

CITY OF COVINGTON, KENTUCKY

**INVITATION TO BID**

ITB240802

(Re-Bid ITB240703)

For:

**Non-Exclusive Electric Utility Franchise Agreement(s)**

BID RESPONSES DUE

**NO LATER THAN:**

**10:00 A.M. 2024 August 29**



Issue Date:

2024 August 15

For:

City of Covington Administration

By:

Department of Finance | Procurement Office

20 W Pike St  
Covington, KY 41011

<b>TABLE OF CONTENTS</b>					
<b>Reference</b>	<b>Subject</b>			<b>Page</b>	
I	Solicitation Legal Advertisement / Public Notice			3	
II	Timeline of Events			4	
III	Bid Specifications			4	
IV	Bid format			5	
V	Evaluation Procedures			5	
VI	Bid Stipulations And requirements			6	
VII	Proposal Format And Content			9	
VIII	Proposal Evaluation Criteria And Related Procedures			12	
IX	General Terms And Conditions			14	
*	Attachment I	Non-Collusion Affidavit		10	*
*	Attachment II	Campaign Finance Affidavit		12	*
*	Attachment III	Certification Against Conflicts Of Interest, Gratuities, And Kickbacks		13	*
	Exhibit A	Covington Ordinance No. O-10-24		14	
*	Attachment IV	Bid Form		13	*

*	<b><i>NOTE: Highlighting and Asterisks indicate items required to be Completed, Properly Executed, and Submitted with and as integral part of Proposal response.</i></b>	*
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I. **LEGAL ADVERTISEMENT / PUBLIC NOTICE**

**Non-Exclusive Electric Utility Franchise Agreement(s)**

The City of Covington, Kentucky ("City") invites bids from qualified, competent, knowledgeable, and experienced providers of electric utility services as described in this Invitation To Bid ("ITB"), and in compliance with all applicable Codes, laws and regulations. Entities submitting bid responses shall be prepared to execute and perform one or more legally binding contractual agreement(s) ("Agreement") for the provision of requested goods and/or services as described herein and in accordance with this ITB.

**Issue Date:** 2024 August 15

**RFP Title:** Non-Exclusive Electric Utility Franchise Agreement(s)

**Issuing Agency:** Public Works Department

**Contact:** Peter Hager, Procurement Officer  
[peter.hager@covingtonky.gov](mailto:peter.hager@covingtonky.gov)  
(859) 292-2178

Bids shall be submitted to the City of Covington (City") sealed, and clearly & conspicuously marked on the outside with:

- Respondent's name, Respondent's representative's name, return mailing address, and telephone number - and
- **"BID: ELECTRIC FRANCHISE - DO NOT OPEN WITH REGULAR MAIL."**

**RESPONSES SHALL BE SUBMITTED NO LATER THAN: 2024 August 29 10:00 A.M. \* to:**

Covington City Hall  
Finance Department  
First (1<sup>st</sup>) Floor Lobby Window  
20 West Pike Street  
Covington, Kentucky 41011

*\*Submittals received after this date and time will be deemed non-responsive.*

Sealed bids will be publicly opened in the Covington City Hall Commission Chambers, 20 West Pike Street, 1st Floor, at the specified date and time. The Covington Board of City Commissioners reserves the right to reject any and all bids. Award shall be made based on the lowest evaluated bid price, to the most responsible and responsive bidder, as permitted by KRS 45A.365. A reciprocal preference will be afforded for resident bidders of the Commonwealth of Kentucky, in accordance with KRS 45A.494.

**II. TIMELINE OF EVENTS**

<b>BID EVENT</b>	<b>SCHEDULE</b>
ITB Issued / Bids Solicited	2024 August 15
Interested Parties' Requests For Information ("RFI") Must Be Submitted To and Received By the City No Later Than	2024 August 22 10:00 A.M.
City's Responses to RFIs Will Be Published No Later Than	2024 August 26 3:00 P.M.
BIDS Shall Be SUBMITTED to and Received By the City NO LATER THAN	2024 September 29 10:00 A.M.
<i>(Estimated) Award Recommendation (Subject to the City's applicable policies, practices, and protocols)</i>	2024 Nov. 05

**III. BID SPECIFICATIONS**

**A. General Information**

The City invites competitive bids for non-exclusive electric utility operational franchise agreement(s) for a term of twenty (20) years, in accordance with City of Covington Ordinance No. O-10-24, all requirements of which must be satisfied to receive the City's consideration, and as further described herein. Service area is both inclusive of, and restricted to, City of Covington, Kentucky corporate bounds and limits. The

**B. Bid Specifications**

City of Covington Ordinance Number O-10-24 shall functionally serve as the specifications for this Invitation To Bid ("ITB"), copy of which is herein furnished as Exhibit A. If there are any conflicting Terms or Conditions between Exhibit A (Covington Ordinance No. O-10-24) and this Agreement, the Terms and/or Conditions of Exhibit A (Covington Ordinance No. O-10-24) shall prevail.

**C. Instructions To Bidders**

1. Bidder shall complete and submit to the City, as integral components of their bid, the attached Bid Form(s), Attachments, and/or Exhibits that are specifically designated as requirements of / for a Bid response qualified to receive the City's consideration.
  - a. Bidder shall specifically denote (e.g., highlight) in its Bid submittal a narrative description or other reliable demonstration of any specified requirement(s) that its Bid exceeds or surpasses, how achieved, and to what extent(s) and/or limit(s).
  - b. Bidder shall specifically denote all specified requirement(s) that its Bid is unable to or otherwise does not include or satisfy.
2. Bids shall remain firm for the City's consideration and acceptance for a minimum period of ninety (90) days after the date Bids are publicly received and opened by the City.
  - a. A firm period of one hundred twenty (120) days is preferred.
  - b. Bidder shall specify firm period duration in its Bid to the City.

#### IV. BID FORMAT

- A. Bid information shall be indelibly affixed (printed) on standard 8.5" x 11" paper with font size no smaller than twelve (12) points. Bids shall consist of:
- B. One (1) hard copy (paper) completed and signed original Bid instrument.
- C. One (1) hard copy (paper) copy of the completed and signed original Bid instrument.
- D. One (1) digital/electronic copy of all Bid documentation saved as a single .pdf-formatted document/file on a USB-drive.\*

\*Any interested party for whom the USB-drive submittal requirement may present an impediment or hardship to tendering a Bid are encouraged and requested to please contact the City's Procurement Officer for assistance.

- E. All of the foregoing shall be physically\*\* submitted to the City in a sealed container (e.g., envelope) plainly and conspicuously marked on its exterior with:
  - 1. Bidder's Name and Return Mailing Address.
  - 2. Bidder's Representative's Name, Telephone Number and e-Mail Address.
  - 3. **"BID: ELECTRIC FRANCHISE - DO NOT OPEN WITH REGULAR MAIL."**

\*\*Bids shall be physically submitted to the City prior to the specified date and time for public opening; the City does not presently accept bids electronically (e.g., online, fax, procurement portal).

