

Liberty Township, Delaware County, OH

Resolution No. 19-0415-10

A RESOLUTION AUTHORIZING ALL ACTIONS NECESSARY TO ENTER INTO A MASTER SERVICES AGREEMENT WITH VOLUNTEER ENERGY SERVICES, INC. FOR 24 MONTHS TO SUPPLY NATURAL GAS FOR THE LIBERTY TOWNSHIP NATURAL GAS GOVERNMENTAL AGGREGATION PROGRAM AND DECLARING AN EMERGENCY.

Liberty Township, Delaware County, Ohio ("Township") met in a special meeting on the 15th day of April, 2019 with the following members present:

M Heneghan - yes

M Gemperline - yes

S Eichhorn - yes

Heneghan moved the adoption of the following Resolution:

WHEREAS, the Ohio Legislature enacted Chapter 4929, Ohio Revised Code, which authorized the legislative authorities of municipal corporations, townships, and unincorporated areas of the county, to aggregate the retail natural gas loads located within the respective jurisdictions and to enter into service agreements to facilitate the purchase and sale of the service for the retail natural gas loads; and

WHEREAS, such legislative authorities may exercise said authority individually or jointly with any other legislative authorities; and

WHEREAS, governmental aggregation provides an opportunity for eligible residential and small business consumers to participate collectively in the potential benefits of natural gas service deregulation through lower natural gas rates, which would not otherwise be available to those customers individually;

WHEREAS, Liberty Township passed a resolution to establish an opt-out aggregation program within the unincorporated areas of the Township for eligible residents, businesses and other natural gas consumers pursuant to Section 4929.26, Ohio Revised Code (the "Aggregation Program");

WHEREAS, Liberty Township obtained authorization to establish the Aggregation Program through a ballot initiative at the November 6, 2018 general election. Liberty Township is duly authorized to act for the Aggregation Program to secure retail natural gas services for eligible residents, businesses and other natural gas consumers that do not opt out of, or that otherwise elect to participate in the Aggregation Program; and

WHEREAS, the Board of Trustees of Liberty Township ("Board") seeks to execute a Master Services Agreement with Volunteer Energy Services, Inc. for a period of 24 months starting with the June 2019 meter read and continuing through the May 2021 meter read.

NOW, THEREFORE, BE IT RESOLVED by the **Board of Trustees of Liberty Township, Delaware County, Ohio** that:

Section 1: The Board finds and determines that it is in the best interest of the Township, its residents, businesses and other natural gas consumers located within the unincorporated areas of the Township to execute an Master Services Agreement with Volunteer Energy Services, Inc. to supply natural gas service to the Liberty Township Natural Gas Aggregation Program for a period of 24 months beginning with the June 2019 meter read and continuing through the May 2021 meter read.

Section 2: All formal actions of the Board concerning and relating to the passage of this Resolution were adopted in an open meeting of the Township, and all deliberations of the Township and of any of its committees that resulted in such formal action took place in meetings open to the public in compliance with all legal requirements, including R.C. § 121.22.

Section 3: This Resolution shall be in full force and effect immediately upon adoption.

Genperline seconded the motion.

Voted on and signed this 15th day of April, 2019 in Liberty Township, in Delaware County, OH

Date: 4-15-19

Melanie Haag
Trustee

Mike Gehr
Trustee

— NO —
Trustee

**Governmental Natural Gas Aggregation Program Agreement
Between
Liberty Township
and
Volunteer Energy Services, Inc.**

This Governmental Natural Gas Aggregation Program Agreement with its exhibits and attachments hereto (collectively, the "Agreement") is entered into as of the date of signature of the last Party to execute this agreement ("Effective Date") between **Volunteer Energy Services, Inc.**, an Ohio corporation ("VESI"), and the **Liberty Township, Delaware County, Ohio** ("Liberty Township"), which may individually be referred to as "Party" or collectively as "Parties." Capitalized terms not defined in the body of the Sections of this Agreement shall have the respective meanings ascribed to them in Article One hereof, entitled "Definitions."

