

ELECTRIC AND NATURAL GAS FRANCHISE AGREEMENT

This Franchise Agreement ("**Agreement**") is hereby made, entered into and effective this 1st day of October, 2019 ("**Effective Date**"), by the City of Southgate, Campbell County, Kentucky, a city of the fourth class with its principal offices at 122 Electric Avenue, Southgate, Kentucky ("**City**"), and Duke Energy Kentucky, Inc., a Kentucky corporation with its principal place of business in Kentucky located at 4580 Olympic Boulevard, Erlanger, Kentucky ("**Duke Energy Kentucky**").

W I T N E S S E T H :

WHEREAS, Duke Energy Kentucky is a public utility subject to the provisions of Sections 163 and 164 of the Kentucky Constitution and K.R.S. 96.010 through 96.045; and

WHEREAS, Section 163 of the Kentucky Constitution prohibits public utilities from using the streets, alleys and other public grounds within a city without a franchise for that use; and

WHEREAS, Duke Energy Kentucky currently has a franchise that is in its final year for the use of the streets, alleys, and public grounds of the City for the transmission and distribution of either or both electricity and natural gas through and for consumption within and outside the City; and

WHEREAS, the City enacted Ordinance 19-03 to establish a franchise for the transmission and distribution of either or both electricity and natural gas through and for consumption within and outside the City (the "**Ordinance**") and has published notice of said Ordinance in accordance with Kentucky law; and

WHEREAS, Duke Energy Kentucky submitted a bid to continue the transmission and distribution of electricity and natural gas through and for consumption within and outside the City; and

WHEREAS, the City has determined that Duke Energy Kentucky's bid satisfied the requirements of the Ordinance and accepted said bid by an affirmative vote that also authorized and directed the Mayor to enter into this Agreement with Duke Energy Kentucky.

NOW, THEREFORE, in consideration of the recitals, promises and mutual obligations set forth herein, the parties do hereby agree as follows:

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Section 1.0 – Definitions. As used herein, the following words and phrases have the meanings indicated for them:

1.1 The word "**City**" means the City of Southgate in Campbell County, Kentucky.

1.2 The words "**Continuing Default**" mean a default lasting for a period of more than thirty (30) consecutive calendar days.

1.3 The word "**Facilities**" means the tangible apparatus, equipment and instrumentalities and the appurtenances thereto used for the transmission and distribution of either or both electricity and natural gas through and within Public Property in the City, including, without limitation, poles, wires, cables, cross-arms, conduits, anchors, junction boxes, manholes, mains, pipes and valves.

1.4 The word "**Franchisee**" means the person to whom the City has awarded and granted the Franchise, which is Duke Energy Kentucky.

1.5 The words "**Public Property**" mean real estate in the City that has been dedicated or is otherwise open to public use and is subject to regulation by the City.

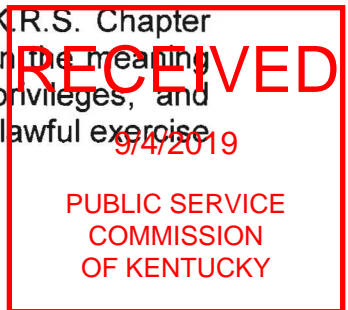
1.6 The words "**Calendar Quarter**" mean three months (25%) of a calendar year composed of the months of either: (a) January, February and March; or (b) April, May and June; or (c) July, August and September; or (d) October, November and December.

Section 2.0 – Franchise. Pursuant to an action by the City, by which action the City accepted the bid tendered by Duke Energy Kentucky and authorized and directed the Mayor to enter into this Agreement, Duke Energy Kentucky is awarded the non-exclusive franchise established by the Ordinance for the use of the Public Property within the City for the transmission and distribution of electricity and natural gas for consumption both within and outside of the City ("**Franchise**").

Section 3.0 – Terms of Franchise. The terms and conditions of the Franchise are as follows:

3.1 Bond Requirement. Pursuant to K.R.S. 96.020(2), because Franchisee already owns a plant and equipment sufficient to render the service required under the Franchise, the deposit and bond requirements delineated in K.R.S. 96.020(1) do not apply to Franchisee.

