

**IN THE MATTER OF APPROVING THE WELLNESS EDUCATION PROGRAM AGREEMENT CALLED
WELLWORKS FOR YOU BETWEEN JOINT TOWNSHIP DISTRICT MEMORIAL HOSPITAL (JTDMH) AND
AUGLAIZE COUNTY.**

The Board of County Commissioners of Auglaize County, Ohio met in regular session on the 14th day of February, 2023.

Commissioner *Spencer* moved the adoption of the following:

RESOLUTION

WHEREAS, Joint Township District Memorial Hospital (JTDMH) provides a Wellness Education program designed for the workplace called *Wellworks for You* and Auglaize County would like to retain JTDMH to provide the services described herein (the “Wellworks for You”) to its employees and spouses; and,

WHEREAS, the initial term of the Agreement is guaranteed for one year beginning on the January 19, 2023 (the “Effective Date”); and,

WHEREAS, Auglaize County shall pay JTDMH the following fees for the Wellworks for You:

- \$65 (Premium – Wellworks for You) per registered participant per Screening performed by JTDMH.

THEREFORE BE IT RESOLVED, that the Board of County Commissioners, Auglaize County, Ohio does hereby approve the Wellworks for You Program Agreement as mentioned above; and,

BE IT FURTHER RESOLVED that the Board authorizes the President of the Board to execute said agreement.

Commissioner *Bambauer* seconded the Resolution and upon the roll being called, the vote resulted in the adoption of the Resolution as follows:

Adopted this
14st day of
February, 2023

BOARD OF COUNTY COMMISSIONERS
AUGLAIZE COUNTY, OHIO

 John N Bergman , *yes*
John N. Bergman
 Douglas A. Spencer , *Yes*
Douglas A. Spencer
 David Bambauer , *yes*
David Bambauer

✓cc: JTDMH



WELLWORKS FOR YOU
WORKSITE WELLNESS PROGRAM AGREEMENT
BETWEEN

Joint Township District Memorial Hospital AND Auglaize County

This agreement (the "Agreement") is made and entered into as of January 19, 2023 (the "Effective Date"), by and between Joint Township District Memorial Hospital ("JTDMH"), and the company noted above ("Company").

The parties agree as follows:

1. Introduction

JTDMH provides a *Wellness Education* program designed for the workplace called *Wellworks For You*. The Company would like to retain JTDMH to provide the services described herein (the "*Wellworks For You Services*") to its employees (*and spouses, optional*). JTDMH is willing to provide the *Wellworks For You Services* on the terms and conditions of this Agreement.

2. *Wellworks For You Services*

A. Consultation and assistance to the Company in the design and implementation of a workplace wellness program, to include the following benchmarks, as designed by the Wellness Council of America:

- 1) Capturing senior level support
- 2) Creating a wellness team and/or leader
- 3) Collecting data to drive a results-oriented wellness initiative
- 4) Crafting an annual operating plan
- 5) Creating a supportive health promoting environment
- 6) Choosing appropriate interventions
- 7) Carefully evaluating program outcomes

B. Performance of annual on-site health screenings, which will include the provision of Health Risk Assessments ("HRAs"), biometrics and/or lab screening tests (a "Screening" or collectively, "Screenings"), as described in the attached Addendum A. Each participant will receive an individualized report of the participant's Screening results through the web portal, which the participant may print or save as a pdf file. The Company will receive summary reports that compile the results from all Screenings (minimum of 30 participants required to produce these



summary reports). These summary reports will include aggregate data only and will not disclose any individual employee health risks. The findings will be presented to the Company, along with recommendations for *Wellness Education* activities and interventions appropriate for your workplace and employee population.

- C. Regular on-site visits from a *Wellness Education* Coordinator to provide continuing support to the Company's wellness leader and/or team in the development of interventions, wellness challenges, incentives, workplace policies, etc. The *Wellness Education* Coordinator will also assist in the development of tools to collect data on employee interests, participation, satisfaction and outcome of the Company's wellness initiatives and activities.

3. **Responsibilities of Company Client:**

- A. The Company shall provide adequate space and facilities as may be required for the planning and implementation of program development meetings, group education sessions, Screenings and individual consultations.
- B. The Company will work with JTDMH to schedule an appropriate date and time for the Screenings. The Company shall, no later than fourteen (14) days prior to the scheduled Screenings, provide JTDMH with a written estimate of the number of individuals expected to participate to assure proper staffing levels. A minimum of 10 participants is required in order to provide an on-site screening. Cancellations of on-site screenings must be received a minimum of 10 days in advance to avoid a cancellation fee.
- C. The Company shall pay for the *Wellworks For You* Services, as set forth in Section 4 below.
- D. The Company shall cooperate fully with JTDMH in implementing and fulfilling its obligations under this Agreement, including but not limited to, notifying employees of the *Wellworks For You* Services offered by JTDMH and providing necessary internal and external publications and communications appropriate for the promotion of the *Wellworks For You* Services. JTDMH will provide sample materials, posters and flyers to assist in these efforts. The Company shall seek and obtain written approval from JTDMH before distributing any written communication materials that identify JTDMH by name, logo or other mark.
- E. The Company shall provide JTDMH with a secure electronic eligibility file if requested of all covered employees (and spouses, if applicable), along with such information as is necessary to enable JTDMH to verify the identity of employees (and spouses, if applicable) eligible to receive the *Wellworks For You* Services.
- F. It is the sole responsibility of the Company to ensure that its wellness program is in compliance with applicable federal, state and local laws and regulations including, but not limited to, ERISA, HIPAA, ADA, GINA, and the IRC.
- G. The Company shall have sole responsibility for deciding any claims and appeals that arise under its wellness program. JTDMH does not and will not process, decide or otherwise take action with respect to any claims or appeals arising from the Company's wellness program.



H. The Company acknowledges that JTDMH is not obligated to and shall not (i) serve in the capacity of a fiduciary under ERISA; or (ii) exercise any discretionary authority with respect to the design, implementation or administration of the Company's wellness program.

4. **Service Fees:**

The Company shall pay JTDMH the following fees for the *Wellworks For You* Services:

- x \$65 (Premium - Wellworks For You) per registered participant per Screening performed by JTDMH

Payment shall be due within thirty (30) days of the date of the invoice.

The initial contract rate is guaranteed for one year. JTDMH will give the Company at least fort five (45) days advance notice of any change in rates thereafter, which will be mutually agreed upon in writing by both parties.

5. **Miscellaneous:**

- A. Each party shall be solely responsible for its own acts and omissions and those of its directors, officers, employees, and agents in performance of services pursuant to this Agreement.
- B. No assignment of the Agreement or delegation of any duty or obligation of performance hereunder shall be made in whole or in part by either party without the prior written consent of the other party. Notwithstanding the foregoing, JTDMH may engage subcontractors to perform certain of the *Wellworks For You* Services but, absent Company's written consent otherwise, shall remain responsible for such services under the Agreement.
- C. The Agreement may only be amended by a writing executed by both parties.
- D. The initial term of the Agreement shall be for 12 months beginning on the Effective Date. Thereafter, the Agreement shall automatically renew on the one-year anniversary of the Effective Date, and each one-year anniversary thereafter unless either party notifies the other in writing of its intent not to renew at least 30 days prior to the end of the term then in progress, in which case the Agreement shall terminate at the end of the term then in progress.
- E. Either party may terminate the Agreement for any reason by providing 90 days prior written notice to the other party.
- F. The Agreement (including all attachments hereto) contains the entire agreement of the parties and there are no other promises or conditions applicable hereto with respect to its subject matter whether oral or written. The Agreement supersedes any prior written or oral agreements or understanding between the parties with respect to the subject matter hereof. JTDMH's only



obligations in connection with this Agreement shall be as expressly set forth herein and JTDMH makes no other representations or warranties, express or implied.

- G. The failure of either party to enforce any provision of the Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of the Agreement.
- H. To the extent not preempted by federal law, the laws of the State of Ohio shall govern the construction and administration of the Agreement.
- I. Any legal action arising out of or related to the Agreement shall be brought exclusively in the Auglaize County Court of Common Pleas or the federal district court with territorial jurisdiction of Auglaize County, Ohio.
- J. The Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument.
- K. The Agreement is not intended to create, nor shall it be deemed or construed to create, an exclusive relationship between the parties. Further, the relationship between the parties shall be that of independent contractors.
- L. Neither party shall be liable for failure to perform any duty or obligation that such party may have under the Agreement where such failure has been caused by any event, foreseen or unforeseen, outside the reasonable control of such party that renders performance impossible or impracticable, including but not limited to, acts of God, terrorist acts, fire, strike, inevitable accident, war, or any other like event (collectively, "Force Majeure Event"), but only to the extent prevented by the Force Majeure Event.
- M. JTDMH and its subcontractor(s), if any, and their respective officers, directors, employees, agents or affiliates shall not be liable to the Company for any special, exemplary, incidental, consequential or punitive damages, whether in contract, warranty, tort, strict liability or otherwise.
- N. All notices required or provided pursuant to the Agreement (including, but not limited to invoices), shall be sent by first-class U.S. mail, email, fax, or national courier service to the following individuals and addresses for the respective parties:



If to JTDMH, addressed to: Wellness Education Coordinator, 200 St. Clair Avenue, St. Marys, Ohio, 45885.

