

RESOLUTION NO. 2009 - 01

**A RESOLUTION APPROVING A CONTRACT FOR A GAS AGGREGATION  
CONSULTANT, DISPENSING WITH THE SECOND READING, AND DECLARING AN  
EMERGENCY**

WHEREAS, the Board of Township Trustees of Sycamore Township wishes to enter into a contract for consulting services in order to become certified as a natural gas aggregator in the State of Ohio; and

WHEREAS, the selection of the consultant will, in effect, decide the choice of the natural gas provider for the Township's natural gas aggregation program;

NOW THEREFORE, BE IT RESOLVED, by the Board of Township Trustees of Sycamore Township, State of Ohio:

**SECTION 1.** The Board hereby approves a contract with Integrys Energy Services, Inc. for consulting services for becoming a natural gas aggregator in the State of Ohio in a form substantially the same as that attached hereto as Exhibit A.

**SECTION 2.** The Township Administrator is hereby authorized and directed to execute the contract with Integrys Energy Services, Inc. when it is in a form approved by the Township Law Director.

**SECTION 3.** The Township Administrator is hereby authorized and directed to sign all documents and agreements necessary in order for Sycamore Township to be certified with the Public Utilities Commission of Ohio as a natural gas aggregator

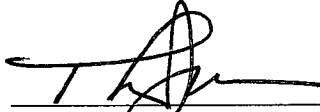
**SECTION 4.** The Trustees of Sycamore Township, upon at least a majority vote, dispense with the requirement that this Resolution be read on two separate days, and hereby authorize the adoption of this Resolution upon its first reading.

**SECTION 5.** Upon the unanimous vote of the Sycamore Township Trustees, this Resolution is hereby declared to be an emergency measure necessary for immediate preservation of the public peace, health, safety or welfare of Sycamore Township. The reason for the emergency is to begin the process to establish the Township as a natural gas aggregator as soon as possible.

**VOTE RECORD:**

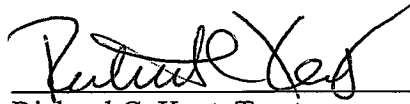
Mr. Bishop Abstained Mr. Kent Yes Mr. Weidman Yes

**PASSED** at the meeting of the Board of Trustees this 8<sup>th</sup> day of January, 2009.



Thomas J. Weidman, President

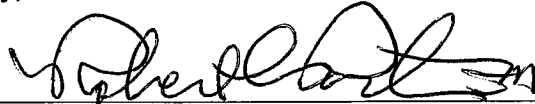
Cliff W. Bishop, Vice President



Richard C. Kent, Trustee


**AUTHENTICATION**

This is to certify that this Resolution was duly passed, and filed with the Sycamore Township Fiscal Officer, this 8<sup>th</sup> day of January, 2009.



Robert C. Porter, III  
Sycamore Township Fiscal Officer

**APPROVED AS TO FORM:**

  
R. Douglas Miller, Law Director

**PROOF OF PUBLICATION**

I hereby certify that I have published this Resolution on \_\_\_\_\_ by posting in the five most public places as established by the Board of Township Trustees such places being the Township Hall, Bob Meyer Park, Bechtold Park, North Sycamore Recreational Facility, and the North Fire Station, Station 93.



Robert C. Porter, III, Fiscal Officer

# EXHIBIT A

## CONSULTING AGREEMENT

This Consulting Agreement ("Agreement") is entered into as of \_\_\_\_\_, 20\_\_, by and between **Integrus Energy Services, Inc.**, a Wisconsin corporation (hereinafter referred to as the "Consultant"), and **Sycamore Township, OH** (hereinafter referred to as the "Customer"). Consultant and Customer may be referred to individually as "party" or collectively as "parties".

**WHEREAS**, Customer desires to obtain PUCO certification as a Governmental Aggregator as provided in 4901:1-27 of the Ohio Administrative Code; and

**WHEREAS**, Consultant has experience in governmental aggregation in Ohio and is willing to provide advice and assistance to Customer in obtaining such certification; and

**WHEREAS**, Customer desires to retain Consultant to provide such advice and assistance; and

**WHEREAS**, upon the issuance of a Governmental Aggregator Certificate for Customer, the parties intend to execute a Natural Gas Aggregation Supply Agreement in a form as set forth in Exhibit C; and

**NOW, THEREFORE**, the Parties, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agree as follows:

### I. SERVICES AND PRICE

- 1.1 Consultant agrees to provide to Customer those Services described in the Exhibit A to this Agreement, and the Customer agrees the Consultant will be the exclusive supplier of all of Customer's requirements for these Services during the term of this Agreement. Customer further agrees that if Customer obtains certification as a Governmental Aggregator, and executes a Natural Gas Aggregation Supply Agreement, Customer shall execute such supply agreement with Consultant.
- 1.2 Customer agrees to provide all information reasonably requested by Consultant from time to time during the term in order to support the provision of the Services.
- 1.3 Changes to the Services (e.g., additions, deletions, discontinued Services, etc.) may not be made except upon the mutual written agreement of the parties.
- 1.4 Consultant shall comply with all applicable federal, state and local laws in connection with its performance of the Services.
- 1.5 Consultant and Customer acknowledge that this Agreement shall not govern the terms and conditions related to any agreement between Consultant and Customer for the purchase and sale of natural gas, electric power, swaps, futures, or options in or with respect to one

or more commodities entered into prior to this Agreement or that may be subsequently entered into ("Transactions"). In the event that Consultant and Customer have entered into or subsequently enter into any such Transactions, the terms, conditions, fees, and charges related to such Transaction will be provided in a separate agreement executed and effective between the parties. Such transactions shall be arm's length transactions between the parties and Customer acknowledges and agrees that Consultant is not acting in any capacity as agent for Customer with respect to such Transactions.