WHEREAS, VESI 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 customers and Governmental Aggregation Programs in the State of Ohio;

WHEREAS, the Liberty Township has passed a resolution to establish an opt-out aggregation program within the unincorporated areas of its borders for its residents and small commercial businesses (the "Aggregation Program" or "Program") pursuant to Section 4929.26, Ohio Revised Code; and

WHEREAS, the Liberty Township obtained authorization to establish the Program through a ballot initiative at the November 2018 general election ("Ballot Initiative"). Such Ballot Initiative is required to establish the Program for the Liberty Township and its qualifying residents and small commercial businesses. The Liberty Township is duly authorized to act for the Program to secure retail natural gas services for certain Eligible Customers that do not opt out of, or that otherwise elect to participate in, the Program, as provided in this Agreement;

WHEREAS, the Parties desire to enter into certain transactions associated with VESI's provision of CRNGS and related services (collectively, "Retail Natural Gas Services") necessary to serve the natural gas accounts of participating Aggregation Members within the service territory of Columbia Gas of Ohio enrolled in the Liberty Township's Governmental Aggregation Program;

WHEREAS, VESI desires to provide Retail Natural Gas Services to Eligible Customers of Liberty Township where such entity is acting as a Governmental Aggregator for the provision of CRNGS under authority conferred by, *inter alia*, Section 4929.26 and 4929.27, Revised Code;

WHEREAS, Liberty Township, has been certified by the Commission as a Governmental Aggregator pursuant to Chapter 4901:1-27-01 *et seq.*, Ohio Administrative Code (OAC);

WHEREAS, The Liberty Township has engaged the services of a PUCO-certified natural gas broker and aggregator, Trebel, LLC ("Consultant" or "Trebel"), to assist in managing the Governmental Aggregation Program;

WHEREAS, by this Agreement, VESI desires to enter into a relationship with the Liberty Township whereby VESI shall provide the Retail Natural Gas Services necessary to serve the Aggregation Members of the Liberty Township's Governmental Aggregation Program;

WHEREAS, The Liberty Township is duly authorized to act for the Aggregation Program to arrange for the provision of the Retail Natural Gas Services hereunder; and

WHEREAS, the Parties have established herein the terms and conditions governing VESI'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. Definitions

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

"Adder" means the retail price adjustment that is determined in the annual SCO auction held by Columbia Gas of Ohio, which, when added to the NYMEX month-end settlement price for natural gas is the price, determines the end-user commodity cost.

"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 the Liberty Township, the term Affiliate shall include but not be limited to instrumentality agency or department of the Liberty Township.

"Aggregation Program" means the collection of Aggregation Members.

"Aggregation Member(s)" means those residential and small commercial customers whose meters are read on a cycle basis by the Local Utility, are within the unincorporated areas of the Liberty Township, and who are eligible for and do become members of the Liberty Township's Governmental Aggregation Program.

"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;

Liberty Township
Volunteer Energy Services, Inc.

- (iv) In the case of the Liberty Township, 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 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.

“Ccf” means one hundred (100) cubic feet of natural gas.

“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 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) That 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;
- (e) Subject to disclosure pursuant to Revised Code Section 149.43 or any other applicable law.

“Consultant” means the independent person or entity with expertise in aggregated natural gas supply contracting, having been engaged by the Liberty Township to assist with the implementation of the Aggregation Program. For purposes of this Agreement, the Consultant is Trebel, LLC.

Liberty Township
Volunteer Energy Services, Inc.

“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 VESI to provide its Retail Natural Gas Services hereunder.

“Eligible Customer” means a customer that is eligible to participate in a governmental aggregation in accordance with Sections 4929.26 and 4929.27, Revised Code, or as otherwise agreed to by the Parties.

“Fixed Price Period” shall mean the flow date period of which a fixed price can be entered into for a specific period of time.

“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, but not be limited to, 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; 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. 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 VESI 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*, Sections 4929.26 and 4929.27, 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*, Sections 4929.26 and 4929.27, Revised Code.

“Historical Load” means the most recent history of natural gas consumption for the Aggregation Program and Aggregation Member(s).

“Local Utility” means, Columbia Gas of Ohio, the natural gas distribution utility providing services to the Aggregation Program of the Governmental Aggregation program.

“Mcf” means one thousand (1,000) cubic feet of natural gas.

“NYMEX Strike Price” means, a monthly NYMEX (New York Mercantile Exchange) closing for the first of the following month for natural gas delivery. NYMEX closes two (2) business days before the end of the month. The price includes NYMEX basis, interstate transmission, shrinkage fuel loss, Ccf Btu conversion and supplier margin.

Liberty Township
Volunteer Energy Services, Inc.

“Rules / Regulations” means Public Utilities Commission of Ohio and Federal Energy Regulatory Commission rules, regulations and legal 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.