If to Company, addressed to: Auglaize County, 209 S. Blackhoof Street, Room 201 Wapakoneta, OH 45895

JOINT TOWNSHIP DISTRICT MEMORIAL HOSPITAL

Approved by: Jenna Fonseca on 1 / 19 / 2023
Jenna Fonseca, RN

Auglaize County

Approved by: John N Bergman on 02 / 14 / 2023
Signature
John N. Bergman
Printed name
President
Title



ADDENDUM A

Service	Additional Fee
Standard Screening: Health Risk Assessment, Biometrics, CMP with lipids, CBC	No additional fee; included with \$65.00 <i>Wellworks For You</i> fee
Aggregate Report	\$260.00
Attachment B Report/BWC Report	No charge
Health Coaching	\$64.00/hour
Osteo Screenings	\$56.00/hour/station
PSA (for men over 40)	\$45.00/person (Optional Self-Pay)
Thyroid Panel Optional Self Pay	\$52.00/person (Optional Self-Pay)
C Reactive Protein Optional Self Pay	\$25.00/person (Optional Self-Pay)
Hemoglobin A1C Optional Self Pay	\$26.00/person (Optional Self-Pay)
Hepatitis C Titer Optional Self-Pay	\$50.00/person (Optional Self-Pay)
Vitamin D Optional Self-Pay	\$42.00/person (Optional Self-Pay)

WELLNESS EDUCATION COORDINATOR & CONTACT INFORMATION

Jenna Fonseca, BSN, RN

Joint Township District Memorial Hospital Affiliate of the Grand Lake Health System 419 394-3335 Ext 1422

jfonseca@jtdmh.org

IN THE MATTER OF AUTHORIZING THE PRESIDENT OF THE BOARD TO EXECUTE THE FIRST AMENDMENT FOR THE OHIO DEPARTMENT OF DEVELOPMENT BROWNFIELD REMEDIATION PROGRAM GRANT AGREEMENT.

The Board of County Commissioners of Auglaize County, Ohio met in regular session on the 14th day of February, 2023.

Commissioner *Spencer* moved the adoption of the following:

RESOLUTION

WHEREAS, the Board of County Commissioners adopted resolution number #22-565 on December 22, 2022, authorizing the execution of grant agreement ODSA--2022 - 191683 to the State of Ohio, Department of Development, in the amount of \$173,950.00 in Brownfield Remediation Program Grant Funds which was effective January 1, 2022 (the "Original Agreement"); and,

WHEREAS, the Board has received notice from the Ohio Department of Development that the following Frist amendment was made to the original agreement.

Expiration Date. The Expiration Date is amended to June 30, 2024.
Section 5. Payment of Grant Funds. The second sentence is deleted and replaced with the following: Grantee will have 30 days after the Expiration Date to submit a financial reimbursement request, unless otherwise extended by Grantor.
Except as modified herein, the Agreement shall remain in full force and effect in accordance with its terms.

WHEREAS, the Ohio Department of Development has provided the Board with the First Amendment to the Grant Agreement ODSA—2022 – 191683 for the execution by the President of the Board.

THEREFORE, BE IT RESOLVED that the Board of Commissioners, Auglaize County, Ohio, does hereby authorize the President of the Board, John N. Bergman, to execute the First Amendment for the ODOT's Brownfield Remediation Program (ODSA—2022 - 191683).

Commissioner *Bambauer* seconded the Resolution and upon the roll being called, the vote resulted in the adoption of the Resolution as follows:

Adopted this
14th day of
February, 2023

BOARD OF COUNTY COMMISSIONERS
AUGLAIZE COUNTY, OHIO

 John N. Bergman , *yes*
John N. Bergman
 Douglas A. Spencer , *Yes*
Douglas A. Spencer
 David Bambauer , *yes*
David Bambauer

Attachment

cc: Ohio Department of Development
Auditor

**FIRST AMENDMENT TO
BROWNFIELD REMEDIATION PROGRAM
GRANT AGREEMENT**

This First Amendment to the Grant Agreement (the "First Amendment") is made and entered into by and between the **Ohio Department of Development** ("Grantor"), and **Auglaize County Board of Commissioners** ("Grantee") for the purpose of amending the Expiration Date for the **Brownfield Remediation Program**.

Background Information

- A. Grantor and Grantee entered into a Grant Agreement effective January 1, 2022 (the "Original Agreement").
- B. Both parties agree to extend the Expiration Date of the Agreement, as provided herein.

Statement of the Agreement

In consideration of the mutual covenants contained herein, the Grantor and Grantee agree that the Agreement is hereby amended as follows:

- 1. **Expiration Date.** The Expiration Date is amended to June 30, 2024.
- 2. Except as modified herein, the Agreement shall remain in full force and effect in accordance with its terms.

GRANTEE:

Auglaize County Board of Commissioners

Sign: John N Bergman

Print: John N. Bergman

Title: President

Date: February 14, 2023

GRANTOR:

Ohio Department of Development

Lydia L. Mihalik
Director

Sign: _____

Print: _____

Title: _____

Date: _____

(Effective Date of First Amendment)

IN THE MATTER OF AUTHORIZING THE PRESIDENT OF THE BOARD TO EXECUTE THE FIRST AMENDMENT FOR THE OHIO DEPARTMENT OF DEVELOPMENT BROWNFIELD REMEDIATION PROGRAM GRANT AGREEMENT.

The Board of County Commissioners of Auglaize County, Ohio met in regular session on the 14th day of February, 2023.

Commissioner *Spencer* moved the adoption of the following:

RESOLUTION

WHEREAS, the Board of County Commissioners adopted resolution number #22-567 on December 22, 2022, authorizing the execution of grant agreement ODSA--2022 - 192589 to the State of Ohio, Department of Development, in the amount of \$2,464,900.00 in Brownfield Remediation Program Grant Funds which was effective January 1, 2022 (the "Original Agreement"); and,

WHEREAS, the Board has received notice from the Ohio Department of Development that the following First amendment was made to the original agreement.

Expiration Date. The Expiration Date is amended to June 30, 2024.

Section 5. Payment of Grant Funds. The second sentence is deleted and replaced with the following: Grantee will have 30 days after the Expiration Date to submit a financial reimbursement request, unless otherwise extended by Grantor.

Except as modified herein, the Agreement shall remain in full force and effect in accordance with its terms.

WHEREAS, the Ohio Department of Development has provided the Board with the First Amendment to the Grant Agreement ODSA—2022 – 192589 for the execution by the President of the Board.

THEREFORE, BE IT RESOLVED that the Board of Commissioners, Auglaize County, Ohio, does hereby authorize the President of the Board, John N. Bergman, to execute the First Amendment for the ODOD's Brownfield Remediation Program (ODSA—2022 - 192589).

Commissioner *Bambauer* seconded the Resolution and upon the roll being called, the vote resulted in the adoption of the Resolution as follows:

Adopted this
14th day of
February, 2023

BOARD OF COUNTY COMMISSIONERS
AUGLAIZE COUNTY, OHIO

 John N. Bergman , *yes*
John N. Bergman

 Douglas A. Spencer , *Yes*
Douglas A. Spencer

 David Bambauer , *yes*
David Bambauer

Attachment

cc: Ohio Department of Development
✓ Auditor

FIRST AMENDMENT TO
BROWNFIELD REMEDIATION PROGRAM
GRANT AGREEMENT

This First Amendment to the Grant Agreement (the "First Amendment") is made and entered into by and between the **Ohio Department of Development** ("Grantor"), and **Auglaize County Board of Commissioners** ("Grantee") for the purpose of amending the Expiration Date for the **Brownfield Remediation Program**.

Background Information

- A. Grantor and Grantee entered into a Grant Agreement effective January 1, 2022 (the "Original Agreement").
- B. Both parties agree to extend the Expiration Date of the Agreement, as provided herein.

Statement of the Agreement

In consideration of the mutual covenants contained herein, the Grantor and Grantee agree that the Agreement is hereby amended as follows:

- 1. **Expiration Date.** The Expiration Date is amended to June 30, 2024.
- 2. Except as modified herein, the Agreement shall remain in full force and effect in accordance with its terms.

GRANTEE:

Auglaize County Board of Commissioners

Sign: John N. Bergman

Print: John N. Bergman

Title: President

Date: February 16, 2023

GRANTOR:

Ohio Department of Development

Lydia L. Mihalik
Director

Sign: _____

Print: _____

Title: _____

Date: _____

(Effective Date of First Amendment)

IN THE MATTER OF RE-APPOINTING DOUG METZ AND JASON VANDERHORST TO THE AUGLAIZE COUNTY SOLID WASTE MANAGEMENT DISTRICT POLICY PLANNING COMMITTEE.

The Board of County Commissioners of Auglaize County, Ohio met in regular session on the 14th day of February, 2023.

Commissioner Spencer moved the adoption of the following:

RESOLUTION

WHEREAS, pursuant to Ohio Revised Code Section 343.01.1, Jason Vanderhorst and Doug Metz were appointed to the Auglaize County Solid Waste Management District Policy Planning Committee to be the citizen and public representatives respectfully in the county; and,

WHEREAS, the terms of Jason Vanderhorst and Doug Metz as members of the Auglaize County Solid Waste Management District Policy Planning Committee did expire on December 31, 2022; and,

WHEREAS, the Board of County Commissioners has contacted Mr. Vanderhorst and Mr. Metz about their willingness to serve another term on said Committee; both parties consented to another term.

THEREFORE, BE IT RESOLVED that the Board of Commissioners, Auglaize County, Ohio does hereby re-appoint Jason Vanderhorst citizen representative and Doug Metz public representative to the Auglaize County Solid Waste Management District Policy Planning Committee; and,

BE IT FURTHER RESOLVED that the terms of Doug Metz and Jason Vanderhorst to the Auglaize County Solid Waste Management District Policy Planning Committee, starting January 1, 2023 and terminating December 31, 2024.

Commissioner Bambauer seconded the Resolution and upon the roll being called, the vote resulted in the adoption of the Resolution as follows:

Adopted this
14th day of
February, 2023

BOARD OF COUNTY COMMISSIONERS
AUGLAIZE COUNTY, OHIO

John N. Bergman, yes
John N. Bergman

Douglas A. Spencer, yes
Douglas A. Spencer

David Bambauer, yes
David Bambauer

- cc: ✓ Solid Waste Coordinator
- ✓ Doug Metz
- ✓ Jason Vanderhorst

IN THE MATTER OF APPOINTING MATTHEW BROUGHMAN TO THE POSITION OF RECYCLING LABORER FOR THE AUGLAIZE COUNTY SOLID WASTE DISTRICT.

