not a Member of the Council with its estimated share of Program Costs for the Participant's next fiscal year so that such non-Member Participant can include its share of those costs in any budgets required of that Participant under Ohio law.

Each Participant intends, subject to the provisions of Section 21 hereof, to pay its Program Costs through the Program Term. Each Participant reasonably believes that legally available funds of an amount sufficient to make all payments of Program Costs through the Program Term can be obtained. Each Participant further intends, subject to the provisions of Section 21 hereof, to do all things lawfully within its power to obtain, and maintain funds from which the payments of Program Costs may be made, including making provision for such payments to the extent necessary in each biannual or annual budget submitted and adopted in accordance with applicable provisions of state law, to have such portion of the budget approved, and to exhaust all available reviews and appeals in the event such portion of the budget is not approved.

If requested by the Council, after each Participant receives a Certificate of Estimated Resources for the succeeding fiscal year, such Participant shall consider a resolution intending to appropriate funds for its Program Costs for the succeeding fiscal year. Participant shall notify the Council in writing if its Board has failed to adopt such resolution by May 1 of each year.

Each Participant shall remit its share of the Program Costs to the Fiscal Agent in the amounts and at the times directed by this Agreement and by the Fiscal Agent.

If contributions made in accordance with the Program budget are insufficient to pay the Program Costs of this Program for such Fiscal Year, as determined by the Board of Directors, the Fiscal Agent shall promptly notify in writing each Participant of any additional Program Costs, the amount of any deficiencies, and each Participant's share of those additional costs or deficiencies, whereupon each Participant shall do all things

lawfully within its power to appropriate (pursuant to Chapter 5705 of the Revised Code) the amount stated in that notice.

The Council shall have the right from time to time to invoice each Participant for its share of Program Administrative Costs. Such invoice shall create a binding obligation on the part of the Participant to pay such amount invoiced. Failure by a Participant to appropriate and remit any of its share of the Program Administrative Costs pursuant to this Agreement within ten (10) days after the same shall become due may be, at the option of the Board of Directors, deemed a withdrawal by such Participant unless: (i) the Participant has petitioned the Board of Directors for permission to make a partial payment and an extension of time for payment of the balance due, (ii) the Board of Directors has, by resolution, approved a partial payment and an extension to a date certain for payment of the balance due, and (iii) the Participant has remitted such partial payment of the Program Administrative Costs to the Fiscal Agent in the amount approved by the Board of Directors.

Under no circumstances shall the Council, the Board of Directors or the Fiscal Agent have the power to incur obligations for Program Costs in an amount which exceeds the total unspent amount appropriated for Program Costs and remitted to the Fiscal Agent by the Participants pursuant to this Agreement, except as may be permitted by law.

SECTION 10. APPORTIONMENT OF PROGRAM COSTS

Each Participant's share of the Program Costs shall be the sum of the costs allocated to each Participant by the Assembly based on the determinations of the Board of Directors under divisions (A) and (B) of this Section. The Board of Directors may utilize the services of outside consultants to assist it in its preparation of those estimates.

(A) The Board of Directors shall estimate the amount of compensation to be paid to any staff hired by the Council to administer this Program, fees to be paid to any advisors, lawyers, managers and consultants or others, any fees to be paid to the Fiscal Agent (in the event that the Fiscal Agent is not a salaried employee of the Council), and any other costs of operating this Program for the next Fiscal Year. The Board of Directors shall develop a schedule apportioning those fees and costs among the Participants in any manner approved by the Assembly and not otherwise prohibited by law.

(B) The Board of Directors shall make any estimate(s) it deems necessary or appropriate pursuant to Section 2 for the next Fiscal Year and shall prepare a schedule estimating and apportioning the supply (and transportation, if applicable) and/or storage costs of that natural gas among the Participants based on their expected usage.