- F. **NONREFUNDABLE BID FEE.** Bids offered for purchase of this Franchise shall be accompanied by a nonrefundable application fee in the amount of Four Thousand Dollars (\$4,000.00).
- G. **ADDITIONAL DEPOSIT TO BE SUBMITTED WITH BID.** Any Bid submitted by a corporation or person not already owning, within the territorial limits of the City of Covington, KY, a plant, equipment, and/or Facilities sufficient to render the service(s) required by Covington Ordinance No. O-10-24 must be accompanied by cash or a certified check drawn on a bank of the Commonwealth of Kentucky, or a national bank, equal to five percent (5%) of the fair estimated cost of the system required to render the service(s), which check or cash shall be forfeited to the Government in case the Bid should be accepted and the Bidder should fail, for thirty (30) days after the confirmation of the Franchise sale, to pay the price and/or to give a good and sufficient bond in a sum equal to one-fourth (1/4) of the fair estimated cost of the system to be erected, conditioned that it shall be enforceable in case the purchaser should fail, within sixty (60) days, to establish and begin rendering the service(s) in the manner set forth in Covington Ordinance No. O-10-24.this Ordinance.

#### V. EVALUATION PROCEDURES

##### A. **Mandatory Criteria**

- 1. The City will only consider Bid responses from Bidders that, through their bid, demonstrate:
  - a. *Successful proven past performance* reliably providing similar goods and/or services in similar scopes and to similar entities.
  - b. That Bidder is in *good standing with the City* in accordance with City of Covington Board of City Commissioners Ordinance No. 0-11-06.
  - c. That *Bidder is not involved in any adverse claims against the City* and are not delinquent in its financial obligations to the City.
  - d. *Substantial compliance* with this solicitation.

##### B. **Evaluation Criteria**

- 1. The Franchise(s) will be sold to the highest and best evaluated Bidder(s).
- 2. In addition to financial and service quality factors, the City shall also consider Bidders' professional, technical, managerial, and financial qualifications.



## VI. BID STIPULATIONS AND REQUIREMENTS

### A. **General Information**

The City of Covington, Kentucky is a Commonwealth of Kentucky Home Rule Class city. The executive and legislative authority is vested in the Covington Board of City Commissioners, which consists of the Mayor and four City Commissioners. The City Manager is the chief administrative officer and is responsible for day-to-day operations. The City Manager is assisted various department heads and City staff, including a Police Chief, Fire Chief, Finance Director, City Solicitor, Director of Public Works, and Director of Special Projects and Intergovernmental Affairs.

The City has a number of boards and commissions pursuant to Kentucky law, local Ordinance, or both. While some boards are comprised wholly or partially of City employees or officials, others are comprised of citizens of the City who are not otherwise employed by the City (e.g., Board of Adjustment, Code Enforcement Board, Urban Design Review Board).

### B. **Bid Guarantee / Award Procedure**

It is anticipated that a recommendation for award from this Bid will be made approximately thirty (30) to sixty (60) days after the Bid due date. Bidders are required to guarantee their Bids as an **irrevocable offer(s) valid and firm** for the City's consideration and acceptance **for a minimum of sixty (60) days post-Bid opening**. The City of Covington, Kentucky in its sole and absolute discretion shall have and retain rights to award (a) contract(s) for any or all goods and/or services listed in each Bid; the City shall have and retain exclusive rights to reject any and/or all Bids, as determined to be in the City's best interests by the proper officials, and to waive formalities and reasonable irregularities in submitted documents.

### C. **Bidder Questions**

The City has provided for potentially interested parties to request additional information or clarification of the information contained herein via a Request For Information ("RFI") process, which is an integral component of this solicitation.

All RFI inquiries shall be submitted in writing by electronic mail directly to Peter Hager, Procurement Officer at [peter.hager@covingtonky.gov](mailto:peter.hager@covingtonky.gov) (i.e., not via the City's procurement portal). The City will (generically) publish all RFI inquiries and the City's responses thereto via the City's procurement portal ([www.covingtonky.bonfirehub.com](http://www.covingtonky.bonfirehub.com)) in accordance with the Event Timeline disclosed above. Upon publication, the City's RFI responses shall function as an Addendum to this solicitation and its specifications. It is and shall remain Bidder's onus to reference the City's website, as needed, prior to Bid submittal. It is each Bidder's responsibility to read this solicitation in its entirety, and fully acquaint themselves with its specifications and/or Scope Of Work. The failure of the Bidder to so perform shall not relieve the Bidder from any obligation(s) with respect to its submitted Bid. If a potentially interested party finds and ambiguity or has any doubt as to the true meaning of any part of this solicitation, it is strongly advised and encouraged to submit a written RFI requesting interpretation and/or clarification.

### D. **Modifications**

The City reserves the right to modify this ITB for any reason by written Addendum at any time prior to the Bid submittal due date and time. All modifications shall be performed via written addendum and published at the City's procurement portal ([www.covingtonky.bonfirehub.com](http://www.covingtonky.bonfirehub.com)) prior to the deadline for Bid submittal.

The City shall not be responsible for oral interpretations given by any City employee, representative, elected official, contractor, agent, or others. The issuance of written Addendum is the only official method whereby interpretation, clarification, or additional information may be issued by the City. If any Addendum is / Addenda are issued to this Bid, the City will exercise due diligence to notify all prospective Bidding entities and the addendum/a shall become a permanent part of the Bid. It shall at all times remain the responsibility of each Bidding entity, prior to submitting a response, to review the Bid details at [www.covingtonky.bonfirehub.com](http://www.covingtonky.bonfirehub.com) to determine if any Addendum/a were issued and to make such an integral part of its Bid submittal.

### E. **Non-Discriminatory Statement**

The City expressly prohibits discrimination of any kind or manner. The City does not discriminate against any individual or vendor/ provider based on disability, age, sex, race, color, religion, ancestry, national origin, sexual orientation, gender identity, familial status, marital and/or parental status. Ref.: City of Covington Code of

Ordinances § 37.01.

**F. Compliance With Laws**

All Respondents shall observe and comply with all applicable regulations, laws, and Ordinances of local, Commonwealth, and Federal government(s) relative to this solicitation.

