

**CITY OF CRESTVIEW HILLS, KENTUCKY  
RESOLUTION NO. 2017-03-02**

**A RESOLUTION OF THE CITY OF CRESTVIEW HILLS, KENTUCKY AWARDED A ONE YEAR FRANCHISE TO DUKE ENERGY KENTUCKY, INC. FOR THE USE OF THE PUBLIC STREETS, ALLEYS AND OTHER PUBLIC TRANSPORTATION OF THE CITY FOR THE TRANSMISSION AND DISTRIBUTION OF NATURAL GAS THROUGH AND FOR CONSUMPTION WITHIN THE CITY; ALSO AUTHORIZING THE MAYOR TO EXECUTE THE FRANCHISE AGREEMENT WITH DUKE ENERGY KENTUCKY, INC.**

*Whereas*, the City of Crestview Hills having solicited bids for a one year, non-exclusive franchise for use of the public rights of way for the the distribution of natural gas in the City of Crestview Hills, and the most responsive bidder having been determined to be Duke Energy Kentucky, Inc.; and

*Whereas*, Duke Energy Kentucky, Inc. and the City have engaged in negotiations and discussions regarding the scope and provisions of a Franchise, and have reached an agreement as to the terms of the Franchise Agreement; and

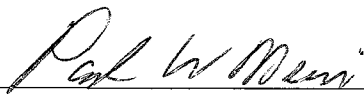
*Whereas*, it is in the interests of the City of Crestview Hills for the City to enter into the negotiated Franchise Agreement with Duke Energy Kentucky, Inc.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CRESTVIEW HILLS, KENTUCKY, AS FOLLOWS:**

**SECTION 1**

The City Council for the City of Crestview Hills, Kentucky hereby awards a Franchise to Duke Energy Kentucky for the provision of electricity in and about the City and use of its rights of ways in a manner consistent with the attached Franchise Agreement, and the Mayor is hereby authorized to execute the attached Franchise Agreement, and any related documents on behalf of the City.

This Resolution shall take effect upon passage and approval on this the 9th day of March, 2017.

  
\_\_\_\_\_  
Mayor Paul W. Meier

ATTEST:

  
\_\_\_\_\_  
Jaime Mahoney, City Clerk



**FRANCHISE AGREEMENT**

**BETWEEN THE CITY OF CRESTVIEW HILLS, KENTUCKY  
AND DUKE ENERGY KENTUCKY, INC.**

**ESTABLISHING A ONE YEAR NON-EXCLUSIVE FRANCHISE FOR THE USE OF  
THE PUBLIC STREETS, ALLEYS AND OTHER PUBLIC TRANSPORTATION OF THE  
CITY FOR THE TRANSMISSION AND DISTRIBUTION OF NATURAL GAS  
THROUGH AND FOR CONSUMPTION WITHIN THE CITY**

*Whereas*, the City of Crestview Hills, Kentucky issued a Request for Proposals soliciting bids to provide a one year, non-exclusive franchise for the transmission and distribution of electricity through and for consumption within the City; and,

*Whereas*, Duke Energy Kentucky, Inc. submitted a bid proposal on or about February 13, 2017; and,

*Whereas*, the Crestview Hills City Council has by Resolution accepted Duke Energy Kentucky's proposal as the lowest and best evaluated bid, and has in that same Resolution authorized the Mayor to enter into this contract with Duke Energy Kentucky, Inc.

***NOW THEREFORE, BE IT AGREED AS FOLLOWS:***

**SECTION ONE**

**DEFINITIONS**

As used herein, the following words and phrases have the meanings indicated for them:

1.1 The word "City" means the City of Crestview Hills, Kentucky in Kenton 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 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 words "Franchisee" or "Grantee" mean the person or entity to whom the City has awarded and granted a franchise hereby established.

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

1.6 The words "Franchisor, "Grantor", or "City" mean the City of Crestview Hills, Kentucky.

## **SECTION TWO**

### **SCOPE OF THE CONTRACT**

2.1 There is hereby established a non-exclusive, one (1) year franchise for the use of Public Property within the City for the transmission and distribution of natural gas for consumption both within and outside of the City.

