

**Governmental Aggregation Program Agreement
Between
Village of Ashville
And
Volunteer Energy Services, Inc.**

This Governmental Aggregation Program Agreement with its exhibits and attachments hereto (collectively, the “Agreement”) is entered into as of the last date written below (“Effective Date”) between **Volunteer Energy Services, Inc.** (“VESI”) and the **Village of Ashville** (“Municipality”), who may individually be referred to as “Party” or collectively as “Parties”. Capitalized terms not defined in the Sections of this Agreement shall have the respective meanings ascribed to them in Article Fifteen hereof “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 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 Aggregation Members within the service territory of Columbia Gas of Ohio (“LDC” or “COH”) enrolled in the Municipality’s Governmental Aggregation program.

WHEREAS, VESI desires to provide Retail Natural Gas Services to inhabitants of municipal corporations, inhabitants of boards of township trustees, and inhabitants of boards of county commissioners acting as Governmental Aggregators for the provision of CRNGS—under authority conferred by, *inter alia*, Section 4929.26 and 4929.27, Revised Code.

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

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

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

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

WHEREAS, the Parties have established herein the terms and conditions governing 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. Provision of Service

1.1 Obligations and Duties

- (a) **Authority to Purchase:** The Municipality, as Governmental Aggregator, is or will be authorized to arrange from VESI the Retail Natural Gas Services for and on behalf of the Aggregation Members of the Aggregation Group. VESI shall be the sole and exclusive provider of Retail Natural Gas Services for those Aggregation Members of the Aggregation Group.
- (b) **Governmental Aggregator.** Municipality shall obtain and maintain a certificate from the Commission to perform the functions of the Governmental Aggregator. VESI will provide the Municipality with all necessary data that is reasonably available to VESI to assist the Municipality with filings or any other information required by the Commission.
- (c) **VESI.** VESI shall have obtained and shall maintain all necessary certifications from the Council to provide the Retail Natural Gas Services.
- (d) **Opt-Out Administration.** VESI, with the reasonable cooperation of the Municipality, 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 and will scrub the list with geocoding software to ensure that only eligible customers within the Municipality’s borders are included. Additionally, VESI shall pay the costs associated with printing and mailing the “opt-out” notices as required pursuant to this Agreement. The Municipality and VESI shall cooperate in the developing, review, approval, printing, posting, and issuance of all opt-out correspondence to assure that the opt-out notices with the agreed upon pricing, terms, and procedures can be sent out by VESI to the eligible customers as set forth in (e) below. The Parties shall cooperate in the development and implementation of efforts, as mutually agreed upon, to promote the Aggregation Program to encourage customers to participate in the same by “opt-out” and “opt-in”.
- (e) **Opt-Out Activities.** Over 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 participate in the Aggregation Program. This opt-out mailer shall include all information necessary to satisfy the disclosure of all items listed in OAC 4901:1-28-03(B) and an exemplar is attached hereto as **Exhibit B** and incorporated herein as if set forth in full. This mailer may include a one-page summary of the Municipality’s Governmental Aggregation program signed by a duly authorized representative of the Municipality. VESI shall have the right to review and approve

such summary information prior to mailing. VESI approval shall not be unreasonably withheld. In the event that a fixed priced is established, an additional notice will be mailed to all the customers. All communications with customers shall comply with applicable rules and regulations.

- (f) Review and Approval of Promotional Communications and Press Releases. The Parties share a common desire to generate favorable publicity regarding the Aggregation Program and the arrangements contemplated by this Agreement. The Parties will have the right to review and approve in advance (i) any press releases issued by either Party regarding arrangements contemplated by this Agreement and (ii) any promotional information intended for general distribution or communication issued by either Party, including bill inserts and mailers intended to be sent or delivered to potential and/or current customers. Each Party will timely review such promotional information and press releases submitted for approval, and will not unreasonably withhold or delay its approval. If there is no objection by either Party, as applicable, by the end of five (5) business days after submittal to such Party, then approval by such Party shall be deemed granted. If there is an objection, the Parties shall reasonably cooperate with each other to resolve the problem with the information as expeditiously as possible. Notwithstanding the foregoing, each Party, without any other Party's prior approval, shall have the right (i) to issue press releases regarding its business affairs and otherwise, including a general description of this Agreement and contemplated arrangement, and (ii) to describe in any of its promotional, sales or other public messages, the number of, but not any other information relating to, customers participating in the Aggregation Program and this Agreement generally.
- (g) Administration and Assignment. VESI shall be responsible for the administration of the accounts of the Aggregation Members, Except for billing under Article 5 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 the Municipality and VESI. 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 or regulations and other applicable laws. This data will be provided to the Municipality on a quarterly basis, or upon Municipality's reasonable request. The Municipality will have the right to access the information in the database in a manner acceptable to VESI, in its commercially reasonable judgment, for the limited purpose of auditing.

