

**CITY OF SOUTH LEBANON, OHIO  
RESOLUTION NO. 2022-50**

**A RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO ENTER INTO  
AN ENERGY PURCHASE AGREEMENT WITH AEP ENERGY, INC. RELATIVE TO  
SUPPLYING NATURAL GAS TO MUNICIPAL FACILITIES, AND DECLARING  
AN EMERGENCY**

**WHEREAS**, upon review of the City's utility bills, it was determined that cost savings could be achieved by seeking proposals from other natural gas suppliers; and,

**WHEREAS**, Energy Alliances, Inc., an energy brokerage company in Cincinnati, solicited proposals for natural gas from multiple suppliers for the City's buildings and facilities; and

**WHEREAS**, AEP Energy, Inc. provided the lowest price which is significantly lower than the City's current rate and City staff recommends the three-year term; and,

**WHEREAS**, AEP Energy, Inc. requires the execution of a purchase agreement to guarantee rates for natural gas; and,

**WHEREAS**, immediate action is required in order to secure natural gas rates due to volatility in the natural gas market, and such action is necessary in order to preserve the public peace, health, safety or welfare of the City.

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of South Lebanon, Ohio, at least two-thirds of all members elected thereto concurring:

**Section 1.** That the Council authorizes the City Administrator to enter into an energy purchase agreement with AEP Energy, Inc. for natural gas for South Lebanon municipal facilities, as attached hereto.


**Section 2.** That the recitals contained within the Whereas Clauses set forth above are incorporated by reference herein.

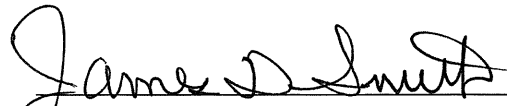
**Section 3.** That this Resolution is hereby declared to be an emergency measure in accordance with Ohio Rev. Code § 731.30 for the immediate preservation of the public peace, health, safety and general welfare; and, this Resolution shall be in full force and effective immediately upon its passage.

**Resolution No. 2022-50 – Natural Gas Agreement**  
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**Section 4.** That it is found and determined that all formal actions of the Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of Council in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Adopted this 1<sup>st</sup> day of December, 2022.

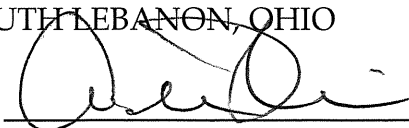
Attest:   
Petrina D. Williams, Fiscal Officer/Clerk

  
James D. Smith, Mayor

Rules Suspended: <u>12</u> / <u>1</u> / 2022 (if applicable)	Effective Date <u>12</u> / <u>1</u> / 2022
Vote - <u>6</u> Yeas ___ Nays	
First Reading - / / 2022	Effective Date - / / 2022
Second Reading - / / 2022	
Third Reading - / / 2022	
Vote - ___ Yeas ___ Nays	

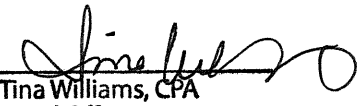
Prepared by and approved as to form:

ANDREW P. MEIER  
CITY SOLICITOR  
SOUTH LEBANON, OHIO

By:   
Date: 12/1/2022

**CERTIFICATE OF POSTING**

I, Tina Williams, CPA, Fiscal Officer of the City of South Lebanon, Ohio do hereby certify I posted a true and accurate copy of this ordinance or resolution, summary of ordinance or resolution, or statement, order, proclamation, notice or report, at five public places within the City as authorized by Section 731.25 of the Ohio Revised Code and Ordinance 98-08 of the City of South Lebanon, Ohio

12/1/22  
Date  
  
Tina Williams, CPA  
Fiscal Officer  
City of South Lebanon, Ohio



### Natural Gas Customer Pricing



Customer Information				
<b>Company:</b>	City of South Lebanon		<b>Rep:</b>	Tim Abbott
<b>Contact Name:</b>			<b>Phone:</b>	-
<b>Billing Address:</b>	South Lebanon	OH	<b>Mobile:</b>	513 535-1008
			<b>E-mail:</b>	<a href="mailto:tabbott@energyalliances.com">tabbott@energyalliances.com</a>
Account Information				
<b># of Accounts:</b>	5		<b>Supplier:</b>	Duke Energy
<b>Utility:</b>	Duke Energy OH		<b>Current Rate:</b>	\$1.0087
<b>Annual CCF:</b>	6,743		<b>Start Date:</b>	December-22
Supplier Bids				
<b>Supplier</b>	<b>12M</b>	<b>24M</b>	<b>36M</b>	<b>48M</b>
AEP Energy	\$0.0829	\$0.7490	\$0.7490	
My Choice Energy	\$0.8540	\$0.8490	\$0.7940	
Santanna Energy	\$0.8840	\$0.8840	\$0.8640	
Energy Harbor	\$0.9150	\$0.8620	\$0.8360	
Savings				
<b>Est. Annual Savings:</b>	\$1,043.34	\$1,077.06	\$1,447.92	
<b>Savings %:</b>	15.34%	15.83%	21.29%	

All prices are indicative of current market rates and subject to refresh prior to execution and may be based on a weighted average so actual contracted rates may vary. Current tariff rates are assumed for the proposed term; actual tariff rates may fluctuate with approved energy riders established via regulatory process. This is intended for informational purposes only and does not represent a guarantee of future savings.



Energy Purchase Agreement – Natural Gas Commodity Sales
(Matrix (OH.NG) v.08.01.22)

This Energy Purchase Agreement – Natural Gas Commodity Sales, which comprises the below General Terms and Conditions (the "GTC") and Schedule 1 hereto, dated and effective as of November 22, 2022 (collectively, this "Agreement"), is entered into by and between AEP Energy, Inc. ("AEP Energy") and the designated customer set forth below in the signature block of this Agreement ("Customer" or "you") (each of AEP Energy and Customer referred to individually as a "Party" and collectively as the "Parties") and governs the purchase and sale of Retail Energy (as hereinafter defined) between the Parties for Customer's account(s) specified on Schedule 1 hereto (each, a "Service Location").