Article Two. Provision of Service

2.1 Obligations and Duties

- (a) **Authority to Arrange for the Provision of Service:** The Liberty Township, as Governmental Aggregator, is authorized to arrange from VESI the Retail Natural Gas Services for and on behalf of the Aggregation Members of the Aggregation Program. VESI shall be the sole and exclusive provider of Retail Natural Gas Services for those Aggregation Members of the Aggregation Program.
- (b) **Governmental Aggregator.** The Liberty Township shall obtain and maintain a certificate from the Commission to perform the functions of the Governmental Aggregator. VESI will provide the Liberty Township with all necessary data that is available to it in order to assist the Liberty Township with filings and provide any other information required by the Commission.
- (c) **VESI.** VESI shall have obtained and shall maintain all necessary certifications to provide the Retail Natural Gas Services.
- (d) **Opt-Out Administration.** VESI, with the reasonable cooperation of the Liberty Township and its Consultant, Trebel, will be responsible for administering the initial and ongoing “opt-out” and “opt-in” procedures, as applicable, to Eligible Customers. VESI shall pay the costs associated with securing the pertinent customer list from the Local Utility. Additionally, VESI shall pay the costs associated with printing and mailing the opt-out notices and prepaid postage opt-out return forms as required pursuant to this Agreement. The Liberty Township and its Consultant, Trebel, and VESI shall cooperate in the development, review, approval, printing, posting, and issuance of all opt-out correspondence to assure that the opt-out notices contain the agreed upon pricing, terms, and procedures for the opt-out notification to Eligible Customers. The Parties shall cooperate in the development and implementation of the Aggregation Program. Once the timing is finalized between the Liberty Township and VESI, VESI will conduct the initial opt-out process and, thereafter, shall conduct subsequent opt-out notifications at various times throughout the remaining term of this Agreement, as agreed upon by the Parties (“Refresh Opt Outs”). Refresh Opt Outs shall occur at least semi-annually and shall provide to newly Eligible Customers the opportunity to take advantage of the Program. Such Refresh Opt Outs will occur at times mutually agreed upon by the Parties. All Refresh Opt Outs shall be conducted in the same manner as the initial opt out.
- (e) **Opt-Out Activities.** For the initial term of this Agreement, VESI shall send to Eligible Customers a notice by regular mail. The notice shall be an opt-out mailer to afford such customers the opportunity to not participate in the Aggregation Program. This mailer shall

include a one-page summary of the Liberty Township's Aggregation Program. The Liberty Township, Trebel and VESI shall have the right to review such summary information prior to mailing. In the event that a fixed price option is established, an additional notice will be mailed to all Eligible Customers describing the terms and conditions of the fixed price, consistent with the Commission's rules and regulations. All communications with customers shall also comply with applicable rules and regulations.

- (f) Review and Approval of Communications and Press Releases to Eligible Customers and Aggregation Members. Intentionally deleted.
- (g) Administration and Assignment. VESI shall be responsible for the administration of the accounts of the Aggregation Members, except for billing under Article 6 below. VESI will build and maintain a database of all Aggregation Members. The database will include the name, address and Local Utility account number (unless prohibited by pertinent Commission rules or regulations and other applicable laws) and may include other pertinent information as mutually agreed upon by Trebel and VESI. As permitted by Ohio law, data will be shared on an as-needed basis as agreed upon by the Parties. Consent to disclose such data will not be unreasonably withheld but shall be in compliance with pertinent Commission rules and regulations and other applicable laws. This data will be provided to Trebel at least quarterly, or upon Trebel's reasonable request. Trebel will have the right to access the information in the database as mutually agreed upon by the Liberty Township and Trebel and VESI consistent with Commission rules and regulations and other applicable laws.

2.2 Firm Natural Gas Supply. VESI will provide sufficient firm natural gas supply to the Delivery Point of the Local Utility, as defined in Section 2.3 hereof, to serve the requirements of the Aggregation Program. If VESI 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, not caused by VESI, including any failure or interruption in distribution service to the Aggregation Program, is solely the responsibility of the Local Utility and VESI shall not be responsible for any such failure or interruption, including any losses or costs to the Liberty Township or the Aggregation Program as the result of such interruption by the Local Utility.

2.3 Delivery Point. The "Delivery Point" for applicable Retail Natural Gas Services supplied by VESI to the Aggregation Program shall be the Local Utility's city gate(s) or any interface with the Local Utility in the local market area of the Aggregation Program for direct redelivery to the Aggregation Program by the Local Utility.

2.4 Responsibility for Delivery Costs. VESI 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. In this instance, Governmental Aggregation falls under Columbia Gas of Ohio Customer Choice programs' rules and regulations.

Liberty Township
Volunteer Energy Services, Inc.

2.5 **Liberty Township as a Governmental Aggregator.** The Liberty Township, as a Governmental Aggregator, and its Consultant, Trebel, shall have no financial responsibility with respect to its obligations under this Agreement, except with respect to its actions associated with obtaining and maintaining its status as a Governmental Aggregator. Customers take delivery service pursuant to Columbia Gas of Ohio's Customer Choice Program.