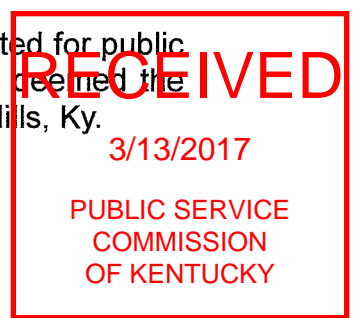
2.2 Duke Energy Kentucky, Inc. shall provide all services necessary to comply with the terms set out in this Agreement; and the Ordinance No. 2017-01-03, entitled *AN ORDINANCE OF THE CITY OF CRESTVIEW HILLS, KENTUCKY ESTABLISHING A NON-EXCLUSIVE FRANCHISE FOR THE USE OF THE PUBLIC STREETS, ALLEYS AND OTHER PUBLIC TRANSPORTATION OF NATURAL GAS THROUGH AND FOR CONSUMPTION WITHIN THE CITY; AND PROVIDING THE TERMS THEREOF* (Attached as Exhibit A); and the response to the request for bids (Attached as Exhibit B).

## **SECTION THREE**

### **TERMS OF FRANCHISE AGREEMENT**

#### **3.1 Bidding Requirement**

Pursuant to Section 164 of the Kentucky Constitution, the City solicited for public bids. Duke Energy Kentucky, Inc. timely submitted its proposal, which is deemed the lowest and best evaluated bid by the City Council of the City of Crestview Hills, Ky.



### 3.2 Bond Requirement

Pursuant to the requirements of KRS 96.020(1), the bid for the franchise hereby established shall include cash or a certified check equal to five percent (5%) of the fair estimated cost of the plant required to render the service posted by Franchisee. The deposit shall be forfeited to the City in case the bid is accepted and the bidder fails, for thirty (30) days after the confirmation of the sale, to pay the price bid and to give a sufficient bond in a sum equal to one-fourth (1/4) of the fair estimated cost of the plant to be erected. The bond shall be conditioned to be enforceable in case the person giving it fails, within a reasonable time, to establish a suitable plant for rendering the service and begin rendering the service in the manner set forth in the terms of the sale; provided, however, that pursuant to the provisions of KRS 96.020(2), this Section 3.2 shall not apply to a person already owning a plant and equipment sufficient to render the service required under the franchise hereby established.

### 3.3 Reservation of Rights

Franchisor hereby reserves all of the rights reserved to home rule cities as set forth in the applicable Kentucky Statutes and within the meaning thereof; and the Franchisor shall have all of the rights, privileges and authority established thereby; and the Franchisee shall comply with all of the lawful exercise thereof by the Franchisor and with all other laws, rules and regulations of all governmental agencies having jurisdiction thereof.

### 3.4 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.

### 3.5 Franchise Not Assignable

The franchise established herein is not assignable in whole or in part to a third party without written consent of the City. In the event that Franchisee ceases to provide the Natural Gas utility services under this franchise, this franchise shall terminate. Franchisee may transfer the franchise to any existing corporate parent, subsidiary or affiliate which may, during the term of the franchise, assume the obligation to provide Natural Gas throughout and for consumption within the City without being required to seek the City's consent to such assignment.

### 3.6 Franchise Area

The franchise established hereby shall be for the use of those portions of the Public Property within the City that are included in the territory for which the Franchisee has been certified by the Public Service Commission of Kentucky pursuant to KRS



Chapter 278, or which it currently serves.

### 3.7 Effective Period of Franchise

The franchise established hereby shall be effective for a period of one (1) year, upon final passage and approval by the City, in accordance with applicable laws and regulations, and upon entry into a formal Franchise Agreement by the City and the Franchisee.