Date"); provided, however, that the Commencement Date cannot be fewer than three (3) calendar days following the date hereof. The Parties agree that the NGDC determines when Customer will be switched to AEP Energy for its Retail Energy supply, and that such switch will occur in accordance with the NGDC's rules and practices regarding such switching. AEP Energy is not liable for any lost savings or lost opportunity as a result of any delay in the Commencement Date. The initial term of this Agreement will continue for 36 months from the Commencement Date (the "Initial Term" and including any Holdover Term or Renewal Term, the "Term"), unless sooner terminated hereunder.

General Terms and Conditions

I. PURCHASE AND SALE OF RETAIL ENERGY

During the relevant Term (as hereinafter defined) and unless excused by a Force Majeure, AEP Energy shall sell to Customer the commodity portion of its retail natural gas supply requirements at each Service Location, and Customer shall exclusively purchase from AEP Energy and take delivery of, all of its retail natural gas supply requirements for each such Service Location (the "Retail Energy"). The Retail Energy will be provided to Customer's relevant natural gas distribution company (each as specified on Schedule 1 hereto, the "NGDC") interconnection point (each, a "Delivery Point"). The NGDC is responsible for delivery of the Retail Energy from the Delivery Point to any Service Location, reading Customer's meter, and responding to leaks and emergencies. Delivery and metering of the Retail Energy is subject to the terms and conditions of the NGDC. Customer designates AEP Energy as an authorized recipient of Customer's account, billing, and historical and ongoing consumption information and consents to the disclosure by the NGDC to AEP Energy of certain information about Customer and each Service Location, including: account number, meter number, meter read data, rate class, billing and payment information, account name, service address, billing address, and telephone number. Customer is solely responsible for payment of all charges or costs related to the NGDC's services provided to Customer including delivery or distribution of the Retail Energy to Customer, switching, telecommunications, or meter or meter reading related costs, whether billed by the NGDC to AEP Energy or Customer.

III. PRICING

During the Initial Term, the price payable for Retail Energy will be:

Table with 2 columns: Retail Energy Price (per Ccf) and \$ .749

The Retail Energy Price listed above is inclusive of any and all applicable bypassable costs, charges, and fees for transportation and storage but is exclusive of any and all applicable taxes, NGDC delivery service charges and other non-bypassable NGDC costs, charges, and fees. The Parties acknowledge and agree that the Retail Energy Price reflects, among other factors, Customer's expected usage and NGDC-specific pricing under such Attachment. The Retail Energy Price is determined by AEP Energy using Customer's actual and estimated historical and forecasted consumption data, which is considered representative of each Service Location's anticipated Retail Energy requirements for the Term.

Customer represents and agrees that each Service Location served by AEP Energy under this Agreement is an eligible account on a commercial rate code and eligible for the NGDC's retail natural gas choice program in the NGDC's service territory, and that Customer is not an existing AEP Energy Retail Natural Gas supply customer. AEP Energy may at any time reject or terminate this Agreement and Retail Natural Gas service to any Customer or Service Location that does not meet the preceding criteria, or which consumes more than 250,000 Ccf per year, and return Customer to the NGDC (or previous AEP Energy product, if applicable) with no penalty to AEP Energy. AEP Energy may reject or terminate this Agreement if Customer is not current on its NGDC charges, unless Customer has entered into a plan with its NGDC to discharge any arrearages owed to the NGDC.

IV. BILLING AND PAYMENT

A. General Billing and Payment Terms: AEP Energy or the relevant NGDC shall provide monthly invoices related to the sold Retail Energy, based on the relevant NGDC's meter read cycle, in accordance with the billing method specified to Customer, which may be (1) as a single invoice through utility/NGDC consolidated billing (UCB); (2) through supplier consolidated billing (SCB), should such SCB billing method become available; or (3) as separate invoices from AEP Energy for supply-related charges and the relevant NGDC for all other charges (Dual Bill). However, the relevant NGDC may convert or alter the invoicing method from time to time as it so requires. AEP Energy will send SCB or Dual Bill invoices via the first available method (listed in order of priority): (1) the billing email address stated in the "Customer Information" table at the end of the GTC (unless Customer requests paper bills) or later specified by Customer in writing (including by email), (2) the billing mailing address stated in such table or later specified by Customer in writing (including by email), or (3) the physical address of any Service Location. AEP Energy may itemize or summarize invoices according to the various cost components related to the Retail Energy and shall provide all further reasonable billing detail to Customer upon request. AEP Energy has the right to estimate invoices in cases where actual billing determinants are unavailable. When an estimated invoice is issued, AEP Energy shall subsequently reconcile the estimated invoice and the actual Retail Energy usage and post any debit or credit amount to Customer's account. Customer shall pay all amounts due according to the instructions on the relevant invoice by payment in check or wire transfer of immediately available funds or via Automated Clearinghouse. AEP Energy must receive such payment no later than the close of business on the business day following fourteen (14) calendar days from the date of the invoice containing the relevant charges. In the event Customer is billed by the NGDC, payment is due to the NGDC as specified in the NGDC bill. Late payments with respect to any amounts due

II. TERM OF AGREEMENT

AEP Energy shall use commercially reasonable efforts to begin supplying Retail Energy to Customer under this Agreement (a) upon the later of (1) Customer's available December 2022 enrollment date and (2) the first available enrollment date, as determined by the NGDC, after the date hereof, and (b) after AEP Energy receives confirmation that the NGDC has accepted the delivery service request (the "Commencement

and payable to AEP Energy (including any outstanding late payment charges and Settlement Amount(s) (as hereinafter defined), collectively, "Account Charges") will incur interest charges at a rate of interest equal to one and one-half percent (1.5%) per month or the maximum allowed under applicable law, whichever is less, compounded monthly, and continue to accrue until all such amounts are paid in full. In any instance where any payment is declined by the issuing institution, Customer will be assessed a charge of forty-five dollars (\$45) or the maximum allowed under applicable law (whichever is less) per declined payment. Customer is liable for all costs incurred by AEP Energy, including attorneys' fees, in connection with the collection and enforcement of AEP Energy's rights to past due Account Charges.

