

RECORD OF ORDINANCES

Haydon Legal Blank, Inc.

Form No. 50043

Ordinance No. _____

Passed _____, 20____

CITY OF BELPRE
ORDINANCE NO. 10 (2020-21)

**AN ORDINANCE TO APPROVE THE PLAN OF
OPERATION AND GOVERNANCE FOR THE CITY OF
BELPRE NATURAL GAS AGGREGATION PROGRAM**

WHEREAS, pursuant to Chapter 4929 of the Ohio Revised Code to facilitate competitive retail natural gas service to promote natural gas savings, lower cost of natural gas supplies, and other benefits, certain governmental entities may aggregate certain natural gas consumers within their jurisdiction; and

WHEREAS, on November 8, 2011, the electors of the City of Belpre approved the Municipality's created an aggregation program for customers located within the boundaries of the City of Belpre; and

WHEREAS, Revised Code 4929.26(c) requires a governmental entity interested in the automatic registration of customers under governmental aggregation, subject to customers rights to "opt-out" of such an aggregation, to adopt a plan of operation and governance for its aggregation program; and

WHEREAS, City Council desires to authorize the Mayor and/or Safety-Service Director to select, hire, manage, and contract with AEP Energy, Inc., to provide the necessary expertise to represent the City's interest in legislative and regulatory matters and/or to service as the Aggregation Program Manager for the purpose of facilitating consumer enrollment and opt-out, assisting with consumers education, addressing consumer questions and concerns, providing reports on program operation, enrollment and savings, supplying retail natural gas service, and representing the City in dealings with the PUCO, among other assigned activities.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL
OF THE CITY OF BELPRE, OHIO, THAT:**

SECTION I

This City Council hereby adopts as the City of Belpre's Plan of Operation And Governance for the implementation and administration of the Municipality's natural gas aggregation program in accordance with Revised Code 4929.29(c) the "Government Aggregation Master Retail Natural Gas Supply Agreement" between AEP Energy, Inc. ("AEP Energy") and the City of Belpre, Ohio ("Government Aggregator") along with the "Attachment A, Customer Pricing And Additional Terms" thereto, and the Exhibit A: Government Aggregation Retail Natural Gas Supply Customer Residential & Small Commercial Terms & Conditions" incorporated therein (attached hereto and incorporated herein by reference as Exhibit 1).

SECTION II

This Ordinance is hereby declared to be an emergency measure deemed necessary for the immediate preservation of the public health, safety and welfare of the City, and to allow this program to be effective as soon as possible.

**GOVERNMENT AGGREGATION
MASTER RETAIL NATURAL GAS SUPPLY AGREEMENT**

This Government Aggregation Master Retail Natural Gas Supply Agreement ("Agreement") is entered into as of the following date: _____ ("Effective Date"). The parties are the following:

AEP Energy, Inc. ("AEP Energy")	City of Belpre, Washington County, Ohio ("Government Aggregator") Federal Tax ID: _____
<u>Address for Notices:</u> 1 Easton Oval, Suite 200 Columbus, OH 43219 Attn: Legal Department Toll Free number: 1-877-726-0214 AEPenergy.com/help	<u>Address for Notices:</u> _____ Attn: _____ Phone: _____

**GENERAL TERMS AND CONDITIONS FOR GOVERNMENT AGGREGATION
MASTER RETAIL NATURAL GAS SUPPLY AGREEMENT**

All capitalized terms used but not otherwise defined in the sections in which they initially appear shall have the meanings as defined by the Public Utilities Commission of Ohio ("PUCO") at the time of the Effective Date. AEP Energy is certified by the PUCO as a Competitive Retail Natural Gas Service ("CRNGS") Provider to sell competitive retail natural gas service to customers in the State of Ohio. AEP Energy is an affiliate of AEP Ohio, but is not soliciting on behalf of and is not an agent of AEP Ohio. This Agreement as well as each Attachment A and all other attachments, tables, schedules, exhibits, other supplements and related credit support arrangements (each, an "Attachment") shall form a single agreement between the parties (collectively referred to as this "Agreement").

