CITY OF GEORGETOWN, KENTUCKY

ORDINANCE NO. 17- 014

AN ORDINANCE AWARDING AN ELECTRIC FRANCHISE

SUMMARY

1. Awards the bid of the non-exclusive electric franchise established in Ordinance 2017-012 to Kentucky Utilities, Owen Electric and Bluegrass Energy.

2. Authorizes the Mayor to sign the Electric Franchise Agreements.

3. Provides for repeal of inconsistent laws, severability of provisions, and an effective date of September 18, 2017 upon passage and publication.

The full text of this Ordinance is available for examination in the City Clerk's Office, 100 North Court Street, Georgetown, Kentucky 40324 or at www.georgetownky.gov.

INTRODUCED AND PUBLICLY READ FIRST TIME: August 28, 2017

PUBLICLY READ SECOND TIME AND PASSED: September 11, 2017

APPROVED: _____
Tom Prather, Mayor

ATTEST: _____
Tracie Hoffman, City Clerk

I, Andrew S. Hartley, hereby certify I am an Attorney licensed to practice law in the Commonwealth of Kentucky. My office is located at 100 North Court Street, Georgetown, Kentucky 40324. I further certify the foregoing Summary of Ordinance 17-014 of the City of Georgetown, Kentucky, was prepared in accordance with the requirements of KRS 83A.060(9), and is a true and accurate summary of the contents of said Ordinance.

_____
Andrew S. Hartley

CITY OF GEORGETOWN, KENTUCKY

ORDINANCE NO. 17-014

AN ORDINANCE CONFIRMING THE SALE AND AWARDING A NONEXCLUSIVE FRANCHISE TO KENTUCKY UTILITIES, OWEN ELECTRIC AND BLUEGRASS ENERGY FOR THE PLACEMENT OF FACILITIES FOR THE TRANSMISSION, DISTRIBUTION AND SALE OF ELECTRICAL ENERGY WITHIN THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF GEORGETOWN CONSISTENT WITH THE TERMS OF ORDINANCE 2017-012.

WHEREAS, Ordinance 2017-012, adopted by the Georgetown City Council on August 16, 2017, provided for the creation and sale of a non-exclusive franchise, for a term of ten (10) years with up to two (2) additional extensions of time of five (5) years each, for the privilege of constructing, operating, maintaining and distributing electrical energy on public rights-of-way within the corporate boundaries of the City of Georgetown; and

WHEREAS, after publication of said advertisement on August 17, 2017, the City Clerk received qualified bids from Kentucky Utilities, Owen Electric and Bluegrass Energy ("the Franchisees").

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF GEORGETOWN, KENTUCKY, AS FOLLOWS:

Section 1. That the electric franchise created by Ordinance 2017-012 be, and it hereby is, awarded to the highest and best bidders, Kentucky Utilities, Owen Electric and Bluegrass Energy, for the cost of advertising and sale of said electric franchise.

Section 2. That the Mayor shall be, and hereby is, authorized and directed to execute an Electric Franchise Agreement consistent with the terms and conditions established in Ordinance 2014-017 with the Franchisees.

Section 3. All prior ordinances, municipal orders, or policies or parts thereof in conflict herewith, are to the extent of such conflict, hereby repealed.

Section 4. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unlawful by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 5. This Ordinance shall become effective September 18, 2017 and upon passage and publication.

PUBLICLY INTRODUCED AND READ FIRST TIME: August 28, 2017

PUBLICLY READ SECOND TIME AND PASSED: September 11, 2017

APPROVED: _____
Tom Prather, Mayor

ATTEST: _____
Tracie Hoffman, City Clerk

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT made and entered into this 15th day of SEPTEMBER, 2017, by and between the **CITY OF GEORGETOWN**, a municipal corporation and political subdivision of the Commonwealth of Kentucky (hereinafter "Georgetown"), and **Owen Electric Cooperative, Inc.**, a corporation created and existing under and by virtue of the laws of the Commonwealth of Kentucky, (hereinafter "Franchisee").