**G. Insurance Requirements**

1. Policies, Coverages, and Endorsements: Bidder agrees to maintain, at its sole cost and expense, the following insurance policies with minimum coverage limits below listed. Prior to contractual award recommendation, Bidder may be requested to provide current and valid Certification of Insurance.

a. *Commercial General Liability*:

i. Each Occurrence \$1,000,000

ii. General Aggregate \$2,000,000

b. *Workers' Compensation*: Bid submittal shall serve as Bidder's affirmation that Bidder is in compliance with the Commonwealth of Kentucky's requirements for Worker's Compensation Insurance, (Ref.: KRS Chapter 342). Contractual award may be subject to and conditioned upon Bidder's validation and verification that it meets or exceeds all Insurance Requirements via Certification(s) of Insurance.

c. A *Waiver of Subrogation* endorsement to the effect that issuer Waives any claim or right in the nature of Subrogation to recover against the City, its officers, agents, contractors, and employees shall be furnished to the City upon request, satisfaction of which may be a condition of contractual award.

d. *Proof of Insurance*: Requisite insurance policies, coverages and endorsements shall be shown on (a) Certificate(s) of Insurance which shall be furnished to the City upon request, satisfaction of which may be a condition of contractual award.

e. *Indemnification*: Bidder shall agree to Indemnify and Hold Harmless the City and its directors, officers, employees and agents from all suits, actions, claims or costs of any character, description, and/or type brought or made on account of any loss, expense, liability, damage, claim, including personal injury and/or death sustained by any person(s) or property arising out of the acts or negligence of the Bidder, the Bidder's personnel, its agents, and employees occurring during the performance of its duties relative to any contractual obligation resulting from this solicitation.

**H. Non-Compliance With Bid**

Submittal of Bid to the City shall serve as Bidder's understanding and agreement that, in the event of an award of contract, if said contract fails to meet the terms and conditions accepted by the City as specified in this solicitation and any prior agreements preceding contractual award, then the City shall, at its exclusive discretion, have rights to:

1. Require Bidder to provide the goods and/or services as stated in its Bid response and in accordance with all Bid pricing.
2. Hold Bidder liable for any cost differential between its Bid and the City's subsequent contractual award to the next lowest and best Bid, or approved alternative contractual award process and/or procedure the City may otherwise exercise to assure and conduct its business operational needs.
3. Cancel the contract in its entirety.
4. Any combination of the foregoing as the City shall determine, in its exclusive discretion, to be in the City's best interests.

**I. Governing Law**

This solicitation and any resulting contractual agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. Any dispute arising under this solicitation or any agreement resulting from it shall be resolved in a Court of competent jurisdiction in Kenton County, Kentucky.

**J. Acceptance of Terms And Conditions**

By submitting a Bid, the Bidder acknowledges and agrees to be bound by the terms and conditions herein.

**K. Payment**

Upon delivery, acceptance, and receipt of accurate, correct and true invoicing, the City shall pay to successful Bidder. Bidder/Contractor shall provide a Bill of Sale and an itemized invoice for all charges. Itemization shall include detailed specification of purchase with VIN number, quantity, price per unit, and any additional costs.

Invoices shall be processed by the City within (30) days of receipt. Prompt payment of invoices shall be contingent upon the necessary receipt of qualified documentation and final acceptance by the proper City officials.

**L. Response Request Disclaimer**

This IFB does not commit the City to enter into a contract, or award any services in relation to this specific document, nor does it obligate the City to pay any costs incurred in preparation or submission of a Bid or in anticipation of a contract.

**M. Conflicts of Interest**

By submitting a Bid, Bidder acknowledges that it is aware of the prohibitions against gratuities, kickbacks, and conflicts of interest as set forth in KRS 45A.455, and agrees that it shall not violate those provisions. The terms of KRS 45A.455, as set forth below, are specifically incorporated herein.

1. It shall be a breach of ethical standards for any employee with procurement authority to participate directly in any proceeding or application; request for ruling or other determination, claim, controversy, or other particular matter pertaining to any contract, or subcontract, and any solicitation or proposal therefor, in which to his or her knowledge:
  - a. He, or any member of his immediate family has a financial interest therein; or
  - b. A business or organization in which he or any member of his immediate family has a financial interest as an officer, director, trustee, partner, or employee, is a party; or
  - c. Any other person, business, or organization with whom he or any member of his immediate family is negotiating or has an arrangement concerning prospective employment is a party. Direct or indirect participation shall include but not be limited to involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity.
2. It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment, in connection with any decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling or other determination, claim or controversy, or other particular matter, pertaining to any contract or subcontract and any solicitation or proposal therefor.
3. It is a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.
4. The prohibition against conflicts of interest and gratuities and kickbacks shall be conspicuously set forth in every local public agency written contract and solicitation therefor.
5. It shall be a breach of ethical standards for any public employee or former employee knowingly to use confidential information for his actual or anticipated personal gain, or the actual or anticipated personal gain of any other person.

**N. Competitive Bidding**

It is the intent of the City that this Bid is conducted according to the competitive sealed bidding procedures set forth in KRS 45A.365. It shall be the Vendor's responsibility to advise the City if any language, requirements, etc. or any combination thereof, inadvertently restricts or limits the requirements stated in this Bid to a single source. Such notification must be submitted in writing and must be received no later than three (3) days after the opening date.

**O. Exclusions**

Accidental exclusions on behalf of the City in this solicitation will not be held against the City as an extra cost of doing business. It is the responsibility of the Bidder to assure that all necessary information including costs of providing the goods and/or services described herein are included in the Bidder's Bid response. Any "hidden" fees or services intentionally excluded or added to a Bid to deceive the City will immediately disqualify the Bidder from this and any further business with the City.



**P. Responsiveness**

The City shall only consider those Bids that substantially conform to the material requirement(s) of the City's solicitation and that are submitted in the Bid format set forth herein. A Bid will be considered conforming and responsive if it substantially addresses and promises to meet the requirements contained in this solicitation and any future reasonable requests made by the City during the Bid evaluation and award processes. The City, in its sole discretion, may waive any non-conformance that it determines is immaterial AND does not prejudice other Bidders.

**Q. Non-Responsiveness**

The City will reject any Bid(s) that materially deviate from the expressed specifications, OR that, due to any deviation between the City's specifications and submitted Bid, prejudice other Bidders whose response substantially conforms to the requested specifications. This discretion is exclusively afforded to the proper City officials and, most specifically, the Bid evaluation committee and members of the Board of City Commissioners.

**R. Public Information Notice**

All submitted Bids become the property of the City of Covington. The City retains the right to provide copies of responses to its staff, legal, technical, and financial advisors and representatives. Respondent should take care not to provide any confidential information, trade secrets or other intellectual property, that they do not want to be received by City staff.

**Please note that** all information submitted for review may be subject to the **Kentucky Open Records Act** and may be made available upon request by the public. Bidders should identify any confidential, proprietary information or trade secrets and provide justification as to why the disclosure of the records would permit an unfair commercial advantage to the Bidder's competitors.

