

**FRANCHISE AGREEMENT**

**THIS FRANCHISE AGREEMENT** made and entered into this 21st day of October, 2015, by and between the **CITY OF WINDY HILLS**, a municipal corporation and political subdivision of the Commonwealth of Kentucky (hereinafter "Windy Hills"), and **LOUISVILLE GAS AND ELECTRIC COMPANY**, a corporation created and existing under and by virtue of the laws of the Commonwealth of Kentucky, with its principal office at 220 West Main Street, Louisville, Kentucky 40202 (hereinafter "LG&E").

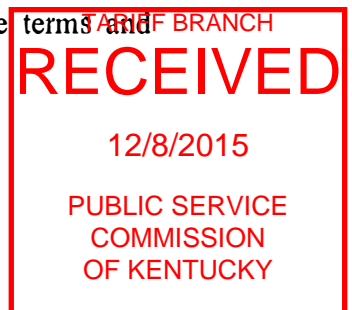
**WITNESSETH:**

**WHEREAS**, by Ordinance No5, Series 2014-2015 adopted May 11, 2015, Windy Hills provided for the creation and sale of a non-exclusive franchise, for a term of twenty (20) years, to enter upon, lay, acquire, construct, operate, maintain, install, use and repair, in the public right-of-way of Windy Hills, a system or works for the transmission, distribution and sale of natural gas from points either within or without the corporate limits of Windy Hills, to Windy Hills and the inhabitants thereof, and from and through Windy Hills 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. 5, Series 2014-2015 authorized the advertising for bids on said franchise, and LG&E submitted a timely bid to acquire said franchise; and

**WHEREAS**, on July 13, 2015, Windy Hills accepted the bid of LG&E to acquire said franchise; and

**WHEREAS**, Windy Hills and LG&E have entered into this Franchise Agreement to memorialize the sale by Windy Hills to LG&E of said franchise subject to the terms and conditions reflected in Ordinance No. 5, Series 2014-2015.



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

1. Ordinance No. 5, Series 2014-2015, 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 LG&E 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. Windy Hills has granted unto LG&E a non-exclusive franchise, for a term of twenty (20) years, to enter upon, lay, acquire, construct, operate, maintain, install, use and repair, in the public right-of-way of Windy Hills, a system or works for the sale, transmission and distribution of natural gas within the corporate boundaries of Windy Hills subject to the provisions of the Ordinances.

4. The franchise memorialized in this Franchise Agreement shall commence October 21, 2015, and shall expire as provided in the terms and provisions of Ordinance No. 5, Series 2014-2015.

5. LG&E 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.

6. 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, Windy Hills and LG&E 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]



CITY OF WINDY HILLS

BY:

MAYOR

*[Handwritten signature]*

ATTEST:

*[Handwritten signature: Stanley Moore]*  
CITY CLERK

LOUISVILLE GAS AND ELECTRIC COMPANY

BY:

*[Handwritten signature]*

STATE OF KENTUCKY )

COUNTY OF Fayette )

The foregoing Franchise Agreement was subscribed, sworn to and acknowledged before me by *[Handwritten signature]* as VP Cust Serv Louisville Gas and Electric Company., on this the 11<sup>th</sup> day of Nov, 2015.

My commission expires:

3/17/2019

*[Handwritten signature]* 529205  
NOTARY PUBLIC  
KENTUCKY, STATE-AT-LARGE

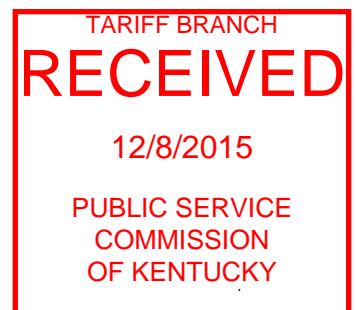


Exhibit List

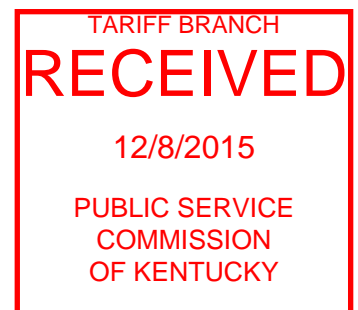
- A Ordinance No. 5, Series 2014-2015
- B Bid



CITY OF WINDY HILLS, KENTUCKY

ORDINANCE NO. 5, SERIES 2014/2015

AN ORDINANCE CREATING AND ESTABLISHING FOR BID A NON-EXCLUSIVE NATURAL GAS FRANCHISE FOR THE PLACEMENT OF FACILITIES FOR THE TRANSMISSION, DISTRIBUTION AND SALE OF NATURAL GAS WITHIN THE PUBLIC RIGHT-OF-WAY OF THE CITY OF WINDY HILLS FOR A TWENTY (20) YEAR DURATION, RESERVING THE RIGHT TO IMPOSE A FRANCHISE FEE OF UP TO FIVE PERCENT (5%) OF FRANCHISEE'S GROSS RECEIPTS PER YEAR FROM THE FRANCHISEE'S SALE OF NATURAL GAS TO GAS-CONSUMING ENTITIES INSIDE THE CITY OF WINDY HILLS' CORPORATE LIMITS 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.



**BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WINDY HILLS:**

**SECTION 1. --**

(a) 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 natural gas within 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 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 natural gas through the City and to any other town or any portion of the county or to any other county ("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 equipment 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. 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 a reasonable time to a condition comparable to what it was prior to the opening thereof.

**SECTION 2.** The following definitions apply to this Ordinance:

*City Council* means the legislative body of the City of Windy Hills.

*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 Windy Hills.

*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 and/or transportation of gas as specified in any bid hereunder and memorialized in a binding franchise agreement, under rates, temporary or permanent, authorized by the Council 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, non sufficient funds, late fees and interest, which are related to but are not a part of the actual retail sale of gas.

*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.

*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 Council, 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 forty-five (45) days' written notice if (a) the City breaches any of its obligations hereunder and such breach is not cured within thirty (30) 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.



Neither the City nor any other person or entity shall have any right to use any portion of the Company's natural gas distribution system without payment of a fair value for such system to Company.

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 Council accepts the bid(s).

SECTION 6. Subject to Section 3 hereof, the Company will comply with all applicable provisions of lawful City ordinances and regulations (including any amendments thereto), unless such provisions (i) conflict with or impair 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 otherwise (ii) are preempted by the action of any state or federal authority with jurisdiction over 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 anyone 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.

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. 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. Franchise Fees. The City reserves the right to impose upon the Company a 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 impose a franchise fee, the City shall receive payment of a total annual fee of up to five (5) percent of gross receipts per year from the Company's sale of natural gas to gas-consuming entities (which includes businesses, industrial facilities and dwellings) inside the City's corporate limits beginning with receipts from meters read on or after the later of ninety (90) days after the date of the written notice or the effective date of the franchise fee specified in the City's notice; *provided, however*, the City shall notify the Company, at least thirty (30) days prior to the effective date, of any annexations or other changes in the City's boundaries and provide the Company a list, in electronic format, of all addresses within the territory annexed or



added to or de-annexed or otherwise removed from the Government's limits that are to be served by the Company.

Payment of any amount due under this Franchise shall be made on a quarterly basis within forty-five (45) days of the end of the preceding payment period.

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 amount due to the Government shall be paid within ten (10) days following written notice to the Company by the Government.

As further consideration for the granting of this Franchise, the Company agrees to pay all publication costs the City incurs in the granting of this Franchise. The above-mentioned costs shall be invoiced by the City to the Company and the Company shall pay said costs within thirty (30) days of receipt of said invoice.

Any other fees assessed to the Company in connection with the Company's use of the City's public ways, including fees associated with permits and licenses of whatever nature, shall be payable by the Company only if 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 Government's ordinances, 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 \$2,000,000 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 Public Service Commission of Kentucky or any successor regulatory body.

SECTION 12.

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

(1) Willfully violates any material provision of this Franchise or any material rule, order, or determination of the Government made pursuant to 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 Government;

(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.





July 10, 2015

City of Windy Hills  
4350 Brownsboro Rd Suite 110  
Windy Hills, KY 40207

Dear City of Windy Hills:

On behalf of Louisville Gas and Electric Company (LGE), please consider this letter as LGE's bid for a natural gas franchise with the City of Windy Hills. This bid is in response to the City of Windy Hills request as contained in the Legal Notice section of the June 24, 2015 issue of the Courier Journal. It is our understanding that said franchise will be for a twenty year period as authorized by Ordinance No. 5 Series 2014/2015, passed by the Windy Hills City Council on May 11, 2015.

LGE agrees to the terms and conditions of the franchise created by Ordinance No. 5 Series 2014/2015 and agrees to reimburse advertising expenses incurred by the City of Windy Hills.

Please be advised that LGE has also filed for a Certificate of Public Convenience and Necessity from the Kentucky Public Service Commission in connection with the submission of this bid.

We appreciate the opportunity to present this bid, and welcome any questions regarding the same.

Respectfully,

A handwritten signature in black ink, appearing to read 'John P. Malloy', written over a horizontal line.

John P. Malloy  
Vice President, Customer Services

