

Gas Main Extension Agreement \_\_\_\_\_

This **GAS MAIN EXTENSION AGREEMENT** ("Agreement"), is entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ ("Effective Date"), by and between Duke Energy Ohio, Inc. hereinafter called "COMPANY" and customer name, located at customer's mailing street address, City of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_, hereinafter called "CUSTOMER" (individually as the "Party" and collectively, as the "Parties".)

**WITNESSETH:**

**WHEREAS**, the CUSTOMER desires a gas main extension and, the COMPANY agrees to install a gas main extension in accordance with the terms and conditions below.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. In consideration of payment of \_\_\_\_\_ Dollars and no Cents (\$0.00) to COMPANY by CUSTOMER, and the granting by CUSTOMER or others to COMPANY necessary easements and/or rights-of-way at no cost to COMPANY, the COMPANY agrees to extend its gas main a distance of approximately \_\_\_\_\_ feet at \_\_\_\_\_, City of \_\_\_\_\_, County of \_\_\_\_\_ Select County, in the State of Ohio per Drawing # \_\_\_\_\_. If any portion of the extension is located on property not owned by CUSTOMER, or if this Agreement is assigned, transferred, sold or otherwise conveyed to a third party for whatever reason by CUSTOMER, without the written consent of COMPANY, whereby CUSTOMER fails to comply with its responsibilities and obligations hereunder, including CUSTOMER'S obligation of payment to COMPANY, CUSTOMER shall be solely responsible for any and all costs and expenses associated with COMPANY'S costs as the result of the CUSTOMER'S failure to comply and any and all costs incurred by COMPANY for the enforcement of this Agreement, including but not limited to attorneys' fees, filing fees and court costs, and the procurement of the appropriate easements and rights-of-way from property owners prior to the COMPANY'S commencement of construction. If said easements and rights-of-way are not granted to COMPANY, COMPANY has the right, at its sole discretion, to terminate this Agreement with no further liability to CUSTOMER, nor shall COMPANY'S termination of this Agreement pursuant to this Paragraph 1 be considered a breach of this Agreement in any manner hereof. CUSTOMER shall be responsible for any costs and expenses incurred by COMPANY in the performance of its duties hereunder prior to the termination of the Agreement. If COMPANY facilities are located or installed on CUSTOMER'S property, or property owned by CUSTOMER at the time of the execution of this Agreement and CUSTOMER fails to grant, or cause to be granted or conveyed, an easement for said facilities, CUSTOMER shall defend, indemnify and hold harmless COMPANY for any and all costs associated with CUSTOMER'S failure to grant or convey said easements or applicable rights-of-way to COMPANY pursuant to this Agreement, including but not limited to the costs and expenses incurred by COMPANY for the procurement of the applicable rights-of-way from any third party. CUSTOMER'S sale of the property that is the subject of this Agreement does in no manner relieve CUSTOMER of its obligations herein, including its financial obligations to COMPANY pursuant to this Agreement.

2. CUSTOMER shall pay the full amount specified in Paragraph 1 upon receipt of invoice.

3. This Agreement shall be effective on the Effective Date set forth herein above and terminate ten (10) years from the date following the commencement of construction ("Term"). The COMPANY will provide written notice to the CUSTOMER with respect to the commencement of the construction date and such construction date will be used in accordance with this Agreement. The CUSTOMER shall be entitled to a refund as set forth below in this Paragraph 3 ("Refund") provided that the following four (4) conditions have been met to COMPANY'S satisfaction: (i) Payment by CUSTOMER has been made to and received by COMPANY; (ii) construction has commenced; (iii) the credited quantity

of (>>>>) gas meters (the "Credited Meters") have been installed and connected on the gas main extension; and (iv) CUSTOMER requests any Refund prior to the expiration of the Term. All four conditions shall be satisfied in order for the CUSTOMER to receive a Refund from COMPANY. If any one condition is not satisfied, CUSTOMER shall not receive, and COMPANY shall not be obligated or in breach of this Agreement for withholding, the Refund. The CUSTOMER shall waive any right to Refunds not received by CUSTOMER within the Term, i.e., any Refunds not obtained by CUSTOMER prior to the expiration of the 10-year period shall become the property of COMPANY, with no exceptions. The maximum amount of Refund available to CUSTOMER shall in no manner exceed the Payment made by CUSTOMER in accordance with this Agreement. COMPANY shall provide the Refund to the CUSTOMER in the amount of for each gas meter, in excess of Credited Meters, hereafter directly installed and connected to said main and within said extension however CUSTOMER shall not receive any Refund for any CUSTOMER that is connected to a lateral from said extension, or for the relocation of existing gas service lines to this extension, or to a further extension of said main not provided for in this Agreement. The CUSTOMER will also be entitled to a Refund, of for each additional increment of 105 Mcf of annual usage above the initial 105 Mcf usage registered on each new gas meter, in excess of Credited Meters. This Refund is determined from the highest usage occurring within twelve (12) consecutive months during the ten (10) year Term of this Agreement. Notwithstanding the Refund described in the preceding two sentences, i.e., the Refund for each additional increment of 105 Mcf usage above the initial 105 Mcf usage, in no circumstances whatsoever shall the CUSTOMER receive Refunds that exceed the amount of the Payments identified in Paragraph 1 herein above. CUSTOMER will notify company when Refunds apply.

4. CUSTOMER agrees to provide COMPANY with an address plat or listing of addresses which covers the above described gas main extension or immediately upon its availability from the governmental agency responsible for assigning house numbers or other pertinent information. CUSTOMER shall bear any costs associated with or incurred by COMPANY resulting from CUSTOMER'S failure to comply herewith.

