

Master Service Agreement

This Government Aggregation Natural Gas Master Service Agreement with its exhibits and attachments hereto (collectively, the "Agreement") is entered into as of March 21, 2024 ("Effective Date") between **Archer Energy, LLC** ("Vendor") and the Orange Township Board of Trustees, Delaware County, Ohio ("Board"), who may individually be referred to as "Party" or collectively as "Parties." Capitalized terms not otherwise defined in this Agreement, shall have the respective meanings ascribed to them in the "Definitions" section of this Agreement.

WHEREAS, Vendor is certified by the Public Utilities Commission of Ohio ("Commission") as a Competitive Retail Natural Gas Service ("CRNGS") Provider to sell competitive retail natural gas and related services to customers and Governmental Aggregation programs in the State of Ohio.

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

WHEREAS, Vendor desires to provide Retail Natural Gas Services to inhabitants of the Township, the Board acting as a Governmental Aggregator for the provision of CRNGS-under authority conferred by, *inter alia*, Section 4929.26 and 4929.27, Ohio Revised Code.

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

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

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

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

WHEREAS, the Parties have established herein the terms and conditions governing Vendor's provision of the Retail Natural Gas Services for the Governmental Aggregation.

NOW, THEREFORE, the Parties, intending to be bound hereby and in consideration of the mutual promises and covenants herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agree as follows:

Definitions:

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

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

"Aggregation Group" means the collection of Aggregation Members.

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

"Bankruptcy Event" means either Party:

- (a) Is dissolved (other than pursuant to a consolidation, amalgamation or merger), becomes insolvent, is unable to pay its debts or admits in writing its inability generally to pay its debts as they become due, or makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (b) Institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation;
- (c) Seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or substantially all its assets, or has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets;
- (d) In the case of the Township, there is appointed or designated any entity such as a board to monitor, review, oversee, recommend or declare a financial emergency or similar state of financial distress;
- (e) Causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (a) to (d) inclusive; or

- (f) Takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

“**Board**” means the Orange Township Board of Trustees, Delaware County, Ohio or its designee.

“**Btu**” means British thermal unit.

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

“**Commission**” means the Public Utilities Commission of Ohio.

“**Confidential Information**” means any and all data and information of whatever kind or nature (whether written, electronic or oral), which is disclosed by one Party (the “Disclosing Party”) to the other Party (the “Receiving Party”) regarding itself, its business, and/or the business of its Affiliates. Information that is disclosed by one Party to the other which the Disclosing Party believes is confidential and is clearly designated as confidential shall be deemed Protected Information, only if such claim of confidentiality is conspicuously disclosed in writing or other tangible form that is marked “confidential” at the time of transmittal or if disclosed verbally is described as confidential or proprietary at the time of the conversation and the Disclosing Party also supplements the verbal transmittal with a transmittal in writing or other tangible form that is conspicuously marked “confidential” or “proprietary” within five (5) days of the verbal disclosure. Each Party shall have the right to correct any inadvertent failure to designate information as Confidential Information by providing the other Party with timely written notification of the error, and the designated information shall be treated as Confidential Information from the time a Party receives the written notification. Confidential Information does not include information:

- (a) In the public domain at the time of disclosure;
- (b) That after disclosure passes into the public domain, except by a wrongful act of the Receiving Party;
- (c) Disclosed to the Receiving Party by a third party not under an obligation of confidentiality;
- (d) Already in the Receiving Party’s possession prior to disclosure by the Disclosing Party;
- (e) Subject to disclosure pursuant to Revised Code Section 149.43 or any other applicable law.

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

“Customer Data” includes, without limitation: the customer's name, billing address, meter address and usage information, account number, rate classification, and similar information that is applicable and necessary for Vendor to provide its Retail Natural Gas Services hereunder.

“Eligible Customer” means a customer that is eligible to participate in a governmental aggregation in accordance with Sections 4929.26 and 4929.27, Ohio Revised Code and Rule 4901:1-28-01(C), O.A.C, or as otherwise agreed to by the parties.

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

“Governmental Aggregator” means an eligible governmental entity certified by the Commission to act as a governmental aggregator for the provision of competitive retail natural gas service under authority conferred by, *inter alia*, Section 4929.26 and 4929.27, Revised Code.

“Governmental Aggregation” means a program certified by the Commission for the provision of competitive retail natural gas service under authority conferred by, *inter alia*, Section 4929.26 and 4929.27, Revised Code.

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

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

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

“NYMEX Settlement Price” means, a monthly NYMEX closing for the first of the following month for natural gas delivery. NYMEX closes three (3) business days before the end of the month.

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

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

“Township” means Orange Township, Delaware County, Ohio.