SECTION 11. DEPOSIT, INVESTMENT AND DISBURSEMENT OF MONIES IN THE OPERATING FUND

The Fiscal Agent shall receive, deposit, invest and disburse funds contributed by the Participants for Program Costs in accordance with this Agreement and shall keep such separate books and records as are necessary to provide proper accounting records and data for the Program.

(A) **Custody of and Disbursements from Fund(s).** The Fiscal Agent shall establish such funds as are necessary and appropriate under Ohio law to effectuate this Program Agreement and the Prepayment Financing, including an Operating Fund which shall be separate and apart from all other funds held by the Fiscal Agent or for which the Fiscal Agent is responsible. The Board of Directors may, from time to time, authorize and direct the Fiscal Agent to establish separate accounts within the Operating Fund. The Operating Fund shall be subject to the laws of the State concerning the investment and management of public funds, particularly Revised Code Chapter 135, and shall be the responsibility of the Fiscal Agent.

The Fiscal Agent shall deposit in the Operating Fund the amounts received from the Participants or others for Program Administrative Costs and shall keep a record of each Participant's contribution to the Operating Fund. Any investment earnings on monies in the Operating Fund shall be credited and paid to the Operating Fund. Disbursements may be made from the Operating Fund by the Fiscal Agent at the direction of the Board of Directors for any proper purpose of this Program, including, but not limited to, payments to Gas Supplier(s), and, if applicable, Utility Transporters and/or LDCs, payment to the Council Fund of costs incurred by the Council attributable to this Program, payment of fees and expenses of the Fiscal Agent, consultants, managers and attorneys, and payment of other operating expenses. All amounts received and to be received from the Participants for Program Gas Costs shall be assigned and paid over to the Trustee and/or paying agents pursuant to the Prepayment Financing.

(B) **Fidelity Bond.** The Fiscal Agent shall obtain and keep in force a fidelity bond, in an amount determined by, and with a surety company approved by, the Board of Directors. In lieu of a separate fidelity bond, the Board of Directors may direct the Fiscal Agent to continue and keep in force any existing fidelity bond which covers the Fiscal Agent. In either case, the Fiscal Agent and the Council shall be named as beneficiaries of such fidelity bond and the amount thereof shall not be reduced without prior written consent of the Board of Directors.

(C) **Maintenance of Records.** The Fiscal Agent shall maintain records which separately identify by Participant all contributions from the respective Participants for Program Costs. The Fiscal Agent shall maintain or cause to be maintained records which account for all deposits and disbursements made to or from the Operating Fund and all investments made of monies held in the Operating Fund.

(D) **Reports.** The Fiscal Agent shall make monthly reports to the Board of Directors on or before the 10th day of each month concerning all contributions to and disbursements from the Operating Fund during the preceding calendar month.

(E) **Management Fee.** In the event that the Fiscal Agent is a Member board of education and not a salaried employee of the Council, its Fiscal Agent may receive a fee from the Council, in consideration for its services, in such amount as the Assembly shall approve.

SECTION 12. WITHDRAWAL OF A PARTICIPANT

Withdrawal from the Council pursuant to the Council Agreement may, at the discretion of the Board of Directors, constitute withdrawal from the Program. Any Member of the Council wishing to continue as a Member of the Council but to withdraw from participation in the Program, and any non-Member Participant in the Program wishing to cease its participation in the Program, shall notify the Fiscal Agent in writing by certified mail commencing for Fiscal Years on and after July 1, 2000, on or before September 15 of the Fiscal Year preceding the Fiscal Year in which the Participant wishes to withdraw from the Program. Any decision to withdraw from the Program must be made by duly adopted resolutions of the governing body of the Participant. Upon withdrawal, the withdrawing Member may not become a Participant again. It is expressly understood that no withdrawal, either from the Council or from this Program, shall be effective unless and until the withdrawing Participant shall have paid to the Council, in full, all amounts due hereunder, including, without limitation, amounts that may be due for excess natural gas usage by the withdrawing Participant and determined by the Council pursuant to the provisions of this Agreement.