## **II. TERM AND ASSIGNMENT**

- 2.1 The term of this Agreement shall be for a period of two (2) years commencing \_\_\_\_\_, 20\_\_.
- 2.2 This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, representatives, permitted successors and permitted assigns. Customer may not assign this Agreement, in whole or in part, whether voluntarily or by operation of law, without having first obtained the written approval of the Consultant, which approval shall not be unreasonably withheld.

## **III. WARRANTY, DISCLAIMERS AND LIMITATION OF LIABILITY**

- 3.1 Consultant warrants that the Services will be performed consistently within the range of standard and reasonable practices in the industry in which similar services are performed. This warranty shall expire with respect to each incident of Service one hundred eighty (180) days after that incident is performed. Customer's exclusive remedy for any breach of this warranty shall be limited to requiring Consultant to re-perform or correct any nonconforming incident of the Services discovered within the warranty period. Consultant does not, however, warrant or guarantee that Customer will realize any savings because of the Services, or that the Services will be provided error-free, or that any recommendations or advice made or given by Consultant in good faith in the course of performing the Services will lead to or accomplish any particular result desired by Customer, whether or not such desired result has been communicated to Consultant.
- 3.2 THE EXPRESS WARRANTY SET FORTH IN SECTION 3.1 IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED BY CONSULTANT.
- 3.3 IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR ITS PERFORMANCE OR BREACH OR THE SERVICES, regardless of whether such party has been advised of the possibility of such damages.
- 3.4 Customer, a governmental entity, represents and warrants to Integrys as follows: (i) all acts necessary to the valid execution, delivery and performance of this Agreement, including without limitation, public notice, election, referendum, prior appropriation or other required procedures have or will be taken and performed as required under all relevant Law; (ii) entry into and performance of this Agreement by Customer is for a proper public purpose

within the meaning of all relevant Law; (iii) the Term of this Agreement does not extend beyond any applicable limitation imposed by relevant Law; and (iv) obligations to make payments hereunder are not proscribed by any provision of any relevant Law applicable to it or its assets, or any contractual restriction binding on or affecting it or any of its assets. As used herein, "Law" means any law, rule, regulation, order, writ, judgment, decree or other legal or regulatory determination by a court, regulatory agency or governmental authority of competent jurisdiction.

#### **IV. CONFIDENTIAL INFORMATION**

- 4.1 This Agreement and any proprietary information received by one party from the other party hereunder and identified in writing as "Confidential" at the time of disclosure (collectively, the "Information") shall be held in strict confidence by the party receiving such Information, and each of the parties agrees that it shall not disclose in any manner the other party's Information to any third party or to the public, or use the other party's Information for any purpose except in connection with this Agreement; provided however, that either party may disclose Information: 1) to such party's directors, officers, subcontractors, affiliates or employees who possess a need to know such Information in connection with this Agreement, or 2) to such party's attorneys or independent auditors or accountants, or 3) to any other third party or to the public, as and to the extent required by applicable laws or regulations, or as and to the extent required in any legal proceeding. Each party agrees to exercise the same degree of care to avoid unauthorized disclosure of Information it receives from the other party as it takes to protect its own similar proprietary business Information. Notwithstanding anything to the contrary herein, however, "Information" shall not include any data, materials or information which: a) is or through no fault of the receiving party becomes generally known or available to the public; b) is furnished to third parties by the disclosing party without restrictions on disclosure; c) is received by the receiving party independently from a third party; or d) is already known to the receiving party prior to its disclosure hereunder.
- 4.2 All reports (including without limitation the formatting of reports), data aggregations, ideas, information and other products of the Services developed by Consultant pursuant to this Agreement are the intellectual property of, and are solely owned by, the Consultant. Consultant will provide Customer with reports in hardcopy or standard electronic format. Such reports and information are intended for internal use by the Customer; these materials shall not be shared with or disclosed to any other person or entity. All Customer-specific data gathered pursuant to this Agreement remains the property of the Customer subject to provisions of Ohio Public Records laws.

#### **V. MISCELLANEOUS**

- 5.1 If any provision in this Agreement is determined to be invalid, void or unenforceable by any court of competent jurisdiction, such determination shall not invalidate, void or make unenforceable any other provision of this Agreement.
- 5.2 This Agreement and its Attachments together set forth all understandings between the parties respecting the subject matter hereof. All prior agreements, understandings and representations on the subject matter hereof, whether consistent or inconsistent, oral or written, between the parties are merged into and superseded by this written Agreement. No modification or amendment of this Agreement shall be binding on either party unless in

writing and signed by both of the parties. Consultant and Customer acknowledge that the terms and conditions related to the supply of natural gas to Customer are not included in this Agreement, and that natural gas supply to Customer, if provided by Integrys Energy Services, Inc., is supplied pursuant to a separate sales agreement executed and effective between the parties.