The Board of County Commissioners of Auglaize County, Ohio met in regular session on the 14th day of February, 2023.

Commissioner Spencer moved the adoption of the following:

RESOLUTION

WHEREAS, Scott Cisco, Auglaize County Solid Waste/Recycle Coordinator, recommended to the Board of County Commissioners the employment of a recycling laborer/truck driver for the current vacancy in the department; and,

WHEREAS, the Board solicited resumes for the position, receiving a resume; and,

WHEREAS, interviews were conducted for the position by the Solid Waste/Recycle Coordinator Scott Cisco and County Administrator Erica Preston; and,

WHEREAS, after the interview, Mr. Cisco recommended to the Board that the appointment for the recycling laborer be made to Matthew Broughman.

THEREFORE, BE IT RESOLVED that the Board of Commissioners, Auglaize County, Ohio does hereby appoint Matthew Broughman to the position of Recycling Laborer for the Auglaize County Solid Waste/Recycle District, appointment contingent upon a successful completion of his background check; and,

BE IT FURTHER RESOLVED that Mr. Broughman's rate of pay to be established at \$20.25 per hour with a potential increase of \$0.25 following the successful completion of the 180 day probationary period.

Commissioner Bambauer seconded the Resolution and upon the roll being called, the vote resulted in the adoption of the Resolution as follows:

Adopted this
14th day of
February, 2023

BOARD OF COUNTY COMMISSIONERS
AUGLAIZE COUNTY, OHIO

John N. Bergman, yes
John N. Bergman

Douglas A. Spencer, Yes
Douglas A. Spencer

David Bambauer, yes
David Bambauer

- cc: ✓Solid Waste/Recycle Coordinator
- ✓Auditor
- ✓Matthew Broughman

IN THE MATTER OF APPOINTING MICHAEL SMITH TO THE POSITION OF RECYCLING LABORER FOR THE AUGLAIZE COUNTY SOLID WASTE DISTRICT.

The Board of County Commissioners of Auglaize County, Ohio met in regular session on the 14th day of February, 2023.

Commissioner Spencer moved the adoption of the following:

RESOLUTION

WHEREAS, Scott Cisco, Auglaize County Solid Waste/Recycle Coordinator, recommended to the Board of County Commissioners the employment of a recycling laborer/truck driver for the current vacancy in the department; and,

WHEREAS, the Board solicited resumes for the position, receiving a resume; and,

WHEREAS, interviews were conducted for the position by the Solid Waste/Recycle Coordinator Scott Cisco and County Administrator Erica Preston; and,

WHEREAS, after the interview, Mr. Cisco recommended to the Board that the appointment for the recycling laborer be made to Michael Smith.

THEREFORE, BE IT RESOLVED that the Board of Commissioners, Auglaize County, Ohio does hereby appoint Michael Smith to the position of Recycling Laborer for the Auglaize County Solid Waste/Recycle District, appointment contingent upon a successful completion of his background check; and,

BE IT FURTHER RESOLVED that Mr. Smith's rate of pay to be established at \$20.00 per hour with a potential increase of \$0.25 following the successful completion of the 180 day probationary period and the required CDL certification during the probationary period.

Commissioner Bambauer seconded the Resolution and upon the roll being called, the vote resulted in the adoption of the Resolution as follows:

Adopted this
14th day of
February, 2023

BOARD OF COUNTY COMMISSIONERS
AUGLAIZE COUNTY, OHIO

John N. Bergman, yes
John N. Bergman

Douglas A. Spencer, Yes
Douglas A. Spencer

David Bambauer, yes
David Bambauer

cc: Solid Waste/Recycle Coordinator
Auditor
Michael Smith

IN THE MATTER OF SETTING A DATE AND TIME AT WHICH TO CONVENE THE FIRST OF TWO MANDATED PUBLIC HEARINGS FOR THE PY2023 COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM.

The Board of County Commissioners of Auglaize County, Ohio met in regular session on the 14th day of February, 2023.

Commissioner Spencer moved the adoption of the following:

RESOLUTION

WHEREAS, the County of Auglaize, including the Cities of St. Marys and Wapakoneta, intend to make application to the Ohio Department of Development (ODOD) in 2023 for the funding under the Community Development Block Grant (CDBG) Program; and,

WHEREAS, the State of Ohio requires Counties to conduct two public hearings to inform all County citizens concerning the CDBG program in Ohio.

THEREFORE, BE IT RESOLVED that the Board of Commissioners, Auglaize County, Ohio, does hereby set Monday, February 27, 2023 at 10:00 a.m. as the date and time at which to conduct in the Auglaize County Administration Building, Assembly Room – 2nd Floor the first of two public hearings on behalf of the county, as well as on behalf of the cities of St. Marys and Wapakoneta, concerning the State of Ohio’s CDBG program.

Commissioner Bambauer seconded the Resolution and upon the roll being called, the vote resulted in the adoption of the Resolution as follows:

Adopted this
14th day of
February, 2023

BOARD OF COUNTY COMMISSIONERS
AUGLAIZE COUNTY, OHIO

John N. Bergman, yes
John N. Bergman

Douglas A. Spencer, yes
Douglas A. Spencer

David Bambauer, yes
David Bambauer

- cc: ~~Kleinfelder~~
- City of Wapakoneta
- City of St. Marys
- Ron Puthoff
- Township – Fiscal Officers
- Villages - Mayors
- Board of DD – Renee Kohler
- Engineer

BOARD OF COUNTY COMMISSIONERS
AUGLAIZE COUNTY, OHIO
209 S. Blackhoof St., Wapakoneta, Ohio 45895

Phone: 419-739-6710

Fax: 419-739-6711

February 14, 2023

TO: WDN

FROM: Board of County Commissioners, Auglaize County, Ohio

RE: Non Legal Section **to be published in The Wapakoneta Daily News and the Evening Leader**

Please publish, in the Public Notice Section of The Wapakoneta Daily News and The Evening Leader, the following Public Notice on **Thursday, February 16,**

Please send **Certificate of Publication to and invoice to:**

Board of County Commissioners
209 S. Blackhoof St., Room 201
Wapakoneta, OH 45895

Thank you.

Esther Leffel
BOCC Clerk

PUBLIC NOTICE
NOTICE OF FIRST PUBLIC HEARING
PY2023 BIENNIAL COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM

The Auglaize County Board of Commissioners intends to make application to the Ohio Department of Development (ODOD) to access funding from the approximately \$45 million of funds available under the PY2023 Biennial Community Development Block Grant (CDBG) Small Cities Program, a federally funded program administered by the State of Ohio.

The County, including the cities of St. Marys and Wapakoneta, is eligible for approximately \$198,000 of CDBG Community Development Allocation Program funds and additional funds for a competitive set-aside program: Neighborhood Revitalization (up to \$750,000); and for competitive open-cycle programs: Critical Infrastructure (up to \$500,000 and Targets of Opportunity/Downtown (up to \$250,000); and CHIP funding (up to \$1,000,000); providing the County meets applicable program requirements.

CDBG Community Development Allocation funding requests from eligible county entities are due to the Board of Commissioners Office by **April 14, 2023**. Projects will be reviewed, ranked, and selected based on compliance with a CDBG National Objective; inclusion in the Auglaize County Community Development Implementation Strategy (CDIS); application completeness; number of beneficiaries served; and number of previous awards. The County's Community Development application to ODOD is due June 14, 2023.

Auglaize County (and its cities and villages) may apply for funding under the following programs: Community Development Program; Community Housing Impact and Preservation Program (CHIP); Economic Development & Public Infrastructure Programs; Target of Opportunity Grant Program; Training and Technical Assistance Funds; New Horizons Fair Housing Assistance Program; Residential Public Infrastructure Grant Program; Housing Opportunities for Persons with AIDs (HOPWA) Program; Supportive Housing, Homeless Crisis Response, & Housing Assistance Grant Programs; and, Any/New Programs Announced Under the CDBG, HOME, and OHTF Programs.

The first of the required two public hearings for this comprehensive grant program will be convened in the Auglaize County Administration Building Assembly Room, Second Floor, 209 South Blackhoof Street, Wapakoneta, Ohio 45895, an ADA-accessible facility. The hearing shall commence at **10 AM on Monday, February 27, 2023**, to provide citizens with pertinent information about the CDBG program, including an explanation of eligible activities and program requirements. The CDBG program can fund a broad range of activities including economic development projects; street improvements; water supply, drainage, and sanitary sewer improvements; park acquisitions and improvements; demolition of unsafe structures; and rehabilitation of housing and neighborhood facilities. The activities must be designed to meet one of the CDBG National Objectives: to primarily benefit low- and moderate-income persons, or aid in the prevention or elimination of slums and blight; or meet an urgent need of the community; and comply with the applicable Program Objectives as outlined in the Ohio Consolidated Plan.

To assist the County in preparing a State required Community Development Implementation Strategy (CDIS) needed for the PY2023 CDBG Program, all interested political jurisdictions within Auglaize County are invited to attend a planning meeting to be held immediately following the public hearing on Monday, February 27, 2023, at 10:30 AM at the County Administration Building.

Citizens are encouraged to attend the first public hearing to provide input on the County's CDBG Program. Should any participant require auxiliary aids due to disability or non-English languages, please contact this office at least one week prior to the hearing date to ensure needs will be accommodated. Anyone wishing to submit written comments prior to the hearing may direct them to the Auglaize County Board of Commissioners at the address above.

By order of the Board of County Commissioners, Auglaize County, Ohio
John N. Bergman
Douglas A. Spencer
David Bambauer

Date of Publication: February 16, 2023. Non-Legal Section (Block Ad). Furnish one (1) affidavit.

IN THE MATTER OF AUTHORIZING PRESIDENT OF THE BOARD TO EXECUTE THE CUSTOMER SUPPLY AGREEMENT WITH DYNEGY ENERGY SERVICES EAST, LLC FOR DAYTON POWER & LIGHT AND AMERICAN ELECTRIC POWER.