**B. Invoice Revisions:** Customer may, in good faith, reasonably dispute in writing the correctness of any invoice rendered under this Agreement with respect to amounts due to AEP Energy by (1) delivering to AEP Energy notice of the dispute, which must include the amount of, and basis for, the disputed amount and supporting documentation (the "Notice of Dispute") and (2) making payment of the undisputed portion of the invoice within the normal terms set forth in Section IV(A). During the forty-five (45) calendar days following AEP Energy's receipt of any Notice of Dispute (the "Dispute Period"), the Parties must expeditiously and in good faith negotiate to resolve any disputed invoice. If the Parties are unable to mutually resolve in writing such dispute during the Dispute Period, either Party may exercise any remedy available to it at law or in equity pursuant to this Agreement. Customer must dispute charges strictly in accordance with the terms of this paragraph or it will be deemed to have waived its rights to dispute such charges. AEP Energy may at any time adjust and re-issue any previously-issued invoice to reflect Customer's actual consumption and charges during the billing period covered therein, irrespective of whether Customer had previously paid the previously-issued invoice.

#### V. EXTENSION AND CONCLUSION OF TERM

Not less than thirty (30) calendar days prior to the then-current expiration date of the relevant Term, AEP Energy may provide written notice ("Renewal Notice") to Customer of AEP Energy's intent to extend such Term ("Renewal Term"). Any Renewal Notice will contain AEP Energy's proposed changes, amendments, deletions, or additions to the terms and conditions of this Agreement, including with regard to fees, charges, and the duration of the Renewal Term ("Renewal Amendments"). Customer has five (5) business days to reject in writing the Renewal Notice. Customer's failure to reject any Renewal Notice in writing within five (5) business days shall result in all Renewal Amendments, including the Renewal Term, being deemed to have been irrevocably and unconditionally agreed to by Customer.

Following expiration of the Term, AEP Energy may continue to supply Retail Energy under this Agreement to any Service Location on a month-to-month holdover basis (each, a "Holdover Term"). The price payable during any Holdover Term will be a variable price (per Ccf or Mcf, as determined by the NGDC), as determined by AEP Energy and based on the applicable settlement price of the NYMEX Henry Hub Natural Gas futures contracts for delivery during the relevant period (as published by CME Group Inc.), plus (1) an adder of up to \$0.500 per Ccf, which adder is inclusive of any and all applicable bypassable costs, charges, and fees for transportation and storage, and (2) any other related penalties, fees, charges, expenses, and other costs to serve incurred by AEP Energy of every kind and nature and taxes will be passed through in a commercially reasonable manner to Customer with no additional mark-up. Either Party may at any time terminate the Holdover Term and return any Service Location to the NGDC without penalty or prejudice.

In the event of expiration or termination as provided in this Agreement, all further obligations of the Parties under this Agreement will immediately terminate without further liability of the Parties, except for the payment by the owing Party of any sums due and owing to the other Party related to performance delivered prior to termination, whether or not then invoiced, including any further Account Charges. Any other obligation hereunder which by its nature survives, will survive the termination or expiration of this

Agreement, including the Parties' respective obligations under the "Title, Indemnification, Warranty, and Limitation of Liability," and "Governing Law, Venue, and Waiver of Jury Trial" sections, and will apply whether in contract, equity, tort, or otherwise. Such expiration or termination will, with respect to each Service Location, be effective on the next switching date available from the NGDC. If the NGDC's retail customer choice program is terminated or materially changed in any manner prior to the end of the Term, AEP Energy may terminate this Agreement without penalty to either Party.

#### VI. CREDIT

Each Party represents that there is no bankruptcy, insolvency, reorganization, receivership, or other similar proceeding pending or contemplated by it or, to its knowledge, threatened against it. Customer agrees to provide commercially reasonable credit information upon request. Should the creditworthiness or financial responsibility of Customer become unsatisfactory to AEP Energy at any time during the Term, as determined by AEP Energy in its commercially reasonable discretion, AEP Energy may require (1) additional credit information, including financial statements in accordance with the previous sentence, and (2) that Customer deliver to AEP Energy, as security, adequate assurance of performance in such form and amount as AEP Energy may in its discretion require, including a parental guaranty or letter of credit from a creditworthy entity in each case acceptable to AEP Energy, deposit (consistent with O.A.C. 4901:1-29-07), or prepayment ("Adequate Assurance of Performance"). Upon receipt of such requirement from AEP Energy, Customer has five (5) business days to provide the requested information and/or Adequate Assurance of Performance to AEP Energy.

#### VII. EVENTS OF DEFAULT

**A. Definition:** An "Event of Default" means, with respect to the Party to which the following applies (the "Defaulting Party"), the occurrence of any of the following: (1) the failure of such Party to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) business days after written notice and demand for payment; (2) any representation or warranty made by such Party herein being false or misleading in any material respect when made or ceasing to remain true (and which if capable of being excused or remedied is not remedied within fifteen (15) calendar days after written notice) during any Term; (3) the failure of such Party to perform any material covenant or obligation set forth in this Agreement, including any unexcused failure to deliver or take any quantity of Retail Energy under this Agreement, and such failure is not excused pursuant to Force Majeure (as hereinafter defined) or remedied within fifteen (15) calendar days after written notice; (4) either Party, or the entity providing Adequate Assurance of Performance, disaffirms, disclaims, repudiates, or rejects, in whole or in part, or challenges the validity of, this Agreement or any Adequate Assurance of Performance issued in connection with this Agreement; (5) AEP Energy's receipt of notice from Customer (other than as provided in Section VIII of this Agreement) or any NGDC of Customer's effective or intended termination of supply with AEP Energy at any Service Location prior to the end of the Term; (6) Customer (A) 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 proceeding commenced against it, (B) makes an assignment or any general arrangement for the benefit of creditors, (C) otherwise becomes bankrupt or insolvent (however evidenced), or (D) has a liquidator, administrator, receiver, trustee, conservator, or similar official appointed with respect to it or any portion of its property or assets, regardless of whether such appointment is made in connection with a bankruptcy proceeding or reorganization for the benefit of creditors; (7) the occurrence of any event of default with respect to Customer under any other agreement between the Parties, including any other agreement for, or in support of, the purchase and sale of retail energy; or (8) the failure of Customer to deliver requested information and/or to deliver, and/or cause to be delivered, Adequate Assurance of Performance or

otherwise satisfy the creditworthiness requirements under the "Credit" section.

