

**DISTRIBUTION OF ELECTRICAL AND NATURAL GAS ENERGY  
FRANCHISE AGREEMENT**

This Distribution of Electrical and Natural Gas Energy Franchise Agreement ("Agreement") is entered into and made effective as of 11/12/21, 2021 ("Effective Date"), by and between the City of Bellevue, Kentucky, a municipal corporation and city of the home rule class ("City"), and Duke Energy Kentucky, Inc. ("Franchisee").

**Section 1. Non-Exclusive Franchise Granted Subject to Conditions.**

A. The City hereby grants to Franchisee, subject to the conditions prescribed in this Agreement, the non-exclusive franchise rights and authority ("Franchise") to construct, install, replace, repair, monitor, maintain, use, operate and remove its equipment and facilities necessary for distribution of electrical and natural gas energy ("Facilities") in, under, on, across, over, and through those areas of the city where Franchisee is already providing said gas and/or electric service, and other areas in the future as the parties may agree in writing. Franchisee hereby accepts the Franchise granted pursuant to this Agreement and agrees to provide quality service within the city as required and regulated by the Kentucky Public Service Commission (PSC).

B. The foregoing franchise rights and authority shall not be deemed to be exclusive to Franchisee and shall in no way prohibit or limit the City's ability to grant other franchises, permits, or rights along, over, or under the areas to which this Franchise has been granted to Franchisee. This Franchise shall in no way interfere with existing utilities or in any way limit, prohibit, or prevent, the City from using its rights-of-way or affect the City's jurisdiction over such rights-of-way in any way consistent with applicable law.

**Section 2. Franchise Limitations.** City does not warrant the suitability of any portion of its rights-of-way for the purposes for which Franchisee may desire to use them under this Agreement, nor does the City warrant the condition of any structure, pole, or other improvement currently located within the City's rights-of-way. Franchisee hereby accepts the City's rights-of-way and all publicly owned improvements located therein on an AS-IS, WHERE-IS, and WITH ALL FAULTS basis.

**Section 3. Authority.** The City Administrator or his or her designee is hereby granted the authority to administer and enforce the terms and provisions of this Agreement and may develop such lawful and reasonable rules, policies, and procedures as he or she deems necessary to carry out the provisions contained herein.

**Section 4. Franchise Term.** The franchise rights granted herein shall remain in full force and effect for a term period of five (5) years from the Effective Date of this Agreement ("Term"). The Term of this Agreement shall be automatically renewed for up to three (3) additional periods of five (5) years each ("Renewal Term"), unless either the City or Franchisee provides the other party written notice of their intention not to renew the Term of this Agreement at least 180 days prior to the expiration date of the then current Term or Renewal Term, as the case may

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be; provided however, the total duration of the Term of this Agreement shall not exceed twenty (20) years as provided under Section 164 of the Kentucky Constitution.

**Section 5. Acceptance of Terms and Conditions.** Failure on the part of Franchisee to provide an executed original of this Agreement to the City Clerk within sixty (60) calendar days (or longer or shorter as the parties may agree) of the City Council approving this Agreement shall be deemed a rejection thereof by Franchisee and shall result in this Agreement being null and void, having no further force or effect and all rights granted under this Agreement shall then terminate.

**Section 6. Construction Provisions and Standards.** The following provisions shall be considered mandatory and failure to abide by any conditions described herein shall be deemed as noncompliance with the terms of this Agreement. To the extent that any of the rules, regulations or restrictions set forth herein conflict with the rules, regulations, or restrictions of the Public Service Commission (PSC), the rule, regulation or restriction of the PSC shall be controlling.

**A. Permit Required.** No installation, construction, expansion, or material modification of the Facilities shall be undertaken in the Franchise Area without first obtaining all required right of way use and/or construction permits as required under all applicable ordinances of the City and under all regulations and other requirements of the Kentucky Public Services Commission (PSC) and all other governing bodies, (where applicable). All construction, removal, alteration(s), and maintenance shall abide by the City's permitting process, including zoning and building.