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1 - OBLIGATIONS OF THE PARTIES

1.1 **Government Aggregator Obligations.** The Government Aggregator is certified and shall maintain its certification by the PUCO as a government aggregator in connection with retail natural gas supply sales for the duration of this Agreement pursuant to Section 4929.26, et. seq. of the Ohio Revised Code and rule 4901: 1-27-01, et. seq., of the Ohio Administrative Code. The Government Aggregator shall establish and sustain an opt-out aggregation program within its municipal or political subdivision boundaries of the Government Aggregator for its residents and small commercial businesses (the "Opt-out Aggregation Program" or "Program"). The Government Aggregator shall designate AEP Energy as the CRNGS Provider of record for purpose of supplying competitive retail natural gas service to its residents and small commercial businesses (as defined in the relevant Attachment A). The Government Aggregator shall adopt, or has adopted, an operation and governance plan (the "Plan") in accordance with the Ohio Revised Code and the Plan has been filed with the PUCO. In coordination with the

Government Aggregator, AEP Energy may send out enrollment forms to the prospective Customers (as hereinafter defined) or any notices on behalf of the Government Aggregator. During the Term (as hereinafter defined), the right to supply competitive retail natural gas service for the Program shall be exclusive to AEP Energy. Government Aggregator agrees and acknowledges that no services shall be provided by AEP Energy to Customers until Government Aggregator has met all certification requirements to provide such Program in its jurisdictional territory. Government Aggregator shall not enter into any type of competitive retail natural gas service supply arrangement with a CRNGS Provider other than AEP Energy on behalf of its residents and small commercial businesses for the provision of the services described hereunder during the Term. During the Term, Government Aggregator shall not directly or indirectly encourage or in any way attempt to persuade either prospective Customers to opt out of the Program or Customers to discontinue their service with AEP Energy, other than notifying prospective Customers of their right to "opt-out" and by

delivery service request. The Government Aggregator and AEP Energy may extend the Term for additional periods of time by written agreement approved and executed by each party. AEP Energy shall continue to serve Customers enrolled in the Program until the Customer exercises its rights to opt-out or terminate, or the Program is terminated by the parties hereto in which case Customers may choose another CRNGS or will be switched to NGDC service in accordance with the standard switching rules and applicable notices. A Customer may be removed on an individual basis based on a failure to adhere to the terms and conditions of service. Termination of this Agreement shall not relieve Customers or either party of the obligation(s) to pay amounts owed for actual performance of obligations rendered prior to the termination of this Agreement.

2.2 Change in Law. In the event that there is any new, or any change in existing, law, regulation, rule, statute, order, filed tariff, decision, judgment, decree, or other event, including any change in any formula rate calculation, or any change in any interpretation or application of any of the foregoing, by a governmental authority, NGDC, or other regulated service provider (a "Change in Law"), and such Change in Law results in AEP Energy incurring additional or increased costs or expenses or other adverse economic effects relating to providing the services contemplated herein (collectively, "Additional Costs"), AEP Energy may revise the pricing under this Agreement to eliminate the impact of such Additional Costs. Furthermore, Additional Costs may be assessed to Customer as prescribed by the PUCO.

2.3 Termination Events. In the event any of the following conditions occur during the Term, AEP Energy shall have the right to terminate this Agreement without liability and close out its obligations hereunder:

- (i) The NGDC will not provide consolidated billing consistent with previous practice;
- (ii) The Government Aggregator does not receive the required certification, authorization and/or approval to move forward with the Program; or
- (iii) Due to the interpretation of any applicable law by any judicial or governmental authority with competent jurisdiction, it becomes unlawful for AEP Energy to perform any obligation under this Agreement.

2.4 Termination Notices. In the event of termination hereunder, the terminating party shall exercise its best efforts to communicate to the non-terminating party the upcoming possibility of termination. In the event that this Agreement is terminated prior to the end of the Term, each Customer will be provided written notification from the terminating party of the termination of this Agreement at least thirty (30) calendar days prior to termination, and in compliance with other regulatory or legal requirements and Customers will also be notified of their right to return to the NGDC or to select an alternate CRNGS Provider. All other notification(s) shall be in accordance with PUCO requirements.