2.6 **Other Assistance.** VESI will assist the Liberty Township and Trebel with respect to its actions as Governmental Aggregator hereunder, and with such other matters as the Parties may mutually agree.

Article Three. Customer & Usage Information

3.1 **Customer Data and Load Forecast Information.** To the extent permitted by law, the Liberty Township hereby authorizes VESI to obtain from the Local Utility all applicable Customer Data and Historical Load information regarding the consumption characteristics of the Aggregation Program (collectively, the "Load Forecast Information") when available and necessary. The Liberty Township, where reasonable, will assist VESI in obtaining any necessary Load Forecast Information of the Aggregation Program. Upon request by VESI, the Liberty Township shall provide to the Local Utility the authorizations and approvals necessary for VESI to obtain the necessary Load Forecast Information.

3.2 **Release of Customer Information.** Without incurring any additional costs, the Liberty Township will cooperate with VESI and provide appropriate authorization and documentation to enable the Local Utility to release to VESI the applicable and necessary Load Forecast Information and Customer data from the Local Utility, including for customers moving into or currently situated within the Liberty Township's boundaries as of the date of this Agreement, or as they may change from time to time during the term hereof. VESI shall use all such information solely in connection with its service to the Governmental Aggregation Program.

3.3 **Addition of Opt-in Customers.** Within the Liberty Township's geographic boundaries, customers served by other CRNGS suppliers and other customers not receiving an opt-out notice may join or opt-in to the Aggregation Program only in accordance with the provisions of paragraph 3.4 below.

3.4 **Addition of Aggregation Members.** Customers that become part of the Aggregation Program after completion of the opt-out period will be accepted by VESI at the Aggregation Contract Price. Customers that leave the Aggregation Program at any time and desire to re-join the Aggregation Program may, during the term of this Agreement, be accepted by VESI and served at the aggregation price. Any new accounts shall be able to enroll in the Aggregation Program under the same terms, conditions, and pricing as accounts that were initially enrolled during the first opt-out period. However, newly enrolled accounts will only have the ability to participate in the ongoing Aggregation Program for the time remaining in the term of the Agreement. Costs (for example, for printing and mailing) associated with subsequent opt-out periods will be the responsibility of VESI.

Except as otherwise provided in this Agreement, prior to the termination of said Agreement, VESI shall not intentionally target by direct mail or direct telemarketing any Eligible Customers within the Liberty Township's geographic boundaries without the prior written consent of the Liberty Township.

Aggregation Members that move from one location to another within the Liberty Township's boundaries, and who notify VESI of such move and provide to VESI all information required to effectuate continued service, will retain their participant status at their then-existing price. If the customer moves out of the Liberty Township's boundaries, all obligations, except for the customer's obligation to pay all amounts owed, shall cease as between that customer, VESI, and the Liberty Township, effective with the customer'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 Program will default to the appropriate Local Utility's Standard Service Offer or other appropriate service.

Article Four. Operations

- 4.1 **Scheduling.** VESI shall perform any and all scheduling necessary to provide service to the Aggregation Program. VESI shall be responsible for all scheduling for delivery to the Aggregation Members.
- 4.2 **Metering.** Metering functions shall continue to be performed by the Local Utility or other entity approved by the Commission.
- 4.3 **Start Date.** The "Start Date" for service to each Aggregation Member shall be the first meter-read date on a date mutually agreed to by the Parties.
- 4.4 **End Date.** Upon the conclusion of the Delivery Term 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. Opt outs by individual Aggregation Members during the term of this Agreement will be permitted at least every two (2) years from the establishment of the initial aggregation service, in accordance with the provisions of Section 4929.26(D), Revised Code, and Rule 4901:1-28-04(B), OAC.

Article Five. Prices and Fees

- 5.1 **Price.** VESI shall charge the rates for service provided to Aggregation Members based on the pricing terms and conditions as set forth in Exhibit A attached hereto and by reference. VESI agrees to execute an Educational Expense Agreement and pay for educational expenses as set forth in Exhibit B and by this reference made a part thereof. VESI agrees to execute an Aggregation Broker/Consultant Fee Agreement with Consultant including payment terms to Consultant on a monthly basis as set forth in Exhibit B and by this reference made a part thereof.

Liberty Township
Volunteer Energy Services, Inc.

5.2 Switching Fee Reimbursement. VESI shall be responsible for the payment of any customer-switching fee or other fees imposed by the Local Utility as a result of the transfer of customers to VESI. VESI is not responsible for any switching or early termination fees charged by another supplier.