**B. Suspension and Early Termination:** If an Event of Default occurs, the Party that is not the Defaulting Party (the "Non-Defaulting Party") may, at its option and in its sole discretion, take any one or more of the following actions: (1) suspend its performance under this Agreement; (2) terminate this Agreement by sending notice to the Defaulting Party; or (3) exercise such other rights and remedies as are available to it at law or in equity pursuant to this Agreement. In the event of such suspension or termination, Customer shall pay to AEP Energy all amounts owed under this Agreement, including amounts owed for delivered performance, whether or not then invoiced. In the event of such an early termination, (i) AEP Energy shall return the relevant Service Location(s) to the NGDC effective on the next switching date available from such NGDC and (ii) the Defaulting Party shall also pay to the Non-Defaulting Party any damages incurred by the Non-Defaulting Party related thereto, including liquidated damages related to termination of the purchase and sale of the Retail Energy (such liquidated damages, the "Settlement Amount") calculated as follows:

- For purposes of calculating any Settlement Amount, Customer's "Historical Annual Usage" is equal to the number of cubic feet (Ccf) used by Customer at the terminated Service Location(s) in the preceding twelve (12) months.

- If Customer's Historical Annual Usage is less than or equal to five thousand (5,000) Ccf, the Settlement Amount is equal to the number of months remaining in the Term multiplied by twenty-five dollars (\$25). For example, if this Agreement is terminated two (2) months early, two (2) months x twenty-five dollars (\$25) per month = fifty dollar (\$50) Settlement Amount.

- If Customer's Historical Annual Usage is greater than five thousand (5,000) Ccf but less than or equal to fifty thousand (50,000) Ccf, the Settlement Amount is equal to the number of months remaining in the Term multiplied by one hundred dollars (\$100). For example, if this Agreement is terminated two (2) months early, two (2) months x one hundred dollars (\$100) per month = two hundred dollar (\$200) Settlement Amount.

- If Customer's Historical Annual Usage is greater than fifty thousand (50,000) Ccf, the Settlement Amount is equal to (a) Contract Value *minus* Wholesale Market Value (if Customer is the Defaulting Party) or (b) Retail Market Value *minus* Contract Value (if AEP Energy is the Defaulting Party). For the avoidance of doubt, no Settlement Amount is due to a Party under this Agreement if such Party is the Defaulting Party.

As used herein, the following terms have the following meanings:

"Contract Value" means the amount that would have been owed by Customer related to the Remaining Performance (as hereinafter defined).

"Retail Market Value" means what Customer is actually paying, so long as no more than is commercially reasonable, related to the Remaining Performance.

"Remaining Performance" means the amount of Retail Energy expected to be supplied by AEP Energy during the remainder of the relevant Term had the Event of Default not occurred.

"Wholesale Market Value" means the value that AEP Energy accrues in reallocating, terminating, or liquidating any portion of any natural gas supply, gas storage, or gas transportation contract, hedge, or related trading position or arrangement held by or for AEP Energy, or in avoiding any cost, in the case of any cost component (e.g., storage contract or basis hedge), related to the Remaining Performance. For the avoidance of doubt, AEP Energy is not required to enter into a replacement transaction(s) in order to determine the Wholesale Market Value.

The Non-Defaulting Party shall calculate the Settlement Amount in its commercially reasonable discretion, including, where applicable, its estimates of forward market prices. Such Settlement Amount calculation will be made available to the Defaulting Party upon written request. The Settlement Amount will be paid by the Defaulting Party to the Non-Defaulting Party within five (5) business days after notice of the Settlement Amount due and owing to the Non-Defaulting Party. The Parties acknowledge and agree

that the Settlement Amount constitutes a reasonable approximation of harm or loss, is a fair and reasonable method of estimating damages that a Party will suffer or incur in such a case in the light of the anticipated or actual harm caused by the termination or suspension, the difficulties of proof of loss, and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy, and is not a penalty or punitive in any respect but is reasonable compensation for a Party's damages.

#### VIII. SERVICE LOCATION CLOSURE

Customer must provide AEP Energy at least thirty (30) calendar days' prior written notice prior to terminating supply to Customer at any Service Location, including as a result of ceasing operations at such Service Location, closing any Service Location, or the sale of any Service Location to an unrelated third party. Customer is responsible for payment of damages incurred by AEP Energy, if any, relating to or arising from any such termination of supply. Such damages will be calculated in the same manner as the Settlement Amount as if Customer is the Defaulting Party. If Customer does not pay AEP Energy for related damages owed in accordance with this section, AEP Energy reserves the right to adjust, in its commercially reasonable discretion, the pricing for any remaining Service Location(s) based on the remaining estimated usage to recoup such damages. The Parties' obligations under this Agreement will continue in full force and effect for any remaining Service Location(s).