- 5.3 Any notice, request, demand, statement, bill or payment provided for in or allowed under this Agreement, or any notice which a party may desire to give the other, shall be in writing and sent to the appropriate addresses identified on Exhibit B to this Agreement (payments may also be made through the other methods described on Exhibit B). If such communications are mailed or sent via courier, they shall be considered duly delivered upon actual receipt. If delivered by confirmed facsimile transmission, any such communications shall be considered delivered on the same day they are received, unless received after 5 p.m. local time on a business day or on a weekend or holiday, in which case they will be considered delivered on the next business day.
- 5.4 No failure by either party to enforce any right, obligation or remedy hereunder shall operate as a waiver of any of the foregoing, or as a waiver of any future right, obligation or remedy, whether of like or different character or nature.
- 5.5 The headings throughout this Agreement are inserted for reference purposes only, and are not to be construed or taken into account in interpreting the terms and provisions of any Section, and are not to be deemed in any way to qualify, modify or explain the effects of any such term or provision.
- 5.6 In the event of any conflict or inconsistency between the terms of this Agreement and the terms of any Attachment to this Agreement, the terms of this Agreement shall control.
- 5.7 This Agreement shall be governed by and construed in accordance with the internal laws of the State of Ohio.
- 5.8 Any dispute between Consultant and Customer that relates to this Agreement and that cannot be resolved by negotiation between those personnel who administer the Agreement on behalf of the respective parties shall be referred to a senior executive conference for resolution. This conference shall include at least one senior executive from each party. If the conference is not able to resolve the dispute within thirty (30) days after the referral, the dispute may be resolved through litigation in a federal or state court of competent jurisdiction.
- 5.9 Consultant and Customer acknowledge and agree that Consultant is an independent contractor. The employees of Consultant are not and shall not be employees of Customer. There is not, and will not be, any employer/employee, joint venture or partnership relationship between the Consultant and Customer under or by virtue of this Agreement. The Customer will not deduct or pay from any amounts due to Consultant any income tax, unemployment insurance, government pension plan, employer health tax or similar amounts. This Agreement does not qualify the Consultant for minimum wage, workers' compensation, or unemployment benefits.
- 5.10 Consultant, in its sole discretion, may employ subcontractors to perform such portions of the Services as Consultant alone deems appropriate.

5.11 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 a party represents and warrants that he/she has full and complete authority to do so and that such party will be bound thereby.

IN WITNESS WHEREOF, the parties have duly executed this Agreement to be effective on the day and year first written above.

**CONSULTANT: Integrys Energy Services, Inc.**

**CUSTOMER: Sycamore Township, OH**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name (Printed): \_\_\_\_\_

Name (Printed): \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_



EXHIBIT A

SERVICES

CONSULTANT SERVICES FOR GOVERNMENTAL AGGREGATOR CERTIFICATION

A.1 Consultant shall provide Customer with the following services:

- (a) Plan of Operation and Governance. Consultant shall assist Customer in the development of its Plan of Operation and Governance ("Operation Plan") mandated by 4929.26 of the Ohio Revised Code.
- (b) Public Meetings. Consultant shall create and publish public notices with Customer approval. Consultant shall attend two public hearings on the Plan of Operation and Governance and provide technical support for questions from residents.
- (c) Create Opt-out notices. Consultant shall create opt-out notices that meet the requirements of 4901:1-28 of the Ohio Administrative Code to be included with the certification application, and approved by Customer.
- (c) Certification Application. Consultant shall assist in the preparation and filing of all necessary materials required for application to the PUCO, in conjunction with Customer's designated representative
- (d) Certification Approval. Consultant shall assist Customer with all questions or additional information required by the PUCO to facilitate approval of Customer's application.

**EXHIBIT B**

**NOTICES**

**GENERAL NOTICES TO THE CONSULTANT**

Attn: Susanne J. Buckley  
Integrus Energy Services, Inc.  
300 W. Wilson Bridge Rd., Suite 350  
Worthington, OH 43085  
Telephone: 614-844-4326  
Facsimile: 614-844-4306

**GENERAL NOTICES TO CUSTOMER**

Attn:  
Sycamore Township  
8540 Kenwood Road  
Cincinnati, OH 45236  
Telephone: 513-791-8447  
Facsimile: 513-792-8564



**Natural Gas Aggregation Supply Agreement  
Between**

**IntegrYS Energy Services, Inc.**

**And**

**Sycamore Township, OH**

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This Natural Gas Aggregation Supply Agreement, entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_ (“Agreement”), is by and between the Board of Trustees of Sycamore Township, OH (“Township” or “Sycamore Township”), a political subdivision of the State of Ohio, pursuant to the authority of \_\_\_\_\_ Resolution No. \_\_\_\_\_ (MS), and IntegrYS Energy Services, Inc. (“Seller” or “IntegrYS”), a corporation with its principal place of business at 1716 Lawrence Drive, De Pere, Wisconsin 54115, hereinafter referred to individually as a (“Party”) or collectively as the (“Parties”).

**WITNESSETH**

**WHEREAS**, the Parties intend to enter into certain proposed transactions necessary to serve accounts and consumers within the Township, and within the service territory of Duke Energy-Ohio (“Utility”) that are part of Sycamore\_ Township’s governmental aggregation pursuant to appropriate legislative action as provided in 4929.26 of the Ohio Revised Code;

**WHEREAS**, Seller has agreed to make available to Sycamore Township’s residents and businesses, that are approved to participate in the Utility Energy Choice Program, natural gas at favorable rates; and

**WHEREAS**, the Parties desire to establish terms and conditions governing the proposed transactions.

**NOW, THEREFORE**, the Parties, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agree as follows:

**ARTICLE 1**

**DEFINITIONS**

- 1.1 **“Adder”** means additional costs involved in moving gas from the wellhead to the burner tip. These costs include, but are not limited to: Shrinkage, pooling costs, program fees and transportation charges.
- 1.2 **“Aggregation Group”** means those retail customers in the Utility’s service territory within the corporate limits of the Township, excluding PIPP customers, who are eligible for and (i) do not “opt-out” of the Aggregation Program, or (ii) affirmatively seek to enroll in the Aggregation Program after the Enrollment Period.
- 1.3 **“Aggregation Program” or “Program”** means the provision of Aggregation Services to the Aggregation Group pursuant to the terms of this Agreement.