**B. Construction Standards.** Any construction, installation, maintenance, operation and restoration activities performed by or for Franchisee within the Franchise Area as regards shall be constructed and located so as to produce the least amount of interference with the free passage of pedestrian and vehicular traffic. All work and improvements made by Franchisee shall be so performed in a safe and good and workmanlike manner, and in compliance with all applicable federal, state, and local laws. The Facilities shall be concealed or enclosed, as much as possible, in a box, cabinet, or other unit, and, as to external cables and wires running down polls, they shall be sheathed or enclosed in a conduit, so that wires are protected and are visually minimized as much as possible. Franchisee shall not locate any overhead wires or cables across any roadway without the express prior approval of the City. In the performance of any work by Franchisee relating to its Facilities under this Agreement, Franchisee, at its sole cost and expense, shall restore and repair any damage to the City's rights-of-way or any public improvements located therein, to their original condition as existed prior to the commencement of such work. Any construction, installation, maintenance, operation and restoration activities performed by the Franchisee within the Franchise area shall conform and be subject to regulations of the Historic Preservation Commission, the Tree Commission, Planning and Zoning (see §9.31 *et seq.* of the Planning and Zoning Regulations) and all other City Regulations.

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**C. Relocation.** Whenever the City causes a public improvement to be constructed within the Franchise Area, and such public improvement requires the relocation of Franchisee's Facilities, the City shall provide Franchisee with written notice requesting such relocation along with plans for the public improvement that are sufficiently complete to allow for the initial evaluation, coordination and the development of a relocation plan. The City and Franchisee shall meet at a time and location determined by the City to discuss the project requirements including critical timelines, schedules, construction standards, utility conflicts, as-built requirements, and other pertinent relocation plan details. The City shall not be liable to Franchisee for any lost revenues or any other costs incurred by Franchisee in relocating its Facilities due to a relocation as a result of a City public improvement project. Franchisee shall not be required to relocate any facilities within thirty (30) days, but rather the parties hereto shall agree to a reasonable time frame as set forth in this paragraph, and any thirty day requirement is hereby waived.

**D. Removal or Abandonment.** Upon the removal from service of any electrical Facilities within the Franchise Area, Franchisee shall comply with all applicable standards and requirements prescribed by the City and/or PSC for the removal or abandonment of said electrical Facilities. No electrical Facilities constructed or owned by Franchisee may be abandoned in place without the express prior written consent of the City. This provision does not apply to natural gas Facilities.

**E. "One-Call" Location & Liability.** Franchisee shall subscribe to and maintain membership in the regional "call before you dig" utility location service and shall promptly locate all of its lines upon request. The City shall not be liable for any damages to Franchisee's Facilities or for interruptions in service to Franchisee's customers which are a direct result of work performed for any City project for which Franchisee has failed to properly locate its Facilities within the prescribed time limits and guidelines established.

**F. As-Built Plans Required.** Franchisee shall maintain accurate engineering plans and details of all installed system Facilities, within the City limits, and upon request by the City, shall provide such information in electronic form prior to close-out of any permit issued by the City and any work undertaken by Franchisee pursuant to this Agreement.

**G. Compliance.** Franchisee shall at all times comply with all rules, regulations, and policies promulgated by the Kentucky Public Service Commission, and shall at all times maintain in good standing any licenses, certificates of need, and other governmental approvals authorizing Franchisee to engage in the activities permitted under this Agreement.

**H. Tree Trimming.** Franchisee shall have the right, at its own expense, to trim trees located in or overhanging the City rights-of-way and that are interfering with the operation of its Facilities and/or related equipment only to the extent necessary to keep the branches of the trees from interfering with such Facilities. All trimming and



pruning shall comply with all applicable ordinances of the City, and when trees are pruned, the Franchisee shall follow all industry standards regarding safety and quality as they pertain to pruning trees near electric utility lines (ANSI A300). . Notwithstanding the foregoing and prior to engaging in such activity, Franchisee shall submit to the City a tree trimming or pruning plan for approval by the Tree Commission or any other municipal body designated by the City. Franchisee shall provide notice to adjacent private property owners prior to trimming or pruning. Any person engaged by Franchisee to provide tree trimming or pruning services shall be deemed, for purposes of this Agreement, an employee or agent of Franchisee, and in no event shall such person be deemed an employee or agent of the City.

**Section 7. Insurance.** Franchisee shall not be required to maintain liability insurance, nor shall Franchisee be required to post surety bond, and any said requirements are hereby waived. Franchisee already operates within the city providing natural gas and electric service, and is a self-insured entity with limits of \$1,000,000 in general liability, worker's compensation, and automobile coverage.

**Section 8. Other Permits & Approvals.** Nothing in this Agreement shall relieve Franchisee from any obligation to obtain approvals or necessary permits from applicable federal, state, and local authorities for all activities in the Franchise Area.