1.2 Firm Natural Gas Supply. VESI will provide sufficient firm natural gas supply to the Delivery Point of the Local Utility, as defined in Section 1.3 hereof, to serve the requirements of the Aggregation Group. 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, including any failure or interruption in distribution service to the Aggregation Group, 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 Municipality or the Aggregation Group as the result of such interruption by the Local Utility.

- 1.3 Delivery Point. The “Delivery Point” for applicable Retail Natural Gas Services supplied by VESI to the Aggregation Group shall be the Local Utility’s City gate(s) or any interface with the Local Utility in the local market area of the Aggregation Group for direct redelivery to the Aggregation Group by the Local Utility.
- 1.4 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. Governmental Aggregation fall under Columbia Gas of Ohio Customer Choice programs rules and regulations.
- 1.5 Municipality as a Governmental Aggregator. The Municipality as a Governmental Aggregator shall have no financial responsibility whatsoever 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 are under the Sub Set of Columbia Gas of Ohio’s Customer Choice Program.
- 1.6 Other Assistance. VESI will endeavor to assist Municipality with respect to its actions as Governmental Aggregator hereunder, and with such other matters as parties may mutually agree to.

Article Two. Customer & Usage Information

- 2.1 Customer Data and Load Forecast Information. Municipality hereby authorizes VESI to obtain from the Local Utility all applicable Customer Data and Historical Load information regarding the consumption characteristics of the Aggregation Group (collectively, the “Load Forecast Information”) when available and necessary. Municipality will assist VESI in obtaining any Load Forecast Information including, but not limited to, planned or unplanned reductions or increases in the natural gas consumption of the Aggregation Group. Upon request by VESI, Municipality shall provide to the Local Utility the authorizations and/or approvals necessary for VESI to obtain the Load Forecast Information.
- 2.2 Release of Customer Information. The Municipality 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 within the Municipality’s corporate limits as they are as of the date of this agreement or as they may change from time to time during the term hereof. VESI shall use all such information solely in connection with its service to the Governmental Aggregation

2.3 Addition of “Opt-in” customers. Within the Municipal geographic boundaries, customers served by CRNGS suppliers and other customers not receiving an “Opt-out Notice” may join or “opt-in” to the Aggregation Group only in accordance with the provisions of paragraph 2.4 below.

2.4 Addition of Aggregation Members. Customers that become part of the Aggregation Group after completion of the “Opt-out Period” will be accepted by VESI at the Aggregation Contract Price at the sole and absolute discretion of VESI. Customers that leave the Aggregation Group at any time and desire to re-join the Aggregation Group may, during the term of this Agreement, be accepted by VESI and served at the aggregation price at VESI sole and absolute discretion. VESI may develop an alternative rate for eligible consumers that have exited and desire to reenter the Aggregation Group. Excluding any and all existing VESI customers and any and all General Transportation customer within the Municipality.

Except as otherwise provided in this Agreement, prior to the termination of this agreement VESI shall not intentionally target by direct mail or direct telemarketing any eligible customer within the Municipality’s geographic boundaries without the prior consent of the Municipality.

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

Article Three. Operations

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

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

3.3 Start Date. The “Start Date” for service to each Aggregation Member shall be the first meter-read date on or after **May 1, 2019**.