#### IX. RELATIONSHIP OF PARTIES

The relationship between the Parties is that of independent contractors for the sale and purchase of Retail Energy. Nothing in this Agreement establishes a joint venture, fiduciary relationship, partnership, other joint undertaking, or any other relationship or imposes a trust or partnership duty, obligation, or liability on either Party. Customer acknowledges that, other than those representations contained in this Agreement, it has not relied on any representation, communication (written or oral), or omission by AEP Energy in entering into this Agreement, including in evaluating the advantages or disadvantages of any specific product or service or predictions about savings, future energy prices, or any other matter. Customer acknowledges that the NGDC's standard offer service rates generally change from time to time and therefore AEP Energy does not provide any guarantee of savings in comparison to the NGDC's standard offer service rates. If Customer received price comparison(s) in connection with this Agreement, by entry into this Agreement, Customer understands and agrees that it has been informed, prior to its entry into this Agreement, that no guarantee of savings is being provided. If a property management company or agent ("Agent") is acting and executing on behalf of the owner of any Service Location (the "Owner"), Agent represents and warrants that it has the full and complete authority to execute and bind the Owner to this Agreement and that the term of such authorization from the Owner does not expire or terminate prior to the end of the Term. Customer agrees and acknowledges that any agent, broker, consultant, or other third party involved in any solicitation or transaction hereunder ("ABC") serves as an agent of Customer during such sales process and may receive a commission paid by AEP Energy out of payments from Customer hereunder.

#### X. ASSIGNMENT

This Agreement will bind and inure to the benefit of each Party's successors and permitted assigns. No Party may assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent must not be unreasonably withheld, conditioned, or delayed; provided, however, that without such consent, but with prior notice, either Party may assign its rights and obligations under this Agreement to an entity in control of, controlled by, or under common control with such Party (an "Affiliate") or transfer this Agreement to any successor acquiring all or substantially all of the assets of such Party, or with respect to AEP Energy all or substantially all of the retail natural gas supply business of AEP Energy, so long as (1) with respect to Customer, such Affiliate or successor, as applicable, (A) is reasonably determined in writing by AEP Energy to be of similar or greater credit quality than Customer and able to perform Customer's obligations

hereunder and (B) delivers such enforceability assurances as AEP Energy reasonably requests and (2) with respect to AEP Energy, such Affiliate or successor is contractually obligated to continue to supply Customer at the Retail Energy pricing specified herein. Any assignment or transfer of this Agreement in contravention of this section is null and void and will constitute an Event of Default at the election of the non-breaching Party.

#### **XI. FORCE MAJEURE**

Neither Party will be required to perform or fulfill its obligations (other than such Party's obligation to make payment(s) then due or becoming due with respect to delivered performance prior to a Force Majeure) under this Agreement so long as and to the extent a Party (the "Claiming Party") is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and such Claiming Party gives notice to the other Party, which must include the reasonably sufficient basis for such Force Majeure, as soon as practicable after it has actual, or reasonably should have had constructive, knowledge of such Force Majeure. "Force Majeure" means an event or circumstance that (A) prevents the Claiming Party from performing its obligations; (B) cannot be reasonably overcome or avoided; (C) is beyond the Claiming Party's reasonable control; and (D) does not result from the Claiming Party's fault, negligence, or particular economic circumstances, including, to the extent satisfying the foregoing requirements, acts of God; landslides; lightning; fire; storms or storm warnings; flood; weather related events affecting an entire geographic region, such as low temperatures that cause freezing or failure of any gas transportation system, wells, or lines of pipe; terrorism; sabotage; breach by the NGDC; natural gas pipeline, supply or storage loss, interruption, curtailment, or restriction; occurrence of a force majeure event affecting, or service curtailment by, any natural gas commodity supplier or transporter related to the Retail Energy; an Operational Flow Order (OFO); earthquake; war; riot or other civil unrest; or requirements, actions, or failure to act on the part of governmental authorities, including actions such as necessity for compliance with any court order, law, statute, ordinance, regulation, or policy having the effect of law promulgated by a governmental authority having jurisdiction. Notwithstanding the foregoing in this section, in no event will Force Majeure be, or will the applicable Party's performance be excused, based on economic hardship of either Party, including a Party's ability to purchase or sell, as applicable, Retail Energy at a price more advantageous than the price hereunder, or with respect to Customer, the loss or failure of Customer's facilities, the loss of business by Customer, or Customer's inability or inability economically to use Retail Energy purchased hereunder. No Claiming Party will receive the benefit of this provision to the extent such Party fails to take all commercially reasonable acts, short of litigation, to remedy the Force Majeure or fails to resume performance of its obligations with all reasonable dispatch following resolution of the Force Majeure. If the Force Majeure continues for a period more than thirty (30) calendar days, then the non-Claiming Party may terminate this Agreement by giving the other Party notice of the early termination, without such termination constituting an Event of Default.

#### **XII. REGULATORY EVENT**

If any new, or any change in any existing, law, statute, rule, regulation, order, decision (including any judgment or judicial decision), decree, tariff, charge, or rate class, or process, practice, procedure, protocol, design, or structure, or other event, including any change in any formula rate calculation or charge, or any change in any interpretation or application of any of the foregoing, by any governmental authority, court, NGDC, other transporter, or other regulated service provider materially alters to the detriment of AEP Energy its costs to perform or its economic returns under this Agreement (a "Regulatory Event"), AEP Energy may pass through such cost or economic effect to Customer to eliminate the impact of such Regulatory Event, and all other terms and conditions of this Agreement will remain in full force and effect. For the purposes of a Regulatory Event, "material" means a change that results in an increase in the relevant Retail Energy pricing hereunder for the remainder of the relevant Term by \$0.05 per Ccf or more.

#### **XIII. FORWARD CONTRACT**

The Parties agree that (A) this Agreement constitutes a "forward contract" within the meaning of Section 101(25) of Title 11 of the United States Code (as amended, the "Bankruptcy Code"), and for all purposes under the Bankruptcy Code; (B) AEP Energy constitutes a "forward contract merchant" within the meaning of Section 101(26) of the Bankruptcy Code and for all purposes under the Bankruptcy Code; (C) AEP Energy is acting as a "forward contract merchant" in connection with this Agreement; and (D) all payments made by Customer to AEP Energy hereunder are "settlement payments" within the meaning of Section 101(51A) of the Bankruptcy Code and for purposes of all forward contract provisions in the Bankruptcy Code.