Article Six. Billing

6.1 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, VESI may, at its sole option, provide consolidated billing to Aggregation Members. Under no circumstances will a dual billing option be offered absent the Liberty Township's consent; but such option may be offered if the Local Utility no longer offers consolidated billing. Budget billing is offered through the Local Utility. VESI does not separately offer and is not responsible for calculating budget billing for individual accounts.

Article Seven. Contingencies and Force Majeure

7.1 Contingencies.

- (a) **Regulatory Events.** The following events constitute a "Regulatory Event" hereunder:
 - (i) **Illegality.** Illegality may result 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, whereby it becomes unlawful for a Party to perform any obligation under this Agreement.
 - (ii) **Adverse Government Action.** Adverse Government Action may occur if:
 - (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 otherwise provide the Retail Natural Gas Services; or
 - (B) Regulations and court action adversely and materially impact a Party's ability to perform hereunder or otherwise provide Retail Natural Gas Services.

Parties

- (b) **Notice, Negotiation, and Early Termination.** Upon the occurrence of a Regulatory Event, the adversely affected Party shall immediately notify the other Party that such event has occurred. Within thirty (30) days, or such other period to which 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, with an

additional thirty (30) days' prior written notice, to terminate and close out its obligations under the Agreement pursuant to the terms of Article ten hereof.

7.2 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 (the "Claiming Party") giving notice and full particulars of such Force Majeure immediately 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 payments are unaffected 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 fifth (5th) Business Day following receipt of notice 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, nor shall anything contained in this section be construed to take any measures that are cost prohibitive. In the event that measures required to remove any disability are cost prohibitive, the Claiming Party shall provide written notice to the non-claiming party and give non-claiming party the opportunity to reimburse the Claiming Party for any additional costs it would incur in order to remove said disability.

Article Eight. Term

8.1 Delivery Term. The delivery term of this Agreement shall be for a period of 24 months following the Start Date for service to each Aggregation Member (the "Delivery Term"), unless agreed to otherwise, or unless otherwise terminated pursuant to the terms and conditions set forth in this Agreement.

Article Nine. Representations and Warranties

9.1 Mutual Representations and Warranties. Each Party represents and warrants to the other Party, as of the Effective Date of this Agreement and upon each delivery of natural gas pursuant to this Agreement, that:

Liberty Township
Volunteer Energy Services, Inc.

- (a) It is duly organized and validly existing under the corporate or municipal 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 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 fully 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 full performance;
- (c) Performance does 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 shall remain as such throughout the term of this Agreement; further, 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 such 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 no 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;
- (h) It has entered into this Agreement with a full understanding of the material terms and risks of the transaction contemplated hereunder, and it is capable and has the authority of assuming those risks;
- (i) Neither Party is 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.

9.2 Additional Representations of the Liberty Township. Relative to this Agreement, the Liberty Township further represents to VESI, as of the Effective Date, that:

- (a) Liberty Township has or shall have a valid certificate as a Governmental Aggregator and will maintain such certificate at all times during the term hereof;
- (b) Liberty Township shall act as a Governmental Aggregator, once it has obtained a valid certificate, throughout the term of this Agreement.
- (c) All acts reasonably necessary to the valid execution, delivery, and performance of this Agreement including, without limitation, public notice, election, referendum, prior appropriation, or other required procedures has or will be taken and performed as required under the all applicable laws and regulations.
- (d) Failure to comply with provisions 9.2(a) – (c) shall constitute a material breach of this Agreement.

9.3 Additional Representations of VESI. VESI further represents that it will transfer to end users 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. With respect to its obligations as supplier of Retail Natural Gas Services to the Aggregation Program, VESI has and shall maintain a valid certification from the Commission during the term hereof. Failure to comply with Section 9.3 shall constitute a material breach of this Agreement.

Article Ten. Default and Early Termination

10.1 Prior to the expiration of any initial or subsequent term of this Agreement, this Agreement may be terminated in the event of the occurrence of any of the following events:

- (a) Immediately upon the occurrence of a Bankruptcy Event by either Party;
- (b) Pursuant to the terms set forth herein, upon the occurrence of a Regulatory Event;
- (c) By mutual written agreement of the Parties;
- (d) As otherwise provided below in Section 10.2;

10.2 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, but limited to the extent set forth in Article Seven herein.