WITNESSETH:

WHEREAS, by Ordinance 2017-012 adopted August 16, 2017, Georgetown provided for the creation and sale of a non-exclusive franchise, for the transmission, distribution and sale of electrical energy within the public rights-of-way of the City of Georgetown for a ten (10) year period with up to two (2) five (5) year extensions; and

WHEREAS, Ordinance 2017-012 authorized the advertising for bids on said franchise, and Franchisee submitted a timely bid to acquire said franchise; and

WHEREAS, by Ordinance No. 2017-014 adopted September 11, 2017, Georgetown accepted the bid of Franchisee to acquire said franchise; and

WHEREAS, Georgetown and Franchisee have entered into this Franchise Agreement to memorialize the sale by Georgetown to Franchisee of said franchise subject to the terms and conditions reflected in Ordinance 2017-012 and Ordinance 2017-014 (collectively, the "Franchise Ordinances").

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

1. Ordinance 2017-012, 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 Franchisee 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. Ordinance 2017-014, 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. The franchise memorialized in this Franchise Agreement shall commence September 18, 2017, and shall expire as provided in the terms of the Franchise Ordinances.

5. Franchisee 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 the Franchise Ordinances, 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 Franchise Ordinances and shall be binding upon and inure to the benefit of the respective successors in interest to the parties hereto.

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

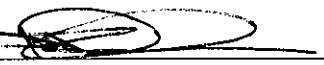
CITY OF GEORGETOWN

BY: _____
MAYOR

ATTEST:

_____
CITY CLERK

OWEN ELECTRIC COOPERATIVE, INC.

BY: 

[representative]

STATE OF KENTUCKY)
)
COUNTY OF Owen)

The foregoing Franchise Agreement was subscribed, sworn to and acknowledged before me by Mark A. Stallons, as President & CEO of Owen Electric Cooperative, Inc., on this the 14th day of Sept., 2017.

My commission expires: 04/14/19

Melissa K Moore
NOTARY PUBLIC
KENTUCKY, STATE-AT-LARGE

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT made and entered into this 15th day of September 2017, by and between the **CITY OF GEORGETOWN**, a municipal corporation and political subdivision of the Commonwealth of Kentucky (hereinafter "Georgetown"), and **Blue Grass Energy Cooperative Corporation,** a corporation created and existing under and by virtue of the laws of the Commonwealth of Kentucky, (hereinafter "Franchisee").

WITNESSETH:

WHEREAS, by Ordinance 2017-012 adopted August 16, 2017, Georgetown provided for the creation and sale of a non-exclusive franchise, for the transmission, distribution and sale of electrical energy within the public rights-of-way of the City of Georgetown for a ten (10) year period with up to two (2) five (5) year extensions; and

WHEREAS, Ordinance 2017-012 authorized the advertising for bids on said franchise, and Franchisee submitted a timely bid to acquire said franchise; and

WHEREAS, by Ordinance No. 2017-014 adopted September 11, 2017, Georgetown accepted the bid of Franchisee to acquire said franchise; and

WHEREAS, Georgetown and Franchisee have entered into this Franchise Agreement to memorialize the sale by Georgetown to Franchisee of said franchise subject to the terms and conditions reflected in Ordinance 2017-012 and Ordinance 2017-014 (collectively, the "Franchise Ordinances").

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

1. Ordinance 2017-012, 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 Franchisee 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. Ordinance 2017-014, 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. The franchise memorialized in this Franchise Agreement shall commence September 18, 2017, and shall expire as provided in the terms of the Franchise Ordinances.

5. Franchisee 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 the Franchise Ordinances, 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 Franchise Ordinances and shall be binding upon and inure to the benefit of the respective successors in interest to the parties hereto.

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

CITY OF GEORGETOWN

BY: _____
MAYOR

ATTEST:

_____
CITY CLERK

BLUE GRASS ENERGY COOPERATIVE CORPORATION

BY: _____

MICHAEL I. WILLIAMS, PRESIDENT/CEO

STATE OF KENTUCKY)
)
COUNTY OF JESSAMINE)

The foregoing Franchise Agreement was subscribed, sworn to and acknowledged before me by Michael I. Williams, as President/CEO of Blue Grass Energy Cooperative Corporation, on this the 15th day of September, 2017

My Commission Expires: February 5, 2019.

