

# CITY OF HENDERSON – ORDINANCE BOOK 23

## *Record of Ordinances of Meetings in 2021*

### FRANCHISE AGREEMENT

**THIS FRANCHISE AGREEMENT** made and entered into this 1<sup>st</sup> day of March 2021, by and between the **CITY OF HENDERSON**, a municipal corporation and political subdivision of the Commonwealth of Kentucky (hereinafter "Henderson"), and **KENERGY CORP.**, a corporation created and existing under and by virtue of the laws of the Commonwealth of Kentucky (hereinafter "Kenergy").

### WITNESSETH:

**WHEREAS**, by Ordinance No. 30-20, Henderson provided for the creation and sale of a non-exclusive franchise, for a term of twenty (20) years, to enter upon, lay, acquire, construct, operate, maintain, install, use and repair, in the public right-of-way of Henderson, a system or works for the generation, transmission, distribution and sale of electrical energy from points either within or without the corporate limits of Henderson, to Henderson and the inhabitants thereof, and from and through Henderson to persons, corporations and municipalities beyond the limits thereof, and for the sale of same for light, heat, power and other purposes; and

**WHEREAS**, Ordinance No. 30-20 authorized the advertising for bids on said franchise, and Kenergy submitted a timely bid to acquire said franchise; and

**WHEREAS**, by Ordinance No. 03-21, Henderson accepted the bid of Kenergy to acquire said franchise; and

**WHEREAS**, Henderson and Kenergy have entered into this Franchise Agreement to memorialize the sale by Henderson to Kenergy of said franchise subject to the terms and conditions reflected in Ordinance No. 30-20 and Ordinance No. 03-21.

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**NOW THEREFORE**, for and in consideration of the mutual covenants and agreements contained herein the receipt and sufficiency of which are hereby acknowledged, Henderson and Kenergy hereby agree to incorporate the foregoing recitals as if fully set forth herein and further agree as follows:

1. Ordinance No. 30-20 which is attached hereto as Exhibit “A”, is incorporated herein by reference in its entirety and shall apply as if fully set forth herein.

2. The bid of Kenergy for said franchise, which is attached hereto as Exhibit “B”, is incorporated herein by reference in its entirety and shall apply as if fully set forth herein.

3. Ordinance No. 03-21, which is attached hereto as Exhibit “C”, is incorporated herein by reference in its entirety and shall apply as if fully set forth herein.

4. Henderson has granted unto Kenergy a non-exclusive franchise, for a term of twenty (20) years, to enter upon, lay, acquire, construct, operate, maintain, install, use and repair, in the public right-of-way of Henderson, a system or works for the generation, transmission, distribution and sale of electrical energy within the corporate boundaries of Henderson subject to the provisions of the Ordinance No. 30-20 and Ordinance No. 03-21.

5. The franchise memorialized in this Franchise Agreement shall commence March 1, 2021 and shall expire as provided in the terms and provisions of Ordinance No. 30-20.

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6. As compensation for said franchise, Henderson reserves the right to assess franchise fees upon prior ninety (90) days written notice to Kenergy. Should Henderson exercise said right to assess franchise fees, Henderson shall receive payment of franchise fees in an amount not to exceed five percent (5%) of gross receipts per year from Kenergy sale of electricity to electric-consuming entities (which includes businesses, industrial facilities and dwellings) inside the City's corporate limits; *provided, however*, Henderson shall notify Kenergy, at least thirty (30) days prior to the effective date of any imposition of franchise fees, of any annexations or other changes in Henderson's boundaries and provide Kenergy a map of the territory annexed or added to or de-annexed or otherwise removed from Henderson's limits that are to be served by Kenergy.

7. As further consideration for the granting of this franchise, Kenergy agrees to pay all publication costs Henderson incurs in the granting of this franchise. The above-mentioned costs shall be invoiced by Henderson to Kenergy and Kenergy shall pay said costs within thirty (30) days of receipt of said invoice.

8. Kenergy does hereby bind itself, its successors and assigns, to faithfully and fully perform each and every condition of said franchise as memorialized in this Franchise Agreement, and further to faithfully perform all acts required of it as the purchaser of said franchise.

9. This Franchise Agreement memorializes the agreement between the parties contained and embodied in the Ordinance No 30-20 and Ordinance No. 03-21 and shall be binding upon and inure to the benefit of the respective successors in interest to the parties hereto.

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IN WITNESS WHEREOF, Henderson and Kenergy have executed this Franchise Agreement as their free and voluntary act and deed effective as of the day and year first above written.

[Signatures on following page]

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ORDINANCE NO. 03-21

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CITY OF HENDERSON – ORDINANCE BOOK 27

Record of Ordinances of Meetings in 2021

CITY OF HENDERSON

BY: Steve [Signature]  
MAYOR

ATTEST:

Mary Collins  
CITY CLERK

KENERGY CORP.

BY: Jeff Hohm

STATE OF KENTUCKY )  
COUNTY OF Henderson )

The foregoing Franchise Agreement was subscribed, sworn to and acknowledged before me  
by Jeff Hohm, Kenergy Corp., on this the 11<sup>th</sup> day of March 2021.