3.2 Reservation of Rights. Pursuant to the requirements of K.R.S. Chapter 96, the City hereby reserves all of the rights identified therein and within the meaning thereof for home rule cities; and the City shall have all of the rights, privileges, and authority established thereby; and Franchisee shall comply with all of the lawful exercise



thereof by the City and with all other laws, rules, and regulations of all governmental agencies having jurisdiction thereof.

3.3 Franchise Non-exclusive. The franchise hereby established is not an exclusive franchise. It is a non-exclusive franchise; and the City reserves the right to also grant the franchise hereby established to others in accordance with the Kentucky Certified Service Territories Act at KRS 278.016, *et seq.* and other applicable law.

3.4 Franchise Not Assignable. 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 and natural gas throughout and for consumption within or outside the City without being required to seek the City's consent to such assignment.

3.5 Franchise Area. The Franchise established hereby shall be for the use of those portions of the Public Property within the City that are currently served by Duke Energy Kentucky or that are included in the territory for which Franchisee has been certified by the Kentucky Public Service Commission ("**Commission**") pursuant to K.R.S. Chapter 278.

3.6 Effective Period of Franchise. The Franchise shall be effective for a period of five (5) years, beginning on October 1, 2019 and ending on the 30th day of September, 2024 ("**Term**"), unless previously terminated by the City pursuant to the provisions hereof or as otherwise provided by operation of law.

3.7 Franchise Termination. In the event of any Continuing Default by Franchisee of any of the obligations of the Franchise, and after a written notice and description thereof to Franchisee from the City by certified mail, return receipt requested, and upon the failure of Franchisee to reasonably cure the default within a reasonable period of time, the City may terminate the Franchise awarded and granted to Franchisee, through a written notice thereof to Franchisee, by certified mail, return receipt requested, to be effective no less than ninety (90) days from delivery of said written notice.

3.8 Franchisee Rights and Privileges During Effective Period. While the Franchise is effective, Franchisee may engage in the following activities; but always subject to the rights reserved by the City pursuant to the provisions of the previous Section 3.2 hereof:

3.8.1 Continuation of Existing Facilities. The continued operation, use, maintenance, repair, construction, and/or re-construction to the existing condition thereof all of the Facilities of Franchisee within or upon any public property within the City.

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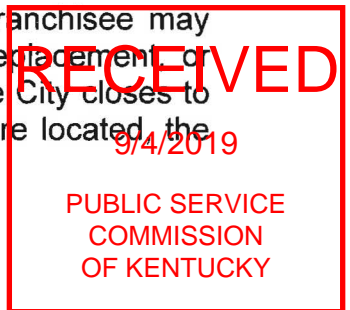
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3.8.2 New Facilities. Franchisee shall provide commercially reasonable notice of any non-emergency extension or expansion of any existing Facilities of Franchisee, or the construction or installation of new Facilities within the Franchise area and the plans and specifications for such new Facilities, to the City. The Franchisee shall abide by the City's permitting process and receive necessary approval thereof by the Mayor or the designee thereof, which approval shall not be withheld unless the extension, expansion, construction, or installation described in those plans and specifications is contrary to the public health, safety, welfare, and convenience. In the event that any request for the extension or expansion of any existing Facilities of Franchisee or the construction or installation of new Facilities of Franchisee is denied by the Mayor or his designee for the reasons stated herein, such denial shall be set forth in writing with the basis of the denial set forth therein within thirty (30) days of the date of Franchisee's notice. If written denial or approval is not received within thirty (30) days of Franchisee's notice, the extension, expansion, construction or installation request shall be deemed approved. The City acknowledges that Franchisee has a statutory duty to provide adequate, efficient, and reasonable service and that Franchisee shall not be prevented from fulfilling that statutory obligation due to any delay by the Mayor or the designee thereof in giving, or failing to give, any approval described herein. The Franchisee shall not be required to pay any fee to apply for, or obtain, any permit required by this section.