CITY OF COVINGTON  
ITB240802  
Attachment I

**NON-COLLUSION AFFIDAVIT OF BIDDER**  
**AFFIDAVIT OF PRINCIPAL BID RESPONDENT**

STATE OF :  
SS:  
COUNTY OF :

\_\_\_\_\_, being first duly sworn, deposes and says that

s/he is \_\_\_\_\_ of \_\_\_\_\_,  
*(Sole Owner/Partner/President/Secretary/Other Title) (Name of Bidder)*

who on \_\_\_\_/\_\_\_\_/2024, submitted a Bid response as set forth in the attached copy; that all  
*(Date Bid Submitted)*

statements of fact in such Bid are accurate, correct, and true; that such submittal was not made in the interest of or on behalf of any undisclosed person, partnership, company, association, organization, or corporation; that such submittal is genuine and not collusive or sham; that said Bidder has not directly or indirectly, by agreement, communication of conference with anyone attempting to induce action prejudicial to the interests of the public body which is to award the contract, or of any other submitter or anyone else interested in the proposed contract; and further, that prior to the public opening and reading of proposals, said submitter:

- (a) Did not directly or indirectly, induce or solicit anyone else to submit a false or sham proposal;
- (b) Did not directly or indirectly, collude, conspire, connive or agree with anyone else that said submitter or anyone else would submit a false or sham proposal, or that anyone should refrain from submitting or withdraw his/her proposal;
- (c) Did not, in any manner, directly or indirectly, seek by agreement, communication or conference with anyone to raise or fix the proposal price of said submitter or of anyone else, or to raise or fix any overhead, profit or cost element of his proposal price, or that of anyone else;
- (d) Did not, directly or indirectly, submit his bid price or any breakdown thereof, or the contents thereof, or divulge information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, or to any individual or group of individuals, except to the awarding authority or to any person or persons who have a partnership or other financial interest with said submitter in his/her business; and
- (e) Did not include in his/her bid price any fees, dues, charges, or assessments because required to do so by reason of his/her membership in or affiliation with any association, organization, corporation, partnership, company, individual or group of individuals, or because of any agreement or understanding with anyone that he/she would do so.

Name of Bidder: \_\_\_\_\_

Signature and Date: \_\_\_\_\_

Typed or Printed Name: \_\_\_\_\_

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

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2024.

(SEAL OF NOTARY HERE)

Notary Public in and for  
My commission expires \_\_\_\_\_.

CITY OF COVINGTON  
ITB240802  
Attachment II

**CAMPAIGN FINANCE AFFIDAVIT OF BID RESPONDENT**

AFFIDAVIT OF PRINCIPAL RESPONDENT

STATE OF \_\_\_\_\_ :  
SS: \_\_\_\_\_  
COUNTY OF \_\_\_\_\_ :

\_\_\_\_\_ being first duly sworn, deposes and says that

s/he is \_\_\_\_\_ of \_\_\_\_\_,  
(Sole Owner/Partner/President/Secretary/Other Title) (Name of Bidder)

who on \_\_\_\_/\_\_\_\_/2024, submitted a Bid response as set forth in the attached copy; that submitter has not  
(Date Bid Submitted)

knowingly violated any provision of the campaign finance laws of the Commonwealth and the award of a contract to the prevailing submitter would not violate any provision of the campaign finance laws of the Commonwealth of Kentucky.

Name of Bidder: \_\_\_\_\_

Signature and Date: \_\_\_\_\_

Typed or Printed Name: \_\_\_\_\_

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

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2024.

(SEAL OF NOTARY HERE)

Notary Public in and for \_\_\_\_\_  
My commission expires \_\_\_\_\_.



CITY OF COVINGTON  
ITB240802  
Attachment III

**CERTIFICATION AGAINST CONFLICTS OF INTEREST, GRATUITIES, AND  
KICKBACKS**

Respondent certifies its understanding and compliance with *KRS 45A.455*, which states:

I. It shall be a breach of ethical standards for any City employee with procurement authority to participate directly in any proceeding or application; request for ruling or other determination; claim or controversy; or other particular matter pertaining to any contract, or subcontract, and any solicitation or proposal therefor, in which to his knowledge:

- A. He, or any member of his immediate family has a financial interest therein; or
- B. A business or organization in which he or any member of his immediate family has a financial interest as an officer, director, trustee, partner, or employee, is a party; or
- C. Any other person, business, or organization with whom he or any member of his immediate family is negotiating or has an arrangement concerning prospective employment is a party. Direct or indirect participation shall include but not be limited to involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

II. It shall be a breach of ethical standards for any person to offer, give, or agree to give any City employee or former employee, or for any City employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment, in connection with any decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling or other determination, claim or controversy, or other particular matter, pertaining to any contract or subcontract and any solicitation or proposal therefor.

III. It is a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a Sub-Respondent under a contract to the prime Respondent or higher tier Sub-Respondent or any person associated therewith, as an inducement for the award of a subcontract or order.

IV. The prohibition against conflicts of interest and gratuities and kickbacks shall be conspicuously set forth in every local public agency written contract and solicitation therefor.

V. It shall be a breach of ethical standards for any City employee or former employee knowingly to use confidential information for his actual or anticipated personal gain, or the actual or anticipated personal gain of any other person.

*By signing the below, Respondent certifies its ongoing adherence and understanding of the above.*

\_\_\_\_\_  
(Print) Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

CITY OF COVINGTON  
ITB240802  
**Exhibit A**

COMMISSIONER'S ORDINANCE NO. 0-10-24

AN ORDINANCE CREATING AND ESTABLISHING FOR BID NONEXCLUSIVE ELECTRIC FRANCHISE FOR THE PLACEMENT OF FACILITIES FOR THE TRANSMISSION, DISTRIBUTION AND SALE OF ELECTRICITY WITHIN THE PUBLIC RIGHT-OF-WAY OF THE CITY OF COVINGTON FOR A TWENTY (20) YEAR DURATION, IMPOSING A FRANCHISE FEE IN OF THE SUM OF UP TO FIVE PERCENT (5%) OF FRANCHISEE'S GROSS RECEIPTS PER YEAR FROM THE FRANCHISEE'S SALE OF ELECTRICITY TO ELECTRIC-CONSUMING ENTITIES INSIDE THE CITY OF COVINGTON'S CORPORATE LIMITS AND FURTHER PROVIDING FOR INDEMNIFICATION; INSURANCE; CANCELLATION OR TERMINATION; AND BID REQUIREMENTS; ALL EFFECTIVE ON DATE OF PASSAGE.