The Board of County Commissioners of Auglaize County, Ohio met in regular session on the 14th day of February, 2023.

Commissioner Spencer moved the adoption of the following:

RESOLUTION

WHEREAS, Palmer Energy has submitted a Customer Supply Agreement with Dynegy Energy Services East, LLC as the best electric supplier Auglaize County; and,

WHEREAS, Palmer Energy has requested the President of the Board to execute said agreement with Constellation.

THEREFORE, BE IT RESOLVED that the Board of County Commissioners, Auglaize County, Ohio, does hereby approve the customer supply agreement and authorizes the President of the Board, John N. Bergman, to execute the customer supply agreement with Dynegy Energy Services East, LLC.

Commissioner Bambauer seconded the Resolution and upon the roll being called. The vote resulted in the adoption of the Resolution as follows:

Adopted this
14th day of
February, 2023

BOARD OF COUNTY COMMISSIONERS
AUGLAIZE COUNTY, OHIO

John N. Bergman, yes
John N. Bergman

Douglas A. Spencer, Yes
Douglas A. Spencer

David Bambauer, yes
David Bambauer

✓ cc: Palmer Energy



**ELECTRIC SERVICE AGREEMENT
EXHIBIT A – Standard Large Stable-Capacity
Issued: February 14, 2023**

This offer is presented to **AUGLAIZE COUNTY** (“Customer”) by **DYNEGY ENERGY SERVICES EAST, LLC** (“Supplier”) and represents a price for Customer’s full requirement retail power (“Retail Power”) needs at the service location(s) listed in Table 2, each service location referred to as an (“Account”). Upon acceptance, this offer will become Exhibit A of Supplier’s Electric Service Agreement Terms and Conditions (“Agreement”), a copy of which is attached. By signing this Exhibit A, Customer is authorizing Supplier to enroll each Account with the Utility (“Utility”) noted in Table 1.

Table 1					
Select Term:	Quote #:	Delivery Term Begins:	Delivery Term Ends:	Power Price (/kWh):	Voluntary REC Quantity (%):
	Q-02179350	May 2023	May 2026	\$0.05794	N/A
Capacity Charge:		Pass-Thru			
Utility:		American Electric Power			
Regional Transmission Organization (RTO):		PJM			
Broker Consultant (If blank, N/A):		Palmer Energy			

Power Price: Supplier will arrange for delivery of Customer’s Retail Power. The Power Price noted in Table 1 includes charges for energy, applicable Regional Transmission Operator, ancillary services and other market settlement charges, distribution and transmission energy losses, charges associated with the purchase, acquisition and delivery of renewable energy certificates (RECs) in accordance with the state-mandated Renewable Portfolio Standards (“RPS”) requirements, if applicable, the charge for additional voluntary RECs, and scheduling and load forecasting associated with the delivery of Customer’s Retail Power. **THE POWER PRICE IN TABLE 1 DOES NOT INCLUDE CHARGES FOR CAPACITY.**

Capacity Charge: Supplier will secure capacity relative to the supply of all electricity during the Term of this Agreement in accordance with the RTO business practices, policies, rules, regulations, or tariffs. Charges for capacity will appear as a separate line item on Customer’s monthly invoice and shall be billed as follows:

The monthly charge will be dependent upon 1) Customer’s then current capacity obligation or Capacity Peak Load Contribution (“PLC”) as determined by the Utility, including any applicable Utility zoning factors, 2) the Final Zonal Capacity Prices (the “Current Capacity Rate”) as determined by RTO, and 3) the number of days in the billing period.

Voluntary REC Quantity: If applicable in Table 1, the Power Price in Table 1 will include a charge associated with the Voluntary REC Quantity requested by Customer. Retail Power shall be associated with the generation of electricity from a renewable energy resource such that the percentage required, when added to Customer’s obligation under the RPS of this Agreement, shall equal the Voluntary REC Quantity (%) selected in Table 1.

The Parties agree and understand a REC is separate from the Retail Power being delivered but, nonetheless, constitutes value associated with the provision of Retail Power. It is understood and agreed that any RECs purchased and retired in accordance with the aforesaid state mandate is not the property of Customer, and Customer has no claim, interest, or right to said RECs, or any value derived therefrom.

Customer will incur additional service and delivery charges from the Utility, and Customer is solely responsible for payments of all charges related to the delivery of electricity from the Utility.

NET METERING. Customer must enroll, and be accepted in, as applicable by state law, Utility’s net metering program in order to participate in net metering with Supplier.

The validity, interpretation and performance of this Agreement shall be governed by and performed in accordance with the laws of the State of Ohio. Notwithstanding any language in this Agreement to the contrary, the electricity sold by Supplier to Customer is deemed to be “a good” for purposes of the Uniform Commercial Code of Ohio, and the parties agree that the provisions of the Uniform Commercial Code of Ohio shall apply to this Agreement.

This offer is contingent on acceptance by the Utility of the enrollment of Customer with Supplier. By signing below, you certify that 1) you are authorized on behalf of Customer to enter into this Agreement with Supplier, 2) Customer has read the Terms & Conditions of this Agreement and agrees to be bound by them, and 3) Customer authorizes Supplier to enroll the Account(s) listed in Table 2 with the Utility which will allow Supplier to provide retail electricity.

IN WITNESS WHEREOF, subject to any of the foregoing execution conditions, the Parties have executed and delivered this Agreement on the date last signed by the Parties.

DYNEGY ENERGY SERVICES EAST, LLC By: <u>Lauren Matson</u> Name: <u>Lauren Matson</u> Feb 14, 2023 15:07 EST Title: <u>Manager, Third Party Sales</u> Date: <u>Feb 14, 2023</u>	AUGLAIZE COUNTY By: <u>John N. Bergman</u> Name: <u>John N. Bergman</u> Title: <u>President</u> Date: <u>2.14.2023</u> **Signatory certifies authorization to enter in to this Agreement
---	--

BILLING AND NOTICE INFORMATION	
FEIN or DUNS#: _____	
<input type="checkbox"/> Check here if you are a local government entity subject to the Ohio Prompt Payment Requirements Act as defined by ORC 126.30/OAC 126-3-01	
If applicable, see Section 4 of the Terms & Conditions for below:	
<input type="checkbox"/> Check here to receive one master invoice that includes detailed usage by Account. If blank, an individual invoice for each Account will be issued.	
<input type="checkbox"/> Check here if you want invoices mailed to the Service Location, Attn: Accounts Payable. Otherwise, please complete invoice information below.	
<u>Invoices</u> Attn: <u>Billing Contact</u> Address: _____ E-mail: _____ Phone: _____	<u>Notices</u> Attn: <u>Erica Preston, County Administrator</u> Address: <u>209 S. Blackhoof St.</u> <u>Wapakoneta, OH 45895</u> E-mail: <u>epreston@auglaizecounty.org</u> Phone: <u>419-739-6710</u>
<u>Sales Contact</u> Name: <u>Brooke Muck</u> Address: <u>312 Walnut Street, Ste 1500</u> <u>Cincinnati, OH 45202</u> E-mail: <u>Brooke.lantry@vistraenergy.com</u> Phone: <u>(513) 762-8208</u>	<u>Notices/Inquires</u> Attn: <u>Customer Care</u> Address: <u>6555 Sierra Drive</u> <u>Irving, TX75039</u> E-mail: <u>Contractlegal12@vistraenergy.com</u> Phone: <u>(800) 920-5039</u>

Upon execution and delivery to Supplier, this Agreement is binding. Please retain a copy for your records and send a signed copy to ContractLegal12@vistraenergy.com. Supplier will forward all necessary documents to the Utility.

Nadra Sherazee

ELECTRIC SERVICE AGREEMENT
ACCOUNT INFORMATION SHEET FOR
AUGLAIZE COUNTY AS OF 02/14/2023

Table 2			
Utility: American Electric Power			
	Account #	Bill Group	Service Location
1	00140060786949240	7	12016 WAPAKONETA BUCKLAND RD WAPAKONETA, OH 45895-9312 ,

**ELECTRIC SERVICE AGREEMENT
GENERAL TERMS AND CONDITIONS**

This Electric Service Agreement ("Agreement") is between Supplier and Customer and is dated and effective as of the date the Exhibit A is signed by both parties. To the extent there is a conflict in the terms, interpretation or understanding of this Agreement and Exhibit A, the terms of Exhibit A shall supersede the terms of this Agreement.

1. ELECTRIC ENERGY SERVICES

Supplier shall supply and deliver to Customer and Customer shall exclusively purchase and receive from Supplier all Retail Power as defined in Exhibit A, pursuant to the terms and conditions which are described in the attached Exhibit A and incorporated herein for all purposes. The Retail Power will be delivered to the interconnection between the transmission system of the applicable transmission provider and the Utility's ("Utility") distribution system ("Delivery Point"). Customer's Utility will be responsible for delivery of Retail Power to Customer's meter from the Delivery Point. The delivery of Retail Power over the Utility's distribution system is subject to the terms and conditions of the Utility's tariff relating to delivery and metering. Customer's Utility will send Customer a notice confirming the switch to Supplier for electricity (the "Confirmation"). Customer shall provide written notice as soon as practicable of any changes to Customer's Account and meter numbers and/or billing locations associated with Customer's delivery services. Customer is solely responsible for payments of all charges related to the delivery of the Retail Power from the Utility whether billed to Supplier or Customer. Customer represents and warrants it is eligible to receive electric energy services from Supplier and that it has given all required notices to the supplier currently serving Customer, if applicable.

2. TERM OF AGREEMENT

After Supplier and the Utility process Customer's enrollment request, Retail Power delivery will begin for each Account with the first available meter reading date of the month noted under "Delivery Term Begins" in Table 1 or as soon as possible thereafter, and ends with the regularly scheduled meter reading date for the month noted under "Delivery Term Ends" in Table 1 on Exhibit A ("Term"). At the end of the Term of this Agreement, Supplier will return Customer to Utility default service, unless a written amendment has been executed to renew the Term. Notwithstanding the foregoing, the Term is subject to renewal pursuant to the conditions under Section 3, Monthly Renewal.