Article One. Provision of Service

1.1 Obligations and Duties

- (a) Authority to Purchase: The Board, as Governmental Aggregator, is or will be authorized to arrange from Vendor the Retail Natural Gas Services for and on behalf of the Aggregation Members of the Aggregation Group. Vendor shall be the sole and exclusive provider of Retail Natural Gas Services for those Aggregation Members of the Aggregation Group.
- (b) Governmental Aggregator. The Board shall obtain and maintain a certificate from the Commission to perform the functions of the Governmental Aggregator. Vendor will provide the Board with all necessary data that is reasonably available to Vendor to assist the Board with filings or any other information required by the Commission.
- (c) Vendor. Vendor shall have obtained and shall maintain all necessary certifications from the Commission and Board to provide the Retail Natural Gas Services.
- (d) Opt-Out Administration. Vendor, with the reasonable cooperation and approval of the Board and its Consultant, will be responsible for administering the initial and ongoing "opt-out" and "opt-in" procedures, as applicable, to eligible customers. Vendor shall pay the costs associated with securing the pertinent customer list from the Local Utility and will scrub the list with geocoding software to ensure that only eligible customers within the Township's borders are included. Additionally, Vendor shall pay the costs associated with printing and mailing the "opt-out" notices as required pursuant to this Agreement. The Board, Consultant, and Vendor shall cooperate in the developing, review, approval, printing, posting, and issuance of all opt-out correspondence to assure that the opt-out notices with the agreed upon pricing, terms, and procedures can be sent out by Vendor to the eligible customers as set forth in (f) below. The Parties shall cooperate in the development and implementation of efforts, as mutually agreed upon, to promote the Aggregation Program to encourage customers to participate in the same by "opt-out" and "opt-in". Unless mutually agreed upon otherwise, Refresh Opt Outs shall occur at least semi-annually and shall provide to newly Eligible Customers the opportunity to take advantage of the Program. Such Refresh Opt Outs will occur at times mutually agreed upon by the Parties. All Refresh Opt Outs shall be conducted in the same manner as the initial opt out.
- (e) After the initial opt-out period and each Refresh Opt Out, Vendor shall provide the Consultant with the initial account list for all eligible residential and small commercial customers who have been enrolled in the Aggregation Program. Furthermore, Vendor shall provide a list of the account holders who have initially opted out of the program. Both lists will be electronically transmitted to Consultant as separate data files in a text-based, comma-delimited format (.csv) or excel file. At a minimum, the files should contain the following: Account Number, Account Name, Premise Address Line 1, Premise Address Line 2, Premise Address Line 3, Premise Address City, Premise Address State, Premise Address Zip Code.

(f) Opt-Out Activities. Over the initial term of this Agreement, Vendor shall send to eligible customers a notice by regular mail. The notice shall be an "opt-out" mailer to afford such customers the opportunity to participate in the Aggregation Program. This opt-out mailer shall include all information necessary to satisfy the disclosure of all items listed in OAC 4901:1-28-03(B). Vendor, the Board, and Consultant shall have the right to review and approve such summary information prior to mailing. In the event a fixed price option is established, an additional notice will be mailed to all Eligible Customers describing the terms and conditions of the fixed price, consistent with the Commissions' rules and regulations. All communications with customers shall comply with applicable rules and regulations.

(g) Review and Approval of Communications and Press Releases to Eligible Customers and Aggregation Members. The Parties share a common desire to generate accurate information regarding the Aggregation Program and the arrangements contemplated by this Agreement. The Parties will have the right to review and approve in advance (i) any press releases issued by the other Party regarding arrangements of this Agreement; and (ii) any promotional information intended for general distribution or communication issued by either Party, including bill inserts and mailers intended to be sent or delivered to eligible customers and Aggregation Members. Each party will timely review such promotional information and press releases submitted for approval, and will not unreasonably withhold or delay approval of the same. If there is an objection, the Parties shall reasonably cooperate with each other to resolve the issue as expeditiously as possible. Notwithstanding the foregoing, each Party, without any other Party's prior approval, shall have the right (i) to issue press releases regarding its own business affairs and otherwise, including a general description of its role under this Agreement, and (ii) to describe in other public messages, the number of, but not any other information relating to, customers participating in the Aggregation Group and this Agreement generally.

1.2 Firm Natural Gas Supply. Vendor will provide sufficient firm natural gas supply to the Delivery Point of the Local Utility, as defined in Section 1.3 hereof, to serve the requirements of the Aggregation Group. If Vendor has arranged for firm transportation service for the delivery to the Delivery Point of the Local Utility, the Parties acknowledge that any failure or interruption after the Local Utility's Delivery Point, including any failure or interruption in distribution service to the Aggregation Group, is solely the responsibility of the Local Utility and Vendor shall not be responsible for any such failure or interruption, including any losses or costs to the Township or the Aggregation Group as the result of such interruption by the Local Utility.

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

- 1.4 Responsibility for Delivery Costs. Vendor will be responsible for obtaining or providing firm interstate pipeline transportation service up to the Delivery Point, and shall be responsible for all costs, liabilities, taxes, losses and charges of any kind to the Delivery Point. The Local Utility shall provide the natural gas distribution service from the Delivery Point to the meters of the Aggregation Members. Responsibility for all costs, liabilities, taxes, losses and charges of any kind after the Delivery Point is governed by the Local Utility's distribution tariff. Governmental Aggregation fall under Columbia Gas of Ohio Customer Choice programs rules and regulations.
- 1.5 Board as a Governmental Aggregator and Consultant. The Board as a Governmental Aggregator, the Township, and its Consultant shall have no financial responsibility whatsoever with respect to its obligations under this Agreement, except with respect to its actions associated with obtaining and maintaining its status as a Governmental Aggregator. Customers take service pursuant to Columbia Gas of Ohio's Customer Choice Program.
- 1.6 Other Assistance. Vendor will endeavor to assist the Board and/or Township with respect to its actions as Governmental Aggregator hereunder, and with such other matters as the Parties may mutually agree to.

Article Two. Customer & Usage Information

- 2.1 Customer Data and Load Forecast Information. The Board hereby authorizes Vendor to obtain from the Local Utility all applicable Customer Data and Historical Load information regarding the consumption characteristics of the Aggregation Group (collectively, the "Load Forecast Information") when available and necessary. The Board and its Consultant will assist Vendor in obtaining any Load Forecast Information including, but not limited to, planned or unplanned reductions or increases in the natural gas consumption of the Aggregation Group. Upon request by Vendor, the Board shall provide to the Local Utility the authorizations and/or approvals necessary for Vendor to obtain the Load Forecast Information.
- 2.2 Release of Customer Information. The Board will cooperate with Vendor and provide appropriate authorization and documentation to enable the Local Utility to release to Vendor the applicable and necessary Load Forecast Information and Customer Data from the Local Utility, including for customers moving into or within the Township's corporate limits as they are as of the date of this Agreement or as they may change from time to time during the term hereof. Vendor shall use all such information solely in connection with its service to the Natural Gas Governmental Aggregation.
- 2.3 Addition of "Opt-in" customers. Within the Township geographic boundaries, customers served by CRNGS suppliers and other customers not receiving an "Opt-out Notice" may join or "opt-in" to the Aggregation Group only in accordance with the provisions of paragraph 2.4 below.