10.3 Enforcement of Remedies. Except as set forth in Article Seven herein, the Party claiming default under Section 10.2 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 Eleven. Notices

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

Volunteer Energy Services, Inc.
Volunteer Energy Services, Inc.
790 Windmiller Drive
Pickerington, Ohio 43147
Attn: Contract Administrator
Glenn Dempsey
cc: Legal Department
John L. Einstein, IV, Esq.

Liberty Township
c/o Trebel, LLC (Consultant)
Scott Belcastro
1216 Lexington Ave., Suite 301
Mansfield, Ohio 44907
scott@electricsuppliers.org

Liberty Township
Liberty Township, Delaware County
10104 Brewster Lane
Powell, Ohio 43065

11.2 Notices shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States certified mail – return receipt requested, or 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 days after delivery. Notice by certified US mail, return receipt requested, shall be effective five (5) business days following delivery. Notice via email effective same day. Additionally, a copy of the notice shall be electronically transmitted to Scott Belcastro, scott@electricsuppliers.org and _____ . A Party may change its addresses or the contact person by providing notice of the same in accordance herewith.

Article Twelve. Confidentiality

- 12.1 **Obligation of Confidentiality.** The Parties agree to the extent permitted by law, 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, and as otherwise may be required by law, 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 use reasonably best efforts to 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. Should the disclosure of Confidential Information be deemed necessary, the Parties will use all efforts to disclose such information in a limited, protective fashion, including seeking a protective order from the body requiring its disclosure.
- 12.3 **Proprietary Rights, Survival.** To the extent permitted by law, obligations under 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 of the Parties. All exhibits, schedules, and addendum 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.** Failure on the part of any Party to exercise, or delay in exercising, any right under this Agreement shall not 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 **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.
- 13.5 **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.
- 13.6 **Assignment.** This Agreement shall not be transferred or assigned by either Party without the express written consent of the other Party. Notwithstanding the foregoing, VESI may, without the consent of the Liberty Township, (a) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangement; (b) transfer or assign this Agreement to an affiliate of VESI; or (c) transfer or assign this Agreement to any person or entity succeeding to all or a substantial portion of the assets of VESI. VESI shall provide the Liberty Township with notice of said transfer or assignment pursuant to clause (b) or (c) of the immediately preceding sentence thirty (30) days prior to such transfer or assignment (but in any event shall provide prompt notice thereof). Upon an assignment pursuant to (b) or (c), the Liberty Township agrees that VESI shall have no further obligations regarding future performance hereunder. Either Party's assignee shall agree in writing to be bound by the terms and conditions of this Agreement, including the exhibits. Subject to the foregoing, this Agreement and its exhibits shall be binding upon and inure to the benefit of any permitted successors and assigns, to the extent permitted by law.
- 13.7 **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.
- 13.8 **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.
- 13.9 **Agent.** Liberty Township may designate an agent or Representative to act on its behalf, which agent or Representative may change from time-to-time upon notice to VESI.
- 13.10 **Campaign Finance Compliance with Section 3517.13, Revised Code.** Section 3517.13(I)(3) and (J)(3), Revised Code, requires that no political subdivision shall award any contract for the purchase of goods with a cost aggregating more than ten thousand dollars in a calendar year or services with a cost aggregating more than ten thousand dollars in a calendar year to a corporation, business trust, individual, partnership, or other unincorporated business, association, including, without limitation, a professional association organized under Chapter 1785 of the Revised Code, estate, or trust unless the political subdivision has received for

that calendar year, or the contract includes, a certification that the individuals named in said sections of the Revised Code are in compliance with the applicable provisions of Section 3517.13, Revised Code. VESI, therefore, is required to complete the attached certificate/affidavit entitled "Compliance with O.R.C. Section 3517.13" set forth as Exhibit C to this Agreement. Failure to complete and submit the required aforementioned certificate/affidavit with this Agreement will prevent the Liberty Township from entering, proceeding with, and performing the Agreement. Such certification is attached to this Agreement as Exhibit C and by this reference made a part thereof.

13.11 Civil Rights.

- (a) The Parties agree that as a condition of this Agreement, there shall be no discrimination against any customer or any employee because of race, color, sex, religion, national origin, handicap, sexual orientation, or any other factor as specified in Title VI of the Civil Rights Act of 1964, Rehabilitation Act of 1973, and subsequent amendments. It is further agreed that the Parties will comply with any and all federal and state laws regarding such discrimination and the right to and method of appeal will be made available to all persons under this Agreement. Any Party found to be out of compliance with this section may be subject to investigation by the Office of Civil Rights of the Department of Health and Human Services ("HHS") and termination of this Agreement.
- (b) The Parties agree as a condition of this Agreement to make all services provided pursuant to this Agreement accessible to the disabled/handicapped. The Parties further agree as a condition of this Agreement to comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), all requirements imposed by the applicable HHS regulations (45 CFR 8:4) and all guidelines and interpretations issued pursuant thereto. Any Party found to be out of compliance with this section may be subject to investigation by the Office of Civil Rights of the Department of Health and Human Services and termination of this Agreement.