ARTICLE 3 - DELIVERY TERM

3.1 Delivery Term. During the Term and on and after the actual switch date(s), AEP Energy shall provide competitive retail natural gas service and related services to the Customers, and shall arrange for distribution service to the Customers by the NGDC.

3.2 Customer Pricing. During the Term, AEP Energy shall provide competitive retail natural gas service and related services to all Customers at the price set forth on the relevant Attachment A (the "Price"). From the Effective Date of this Agreement up to the date on which AEP Energy or Government Aggregator mails out notice of this Opt-out Aggregation Program to prospective Customers, AEP Energy reserves the right to adjust the pricing in the relevant Attachment A to reflect current market conditions or any updated usage data, historical consumption information or consumption forecast information and maintain the original expected economic position ("Change in Price Event"). Should a Change in Price Event occur, AEP Energy will provide notice of the revised price to the Government Aggregator. Parties must mutually agree to the revised price for the Program to move forward. If the parties are unable to agree upon modification(s) to this Agreement within thirty (30) calendar days of such notice, this Agreement shall terminate.

ARTICLE 4 - BILLING AND PAYMENTS

4.1 Pass-through Costs.

Each Customer shall be responsible for payments to the NGDC and shall be solely responsible for late charges, interests, or penalties imposed by the NGDC as a result of such Customer's failure to timely pay the NGDC charges. If such late charges, interests, or penalties are directed to AEP Energy as the CRNGS, then such Customer shall reimburse AEP Energy for any amounts paid. Any charges, fees, penalties, damages, credits, rebates or refunds arising from service to such Customer by the NGDC and/or other provider(s) prior to switch date shall be the responsibility of such Customer or accrue to the benefit of such Customer as appropriate. Each Customer shall use commercially reasonable efforts to respond to these obligations directly with the NGDC and/or other provider(s). If such late charges, interest, or penalties are directed to AEP Energy as the CRNGS, then such Customer shall reimburse AEP Energy for any amounts paid. Each Customer shall hold AEP Energy harmless for such Customer's failure to pay these obligations in a timely fashion.

4.2 Billing. Consolidated billing shall be provided to Customers directly by the NGDC based upon the NGDC's meter read and Billing Cycle(s) for Customers. Such bills will contain both NGDC and AEP Energy charges. If a Customer fails to pay amounts due within the specified time period for said payments in accord with the NGDC's tariff and PUCO regulations, AEP Energy retains the right to assess late payment fees on amount(s) owed to AEP Energy, or deem such non-payment a Customer default. AEP Energy reserves the right to convert Customer from consolidated billing to dual billing, or from dual billing to consolidated billing if such a conversion will facilitate more timely billing, collections, and/or payment.

ARTICLE 5 - DEFAULT AND REMEDIES

5.1 Events of Default. The occurrence of any of the following shall be an "Event of Default" hereunder: (a) the failure to make, when due, any undisputed payment required pursuant to this Agreement if such failure is not remedied within five (5) business days after written notice; (b) any representation or warranty made by Government Aggregator or AEP Energy herein is false or misleading in any material respect when made or when deemed made or repeated; (c) failure of Government Aggregator or AEP Energy to perform a material obligation set forth in this Agreement for which an exclusive remedy is not

ARTICLE 8 - REPRESENTATIONS AND WARRANTIES

8.1 Representations and Warranties by AEP Energy. AEP Energy hereby represents and warrants to Government Aggregator as of the Effective Date as follows:

(i) AEP Energy is a corporation, duly formed, validly existing and in good standing under the laws of the State of Illinois;

(ii) AEP Energy has all authorizations from any government authority necessary for it to legally perform its obligations under this Agreement or will obtain such authorizations in a timely manner prior to when any performance by it requiring such authorization becomes due;

(iii) The execution and delivery of, and performance under, this Agreement are within AEP Energy's powers, have been duly authorized by all necessary action and do not violate, conflict with or breach any of the terms or conditions in its governing documents or any contract to which it is a party or any government rule applicable to it;

(iv) This Agreement has been duly executed and delivered by AEP Energy, and this Agreement (assuming due authorization, execution and delivery of all parties) constitutes legal, valid and binding obligations of AEP Energy enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, fraudulent conveyance, reorganization and other laws affecting creditor's rights generally and general principles of equity, regardless of whether such enforceability is considered in a proceeding in equity or at law; and

(v) No bankruptcy is pending against it or to its knowledge threatened against it.