3.8.3 Pavement Removal, Excavation and Grading. Franchisee shall provide commercially reasonable notice of any non-emergency removal or revision of any pavement and any excavation and grading reasonably necessary within any Public Property in the Franchise area and the plans and specifications for such new Facilities to the City. Franchisee shall abide by the City's permitting process and receive necessary approval thereof by the Mayor or the designee thereof, which approval shall not be withheld unless the proposed pavement removal, excavation, or grading is contrary to the public health, safety, welfare, and convenience. In the event that any request for pavement removal or revision, excavation, or grading is denied by the Mayor or his designee, such denial shall be set forth in writing with the basis of the denial set forth therein within thirty (30) days of Franchisee's notice. If a written denial or approval is not received within thirty (30) days of Franchisee's notice, the removal or revision of any pavement and any excavation and grading shall be deemed approved. The City acknowledges that Franchisee has a statutory duty to provide adequate, efficient, and reasonable service and that Franchisee shall not be prevented from fulfilling that statutory obligation due to any delay by the Mayor or the designee thereof in giving, or failing to give, any approval described herein. Franchisee shall not be required to pay any fee to apply for, or obtain, any permit required by this section.

3.8.4 Right of Way Maintenance. Franchisee shall have the right, without payment of fees, to cut, trim, or remove any trees, overhanging branches or other obstructions on Public Property, which in the reasonable opinion of Franchisee may endanger or interfere with the efficient installation, operation, repair, replacement, or maintenance of Franchisee's Facilities. If, during the Franchise Term, the City closes to public use any Public Property in or on which Facilities of Franchisee are located, the



City shall make such provisions as may be legal and necessary to grant Franchisee the right to retain the Facilities thereof within and upon that Public Property, along with the rights to maintain and operate such Facilities.

3.8.5 Other Activities. All other activities that are reasonably necessary for the use by Franchisee of the Public Property within the Franchise area pursuant to the provisions of the Franchise or for any lawful purpose.

3.9 Franchisee Obligations During the Franchise Term. While this Franchise is effective, Franchisee shall:

3.9.1 Provision of Electricity and Natural Gas. Provide electricity and natural gas to the consumers thereof within the City that is no less in character, quantity, and geographical area than that provided at the time the Franchise is granted and awarded to Franchisee; and also equal to and no less in character and quantity than that provided to consumers thereof outside of the City and according to the same terms, conditions, rates, charges, and costs as approved and may be amended from time to time, by the Commission. Franchisee's tariff that is on file with the Commission, as may be amended from time to time, is incorporated herein as if set forth in full.

3.9.2 Maintenance of Facilities. Cause Franchisee's Facilities within the Franchise area to be maintained, operated, and repaired to a condition that is functional and safe and not a hazard to the public health, safety, welfare, and convenience.

3.9.3 Performance of Work. During the construction, maintenance, repair, replacement, re-construction, expansion, extension, new construction, or installation of any of Franchisee's Facilities, Franchisee shall promptly and diligently perform such activities to completion within a reasonable time, and at the least possible hazard to the City's public health, safety, convenience, and general welfare; and, upon completion thereof, the Public Property of the City in which those activities occurred shall be restored by Franchisee to a condition that is as good or better than the condition thereof at the time of the commencement of those activities.

3.9.4 Relocation of Facilities. During any construction, maintenance, repair, replacement, improvement, or expansion by the City of any of the Public Property within the Franchise area or any improvements therein other than the Franchisee's Facilities, or at any other time, Franchisee shall remove, relocate, or adjust any of Franchisee's Facilities in such Public Property within a reasonable time after a written request therefor from the City.

3.9.5 Reserved Rights of the City. Comply with the exercise by the City of all of the rights thereof reserved by the City pursuant to the provisions of the previous Section 3.2 hereof.

3.9.6 Franchise Fee. Pay to the City within thirty (30) days after the end of each Calendar Quarter a Franchise Fee equal to three percent (3%) of the gross