13.12 Drug Free Environment. VESI agrees to comply with all applicable state and federal laws regarding a drug-free environment and shall have established and have in place a drug free workplace policy.

13.13 Findings for Recovery. VESI certifies that it has no outstanding findings for recovery pending or issued against it by the State of Ohio

13.14 Indemnification. To the extent permitted by law and without limitation, VESI agrees to and shall indemnify and hold free and harmless Liberty Township and all of its respective officers, officials, employees, volunteers, agents, servants, and representatives (collectively, "Indemnified Parties") from any and all actions, claims, suits, demands, judgments, damages, losses, costs, and expenses, including, but not limited to attorney's fees, arising out of or resulting from any accident, injury, bodily injury, sickness, disease, illness, death, or occurrence, regardless of type or nature, negligent or accidental, actual or threatened, intentional or unintentional, known or unknown, realized or unrealized, related in any manner, in whole or in part, to VESI's or any subcontractor's performance of this agreement or the actions, inactions, or omissions of VESI or any subcontractor, including, but not

Liberty Township
Volunteer Energy Services, Inc.

limited to the performance, actions, inactions, or omissions of VESI's or any subcontractor's boards, officers, officials, employees, volunteers, agents, servants, or representatives (collectively, "Contracted Parties"). VESI agrees that in the event of or should any such actions, claims, suits, or demands be brought against the Indemnified Parties that VESI shall, at its own expense, promptly retain defense counsel to represent, defend, and protect the Indemnified Parties, paying any and all attorney's fees, costs, and expenses. Prior to VESI retaining counsel, the Liberty Township will be given the opportunity to make a reasonable recommendation on the counsel to be retained. VESI further agrees that in the event of or should any such actions, claims, suits, or demand be brought against the Indemnified Parties, that VESI shall pay, settle, compromise and procure the discharge of any and all judgments, damages, losses, costs and expenses, including, but not limited to, attorney's fees.

13.15 Insurance. VESI, at its sole cost and expense, shall carry and maintain throughout the life of the Agreement such general liability, bodily injury and property damage liability insurance as will protect it and the Indemnified Parties against any and all claims for personal injury, including death, or property damage, which may arise out of or result from the performance of or operations under this Agreement or use of any vehicle(s) in connection therewith, and shall include coverage for indemnification as described above.

Prior to commencement of this Agreement, VESI shall present to the Liberty Township current certificates of insurance and shall maintain current such insurance during and throughout the entire term of this Agreement. Said insurance shall, at a minimum, be of a type which is customary in the industry and acceptable to the Liberty Township. VESI shall provide coverage in an amount that is both customary in the industry and equal to and covering all sums which VESI may or shall become legally obligated to pay as damages. VESI shall be responsible for any and all premiums for such policy(jes).

In addition to the rights and protections provided by the insurance policies as required above, the Liberty Township shall retain any and all such other and further rights and remedies as are available at law or in equity.

13.16 Independent Contractor. VESI agrees that it shall act in performance of this Agreement as an independent contractor and not as an officer, agent, servant or employee of the Liberty Township. No agency, employment, joint venture, or partnership has been or will be created between the Parties hereto pursuant to the terms and conditions of this Agreement.

VESI assumes all responsibility for any and all federal, state, municipal, or other tax liabilities, along with workers' compensation, unemployment compensation, contributions to retirement plans, and insurance premiums which may accrue and become due as a result of compensation received for services and deliverables rendered and received under or pursuant to this agreement.

VESI and/or its officers, officials, employees, representatives, agents, and volunteers are not entitled to any benefits enjoyed by employees of the Liberty Township.

13.17 Licenses. VESI certifies and warrants that it has obtained and maintains current all approvals, licenses, including operator licenses, certifications, and other qualifications

(collectively, "Licenses") necessary to provide all of the services required pursuant to this Agreement and to conduct business in the state of Ohio. VESI further certifies and warrants that all such Licenses are operative and current and have not been revoked or are not currently suspended for any reason.

13.18 Expenses. Each Party and Consultant shall be solely and exclusively responsible for their own costs and expenses incurred in connection with the negotiation and preparation of this Agreement.

13.19 Signatures. Any person executing this Agreement in a representative capacity hereby warrants that he/she has authority to sign this Agreement or has been duly authorized by his/her principal to execute this Agreement on such principal's behalf.