3.4 End Date. Upon the conclusion or termination of this Agreement, the end date for service to each Aggregation Member shall be the next immediate metering date after the effective date of such conclusion or termination subject to the Local Utility’s procedures. Opt-out by

individual Aggregation Members during the term of this Agreement will be permitted at least every two years from the establishment of the initial aggregation service, in accordance with the provisions of Rule 4901:1-28-04(B), O.A.C.

Article Four. Prices and Fees

- 4.1 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** hereto.
- 4.2 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.

Article Five. Billing

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

Article Six. Intentionally Omitted

Article Seven. Contingencies and Force Majeure

7.1 Contingencies.

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

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

parties, enacted and effective after the Effective Date.

- (b) Notice, Negotiation, and Early Termination. Upon the occurrence of a Regulatory Event, the adversely affected Party shall within ten (10) days give notice to the other Party that such event has occurred. Within thirty (30) days, or such other period as the Parties may agree to in writing, each Party will enter into good faith negotiations with the other Party to amend or replace this Agreement. In the case of a Regulatory Event, the Parties shall attempt to amend this Agreement so that the adversely affected Party is restored as nearly as possible to the economic position it would have been in but for the occurrence of the Regulatory Event. In either case, if the Parties are unable, within thirty (30) days of initiating negotiations, or such other period as the Parties may agree to in writing, to agree upon an amendment to the Agreement, the adversely affected Party shall have the right, upon subsequent additional thirty (30) days prior written notice, to terminate and close out its obligations under the Agreement pursuant to the terms of Section 10.1 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's (the "Claiming Party") giving notice and full particulars of such Force Majeure within three (3) Business Days after becoming aware of the cause relied upon, such notice to be confirmed in writing to the other Party, then the obligations of the Claiming Party shall, other than the obligation to make payments due hereunder and to the extent they are affected by such Force Majeure, be suspended during the continuance of said inability but for no longer period. The Party receiving such notice of Force Majeure shall have until the end of the second (2nd) Business Day following such receipt to notify the Claiming Party that it objects to or disputes the existence of an event of Force Majeure.

- (b) The Claiming Party affected by an event of Force Majeure shall use due diligence to fulfill its obligations hereunder and to remove any disability caused by such event at the earliest practicable time. Nothing contained in this section shall be construed as requiring a party to settle any strike or labor dispute in which it may be involved, 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 Term of Agreement. The term of this Agreement shall commence on the Effective Date hereof and terminate on **April 30, 2021**, 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 of each delivery of natural gas hereunder, that:

- (a) It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, is in good standing;
- (b) It has the corporate, governmental and/or other legal capacity, authority and power to execute and deliver this Agreement and any other document relating hereto to which it is a Party, and to 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) Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;
- (d) All governmental and other authorizations, approvals, consents, notices and filings that are required to have been obtained or submitted by it with respect to this Agreement or any other document relating hereto to which it is a party have been obtained or submitted and are in full force and effect and shall remain in full force and effect throughout the term of this agreement, and it has complied with all conditions and terms of any such authorizations, approvals, consents, notices and filings;
- (e) Its obligations under this Agreement and any other document relating hereto to which it is a Party are legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application regardless of whether enforcement is sought in a proceeding in equity or at law);
- (f) No Bankruptcy Event has occurred and is continuing, and that a Bankruptcy Event would neither occur as a result of its entering into or performing its obligations under this Agreement or any other document relating hereto to which it is a Party nor is presently or otherwise threatened;
- (g) There is not pending or, to its knowledge, threatened against it or any of its Affiliates

any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or any other document relating hereto to which it is a party or its ability to perform its obligations under this Agreement or such document;

- (h) It has entered into this Agreement with a full understanding of the material terms and risks of transaction contemplated hereunder, and it is capable and has the authority of assuming those risks;
- (i) Either Party is not acting as a fiduciary or in an advisory capacity to the other Party; and
- (j) All applicable information that is furnished in writing by or on behalf of it to the other Party is, as of the date of the information, true, accurate and complete in every material respect.