#### **XIV. CONFIDENTIALITY**

Both Parties agree to keep confidential the terms and conditions of this Agreement and each proposed or consummated transaction hereunder, including price, product specifications, and quantity information, except for any required disclosure to any regulatory body, governmental entity, or agency having jurisdiction, any disclosure reasonably necessary to enforce the terms of this Agreement, or any disclosure to any accountant, attorney, or other professional acting on behalf of or representing the receiving Party, any ABC, or any affiliated or third-party agent, advisor, or contractor implementing this Agreement or the purposes hereof.

#### **XV. TITLE, INDEMNIFICATION, WARRANTY, AND LIMITATION OF LIABILITY**

Title to and control and possession of the Retail Energy will pass from AEP Energy to Customer at the Delivery Point. AEP Energy shall have and assume responsibility for any injury, loss, expense, penalty, liability, damage, or loss (each, a "Liability") with respect to, and shall defend, indemnify, and hold harmless Customer against all claims and Liabilities, including attorneys' fees (collectively, "Claims"), arising from, the Retail Energy prior to its delivery to the relevant Delivery Point, and Customer shall have and assume responsibility for any Liability with respect to, and shall defend, indemnify, and hold harmless AEP Energy against all Claims arising from, the Retail Energy at and after the relevant Delivery Point, in each case, with respect to each Party, except to the extent such Claims and/or Liabilities arise out of the indemnified Party's negligence or breach of this Agreement. Customer acknowledges that AEP Energy (A) is not a producer of natural gas, including the Retail Energy; (B) directly or indirectly procures the Retail Energy from third-party producers or resellers; and (C) does not own or operate transportation or distribution systems through which the Retail Energy is delivered to Customer and therefore agrees that AEP Energy is not liable for any damages associated with any failure or delay of such transportation or distribution systems. AEP Energy warrants good title to all Retail Energy delivered hereunder at the Delivery Point free and clear of any liens or other encumbrances or title defects. THIS IS AEP ENERGY'S ONLY WARRANTY CONCERNING THE RETAIL ENERGY PROVIDED HEREUNDER AND IS MADE EXPRESSLY IN LIEU OF (AND AEP ENERGY EXPRESSLY DISCLAIMS) ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, OR OTHERWISE. EXCEPT AS PART OF ANY PAYMENT OF THE SETTLEMENT AMOUNT OR OTHERWISE AS EXPRESSLY PERMITTED IN ACCORDANCE WITH THE TERMS HEREOF, NEITHER PARTY WILL BE LIABLE UNDER ANY CIRCUMSTANCES FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, LOST PROFITS, OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT OR OTHERWISE. IN ADDITION, AEP ENERGY'S AGGREGATE LIABILITY UNDER THIS AGREEMENT IS LIMITED TO AN AMOUNT EQUAL TO THE TOTAL OF THE AEP ENERGY CHARGES CONTAINED IN THE FIRST TWO INVOICES REFLECTING THE ENERGY COST SPECIFIC TO CUSTOMER'S METER READS AS THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE EXPRESSLY WAIVED. THE PARTIES AGREE THAT ARTICLE 2 OF THE

UNIFORM COMMERCIAL CODE ("UCC") APPLIES TO THE TERMS OF THIS TRANSACTION AS IF THE RETAIL ENERGY SOLD HEREUNDER WERE A "GOOD," NOTWITHSTANDING WHETHER THE RETAIL ENERGY SOLD HEREUNDER MEETS THE DEFINITION OF A "GOOD" UNDER THE UCC OF THE GOVERNING LAW.

#### **XVI. NOTICES**

Any notice served hereunder from AEP Energy to Customer, must be in writing and sent to any of Customer's notice or billing or email addresses as specified in writing by Customer from time to time, or to the address of any Service Location. Any notice served hereunder from Customer to AEP Energy must be in writing and delivered to AEP Energy, Inc., Attn: Legal Department, 225 West Wacker Drive, Suite 600, Chicago, IL 60606 or such other address specified in writing by AEP Energy from time to time as the notice address. Absent proof of actual receipt, notice will be deemed to have been received (A) if by email, on the close of the business day on which it was transmitted, (B) if by overnight mail or courier, on the next business day after it was sent, or (C) if by first class mail, on the fifth (5<sup>th</sup>) business day after mailing, each as established by business records or any other commercially reasonable evidence.

Customer is responsible for communicating to AEP Energy each change to Customer's billing, notice, or email address, ownership, business name, telephone number, contact person, or meter number(s) for each Service Location as soon as practicable and in no event later than fifteen (15) calendar days after such change takes effect. Customer affirms its agreement that AEP Energy and entities calling on AEP Energy's behalf may make calls to the number(s) Customer has provided, or will provide during the Term, regarding Customer's account(s), including about amounts due. By providing AEP Energy Customer's email address, Customer agrees to receive notices electronically, where permitted under applicable law.

**AEP Energy Contact Information:** AEP Energy's (A) mailing address is 225 West Wacker Drive, Suite 600, Chicago, IL 60606; (B) website address is [AEPenergy.com](http://AEPenergy.com); and (C) toll-free telephone number is 866-258-3782 (Mon. - Fri.: 8 a.m. - 7 p.m. (EPT)).

#### **XVII. GOVERNING LAW, VENUE, AND WAIVER OF JURY TRIAL**

This Agreement, with respect to any Service Location, is governed by, and construed and enforced exclusively in accordance with, the laws of the state where such Service Location is located, without regard to its choice of law provisions. Each Party expressly waives its rights as a consumer under any law granting consumers special rights and protections. Any action suit, or proceeding directly or indirectly arising out of, or in connection with, this Agreement (each, an "Action") must be litigated exclusively in any federal court, if it has jurisdiction over the matter, or any state court, if there is no federal jurisdiction, located within the state where any Service Location that is a subject of such Action is located, in the plaintiff Party's sole discretion, and the Parties expressly consent and irrevocably submit to the jurisdiction of said courts for purpose of any such Actions and covenant not to sue in any other court. The Parties agree not to raise, and waive, any objections or defenses based upon venue or forum non conveniens. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY SUCH ACTION.