Allison R. Mutt #527583

NOTARY PUBLIC KENTUCKY STATE AT LARGE

CITY OF GEORGETOWN, KENTUCKY

ORDINANCE NO. 17- 012

AN ORDINANCE PROVIDING FOR BIDS FOR AN ELECTRIC FRANCHISE

SUMMARY

Establishes for bid a non-exclusive electric franchise for the placement of facilities for the transmission, distribution and sale of electrical energy within the public rights-of-way of the City of Georgetown for an initial ten (10) year period with up to two (2) additional extensions of time of five (5) years each; establishes requirements for bid submissions; sets for the terms and conditions by which franchisees must operate within the City, including installation procedures, performance guarantees, regulatory compliance, liability insurance, and access to franchisees' records; and establishes penalties for failure to comply with provisions of the ordinance, and establishes circumstances under which the City and Franchisees may terminate the franchise; imposes a franchise fee of 1.75% of each franchisee's gross annual revenues from the sale, distribution, and delivery of electrical energy within the City of Georgetown and establishes the terms under which the franchise fee would be collected; requires the 1.75% rate to remain in effect for the first ten years of the franchise, after which time, if the city chooses to extend the terms of the franchise, reserves the right of the City to increase, by ordinance, the franchise fee to an amount not to exceed 5% of gross revenues, with 90 days' notice to the franchisee; provides for governance by state law, severability of provisions, and an effective date upon passage and publication.

The full text of this Ordinance is available for examination in the City Clerk's Office, 100 North Court Street, Georgetown, Kentucky 40324 or at www.georgetownky.gov.

INTRODUCED AND PUBLICLY READ FIRST TIME: August 14, 2017

PUBLICLY READ SECOND TIME AND PASSED: August 16, 2017

APPROVED: _____
Tom Prather, Mayor

ATTEST: _____
Tracie Hoffman, City Clerk

I, Andrew S. Hartley, hereby certify I am an Attorney licensed to practice law in the Commonwealth of Kentucky. My office is located at 100 North Court Street, Georgetown, Kentucky 40324. I further certify the foregoing Summary of Ordinance 17-012 of the City of Georgetown, Kentucky, was prepared in accordance with the requirements of KRS 83A.060(9), and is a true and accurate summary of the contents of said Ordinance.

_____
Andrew S. Hartley

City of Georgetown, Kentucky

Ordinance No. 17-012

AN ORDINANCE CREATING AND ESTABLISHING FOR BID A NON-EXCLUSIVE ELECTRIC FRANCHISE FOR THE PLACEMENT OF FACILITIES FOR THE TRANSMISSION, DISTRIBUTION AND SALE OF ELECTRICAL ENERGY WITHIN THE PUBLIC RIGHT-OF-WAY OF THE CITY OF GEORGETOWN FOR A TEN (10) YEAR DURATION, IN RETURN FOR PAYMENT TO THE CITY OF GEORGETOWN OF THE SUM OF ONE POINT SEVEN FIVE PERCENT (1.75%) OF FRANCHISEE'S GROSS RECEIPTS PER YEAR FROM THE FRANCHISEE'S SALE OF ELECTRICITY TO ELECTRIC-CONSUMING ENTITIES INSIDE THE CITY OF GEORGETOWN'S 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.

WHEREAS, pursuant to Kentucky Constitution Sections 163 and 164, the City of Georgetown is authorized and empowered to award electric franchises, and

WHEREAS, in order to protect the health, safety and welfare of the citizens of Georgetown, Kentucky, to protect and preserve the City of Georgetown's public right-of-way and infrastructure and to provide for the orderly administration of any franchise contemplated herein, it is necessary and appropriate to require any successful franchisee to conduct its business and operations in a lawful manner in compliance with the terms and conditions set forth herein below.

NOW THEREFORE, be it ordained by the City of Georgetown:

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 generation, transmission, and distribution of electrical energy 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, wire, manholes, ducts, structures, stations, towers, amplifiers, poles, overhead conductors and devices, underground conductors and devices, transformers, and any other apparatus, equipment and facilities (collectively, "Equipment") necessary, essential, and/or used or useful to the distribution and sale of electric service 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.

(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 in accordance with its general underground practices and procedures and rules established by the Kentucky Public Service Commission. Subject to such practices and procedures and rules, repairs or replacements of existing facilities or construction of new facilities within areas where existing facilities have been placed underground at the request of the City also shall be placed underground; provided, however, the City pays incremental costs associated with placing new facilities in such areas underground, if any.