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

- (a) The Municipality has or shall have a valid certificate as a Governmental Aggregator and will maintain such certificate at all times during the term hereof;
- (b) The Municipality shall act as a Governmental Aggregator, once it has obtained a valid certificate, throughout the term of this Agreement.
- (c) All acts necessary to the valid execution, delivery and performance of this Agreement including, without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Act, Regulations and the Municipality's ordinances, bylaws, policies or other regulations.
- (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 shall have and maintain valid certification from the Commission during the term hereof. Failure to comply with this Section 9.3 shall constitute a material breach of this Agreement.

9.4 Limitation of Warranties. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARE

DISCLAIMED BY THE PARTIES.

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 any Party;
 - (i) Pursuant to the terms set forth herein, upon the occurrence of a Regulatory Event;
 - (ii) Pursuant to the terms set forth in Exhibit A as those terms relate to the annual renegotiation of a retail adder;
 - (iii) By mutual written agreement of the parties;
 - (iv) 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 Section 11.1 herein.

10.3 Enforcement of Remedies. Except to the extent set forth in Section 11.1 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. Liability

11.1 Limitation of Liability. To the fullest extent permissible by law, neither party, nor their respective representatives, successors or assigns, shall be liable to the other party or its representatives, successors or assigns, shall be liable to the other party or its representatives, successors or assigns, for claims, suits, actions or causes of action, under any theory of recovery, for incidental, indirect, special, punitive, multiple or consequential damages,

including without limitation loss of profits or revenue or the loss of use of either, costs of replacement retail natural gas services or of capital, or claims of customers of the other party relating to loss of retail natural gas services supply, except as expressly provided in this agreement. The provisions of this section 11.1 shall apply regardless of fault and shall survive termination, cancellation, suspension, completion or expiration of this agreement. Notwithstanding the foregoing, nothing herein shall preclude either party from seeking legal redress and take other legal actions for a material breach of this agreement by the breaching party and pursuing a claim for actual damages resulting from said breach.

Article Twelve. Notices

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

All Notices: **Volunteer Energy Services, Inc.**
Street: **790 Windmill Drive**
City, State and Zip: **Pickerington, Ohio 43147**
Attn: **John L. Einstein, IV**
With a Copy to: **Mark Skaggs**

All Notices: **Village of Ashville**
Street: **200 East Station Street**
City, State and Zip: **Ashville, Ohio 43103**
Attn: **Franklin Christman, Village Administrator**

12.2 Notices shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States certified mail – return receipt requested, 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 (2) two business days after delivery. Notice by certified US mail, return receipt requested, shall be effective five (5) business days following delivery. A Party may change its addresses or the contact person by providing notice of the same in accordance herewith.

Article Thirteen. Confidentiality

13.1 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, 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.

- 13.2 Disclosure. In the event either Party is required to disclose such Confidential Information by a law, court, agency or other governing body having, or purporting to have, jurisdiction over the Party, such Party shall notify the other Party prior to any disclosure, if such notice is, in the determination of the Receiving Party's counsel, permitted by law, so as to allow the other Party an opportunity to resist such disclosure and/or to seek appropriate protection from further disclosure. If the Disclosing Party, in the determination of counsel, is compelled to disclose Confidential Information, the Disclosing Party may disclose that portion of the Confidential Information, which the Disclosing Party's counsel advises that the Disclosing Party is compelled to disclose.
- 13.3 Proprietary Rights, Survival. Each Party acknowledges the proprietary rights of the other Party in and to the Confidential Information. The obligations under this Article Twelve shall survive the conclusion or termination of this Agreement for two (2) years.

Article Fourteen. General Terms

- 14.1 Entire Agreement, Amendments and Counterparts. The terms of this Agreement (including any exhibits, schedules and attachments hereto) constitute the entire agreement between the parties with respect to the matters set forth in this Agreement and may be changed only by written agreement executed after the date hereof by the Parties. All exhibits, schedules and addendums attached hereto are incorporated herein by reference. This Agreement and any modification hereof may be executed and delivered in counterparts, including by a facsimile transmission thereof, each of which shall be deemed an original.
- 14.2 No Waiver. No failure on the part of any Party to exercise, and no 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.
- 14.3 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.
- 14.4 No Partnership. Nothing in this Agreement shall constitute or be construed as constituting or tending to create an agency, partnership, master-servant or employer-employee relationship between the Parties.
- 14.5 Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the law of the State of Ohio without regard to principles of conflict of laws.
- 14.6 No Third Party Beneficiaries. This Agreement confers no rights or remedies whatsoever upon any person or entity other than the Parties and shall not create, or be interpreted as creating, any standard of care, duty or liability to any person or entity not a party hereto.