WHEREAS, Sections 163 and 164 of the Constitution of the Commonwealth of Kentucky, and Chapter 96 of the Kentucky Revised Statutes, authorize municipal corporations to require public utilities, including providers of electricity within their boundaries, to operate under franchise agreements and to grant utilities the right to use Right-Of-Way on such terms and conditions as are deemed reasonable and necessary; and

WHEREAS, KRS 82.082 authorizes the City to exercise any and all powers within its boundaries that are not in conflict with the Kentucky Constitution or state statutes; and

WHEREAS, the City Commission of the City of Covington, Kentucky, has found and determined that the construction, operation, maintenance and utilization of an electric franchise over, across or under Right-Of-Way in the City of Covington, benefits said utility and the customers it serves; and

WHEREAS, the City Commission has further found and determined that the construction, installation, removal, maintenance and/or repair of utility-owned facilities and other infrastructures does periodic and unavoidable disturbance that gradually results in the degradation of the City's streets and sidewalks, for which the City is entitled to reasonable compensation in order to offset and recover the costs of reconstructing, removing, repairing or resurfacing damaged Right-Of-Way; and,

WHEREAS, in order to protect the health, safety and welfare of the citizens of Covington, Kentucky, to protect and preserve the City's public right-of-way and infrastructure and to provide for the orderly administration of the franchise contemplated herein, it is necessary and appropriate to require the successful franchisee to conduct its business and operations in a lawful manner in compliance with the terms and conditions set forth hereinbelow.

**NOW, THEREFORE,**

**BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF COVINGTON, KENTON COUNTY, KENTUCKY:**

**Section 1**

There is hereby created a non-exclusive franchise to enter upon, lay, acquire, construct, operate, maintain, install, use, and repair, in the Right-Of-Way of the City, a system or works for the transmission and distribution of electricity within and without the corporate boundaries of the City as it now exists or may hereafter be constructed or extended, subject to the provisions of this Ordinance. Such system may include poles, pipes, manholes, ducts, structures, and any other apparatus, equipment and facilities above and below the ground (collectively, "Equipment") necessary, essential, and/or used or useful to the transmission, distribution and sale of electricity through the City or to any other town or any portion of the county or to any other jurisdiction ("Services"). Additionally, the Company shall have the right to use the streets with its service and maintenance vehicles in furtherance of this Franchise. Prior to beginning the construction or installation of any new facilities under this Franchise, the Company shall obtain any necessary

governmental permits for such construction or installation, copies of which it shall provide to the City. For avoidance of doubt, the Company shall not be required to obtain a permit prior to undertaking any maintenance or Emergency restoration work on existing facilities. To the extent a permit is necessary for such Emergency restoration work, the Company shall make any necessary permit application filings within any prescribed time by applicable ordinance or, if not provided by ordinance within a reasonable period, not to exceed fifteen (15) days, following completion of the work. Work performed by the Company under this Franchise shall be performed in a workmanlike manner and in such a way as not to unnecessarily interfere with the public's use of City streets. Whenever the surface of any City street is opened, it must be restored at the expense of the Company within any prescribed time by applicable ordinance or if not provided by ordinance, within thirty (30) days for hard surfaces and within fifteen (15) days for soft surfaces along city streets. Such restoration shall be to a condition comparable to what it was prior to the opening thereof. By way of example, brick pavers must be restored with brick pavers and stamped concrete must be restored with stamped concrete. During seasonal periods where weather prevents the restoration within the times set forth in this Ordinance or in the event of any shortage of materials or labor, the Company shall make temporary restorations satisfactory to the City and shall work with the City to develop a mutually agreeable and reasonable period for permanent restoration. In the event a street is opened at the request of the City for a reason other than providing adequate, efficient and reasonable service, then the City shall bear the expense of opening and restoring the street.

## **Section 2**

The following definitions apply to this Ordinance:

**City Commission** means the legislative body of the City of Covington.

**Company** means the Party or Person that shall become the purchaser of said franchise, or any successor or assignee of such Party or Person.

**Facility** includes all property, means, and instrumentalities owned, operated, leased, licensed, used, furnished, or supplied for, by, or in connection with the business of the utility in the Right-Of-Way.

**Government or City** means the City of Covington.

**Gross Receipts** means those amounts of money which the Company receives from its customers within the City's geographical limits or boundaries for the retail sale of electricity under rates, temporary or permanent, authorized by the Kentucky Public Service Commission and represents amounts billed under such rates as adjusted for refunds, the net write-off of uncollectible accounts, corrections or other regulatory adjustments. Revenues do not include miscellaneous service charges, including but not limited to turn-ons, meter sets, insufficient funds, taxes, local fees, late fees and interest, which are related to but are not a part of the actual retail sale of electricity.

**Party or Person** means any natural or corporate person, business association or other business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a Utility', a successor or assign of any of the foregoing, or any other legal entity. As used in this ordinance, the term Parties shall collectively refer to the Company and the Government.

**Public Utility or Utility** means a Party or Person that is defined in KRS Chapter 278.010 as a utility and: (i) is subject to the jurisdiction of the Kentucky Public Service Commission or the Federal Energy Regulatory Commission; or (ii) is required to obtain a franchise from the Government to use and occupy the Right-Of-Way pursuant to Sections 163 and 164 of the Kentucky Constitution.

**Right-Of-Way** means the surface of and the space above and below a public roadway, highway, street, freeway, lane, path, sidewalk, alley, court, boulevard, avenue, parkway, cartway, bicycle lane or path, public sidewalk, or easement held by the Government for the purpose of public travel and shall include Rights-Of-Way as shall be now held or hereafter held by the Government.

## **Section 3**

The Franchise created herein shall be non-exclusive and shall continue for a period of TWENTY (20) years from and after the effective date of this Ordinance, as set forth in Section 5. The Company may, at its option, terminate this Franchise upon one hundred eighty (180) days' written notice if: (a) the City breaches any of its obligations hereunder

and such breach is not cured within ninety (90) days of the Company's notice to the City of such breach; (b) the Company is not permitted to pass through to affected customers all fees payable by it under Section 9 herein; or (c) the City creates or amends any ordinance or regulation which, in the Company's sole discretion, would have the effect of: (i) substantially altering, amending or adding to the terms of this Ordinance; (ii) substantially impairing the Company's ability to perform its obligations under the Franchise in an efficient, unencumbered and profitable way; or (iii) preventing the Company from complying with applicable statutes or regulations, rules or orders issued by the Kentucky Public Service Commission. Without diminishing the Company's rights under this Section 3, the City agrees that to the extent it desires to pass or amend an ordinance or regulation which could have the effect of substantially: (i) altering, amending, or adding to the terms of this Ordinance; (ii) impairing the Company's ability to perform its obligations under this Franchise in an efficient, unencumbered and profitable way; or (iii) preventing the Company from complying with applicable statutes or regulations, rules or orders issued by the Kentucky Public Service Commission, that it will first discuss such proposed ordinance or regulation with the Company and the parties shall negotiate in good faith regarding the same.