Upon withdrawal from the Program, the withdrawing Participant shall be entitled, upon application to the Fiscal Agent, to recover that amount, if any, of its contributions to the Operating Fund which are not encumbered for the payment of its share of Program Administrative Costs. The Fiscal Agent shall distribute any excess contributions to the withdrawing Participant not earlier than forty-five (45) days and not later than sixty (60) days following receipt of the withdrawing Participant's application for those monies. All arrangements for the supply of natural gas and the cost thereof shall be exclusively the responsibility of the withdrawing Participant as of the effective date of its withdrawal. The withdrawing Participant specifically waives all claims and rights against the Operating Fund or other fund and the Program.

SECTION 13. INITIAL IMPLEMENTATION OF PROGRAM

During the first Fiscal Year of operations of this Program, any actions required by this Agreement to be taken by the Assembly or the Board of Directors on or prior to the annual meetings of the Assembly shall be taken on or before such other dates as the Board of Directors shall determine are at the earliest practical times by which such actions could be taken. Provided that the Prepayment Financing has been consummated

and all arrangements are in place with the Utility Transporters, East Ohio, Columbia Gas and the Supplier(s), operation of the Program shall begin effective the later of October 1, 1999 or the commencement date set forth in the Gas Purchase Contract. Upon the commencement of the operation of the Program, the Base Agreement shall terminate as to the Participants.

SECTION 14. AMENDMENTS

This Agreement may be modified, amended or supplemented in any respect not prohibited by law upon approval of the modification, amendment or supplement by the governing bodies of at least two-thirds (2/3) of the Participants.

SECTION 15. RESTRICTIONS

It is understood and agreed, and the Council and each Participant hereby represent and warrant, that the Council, the Program, the Administrator, the Fiscal Agent and any Participant are not engaged and will not engage in (i) the business of supplying natural gas for lighting, power or heating purposes to consumers within the State of Ohio or to natural gas companies within the State of Ohio, or (ii) the business of transporting natural gas through pipes or tubing either wholly or partly within the State of Ohio, or (iii) any other activity or otherwise in any manner which would cause the Council, this Program, the Administrator, the Fiscal Agent or any Participant to be classified as a public utility under Title 49 of the Ohio Revised Code. It is further understood and agreed that this Program, and its supporting natural gas purchase and transportation agreements, will be subject to the Public Utilities Commission of Ohio's "self-help guidelines" in PUCO Case No. 85-800-GA-COI, as may be further amended or modified, and tariffs, rules and regulations of the LDC.

SECTION 16. TERM OF THIS AGREEMENT

It is the express intention of the Participants that this Agreement shall continue for an indefinite term, but in no event shorter than the Program Term, but may be terminated as provided in Section 17.

SECTION 17. TERMINATION

In the event that all of the Participants, by duly adopted resolutions have terminated their participation in this Program and withdrawn there from, the Board of Directors shall meet, within thirty (30) days following receipt of certified copies of such resolutions, to determine the date upon which this Agreement and the activities and operations of the Program shall terminate and to make recommendations to the Participants with respect to matters which must be resolved upon termination of the Program which are not addressed by this Agreement. All such matters shall be resolved in a manner consistent with the terms and conditions of the Gas Contract(s), the Prepayment Financing, and this Agreement.

Notwithstanding the foregoing, if at any time during the term of this Agreement,

- (i) the Council, the Program, the Administrator, the Fiscal Agent or any Participant shall become subject to or threatened to become subject to public utility regulation by the Public Utilities Commission of Ohio, the Federal Energy Regulatory Commission, the U.S. Department of Energy or any other governmental regulatory entity, or
- (ii) the Council, this Program, the Administrator, the Fiscal Agent or any Participant shall be deemed or threatened to be deemed to be a public utility for purposes of taxation or by the Public Utilities Commission of Ohio or any other governmental regulatory agency, or
- (iii) all of the Participant's natural gas transportation agreements with the LDCs are terminated for any reason or amended by the Public Utilities Commission of Ohio, the Federal Energy Regulatory Commission or any other governmental agency order in a manner unacceptable to the Board of Directors, or
- (iv) the terms and conditions of the Prepayment Financing require the termination of this Agreement,

the Board of Directors may terminate this Agreement promptly by its majority vote.