Neither Party shall be liable to a third party not a party to this Agreement for any unauthorized act or omission on the part of the other Party, nor for any unauthorized obligation or debt incurred by the other Party

14.7 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.

14.8 Assignment. This Agreement shall not be assigned by either Party without the written consent of the other Party; which consent shall not be unreasonably withheld.

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

14.10 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.

14.11 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.

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

Article Fifteen. Definitions

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

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

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

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

“Bankruptcy Event” means either Party:

- (a) 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;
- (b) 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;
- (c) 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;
- (d) In the case of the Municipality, there is appointed or designated any entity such as a board, commission, authority or agency to monitor, review, oversee, recommend or declare a financial emergency or similar state of financial distress;
- (e) Causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (iv) inclusive; or
- (f) 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/or the business of its Affiliates. Information that is disclosed by one Party to the other which the Disclosing Party believes is confidential and is clearly designated as confidential shall be deemed Protected Information, only if such claim of confidentiality is conspicuously disclosed in writing or other tangible form that is marked “confidential” at the time of transmittal or if disclosed verbally is described as confidential or proprietary at the time of the conversation and the Disclosing Party also supplements the verbal transmittal with a transmittal in writing or other tangible form that is conspicuously marked “confidential” or “proprietary” within five (5) days of the verbal disclosure. Each Party shall have the right to correct any inadvertent failure to designate information as Confidential Information by providing the other Party with timely written notification of the error, and the designated information shall be treated as Confidential

Information from the time a Party receives the written notification. Confidential Information does not include information:

- (a) In the public domain at the time of disclosure;
- (b) 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.

“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, Ohio Revised Code and Rule 4901:1-28-01(C), O.A.C, 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; governmental actions such as necessity to comply with any court order, law, statute, ordinance or regulation promulgated by a governmental authority; or any other unplanned or non-scheduled occurrence, condition, situation or threat not covered above, which renders either Party unable to perform its obligations hereunder, provided such event is beyond the reasonable control through the exercise of due diligence of the Party claiming such inability. 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*, Section 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*, Section 4929.26 and 4929.27, Revised Code.

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

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

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

“NYMEX Strike Price” means, a monthly NYMEX 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, Mcf Btu conversion and supplier margin.

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

“Representative” means, as to a Party, any Affiliate, or any shareholder, officer, director, employee, agent, attorney, or advisor of the Party or its Affiliate.

[remainder of page intentionally left blank]

Execution of Agreement

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

Volunteer Energy Services, Inc.

Village of Ashville

By: _____

By: _____

Name: **Richard A. Curnutte Sr.**

Name: _____

Title: **President**

Title: _____

Execution of Agreement

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

Volunteer Energy Services, Inc.

Village of Ashville

By: _____

By: Franklin Christman

Name: **Richard A. Curnutte Sr.**

Name: Franklin Christman

Title: **President**

Title: Village Administrator

EXHIBIT A

1. Type of Service: Columbia Gas of Ohio Customer Choice
2. Term: **May 1, 2019 through April 30, 2021**
3. Delivery Point: **Customers Burner Tip**
4. Price: **VESI has offered to provide natural gas to Aggregation Members at a fixed rate of \$0.423 per Ccf at the burner tip. In addition, there are no early termination penalties for Aggregation Members who decide to leave this offer during the Term.**

VOLUNTEER ENERGY SERVICES, INC.
(“SELLER”)

By: _____

Print: **Richard A. Curnutte Sr.**

Title: **President**

VILLAGE OF ASHVILLE
(“BUYER”)

By: _____

Print: _____

Title: _____

Approved as to Form: _____

Print: _____

Title: _____

EXHIBIT A

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2. Term: **May 1, 2019 through April 30, 2021**
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VOLUNTEER ENERGY SERVICES, INC.
("SELLER")