8.2 Representations and Warranties by Government Aggregator. Government Aggregator hereby represents and warrants to AEP Energy as of the Effective Date as follows:

(i) The Government Aggregator is duly authorized as the agent for the Customers, as a duly authorized government aggregator;

(ii) The Government Aggregator has all authorizations from any government authority necessary for it to legally perform its obligations under this Agreement;

(iii) The execution and delivery of, and performance under, this Agreement are within the Government Aggregator's powers, have been duly authorized by all necessary action and do not violate, conflict with or breach any of the terms or conditions in its governing documents or any contract to which it is a party or any government rule applicable to it. Neither the execution nor delivery by Government Aggregator of this Agreement nor the consummation by the Government Aggregator of the transactions contemplated hereby or thereby does or will result in a breach or violation of this Agreement establishing the Government Aggregator's authority, or its bylaws, or any material provision of the governance document related thereto. Notwithstanding the foregoing in this paragraph, it is understood with respect to the terms or conditions of any governance document (including the Plan), any contract, or any other document the terms of Section 10.2 shall apply and prevail;

(iv) Government Aggregator has the authority to designate, and has designated AEP Energy as its CRNGS provider for the Customers for the Term. If Government Aggregator is a governmental authority, no action taken by it will be an action by a governmental authority unless it is taken by Government Aggregator in the general exercise of its governmental police powers without a disproportionate impact on AEP Energy or this Agreement, and not in its capacity as a party to this Agreement, and no action taken by Government Aggregator's consultant(s), if any, will be an action by a governmental authority;

(v) This Agreement has been duly executed and delivered by the Government Aggregator, and this Agreement (assuming due authorization, execution and delivery of all parties) constitutes legal, valid and binding obligations of the Government Aggregator, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization and other laws affecting creditors' rights and remedies generally, to general principles of equity, regardless of whether such enforceability is considered in a proceeding in equity or at law;

(vi) The Government Aggregator is entering into this Agreement with a full understanding of all of the risks hereof (economic and otherwise), it is capable of assuming and willing to assume those risks and AEP Energy is not acting as a fiduciary or in an advisory capacity to it;

(vii) None of the documents or other written information furnished by or on behalf of the Government Aggregator or Customers to AEP Energy pursuant to this Agreement contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements contained herein or therein, in the light of the circumstances in which they were made, not misleading; and

(viii) The Government Aggregator has the contractual right to enter into this Agreement and to contract with AEP Energy to supply competitive retail natural gas service and related services to meet the obligations of Customers and there is no other aggregation program available to these Customers within the jurisdictional territory of the Government Aggregator.

ARTICLE 9 - CONFIDENTIAL INFORMATION

9.1 Confidentiality. Each of AEP Energy and Government Aggregator agrees, for itself and its authorized representatives, to keep all proprietary, confidential, and/or trade secret information of the disclosing party (the "Discloser") provided under or in connection with this Agreement, including the terms and provisions of this Agreement ("Confidential Information"), confidential and to use such Confidential Information solely for purposes in connection with this Agreement, except to the extent that the receiving party (the "Recipient") determines that release of such Confidential Information is required by applicable law or regulation, including the Ohio Public Records Act, O.R.C. Section 149.01 et seq. (the "Public Records Act"), subject to the terms and conditions set forth in this paragraph. For purposes of this Article 9, Confidential Information includes this Agreement (or any portion of the contents hereof) and any oral, written, electronic, graphic, or machine-readable information provided before, on, or after the date hereof relating to a party's business information or corporate structure and/or that of any of its affiliates, marketing and product development plans,