**Section 9. Transfer of Ownership.** The rights, privileges, benefits, title, or interest provided by this Agreement shall not be sold, transferred, assigned, or otherwise encumbered, without the prior written consent of the City, which consent may be conditioned upon such transferee agreeing in writing to be bound by all of the terms and conditions of this Agreement. Approval shall not be required for any transfer from Franchisee to another person or entity controlling, controlled by, or under common control with Franchisee or if Franchisee adopts a new company name without a change in control.

**Section 10. Fees.** It is the intention of the City that Franchisee compensate City for the use of the City's rights-of-way, as they are valuable assets of the City that: (a) the City acquired and maintains at the expense of its taxpayers and citizens; (b) the City holds in trust for the benefit of its citizens; and (c) the grant to Franchisee of the use of the City's rights-of-way is a valuable right without which Franchisee would be required to invest substantial capital in right-of-way acquisition costs. Accordingly, it is the intention of the City and Franchisee to obtain and to pay a fair and reasonable compensation for grant of this Franchise.

- A. Permit Fees. Franchisee shall pay to City all fees required in obtaining permits and processing permit applications for the Facilities as now codified, or as shall be in the future, codified pursuant to any ordinance of City, or pursuant to its permit application fee structure (as set forth in the application or elsewhere as determined by City) generally applicable to all other users of City rights-of-way.
- B. Franchise Fees. In addition to the fees set forth in Section 10.A above, Franchisee shall be obligated to pay an annual franchise fee equal to three and one half percent (3.5%) of Gross Receipts received from customers and subscribers, or other users located within the Franchise Area and such obligation shall commence on the earlier





of the signing of this Agreement, unless time is needed to complete the installation of the Facilities, or to make the Facilities become commercially operational; then the earlier of those (2) two shall dictate all franchise fees and other compensation due and payable under this Agreement shall be paid automatically by Franchisee without any notice or other request from City. "Gross Receipts" means any and all revenues or receipts (as determined in accordance with generally accepted accounting principles), including cash, credits, or other consideration of any kind or nature, derived directly or indirectly from the system being provided through the Facilities including: (a) revenues and receipts which Franchisee receives in connection with its services or other services provided in accordance with this Agreement; (b) revenues and receipts which Franchisee receives from its customers or subscribers, including residential, industrial and commercial entities within the Franchise Area for the sale, transmission, rendering and/or provision of its services, under rates, temporary or permanent, whether authorized or not by the 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; and (c) any revenues and receipts received for rendering other services, products or charges (including installation, maintenance and service charges) relating or pertaining to, or in connection with, the system being provided through the Facilities. The Franchise Fee shall be paid by Franchisee on an annual basis and shall be made directly to the City within thirty (30) days after the expiration of each calendar year. Simultaneously with the payment of the Franchise Fee, Franchisee shall file with the City a detailed revenue statement clearly showing the Gross Receipts received by Franchisee during the preceding year and certified by an officer of Franchisee attesting to the accuracy, completeness and veracity of the revenue figures consistent with the definition of Gross Receipts as defined in this Agreement.

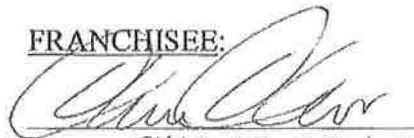
- C. Customer Billings/Complaints: City acknowledges and agrees that Franchisee's customer billing payment methods are presently adequate and include U.S. Mail, automatic bank draft, auto pay/paperless billing, online and mobile app payments via Speedway and its pay agent network. City further acknowledges and agrees that Franchisee's procedures for receiving customer complaints about billings and otherwise are presently adequate.

**Section 11. Notices.** Any notice to be served upon the City or Franchisee shall be delivered to the following addresses respectively by either personal delivery or by nationally recognized overnight delivery service:

CITY:

City of Bellevue  
Attn: Mayor  
616 Poplar Street  
Bellevue, KY 41073

FRANCHISEE:

  
Attn: CHARLES CLEVES  
MAYOR CITY OF BELLEVUE

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**Section 14. Severability.** If any section, sentence, clause or phrase of this Agreement is held to be invalid or unenforceable, the remaining sections, sentences, clauses and phrases shall not be affected thereby, and shall remain in full force and effect legally binding upon the parties hereto.

**Section 15. Reservation of Rights.** The parties agree that this Agreement is intended to satisfy the requirements of all applicable laws, administrative guidelines, rules, orders, and ordinances. Accordingly, any provision of this Agreement or any local ordinance which may conflict with or violate the law shall be invalid and unenforceable, whether occurring before or after the execution of this Agreement, it being the intention of the parties to preserve their respective rights and remedies under the law, and that the execution of this Agreement does not constitute a waiver of any rights or obligations by either party under the law.