By: _____

Print: **Richard A. Curnutte Sr.**

Title: **President**

VILLAGE OF ASHVILLE
("BUYER")

By: *Franklin Christman*

Print: Franklin Christman

Title: Village Administrator

Approved as to Form: *Mark Landes*

Print: Mark Landes, Esquire

Title: Solicitor

EXHIBIT B



DATE

Dear Natural Gas Consumer,

Volunteer Energy Services, Inc. (VESI) in cooperation with the Village of Ashville (the “Village”) is providing you with the opportunity to join or remain with other residents and small commercial customers in the Village’s natural gas Government Aggregation Program. **If you have received this letter and are outside the boundaries of the Village of Ashville, please let us know by calling 800-977-8374.** Government Aggregation programs allow Village officials to bring together citizens to gain group-buying power for the purchase of natural gas from a retail supplier licensed by the Public Utilities Commission of Ohio. **Village of Ashville voters approved this program in 2016.**

During the past few months, we have researched options for competitive natural gas pricing for you. We have chosen VESI, an Ohio based corporation to provide you with natural gas for the term **May 1, 2019 through April 30, 2021.**

You will be automatically enrolled in the Village ’s Natural Gas Government Aggregation Program unless you choose to “opt out” – that is, affirmatively choose not to participate. If you wish to be excluded from the Village ’s natural gas aggregation program, you must return the enclosed “Opt-Out” form by _____. Otherwise, you will be included in the aggregation program. If you do not opt-out at this time, you will receive a notice at least once every two years asking if you wish to remain in the program. However, you do not need to do anything to participate. There is no cost for enrollment and you will not be charged a switching fee.

For participating members of this program, VESI has offered to provide natural gas to Aggregation Members at a fixed rate of \$0.423 per Ccf at the burner tip. If you are ever unhappy with your rate, you may leave the program free of charge at any time. Please refer to the attached Terms and Conditions for full details of this offer.

After you become a participant in the Village ’s natural gas aggregation program, Columbia Gas of Ohio (COH) will send a postcard confirming your selection of VESI as your natural gas provider. As required by law, this postcard will inform you of your option to cancel your enrollment with VESI within seven (7) business days of its postmark date. To remain in the Village ’s government aggregation program, you don’t need to take any action when this postcard arrives. You will be automatically enrolled.

COH will always be responsible for ensuring the distribution of natural gas to your premises and will continue to maintain your meter, the monthly reads and the pipelines that deliver natural gas to your home. Your natural gas bill will also continue to come from COH. The only change you’ll notice is the name of your new gas supplier, Volunteer Energy Services, Inc., included on your bill.

If you have any questions, please call VESI toll-free at **1-800-977-8374**, Monday through Friday, 9:00 a.m. to 4:00 p.m.

Sincerely,

Village of Ashville
and
Volunteer Energy Services, Inc.

VOLUNTEER ENERGY SERVICES, INC. TERMS AND CONDITIONS OF SERVICE

These **TERMS AND CONDITIONS OF SERVICE** have important information you need to know before you commit to natural gas service from Volunteer Energy Services, Inc. (VESI). VESI is an Ohio corporation whose customers include a variety of Ohio natural gas end users. As a natural gas supply customer of VESI, you agree to the Terms and Conditions of VESI's natural gas supply contract.

Service Arrangement: VESI's energy supply will be delivered to your residence or facility via the Columbia Gas of Ohio pipeline through **April 2021**. Upon acceptance by the Columbia Gas of Ohio the cost will be a fixed rate of \$0.423 per Ccf.

Term: The term of this Agreement shall commence when accepted by VESI and shall continue through **May 2021** unless otherwise cancelled by either party. Natural gas service will begin within 60 days of acceptance by Columbia Gas of Ohio (COH). You may terminate this Agreement with VESI by providing a 30-day notice in writing to VESI or by telephone. COH will continue to deliver VESI-supplied natural gas to your home at the agreed upon rate.