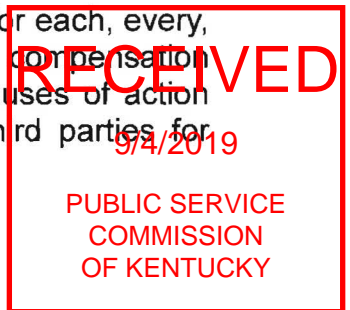


receipts of Franchisee from the sale of electricity and natural gas for consumption within the corporate limits of the City during the previous Calendar Quarter ("**Franchise Fee**"), along with a certification signed by an officer of Franchisee or a Certified Public Accountant employed by or on behalf of Franchisee indicating the quarter's gross receipts, payment calculation, and any necessary gross-ups for collections by Franchisee. The Franchise Fee required hereby is not in substitution or in lieu of any other tax, fee, imposition or charge for which Franchisee would otherwise be responsible and liable. The Franchise Fee required hereby is in consideration of the use of the public street, alleys and other public grounds within the City by the Franchisee pursuant to the provisions of the Franchise, since such use is a valuable right in property, the acquisition and maintenance of which is very expensive to the City; and, without such use, Franchisee would be required to acquire easements in private property for the transmission and distribution of either or both electricity and natural gas, at considerable expense to Franchisee. The Franchise Fee shall be applicable to bills rendered to customers on and after October 1, 2019, or as soon thereafter as is possible. Franchisee further agrees to reimburse the City for costs incurred by the City in advertising the bid and for publication of the necessary ordinances and for the doing of all other acts necessary to the letting of the bid.

3.10 Franchisee Obligations During and After the Effective Period. While this franchise is effective and also thereafter, the Franchisee shall and hereby does:

3.10.1 Release. Release, acquit and forever discharge the City, and all of its officers, agents, successors and assigns thereof, from each, every, and any and all obligations and liabilities thereof, jointly and severally, to the Franchisee and the successors and assigns thereof for each, every, and any and all obligations and liabilities thereof, jointly and severally, to the Franchisee and the successors and assigns thereof for each, every, and any and all personal injuries, property damage, costs, expenses, losses, compensation and all other damages of every kind and nature, and all claims and causes of action therefore, at law, or in equity, including, without limitation, claims of third parties for indemnification and/or contribution, which may accrue to the Franchisee and the successors and assigns thereof, through any act, omission, event or occurrence proximately caused by the negligence of the Franchisee, during the term of the franchise, which is in any way related to the franchise established hereby or the award or grant thereof to the Franchisee or the use of the public streets, alleys and other public grounds within the City by the Franchisee, pursuant to the franchise.

3.10.2 Indemnification. Agree to pay, indemnify and hold the City and its officers, agents, successors and assigns thereof harmless and to defend them at the request of the City and at the sole cost and expense of the Franchisee, from each, every, any and all uninsured obligations and liabilities thereof to others and the executors, administrators, heirs, successors and assigns of such others for each, every, any and all personal injuries, property damage, costs, expenses, losses, compensation and all other damages of every kind and nature, and all claims and causes of action therefore, at law, or in equity, including without limitation, claims of third parties for



indemnification and/or contribution, which may accrue to such others and their executors, administrators, heirs, successors and assigns, through any act, omission, event or occurrence proximately caused by the negligence of the Franchisee during the term of the franchise which is related to the franchise established hereby or the award or grant thereof to the Franchisee or the use of the public streets, alleys and other public grounds within the City by the Franchisee, pursuant to the franchise.

Section 4.0 – Construction. This Agreement shall not be construed in a manner that would create an obligation, requirement, or duty on the part of Franchisee that is in any way inconsistent with Kentucky law or its tariff on file with and approved by the Commission.

Section 5.0 – Miscellaneous.

5.1 Headings. Headings of the provisions of this Agreement have been inserted for convenience only and shall in no way affect the interpretation of any term or provision hereof.

5.2 Governing Law and Venue. This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Kentucky. Any proceeding arising from or relating to this Agreement shall be brought in the Campbell County Circuit Court.

5.3 Waivers. Any waiver at any time by a party of its rights with respect to a default or with respect to any other matters arising on connection with this Agreement shall not be deemed a waiver with respect to any subsequent default or other matter.

5.4 Prior Agreements. The parties hereby acknowledge that this Agreement contains the entire agreement among the parties and supersedes all prior agreements and understandings related to the subject matter hereof.

5.5 Counterparts. This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed an original.

Section 6.0 – Effective Date. This Agreement shall be effective as of the date forth above.



City of Southgate, Kentucky

By: *James Hamberg*
James Hamberg, Mayor

Duke Energy Kentucky, Inc.

By: *Amy B. Spiller*
Amy B. Spiller, President

Date: 8-21-19

Date: 8/30/19

ATTEST:

Brandi Barton
BRANDI BARTON, CITY CLERK

