

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT made and entered into this 9 day of SEPT, 2020¹⁹,
by and between the **CITY OF PIKEVILLE**, a municipal corporation and political subdivision of
the Commonwealth of Kentucky (hereinafter "Pikeville"), and **KENTUCKY POWER
COMPANY**, a corporation created and existing under and by virtue of the laws of the
Commonwealth of Kentucky, (hereinafter "KPC").

WITNESSETH:

WHEREAS, by Ordinance No. O-2019-25 , Pikeville provided for the creation and sale of
a non-exclusive franchise, for a term of ten (10) years, to acquire, lay, maintain, operate, enter
upon, construct, install, use and repair, in the public right-of-way of Pikeville, a system or works
for the generation, transmission and distribution of electrical energy from points either within or
without the corporate limits of Pikeville, to Pikeville and the inhabitants thereof, and from and
through Pikeville to persons, corporations and municipalities beyond the limits thereof, and for the
sale of same for light, heat, power and other purposes; and

WHEREAS, Ordinance No. O-2019-25 authorized the advertising for bids on said
franchise, and KPC submitted a timely bid to acquire said franchise; and

WHEREAS, by Resolution, Pikeville accepted the bid of KPC to acquire said franchise;
and

WHEREAS, Pikeville and KPC have entered into this Franchise Agreement to memorialize
the sale by Pikeville to KPC of said franchise subject to the terms and conditions reflected in
Ordinance No. O-2019-25; Kentucky Power Company's bid letter dated September 5, 2019; and
the Resolution dated SEPT 9, 2020¹⁹;

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

1. Ordinance No. O-2019-25, which is attached hereto as Exhibit "A", is incorporated herein by reference in its entirety and shall apply as if fully set forth herein.

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

3. Resolution, which is attached hereto as Exhibit "C", is incorporated herein by reference in its entirety and shall apply as if fully set forth herein.

4. Pikeville has granted unto KPC a non-exclusive franchise, for a term of ten (10) years, to enter upon, lay, acquire, construct, operate, maintain, install, use and repair, in the public right-of-way of Pikeville, a system or works for the generation, transmission and distribution of electrical energy within the corporate boundaries of Pikeville subject to the provisions of Ordinance No. O-2019-25; Kentucky Power Company's bid letter dated September 5, 2019; and the Resolution.

5. The franchise memorialized in this Franchise Agreement shall commence April 1, 2020 and shall expire as provided in the terms and provisions of Ordinance No. O-2019-25.

6. As compensation for said franchise, KPC agrees to pay to Pikeville a sum equal to three percent (3%) of the revenues received from electric service provided by Kentucky Power Company within the corporate limits of the City of Pikeville as provided in KPC's bid letter dated September 5, 2019 (Exhibit B).

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

8. This Franchise Agreement memorializes the agreement between the parties contained and embodied in the Ordinances and shall be binding upon and inure to the benefit of the respective successors in interest to the parties hereto.

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

[Signatures on following page]

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CITY OF PIKEVILLE

BY: *James A. Carter*
JAMES A. CARTER, MAYOR

ATTEST:

Robbi S. Bentley
ROBBI BENTLEY, CITY CLERK

KENTUCKY POWER COMPANY

BY: *[Signature]*

STATE OF KENTUCKY)
)
COUNTY OF _____)

The foregoing Franchise Agreement was subscribed, sworn to and acknowledged before me by _____, as _____, Kentucky Power Company, on this the ____ day of _____, 2020.

My commission expires: _____

NOTARY PUBLIC
KENTUCKY, STATE-AT-LARGE

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Exhibit List

- A Ordinance No. O-2019-25
- B Bid
- C Resolution

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A SUMMARY ORDINANCE CREATING AND ESTABLISHING FOR BID A NON-EXCLUSIVE ELECTRIC FRANCHISE AUTHORIZING THE FRANCHISEE TO OWN, MAINTAIN, OPERATE, AND CONSTRUCT FACILITIES FOR THE TRANSMISSION, DISTRIBUTION AND SALE OF ELECTRICAL ENERGY WITHIN THE PUBLIC RIGHT-OF-WAY OF THE CITY OF PIKEVILLE FOR A TEN (10) YEAR TERM, IN CONSIDERATION OF PAYMENT TO THE CITY OF PIKEVILLE OF THE SUM OF THREE PERCENT (3%) OF THE REVENUES RECEIVED BY THE FRANCHISEE FROM ELECTRIC SERVICE PROVIDED BY THE FRANCHISEE WITHIN THE CORPORATE LIMITS OF THE CITY OF PIKEVILLE SEPARATE FROM AND EXCLUSIVE OF ANY LOCAL OR STATE TAX, AND FURTHER PROVIDING FOR COMPLIANCE WITH RELEVANT LAWS, REGULATIONS AND STANDARDS; INDEMNIFICATION; INSURANCE; CANCELLATION OR TERMINATION; AND BID REQUIREMENTS; ALL EFFECTIVE ON DATE OF PASSAGE OF THE ORDINANCE GRANTING THE FRANCHISE

ORDINANCE NO. O-2019-25

**BE IT SUMMARILY ORDAINED BY THE COMMISSION OF THE CITY OF
PIKEVILLE:**

SECTION 1.