**Section 16. Police Powers.** Nothing contained herein shall be deemed to affect the City's authority to exercise its police powers. Franchisee shall not by this Agreement obtain any vested rights to use any portion of the City rights-of-way except for the locations approved by the City and then only subject to the terms and conditions of this Agreement. This Agreement and the permits issued thereunder shall be governed by applicable City ordinances in effect at the time of application for such permits.

**Section 17. Governing Law.** This Agreement shall be governed by the domestic laws of the Commonwealth of Kentucky, County of Campbell, and any applicable federal laws of the United States of America which may preempt state laws.

**Section 18. Counterparts.** This Agreement may be executed in counterpart signature pages by the parties hereto.

**Section 19. Authorization.** The entering into of this Agreement has been authorized by the City by passage of Ordinance 2021-05-04.

**Section 20. Organization and Standing.** Franchisee is duly organized, validly existing and in good standing under the laws of the state of its organization and is duly authorized to conduct business in the Commonwealth of Kentucky. Franchisee has all requisite power and authority to own or lease its properties and assets, subject to the terms of this Agreement, to conduct its businesses as currently conducted, to offer services within the Commonwealth of Kentucky, and to execute, deliver and perform this Agreement and all other agreements entered into or delivered in connection with or as contemplated hereby.

**Section 21. Relationship of Parties.** Franchisee shall be responsible and liable for its contractors, subcontractors, sublicensees and vendors. The City has no control or supervisory powers over the manner or method of Franchisee's, or its contractors', subcontractors' and sublicensees' performance under this Agreement. All personnel Franchisee uses or provides are its employees, contractors, subcontractors or sublicensees and not the City's employees, agents, or subcontractors for any purpose whatsoever. The relationship between City and Franchisee is at all times solely that of franchisor and franchisee, not that of partners or joint ventures.

**Section 22. Entire Agreement.** This Agreement merges the prior negotiations and understandings of the parties and embodies the entire agreement of the parties.

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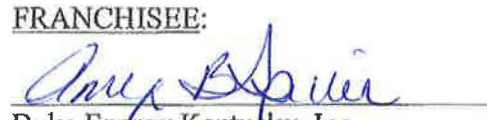
**Section 23. Amendment.** This Agreement may only be amended or modified by a written instrument executed by all of the parties hereto.

**Section 24. Non-Waiver.** If either party fails to require the other to perform a term or condition of this Agreement, that failure does not prevent the party from later enforcing that term or condition. If either party waives a breach of this Agreement by the other party, that waiver does not waive a later subsequent breach of this Agreement.

**Section 25. Mechanics Liens.** Franchisee shall keep all portions of the City's rights-of-way wherein its Facilities and related equipment are located or placed free from any mechanics liens or encumbrances arising from any work performed, materials furnished, or obligations incurred by or at the request of Franchisee. If any lien is filed against the City's rights-of-way or any portion thereof or other property belonging to the City as a result of the acts or omissions of Franchisee or its employees, agents, or contractors, Franchisee shall discharge the lien or bond the lien off in a manner satisfactory to the City within thirty (30) days after Franchisee receives written notice from any party that the lien has been filed.

IN WITNESS WHEREOF, the parties have hereunto set their signatures as of the Effective Date described above.

CITY:  
  
City of Bellevue  
By: Charlie Cleves  
Title: Mayor

FRANCHISEE:  
  
Duke Energy Kentucky, Inc.  
By: Amy Spiller  
Title: Site president

**Prepared By:**  
**David F. Fessler, Esq**  
**City Attorney, Bellevue**

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**CITY OF BELLEVUE**

**ORDER 2021-10-01**

**AN ORDER ACCEPTING THE FRANCHISE AGREEMENT BETWEEN DUKE ENERGY KENTUCKY AND THE CITY OF BELLEVUE.**

\* \* \* \*

WHEREAS, the City desires to hire Duke Energy Kentucky to provide the distribution of electrical and natural gas energy; and

WHEREAS, Duke Energy Kentucky has the desired expertise to provide the City with the necessary electrical and natural gas energy.

**NOW, THEREFORE, BE IT ORDERED, that:**

The agreement between Duke Energy Kentucky and City of Bellevue to provide electrical and natural gas energy is hereby accepted and approved. The Mayor is hereby authorized on behalf of the City of Bellevue to execute any documents necessary to effectuate the franchise agreement.

Adopted this 13<sup>th</sup> day of October 2021.



Charlie Cleves, Mayor

Attest:



Mary H. Scott, City Clerk

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