My commission expires: 1-14-22

Jennifer S. Bell  
NOTARY PUBLIC  
KENTUCKY, STATE-AT-LARGE  
Notary ID 893154



# 22 CITY OF HENDERSON – ORDINANCE BOOK

*Record of Ordinances of Meetings in 2021*

ORDINANCE NO. 03-21 (CONT.)  
Exhibit "A"

**BID PROPOSAL ON TWENTY (20) YEAR ELECTRIC  
FRANCHISE ESTABLISHED BY ORDINANCE 30-20  
ADOPTED BY THE CITY COMMISSION OF  
THE CITY OF HENDERSON, KENTUCKY**

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In accordance with and in response to the provisions of Ordinance 30-20, providing for the sale of a nonexclusive, twenty (20) year franchise for use of public right-of-way within the city limits of Henderson, Kentucky, and within Kenergy Corp.'s certified territory, for the construction, operation, maintenance and utilization of an electrical distribution system, as publicly advertised in the The Gleaner, Kenergy Corp., by its duly authorized representative, does hereby submit the following bid offer:

- (a) 0% of gross revenues payable to the City of Henderson, Kentucky, which may be accounted for and reflected on the members' bills, and subject to increase by the City of Henderson;
- (b) Bidder/Offeror acknowledges, understands, covenants and agrees to the terms and conditions set forth in Ordinance 30-20 and the terms and conditions of the franchise award shall be incorporated into a written agreement executed by both parties and effective the date of execution.

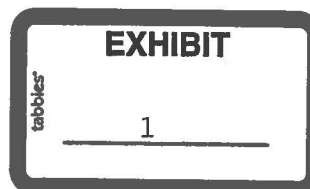
Bid submitted by: KENERGY CORP.

By Jeff Hohn  
Jeff Hohn, President/CEO

Date: 12/11/2020

Exhibit "1"

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# 20 CITY OF HENDERSON – ORDINANCE BOOK

## Record of Ordinances of Meetings in 2021

ORDINANCE NO. 03-21

AN ORDINANCE AWARDING A NON-EXCLUSIVE FRANCHISE TO KENERGY CORP. FOR A TERM OF TWENTY (20) YEARS FOR AN ELECTRIC SYSTEM WITHIN THE CONFINES OF THE CITY OF HENDERSON, KENTUCKY AND AUTHORIZING THE MAYOR TO SIGN A FRANCHISE AGREEMENT WITH KENERGY CORP.

WHEREAS, by Ordinance No. 30-20 the City of Henderson, Kentucky (“Henderson”) created non-exclusive twenty (20) year, non-exclusive franchise for an electric system; and

WHEREAS, Henderson offered at bid a franchise pursuant to Ordinance No. 30-20; and

WHEREAS, Henderson received a bid from Kenergy Corp. for an electric franchise pursuant to Ordinance No. 30-20 (See Exhibit 1).

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF HENDERSON, KY AS FOLLOWS:

Section 1. That a twenty (20) year, non-exclusive electric franchise created by Ordinance No. 30-20 be, and it hereby is, awarded to Kenergy Corp.

Section 2. All prior ordinances, or ordinances, or parts thereof in conflict herewith, are to the extent of such conflict, hereby repealed.

Section 3. That the Mayor is hereby authorized to sign the Franchise Agreement which memorializes the award by Henderson to Kenergy Corp. of said franchise subject to the terms and conditions reflected in Ordinance No. 30-20 and this Ordinance. Said agreement is attached hereto and incorporated by reference as Exhibit 2.

Section 4. That the statements set forth in the Preamble to this Ordinance are hereby incorporated in this Ordinance by reference, the same as if set forth at length herein.

Section 5. That if any section, sentence, clause or phrase of this Ordinance is held to be unconstitutional or otherwise invalid, such infirmity shall not affect the validity of the remainder of the Ordinance.

Section 6. That this Ordinance shall be effective March 1, 2021.

On first reading of the foregoing ordinance, it was moved by Commissioner Thomas, seconded by Commissioner Staton, that the ordinance be adopted on its first reading.

WHEREUPON, the vote was called.

On roll call the vote stood:

Commissioner Staton: AYE  
Commissioner Thomas: AYE  
Commissioner Vowels: AYE

Commissioner Pruitt: AYE  
Mayor Austin: AYE

PUBLICATION DATE: 02/27/2021



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## Record of Ordinances of Meetings in 2021

ORDINANCE NO. 03-21 (CONT.)


WHEREUPON, Mayor Austin declared the ordinance adopted on first reading and ordered that it be presented for second reading at a meeting of the Board of Commissioners.

On second reading of the foregoing ordinance, it was moved by Commissioner Staton, seconded by Commissioner Vowels, that the ordinance be adopted.


WHEREUPON, the vote was called. On roll call the vote stood:

|                      |               |                      |            |
|----------------------|---------------|----------------------|------------|
| Commissioner Staton: | <u>AYE</u>    | Commissioner Pruitt: | <u>AYE</u> |
| Commissioner Thomas: | <u>ABSENT</u> | Mayor Austin:        | <u>AYE</u> |
| Commissioner Vowels: | <u>AYE</u>    |                      |            |

WHEREUPON, Mayor Austin declared the ordinance adopted, affixed his signature and the date and ordered it be recorded.

  
Steve Austin, Mayor  
Date: February 23, 2021

ATTEST:

  
Marce Collins, CKMC,  
City Clerk

**APPROVED AS TO FORM AND  
LEGALITY THIS 5<sup>TH</sup> DAY OF  
FEBRUARY 2021.**

By:   
Dawn S. Kelsey  
City Attorney

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