Subject to the provisions of this Ordinance, there is hereby created a non-exclusive franchise to enter upon, lay, acquire, construct, operate, own, maintain, install, use, and repair, in the Right-Of-Way of the City, a system for the generation, transmission, and distribution of electrical energy within the corporate boundaries of the City. Work performed by the Company under this Franchise shall be performed 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 by the Company, it must be restored at the expense of the Company.

[b] The Company will replace segments of existing overhead facilities within the Right-Of-Way with underground facilities at the request of and cost to the City,

SECTION 3.

[a] The Franchise created herein shall be non-exclusive and shall continue for a term of ten (10) years from the effective date of the Ordinance, granting the franchise.

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[b] The Company may, at its option, terminate this Franchise upon forty-five (45) days written notice. The City may, at its option, terminate this Franchise upon forty-five (45) days written notice

SECTION 7. The grantee of this franchise shall save the City harmless from any and all liability arising, in any way, from negligence of the Company in the erection, maintenance or operation of said lines and appurtenances.

SECTION 8.

As compensation for the Franchise created by this Ordinance, the City shall receive payment of a total annual fee of three percent (3%) of the revenues received by the Company from the provision of electric service within the corporate limits of the City separate from and exclusive of any local or state tax within 45 day of the end of the quarter.

SECTION 9. The Company shall either self-insure in whole or in part or 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.

SECTION 10. The Company agrees to charge such rate or rates as may from time to time be fixed by the Public Service Commission of Kentucky or any successor regulatory body.

SECTION 11. -Company shall have the right to trim and cut trees in order to maintain its equipment and facilities subject to its vegetation management plan and will keep debris resulting from said trimming and cutting out of waterways, culverts, and drainage ditches and will keep streets and sidewalks free of such debris.

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SECTION 15. It shall be the duty of the City's Mayor, or his/her designee, to offer for sale the Franchise and privileges created hereunder to the highest and best bidder or bidders at a time and place fixed by the City's Mayor. .

SECTION 16. 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's Mayor, or his/her designee, upon the date(s) and at the times(s) fixed by him or her in said publication(s) or advertisement(s) for receiving same. Thereafter, the City's Mayor 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's Mayor shall be rejected by the 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.

In addition, any bid submitted by a corporation or person 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,

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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. Bids shall include such documentation as is necessary to support the bidder's determination of the fair estimated cost of the system required to render the service. Government reserves the right to review any of bidder's supporting documentation which justifies bidder's determination of said estimated cost. 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. Each bidder for said franchise, privilege, right and authority shall file, as a part of its bid, a certified copy of a Certificate of Convenience and Necessity from the Public Service Commission of Kentucky, issued under the authority of KRS 278.020(3).

The ordinance shall be in full force and effect after it is passed and published as required by law.

The above ordinance was given first reading this 22nd day of July, 2019.

The ordinance was given a second reading on the 12th day of August 2019.

Passed this 12th day of August, 2019.

Commissioner Hartsock moved for the adoption of the forgoing ordinance.

Commissioner McNamee seconded the motion.

Upon roll call, the votes were as follows:

	Yes	No
JAMES A CARTER, MAYOR	<u>X</u>	<u> </u>
ROBERT SHURTLEFF, COMMISSIONER	<u> </u>	<u>Abstained</u>
ALLISON POWERS, COMMISSIONER	<u>X</u>	<u> </u>
STEVE HARTSOCK, COMMISSIONER	<u>X</u>	<u> </u>



PATRICK MCNAMEE, COMMISSIONER

X

The Mayor declared the within ordinance adopted.



JAMES A. CARTER, MAYOR

ATTEST:



ROBBI BENTLEY, CITY CLERK

The undersigned Attorney at Law, licensed to practice in Kentucky, hereby certifies that the foregoing Summary of Ordinance of the City of Pikeville, Kentucky, was prepared by the undersigned and constitutes a general summary of certain essential provisions of the described Ordinance, reference to the full text of which Ordinance is hereby made for a complete statement of its provisions and terms.



Russell H. Davis, City Attorney
P.O. Box 351
Pikeville, KY 41501

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Kentucky Power Company
855 Central Avenue
Suite 200
Ashland, KY 41101
606-327-2600

To: The Honorable James A. Carter, Mayor
Pikeville City Commission
City of Pikeville
243 Main Street
Pikeville, Kentucky 41501

Dear Mayor Carter and Commission Members:

Kentucky Power Company, a corporation organized and existing under the laws of the Commonwealth of Kentucky, hereby offers to purchase the right, privilege, franchise and authority to erect and operate an electric light and power system in the City of Pikeville, Pike County, Kentucky, such franchise to contain all rights and privileges, and to be subject to all conditions prescribed by Ordinance No. 0-2019-25 directing the sale of the same and adopted by the City Commission on August 12, 2019.

