

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

**ELECTRONIC APPLICATION OF EAST)
KENTUCKY POWER COOPERATIVE, INC.)
FOR A (1) CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY FOR)
THE CONSTRUCTION OF TRANSMISSION)
FACILITIES IN MADISON COUNTY)
KENTUCKY; (2) DECLARATORY ORDER)
CONFIRMING THAT A CERTIFICATE)
OF PUBLIC CONVENIENCE AND)
NECESSITY IS NOT REQUIRED FOR)
CERTAIN FACILITIES)**

CASE NO.
2022-00314

MOTION TO TAKE ADMINISTRATIVE NOTICE

Comes now, East Kentucky Power Cooperative, Inc. (“EKPC”), by counsel, pursuant to KRS 13B.090(5) and other applicable law, and requests the Kentucky Public Service Commission (“Commission”) to take administrative notice of the attached Order of the Richmond Board of Commissioners authorizing the city of Richmond to enter into an option-to-purchase contract with Begley Properties, LLC for a 600 acre tract of land to develop an Industrial Mega-Site in the area located near the proposed project that is the subject of this proceeding. A copy of the attached Order and a highlighted confidential version were filed earlier today with EKPC’s responses to Commission Staff’s Post-Hearing Request for Information pursuant to a Motion for Confidential Treatment.

WHEREFORE, on the basis of the foregoing, EKPC respectfully requests that the Commission take administrative notice of the attached Order of the Richmond Board of Commissioners.

This 2nd day of February, 2023.

Respectfully submitted,




L. Allyson Honaker
Brittany H. Koenig
HONAKER LAW OFFICE, PLLC
1795 Alysheba Way, Suite 6202
Lexington, KY 40509
(859) 368-8803
allyson@hloky.com
brittany@hloky.com

Counsel for East Kentucky Power Cooperative, Inc.

CERTIFICATE OF SERVICE

This is to certify that the foregoing electronic filing was transmitted to the Commission on February 2, 2023; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that pursuant to prior Commission Orders, no paper copies of this filing will be made.



Counsel, East Kentucky Power Cooperative, Inc.

ORDER NO. 23-10

**AN ORDER OF THE BOARD OF COMMISSIONERS OF THE CITY OF RICHMOND,
KENTUCKY AUTHORIZING OPTION TO PURCHASE CONTRACT**

WHEREAS, The City is in need of large acreage industrial property to lure and entice large industry offering high wage employment to the Citizens of Richmond; and

Whereas, A location has been identified that has acreage, location, and sufficient infrastructure to be ideal for a mega site development, and

Whereas, The Governor has created a discretionary fund for the purpose of developing mega-site projects; and

Whereas, these mega-site funds require that a municipality own or have an option to purchase of the property to qualify for potential funding; and

Whereas, the private owner is in agreement for give the City an option on 600 acres of property in exchange for [REDACTED] and the cost/performance of a full Phase one environmental study, up to [REDACTED].

NOW, THEREFORE, BE IT ORDERED the Mayor is authorized to sign and the City is authorized to spend up to [REDACTED] to secure a phase one environmental study and an option to purchase agreement for real estate to qualify for potential Mega-site funds to be used to lure high paying large-scale industry to the City of Richmond.

DATE OF READING:

January 24, 2023

MOTION BY:

Commissioner Cole

SECONDED BY:

Commissioner Brewer

VOTE

YES NO

Commissioner Brewer

X

Commissioner Cole

X

Commissioner Goble

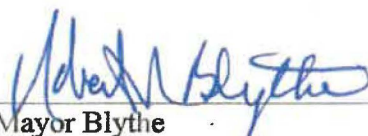
X

Commissioner Newby

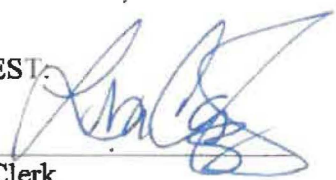
X

Mayor Blythe

X


Mayor Blythe

ATTEST:


City Clerk

KENTUCKY PURCHASE OPTION AGREEMENT

This Purchase Option Agreement ("Option to Purchase Agreement") is made on this 30 day of January, 2023, by and between Bealey Properties, LLC, whose address is P.O. Box 647, London, Kentucky 40741-0647, (the "Seller") and The City Of Richmond, whose address is 239 West Main Street, Richmond, Kentucky 40475, (the "Buyer") Hereinafter known as the "Parties".