2.4 Addition of Aggregation Members. Customers that become part of the Aggregation Group after completion of the "Opt-Out Period" will be accepted by Vendor at the Aggregation Contract Price. Customers that leave the Aggregation Group at any time and desire to re-join the Aggregation Group may, during the term of this Agreement, be accepted by Vendor and served at the aggregation price. Such acceptance or re-acceptance excludes any and all existing Vendor customers and any and all General Transportation customers within the Township.

Aggregation Members that move from one location to another within the Township's boundary, and who notify Vendor of such move and provide to Vendor all information required to effectuate continuing service, will retain their participant status at their then-existing price. If the customer moves out of the Township's corporate limits, all obligations, except for the customer's obligation to pay all amounts owed, shall cease as between that customer, Vendor, and the Board, effective with the customer's termination of service with the Local Utility relative to its participation in the Governmental Aggregation.

Consumers that opt-out of or otherwise leave the Aggregation Group will default to the appropriate Local Utility's Standard Service Offer or other appropriate service.

Article Three. Operations

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

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

3.3 Start Date. The "Start Date" for service to each Aggregation Member shall be the first meter-read date on or after **June 1, 2022**.

3.4 End Date. On May 31, 2024 or upon the conclusion or termination of this Agreement, whichever happens first, the end date for service to each Aggregation Member shall be the next immediate metering date after the effective date of such conclusion or termination subject to the Local Utility's procedures. Opt-out by individual Aggregation Members during the term of this Agreement will be permitted at least every two (2) years from the establishment of the initial aggregation service, in accordance with the provisions of OAC 4901:1-28-04(B) and R.C. § 4929.26(D).

Article Four. Prices and Fees

4.1 Price. Vendor shall charge the rates for service provided to Aggregation Members based on the pricing terms and conditions as set forth in **Exhibit A** hereto.

4.2 Vendor agrees to execute a Consultant Fee Agreement and pay a Consultant fee on a monthly basis for the Term of the Agreement as set forth in the Consultant Fee Agreement. The Consultant Fee Agreement shall include an administrative fee and educational expense component. The Consultant Fee Agreement shall include payment terms to Consultant on a monthly basis as set forth in **Exhibit A** to this Agreement. Nothing in this Agreement shall be interpreted or construed as creating any contractual relationship whatsoever between Vendor and Consultant.

4.3 Switching Fee Reimbursement. Vendor shall be responsible for the payment of any customer-switching fee or other fees imposed by the Local Utility as a result of the transfer of customers to Vendor or from Vendor.

4.4 This Agreement doesn't require the expenditure of any (\$0.00) Township moneys or funds.

Article Five. Billing

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

Article Six. Contingencies

6.1 Contingencies.

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

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

license, fee or assessment (other than such charges based on net income or net worth), or material increase in such charges, or application of such charges, enacted and effective after the Effective Date.

- (b) Notice, Negotiation, and Early Termination. Upon the occurrence of a Regulatory Event, the adversely affected Party shall within ten (10) days give notice to the other Party that such event has occurred. Within thirty (30) days, or such other period as the Parties may agree to in writing, each Party will enter into good faith negotiations with the other Party to amend or replace this Agreement. In the case of a Regulatory Event, the Parties shall attempt to amend this Agreement so that the adversely affected Party is restored as nearly as possible to the economic position it would have been in but for the occurrence of the Regulatory Event. In either case, if the Parties are unable, within thirty (30) days of initiating negotiations, or such other period as the Parties may agree to in writing, to agree upon a replacement agreement or an amendment to the Agreement, the adversely affected Party shall have the right, upon subsequent additional thirty (30) days prior written notice, to terminate and close out its obligations under the Agreement pursuant to the terms of Section 10.1 hereof.

Article Seven. Force Majeure

7.1 Force Majeure. If either party is unable to perform its obligations in whole or in part due to an event of Force Majeure as defined herein, then the obligations of the affected party shall be suspended to the extent made necessary by such event. The term "Force Majeure" means any cause not within the control of the party claiming relief, including, but not limited to, flood, earthquake, storm, drought, fire, pestilence, lightning, hurricanes, washouts, landslides and other natural catastrophes and acts of God; acts of the public enemies, epidemics, riots, civil disturbance or disobedience, sabotage, terrorist acts, wars or blockades; or the failure of the LDC or Interstate Pipeline to receive, transport, or deliver, or otherwise perform, unless due to the failure of the party claiming Force Majeure to perform such party's obligations hereunder; Any such event of Force Majeure shall, so far as possible, be remedied with all reasonable dispatch. None of the following shall be deemed a Force Majeure event: (a) financial distress of either party; (b) the inability of either party to make a profit or avoid a financial loss; (c) changes in the market prices of fuel, energy, or power, or (d) a party's financial inability to perform its obligations under this Agreement. If either party is unable to perform any of its obligations under this Agreement due to a Force Majeure event, then said party shall notify the other party in writing as soon as possible after the start of the Force Majeure event. The written notice shall include a specific description of the cause and expected duration of the Force Majeure Event.

- (a) Neither Party shall be considered to be in default in the performance of its obligations under this Agreement, if its failure to perform results directly from a Force Majeure event. In the event that either Party is unable, wholly or in part, to meet its obligations under this Agreement due to conditions of a Force Majeure event, the obligations of each

Party, so far as they are affected by such Force Majeure, shall be suspended during the period of Force Majeure.