Any Action must be brought in the plaintiff or claimant Party's individual capacity and not as a plaintiff, class member, or representative class member in any purported class action, collective action, or representative action or proceeding. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT TO ASSERT ANY CLAIMS AGAINST THE OTHER PARTY AS A REPRESENTATIVE OR MEMBER IN ANY CLASS ACTION, COLLECTIVE ACTION, OR REPRESENTATIVE ACTION OR PROCEEDING. TO THE EXTENT EITHER PARTY IS SO PERMITTED TO PROCEED: (A) THE PREVAILING PARTY IS NOT ENTITLED TO

RECOVER ATTORNEYS' FEES OR COSTS ASSOCIATED WITH SUCH ACTION; AND (B) THE PARTY WHO INITIATES OR PARTICIPATES AS A NAMED REPRESENTATIVE OF ANY PURPORTED CLASS MUST NOT SUBMIT A CLAIM OR OTHERWISE PARTICIPATE IN ANY RECOVERY SECURED THROUGH SUCH ACTION. Nothing in this Agreement shall impair Customer's right to make an informal or a formal complaint to the applicable state commission.

#### **XVIII. SEVERABILITY AND WAIVER**

If any provision in this Agreement is determined or rendered void, unlawful, or otherwise unenforceable for any reason whatsoever, (A) the remaining provisions will remain in force and not otherwise be affected, and (B) such provision will be deemed amended to the extent necessary to make it valid while still giving effect to the agreement of the Parties. The rights and remedies of the Parties under this Agreement and at law are cumulative. No waiver of any breach of this Agreement will operate as a waiver of any other or subsequent breach. No delay, failure, or single or partial exercise by AEP Energy in enforcing any part of this Agreement will be deemed a waiver of or will prejudice any of its rights or remedies hereunder.

#### **XIX. ENTIRE AGREEMENT, AMENDMENT, AND MISCELLANEOUS**

This Agreement sets forth all understandings between the Parties regarding the subject matter hereof, and any prior contracts, understandings, and representations, oral or written, relating to such subject matter are merged into, and superseded by, this Agreement. No waiver, alteration, amendment, or modification of any of the provisions of this Agreement will be binding unless in writing and signed by a duly authorized representative of each Party. No failure to enforce will be deemed to constitute an amendment hereto. The words "include" and "including" are deemed to be followed by the phrase "without limitation." The word "or" is not exclusive. The headings and subheadings contained in this Agreement are used solely for convenience, do not constitute a part of this Agreement, and must not be used to construe or interpret the provisions of this Agreement. This Agreement must be considered for all purposes as prepared through the joint efforts of the Parties, simply construed according to its fair meaning, and not construed against a Party as a result of the manner in which this Agreement was negotiated, prepared, drafted, or executed. This Agreement is effective only upon Customer's execution and AEP Energy's subsequent execution or performance of this Agreement.

#### **XX. REGULATORY DISCLOSURE(S)**

AEP Energy is a competitive retail natural gas service provider and an affiliate of Ohio Power Company (AEP Ohio). AEP Energy is not soliciting on behalf of and is not an agent of AEP Ohio. Customer has the right to request from AEP Energy twice within a twelve (12) month period up to twenty-four (24) months of Customer's payment history without charge. Customer may be charged switching fees by the NGDC.

#### **XXI. COUNTERPARTS AND ELECTRONIC SIGNATURES**

This Agreement may be executed in one or more counterparts, each of which will be considered an original, all of which together will constitute one and the same agreement, and any of which may be executed and evidenced by signature transmitted by email or other electronic means as though it were an original. Each Party agrees that any Party may execute this Agreement using electronic means, including the use of electronic signatures whether digital or encrypted, by the Parties, which the Parties agree are intended to authenticate such writing and will have the full force and legal effect as if the electronic signatures were traditional hand-written signatures. Each Party agrees not to contest, or assert any defense to, the validity, admissibility, or enforceability of either Party's electronic signature on the grounds that such signature is in electronic form or was executed or evidenced by email or other electronic means or an electronic record was used in its formation.



**FOR OHIO SMALL COMMERCIAL CUSTOMERS ONLY**

If as of the date you sign this Agreement, your account is used for non-residential end use consumption with less than 5,000 Ccf per year at a single location or you have three (3) locations or less, you qualify as a "Small Commercial Customer." As a Small Commercial Customer, the following terms apply to you in addition to, or (as applicable and specified) instead of and will replace, the General Terms and Conditions set forth above in this Agreement:

- You may, without penalty, rescind this Agreement by calling your relevant natural gas distribution company, which shall be specified on Schedule 1 ("NGDC") or by written notice to the NGDC within seven (7) business days following the postmark date on the NGDC's confirmation notice to you of your switching service to AEP Energy. The following are toll-free or local telephone number(s) for each applicable NGDC that you can call to rescind the enrollment:

Columbia Gas of Ohio: 1-800-344-4077

Dominion Energy: 1-800-362-7557

Vectren: 1-800-227-1376

Duke Energy: 1-800-774-1202

- You acknowledge that if you switch your account back to the NGDC, you may or may not be served under the same rates, terms, and conditions that apply to other customers served by the NGDC.
- The second sentence of the second paragraph of Section I (Purchase and Sale of Retail Energy) does not apply to you and shall be replaced with the following:

AEP Energy reserves the right to reject or not enroll any Service Location that does not meet the preceding criteria, or which consumes more than 5,000 Ccf per year, and return Customer to the previous AEP Energy product, if applicable, with no penalty to AEP Energy.