WHEREAS, Seller is the fee owner of certain real property being, lying and situated in Madison County, Richmond, Kentucky such real property identified as Duncannon 600 acres parcel. (the "Property") identified specifically in attached exhibit A.

WHEREAS, Seller and Buyer agreed to a purchase price of [REDACTED] per acre, but wish to secure the offer for further due diligence by the purchaser.

NOW, THEREFORE, for and in consideration of the covenants and obligations contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller hereby grants to Buyer an exclusive option to purchase the aforementioned "Property."

The parties hereto hereby agree as follows:

1. **OPTION TERM.** The option to purchase period commences upon a signing and shall run for two years (730 days). If the option is exercised the closing is to occur within the 730 days of this option, by the terms set out in Paragraph 9 of this document.
2. **NOTICE REQUIRED TO EXERCISE OPTION.** To exercise the Option to Purchase, the Buyer must deliver to the Seller, at the address set out above, written notice of Buyer's intent to purchase. The closing date must occur no later than the expiration date of this Option Agreement.
3. **OPTION CONSIDERATION.** As consideration for this Option to Purchase Agreement, the Buyer shall pay the Seller/Landlord a non-refundable fee of [REDACTED] receipt of which is hereby acknowledged by the Seller. This amount shall be credited to the purchase price at closing if the Buyer timely exercises the option to purchase.
4. **PHASE ONE ENVIRONMENTAL STUDY.** Buyer shall commission a phase one environmental study to be done on the subject property within 90 days of

all necessary signatures executed to this option contract. Failure of the buyer to commission a phase one environmental study within 90 days of said signatures shall constitute a default by the buyer. The Study shall be made available to the Seller upon completion.

5. **PURCHASE PRICE.** The total purchase price for the Property is [REDACTED], based on a unit price of [REDACTED] per acre; provided that the Buyer timely executes the option to purchase, and closes the conveyance of the Property, the Seller shall credit towards the purchase price at closing the sum of [REDACTED]. The total purchase price shall be paid by Buyer to Seller at closing.
6. **EXCLUSIVITY OF OPTION.** This Option to Purchase Agreement is assignable upon written approval of the Seller.
7. **SELLER'S RIGHT TO REPURCHASE.** The Seller shall have the right to buy back this option in its entirety or any portion thereof, for the original price of the option plus costs of any studies/due diligence done by the buyer up to a maximum of [REDACTED], if the seller receives a letter of intent from a 3rd party for the same property at the same price per acre or greater. If the Letter of intent does not result in a sale of the property this option shall be reinstated and repurchase money refunded. If the repurchased portion is smaller acreage than the 600 acres total, costs from any studies/due diligence done by the buyer shall be repaid by seller on a pro rata basis. As an example, if the repurchase area is 50 acres and Buyer has a cost of [REDACTED] in the studies, the repurchase price would be 50 acres/600 acres X [REDACTED] or [REDACTED]. If Buyer has a cost of [REDACTED] in the studies, the repurchase price would be 50 acres/600 acres X [REDACTED] or [REDACTED].
8. **ACCESS.** Seller shall allow Buyer access to the property during the term of this agreement, for the sole purpose of conducting feasibility study of the property. These feasibility studies are understood to include but not limited to architectural design, Civil Engineering, Appraisal, environmental, and Land Surveying. Buyer shall have all parties conducting feasibility studies provide an indemnification to Seller and provide adequate liability insurance for any claims against Seller arising out of such studies, with limits of no less than One Million Dollars (\$1,000,000), naming Seller additional insured.
9. **CLOSING AND SETTLEMENT.** Upon Seller receiving from Buyer an exercise of the Option, Seller shall prepare and deliver to Buyer within thirty days (30) after the exercise date the following:

A. A Purchase Agreement containing the general terms of this Option along with a statement that Seller is selling the Property "as is" with existing rights-of-way, easements, and restrictions, and that there are no representations whatsoever regarding the Property other than the representation given in the Special Warranty Deed;

B. A proposed Special Warranty Deed;

Buyer shall prepare Protective Covenants equal to or greater than those found on file in the office of the Madison County Clerk in Miscellaneous Book #224 at Page #407, attached hereto as Exhibit B, which shall be recorded by the Buyer immediately upon receiving and recording the deed from Seller. Covenants on the issues of noise, odor, and cleanliness, are to mirror paragraph 3.03(A)(1-6) and 3.05 of Winchester Industrial Park Phase IV protective covenants, Attached hereto as Exhibit C. These listed provision as to noise, odor, and cleanliness are to be unamendable and shall run with the land.

Seller shall determine the title company with which settlement shall occur and shall inform Buyer of this location in writing. Buyer agrees that closing costs in their entirety, including any points, fees, and other charges required by the third-party lender, shall be the sole responsibility of Buyer. The only expense related to closing costs apportioned to Seller shall be the pro-rated share of the ad valorem taxes due at the time of closing, for which Seller is solely responsible.

10. **FINANCING AVAILABILITY.** SELLER MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE AVAILABILITY OF FINANCING REGARDING THIS OPTION TO PURCHASE. BUYER IS SOLELY RESPONSIBLE FOR OBTAINING FINANCING IN ORDER TO EXERCISE THIS OPTION.
11. **FINANCING DISCLAIMER.** The parties acknowledge that it is impossible to predict the availability of obtaining financing towards the purchase of this Property. Obtaining financing shall not be held as a condition of performance of this Option to Purchase Agreement. The parties further agree that this Option to Purchase Agreement is not entered into in reliance upon any representation or warranty made by either party.
12. **REMEDIES UPON DEFAULT.** If Buyer defaults under this Option to Purchase Agreement, then in addition to any other remedies available to Seller at law or in equity, Seller may terminate this Option to Purchase by giving written notice of the termination. If terminated, the Buyer shall lose entitlement to any refund of option consideration.

13. **COMMISSION.** No real estate commissions or any other commissions shall be paid in connection with this transaction.

14. **RECORDING OF AGREEMENT.** Buyer shall not record this Option to Purchase Agreement on the Public Records of the Madison County Clerk.

15. **ACKNOWLEDGMENTS.** The parties are executing this Option to Purchase Agreement voluntarily and without any duress or undue influence. The parties have carefully read this Option to Purchase Agreement and have asked any questions needed to understand its terms, consequences, and binding effect and fully understand them and have been given an executed copy. The parties have sought the advice of an attorney of their respective choice if so desired prior to signing this Option to Purchase Agreement.

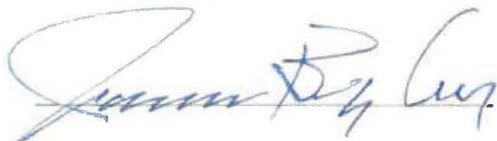
16. **TIMING.** Time is of the essence in this Option to Purchase Agreement.

17. **GOVERNING LAW AND VENUE.** This Option to Purchase Agreement shall be governed, construed and interpreted by, through and under the Laws of the State of Kentucky. The parties further agree that the venue for any and all disputes related to this Option to Purchase shall be the Madison Circuit Court, Richmond, Kentucky.