- 1.4 **"Aggregation Services"** means services provided to the Aggregation Group pursuant to this Natural Gas Aggregation Supply Agreement.
- 1.5 **"Buyer"** means a residential, commercial, or governmental retail natural gas customer in the service territory of Utility that is a member of the Aggregation Group.
- 1.6 **"Commodity Component"** means a pricing variable which together with the Adder create the price to Buyers under this Agreement.
- 1.7 **"Consolidated Billing"** means combining the local natural gas distributing utility's charges and the retail natural gas supplier's charges on one billing statement.
- 1.8 **"Delivery Point"** means the point at which natural gas will be delivered and received.
- 1.9 **"Enrollment Period"** means the twenty-one (21) day period that coincides with the twenty-one (21) day Opt-out Period.
- 1.10 **"Force Majeure"** means an event or circumstance, which prevents one Party from performing its obligations as specified in Article 8 of this Agreement.
- 1.11 **"Historical Load"** means the most recent historical data detailing the natural gas consumption characteristics of the Aggregation Group (and/or group members) and other use and demographic information available to the Township with respect to the Aggregation Group.
- 1.12 **"Load"** means the natural gas demand and consumption of the Aggregation Group and/or group members.
- 1.13 **"Opt-out"** means the process by which a Buyer affirmatively elects not to participate in the Program.
- 1.14 **"Opt-out Period"** means the twenty-one day (21) day period in which Utility customers in eligible areas of the Township must opt-out of the Aggregation Program or they will be automatically enrolled in the Program. This period coincides with the Aggregation Program's Enrollment Period.
- 1.15 **"PIPP"** means Percentage of Income Payment Plan Program as prescribed in PUCO Rules 4901:1-18-02(B)-(G) and 4901:1-18-04(B) of the *Ohio Administrative Code*.
- 1.16 **"Plan of Operation and Governance"** means the plan for implementing the Aggregation Program pursuant to 4929.26 of the Ohio Revised Code.
- 1.17 **"PUCO"** means the Public Utilities Commission of Ohio.
- 1.18 **"Representative"** means, as to a Party, an Affiliate, or officer, director, employee, agent, attorney, or advisor of the Party or its Affiliate.
- 1.19 **"Utility"** shall mean **Duke Energy-Ohio**.

## **ARTICLE 2** **GENERAL REQUIREMENTS**

### 2.1 Purchasing Agent.

(a) The Township will act as purchasing agent for the Aggregation Group as a Governmental Aggregator, as that term is defined in Ch 4929.26 of the Ohio Revised Code; enact the appropriate ordinances and oversee the implementation of "opt-out" procedures; negotiate for the provision of Aggregation Services; and assign all eligible Buyer accounts to Seller, including the right to collect past due billed amounts.

(b) The Township, as purchasing agent, has designated Seller as the exclusive supplier for members of the Aggregation Group for the term of this Agreement.

2.2 Firm Natural Gas Supply. Seller will provide a firm supply of natural gas sufficient to serve the needs of the Aggregation Group. Seller does not take responsibility for delivery of services supplied by the Utility or for the consequences of such delivery of services.

2.3 Contract with Buyer. Buyers may join the Program through Seller's internet website, by contacting Seller by telephone or mail, or by doing nothing and thereby not opting out during the Enrollment Period. Seller shall contract directly with Buyers who join the Program.

2.4 Customer Data and Load Forecast Information. The Township will assist Seller in obtaining all available Customer Data and Historical Load information regarding the Load consumption characteristics of the Aggregation Group (and as it may change from time to time) as soon and as often as such information becomes available ("Load Information"). The Township will assist Seller in obtaining Load Information in sufficient detail to allow Seller to determine the probable Load profiles of the Aggregation Group. Seller and the Township will cooperate to advocate and secure the release of such Customer Data and Load Information by the Utility.

2.5 Switching Fee. Seller shall be responsible for the payment of switching fees assessed by the Utility on customers participating in the Aggregation Program.

2.6 Plan of Operation and Governance. Seller shall assist the Township in the development of its Plan of Operation and Governance ("Operation Plan") mandated by 4929.26 of the Ohio Revised Code.

2.7 Exit Fee. Buyers may Opt-out of the Aggregation Group at no charge under the following circumstances: (1) during the Enrollment Period; or (2) upon the termination of this Agreement. In the event of a mass loss of customers from the program outside of normal attrition Seller may charge a twenty-five dollar (\$25.00) exit fee to Buyers that remain at the same address and that select an alternate supplier, if such Buyer exits the Aggregation Program under circumstances other than those stated in this Paragraph. The Township warrants that it will not take any action (written, verbal, or otherwise) to advise and/or encourage Buyers to exit the Program. Provided that nothing in the preceding clause is meant to prohibit the Township from making factual statements in response to Buyers inquiries about the Program

2.8 Opt-out Process. Seller shall conduct the initial Opt-out Period no later than \_\_\_\_\_, 200\_\_\_\_, unless otherwise agreed by the Parties. All opt-out expenses shall be incurred and paid by Seller. Seller, in consultation with the Township representatives, shall prepare opt-out notices. Seller shall make arrangements to deliver the notices to all potential members of the Aggregation Group and shall perform the activities related to implementing the opt-out process.

2.9 Consumer Education. Seller will assist the Township in developing a consumer education plan concerning natural gas deregulation. The Township and the Seller will, where practicable, provide consumer education messages that are consistent with the messages from the Utility and the statewide consumer education program.

2.10 Regulatory Contingencies.

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

(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 this Agreement that requires a material change to the terms of this Agreement that materially and adversely affects a Party or (B) regulatory or court action that adversely and materially impacts a Party's ability to perform or otherwise provide the services disclosed herein.

(iii) New Taxes. Any ad valorem, property, occupation, severance, generation, first use, conservation, Btu or energy, transmission, utility, gross receipts, privilege, sales, use, consumption, excise, lease, transaction or other governmental charge, license, fee or assessment (other than such charges based on net income or net worth), or increase in such charges, or application of such charges to a new or different class of parties, enacted and effective after the Effective Date of this Agreement.