### 3.8 Franchise Termination

In the event of any Continuing Default by the Franchisee of any of the obligations of the franchise, and after a written notice and description thereof has been delivered to the Franchisee by the City by certified mail, return receipt requested, and upon the failure of the Franchisee to reasonably cure the default or, after consultation with the Mayor, to reasonably commence action to cure the default within sixty (60) days, the City may terminate the franchise awarded and granted to the Franchisee through a written notice thereof to the Franchisee, by certified mail, return receipt requested, to be effective no less than sixty (60) days from delivery of said notice.

### 3.9 Franchisee Rights and Privileges During Effective Period

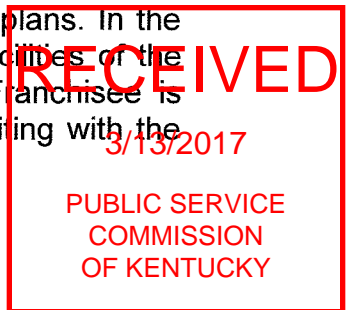
During the term of the franchise, the Franchisee may engage in the following activities; but always subject to the rights reserved by the City pursuant to the provisions of the previous Section 3.3 hereof:

#### 3.9.1 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 the Franchisee within or upon any Public Property within the City.

#### 3.9.2 New Facilities

The Franchisee shall provide commercially reasonable notice of any non-emergency extension or expansion of any existing Facilities of the 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 or future City right of way plans. In the event that any request for the extension or expansion of any existing Facilities of the Franchisee or the construction or installation of new Facilities of the Franchisee 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 sixty (60) days of the Franchisee's notice. If written denial or approval is not received within sixty (60) days of the Franchisee's notice, the extension, expansion, construction or installation request shall be deemed approved. The City acknowledges that the Franchisee has a statutory duty to provide adequate, efficient and reasonable service and that the 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.

Nothing in this Agreement shall excuse Franchisee from obtaining any and all required permits, including City permits, licenses, and approvals, including performance and maintenance bonds if applicable and to pay the fees and costs associated with said permits, licenses, and approvals, in the same manner as any other entity doing business in the City of Crestview Hills. Before requiring a performance bond, the City shall meet and confer with the Franchisee to discuss why such bond may be necessary.

### 3.9.3 Pavement Removal, Excavation and Grading

The 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 is expected to abide by all Ordinances in the same manner as any other business entity doing business in the City of Crestview Hills. Franchisee shall have the right to disturb, break, and excavate in the public-right-of-way as may be reasonable and necessary to provide the service authorized by the Franchise Agreement; however, the City may deny Franchisee the right to so disturb, break and excavate in the public-right-of-way if by doing so the activity is injurious to the health and welfare of the public. Franchisee will repair any damage caused solely by Franchisee to any part of the public-right-of-way and will restore, as nearly as practicable, such property to its condition immediately prior to such damage or better. Franchisee shall use reasonable care in conducting its work and activities in order to prevent injury to any person and unnecessary damage to any real or personal property. Franchisee shall, when reasonably practicable, install all wires, materials and/or pipelines underground at such depth and in such manner so as not to interfere with the existing pavement, curbs, gutters, water or sewer pipes owned, or controlled by the City or any other local governmental agency.

### 3.9.4 Right-of-Way Maintenance

The Franchisee shall have the right, without the payment of fees, to cut, trim or remove any trees, overhanging branches or other obstructions on Public Property which in the reasonable opinion of the Franchisee may endanger or interfere with the efficient installation or maintenance of Natural Gas facilities. If, during the franchise period, the City closes to public use any Public Property in or on which Facilities of the Franchisee are located, the City shall make such provisions as may be legal and necessary to grant the Franchisee the right to retain the Facilities thereof within that Public Property, along with the rights to maintain and operate such Facilities.



### 3.9.5 Compliance with Lawful City Ordinances

Franchisee shall comply with all applicable provisions of lawful City ordinances and regulations (including any amendments thereto) unless such provisions: (i) conflict with or impair the Franchisee'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 otherwise; (ii) are preempted by the action or order of the Kentucky Public Service Commission related to the Company's rates or services; or (iii) are preempted by the action of any state or federal authority with jurisdiction over the Franchisee.