3. MONTHLY RENEWAL

This Agreement shall automatically continue on a monthly basis ("Renewal Term") at the rates determined by Supplier, which may vary from month to month. If Customer has not notified Supplier that Customer has elected to obtain Retail Power from another retail supplier, then Supplier may in its sole discretion place Customer on Renewal Term service or Supplier may return Customer to Utility default service, thereby terminating this Agreement.

4. PAYMENTS/INVOICES

Supplier will issue an invoice via mail or e-mail based on actual usage data provided by the Utility as soon as practicable after the end of each Monthly Billing Cycle in which service was provided. Each invoice will include Supplier charges set forth in this Agreement and payments shall be received by Supplier within twenty-one (21) Calendar Days following the issue date of each invoice, the "Due Date". Alternatively and upon mutual agreement of the Parties and approval by Utility, Supplier may issue an invoice that includes both Supplier charges set forth in this Agreement and the Utility's delivery service charges, in which case the Due Date shall be reduced to fourteen (14) days. All payments shall be made via an electronic method or check, to the account specified on each invoice. Should the Utility fail to provide the customer's usage information to Supplier within five (5) Business Days after the published meter read date, Supplier reserves the right to provide the Customer with an estimated bill, to be trued up in an invoice that follows receipt of the actual bill. Amounts not paid on or before the Due Date shall be deemed delinquent and a late payment charge equivalent to one and one-half percent (1.5%) will be assessed each month on the unpaid balance ("Interest Rate"). If Customer in good faith, disputes the correctness of any invoice rendered under this Agreement then Customer shall 1) provide written explanation of the basis of the dispute to Supplier no later than the Due Date and 2) pay the undisputed portion of the amount invoiced no later than the Due Date. If the disputed amount is determined to have been due by Supplier, it shall be paid to Supplier within five (5) Business Days of such determination, along with interest at the Interest Rate from and including the date such amount was due, but excluding the date paid. For purposes of this Agreement, Business Day shall mean any day except a Saturday, Sunday, or a Federal Reserve Bank holiday and Calendar Day shall mean every day including Saturday, Sunday and Federal Reserve Bank holidays.

Alternatively, if eligible, Customer will receive a single bill from the Utility that contains Supplier charges set forth in this Agreement and Utility charges. Customer will make payments to the Utility according to the Utility's billing rules and schedules. Failure to pay Supplier charges may result in the Account(s) being returned to the Utility's standard service and forfeiture of Customer's right to choose another retail electric service provider until past due amounts are paid. Failure to pay invoice charges may result in the Account(s) being disconnected in accordance with the Utility's business practices. If, due to Utility rules, any Account(s) become ineligible for a single bill from the Utility, at any time during contract, then Supplier will issue an invoice for all ineligible Account(s). Supplier's invoice will reflect the Power Price for Retail Power times the kWh each month for those accounts billed by supplier, and Customer will make payments to Supplier in the terms described above in Supplier billing.

If Customer is a state government entity as defined by its local government Prompt Payment Requirements Act indicated in Exhibit A, then in such event said Act shall control with regard to the calculation of payment due dates and late payment charges. All other provisions in this paragraph remain the same and are in effect.

5. CUSTOMER INFORMATION

Customer authorizes Supplier to receive current and historical energy billing and usage data from the Utility and such authorization shall remain in effect unless Customer rescinds such authorization in writing. Supplier reserves the right to cancel this Agreement in the event that Customer rescinds such authorization. Customer has the right to request from Supplier, twice within a twelve (12) month period without charge, up to twenty-four (24) months of Customer's payment history.

6. TAXES

Except for taxes on the gross income and property of Supplier, all federal, state, and municipal or other governmental subdivision taxes, assessments, fees, use taxes, sales taxes or excise taxes, or similar taxes or fees incurred by reason of Retail Power sold under this Agreement are the sole responsibility of Customer. It is understood that Supplier is responsible for all taxes applicable prior to Supplier's delivery to the Delivery Point, and Supplier agrees to hold harmless and indemnify Customer from any liability, demand or payment for same.

7. CREDIT

Should Customer's creditworthiness or financial condition deteriorate following the date of this Agreement, Supplier may request adequate financial security from Customer in a form acceptable to Supplier as determined in a commercially reasonable manner. The failure of Customer to provide adequate financial security to Supplier within ten (10) Business Days of a written request by Supplier shall be considered an Event of Default under Section 14. For purposes of this Section, creditworthiness or financial condition shall be determined by Supplier in a commercially reasonable manner, based upon but not limited to, reasonable concern over Customer's payment pattern, discovery of negative or derogatory public information, and/or based upon a review of Customer's most recently audited annual financial statements or such other documents that may be necessary to adequately determine Customer's creditworthiness (which, if available, shall be supplied by Customer upon the reasonable request of Supplier). In addition, the determination of creditworthiness or financial condition may include consideration of the market exposure assumed by Supplier relevant to the liquidation value of this Agreement under Section 14.

8. CONFIDENTIALITY

Subject to Ohio's Public Records Law, Ohio Revised Code Section 149.43, Customer and Customer's agents and Supplier and/or Supplier's agents shall treat as confidential all terms and conditions of this Agreement, including all information and documentation exchanged by the Parties

during the negotiations of this Agreement. Neither Party will disclose terms and conditions of this Agreement to any other party, except as required by law. Notwithstanding the foregoing, Supplier and/or Supplier's agents and Customer and/or Customer's agents shall be allowed to acknowledge that an Agreement for Retail Power services does exist between the Parties. At Supplier's discretion, third-party agents of Customer may be asked to execute a confidentiality agreement.

9. WARRANTY, DISCLAIMER AND LIMITATION OF LIABILITY

Supplier warrants title to all Retail Power delivered hereunder, and sells such Retail Power to Customer free from liens and adverse claims to the delivery point. **THIS IS SUPPLIER'S ONLY WARRANTY CONCERNING THE RETAIL POWER PROVIDED HEREUNDER, AND IS MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY OR OTHERWISE.** UTILITY WILL PROVIDE DELIVERY SERVICES UNDER THIS AGREEMENT; THEREFORE SUPPLIER IS NOT LIABLE FOR ANY DAMAGES RESULTING FROM FAILURE BY THE UTILITY OR RTO. SUPPLIER DOES NOT GUARANTEE UNINTERRUPTED SERVICE AND SHALL NOT BE LIABLE FOR ANY DAMAGES SUSTAINED BY CUSTOMER BY REASON OF ANY FAILURE, ALTERATION OR INTERRUPTION OF SERVICE. NEITHER PARTY SHALL BE RESPONSIBLE UNDER ANY CIRCUMSTANCES FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE, INCURRED BY THE OTHER PARTY.

10. FORCE MAJEURE

If a Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement (the "Claiming Party") and gives notice and details of the Force Majeure to the other Party as soon as practicable, then the Claiming Party shall be excused from the performance of its obligations under this Agreement (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. During the period excused by Force Majeure, the non-Claiming Party shall not be required to perform its obligations under this Agreement. "Force Majeure" shall mean an event or circumstance which prevents the Claiming Party from performing its obligations or causes delay in the Claiming Party's performance under this Agreement, which event or circumstance was not anticipated as of the date this Agreement was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence or use of good utility practice, as defined in the applicable transmission tariff, the Claiming Party is unable to overcome or avoid or cause to be avoided, such as, but not limited to, acts of God;

fire; flood; earthquake; war; riots; strikes, walkouts, lockouts and other labor disputes that affect Customer or Supplier. Force Majeure shall not be based on 1) Customer's inability to economically use the Retail Power purchased hereunder; or 2) Supplier's ability to sell the Retail Power at a price greater than the price under this Agreement.

11. CHANGE IN LAW OR REGULATORY EVENT

In the event that any change in or enactment of any rule, regulation, Utility operating procedure, tariff, ordinance, statute, or law affecting the sale or transmission, distribution, or purchase or other obligation under this Agreement (including but not limited to any administrative ruling, interpretation, or judicial decision), or any new or increased charges to maintain system reliability affects Supplier's costs to deliver Retail Power, as determined in Supplier's reasonable discretion (a "Change in Law"), Supplier shall, 1) provide written notice to Customer of the change; 2) specify the effect on price necessary to accommodate the Change in Law, and 3) state the date upon which such new pricing shall be effective, which date shall not be less than thirty (30) days from the date of the written notice and shall coincide with the next Monthly Billing Cycle invoice that follows the thirty (30) day period. Customer agrees that it shall be bound by the new pricing set forth in the written notice described in the foregoing provision.

12. ASSIGNMENT/CUSTOMER NAME CHANGE

This Agreement shall be binding on each Party's successors and permitted assigns. Neither Party shall assign this Agreement or its rights without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, 1) Supplier may assign its rights and obligations under this Agreement to an affiliate without consent of the Customer, or 2) the assigning party ("Assignor") shall be released from all liability under this Agreement if assignee agrees in writing to be bound by the terms and conditions and assumes the liability of Assignor under this Agreement. If Customer undergoes a change of legal name during any term of this Agreement, Customer is responsible for notifying the Utility and Supplier of such change in Customer's legal name (such new name, the "New Name") as soon as practicable. Customer further agrees to take any and all steps as may be required by the Utility to continue as Supplier's customer or to re-enroll with Supplier.

13. WAIVER

Except as otherwise set forth in this Agreement, failure or delay on the part of either Party to exercise any right, power, or privilege under this Agreement shall not operate as a waiver of such right, power or privilege of this Agreement.