(b) Notice, Negotiation, and Early Termination. Upon the occurrence of a Regulatory Event, the adversely affected Party shall give notice to the other Party that such event has occurred. Within thirty (30) days, or such other period as the Parties may agree in writing, the Parties will enter into good faith negotiations to amend or replace 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. If the Parties are unable to agree upon an amendment to the Agreement, within the prescribed time after entering into negotiations, the adversely affected Party shall have the right, upon thirty (30) days prior written notice, to terminate and close out its obligations under the Agreement pursuant to the terms of this Agreement. Such early termination shall not absolve either Party from performing its obligations for services already rendered.

2.11. Additions to the Aggregation Group. Utility supply customers and customers of other retail natural gas suppliers in the eligible areas of the Township may join the Aggregation Group after the expiration of the initial Enrollment Period by contacting the Seller. Seller may offer subsequent Enrollment Periods for customers interested in joining the Township's Program. Unless otherwise provided herein, Buyers who join the Program other than during an Enrollment Period may pay a different rate and have service activated within the Aggregation Program subject to written policies mutually agreed upon by the Township and the Seller.

2.12 Buyer Movement within the Township's Boundary limits. Buyers in the Aggregation Group that move from one location to another within the Township boundaries of the Township may re-enroll in the Aggregation Program. Buyers must inform Seller of their move and request to be re-enrolled in the Program and shall receive natural gas under the same terms as they were receiving immediately prior to moving and in accordance with section 3.3 of this Agreement.

2.13 Commitment and Use of Resources.

(a) The Township and Seller shall cooperate in disseminating information to all Buyers concerning the Program and the Township's endorsement of the Program. Information related to pricing available through the Program and the Township's official seal shall be mutually agreed upon by the Parties.

(b) Upon mutual agreement of the Parties, the Parties may utilize Township resources for advertising, promotion and consumer communications of the Township's selection of Seller as the Township's sole preferred supplier of natural gas to Buyers in the Township's Natural Gas Aggregation Program. Any use of the Township's name and/or official seal for advertising or promotional purposes shall be only with the express approval of the Township.

### **ARTICLE 3** **TERM, PRICE, TERMINATION, AMENDMENT and ASSIGNMENT**

3.1 Term of Agreement. This Agreement shall be effective upon execution by the Parties. Township and Integrys will with good faith effort endeavor to reach a mutual agreement as to pricing and product, which will be reflected on an Exhibit A. Such Exhibit A shall be effective for no less than two (2) years. Notwithstanding the foregoing, in the event that the parties do not each agree to an acceptable price or product for the natural gas within two years from the date of execution of this Agreement, then this Agreement will be terminated. Furthermore, the assignment by Township to Integrys of all eligible Buyer accounts, as set out in Section 2.1 shall not occur until such time as the parties each agree to an acceptable price or product for the natural gas.

3.2 Activation of Service. Enrollment in the Aggregation Program shall occur, without action by the Buyer, upon the close of the Enrollment Period. Service in the Aggregation Program will begin on the Buyer's scheduled meter read date, as determined by the Utility, within the month natural gas deliveries begin as provided in paragraph 3.4 of this Agreement.

3.3 Price. See Exhibit A

3.4 Gas Flow Date. Seller will advise Buyer of gas flow within fifteen (15) days of confirmation from the Utility that the Buyer is a member of the Aggregation Group. Each Buyer's gas flow start and end date is on a billing cycle basis established by the Utility, unless otherwise stated by the Utility.

3.5 Termination. This Agreement may be terminated early: (1) upon the occurrence of a Regulatory Contingency, as provided for in Paragraph 2.11 herein; (2) if either Party is in material breach of this Agreement, as provided for in Article 7 herein; or (3) consistent with any other provisions permitting termination herein.

3.6 Termination Notices. In the event that this Agreement is terminated prior to the date set forth in paragraph 3.1 above, each Buyer in the Aggregation Group will receive written notification by U.S. Mail from the Seller of the termination of the Agreement prior to termination. Buyers will also be notified of their right to return to the applicable rate offered by the Utility or to select an alternate natural gas supplier. Any end-of-service notification shall be in accordance with PUCO requirements.

3.7 Termination Obligations. Termination of this Agreement shall not relieve either Party of the obligation to pay amounts owed for actual performance of obligations under this Agreement.

3.8 Amendment. All amendments or modifications to this Agreement must be made in writing and signed by both Parties before they become effective.

3.9 Term Extension. The term of this Agreement may be extended with the express written authorization of the Parties.

3.10 Non-Assignability. This Agreement shall not be transferred or assigned by either Party without the express authorization of the other Party and such authorization shall not be unreasonably withheld.

**ARTICLE 4**  
**SERVICE INQUIRIES AND NOTIFICATIONS**

4.1 Service Inquiries. Seller shall establish toll free and local telephone numbers for the Program to answer general information requests, billing questions and other customer service inquiries. All emergency, gas leaks or other disruption concerns should continue to be directed to the Utility.

4.2 Method of Notification. Any notices, requests or demands regarding the services provided under this Agreement shall be properly given or made upon receipt, if delivered by overnight or next day mailing/courier service to the address shown below. If delivered by facsimile, any such document shall be considered delivered the same business day on which it is sent, unless it is sent after 5:00 pm eastern prevailing time, in which case it will be deemed delivered on the following business day. Each Party shall direct notices, requests or demands to the other Party using the following address:

**Notices to Seller:**

Contract Administration  
IntegrYS Energy Services, Inc.  
300 W. Wilson Bridge Rd., Suite 350  
Worthington, OH 43085  
Telephone: (614) 844-4311  
Facsimile: (614) 844-4306  
E-mail: voreiff@integrysenergy.com

**Notices to Township:**

Director of Law  
Sycamore Township  
8540 Kenwood Road  
Cincinnati, OH 45236  
Telephone: 513-791-8447  
Facsimile: 513-792-8564  
E-mail:

**With a copy to:**

Susanne J. Buckley  
IntegrYS Energy Services, Inc.  
300 W. Wilson Bridge Rd., Suite 350  
Worthington, OH 43085  
Telephone: (614) 844-4326  
Facsimile: (614) 844-4305  
E-mail: sjbuckley@integrysenergy.com

Telephone:  
Facsimile:  
E-mail:

**ARTICLE 5**  
**REMEDY**

5.1 Service Failure Remedy of Buyers. In the event Seller fails to deliver to the Buyer the amount of natural gas contracted for by the Buyer, and the Seller's failure is not due to a Force Majeure event as defined herein, Seller shall procure replacement gas from the Utility, or from an alternate supplier for the immediate use by Buyer without any increase in rates during Seller's failure.