In the event any Party hereto is rendered unable, wholly or in part, by an event of Force Majeure to carry out its obligations hereunder, it is agreed that upon such Party's (the "Claiming Party") giving notice and full particulars of such Force Majeure within three (3) Business Days after becoming aware of the cause relied upon, such notice to be confirmed in writing to the other Party, then the obligations of the Claiming Party shall, other than the obligation to make payments due hereunder and to the extent they are affected by such Force Majeure, be suspended during the continuance of said inability but for no longer period. The Party receiving such notice of Force Majeure shall have until the end of the second (2nd) Business Day following such receipt to notify the Claiming Party that it objects to or disputes the existence of an event of Force Majeure.

- (b) The Claiming Party affected by an event of Force Majeure shall use due diligence to fulfill its obligations hereunder and to remove any disability caused by such event at the earliest practicable time. Nothing contained in this section shall be construed as requiring a party to settle any strike or labor dispute in which it may be involved, nor shall anything contained in this section be construed to take any measures that are cost prohibitive. In the event that measures required to remove any disability are cost prohibitive, the Claiming Party shall provide written notice to the non-claiming party and give non-claiming Party the opportunity to reimburse the Claiming Party for any additional costs it would incur in order to remove said disability.

Article Eight. Term

- 8.1 Term of Agreement. The term of this Agreement shall commence on the Effective Date hereof and terminate on May 31, 2024, unless otherwise terminated pursuant to the terms and conditions set forth in this Agreement.

Article Nine. Representations and Warranties

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

- (a) It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, is in good standing;
- (b) It has the corporate, governmental and/or other legal capacity, authority and power to execute and deliver this Agreement and any other document relating hereto to which it is a Party, and to fully perform its obligations under this Agreement and any other document relating hereto to which it is a Party, and has taken all necessary action to authorize such execution, delivery and full performance;

- (c) Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;
- (d) All governmental and other authorizations, approvals, consents, notices and filings that are required to have been obtained or submitted by it with respect to this Agreement or any other document relating hereto to which it is a party have been obtained or submitted and are in full force and effect and shall remain in full force and effect throughout the term of this agreement, and it has complied with all conditions and terms of any such authorizations, approvals, consents, notices and filings;
- (e) Its obligations under this Agreement and any other document relating hereto to which it is a party are legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application regardless of whether enforcement is sought in a proceeding in equity or at law);
- (f) No Bankruptcy Event has occurred and is continuing, and that a Bankruptcy Event would neither occur as a result of its entering into or performing its obligations under this Agreement or any other document relating hereto to which it is a party nor is presently or otherwise threatened;
- (g) There is not pending or, to its knowledge, threatened against it or any of its Affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or any other document relating hereto to which it is a party or its ability to perform its obligations under this Agreement or such document;
- (h) It has entered into this Agreement with a full understanding of the material terms and risks of the transaction contemplated hereunder, and it is capable and has the authority of assuming those risks;
- (i) Either Party is not acting as a fiduciary or in an advisory capacity to the other Party; and
- (j) All applicable information that is furnished in writing by or on behalf of it to the other Party is, as of the date of the information, to the best of its knowledge true, accurate and complete in every material respect.

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

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

9.3 Additional Representations of Vendor. Relative to this Agreement, Vendor further represents to Township, as of the Effective Date, that:

- (a) Vendor will transfer to end users good title, as applicable at the Delivery Point or otherwise of all Retail Natural Gas Services delivered hereunder, that it has the right to sell such Retail Natural Gas Services, that such Retail Natural Gas Services shall be free from all taxes, liens, encumbrances and claims, and that such Retail Natural Gas Services comply with the technical specifications and will be in a form and quality specified by the Local Utility's distribution system.
- (b) With respect to its obligations as supplier of Retail Natural Gas Services to the Aggregation Program, Vendor shall have and maintain valid certification from the Commission during the term hereof.
- (c) Vendor shall complete the Non-Collusion Affidavit, which is **Exhibit B** to this Agreement and by this reference made a part thereof. Vendor failure to comply with this Section 9.3 shall constitute a material breach of this Agreement.

9.4 Limitation of Warranties. EXCEPT AS PROVIDED FOR HEREIN, VENDOR EXPRESSLY DISCLAIMS AND MAKES NO WARRANTIES, WHETHER WRITTEN OR VERBAL, FOR OR WITH RESPECT TO ITS SUPPLY OF NATURAL GAS OR OTHER OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY EXPRESS, IMPLIED, OR STATUTORY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. VENDOR DOES NOT WARRANT OR GUARANTEE THE UNINTERRUPTED DELIVERY OF FULL REQUIREMENTS OF RETAIL NATURAL GAS SUPPLY TO CUSTOMERS DURING FORCE MAJEURE EVENTS, BUT SHALL TAKE ALL STEPS TO RESTORE SUCH SUPPLY EXPEDICIOUSLY. VENDOR WILL HAVE NO LIABILITY OR RESPONSIBILITY FOR THE OPERATIONS OF THE LOCAL UTILITY, INCLUDING

BUT NOT LIMITED TO, THE INTERRUPTION, TERMINATION, FAILURE TO DELIVER, OR DETERIORATION OF THE LOCAL UTILITY'S TRANSMISSION OR DISTRIBUTION SERVICE.

Article Ten. Default and Early Termination

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

- (a) Immediately upon the occurrence of a Bankruptcy Event by any Party;
- (b) For the following reasons with (30) days written notice or written notice within any applicable notice period otherwise required by this Agreement to the other Party:
 - (i) Upon the occurrence of a Regulatory Event;
 - (ii) Pursuant to **Exhibit A** as the result of the annual renegotiation of a retail adder or new variable rate;
- (c) By mutual written agreement of the parties;
- (d) As otherwise provided below in Section 10.2.