14. EVENTS OF DEFAULT

Definition: An "Event of Default" shall mean, with respect to a defaulting party (the "Defaulting Party"), the occurrence of any of the following: (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within five (5) Business Days (as such term is defined in Section 4 above) after written notice of such failure; (b) any representation or warranty made by such

Party herein is false or misleading in any material respect when made or when deemed made or repeated; (c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive where such Party has made payments due for such failure to deliver or receive,) if such failure is not remedied within five (5) Business Days (as such term is defined in Section 4 above) after written notice by Supplier to Customer; (d) such Party (1) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (2) makes an assignment or any general arrangement for the benefit of creditors, (3) otherwise becomes bankrupt or insolvent (however evidenced), or (4) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets as part of bankruptcy proceeding or reorganization for the benefit of creditors; (e) the failure of Customer to satisfy the creditworthiness/collateral requirements under Section 7 of this Agreement; or (f) a Party consolidates or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement, or the resulting, surviving or transferee entity does not satisfy the creditworthiness requirements/collateral requirement set forth in Section 7 of this Agreement (each, an "Event of Default").

Suspension and Early Termination: If an Event of Default occurs, the non-defaulting Party ("the Non-Defaulting Party") may, at its option and in its sole discretion, 1) suspend its performance under this Agreement, or 2) terminate this Agreement ("Early Termination"), at which Early Termination, the Non-Defaulting Party shall have the right to liquidate this Agreement and to demand payment of, which the defaulting Party ("the Defaulting Party") shall pay upon invoice, a settlement amount which shall be equal to a) if Customer is the Defaulting Party, any unpaid invoices plus, the positive difference (if any) of the Power Price minus the Market Price multiplied by the Total Monthly Usage kWh in the Monthly Billing Cycles remaining in the Term or Renewal Term, or b) if Supplier is the Defaulting Party, the net result of any unpaid invoices by Customer to Supplier and, the positive difference (if any) of the Market Price minus the Power Price multiplied by the Total Monthly Usage kWh in the Monthly Billing Cycles remaining in the Term or Renewal Term. Any such calculation shall be discounted to present value, plus other costs, expenses and charges under this Agreement which the Non-Defaulting Party incurs as a result of such Early Termination, in addition to and without prejudice to any right of setoff, recoupment, combination of accounts, lien or other right to which the Non-Defaulting Party is otherwise entitled, whether by operation of law,

equity, contract or otherwise as a result of the Event of Default and early termination of this Agreement, subject to any limitations on liability as set forth in Section 9 WARRANTY, DISCLAIMER AND LIMITATION OF LIABILITY. For the purposes of this section "Market Price" shall mean the amount, as determined by the Non-Defaulting Party, that a bona fide third party would pay for the subject kWh at the then current prevailing energy prices. The non-Defaulting Party may consider, among other things, quotations from the leading dealers in the wholesale energy industry, internally developed forward market prices and other bona fide third party offers as commercially available to the Non-Defaulting Party, which will be adjusted, as necessary, for the period and differences in transmission costs, volume, and other factors, as reasonably determined by the Non-Defaulting Party.

15. MISCELLANEOUS

This Agreement constitutes the entire agreement of the parties with respect to the subject matter of this Agreement and supersedes and extinguishes any and all prior oral or written agreements between the parties concerning the subject matter of this Agreement. This Agreement may only be modified or amended through a written document signed by both parties. Except as otherwise set forth in this Agreement, failure or delay on the part of Supplier to exercise any right, power, or privilege under this Agreement shall not operate as a waiver of such right, power or privilege of this Agreement.

16. FORWARD CONTRACT/NON-UTILITY ACKNOWLEDGEMENT

The Parties agree this Agreement is construed and understood to be a "forward contract" as defined by the U.S. Bankruptcy Code. Each party agrees that, for purposes of this Agreement, the other party is not a "utility" as such term is used in Section 366 of the U.S. Bankruptcy Code, and each party waives and agrees not to assert the applicability of the provisions of such Section 366 in any bankruptcy proceeding wherein such party is a debtor.

17. RESOLUTION OF DISPUTES/ARBITRATION

If a question or controversy arises between the Parties concerning the observance or performance of any of the terms, provisions or conditions contained herein or the rights or obligations of either Party under this Agreement, such question or controversy shall in the first instance be the subject of a meeting between the Parties to negotiate a resolution of such dispute. Such meeting shall be held within fifteen (15) days of a written request by either Party. If within fifteen (15) days after that meeting the Parties have not negotiated a resolution or mutually extended the period of negotiation, each Party shall be permitted to commence with legal action.

18. EXECUTION

Customer may provide Supplier with an executed facsimile copy of the Agreement, or other form of an electronic execution of the Agreement, and in such event the Agreement is binding on the Parties upon acceptance and execution by Supplier, and shall be deemed an original.

19. CHANGES IN CONSUMPTION

Customer will provide Supplier advanced notification of any planned shut-downs or known or anticipated changes to Customer's operations that will have an impact on Supplier's ability to accurately forecast Customer's load and/or notice of any Account closings that may occur or may be expected to occur during the Term. Supplier may incorporate a request that Customer provide a periodic production or load forecast to aid in forecasting Customer's load requirements as part of the terms of this Agreement. During the Term of this Agreement, Customer may add or remove up to ten percent (10%) of contracted volume at no additional cost incurred by the Customer.

20. CUSTOMER SERVICE

For questions about your invoice or Supplier service, please contact our Customer Care Department by calling Supplier at the toll free number listed on the Notices Schedule. To report a service outage in an emergency or for any other questions, please contact your Utility directly.

ELECTRIC SERVICE AGREEMENT
EXHIBIT A – Standard Large Stable-Capacity
Issued: February 14, 2023

This offer is presented to **AUGLAIZE COUNTY** (“Customer”) by **DYNEGY ENERGY SERVICES EAST, LLC** (“Supplier”) and represents a price for Customer’s full requirement retail power (“Retail Power”) needs at the service location(s) listed in Table 2, each service location referred to as an (“Account”). Upon acceptance, this offer will become Exhibit A of Supplier’s Electric Service Agreement Terms and Conditions (“Agreement”), a copy of which is attached. By signing this Exhibit A, Customer is authorizing Supplier to enroll each Account with the Utility (“Utility”) noted in Table 1.

Table 1					
Select Term:	Quote #:	Delivery Term Begins:	Delivery Term Ends:	Power Price (/kWh):	Voluntary REC Quantity (%):
	Q-02179356	May 2023	May 2026	\$0.05794	N/A
Capacity Charge:		Pass-Thru			
Utility:		Dayton Power & Light			
Regional Transmission Organization (RTO):		PJM			
Broker Consultant (If blank, N/A):		Palmer Energy			

Power Price: Supplier will arrange for delivery of Customer’s Retail Power. The Power Price noted in Table 1 includes charges for energy, applicable Regional Transmission Operator, ancillary services and other market settlement charges, distribution and transmission energy losses, charges associated with the purchase, acquisition and delivery of renewable energy certificates (RECs) in accordance with the state-mandated Renewable Portfolio Standards (“RPS”) requirements, if applicable, the charge for additional voluntary RECs, and scheduling and load forecasting associated with the delivery of Customer’s Retail Power. **THE POWER PRICE IN TABLE 1 DOES NOT INCLUDE CHARGES FOR CAPACITY.**

Capacity Charge: Supplier will secure capacity relative to the supply of all electricity during the Term of this Agreement in accordance with the RTO business practices, policies, rules, regulations, or tariffs. Charges for capacity will appear as a separate line item on Customer’s monthly invoice and shall be billed as follows:

The monthly charge will be dependent upon 1) Customer’s then current capacity obligation or Capacity Peak Load Contribution (“PLC”) as determined by the Utility, including any applicable Utility zoning factors, 2) the Final Zonal Capacity Prices (the “Current Capacity Rate”) as determined by RTO, and 3) the number of days in the billing period.

Voluntary REC Quantity: If applicable in Table 1, the Power Price in Table 1 will include a charge associated with the Voluntary REC Quantity requested by Customer. Retail Power shall be associated with the generation of electricity from a renewable energy resource such that the percentage required, when added to Customer’s obligation under the RPS of this Agreement, shall equal the Voluntary REC Quantity (%) selected in Table 1.

The Parties agree and understand a REC is separate from the Retail Power being delivered but, nonetheless, constitutes value associated with the provision of Retail Power. It is understood and agreed that any RECs purchased and retired in accordance with the aforesaid state mandate is not the property of Customer, and Customer has no claim, interest, or right to said RECs, or any value derived therefrom.

Customer will incur additional service and delivery charges from the Utility, and Customer is solely responsible for payments of all charges related to the delivery of electricity from the Utility.

NET METERING. Customer must enroll, and be accepted in, as applicable by state law, Utility’s net metering program in order to participate in net metering with Supplier.

The validity, interpretation and performance of this Agreement shall be governed by and performed in accordance with the laws of the State of Ohio. Notwithstanding any language in this Agreement to the contrary, the electricity sold by Supplier to Customer is deemed to be “a good” for purposes of the Uniform Commercial Code of Ohio, and the parties agree that the provisions of the Uniform Commercial Code of Ohio shall apply to this Agreement.

This offer is contingent on acceptance by the Utility of the enrollment of Customer with Supplier. By signing below, you certify that 1) you are authorized on behalf of Customer to enter into this Agreement with Supplier, 2) Customer has read the Terms & Conditions of this Agreement and agrees to be bound by them, and 3) Customer authorizes Supplier to enroll the Account(s) listed in Table 2 with the Utility which will allow Supplier to provide retail electricity.

IN WITNESS WHEREOF, subject to any of the foregoing execution conditions, the Parties have executed and delivered this Agreement on the date last signed by the Parties.