other party, which authorization shall not be unreasonably withheld. Notwithstanding the foregoing, AEP Energy may, without the consent of Government Aggregator or Customers, (a) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangement; (b) transfer or assign this Agreement to an affiliate of AEP Energy; or (c) transfer or assign this Agreement to any person or entity succeeding to all or a substantial portion of the assets of AEP Energy. Upon an assignment pursuant to (b) or (c), Government Aggregator and Customers agree that AEP Energy shall have no further obligations regarding future performance hereunder. Either party's assignee shall agree in writing to be bound by the terms and conditions of this Agreement, including the Attachments. Subject to the foregoing, this Agreement and its Attachments shall be binding upon and inure to the benefit of any permitted successors and assigns, to the extent permitted by law.

10.8 Forward Contract. The parties acknowledge and agree that (a) this Agreement constitutes a forward contract within the meaning of the United States Bankruptcy Code, and (b) AEP Energy is a forward contract merchant. Further, AEP Energy is not providing advice regarding "commodity interests," including commodity futures contracts and commodity options contracts or any other matter, which would

cause it to be a "commodity trading advisor" under the U.S. Commodity Exchange Act, as amended.

10.9 Press Releases. Government Aggregator agrees and acknowledges that AEP Energy shall have the right to review and approve any press releases in connection with this Agreement prior to publication or release.

10.10 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one instrument. Any counterpart may be executed and evidenced by signature transmitted by email or other electronic means as though it were an original.

10.11 No Third-Party Beneficiaries. This Agreement confers no rights or remedies whatsoever upon any person or entity other than the parties and shall not create, or be interpreted as creating, any standard of care, duty or liability to any person or entity not a party hereto. Neither party shall be liable to a third party not a party to this Agreement for any unauthorized act or omission on the part of the other party or for any unauthorized obligation or debt incurred by the other party.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed by a duly authorized representative, who, by applying his or her signature, represents and warrants full right, power, and authority to sign on behalf of the relevant party named below, effective as of the Effective Date set forth above.

AEP ENERGY, INC.

By: _____
Name: _____
Title: _____

CITY OF BELPRE, OHIO

By: _____
Name: _____
Title: _____

Attachment A to Government Aggregation Master Retail Natural Gas Supply Agreement

Between

City of Belpre, Washington County, Ohio and AEP Energy, Inc.

Term:

_____ (____) months, expected to begin on or around the relevant _____ meter read date(s) (or, for Refresh Opt Out(s) or Customer(s) that enroll in the Program by affirmative consent, for a period up to the remainder of such _____ (____) month-term), subject to the timing of (i) the available meter read date(s), as determined by the NGDC, following the applicable opt-out period or enrollment date, and (ii) AEP Energy's receipt of confirmation that the NGDC has completed its processing and has accepted the relevant delivery service request(s)

Pricing:

Residential (RS): Commodity portion of natural gas service equal to \$ 3.59 per Mcf

The Customer shall pay AEP Energy a charge for the commodity portion of its natural gas service that is equal to \$ _____ per _____ multiplied by the metered natural gas usage for the monthly Billing Cycle. Price is exclusive of distribution service charges and other non-bypassable NGDC charges and fees.

Commercial (consumption less than 5,000 Ccf or 500 Mcf annually): Commodity portion of natural gas service equal to \$ _____ per _____

The Customer shall pay AEP Energy a charge for the commodity portion of its natural gas service that is equal to \$ _____ per _____ multiplied by the metered natural gas usage for the monthly Billing Cycle. Price is exclusive of distribution service charges and other non-bypassable NGDC charges and fees.

Administrative Services to be provided to Government Aggregator by AEP Energy during the Term:

- Design, print and mail the Opt-out letter to eligible participants, including a sheet of Frequently Asked Questions to provide assistance.
- Administer the opt-out process including database preparation, handling of opt-out form information, and final enrollment list compilation.
- Provide call center support to handle informational calls regarding the Program.