- The first and second paragraphs of Section V (Term, Renewal, and Effect of Termination) do not apply to you and shall be replaced with the following:

Not less than forty-five (45) calendar days prior to the then-current expiration date of the Term) and consistent with the applicable PUCO rules, AEP Energy may provide written notice ("Renewal Notice") to Customer of AEP Energy's intent to extend the relevant Term ("Renewal Term") along with AEP Energy's proposed changes, amendments, deletions, or additions to the terms and conditions of this Agreement, including with regard to fees, charges, and the Renewal Term ("Renewal Amendments"). A notice of expiration will be sent between forty-five (45) and ninety (90) calendar days prior to the then-current expiration date of the Term if no Renewal Notice is sent and **this Agreement will automatically renew on a month-to-month holdover basis ("Holdover Term") at a variable price (per Ccf or Mcf, as determined by the NGDC), as determined by AEP Energy and based on the applicable settlement price of the NYMEX Henry Hub Natural Gas futures contracts for delivery during the relevant period (as published by CME Group Inc.), plus an adder of up to \$0.500 per Ccf, which adder is inclusive of any and all applicable bypassable costs, charges, and fees for transportation and storage, and any and all other costs to serve incurred by AEP Energy of every kind and nature and taxes shall be passed through in a commercially reasonable manner to Customer with no additional mark-up and AEP Energy can renew this Agreement without your affirmative consent even with this change in the rate. Either Party may at any time terminate the Holdover Term and return any Service Location to the NGDC without penalty or prejudice.**

For any Renewal Notice that contains Renewal Amendments with a Renewal Term longer than month-to-month and a Settlement Amount greater than zero dollars (\$0), but less than twenty-five dollars (\$25), then AEP Energy also will provide a second renewal notice either in writing, by telephone, by notice in your bill, or by email at least thirty-five (35) calendar days prior to the end of the initial Term, consistent with 4901:1-29-10(G)(3) of the Ohio Administrative Code, and **this Agreement shall be automatically renewed for the renewal term with the revised terms and conditions by AEP Energy without your affirmative consent even with this change in the rate and other terms and conditions**, unless you notify AEP Energy in writing rejecting the renewal term on such terms and conditions no later than five (5) business days after receipt of such Renewal Notice or such second renewal notice, as applicable.

Any Renewal Notice that contains Renewal Amendments with a Renewal Term longer than month-to-month and a Settlement Amount of twenty-five dollars (\$25) or greater will require your affirmative consent to any changes pursuant to 4901:1-29-10 of the Ohio Administrative Code, and if such consent is not provided, you will automatically revert to the NGDC unless you choose another CRES provider.

- The last sentence of Section V (Term, Renewal, and Effect of Termination) does not apply to you as a Small Commercial Customer and shall be deleted.
- If, due to a change in market conditions, AEP Energy wishes to lower the Retail Energy Price charged to Customer under this Agreement, AEP Energy may do so without consent provided there are no other changes to the terms and conditions to this contract.
- If you move your account to a location either outside of AEP Energy's service territory or the NGDC's service area, or within the service territory of an incumbent natural gas company that does not permit portability of this Agreement, you may automatically terminate this Agreement without any obligation to pay any Settlement Amount (as defined above). Section VIII (Service Location Closure) does not apply to you as a Small Commercial Customer
- You represent that you have not failed to discharge or enter into a plan to discharge, all existing arrearages owed to or being billed by the NGDC. Your failure to pay NGDC charges may result in your account being disconnected in accordance with the NGDC tariff and this Agreement with AEP Energy may be automatically terminated, leading to early termination penalties.
- The Events of Default contained in Section VII(A) do not apply to you as a Small Commercial Customer. An Event of Default (as defined above)

will only occur when: (1) In the case where AEP Energy bills for its own services, should Customer fail to pay the bill or fail to meet any agreed-upon payment arrangement (at which time, this Agreement may be terminated by AEP Energy on fourteen days' notice and early termination penalties will apply); and (2) in the case where the NGDC bills for the commodity service of AEP Energy, should Customer fail to pay the bill or fail to meet any agreed-upon payment arrangement (at which time, Customer's service may be terminated in accordance with the incumbent NGDC's tariffs and this Agreement will automatically terminate, leading to early termination penalties). This Agreement automatically terminates if AEP Energy returns your Service Location(s) to the NGDC's applicable tariff service; provided that AEP Energy is permitted to terminate the Agreement under the terms and conditions of this Agreement.

- **Consumer Complaints:** If your complaint is not resolved after you have called AEP Energy and/or your NGDC, or for general utility information, as a Small Commercial Customer, you may contact the Public Utilities Commission of Ohio for assistance at 1-800-686-7826 (toll free) or for TTY at 1-800-686-1570 (toll free) from 8:00 a.m. to 5:00 p.m. (EPT) weekdays, or at [www.PUCO.ohio.gov](http://www.PUCO.ohio.gov). Hearing or speech impaired customers may contact the PUCO via 7-1-1 (Ohio relay service).
- Your account number(s) or any of your customer information will not be released without your express written consent except in accordance with rules 4901:1-28-04 and 4901:1-29-09 of the Ohio Administrative Code.
- If you voluntarily return to the NGDC after your supply from AEP Energy, you may be charged a price other than the NGDC's applicable tariff rate.

Customer Information		
	<b>Billing Information:</b> <input type="checkbox"/> Please send paper invoices.	<b>Contract Notice Information:</b> <input type="checkbox"/> Same as Billing Information
Address 1:	10 North High Street, South Lebanon, OH 45056	
Address 2:		
Attn:	Jerry Haddix, Administrator	
Telephone:	513-494-2296	
Email:	jhaddix@southlebanonohio.org	

Each of the Parties has caused this Agreement to be executed by a duly authorized representative, who, by applying his or her signature, represents and warrants full right, power, and authority to sign on behalf of the relevant Party named below, effective as of the date first written above.

AEP Energy, Inc.

Customer: City of South Lebanon

Signature: \_\_\_\_\_  
 Name: Scott D. Slisher  
 Title: SVP Customer Solutions

Signature: \_\_\_\_\_  
 Name: Jerry Haddix  
 Title: Administrator