**IN THE EVENT OF A NON-FORCE MAJEURE EVENT, SELLER'S OBLIGATION TO SUPPLY REPLACEMENT NATURAL GAS AT THE AGGREGATION PROGRAM'S PRICE SHALL BE BUYER'S SOLE REMEDY FOR SELLER'S FAILURE TO DELIVER NATURAL GAS PURSUANT TO THE TERMS OF THIS AGREEMENT.**

5.2 Service Impact Notifications. The Parties agree to cooperate in notification of Buyers concerning the impacts caused by service interruptions or disruptions on the natural gas systems of transportation and distribution utilities involved in delivery of energy under this Agreement.

**ARTICLE 6**  
**METERING, BILLING, AND PAYMENTS**

6.1 Additional Equipment. If additional metering or monitoring equipment is required by the Utility or retail access program requirements, such metering or monitoring equipment shall be installed at Buyer's expense. Buyer shall cooperate as necessary with installation of additional metering or monitoring equipment.

6.2 Additional Costs. Buyer will pay, or cause to be paid, all Taxes or other charges imposed on the Gas upon and after delivery of the Gas to Buyer at the Utility Delivery Point unless Buyer furnishes Seller with applicable exemption certificates, and shall hold Seller harmless therefrom. In the event that sales of Gas hereunder are subject to any state or local gas revenue, utility, sales, gross receipts, commercial activity tax, or use taxes that Seller is obligated to remit to any competent taxing authority, Buyer shall reimburse Seller for any such taxes remitted by Seller in connection with sales of Gas hereunder. Any taxes, duties, fees or charges levied against Seller by any governmental or regulatory entity or passed through to Seller by capacity or energy suppliers and not explicitly included in the Price as noted in paragraph 3.3 of this Agreement shall be passed through by Seller and paid by Buyer. Seller shall provide Buyer with written notice and detailed description of such charges if they have not been included in previous communications or proposals.

6.3 Billing. If billing is to be provided by the Utility under a Consolidated Billing format, then the billing provisions as defined in the Utility's tariff(s) applicable to Buyer shall apply. Seller retains the right to assess late payment fees on Buyer of one-and-a-half percent per month of Seller's invoiced charges, if Buyer fails to pay amounts due within the specified time period for said payments per PUCO regulations.

## **ARTICLE 7** **DEFAULT AND DISPUTES**

7.1 Default. If either Party fails to comply with any of the material terms or conditions of this Agreement and such failure is not excused as Force Majeure, such Party shall be in default.

7.2 Remedies. If such default continues for a period of thirty (30) days after written notice thereof is given by the non-defaulting Party, then the non-defaulting Party may, at its option, terminate this Agreement at any time after expiration of such thirty (30) day period without prejudice to any rights and remedies of the non-defaulting Party.

7.3 Mitigation.

If any regulatory, legislative or judicial body orders a change or modification that affects the Program such that either party's obligations hereunder are materially changed, and the change is not deemed a Force Majeure and/or the program is unreasonably delayed due to regulatory action that is unacceptable to either the Township or Seller then the Township and Seller shall negotiate a modification to the terms of the program to mitigate the impact of the event or to resolve any changes ordered by the regulatory body or caused due to legislative, regulatory, or judicial action. The Township's and Seller's obligation hereunder to negotiate a modification to the terms of this Agreement in order adequately mitigate or resolve the impact of such an event as described above shall only be binding if the modification is approved by the Township and Seller and if the modification does not otherwise prevent the Township and Seller from performing hereunder. If either the Township and/or Seller concludes it is not able to achieve such an adequate mitigation or resolution at anytime within three (3) months after the issuance of such event, changes or action, then the Township and/or Seller may terminate this Agreement by providing written notice to the other and such termination shall be effective as of the end of the three month period following the written notice.

## **ARTICLE 8** **FORCE MAJEURE**

8.1 Excused Failure to Comply. 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 or indirectly from Force Majeure. In the event that either Party is unable, wholly or in part, to meet its obligations under this Agreement due to conditions of Force Majeure, the obligations of each Party, other than the obligation to make payments due hereunder, so far as they are affected by such Force Majeure, shall be suspended during the period of Force Majeure.

8.2 Force Majeure Events. For purposes of this Agreement, Force Majeure shall include flood, earthquake, storm, drought, fire, pestilence, lightning, hurricanes, washouts, landslides and other natural catastrophes and acts of God; strikes, lockouts, labor or material shortage, or other industrial disturbances; acts of the public enemies, terrorists, epidemics, riots, civil disturbance or disobedience, sabotage, wars or blockades; governmental actions such as necessity to comply with any court order, law, statute, ordinance or regulation promulgated by a governmental authority; or any other unplanned or non-scheduled occurrence, condition, situation or threat not covered above, which renders either Party unable to perform its obligations hereunder, provided such event is beyond the reasonable control of the Party claiming such inability. An unrelated change in economic natural gas market conditions shall not constitute Force Majeure. Failures



or interruptions, including government ordered interruptions, in production, transportation or distribution relied upon for supplying natural gas under this Agreement will constitute Force Majeure provided that Seller has arranged for service on these systems at the level of firmness required in this Agreement.