Franchisee 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 Franchisee's performance or to seek the Franchisee's compliance with anyone or more of such terms or conditions.

### 3.10 Franchisee Obligations During Effective Period

While this franchise is effective the Franchisee shall:

#### 3.10.1 Surety Bond

Provide the City with and continually maintain a surety bond with (a) the City as the Obligee; and (b) the Franchisee as the Principle; and (c) a surety approved by the Mayor of the City, in an amount equal to One Hundred Thousand Dollars (\$100,000.00), conditioned upon the faithful performance by the Franchisee of the terms and conditions of the franchise hereby established. This requirement may be waived by the City Council if the Franchisee is reasonably determined to have sufficient financial resources to fulfill its obligations under this Franchise.

#### 3.10.2 Liability Insurance

Provide the City with and continually maintain a comprehensive policy of liability insurance, with the Franchisee and the City as named insureds, and with limits not less than \$500,000.00 per person and \$1,000,000.00 per occurrence, by which the Franchisee and the City are insured against any legal liability to others that is in any way related to any acts or omissions of the Franchisee pursuant to the franchise hereby established; provided, however, that this requirement may be waived by the Mayor or the designee thereof upon the reasonable satisfaction thereof with the net worth of the Franchisee.

#### 3.10.3 Provision of Natural Gas

Provide 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 a franchise established hereby is granted and awarded to the 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 by the Kentucky Public Service Commission ("Commission").

#### 3.10.4 Maintenance of Facilities

Cause the Facilities of the Franchisee within the franchise area to be maintained and repaired to a condition that is functional and safe and not a hazard to the public health, safety, welfare and convenience.

#### 3.10.5 Prosecution of Work

During the construction, maintenance, repair, replacement, re-construction, expansion, extension, new construction or installation of any of the Facilities of the Franchisee, the Franchisee shall promptly and diligently prosecute such activities to completion within a reasonable time, consistent with all local, state and federal laws, rules and regulations and at the least possible hazard to the 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 the Franchisee to a condition that is as good or better than the condition thereof at the time of the commencement of those activities.

#### 3.10.6 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 Facilities of the Franchisee, or at any other time, the Franchisee shall remove, relocate or adjust any of the Facilities of the Franchisee in such Public Property within sixty days (60), weather permitting and no more than sixty (60) days after the weather permits,, after a written request from the City.

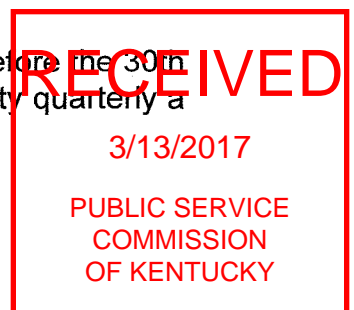
#### 3.10.7 Reserved Rights of the City

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 3.3 hereof.

#### 3.10.8 Franchise Fee

As consideration for the rights conferred by the granting of this one (1) year franchise, and to compensate the City for its superintendence of the franchise, the successful bidder shall pay to the City a fee of three percent (3%) of revenues derived from the sale of Natural Gas within the City upon the following conditions:

A. The Franchisee will remit to the City quarterly payments on or before the 30th day after the end of each calendar quarter, and shall also submit to the City quarterly a statement of the Franchisee's revenues.





B. 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.

C. As further consideration for the granting of this Franchise, the Franchisee agrees to reimburse to the City all publication costs, and attorney fees up to three thousand dollars (\$3,000), the City incurs in the granting of this Franchise. These costs shall be invoiced by the City to the Franchisee and the Franchisee shall pay said costs within thirty (30) days of receipt of said invoice.