SECTION 2. The following definitions apply to this Ordinance:

City Council means the legislative body of the City of Georgetown, KY.

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 Georgetown, KY.

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 Commission, 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 ten (10) years from and after the effective date of this Ordinance, as set forth in Section 5. The City may, by ordinance, extend the terms of the Franchise by no more than two (2) five (5) year periods for a total franchise term of no more than 20 years. 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.

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. As compensation for the Franchise created by this Ordinance to the Company, the City shall receive payment of a total annual fee of ONE POINT SEVEN FIVE percent (1.75%) of gross receipts per year from the Company's sale of electricity to all electric-consuming entities (which includes businesses, industrial facilities and dwellings) inside the City's corporate limits; *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.

The rate of 1.75% shall remain in effect for the first TEN (10) years of the Franchise, after which time, if the City chooses to extend the term of the Franchise pursuant to Section 3, the City reserves the right by subsequent ordinance to increase the franchise fee at any time upon prior ninety (90) days written notice to the Company. Should the City exercise said right to increase the franchise fee, the City shall receive a monthly payment of up to five percent (5%) of gross receipts per month from the Company's sale of electricity (which includes businesses, industrial facilities and dwellings) inside the City's corporate limits beginning with the first billing cycle 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.

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.

The Company shall permit the Government to utilize its poles, conduit, or raceway space at no charge when such space is vacant or available for public safety or governmental purposes.

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 of 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;

(4) If experiencing a foreclosure or other judicial sale of all or a substantial part of the Company's Facilities located within the City of Georgetown, the Company shall provide the Government at least thirty (30) days advance written notice of such foreclosure or sale; or

(5) Is no longer able to provide regular and customary uninterrupted service to its customers in the franchise area.

(b) Prior to attempting to terminate or cancel this Franchise pursuant to this section, the City's Mayor or his or her designee, or the City Council shall make a written demand that the Company do or comply with any such provision, rule, order or determination. If the violation, found in Section 12(a), by the Company continues for a period of thirty (30) days following such written demand without written proof that corrective action has been taken or is being actively and expeditiously pursued, the Government may place its request for termination of this Franchise as early as the next regular City Council meeting agenda. The Government shall cause to be served upon Company, at least ten (10) days prior to the date of such City Council meeting, a written notice of intent to request such termination and the time and place of the meeting, legal notice of which shall be published in accordance with any applicable laws.

(1) It shall be a defense to any attempt to terminate and cancel this Franchise that the Company was relying on federal law, state law, or a valid tariff in acting or not acting on the issue in dispute.

(2) The City Council shall consider the request of the Government and shall hear any person interested therein, and shall determine in its discretion, whether or not any violation by the Company was with just cause.

(3) If such violation by the Company is found to have been with just cause, the City Council shall direct the Company to comply therewith within such time and manner and upon such terms and conditions as are just and reasonable.

(4) If the City Council determines such violation by the Company was without just cause, then the City Council may, by resolution, declare that this Franchise of the Company shall be terminated and forfeited unless there is compliance by the Company within such period as the City Council may fix.

(c) Any violation by the Company or its successor of the material provisions of this Franchise, or the failure promptly to perform any of the provisions thereof, shall be cause for the forfeiture of this Franchise and all rights hereunder if, after written notice to the Company and an opportunity to cure, such violations, failure or default continue as set forth in Section 12(a).

SECTION 13. Right to Cancel. The City Council shall have the right to cancel the Franchise created by this Ordinance thirty (30) days after the appointment of a receiver or trustee to take over and conduct the business of the Company, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said thirty (30) days, unless:

1. Within thirty (30) days after his election of appointment, such receiver or trustee shall have fully complied with all the provisions of this Ordinance and remedied all defaults thereunder; and,

2. Such receiver or trustee, within said thirty (30) days shall have executed an agreement, duly approved by the court having jurisdiction in the premises,

whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Ordinance and the Franchise granted to the Company.

SECTION 14. In the event the sale of electricity is deregulated within the Commonwealth of Kentucky, and deregulation results in a material shortfall of revenue to the Government, the Government shall have the option of terminating this Franchise with the Company. If this Franchise is terminated by the Government pursuant to this provision, the Government and the Company shall have a duty to negotiate in good faith with respect to offering a mutually acceptable franchise to the Company.