5. COMPANY shall be excused from entire or part performance hereof to the extent such performance is prevented by force majeure. The term force majeure shall include, but not be limited to, acts of God, acts of public enemy, insurrection, riots, strikes, labor disputes, fires, explosions, floods, breakdowns of or damage to plants, equipment, or facilities, acts or orders of regulatory, civil or military authorities, fuel shortages, or other causes of a similar or dissimilar nature beyond the reasonable control of COMPANY. Such excuses from performance shall continue until such preventive cause is eliminated or ceases to exist. COMPANY shall use reasonable efforts to eliminate such cause as promptly as possible, the CUSTOMER recognizing, however, that the settlement of any strike or other labor dispute shall be solely within the discretion of the COMPANY.

6. The Parties recognize and agree that, subsequent to the execution of this Agreement, The Public Utilities Commission of Ohio (PUCO) or another body lawfully empowered to do so, may impose restrictions on the COMPANY'S ability to supply natural gas to new customers (whether or not a gas main is adjacent to the property for which gas service is requested). The Parties agree to be bound by such restrictions.

7. The Parties also agree to be bound by any future determination by, The Public Utilities Commission of Ohio (PUCO) or another body lawfully empowered to do so, that would have an effect on the method of refunding the Payment as set forth in Paragraph 3 herein above.

8. CUSTOMER shall be liable for all damages or injuries occurring to persons or property that are caused by its negligence, intentional acts or omissions, wanton and willful conduct, or its failure to comply with the terms and conditions of this Agreement. Further, CUSTOMER hereby agrees to indemnify, defend and hold harmless COMPANY during the period of any applicable statute of limitation from and against any and all actions or causes of action, claims, demands, liabilities, losses, damages or expenses of whatever kind or nature, including attorneys' fees, which COMPANY may suffer or incur by reason of bodily injury, including death, to any person or persons, or by reason of damage or destruction of any property, including the loss of use, profits, business or operations

thereof, arising out of or is in any way connected with any work, act or omission performed of in accordance with this Agreement or which COMPANY may sustain or incur in conjunction with any litigation, investigation, or other expenditures incident thereto, including any suit instituted to enforce the obligations of this provision of indemnity or any other provision of this Agreement except to the extent the same is due to the negligence of COMPANY.

9. CUSTOMER shall release, exculpate and hold harmless and shall reimburse COMPANY, its agents and employees from and for all claims, losses, damages, costs, and expenses, including attorneys' fees, arising or alleged to arise, in whole or in part, from injury to CUSTOMER, its representatives, employees or subcontractors, including death or damage to their property, including the loss of use thereof, arising or alleged to arise out of or in any way connected with any work or acts performed as a result of this Agreement by CUSTOMER or the agents, employees or subcontractors of CUSTOMER, except to the extent caused by the negligence of COMPANY, its agents or employees.

10. This Agreement: (a) is the entire agreement between the Parties and there are no other oral or written representation, conditions or agreements relating to this Agreement, which are not specifically incorporated herein; (b) may not be waived, with the exception of Paragraphs 6 and 7 herein, amended or extended except by a written amendment executed by both Parties; and (c) is binding upon and inures to the benefit of each of the Parties and their permitted successors and assigns. Neither Party's failure to insist upon the other Party's strict performance of any provision of this Agreement or failure to promptly exercise any right available in connection with this Agreement shall constitute a waiver of any provision or an amendment to this Agreement. This Agreement may be executed in separate counterparts, each of which will be deemed an original, but which together will constitute one and the same instrument. If any clause, provision or section of this Agreement is ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision, or section shall not affect any of the remaining provisions hereof. Both Parties warrant and represent that the execution and performance of this Agreement will not cause it to violate any laws, ordinances, covenants, or provisions, of any mortgage, lease, or other agreement binding on it, and both Parties shall be responsible respectively for any failure to comply with this provision herewith. Both Parties have had the opportunity to review this Agreement with counsel and therefore neither Party shall be construed as the "drafter" of this Agreement. This Agreement shall not be assigned by CUSTOMER without the written consent of COMPANY. The CUSTOMER shall remain obligated to the terms and conditions of this Agreement in the event of any permitted assignment or transfer of this Agreement by CUSTOMER, unless CUSTOMER obtains the written agreement of any subsequent third party operating pursuant to this Agreement, e.g., assignee, purchaser, lessee, to abide by the terms and conditions of this Agreement. Only upon the tender of said written agreement demonstrating a third party's acceptance of the terms and conditions of this Agreement by said third party shall CUSTOMER be relieved of any obligations and duties hereunder, including the Payment.

11. This Agreement constitutes an offer and shall be void, at the sole option of the COMPANY, if not signed by CUSTOMER and received by COMPANY on or before the (Type the Day day of Select Month, Select year).

12. This Agreement shall be governed by and construed under the laws of the State of Ohio without reference to the conflict of law principles thereof.

13. The Parties agree that facsimile signatures on this Agreement may be deemed as original signatures and as such this Agreement, with facsimile signatures, may be deemed as an original for purposes of enforcement and construction.

14. The CUSTOMER'S obligations pursuant to Paragraphs 10 & 11 of this Agreement shall survive the termination or expiration hereof.

**IN WITNESS WHEREOF**, the Parties have caused their duly authorized agents to execute this Agreement which shall be effective as set forth herein.

Duke Energy Ohio, Inc.

By: Customer Contact Name & Title

By: Select Manager:, Manager

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Customer Signature

Gas Engineering

Customer mailing address

City, State Zip

Customer Phone Number

Company Federal Tax ID \_\_\_\_\_