Liberty Township
Volunteer Energy Services, Inc.

Execution of Agreement

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

VOLUNTEER ENERGY SERVICES, INC.

By: _____
Print: Richard A. Curnutte Sr.
Title: President
Date: _____

**LIBERTY TOWNSHIP
DELAWARE COUNTY, OHIO**

By: _____
Print: Michael Gemperline
Title: Trustee
Date: _____

By: _____
Print: Shyra Eichhorn
Title: Trustee
Date: _____

By: _____
Print: Melanie Leneghan
Title: Trustee
Date: _____

FISCAL OFFICER'S CERTIFICATION (RC 5705.41(D)):

No actual funds are to be exchanged between the Parties in connection with this Agreement. No Fiscal Officer's Certification is required.

EXHIBIT A

A. Service:

Type: Columbia Gas of Ohio Customer Choice
Delivery Point: Customers' Burner Tip

B. Term:

June 1, 2019 through May 31, 2021 subject to possible extension as set forth in Article 8 herein.

C. Price:

Columbia Gas of Ohio: \$0.115 fixed adder per Ccf plus the NYMEX Price for the delivery month.

Fixed Pricing: Liberty Township has the right, at any time, to request a conversion to a Fixed Rate per Ccf for an agreed-to term of this Agreement. Fixed Price shall be calculated taking the Weight Average Cost of Gas (monthly volume x corresponding NYMEX price) plus an adder of \$0.115 per Ccf being applied to the cost plus no more than a \$0.0035 per Ccf execution premium.

D. Termination Fee

Residential Accounts - \$0.00
Commercial Accounts- \$0.00

E. General Pricing Provisions:

1. A customer participating in the Aggregation Program shall not be charged a cancellation fee or early termination penalties by VESI should that customer terminate participation in the Aggregation Program.
2. VESI will provide an annual reconciliation to verify that savings objectives were satisfied.
3. After the initial opt-out period, VESI shall provide Liberty Township and Trebel with the initial account list for all eligible residential and small commercial customers who have been enrolled in the Aggregation Program. Furthermore, VESI shall provide a list of the account holders who have initially opted out of the program. Both lists will be electronically transmitted to Trebel as separate data files in a text-based, comma-delimited format (.csv) or excel file. At a minimum, the files should contain the following: Account Number, Account Name, Premise Address Line 1, Premise Address Line 2, Premise Address Line 3, Premise Address City, Premise Address State, Premise Address Zip Code.
4. After the initial opt-out process is completed, Liberty Township, Trebel and VESI may establish protocols and procedures to hold additional opt-out processes for new eligible residential and small commercial accounts that were not mailed opt-out notices in earlier opt-out rounds within the term of the ongoing Aggregation. Any new accounts shall be able to enroll in the Aggregation Program under the same terms, conditions, and pricing as accounts that were initially enrolled during the first opt-out round. However, newly enrolled accounts will only have the ability to participate in the ongoing Aggregation Program for the time remaining in the term of the Agreement. Costs (for example, for printing and mailing) associated with subsequent opt-out rounds will be paid in the same manner as was done for the initial opt-out round.
5. Provide a call center to handle information calls. Provide a toll-free number for members to reach VESI.

EXHIBIT B

1. Administrative Fee

VESI shall pay to Trebel on a monthly basis a required non-negotiable administrative fee of \$0.007/Ccf used/consumed by Members. In addition to Members' usage/consumption, this fee shall also apply to Mcf used/consumed by any new Members/accounts that join the Aggregation Program.

Payment of the administrative fee to Trebel shall be made monthly by Automated Clearing House (ACH) directly to Trebel's designated depository bank account. Payment of the administrative fee shall be made, provided that VESI has received payment with respect to the natural gas used by the Aggregation Member. The administrative fee shall be paid monthly based on revenue collected by VESI with respect to each Aggregation Member during the prior calendar month. In the event that a Force Majeure event suspends either VESI's or Aggregation Member's obligations to deliver or take delivery of the supply, the obligation to pay the fee shall be similarly suspended for the affected supply deliveries.

2. Educational Expense

VESI shall pay \$908.00 for educational expenses incurred for the Aggregation Program. Such payment shall be made to Trebel within five (5) days of VESI receiving an invoice for such educational expense.

Payment of educational expenses shall be made by ACH directly to Trebel's designated depository bank account.

VOLUNTEER ENERGY SERVICES, INC.

TREBEL, LLC

By:

Richard A. Curnutt, Sr., President

By:

Scott Belcastro, Principal