SECTION 15. The Company shall have the authority to trim trees that are located within or overhang the Right-Of-Way so as to prevent the branches of such trees from coming in contact with the wires, cables, or other Facilities of the Company. Any trimming, removal or other disturbance of trees shall conform to all lawful ordinances, requirements and directives of the Government, and the Company shall make available upon reasonable request of the Government, information regarding its tree-trimming practices. In the event that the Company fails to timely and sufficiently respond to a legitimate and reasonable complaint regarding its failure to trim such trees, and such complaint is made known to the Government, the Government shall contact the Company with respect to such matter and attempt to reach a satisfactory result. Notwithstanding the foregoing, this provision in no way limits any existing or future lawful rights that the Government may have with respect to such trees.

SECTION 16. This Ordinance and any Franchise awarded pursuant to it shall be governed by the laws of the Commonwealth of Kentucky, both as to interpretation and performance. The

venue for any litigation related to this Ordinance and any Franchise awarded pursuant to it shall be in a court of competent jurisdiction in Scott County, Kentucky.

SECTION 17. This Ordinance and any Franchise awarded pursuant to it does not create a contractual relationship with or right of action in favor of a third party against either the Government or the Company.

SECTION 18. If any section, sentence, clause or phrase of this Ordinance is held unconstitutional or otherwise invalid, such infirmity shall not affect the validity of the remaining Ordinance.

SECTION 19. It shall be the duty of the City's Mayor, or his/her designee, to offer for sale at public auction the Franchise and privileges created hereunder. Said Franchise and privileges shall be sold to the highest and best bidder or bidders at a time and place fixed by the City's Mayor after he or she has given due notice thereof by publication or advertisement as required by law. In awarding the franchise, the City shall consider the technical, managerial, and financial qualifications of the bidder to perform its obligations under the franchise.

SECTION 20. 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 Council, at the time of its next regular meeting or as soon as practicable thereafter, said bids and proposals for its approval. The City Council 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 Council, 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, 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.

City of Georgetown, Kentucky

Ordinance No. 17-012

The foregoing Ordinance was introduced and read for the first time at the Council's regular meeting of August 14, 2017 and read for the second time, adopted and approved at its special called meeting August 16, 2017.

MAYOR

ATTEST:

CITY CLERK

CITY OF GEORGETOWN, KENTUCKY

ORDINANCE NO. 17- 014

AN ORDINANCE AWARDING AN ELECTRIC FRANCHISE

SUMMARY

1. Awards the bid of the non-exclusive electric franchise established in Ordinance 2017-012 to Kentucky Utilities, Owen Electric and Bluegrass Energy.

2. Authorizes the Mayor to sign the Electric Franchise Agreements.

3. Provides for repeal of inconsistent laws, severability of provisions, and an effective date of September 18, 2017 upon passage and publication.

The full text of this Ordinance is available for examination in the City Clerk's Office, 100 North Court Street, Georgetown, Kentucky 40324 or at www.georgetownky.gov.

INTRODUCED AND PUBLICLY READ FIRST TIME: August 28, 2017

PUBLICLY READ SECOND TIME AND PASSED: September 11, 2017

APPROVED: Tom Prather
Tom Prather, Mayor

ATTEST: Tracie Hoffman
Tracie Hoffman, City Clerk

I, Andrew S. Hartley, hereby certify I am an Attorney licensed to practice law in the Commonwealth of Kentucky. My office is located at 100 North Court Street, Georgetown, Kentucky 40324. I further certify the foregoing Summary of Ordinance 17-014 of the City of Georgetown, Kentucky, was prepared in accordance with the requirements of KRS 83A.060(9), and is a true and accurate summary of the contents of said Ordinance.

Andrew S. Hartley

CITY OF GEORGETOWN, KENTUCKY

ORDINANCE NO. 17-014

AN ORDINANCE CONFIRMING THE SALE AND AWARDING A NONEXCLUSIVE FRANCHISE TO KENTUCKY UTILITIES, OWEN ELECTRIC AND BLUEGRASS ENERGY FOR THE PLACEMENT OF FACILITIES FOR THE TRANSMISSION, DISTRIBUTION AND SALE OF ELECTRICAL ENERGY WITHIN THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF GEORGETOWN CONSISTENT WITH THE TERMS OF ORDINANCE 2017-012.