#### **Section 4**

The Company is authorized to operate throughout all the territory within the corporate limits of the City for which it is authorized under state or federal law.

#### **Section 5**

This Ordinance shall become effective on the date of its passage and publication as required by law. The Franchise created by this Ordinance shall take effect no earlier than thirty (30) days after the City Commission accepts the bid(s).

#### **Section 6**

The Company shall comply with all provisions of the City's Code of Ordinances ("Code"), including but not limited to, Urban Forestry, Right of Way Encroachment, Historic Preservation Guidelines, and Public Realm Streetscape Design Standards and City regulations (including any amendments thereto), unless such provisions: (i) conflict with the Company's ability to comply with any rule, regulation or order issued by the Kentucky Public Service Commission related to the Company's rates or services; or (ii) are otherwise preempted by the action of any state or federal authority with jurisdiction over the Company. The Company shall comply with the provisions of Covington Code of Ordinance 596.067 regarding Installation, Regulation, or Discontinuance of facilities and specifically including, but not limited to, 596.067(H) on leases of poles in the right of way to entities other than the Company. The Company shall not be excused from complying with any of the terms and conditions of this Ordinance by any failure of the Government, upon any one or more occasions, to insist upon the Company's performance or to seek the Company's compliance with any one or more of such terms or conditions.

#### **Section 7**

Rights Reserved by City. Subject to the above provisions, the Franchise created by this Ordinance is expressly subject to the right of the City: (i) to repeal the same for misuse, nonuse, or the Company's failure to comply with applicable local, state or federal laws; (ii) to impose such other regulations as may be determined by the City to be conducive to the safety, welfare and morals of the public; and/or (iii) to control and regulate the use of its Right-Of-Way as permitted by law. All rights and privileges granted in any electric franchise shall be subject to the provisions hereof, this Ordinance and to all powers (including police power) inherent in, conferred upon, or reserved to the City, including but not limited to those contained in the Code and in all regulations and or policies promulgated by the City.

#### **Section 8**

As consideration for the granting of the Franchise created by this Ordinance, the Company agrees it shall defend, indemnify, and hold harmless the Government from and against claims, suits, causes of action, proceedings, judgments for damages or equitable relief, and costs and expenses asserted against the Government that the Company's use of the Right-Of-Way or the presence or operation of the Company's equipment on or along said Right-Of-Way has caused damage to tangible property or bodily injury, if and to the extent such damage or injury is not caused by the Government's negligence, gross negligence or willful conduct. The Government shall notify the Company in writing within a reasonable time of receiving notice of any issue it determines may require indemnification.



## **Section 9**

A. Franchise Fees. For the privilege of utilizing said public streets and Rights-Of-Ways, the Company, its successors and assigns, shall be required to pay to the Government monthly three percent (3%) of Gross Receipts per month from the Company's sale of electricity to electric-consuming entities (which includes businesses, industrial facilities and dwellings) inside the City's corporate limits. Additionally, the City reserves the right to increase the franchise fee at any time after the one-year anniversary of the effective date of this Ordinance, and upon prior ninety (90) days written notice to the Company. Should the City exercise said right to increase the franchise fee, the City shall receive payment of franchise fees in an amount not to exceed five percent (5%) of the Gross Receipts received by the Company from the Company's sale of electricity to electricity-consuming entities (which includes businesses, industrial facilities and dwellings) inside the City's corporate limits.

Unless otherwise agreed in writing, no acceptance of any franchise fee payment by the Government shall be construed as an accord and satisfaction that the amount paid is in fact the correct amount nor shall acceptance be deemed a release to any claim the Government may have for future or additional sums pursuant to this Franchise. Any additional and non-disputed amount due to the Government shall be paid within ten (10) days following written notice to the Company by the Government.

The Government shall have the right to inspect the Company's electric income records no more than once, annually, related to the Company's electric gross receipts within the City for a time period consisting of the lesser of the effective date of the franchise or the most recent two years (the Audit Period). The Government shall retain the right to audit and to re-compute any amounts determined to be payable under this agreement for the Audit Period; provided, however, that such audit shall take place within twelve (12) months following the close of the Company's fiscal year. If, as a result of such audit or review, the Government determines that Company has underpaid its franchise fees to the Government in any twelve (12) month period by ten percent (10%) or more, then, in addition to making full payment of the relevant obligation, the Company shall reimburse the Government for all expenses incurred as a result of an audit or review and such payments shall be paid within the thirty (30) days following written notice to the Company by the Government, which notice shall include a copy of the audit report and copies of all invoices for which the Government seeks reimbursement. If the audit shows that the Company has overpaid its franchise fee in any twelve (12) month period, then the Government will promptly make a payment to the Company of the overpayment amount and Company will make appropriate bill adjustments to affected customer's bill to credit back the overpayment.

Once the Government has exercised its right to audit any fiscal year, such year shall not be includable within the scope of any subsequent audit by the Government unless agreed to by the Company.

If any franchise fee is owed to the Government, in the event that any franchise fee payment or recomputed amount is not made to the Government on or before the applicable dates heretofore specified, interest shall be charged from such date at the annual rate of 2% over prime interest rate, unless the Company demonstrates that the non-payment is the result of an act or omission of the Commonwealth of Kentucky or the City and wholly beyond the fault of the Company.

Any other fees assessed to the Company in connection with the Company's operation within the City pursuant to this franchise, including use of the City's Right-Of-Way, including fees associated with permits and licenses of whatever nature, shall be payable by the Company only if and to the extent such fee is provided for under the laws of the Commonwealth of Kentucky and to the extent the Company is authorized by the Kentucky Public Service Commission (or its successor) to pass through such fees to the entities served by it inside the City's corporate limits.

To the extent the Company actually incurs other reasonable incremental costs in connection with its compliance with the Code, the Government agrees that the Company may recover such amounts from its customers pursuant to the terms of a tariff filed with and approved by the Kentucky Public Service Commission, if otherwise permitted by law.

## **Section 10**

The Company shall maintain in force through the term of the Franchise insurance coverage for general liability insurance, auto liability and workers compensation, in accordance with all applicable laws and regulations. The Company shall maintain a general liability and auto liability coverage minimum limit of \$5,000,000 per occurrence. The Company may elect to self-insure all or part of this requirement.

## **Section 11**

The Company agrees to charge such rate or rates as may from time to time be fixed by the Kentucky Public Service Commission or any successor regulatory body and will give notice of same as required by KRS 278.180 and the Orders

of the Kentucky Public Service Commission construing same.

### **Section 12**

In the event the Government believes the Company has materially breached this franchise or violated one of its terms, the Government shall provide written notice to the Company that states the precise alleged breach or violation and shall provide the Company a reasonable opportunity, not to exceed thirty (30) days from receipt of notice, to provide evidence that such breach or violation has not occurred or to take action to cure such breach or violation.