Office Locations and Hours: VESI's offices are located at 790 Windmill Drive, Pickerington, Ohio 43147 and are open from 9:00 A.M. to 4:00 P.M. E.S.T., Monday through Friday. VESI can be reached by telephone at (614) 856-3128 or toll free at 800-977-8374. Telephone service hours are from 9:00 A.M. to 4:00 P.M. E.S.T., Monday through Friday. E-mail address is sraffeld@volunteerenergy.com.

Bill Payment Process: COH will continue to bill you monthly for natural gas delivery services and also for VESI's natural gas service. Should you fail to pay the bill or fail to meet any agreed upon payment arrangement, COH may terminate your service in accordance with its company tariffs, and this agreement with VESI may be automatically terminated.

Complaint Dispute Resolution: If you have any complaints regarding your natural gas service or your monthly bill, please contact us at 1-800-977-8374. Upon request, VESI will provide you up to twenty-four months of your payment history without charge. If your complaint is not resolved after you have called VESI, or for general utility information, residential and business customers may contact the Public Utilities Commission of Ohio (PUCO) for assistance at 1-800-686-7826 (toll free) from eight a.m. to five p.m. weekdays, or at <http://www.puco.ohio.gov>. Hearing or speech impaired customers may contact the PUCO via 7-1-1 (Ohio relay service). Additionally, the Ohio consumers' council (OCC) represents residential utility customers in matters before the PUCO. The OCC can be contacted at 1-877-742-

5622 (toll free) from eight a.m. to five p.m. weekdays, or at <http://www.pickocc.org>.

Emergency Service Problems: If you become aware of a gas emergency condition, or experience an unanticipated loss of gas service, you should contact the COH at the telephone number listed on your gas bill.

Termination/Rescission of Agreement: You may terminate / rescind your natural gas supply enrollment with VESI within seven (7) days of the post mark date of the confirmation letter from COH. After the initial seven (7) day period, either you or VESI may terminate the contract at any time by providing the non-terminating party thirty (30) days written notice of such termination, without penalty. You will remain responsible for all natural gas consumed by you prior to the actual termination of service. If your supply contract with VESI is terminated, your natural gas supply will automatically be provided by COH under its standard tariff unless or until you choose another supplier. If you voluntarily terminate participation in the Village 's natural gas governmental aggregation program, you may be charged a price other than COH regulated sales service rate. **There will be no early termination fees associated with the Village 's program.** Service will automatically terminate upon the occurrence of any of the following: (1) the requested service location is not served by COH; (2) you move outside COH service area or to an area not served by VESI; or (3) VESI terminates your supply agreement and returns you as a customer to COH. You have the right to terminate natural gas service with VESI, without penalty, for any reason at any time.

Program Compliance: COH's deregulation program is subject to the ongoing jurisdiction of the PUCO. If the PUCO cancels the program, this contract is rendered void with no penalty to either party. The laws of the State of Ohio will govern the terms of natural gas supply.

VESI's rate excludes COH charges and taxes. Natural gas service is subject to enrollment processing timelines as determined by COH and VESI's aforementioned Terms and Conditions of Service. To be eligible to participate in the Village of Ashville's natural gas aggregation program, you must: (1) have a residence or business located in the Village of Ashville; (2) be eligible to receive natural gas from COH; (3) meet Ohio non-mercantile requirements; (4) be current with your natural gas payments or payment arrangements; (5) not be enrolled in the PIPP program; and (6) currently not taking natural gas supply service from another natural gas marketer.

If you believe you received this letter in error or are not located in the Village of Ashville, please contact VESI to remove your account from our aggregation list.

P.S. Remember to return the below Opt-Out form only if you do not want to participate in the Village of Ashville's Natural Gas Government Aggregation Program.

OPT-OUT FORM FOR THE VILLAGE OF ASHVILLE GOVERNMENT AGGREGATION PROGRAM

I wish to opt out of my community's natural gas program. (Check box to opt out.)

Service Address: _____

Phone Number: _____ Account Number (located at the top of your _____ bill): _____

Printed Name: _____ Date: _____

Account Holder's signature: _____

Mail by: _____ To: Village of Ashville Government Aggregation Program, 790 Windmill Drive, Pickerington, Ohio 43147