### 3.11 Franchisee Obligations During and After Effective Period

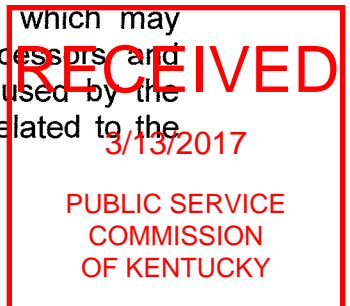
While this franchise is effective and also thereafter, the Franchisee shall and hereby does:

#### 3.11.1 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 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.

#### 3.11.2 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 FOUR**

#### **BREACH OF FRANCHISE AGREEMENT**

In the event that either party engages in breach of any material provision of this Franchise, or willfully attempts to evade any material provision in the Franchise Agreement, or practices fraud or deceit upon the other party, then the aggrieved party may declare the Franchise Agreement terminated, and seek any remedy available in law or equity for the breach by commencing action in the Kenton Circuit Court. The Franchise Agreement shall be subject to the laws of the Commonwealth of Kentucky and enforceable in the Kenton Circuit Court, and both parties agree to the jurisdiction of the Kenton Circuit Court. Prior to initiating civil action for breach the aggrieved party must provide written notice to the other party of the alleged breach, and shall provide the other party a minimum of sixty (60) days within which to cure the breach.

#### **SECTION FIVE**

#### **CONSTRUCTION**

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

#### **SECTION SIX**

#### **CHANGE IN KENTUCKY LAW**

Although the parties do not contemplate a change in Kentucky, in the event of a change of Kentucky law whereby retail rates of Natural Gas service customers are no longer regulated by the Public Service Commission, the City shall have the option of terminating this Franchise with the Franchisee. If this Franchise is terminated by the City pursuant to this provision, the City and Franchisee shall have a duty to negotiate in good faith with respect to negotiating a new Franchise Agreement.

#### **SECTION SEVEN**

#### **MISCELLANEOUS**

7.1 The rights of the parties herein and the duties set forth herein inures only to the benefit of and are binding upon only the parties to this Agreement, Franchisee and the City. The parties are not engaged in a joint venture. Neither this Agreement nor



provisions hereof shall be deemed or construed to create any rights in any third-party beneficiary, intended or unintended. Nor does this Agreement confer upon any third party any benefit, right, claim, or cause of action by reason of the performance or non-performance of either of the parties to this Agreement.

**7.2** Neither party to this Agreement waives any claims or defenses accorded to them under the doctrines of absolute immunity, governmental immunity, statutory immunity, or any other immunity from claims of third parties under state or federal law.

**7.3** Any and all amendments to this Agreement shall be in writing, executed by both parties, and appended to this Agreement as an amendment.

**7.4** Attached hereto, and incorporated by reference as if fully set forth herein, are the following Exhibits, which are expressly made part of this Agreement:

**Exhibit A:** Request for Bids issued by the City; and

**Exhibit B:** Duke Energy Kentucky, Inc. Bid Proposal Form

**7.5** All notices pursuant to this Agreement shall be sent via U.S. mail to the following addresses:

For Crestview Hills: **City Administrator**  
**City of Crestview Hills, Kentucky**  
**50 Town Center Boulevard**  
**Crestview Hills, KY 41017**

For Franchisee: **James P. Henning, President**  
**Duke Energy Kentucky, Inc.**  
**139 East 4<sup>th</sup> Street**  
**Room 1409-M**  
**Cincinnati, Ohio 45202**



7.6 This Agreement shall be construed according to the laws of the Commonwealth of Kentucky, and venue to enforce any term or provision in this Agreement shall lie in the Kenton Circuit Court.

7.7 This Agreement is severable. To the extent that any provision or term is determined by a court of law to be unenforceable or otherwise invalid, then said provision(s) or term(s) shall be severed from the Agreement and all remaining terms, provisions, and conditions shall remain in full force and effect.

IN WITNESS WHEREOF, THE PARTIES AFFIX THEIR SIGNATURES:

Paul Meier

Paul Meier, Mayor  
City of Crestview Hills, Kentucky

3-9-17

Date


Witnessed by:

Mary B. Stewart

Signature

3-9-17

Date

James P. Henning 

By: James P. Henning, President  
Duke Energy, Kentucky

2-27-17

Date

RECEIVED

3/13/2017

PUBLIC SERVICE  
COMMISSION  
OF KENTUCKY

Witnessed by:

Christine Emerick

Signature

2-27-17

Date