10.2 If either Party fails to comply with any material term or condition of this Agreement and such failure is not excused as Force Majeure, such Party shall be in default under this Agreement. If a Party is in default under this Agreement, the Party claiming that the other Party is in default shall give notice to the defaulting Party in writing detailing the alleged default and requesting specific relief that is in accord with the terms and conditions of this Agreement. The Party receiving such notice of default shall respond in writing within five (5) business days affirming or denying the alleged default and detailing how any such default under this Agreement will be cured. If the Party claiming the default is not reasonably satisfied that such default has been cured within thirty (30) days following the date that the notice of default has been received by the defaulting Party, the claiming Party shall be free to seek legal redress and/or take such other actions, including termination of this Agreement, as it sees fit, but limited to the extent set forth in Section 11.1 herein.

10.3 Enforcement of Remedies. Except to the extent set forth in Section 11.1 herein, the Party claiming default under Section 10.2 above may enforce any of its remedies under this Agreement successively or concurrently at its option. All of the remedies and other provisions of this Article shall be without prejudice and in addition to any right of setoff, recoupment, combination of accounts, lien or other right to which any Party or any of its Affiliates is at any time otherwise entitled (whether by operation of law or in equity, under contract or otherwise).

Article Eleven. Liability

11.1 Limitation of Liability. To the fullest extent permissible by law, neither Party, nor their respective boards, officers, officials, employees, representatives, successors or assigns, shall be liable to the other Party or its boards, officers, officials, employees, representatives, successors or assigns, for claims, suits, actions or causes of action, under any theory of recovery, for incidental, indirect, special, punitive, multiple or consequential damages, including without limitation loss of profits or revenue or the loss of use of either, costs of replacement retail natural gas services or of capital, or claims of customers of the other Party relating to loss of retail natural gas services supply, except as expressly provided in this Agreement. The provisions of this section 11.1 shall apply regardless of fault and shall survive termination, cancellation, suspension, completion or expiration of this Agreement. Notwithstanding the foregoing, nothing herein shall preclude either Party from seeking legal redress and/or taking other legal actions for a material breach of this Agreement by the breaching party and pursuing a claim for actual damages resulting from said breach.

Article Twelve. Notices

12.1 Unless otherwise specified, all notices and/or communications under this Agreement shall be made to the following:

All Notices to Vendor:

Archer Energy, LLC

Attn: Legal Department

9777 Fairway Dr, Powell, OH 43065

With an Electronic Copy to: **amitrey@archerenergy.com**

All Notices to Township:

Orange Township Board of Trustees

c/o Michele Boni, Township Administrator

1680 E. Orange Rd., Lewis Center, OH 43035

With an Electronic Copy to: **MBoni@orangetwp.org**

12.2 Notices shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States certified or overnight mail – return receipt requested or nationally recognized and reputable overnight courier service – return receipt requested. Notice by hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a business day, and otherwise shall be effective at the close of business on the next business day after receipt. Notice by overnight United States mail or courier, return receipt requested, shall be effective (2) two business days after delivery. Notice by certified US mail, return receipt requested, shall be effective five (5) business days following delivery. A Party may change its addresses or the contact person by providing notice of the same in accordance herewith.

Article Thirteen. Confidentiality

- 13.1 **Obligation of Confidentiality.** The Parties agree to the extent permitted by law, for themselves and their respective Representatives to keep confidential all Confidential Information provided hereunder and to use the Confidential Information solely for purposes related to this Agreement. Except as provided herein, Confidential Information shall not be disclosed by the receiving Party ("Receiving Party") to any third party without the prior written consent of the disclosing Party ("Disclosing Party"); and such third party shall be requested to treat the Confidential Information in accordance with this Agreement.
- 13.2 **Disclosure.** In the event the Receiving Party is required to disclose Confidential Information by law, court, agency or other governing body having, or purporting to have, jurisdiction over the Receiving Party, the Receiving Party shall notify the Disclosing Party prior to any disclosure, if such notice is, in the determination of the Receiving Party's counsel, permitted by law, so as to allow the Disclosing Party an opportunity to resist such disclosure and/or to seek appropriate protection from further disclosure. If the Receiving Party, in the determination of counsel, is compelled to disclose Confidential Information, the Receiving Party may disclose that portion of the Confidential Information, which the Receiving Party's counsel advises that the Receiving Party is compelled to disclose.
- 13.3 **Proprietary Rights, Survival.** Each Party acknowledges the proprietary rights of the other Party in and to the Confidential Information. The obligations under this Article Twelve shall survive the conclusion or termination of this Agreement for two (2) years.

Article Fourteen. General Terms

- 14.1 **Entire Agreement, Amendments and Counterparts.** The terms and conditions of this Agreement (including any exhibits, schedules and attachments hereto) constitute the entire agreement between the Parties with respect to the matters set forth in this Agreement and may be changed only by written agreement executed after the date hereof by the Parties. All exhibits, schedules and addendums attached hereto are incorporated herein by reference. This Agreement and any modification hereof may be executed and delivered in counterparts, including by electronic or facsimile transmission thereof, each of which shall be deemed an original.
- 14.2 **No Waiver.** No failure on the part of any Party to exercise, or delay in exercising, any right under this Agreement shall operate as a waiver thereof, nor shall any partial exercise of any such right preclude the exercise of any other right. No waiver shall be valid unless set forth in a mutually signed writing, and any such waiver shall not operate as a waiver of the same or any other right on another occasion, unless otherwise agreed to mutually in writing.
- 14.3 **Headings.** The headings used for the articles and sections herein are for convenience only and shall not affect the meaning or interpretation of the provisions of this Agreement.

14.4 No Partnership. Nothing in this Agreement shall constitute or be construed as constituting or tending to create an agency, partnership, master-servant or employer-employee relationship between the Parties.

14.5 Governing Law. This Agreement shall be governed by, interpreted, construed and enforced in accordance with the law of the State of Ohio without regard to principles of conflict of laws. Any and all legal disputes arising from this Agreement shall be filed in and heard before the courts of Delaware County, Ohio and such courts shall be deemed to have jurisdiction and venue. The Parties hereby irrevocably consent to such applicable law, venue, and jurisdiction.