WHEREAS, Ordinance 2017-012, adopted by the Georgetown City Council on August 16, 2017, provided for the creation and sale of a non-exclusive franchise, for a term of ten (10) years with up to two (2) additional extensions of time of five (5) years each, for the privilege of constructing, operating, maintaining and distributing electrical energy on public rights-of-way within the corporate boundaries of the City of Georgetown; and

WHEREAS, after publication of said advertisement on August 17, 2017, the City Clerk received qualified bids from Kentucky Utilities, Owen Electric and Bluegrass Energy ("the Franchisees").

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF GEORGETOWN, KENTUCKY, AS FOLLOWS:

Section 1. That the electric franchise created by Ordinance 2017-012 be, and it hereby is, awarded to the highest and best bidders, Kentucky Utilities, Owen Electric and Bluegrass Energy, for the cost of advertising and sale of said electric franchise.

Section 2. That the Mayor shall be, and hereby is, authorized and directed to execute an Electric Franchise Agreement consistent with the terms and conditions established in Ordinance 2014-017 with the Franchisees.

Section 3. All prior ordinances, municipal orders, or policies or parts thereof in conflict herewith, are to the extent of such conflict, hereby repealed.

Section 4. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unlawful by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 5. This Ordinance shall become effective September 18, 2017 and upon passage and publication.

PUBLICLY INTRODUCED AND READ FIRST TIME: August 28, 2017

PUBLICLY READ SECOND TIME AND PASSED: September 11, 2017

APPROVED:

Tom Prather, Mayor

ATTEST:

Tracie Hoffman, City Clerk

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT made and entered into this 18th day of September, 2017, by and between the **CITY OF GEORGETOWN**, a municipal corporation and political subdivision of the Commonwealth of Kentucky (hereinafter "Georgetown"), and **Kentucky Utilities, Inc.**, a corporation created and existing under and by virtue of the laws of the Commonwealth of Kentucky, (hereinafter "Franchisee").

WITNESSETH:

WHEREAS, by Ordinance 2017-012 adopted August 16, 2017, Georgetown provided for the creation and sale of a non-exclusive franchise, for the transmission, distribution and sale of electrical energy within the public rights-of-way of the City of Georgetown for a ten (10) year period with up to two (2) five (5) year extensions; and

WHEREAS, Ordinance 2017-012 authorized the advertising for bids on said franchise, and Franchisee submitted a timely bid to acquire said franchise; and

WHEREAS, by Ordinance No. 2017-014 adopted September 11, 2017, Georgetown accepted the bid of Franchisee to acquire said franchise; and

WHEREAS, Georgetown and Franchisee have entered into this Franchise Agreement to memorialize the sale by Georgetown to Franchisee of said franchise subject to the terms and conditions reflected in Ordinance 2017-012 and Ordinance 2017-014 (collectively, the "Franchise Ordinances").

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

1. Ordinance 2017-012, 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 Franchisee 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. Ordinance 2017-014, 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. The franchise memorialized in this Franchise Agreement shall commence September 18, 2017, and shall expire as provided in the terms of the Franchise Ordinances.

5. Franchisee 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 the Franchise Ordinances, 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 Franchise Ordinances and shall be binding upon and inure to the benefit of the respective successors in interest to the parties hereto.

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

CITY OF GEORGETOWN

BY: _____
MAYOR

ATTEST:

_____
CITY CLERK

KENTUCKY UTILITIES, INC.

BY: Elizabeth J. McFarland

ELIZABETH J. MCFARLAND
VICE PRESIDENT, CUSTOMER SERVICES

STATE OF KENTUCKY)
)
COUNTY OF Jefferson)

The foregoing Franchise Agreement was subscribed, sworn to and acknowledged before me by Elizabeth McFarland, as Vice President-Customer Ser of Kentucky Utilities, Inc., on this the 15th day of September, 2017.

My commission expires: 10-16-2020

Kimberly C Bruk

NOTARY PUBLIC
KENTUCKY, STATE-AT-LARGE