If after thirty days, the Company has either failed to provide evidence of such breach or violation not occurring or has failed to commence action to cure such breach or violation, the City reserves the right to assess a penalty in the amount of \$500 per violation or breach.

If payment of any penalty assessed under this provision not made to the Government on or before the applicable dates specified, interest shall be charged from such date at the annual rate of 2% over prime interest rate, unless the Company demonstrates that the non-payment is the result of an act or omission of the Commonwealth or the City and beyond the fault of the Company.

The Parties retain all rights available under the law of the Commonwealth of Kentucky with respect to enforce provisions of this Ordinance or any contract derived from the passage of this Ordinance, including the right to seek remedies at law, and direct damages.

The payment of penalties or damages shall not excuse non-performance under this Ordinance. The right of the Parties to seek and collect damages as set forth in this section is in addition to its right to terminate and cancel as set forth in Section 13 of this Ordinance.

In no event shall either Party be liable under this Agreement to the other Party any special, incidental, punitive, exemplary, or consequential damages.

### **Section 13**

(a) In addition to all other rights and powers pertaining to the Parties by virtue of the Franchise created by this Ordinance or otherwise, the Government, by and through its City Commission, and the Company, each reserve the right to terminate and cancel this Franchise and all rights and privileges of the hereunder in the event that the other Party:

- (1) Willfully violates any material provision of this Franchise, except where such violation is without fault or through excusable neglect;
- (2) Willfully attempts to evade any material provision of this Franchise or practices any fraud or deceit upon the other Party;
- (3) Knowingly makes a material misrepresentation of any fact in the application, proposal for renewal, or negotiation of this Franchise; or
- (4) Is no longer able to provide regular and customary uninterrupted service to its customers in the franchise area.

(b) Prior to attempting to terminate or cancel this Franchise pursuant to this section, the City's Mayor or his or her designee, or the City Commission, or the Company shall make a written demand that the Company or City do, or comply with, any such provision, rule, order or determination. If the violation, found in Section 13(a), by the Company or the City continues for a period of thirty (30) days following such written demand without written proof that corrective action has been taken or is being actively and expeditiously pursued, the Government may place its request for termination of this Franchise as early as the next regular City Commission meeting agenda. The Government shall cause to be served upon the Company, at least ten (10) days prior to the date of such City Commission meeting, a written notice of intent to request such termination and the time and place of the meeting, legal notice of which shall be published in accordance with any applicable laws. In the event of a breach by the City, the Company retains all rights available under the law of the Commonwealth of Kentucky with respect to enforce provisions of this Ordinance or any contract derived from the passage of this Ordinance,

(c) Any violation by the Company or its successor of the material provisions of this Franchise, or the failure promptly to perform any of the provisions thereof, shall be cause for the forfeiture of this Franchise and all rights

hereunder if, after written notice to the Company and a reasonable opportunity to cure, such violations, failure or default continue as set forth in Section 13(a).

#### **Section 14**

Right to Cancel. The City shall have the right to terminate the Franchise created by this Ordinance thirty (30) days after the appointment of a receiver or trustee to take over and conduct the business of the Company, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said thirty (30) days, unless:

1. Within thirty (30) days after his election of appointment, such receiver or trustee shall have fully complied with all the provisions of this Ordinance and remedied all defaults thereunder; and,
2. Such receiver or trustee, within said thirty (30) days shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Ordinance and the Franchise granted to the Company.

#### **Section 15**

In the event of a change of Kentucky law whereby retail rates of electric customers are no longer regulated by the Public Service Commission, the Government shall have the option of terminating this Franchise with the Company. If this Franchise is terminated by the Government pursuant to this provision, the Government and the Company shall have a duty to negotiate in good faith with respect to offering a mutually acceptable franchise to the Company.

#### **Section 16**

The Company shall conform to at least the minimum standards or requirements in federal and state law or regulation in the operation of its electric system pursuant to this Ordinance. In addition to complying with other applicable law, the Company agrees that:

- (a) Any defect in the work, materials or equipment, whether latent or patent, will be remedied by the Company;
- (b) Construction, reconstruction, maintenance, or removal of any facilities, shall be performed with due regard for the rights of the Government and others, and shall not unnecessarily interfere with, or in any way injure the property of the Government or others under, on, or above the ground, or otherwise unduly interfere with the public use of the Right-Of-Way;
- (c) Placement of lights, danger signals or warning signs shall be undertaken by the Company in compliance with applicable law; and
- (d) All new facilities shall be installed and shall be in conformance with the applicable requirements of this Ordinance and those set forth in the Code, the Zoning Ordinance, or any other applicable federal state and local laws or regulations. The Company assumes all responsibility for damage or injury resulting from its placement or maintenance of any facilities.
- (e) The Government shall have the ability to order the relocation of any facility located within the Right-Of-Way.
  1. Whenever the Government shall grade, regrade, construct, reconstruct, widen or alter any Right-Of-Way or shall construct, reconstruct, repair, maintain or alter a public improvement, including, but not limited to, storm sewers, sanitary sewers and street lights therein, it shall be the duty of the Company, when so ordered by the Government, to change, relay and relocate its facilities in the Right-Of-Way at no cost to the Government so as to conform to the established grade or line of such Right-Of-Way and so as not to interfere with such public improvements so constructed, reconstructed or altered. However, notwithstanding the above, if as part of said public improvement the Government, receives grant money, as part of a state or federally funded project, applicable for the relocation of any above-ground, to be relocated underground, the grant or other award shall be applied with the Company to bear any additional cost. The Company specifically acknowledges and agrees that the placement of facilities in the City's Right-Of-Way is a revocable permit, which may be revoked for specific facilities for the reasons set forth herein.

2. The Government shall have the authority to order the relocation and/or for the Company to provide any required safety measures for any facility that due to proximity of a private property owner is interfering with the . property owner's respective use of their property or is in violation of a safety standard set forth by law and/or regulation. Specifically, the Company agrees to either relocate and/or provide safety measures for an property owner whose ability to use, repair, rebuild, paint and/or make any required alterations to their property is impacted by the location of Company's facilities.
3. If the reason the Government is ordering the relocation is to assist in the installation of facilities by another party, the party seeking to install the facilities, or the project funding source, shall bear the costs of said relocation, unless an agreement is otherwise reached. This shall not apply to any relocation resulting from the relocation required by redevelopment and/or construction of a City owned property, which shall include ownership by Industrial Revenue Bond and/or similar economic incentive issued pursuant to applicable state law.
4. The Company shall, at no cost to the Government, place facilities underground if said above-ground facilities cause a public safety concern or are required to be placed underground pursuant to federal, state or local laws or regulations.