14.6 No Third Party Beneficiaries. Other than with respect to the Consultant to the extent of any provisions under this Agreement applicable to the Consultant and related payments thereto, this Agreement confers no rights or remedies whatsoever upon any person or entity other than the Parties and shall not create, or be interpreted as creating, any standard of care, duty or liability to any person or entity not a party hereto.

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

14.7 Binding Effect. This Agreement shall be binding on and inure to the benefit of the Parties and their respective successors and permitted assigns, except as expressly provided in this Agreement.

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

14.9 Authorization. Each Party to this Agreement represents and warrants that it has full and complete authority to enter into and perform this Agreement. Each person who executes this Agreement on behalf of either Party represents and warrants that he or she has full and complete authority to do so and that such Party will be bound by the Agreement. Vendor shall complete the Affidavit of Authority, which is **Exhibit C** to this Agreement and by this reference made a part thereof.

14.10 Prefatory Statements. The Parties hereto agree and acknowledge that the prefatory statements in this Agreement are intended to be and shall be a part of the provisions of this Agreement.

14.11 Severability. If any provision of this Agreement is determined to be invalid, void, or unenforceable by any court having jurisdiction, such determination shall not invalidate, void or make unenforceable any other provision, agreement or covenant of this Agreement.

14.12 Agent. The Township may designate an agent or Consultant to act on its behalf, which agent or Consultant Township may change from time-to-time upon notice to Vendor.

14.13 Records. Vendor shall keep Records as follows:

- (a) Retention of Records. For a minimum of three (3) years after termination of this Agreement or as otherwise required by any applicable law, regulation, rule, or records retention schedule, whichever requires the longest retention period, Vendor shall retain and maintain all books, records, documents, papers, subcontracts, invoices, receipts, payrolls, personnel records, enrollee records, notices, drafts, reports, documents and all other information or data, including Aggregation Member and Aggregation Group records, relating to all matters covered by this Agreement (collectively "Records"). If an audit, litigation, prosecution, or other action (collectively "Action") is initiated during the term of this Agreement or any renewal term, Vendor shall retain and maintain the Records until the Action is concluded and all issues are resolved or the applicable retention period has expired, whichever is later.
- (b) Access to Records. At any time during regular Business Hours and with reasonable notice, Vendor shall make available to the Board or its authorized representatives, at no cost and within a reasonable period of time, any and/or all Records. The Board or its authorized representatives shall be permitted to inspect or audit and/or make excerpts, photocopies, and/or transcripts of the Records.

14.14 Civil Rights.

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

by the Office of Civil Rights of the Department of Health and Human Services and termination of this Agreement.

- 14.15 Drug Free Environment. Vendor agrees to comply with all applicable state and federal laws regarding a drug-free environment and shall have established and have in place a drug free workplace policy.
- 14.16 Findings for Recovery. Vendor, by signature of its authorized representative below, hereby certifies that it is not subject to any current unresolved findings for recovery pending or issued against it by the State of Ohio.

Signature

Date

Printed Name

Title

- 14.17 Personal Property Taxes, Vendor, by signature of its authorized representative on **Exhibit D**, certifies that it is not charged with delinquent personal property taxes on the general list of personal property in Delaware County, Ohio, or any other counties containing property in the taxing districts under the jurisdiction of the Auditor of Delaware County, Ohio. **Exhibit D** is attached to this Agreement and by this reference made a part thereof.
- 14.18 Indemnification. To the fullest extent permitted by law and without limitation, Vendor agrees to and shall indemnify and hold free and harmless the Board, Township, and all of their respective boards, officers, officials, employees, volunteers, agents, servants, and representatives (collectively, "Indemnified Parties") from any and all actions, claims, suits, demands, judgments, damages, losses, costs, fines, penalties, fees, and expenses, including, but not limited to attorney's fees, arising out of or resulting from any accident, injury, bodily injury, sickness, disease, illness, death, or occurrence, regardless of type or nature, negligent or accidental, actual or threatened, intentional or unintentional, known or unknown, realized or unrealized, related in any manner, in whole or in part, to Vendor's or any subcontractor's performance of this Agreement or the actions, inactions, or omissions of Vendor or any subcontractor, including, but not limited to the performance, actions, inactions, or omissions of Vendor's or any subcontractor's boards, officers, officials, employees, volunteers, agents, servants, or representatives (collectively, "Contracted Parties"). Vendor agrees that in the event of or should any such actions, claims, suits, or demands be brought against the Indemnified Parties that Vendor shall, at its own expense, promptly retain defense counsel to represent, defend, and protect the Indemnified Parties, paying any and all attorney's fees, costs, and expenses. Prior to Vendor retaining counsel, the Board will be given the opportunity to make a reasonable recommendation on the counsel to be retained. Vendor further agrees that in the event of or should any such

actions, claims, suits, or demand be brought against the Indemnified Parties, that Vendor shall pay, settle, compromise and procure the discharge of any and all judgments, damages, losses, costs and expenses, including, but not limited to, attorney's fees. This indemnity requirement shall survive termination of this Agreement.

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

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

Vendor shall also carry and maintain throughout the term of the Agreement Worker's Compensation Insurance as required by Ohio law and any other state in which work will be performed. Vendor shall be responsible for any and all premiums for such policy(ies). At any time throughout the life of the Agreement the Board may request proof of such insurance. Proof of such insurance shall be promptly provided upon its request.