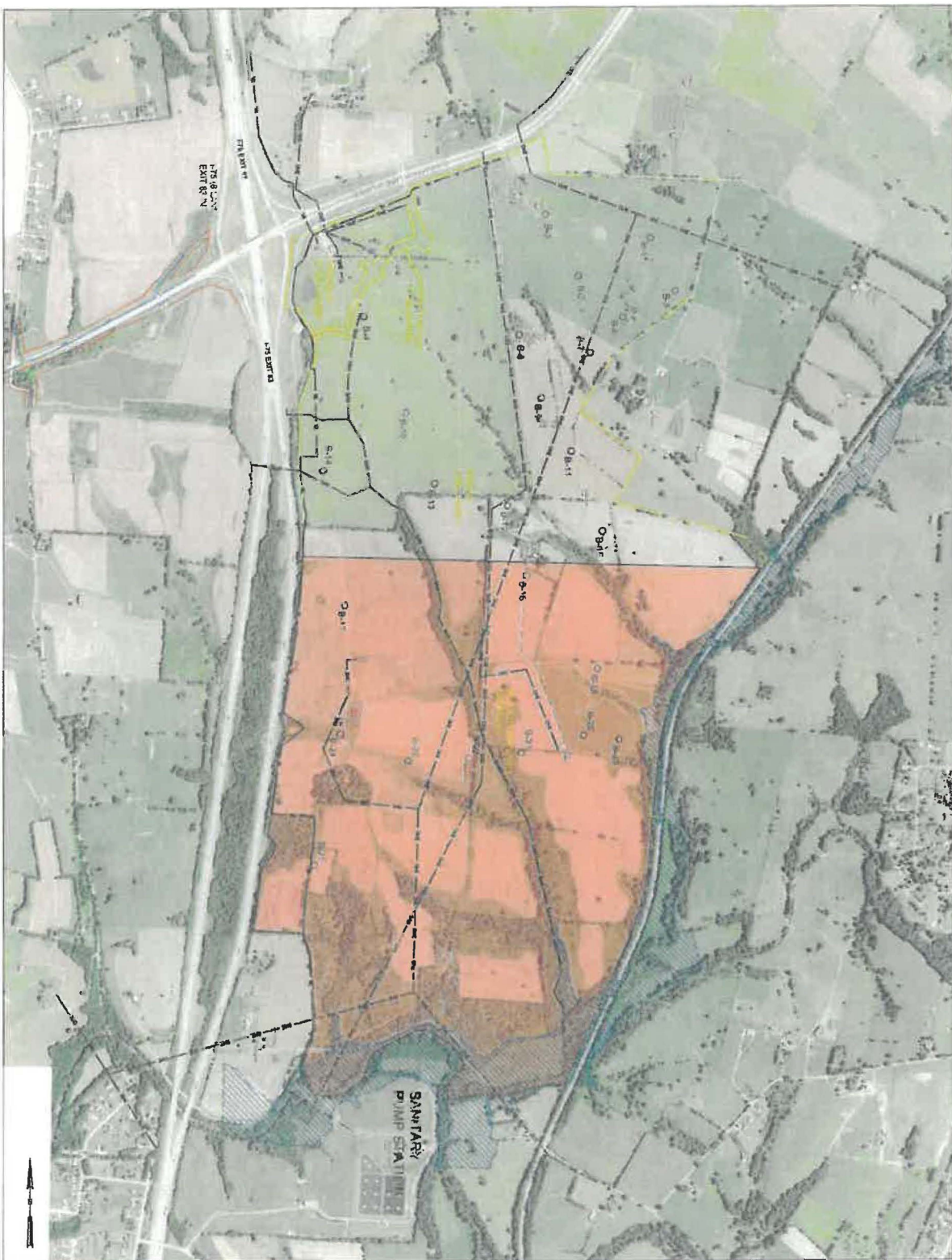
18. **ENTIRE AGREEMENT; MODIFICATION.** This document sets forth the entire agreement and understanding between the parties relating to the subject matter herein and supersedes all prior discussions between the parties. No modification of or amendment to this Option to Purchase Agreement, nor any waiver of any rights under this Option to Purchase Agreement, will be effective unless in writing signed by the party to be charged.

SELLER

James Begley Family Dynasty Trust, Member
James Begley Trustee



BUYER



Palmer
ENGINEERING

Palmer Engineering, Inc.
400 South Main Street
PO Box 812
London, KY 40301
Phone: 502-224-1212

JOB NAME: DATE: 06/08/03 DRAWN BY: C. G. GIBBS
SHEET: EXHIBIT A SCALE: 1"=400' CHECKED BY: C. G. GIBBS

EXHIBIT A
BEULEY PROPERTIES - RICHMOND, KENTUCKY
BEULEY PROPERTIES
2001 West Hill Rogers Pkwy - PO BOX 847
LONDON, KENTUCKY 40321

DATE	REVISION DESCRIPTION