DYNEGY ENERGY SERVICES EAST, LLC By: <u>Lauren Matson</u> <small>Lauren Matson (Feb 14, 2023 15:05 EST)</small> Name: <u>Lauren Matson</u> Title: <u>Manager, Third Party Sales</u> Date: <u>Feb 14, 2023</u>	AUGLAIZE COUNTY By: <u>John N. Bergman</u> Name: <u>John N. Bergman</u> Title: <u>President</u> Date: <u>2.14.2023</u> **Signatory certifies authorization to enter in to this Agreement
---	--

BILLING AND NOTICE INFORMATION	
FEIN or DUNS#: _____	
<input type="checkbox"/> Check here if you are a local government entity subject to the Ohio Prompt Payment Requirements Act as defined by ORC 126.30/OAC 126-3-01	
If applicable, see Section 4 of the Terms & Conditions for below:	
<input type="checkbox"/> Check here to receive one master invoice that includes detailed usage by Account. If blank, an individual invoice for each Account will be issued.	
<input type="checkbox"/> Check here if you want invoices mailed to the Service Location, Attn: Accounts Payable. Otherwise, please complete invoice information below.	
<u>Invoices</u> Attn: <u>Billing Contact</u> Address: _____ E-mail: _____ Phone: _____	<u>Notices</u> Attn: <u>Erica Preston, County Administrator</u> Address: <u>209 S. Blackhoof St.</u> <u>Wapakoneta, OH 45895</u> E-mail: <u>epreston@auglaizecounty.org</u> Phone: <u>419-739-6710</u>
<u>Sales Contact</u> Name: <u>Brooke Muck</u> Address: <u>312 Walnut Street, Ste 1500</u> <u>Cincinnati, OH 45202</u> E-mail: <u>Brooke.lantry@vistraenergy.com</u> Phone: <u>(513) 762-8208</u>	<u>Notices/Inquires</u> Attn: <u>Customer Care</u> Address: <u>6555 Sierra Drive</u> <u>Irving, TX75039</u> E-mail: <u>Contractlegal12@vistraenergy.com</u> Phone: <u>(800) 920-5039</u>

Upon execution and delivery to Supplier, this Agreement is binding. Please retain a copy for your records and send a signed copy to ContractLegal12@vistraenergy.com. Supplier will forward all necessary documents to the Utility.

Nadra Sherazee

ELECTRIC SERVICE AGREEMENT
ACCOUNT INFORMATION SHEET FOR
AUGLAIZE COUNTY AS OF 02/14/2023

Table 2			
Utility: Dayton Power & Light			
	Account #	Bill Group	Service Location
1	2425850683	14	305 SHABORN LN, MARYS, OH 45885
2	4118258319	3	ARROWHEAD SEWAGE PLANT, WAPAKONETA, OH 45895
3	5163269318	13	PUMP STATION, MARYS, OH 45885
4	6130281568	21	FOREST LN & RT-66 SEWAGE, BREMEN, OH 45869
5	7396379973	3	200 N MAIN ST, UNIOPOLIS, OH 45888

**ELECTRIC SERVICE AGREEMENT
GENERAL TERMS AND CONDITIONS**

This Electric Service Agreement (“Agreement”) is between Supplier and Customer and is dated and effective as of the date the Exhibit A is signed by both parties. To the extent there is a conflict in the terms, interpretation or understanding of this Agreement and Exhibit A, the terms of Exhibit A shall supersede the terms of this Agreement.

1. ELECTRIC ENERGY SERVICES

Supplier shall supply and deliver to Customer and Customer shall exclusively purchase and receive from Supplier all Retail Power as defined in Exhibit A, pursuant to the terms and conditions which are described in the attached Exhibit A and incorporated herein for all purposes. The Retail Power will be delivered to the interconnection between the transmission system of the applicable transmission provider and the Utility’s (“Utility”) distribution system (“Delivery Point”). Customer’s Utility will be responsible for delivery of Retail Power to Customer’s meter from the Delivery Point. The delivery of Retail Power over the Utility’s distribution system is subject to the terms and conditions of the Utility’s tariff relating to delivery and metering. Customer’s Utility will send Customer a notice confirming the switch to Supplier for electricity (the “Confirmation”). Customer shall provide written notice as soon as practicable of any changes to Customer’s Account and meter numbers and/or billing locations associated with Customer’s delivery services. Customer is solely responsible for payments of all charges related to the delivery of the Retail Power from the Utility whether billed to Supplier or Customer. Customer represents and warrants it is eligible to receive electric energy services from Supplier and that it has given all required notices to the supplier currently serving Customer, if applicable.

2. TERM OF AGREEMENT

After Supplier and the Utility process Customer’s enrollment request, Retail Power delivery will begin for each Account with the first available meter reading date of the month noted under “Delivery Term Begins” in Table 1 or as soon as possible thereafter, and ends with the regularly scheduled meter reading date for the month noted under “Delivery Term Ends” in Table 1 on Exhibit A (“Term”). At the end of the Term of this Agreement, Supplier will return Customer to Utility default service, unless a written amendment has been executed to renew the Term. Notwithstanding the foregoing, the Term is subject to renewal pursuant to the conditions under Section 3, Monthly Renewal.

3. MONTHLY RENEWAL

This Agreement shall automatically continue on a monthly basis (“Renewal Term”) at the rates determined by Supplier, which may vary from month to month. If Customer has not notified Supplier that Customer has elected to obtain Retail Power from another retail supplier, then Supplier may in its sole discretion place Customer on Renewal Term service or Supplier may return Customer to Utility default service, thereby terminating this Agreement.

4. PAYMENTS/INVOICES

Supplier will issue an invoice via mail or e-mail based on actual usage data provided by the Utility as soon as practicable after the end of each Monthly Billing Cycle in which service was provided. Each invoice will include Supplier charges set forth in this Agreement and payments shall be received by Supplier within twenty-one (21) Calendar Days following the issue date of each invoice, the “Due Date”. Alternatively and upon mutual agreement of the Parties and approval by Utility, Supplier may issue an invoice that includes both Supplier charges set forth in this Agreement and the Utility’s delivery service charges, in which case the Due Date shall be reduced to fourteen (14) days. All payments shall be made via an electronic method or check, to the account specified on each invoice. Should the Utility fail to provide the customer’s usage information to Supplier within five (5) Business Days after the published meter read date, Supplier reserves the right to provide the Customer with an estimated bill, to be trued up in an invoice that follows receipt of the actual bill. Amounts not paid on or before the Due Date shall be deemed delinquent and a late payment charge equivalent to one and one-half percent (1.5%) will be assessed each month on the unpaid balance (“Interest Rate”). If Customer in good faith, disputes the correctness of any invoice rendered under this Agreement then Customer shall 1) provide written explanation of the basis of the dispute to Supplier no later than the Due Date and 2) pay the undisputed portion of the amount invoiced no later than the Due Date. If the disputed amount is determined to have been due by Supplier, it shall be paid to Supplier within five (5) Business Days of such determination, along with interest at the Interest Rate from and including the date such amount was due, but excluding the date paid. For purposes of this Agreement, Business Day shall mean any day except a Saturday, Sunday, or a Federal Reserve Bank holiday and Calendar Day shall mean every day including Saturday, Sunday and Federal Reserve Bank holidays.

Alternatively, if eligible, Customer will receive a single bill from the Utility that contains Supplier charges set forth in this Agreement and Utility charges. Customer will make payments to the Utility according to the Utility’s billing rules and schedules. Failure to pay Supplier charges may result in the Account(s) being returned to the Utility’s standard service and forfeiture of Customer’s right to choose another retail electric service provider until past due amounts are paid. Failure to pay invoice charges may result in the Account(s) being disconnected in accordance with the Utility’s business practices. If, due to Utility rules, any Account(s) become ineligible for a single bill from the Utility, at any time during contract, then Supplier will issue an invoice for all ineligible Account(s). Supplier’s invoice will reflect the Power Price for Retail Power times the kWh each month for those accounts billed by supplier, and Customer will make payments to Supplier in the terms described above in Supplier billing.

If Customer is a state government entity as defined by its local government Prompt Payment Requirements Act indicated in Exhibit A, then in such event said Act shall control with regard to the calculation of payment due dates and late payment charges. All other provisions in this paragraph remain the same and are in effect.

5. CUSTOMER INFORMATION

Customer authorizes Supplier to receive current and historical energy billing and usage data from the Utility and such authorization shall remain in effect unless Customer rescinds such authorization in writing. Supplier reserves the right to cancel this Agreement in the event that Customer rescinds such authorization. Customer has the right to request from Supplier, twice within a twelve (12) month period without charge, up to twenty-four (24) months of Customer's payment history.

6. TAXES

Except for taxes on the gross income and property of Supplier, all federal, state, and municipal or other governmental subdivision taxes, assessments, fees, use taxes, sales taxes or excise taxes, or similar taxes or fees incurred by reason of Retail Power sold under this Agreement are the sole responsibility of Customer. It is understood that Supplier is responsible for all taxes applicable prior to Supplier's delivery to the Delivery Point, and Supplier agrees to hold harmless and indemnify Customer from any liability, demand or payment for same.

7. CREDIT

Should Customer's creditworthiness or financial condition deteriorate following the date of this Agreement, Supplier may request adequate financial security from Customer in a form acceptable to Supplier as determined in a commercially reasonable manner. The failure of Customer to provide adequate financial security to Supplier within ten (10) Business Days of a written request by Supplier shall be considered an Event of Default under Section 14. For purposes of this Section, creditworthiness or financial condition shall be determined by Supplier in a commercially reasonable manner, based upon but not limited to, reasonable concern over Customer's payment pattern, discovery of negative or derogatory public information, and/or based upon a review of Customer's most recently audited annual financial statements or such other documents that may be necessary to adequately determine Customer's creditworthiness (which, if available, shall be supplied by Customer upon the reasonable request of Supplier). In addition, the determination of creditworthiness or financial condition may include consideration of the market exposure assumed by Supplier relevant to the liquidation value of this Agreement under Section 14.