8.3 Notification. If either Party is unable to perform any of its obligations under this Agreement due to conditions of Force Majeure, then said Party shall notify the other Party in writing as soon as possible, but no later than seventy-two (72) hours after the start of the occurrence. The written notice shall include a specific description of the cause and expected duration of the inability to perform. The claiming Party shall exercise due diligence to remove such inability as soon as reasonably possible.

## ARTICLE 9 LIMITATION OF LIABILITY

9.1 SELLER'S DISCLAIMER. EXCEPT AS EXPRESSLY PROVIDED HEREIN, SELLER MAKES NO WARRANTIES HEREUNDER, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

9.2 LIABILITY. EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY UNDER THIS CONTRACT FOR INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES CONNECTED WITH OR RESULTING FROM PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER SUCH CLAIMS ARE BASED UPON BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE OF ANY DEGREE), STRICT LIABILITY, CONTRACT, OPERATION OF LAW OR OTHERWISE.

9.3 INDEMNIFICATION BY SELLER. SUBJECT TO THIS DISCLAIMER AND LIMITATION OF LIABILITY, SELLER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS BUYER, THE TOWNSHIP, ITS OFFICERS, AGENTS AND EMPLOYEES AGAINST ALL THIRD PARTY SUITS, CLAIMS, LOSS, COST, DAMAGE, EXPENSE OR LIABILITY THAT MAY ARISE OUT OF BREACH BY SELLER IN THE PERFORMANCE OF THIS AGREEMENT.

9.4 TOWNSHIP DISCLAIMER. THE TOWNSHIP IS RESPONSIBLE FOR ITS ACTIONS IN FURTHERANCE OF THE AGGREGATION PROGRAM AND THE SELLER SHALL NOT BE LIABLE FOR ANY CLAIMS, HOWEVER STYLED, ARISING OUT OF THE PROVISION OF AGGREGATION SERVICES BY THE TOWNSHIP.

9.5 Indemnification Claim. If any Party intends to seek indemnification under this Section from the other Party with respect to any action or claim, the Party seeking indemnification shall give the other Party written notice of such claim or action within fifteen (15) days of the commencement of, or actual knowledge of, such claim or action; provided however, that failure to give such notice shall not affect the indemnity granted hereunder except to the extent the indemnifying Party is actually prejudiced by the failure to provide timely notice. The Party seeking indemnification shall have the right, at its sole cost and expense, to participate in the defense of any such claim or action. The Party seeking indemnification shall not compromise or settle any such claim or action without the prior consent of the other Party, which consent shall not be unreasonably withheld.

## ARTICLE 10 CONFIDENTIAL INFORMATION

10.1 Confidentiality. Any information transferred through performance of this Agreement and identified in writing as "Confidential" shall be held in strict confidence by each of the Parties.

10.2 Confidential Information. "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 Recipient") regarding itself, its business, the business of its affiliates, and/or the Proposed Aggregation. Confidential Information does not include information: (a) in the public domain at the time of disclosure; (b) which after disclosure passes into the public domain, except by a wrongful act of the Recipient; (c) disclosed to the Recipient by a third party not under an obligation of confidentiality; (d) already in the Recipient's possession prior to disclosure by the Disclosing Party; or (e) subject to disclosure pursuant to Section 149.43 or any other section of the *Ohio Revised Code*.

10.3 Obligation of Confidentiality. Each Party agrees, for itself and its Representatives, to keep confidential all Confidential Information provided hereunder and to use the Confidential Information solely for purposes related to the Seller's services to the Township hereunder except to the extent that the Township determines that releases of Confidential Information is required by public records laws. The confidentiality provisions and obligations relating thereto, including but not limited to non-disclosure obligations and the duty to return Confidential Information, upon written request, shall survive termination of this Agreement for a period of two (2) years thereafter.

10.4 No Representation as to Accuracy. Neither Party makes any representation as to the accuracy or completeness of the Confidential Information, but shall make reasonable efforts to ensure that all Confidential Information disclosed to Recipient is accurate and not misleading. Each Party acknowledges the proprietary rights of the other Party in and to the Confidential Information.

10.5 Press Releases. Because the manner of public disclosure of this Agreement and the agreements between the Township and Seller directly impacts the commercial sensitivity of the arrangements contemplated therein and Seller's ability to secure energy at competitive prices, the Parties agree to joint review and approval prior to issuance of all media press releases regarding this Agreement. Approval of press releases will not be unreasonably withheld.

10.6 Data. All raw data of the Township and Aggregation Group members collected pursuant to this Agreement remains the property of the Township. All reports, data aggregations and analysis, product and service ideas, and other information generated by the Seller as part of this Agreement remain the sole and exclusive property of the Seller. The Township may use all such information furnished by Seller for its internal use, but only in furtherance of the Program.

## **ARTICLE 11** **MISCELLANEOUS**

11.1 Notices. All notices sent to the Township by the Utility concerning an account served by this Agreement shall be forwarded to Seller in a timely manner. These notices shall include, but are not limited to verbal or written notices regarding transition costs, changes in the terms and conditions of tariffs, rates or riders, and notice concerning the operation and reliability of the distribution system.

11.2 Entire Agreement. This Agreement and any Transaction Confirmations constitute the entire Agreement and understanding between the Parties with respect to the services, which are included herein. All prior written and verbal agreements and representations with respect to these services are merged into and superseded by this agreement.

11.3 Waivers. No failure or delay on the part of either Party in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

11.4 Applicable Law and Choice of Venue. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Ohio without regard to principles of conflict of laws.

11.5 Severability. Subject to Article 8 hereof, 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.

11.6 Prior Contracts Unaffected. Nothing in this Agreement affects any arrangement or other contract to supply or arrange the supply of commodity sales service to a consumer in Ohio; which arrangement or contract was entered into prior to the effective date of initial rules adopted pursuant to Ohio Rev. Code Ann. § 4929.20(A), and was authorized as a result of a rule or order adopted or issued by the Public Utilities Commission under Chapter 4905 of the Ohio Rev. Code Annotated. Further, nothing in this Agreement affects any rights or duties of any person under such an arrangement or contract for the term of the arrangement or contract.