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

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

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

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

- 14.21 Independent Contractor Acknowledgment/No Contribution to OPERS. The Board and Township are a public employer as defined in Section 145.01(D), Revised Code. The Board and Township have classified Vendor as an independent contractor or another classification other than public employee. As a result no contributions will be made to the Ohio Public Employees Retirement System ("OPERS") for or on behalf of Vendor and/or its officers, officials, employees, representatives, agents, and volunteers for services and deliverables rendered and received under or pursuant to this Agreement. Vendor acknowledges and agrees that the Board and Township, in accordance with Section 145.038(A), Revised Code, has informed it of such classification and that no contributions will be made to OPERS. If Vendor is an individual or has less than five employees, Vendor shall complete and have each of its employees complete, pursuant to Section 145.038, Revised Code, an OPERS Independent Contractor Acknowledgement Form, which is **Exhibit E** to this Agreement and by this reference made a part thereof.
- 14.22 Licenses. Vendor certifies and warrants that it has obtained and maintains current all approvals, licenses, including operator licenses, certifications, and other qualifications (collectively, "Licenses") necessary to provide all of the services required pursuant to this Agreement and to conduct business in the state of Ohio. Vendor further certifies and warrants that all such Licenses are operative and current and have not been revoked or are not currently suspended for any reason.
- 14.23 Expenses. Each Party and Consultant shall be solely and exclusively responsible for their own costs and expenses incurred in connection with the negotiation and preparation of this Agreement.
- 14.24 Authority. The Board is authorized by, including, but not limited to, R.C. § 4929.26 to enter this Agreement.
- 14.25 Audit. Vendor agrees to submit to and cooperate with any audit and accept responsibility for receiving, replying to, and/or complying with any audit exception by any appropriate federal, state, local, or independent audit authority. Vendor agrees to reimburse the Board the amount of any identified audit exception.
- 14.26 Drafting. This Agreement shall be deemed to have been drafted by both Parties and no interpretation shall be made to the contrary.
- 14.27 Subcontracting. Vendor may, with prior written consent of the Board, such consent not to be unreasonably withheld, subcontract any portion of this Agreement. If any portion of this Agreement is subcontracted, Vendor shall continue to act as the prime contractor for the entire Agreement, including the subcontracted portion, and shall continue to assume full responsibility for the performance of the Agreement, including the subcontracted portion. The terms of this Agreement shall be incorporated in any subcontract and the subcontractor shall be bound by all terms of this Agreement. Vendor will remain the sole

point of contact and shall be ultimately responsible for the performance of the entire Agreement, including the subcontracted portion.

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

WHEREFORE: The Parties acknowledge their agreement to the terms and conditions herein by their signatures below.

Archer Energy, LLC
("VENDOR")

Orange Township Board of Trustees
Delaware County, Ohio ("BOARD")

By: _____

Ben Grumbles
Trustee

Print: _____

Lisa Knapp
Trustee

Title: _____

Erica Fouss
Trustee

Approved as to Form:

Melissa A. Schiffel /CDB
3-16-2022

Melissa A. Schiffel (0082154)
Delaware County Prosecuting Attorney

FISCAL OFFICER'S CERTIFICATION (Section 5705.41(D), Revised Code):

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

EXHIBIT A

1. **Type of Service:** Columbia Gas of Ohio Customer Choice
2. **Term:** June 1, 2022 through May 31, 2024
3. **Delivery Point:** as provided in Section 1.3 of the Agreement
4. **Price:** Vendor to provide natural gas to Aggregation Members at a variable rate equal to NYMEX Settlement + (Columbia SCO adder less 2%). This rate shall be effective through May 31, 2023. At least 50 days prior to expiration of the current variable product, and if a fixed rate has not been established as outlined below, Vendor will provide written notice of the new variable rate to the Board. The new variable rate will begin in June 2023, provided however the Board may terminate the agreement without penalty if it disagrees with the new variable rate and provides written notice of termination to the Vendor within ten business days of the receipt of the notice of the new rate from Vendor.
Anytime during the Agreement, Vendor and the Board may work together to provide a fixed rate to the participants of the aggregation in accordance with Section 1.1(f) of the Agreement. The fixed rate shall remain the same from the time established until termination of this Agreement.
5. **Termination Fee:**
 - Residential Accounts - \$0.00
 - Commercial Accounts - \$0.00
6. **Administrative Services:** The Vendor shall provide all of the following at no cost to the Board or Township and no additional cost beyond the rates set forth in this Agreement to Aggregation Members:
 - a. Design, print and mail the Opt-out letter to all eligible participants including a sheet of Frequently Asked Questions to provide assistance.
 - b. Administer the Opt-out process including database preparation, handling of opt-out form information, and final enrollment list compilation.
 - c. Vendor will provide a call center to handle information calls with a toll-free telephone number and to handle opt-out and information calls.
 - d. Conduct supplemental opt-out mailings at least semi-annually, but no less frequently than otherwise as required by applicable law and regulations.
 - e. Provide to Consultant the required information for PUCO reports on behalf of the Community.

- f. A customer participating in the Aggregation Group shall not be charged a cancellation fee or early termination penalties by Vendor should that customer terminate participation in the Aggregation Group.
- g. Vendor will provide an annual reconciliation to verify that savings objectives were satisfied.
- h. After the initial opt-out period, Vendor shall provide the Board and Consultant with the initial account list for all eligible residential and small commercial customers who have been enrolled in the Aggregation Group. Furthermore, Vendor shall provide a list of the account holders who have initially opted-out of the program. Both lists will be electronically transmitted to the Board and Consultant as separate data files in a text-based, comma-delimited format (.csv) and Excel file format. At a minimum, the files should contain the following: Account Number, Account Name, Premise Address Line 1, Premise Address Line 2, Premise Address Line 3, Premise Address City, Premise Address State, Premise Address Zip Code.
- i. After the initial opt-out process is completed, the Board, Consultant, and Vendor may establish protocols and procedures to hold additional opt-out processes for new eligible residential and small commercial accounts that were not mailed opt-out notices in earlier opt-out periods within the term of the ongoing Aggregation. Any new accounts shall be able to enroll in the Aggregation Group under the same terms, conditions, and pricing as accounts that were initially enrolled during the first opt-out period. However, newly enrolled accounts will only have the ability to participate in the ongoing Aggregation Group for the time remaining in the term of the Agreement. Costs (for example, for printing and mailing) associated with subsequent opt-out periods will be paid in the same manner as was done for the initial opt-out period.
- j. Vendor shall pay to the Consultant a fee per Ccf delivered/consumed and paid for by Aggregation Members under the Aggregation Group on a monthly basis. In addition to Aggregation Members' consumption, this fee shall also apply to Ccf delivered/consumed and paid for by any new Aggregation Member or Aggregation Members' accounts that join the Aggregation Group. Vendor shall also pay to Consultant educational expenses incurred for initiating and implementing the Aggregation Program as set forth in the Consultant Fee Agreement. All such fees are embedded in the overall price of Vendor. The amount of such fees is deemed by Consultant to be a trade secret and not to be a public record and shall not be disclosed. The Township shall notify Consultant if a public record request is made, to permit Consultant to seek a protective order.
- k. Upon Request by the Board, and to the extent permitted by law, Vendor shall provide it the same information available to Consultant, except Vendor shall not disclose an eligible customer's usage data and other confidential information without the eligible customer's consent.