Upon termination of the Program, the Operating Fund shall be maintained by the Fiscal Agent for the payment of Program Administrative Costs which accrued prior to the date of termination of the Program, and those costs and expenses shall be paid on behalf of the Participants from the Operating Fund. On or before the 90th day following termination of this Agreement, the Fiscal Agent shall distribute any money remaining in the Operating Fund to the Participants in a manner approved by the Board of Directors which is consistent with each Participant's payment to the Operating Fund.

SECTION 18. MISCELLANEOUS

This Agreement shall be construed under the laws of the State of Ohio. If the date on which any action or payment required to be taken or made under this Agreement is a Saturday, Sunday or legal holiday in the State of Ohio, that action shall be taken or that payment shall be made on the next succeeding day which is not a Saturday, Sunday or legal holiday.

SECTION 19. COUNTERPARTS

This Agreement may be executed in counterparts each of which will be deemed an original, but all of which together will constitute one and the same instrument. Each member and other Participant executing this Agreement shall deliver to the Fiscal Agent a certified copy of the resolution of its governing body authorizing execution of this Agreement.

SECTION 20. NOTICES

All notices required or permitted hereunder shall be in writing and shall be deemed to be properly given when (a) personally delivered to the party to receive the notice; (b) deposited in the United States mail, first-class, postage prepaid, addressed to that party listed on Appendix A or at such other address as that party may designate; or (c) delivered by hand or messenger delivery service or by telephone facsimile transmission, confirmation receipt.

SECTION 21. NONAPPROPRIATION OF FUNDS

In the event no appropriations or insufficient appropriations are made for any Fiscal Year enabling the payment of the amount of the Program Gas Costs with respect to a Participant due during a Fiscal Year, then such Participant will immediately notify the Fiscal Agent and the Council of the fact. On the last day of the Fiscal Year for which the last payment can be made in full, this Agreement shall terminate with respect to such Participant without penalty or expense to such Participant, except as to the portions of the amount of Program Costs provided for in this Agreement for a Fiscal Year for which appropriations are made and payment to the Council of Program Costs and any other amounts payable by the Participant pursuant to this Agreement. In the event of such termination and except as permitted hereunder, the Fiscal Agent and/or the Council will have all legal and equitable rights and remedies available under Ohio law against the Participant to pursue recovery of all amounts owed by Participant hereunder.

SECTION 22. ASSIGNMENT

Each Participant acknowledges and agrees that the Council shall have the right to assign all of its and/or the Fiscal Agent's rights to payments and monies received or to be received from such Participant hereunder and any other rights, remedies and/or obligations hereunder to a third party including, without limitation, one or more Trustees and paying agents as may be necessary or desirable to effectuate the Prepayment Financing, and Participant hereby consents thereto.

IN WITNESS WHEREOF, the undersigned representatives of the respective Participants, pursuant to the duly adopted authorizing resolutions of their governing boards, have on behalf of their respective Participants signed this Agreement.

OHIO SCHOOLS COUNCIL

By: _____
Executive Director

6133 Rockside Road, Suite 10
Independence, Ohio 44131

Board of Education of the Norton City School District	Date of Adoption of Approving Board Resolution
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By: _____ Treasurer	_____
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Address:
4128 Cleveland Massillon Road
Norton, OH 44203-5633

Telecopy (Fax) Number:
330-825-0929

431849

**[FISCAL OFFICER CERTIFICATE
AS REQUIRED BY OHIO LAW TO BE PROVIDED]**