8. CONFIDENTIALITY

Subject to Ohio's Public Records Law, Ohio Revised Code Section 149.43, Customer and Customer's agents and Supplier and/or Supplier's agents shall treat as confidential all terms and conditions of this Agreement, including all information and documentation exchanged by the Parties

during the negotiations of this Agreement. Neither Party will disclose terms and conditions of this Agreement to any other party, except as required by law. Notwithstanding the foregoing, Supplier and/or Supplier's agents and Customer and/or Customer's agents shall be allowed to acknowledge that an Agreement for Retail Power services does exist between the Parties. At Supplier's discretion, third-party agents of Customer may be asked to execute a confidentiality agreement.

9. WARRANTY, DISCLAIMER AND LIMITATION OF LIABILITY

Supplier warrants title to all Retail Power delivered hereunder, and sells such Retail Power to Customer free from liens and adverse claims to the delivery point. **THIS IS SUPPLIER'S ONLY WARRANTY CONCERNING THE RETAIL POWER PROVIDED HEREUNDER, AND IS MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY OR OTHERWISE.** UTILITY WILL PROVIDE DELIVERY SERVICES UNDER THIS AGREEMENT; THEREFORE SUPPLIER IS NOT LIABLE FOR ANY DAMAGES RESULTING FROM FAILURE BY THE UTILITY OR RTO. SUPPLIER DOES NOT GUARANTEE UNINTERRUPTED SERVICE AND SHALL NOT BE LIABLE FOR ANY DAMAGES SUSTAINED BY CUSTOMER BY REASON OF ANY FAILURE, ALTERATION OR INTERRUPTION OF SERVICE. NEITHER PARTY SHALL BE RESPONSIBLE UNDER ANY CIRCUMSTANCES FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE, INCURRED BY THE OTHER PARTY.

10. FORCE MAJEURE

If a Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement (the "Claiming Party") and gives notice and details of the Force Majeure to the other Party as soon as practicable, then the Claiming Party shall be excused from the performance of its obligations under this Agreement (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. During the period excused by Force Majeure, the non-Claiming Party shall not be required to perform its obligations under this Agreement. "Force Majeure" shall mean an event or circumstance which prevents the Claiming Party from performing its obligations or causes delay in the Claiming Party's performance under this Agreement, which event or circumstance was not anticipated as of the date this Agreement was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence or use of good utility practice, as defined in the applicable transmission tariff, the Claiming Party is unable to overcome or avoid or cause to be avoided, such as, but not limited to, acts of God;

fire; flood; earthquake; war; riots; strikes, walkouts, lockouts and other labor disputes that affect Customer or Supplier. Force Majeure shall not be based on 1) Customer's inability to economically use the Retail Power purchased hereunder; or 2) Supplier's ability to sell the Retail Power at a price greater than the price under this Agreement.

11. CHANGE IN LAW OR REGULATORY EVENT

In the event that any change in or enactment of any rule, regulation, Utility operating procedure, tariff, ordinance, statute, or law affecting the sale or transmission, distribution, or purchase or other obligation under this Agreement (including but not limited to any administrative ruling, interpretation, or judicial decision), or any new or increased charges to maintain system reliability affects Supplier's costs to deliver Retail Power, as determined in Supplier's reasonable discretion (a "Change in Law"), Supplier shall, 1) provide written notice to Customer of the change; 2) specify the effect on price necessary to accommodate the Change in Law, and 3) state the date upon which such new pricing shall be effective, which date shall not be less than thirty (30) days from the date of the written notice and shall coincide with the next Monthly Billing Cycle invoice that follows the thirty (30) day period. Customer agrees that it shall be bound by the new pricing set forth in the written notice described in the foregoing provision.

12. ASSIGNMENT/CUSTOMER NAME CHANGE

This Agreement shall be binding on each Party's successors and permitted assigns. Neither Party shall assign this Agreement or its rights without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, 1) Supplier may assign its rights and obligations under this Agreement to an affiliate without consent of the Customer, or 2) the assigning party ("Assignor") shall be released from all liability under this Agreement if assignee agrees in writing to be bound by the terms and conditions and assumes the liability of Assignor under this Agreement. If Customer undergoes a change of legal name during any term of this Agreement, Customer is responsible for notifying the Utility and Supplier of such change in Customer's legal name (such new name, the "New Name") as soon as practicable. Customer further agrees to take any and all steps as may be required by the Utility to continue as Supplier's customer or to re-enroll with Supplier.

13. WAIVER

Except as otherwise set forth in this Agreement, failure or delay on the part of either Party to exercise any right, power, or privilege under this Agreement shall not operate as a waiver of such right, power or privilege of this Agreement.

14. EVENTS OF DEFAULT

Definition: An "Event of Default" shall mean, with respect to a defaulting party (the "Defaulting Party"), the occurrence of any of the following: (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within five (5) Business Days (as such term is defined in Section 4 above) after written notice of such failure; (b) any representation or warranty made by such

Party herein is false or misleading in any material respect when made or when deemed made or repeated; (c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive where such Party has made payments due for such failure to deliver or receive,) if such failure is not remedied within five (5) Business Days (as such term is defined in Section 4 above) after written notice by Supplier to Customer; (d) such Party (1) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (2) makes an assignment or any general arrangement for the benefit of creditors, (3) otherwise becomes bankrupt or insolvent (however evidenced), or (4) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets as part of bankruptcy proceeding or reorganization for the benefit of creditors; (e) the failure of Customer to satisfy the creditworthiness/collateral requirements under Section 7 of this Agreement; or (f) a Party consolidates or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement, or the resulting, surviving or transferee entity does not satisfy the creditworthiness requirements/collateral requirement set forth in Section 7 of this Agreement (each, an "Event of Default").

Suspension and Early Termination: If an Event of Default occurs, the non-defaulting Party ("the Non-Defaulting Party") may, at its option and in its sole discretion, 1) suspend its performance under this Agreement, or 2) terminate this Agreement ("Early Termination"), at which Early Termination, the Non-Defaulting Party shall have the right to liquidate this Agreement and to demand payment of, which the defaulting Party ("the Defaulting Party") shall pay upon invoice, a settlement amount which shall be equal to a) if Customer is the Defaulting Party, any unpaid invoices plus, the positive difference (if any) of the Power Price minus the Market Price multiplied by the Total Monthly Usage kWh in the Monthly Billing Cycles remaining in the Term or Renewal Term, or b) if Supplier is the Defaulting Party, the net result of any unpaid invoices by Customer to Supplier and, the positive difference (if any) of the Market Price minus the Power Price multiplied by the Total Monthly Usage kWh in the Monthly Billing Cycles remaining in the Term or Renewal Term. Any such calculation shall be discounted to present value, plus other costs, expenses and charges under this Agreement which the Non-Defaulting Party incurs as a result of such Early Termination, in addition to and without prejudice to any right of setoff, recoupment, combination of accounts, lien or other right to which the Non-Defaulting Party is otherwise entitled, whether by operation of law,

equity, contract or otherwise as a result of the Event of Default and early termination of this Agreement, subject to any limitations on liability as set forth in Section 9 WARRANTY, DISCLAIMER AND LIMITATION OF LIABILITY. For the purposes of this section "Market Price" shall mean the amount, as determined by the Non-Defaulting Party, that a bona fide third party would pay for the subject kWh at the then current prevailing energy prices. The non-Defaulting Party may consider, among other things, quotations from the leading dealers in the wholesale energy industry, internally developed forward market prices and other bona fide third party offers as commercially available to the Non-Defaulting Party, which will be adjusted, as necessary, for the period and differences in transmission costs, volume, and other factors, as reasonably determined by the Non-Defaulting Party.

15. MISCELLANEOUS

This Agreement constitutes the entire agreement of the parties with respect to the subject matter of this Agreement and supersedes and extinguishes any and all prior oral or written agreements between the parties concerning the subject matter of this Agreement. This Agreement may only be modified or amended through a written document signed by both parties. Except as otherwise set forth in this Agreement, failure or delay on the part of Supplier to exercise any right, power, or privilege under this Agreement shall not operate as a waiver of such right, power or privilege of this Agreement.

16. FORWARD CONTRACT/NON-UTILITY ACKNOWLEDGEMENT

The Parties agree this Agreement is construed and understood to be a "forward contract" as defined by the U.S. Bankruptcy Code. Each party agrees that, for purposes of this Agreement, the other party is not a "utility" as such term is used in Section 366 of the U.S. Bankruptcy Code, and each party waives and agrees not to assert the applicability of the provisions of such Section 366 in any bankruptcy proceeding wherein such party is a debtor.

17. RESOLUTION OF DISPUTES/ARBITRATION

If a question or controversy arises between the Parties concerning the observance or performance of any of the terms, provisions or conditions contained herein or the rights or obligations of either Party under this Agreement, such question or controversy shall in the first instance be the subject of a meeting between the Parties to negotiate a resolution of such dispute. Such meeting shall be held within fifteen (15) days of a written request by either Party. If within fifteen (15) days after that meeting the Parties have not negotiated a resolution or mutually extended the period of negotiation, each Party shall be permitted to commence with legal action.

18. EXECUTION

Customer may provide Supplier with an executed facsimile copy of the Agreement, or other form of an electronic execution of the Agreement, and in such event the Agreement is binding on the Parties upon acceptance and execution by Supplier, and shall be deemed an original.

19. CHANGES IN CONSUMPTION

Customer will provide Supplier advanced notification of any planned shut-downs or known or anticipated changes to Customer's operations that will have an impact on Supplier's ability to accurately forecast Customer's load and/or notice of any Account closings that may occur or may be expected to occur during the Term. Supplier may incorporate a request that Customer provide a periodic production or load forecast to aid in forecasting Customer's load requirements as part of the terms of this Agreement. During the Term of this Agreement, Customer may add or remove up to ten percent (10%) of contracted volume at no additional cost incurred by the Customer.

20. CUSTOMER SERVICE

For questions about your invoice or Supplier service, please contact our Customer Care Department by calling Supplier at the toll free number listed on the Notices Schedule. To report a service outage in an emergency or for any other questions, please contact your Utility directly.