(SIGNATURES ON FOLOWING PAGE)

**Archer Energy, LLC
("VENDOR")**

**Orange Township Board of Trustees
Delaware County, Ohio ("BOARD")**

By: _____

Print: _____

Title: _____

Ben Grumbles
Trustee

Lisa Knapp
Trustee



Erica Fouss
Trustee



INDEPENDENT CONTRACTOR/WORKER ACKNOWLEDGMENT

Ohio Public Employees Retirement System
277 East Town Street, Columbus, Ohio 43215-4642

Employer Services: 1-888-400-0965
www.opers.org

This form is to be completed if you are an individual who begins providing personal services to a public employer on or after Jan. 7, 2013 but are not considered by the public employer to be a public employee (e.g., you are an independent contractor) and will not have contributions made to OPERS. This form must be completed not later than 30 days after you begin providing personal services to the public employer.

STEP 1: Personal Information

Social Security Number

____-____-____

Date of Birth

Month Day Year

____/____/____

First Name

MI Last Name

____ MI _____

Name of Current Employer

I am an OPERS or other retirement system benefit recipient

STEP 2: Public Employer Information

Name of Public Employer for Which You Are Providing Personal Services

Employer Contact

First Name

MI Last Name

____ MI _____

Employer Code

Employer Contact Phone Number

____-____-____

Service Provided to Public Employer

Start Date of Service

End Date of Service

Month Day Year

Month Day Year

____/____/____

____/____/____

STEP 3: Acknowledgment

The public employer identified in Step 2 has identified you as an independent contractor or another classification other than a public employee. Ohio law requires that you acknowledge in writing that you have been informed that the public employer identified in Step 2 has classified you as an independent contractor or another classification other than a public employee for the services described in Step 2 and that you have been advised that contributions to OPERS will not be made on your behalf for these services.

In accordance with Ohio Administrative Code section 145-1-42(A)(2), an independent contractor means an individual who:

- Is a party to a bilateral agreement which may be a written document, ordinance or resolution that defines the compensation, rights, obligations, benefits and responsibilities of both parties;
- Is paid a fee, retainer or other payment by contractual arrangement for particular services;
- Is not eligible for workers' compensation or unemployment compensation;
- May not be eligible for employee fringe benefits such as vacation or sick leave;
- Does not appear on a public employer's payroll;
- Is required to provide his own supplies and equipment, and provide and pay his assistants or replacements if necessary;
- Is not controlled or supervised by personnel of the public employer as to the manner of work; and
- Should receive an Internal Revenue Service form 1099 for income tax reporting purposes.

An independent contractor is not a public employee and shall not become a contributor to the retirement system. If you disagree with the public employer's classification, you may contact OPERS to request a determination as to whether you are a public employee eligible for OPERS contributions for these services. Ohio law provides that a request for a determination must be made within five years after you begin providing personal services to the public employer, unless you are able to demonstrate through medical records to the Board's satisfaction that at the time the five-year period ended, you were physically or mentally incapacitated and unable to request a determination. Under the OPERS Health Reimbursement Arrangement (HRA) and the OPERS Retiree Medical Account (RMA), re-employed retirees who are not independent contractors are not eligible for a monthly allowance or reimbursement of any medical expenses incurred during the re-employment period. If you are not an independent contractor and receive an allowance or reimbursements, you may be liable to OPERS and/or the applicable plan.

By signing this form, you are acknowledging that the public employer for whom you are providing personal services has informed you that you have been classified as an independent contractor or another classification other than a public employee and that no contributions will be remitted to OPERS for the personal services you provide to the public employer. If you entered into a contract to provide services as an independent contractor, you are acknowledging that you meet the requirements of an "independent contractor" as that term is defined in Ohio Administrative Code section 145-1-42(A)(2). If you begin to provide services as an independent contractor to the same employer from which you retired, or to any employer if less than two months after the retirement allowance commences, you are acknowledging the pension portion of your benefit will be forfeited during the period of the contract. You are acknowledging that the annuity portion of your benefit will be suspended and will be paid in a lump sum upon termination of the contract, and you may be liable to the retirement system for any amounts incorrectly paid from the plan(s). You are also acknowledging that you are not eligible for a monthly allowance or reimbursement of medical expenses incurred during the period you are providing services under the OPERS HRA or the OPERS RMA, and you may be liable to OPERS and/or the applicable plan for any allowance or reimbursements received. This acknowledgment will remain valid as long as you continue to provide the same services to the same employer with no break in service regardless of whether the initial contract period is extended by any additional agreement of the parties. You also acknowledge that you understand you have the right to request a determination of your eligibility for OPERS membership if you disagree with the public employer's classification. This form must be retained by the public employer and a copy sent to OPERS. The public employer's failure to retain this acknowledgment may extend your right to request a determination beyond the five years referenced above.

Signature _____ Today's Date / /

Do not print or type name