### **Section 17**

This Ordinance and any Franchise awarded pursuant to it shall be governed by the laws of the Commonwealth of Kentucky, both as to interpretation and performance. The venue for any litigation related to this Ordinance and any Franchise awarded pursuant to it shall be in a court of competent jurisdiction in Kenton County, Kentucky.

### **Section 18**

This Ordinance and any Franchise awarded pursuant to it does not create a contractual relationship with or right of action in favor of a third party against either the Government or the Company.

### **Section 19**

If any section, sentence, clause or phrase of this Ordinance is held unconstitutional or otherwise invalid, such infirmity shall not affect the validity of the remaining Ordinance unless the rights of the City or Company are materially altered or impaired.

### **Section 20**

It shall be the duty of the City Commission, through the City Manager's Office, to offer for sale at public auction the Franchise and privileges created hereunder. Said Franchise and privileges shall be sold to the highest and best bidder or bidders at a time and place fixed by the City Commission after given due notice thereof by publication or advertisement as required by law. In awarding the franchise, the City shall consider the technical, managerial, and financial qualifications of the bidder to perform its obligations under the franchise.

### **Section 21**

Bids and proposals for the purchase and acquisition of the franchise and privileges hereby created shall be in writing and shall be delivered to the City Commission, through the office of the City Manager, upon the date(s) and at the times(s) fixed by publication(s) or advertisement(s) for receiving same. Thereafter, the City Manager shall report and submit to the City Commission, at the time of its next regular meeting or as soon as practicable thereafter, said bids and proposals for its approval. The City Commission reserves the right, for and on behalf of the Government, to reject any and all bids for said franchise and privileges; and, in case the bids reported by the City Manager shall be rejected by the City Commission, it may direct, by resolution or ordinance, said franchise and privileges to be again offered for sale, from time to time, until a satisfactory bid therefore shall be received and approved.

Bids offered for purchase of this Franchise shall state the bidder's acceptance of the conditions set forth in this Ordinance and shall be accompanied by a nonrefundable application fee in the amount of Four Thousand Dollars (\$4,000.00) payable to the City Commission to defray the City's costs of advertising and other administrative expenses incurred.

In addition, any bid submitted by a corporation or person <sup>20</sup>not already owning within the territorial limits of the City a



plant, equipment, and/or Facilities sufficient to render the service required by this Ordinance must be accompanied by cash or a certified check drawn on a bank of the Commonwealth of Kentucky, or a national bank, equal to five percent (5%) of the fair estimated cost of the system required to render the service, which check or cash shall be forfeited to the Government in case the bid should be accepted and the bidder should fail, for thirty (30) days after the confirmation of the sale, to pay the price and to give a good and sufficient bond in a sum equal to one-fourth (1/4) of the fair estimated cost of the system to be erected, conditioned that it shall be enforceable in case the purchaser should fail, within sixty (60) days, to establish and begin rendering the service in the manner set forth in this Ordinance. Such deposit need not be made by a corporation or person already owning within the territorial limits of the City a plant, equipment, and/or Facilities sufficient to render the service required by this Ordinance.

**Section 22**

The Franchise shall not be assignable without the written consent of the City; however, Franchisee may assign the Franchise to any affiliate, parent, or subsidiary entity which may, during the Term of the Franchise, assume the obligation to provide electricity throughout and for consumption within or outside the City without being required to seek the City's consent to such assignment. The Company shall provide the City with any notices required under the law of the Commonwealth of Kentucky.

If the Company experiences a foreclosure or other judicial sale of all or a substantial part of the Company's Facilities located with the City of Covington, the Company shall provide the Government with any notices required under the law of the Commonwealth of Kentucky.

**Section 23**

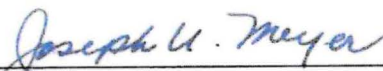
The Company shall provide the City with the name, address, phone number and email address of each contractor and/or subcontractor constructing, installing, removing, maintaining and/or repairing Company-owned facilities in the City. Said information shall be provided to the City at least 7 days prior to any work being performed in the City by said contractors or subcontractors. Additionally, the Company, and all of its contractors and subcontractors, shall comply with all City ordinances and/or regulations, including, but not limited to, Section 96 of the Code.

**Section 24**

As set forth herein, the "Franchise Fee," is a fee paid by the Company's customers. In as much, Company agrees as further consideration of the use of the City's rights of way, the Company agrees to apply all Revenue Justification Policies, Economic Development Policies and/or other similar policy or procedure, provided for in the submittals to the Kentucky Public Services Commission by the Company.

**Section 25**

This Ordinance shall take effect and be in full force when passed, published, and recorded according to law.

  
\_\_\_\_\_  
MAYOR

ATTEST:

  
\_\_\_\_\_  
CITY CLERK

Passed: May 14, 2024 (Second Reading)  
April 23, 2024 (First Reading)

CITY OF COVINGTON  
ITB240802  
Attachment IV

**BID FORM**

**For: Non-Exclusive Electric Utility Franchise Agreement(s)**

**Bidder (Company) Name:** \_\_\_\_\_

**Bidder's Representative's<sup>1</sup> Name(s):** \_\_\_\_\_

**Bidder's Representative's<sup>1</sup> Title:** \_\_\_\_\_

*<sup>1</sup>Representative must have proper legal authority to bind Bidder legally and contractually.*

**Representative's Contact Information:**

**Direct Dial Telephone Number:** \_\_\_\_\_

**General/Main Telephone Number:** \_\_\_\_\_

**Mobile Telephone Number:** \_\_\_\_\_

**SMS/Text Number/Address:** \_\_\_\_\_

**e-Mail Address:** \_\_\_\_\_

**Other (Specify):** \_\_\_\_\_

\_\_\_\_\_

Bidder shall separately prepare and attach with its Bid the specifications of and for the Non-Exclusive Electric Utility Franchise Agreement(s) that it's Bidding to furnish to the City. Bidder's specifications shall:

1. Fully comply with the City's specifications as expressed in the ITB.
2. Specifically, and clearly express:
  - a. Any City specification included in this ITB (ITB240703), including the City's specified Terms and Conditions, that:
    - i. Bid does not include, or fully satisfy.
    - ii. Bid exceeds or surpasses, how and to what extent(s)/limit(s).
    - iii. Absence of either or both expressions shall indicate Bidder's full compliance with City's specifications.
  - b. Bidder's Bid price to acquire from the City the Non-Exclusive Electric Utility Franchise Agreement(s) its specification(s) describe.
    - i. Bid pricing shall remain firm for the City's evaluation and consideration for not less than ninety (90) days after the City publicly receives, opens and records Bids received by the City in response to this ITB240703.

**Bidder's Representative's<sup>1</sup> Signature:** \_\_\_\_\_

**Date Executed:** \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_