As consideration for this franchise, Kentucky Power Company offers to pay to the City of Pikeville a sum equal to three percent (3%) of the revenues received from electric service provided by Kentucky Power Company within the corporate limits of the City of Pikeville excluding all state and local taxes.

Effective 30 days after the passage of the Ordinance granting the franchise to Kentucky Power Company, and throughout the term of the franchise, this additional amount will be shown on customers' bills in accordance with Kentucky Power Company's franchise tariff as presently written or as subsequently revised.

Payment of the amount due for the prior month shall be made to the City within forty-five (45) days following close of such month. Any such fees paid to the City that are included in electric bills charged off as uncollectible shall be allowed as a credit to Kentucky Power Company in the determination of the payment due the City for the month in which such charge off occurred.

The City will promptly notify Kentucky Power Company of any alterations to the boundaries of the City during the term of this franchise, and shall promptly provide Kentucky Power Company with all information required by the Company to compute and bill the franchise fee on service to the altered boundaries. Kentucky Power Company's obligation to pay the franchise fee with regard to service to the altered boundaries shall commence 30 days following its receipt of the information required to compute and bill the franchise fee and payments of the resulting amount shall be made to the City within the same forty-five (45) day period provided above.

Kentucky Power Company shall have the option to terminate the franchise agreement in the event that its rights to recoup the franchise fee are modified by statute, regulation, or judicial determination, or are otherwise modified, effective upon the effective date of such modification.

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An AEP Company

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**The Honorable James A. Carter
Pikeville City Commission
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We attach and file herewith, as part of this bid and purchase offer, a copy of the Certificate of Convenience and Necessity issued by the order of the Public Service Commission of Kentucky, Case No. 2019-00114, entered April 12, 2019, authorizing Kentucky Power Company to bid.

The undersigned, Kentucky Power Company already owns and operates in the City of Pikeville plant and equipment sufficient to render the services required under the terms and provisions of the Ordinance directing the sale, and is now furnishing adequate service to the City and its inhabitants.

Respectfully submitted this 5TH day of September, 2019.

KENTUCKY POWER COMPANY

By: _____


Brian K. West
Director of Regulatory Services

Attachment

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**CITY OF PIKEVILLE
RESOLUTION**

RESOLUTION CONFIRMING THE SALE AND AWARDING A NON-EXCLUSIVE FRANCHISE TO KENTUCKY POWER COMPANY FOR A TERM OF TEN (10) YEARS FOR ELECTRIC FRANCHISE FOR THE PLACEMENT OF FACILITIES FOR THE TRANSMISSION, DISTRIBUTION AND SALE OF ELECTRICAL ENERGY ALONG AND UNDER PUBLIC RIGHT-OF-WAY WITHIN THE CITY OF PIKEVILLE, KENTUCKY, IN RETURN FOR WHICH FRANCHISEE SHALL PAY TO THE CITY AN ANNUAL SUM EQUAL TO THREE PERCENT (3%) OF THE GROSS REVENUES DERIVED FROM THE FRANCHISE AWARDED HEREIN.

WHEREAS, Ordinance No. O-2019-25, adopted by the Pikeville City Commission, provided for the creation and sale of a non-exclusive franchise, for a term of ten (10) years, to acquire, lay, maintain, operate, enter upon, construct, install, use and repair, in the public right-of-way of the City a system or works for the generation, transmission and distribution of electrical energy from points either within or without the corporate limits of this City, to this City and the inhabitants thereof, and from and through this City to persons, corporations and municipalities beyond the limits thereof, and for the sale of same for light, heat, power and other purposes; and

WHEREAS, said ordinance also established a sealed bid process which includes advertising the invitation for bids, and awarding the franchise to the successful bidder(s); and

WHEREAS, after publication of said advertisement, the City received a bid from Kentucky Power Company ("KPC").

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF PIKEVILLE, KENTUCKY, AS FOLLOWS:

Section 1. That an electric franchise created by Ordinance No. O-2019-25 be, and it hereby is, awarded to KPC, for a sum equal to three percent (3%) of the revenues received from electric service provided by Kentucky Power Company within the corporate limits of the City of Pikeville, excluding all state and local taxes, which shall be payable to the City of Pikeville, Kentucky, on a quarterly basis in accordance with KPC's bid letter dated September 5, 2019.

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

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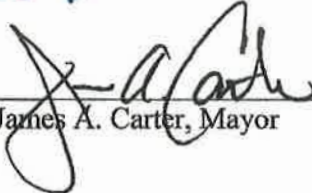
Section 3. That the mayor of Pikeville is hereby authorized to sign the Franchise Agreement which memorializes the sale by Pikeville to Kentucky Power Company of said franchise subject to the terms and conditions reflected in Ordinance No.O-2019-25; Kentucky Power Company's bid letter dated September 5, 2019; and this Resolution.

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

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

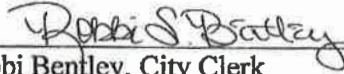
Section 6. That this Resolution shall be effective on the date of its passage.

SO RESOLVED this 9 day of SEPTEMBER 2020.



James A. Carter, Mayor

ATTEST:



Robbi Bentley, City Clerk

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