11.7 Compliance with Law. The Utility's Energy Choice Programs are subject to the ongoing jurisdiction of the PUCO. If the PUCO cancels the program, this contract is rendered void with no penalty to either Party.

11.8 Township Resolution of the Township Board of Trustees. Resolution \_\_\_\_\_ of the Township Board of Trustees attached hereto is hereby incorporated by reference.

**ARTICLE 12**  
**REPRESENTATIONS AND WARRANTIES**

12.1 Mutual Representations and Warranties. Each Party represents and warrants to the other Party, as of the date of this Agreement, 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, in good standing;

(b) It has the corporate, governmental and/or other legal capacity, authority and power to execute, deliver and enter into this Agreement and any other related documents, and perform its obligations under this Agreement, and has taken all necessary actions and made all necessary determinations and findings to authorize such execution, delivery and performance; and

(c) The execution, delivery and performance of this Agreement does not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets.

12.2 Additional Representations of the Township. The Township hereby further represents to Seller, as of the date of this Agreement, that:

(a) The Township's execution and delivery of this Agreement, and its performance of its obligations hereunder, are in furtherance, and not in violation, of the municipal purposes for which the Township is organized pursuant to its authorizing statutes and regulations; and

(b) This Agreement does not constitute any kind of investment by the Township that is proscribed by any constitution, charter, law, rule, regulation, government code, constituent or governing instrument, resolution, guideline, ordinance, order, writ, judgment, decree, charge, or ruling to which the Township (or any of its officials in their respective capacities as such) or its property is subject.

**IN WITNESS WHEREOF**, the Parties have duly executed this agreement to be effective on the date first written above. The parties agree that signatures transmitted by facsimile are acceptable and binding for execution of this Natural Gas Aggregation Supply Agreement.

**Seller: Integrys Energy Services, Inc.:**

**Sycamore Township, OH:**

**Signed:** \_\_\_\_\_

**Signed:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Approved as to Form:**

\_\_\_\_\_

**Date:** \_\_\_\_\_



This Exhibit A is made a part of, and pursuant to terms of, the Natural Gas Aggregation Supply Agreement dated \_\_\_\_\_, 20\_\_\_\_, between Seller and Township identified herein.

<b>SELLER:</b> IntegrYS Energy Services, Inc. 300 W. Wilson Bridge Rd, Suite 350 Worthington, OH 43085 Attn: Account Management Phone: 614-844-4311 Fax: 614-844-4305 E-Mail: OHAccountManagers-Gas@integrYSenergy.com Account Executive: Brenda Coffey	<b>TOWNSHIP:</b> Name Address Address Attn: Title: Phone: Fax: E-Mail: Agent/Assoc:	<b>Additional Facility Information:</b> N/A County: Transporter: Transporter Acct Number:
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**Delivery Period:**

**Contract Price:**

Price: The price will be comprised of the IntegrYS Energy Delivery Adder of \$\_\_\_\_\_/CCF plus the NYMEX Market pricing formula which is comprised of those costs involved in moving gas from the wellhead to the burnertip. These costs include, but are not limited to, NYMEX cost of gas commodity, shrinkage, pooling costs, program fees and transportation charges. In addition, each Buyer will be responsible for sales tax and utility pass through costs.

Locked-In Price with Flex Down Opportunity<sup>SM</sup> Rate Price

Buyers may receive a Locked-In Price with Flex Down Opportunity<sup>SM</sup> Rate for the \_\_\_\_\_ through \_\_\_\_\_ Usage period (\_\_\_\_\_ through \_\_\_\_\_ Billing), or any portion thereof. The Locked-In Price with Flex Down Opportunity<sup>SM</sup> Rate will include a locked-in price with the opportunity to receive a lower monthly rate if the natural gas market falls significantly. During the period that the price is locked-in, the rate will never increase beyond the fixed price regardless of how much the market increases.

The Township shall have the ability to lock in the NYMEX cost of gas commodity component price for the forecasted usage for any time period on any business day that is not a New York Mercantile Exchange Holiday, by sending written notice to IntegrYS Energy Services, no later than Noon EPT (EST) by e-mail to [FixedPriceReqOH@integrYSenergy.com](mailto:FixedPriceReqOH@integrYSenergy.com) of the Township's intent to lock in the price. The NYMEX cost of gas commodity component price shall be the market price on the day that notice is received, or if notice is received after Noon eastern prevailing time or on a New York Mercantile Exchange Holiday, then the NYMEX cost of gas commodity component shall be the market price on the next business day following receipt of notice during which the New York Mercantile Exchange is open.

IntegrYS Energy Services shall notify the Township through a Transaction Confirmation that the price is locked in, and at what price. Any Transaction Confirmation that reflects the agreed upon price, shall be made a part of and integrated into the supply agreement dated \_\_\_\_\_, 20\_\_\_\_, by and between IntegrYS Energy Services, Inc. and the Board of Trustees of \_\_\_\_\_ Township, OH.

**Delivery Point(s):** Duke Energy-Ohio citygate

**Special Conditions:** N/A

<p><b>Seller:</b> IntegrYS Energy Services, Inc.</p> <p><b>By:</b> _____</p> <p><b>Name:</b> Susanne Buckley</p> <p><b>Title:</b> Director, Regional Sales</p> <p><b>Date:</b> _____</p>	<p><b>Township:</b> _____, OH</p> <p><b>By:</b> _____</p> <p><b>Name:</b> _____</p> <p><b>Title:</b> _____</p> <p><b>Date:</b> _____</p>
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