

Ordinance No. 154, Series 2016

AN ORDINANCE AUTHORIZING LOUISVILLE METRO GOVERNMENT TO ACCEPT THE BID SUBMITTED BY LOUISVILLE GAS & ELECTRIC AND SIGN A GAS FRANCHISE AGREEMENT AS SUBMITTED. (AS AMENDED)

SPONSORED BY: COUNCIL MEMBERS KRAMER, BLACKWELL, WOOLRIDGE, DOWNARD, WELCH, STUCKEL, YATES, BENSON, JAMES AND PARKER

WHEREAS, on May 26, 2016, Metro Council authorized Louisville Metro Government to advertise a gas franchise bid;

WHEREAS, Metro Council set the terms and conditions of the franchise bid as a 5 year renewable agreement, totally not more than 20 years, and with a franchise fee of no greater than 2 3.0% of gross receipts within the franchise area;

WHEREAS, Louisville Gas & Electric submitted a bid responsive to such terms and conditions; and

WHEREAS, the attached gas franchise agreement contains the gas franchise fee in effect at the time of the agreement that may be modified throughout the term of the agreement.

BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT ("METRO COUNCIL") AS FOLLOWS:


SECTION I: Louisville Metro Government advertised and received a bid from Louisville Gas & Electric Company for a gas franchise agreement.

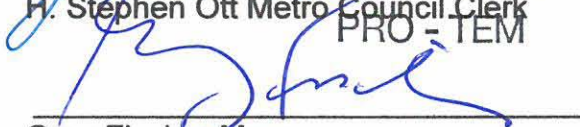
SECTION II: Louisville Metro Council hereby makes payment of the gas franchise fee contingent upon the final order, including any appeals therefrom, in an adjudication of the Company's method of recovery of the franchise fee. Should the adjudication and any appeals therefrom, conclude that the franchise fee should be

recovered from the Company's ratepayers as a line item on the bills of customers only in the franchise area, the amount of the fee will automatically revert to zero and no fee will be due from the Company.


SECTION III: Louisville Metro Council authorizes Louisville Metro Government to enter into the attached gas franchise agreement with Louisville Gas & Electric Company.

SECTION IV: This Ordinance shall take effect upon its passage and approval.



H. Stephen Ott Metro Council Clerk
PRO-TEM


Greg Fischer Mayor




David Yates President of the Council
Pro Tem
8/30/16

Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

BY: 

**LOUISVILLE METRO COUNCIL
READ AND PASSED
August 25, 2016**

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT by and between **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT** of the Commonwealth of Kentucky (the "Louisville Metro", and **LOUISVILLE GAS AND ELECTRIC COMPANY**, a Kentucky corporation having a business address of 220 West Main Street, Louisville, Kentucky 40232 (the "Company")):

WHEREAS, Metro Council passed Ordinance No. 132, Series 2016, to create a Franchise for the transmission, distribution, transportation and sale of gas; and

WHEREAS, the Company submitted its bid for said Franchise which bid has been determined to be the highest and best bid; and

WHEREAS, Metro Council passed Ordinance 214 Series 2016 accepting the bid of the Company;

NOW, THEREFORE, for good and valuable consideration, the parties hereto, agree as follows:

Section 1. There is hereby created a Franchise to acquire, lay, maintain and operate in the public streets, avenues, alleys and other public ways of Louisville Metro, but not within the jurisdiction of any other city located in Jefferson County, Kentucky (the "Franchise Area"), a system of mains, pipes, fixtures and appliances for the transmission, transportation, distribution and sale of gas for heating and other purposes, subject to all the provisions of this Franchise Agreement.

Section 2. The following definitions apply to this Franchise:

(a) "*Company*" means the Party or Person that shall become the purchaser of said Franchise, or any successor or assignee of such Party or Person.

(b) "*Facility*" or "*Facilities*" means any tangible component of the Company's

gas distribution and transmission system, located within the Right of Way of the Franchise Area, including, but not limited to, mains, pipes, pipelines, conduit, valves, meters, or other physical assets used for the delivery of natural gas.

(c) "*Franchise*" or "*Franchise Agreement*" means this Franchise Agreement, as approved by the Metro Council and accepted by the Company.

(d) "*Metro Council*" means the legislative body of Louisville Metro.

(e) "*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.

(f) "*Right of Way*" means the surface of and the space above and below a property, Street or sidewalk, to the extent Louisville Metro has the authority to allow the Company to use them, and shall include Rights of Way as shall be now held or hereafter held by Louisville Metro within the Franchise Area.

(g) "*Street*" means the surface of, and the space below, any public street, road, alley, bridge or highway within Louisville Metro, used or intended to be used by the general public for travel, to the extent Louisville Metro has the authority to allow the Company to use them.

(h) "*Utility Policy*" means the Louisville Metro Public Works & Assets Utility Policy presently in force, or as later amended or updated, throughout the term of the Franchise.

Section 3. The Company shall have the right and privilege of laying and maintaining gas mains and pipes, and appurtenances necessary or appropriate in connection therewith, in, along, under, above and across the said Right of Way, and transmit, transport, distribute and sell gas through said pipes, within the Franchise Area as they now exist or may hereafter be extended; subject to the provisions hereof, Louisville Metro regulations or laws on the use of the Right of

Way by utilities, and to all powers (including police power) inherent in, conferred upon or reserved to said Louisville Metro.

Section 4. (a) No pavements or sidewalks shall be disturbed and no excavation in any of the said Rights of Way will be made, except in strict accordance with the Utility Policy and all laws and ordinances, presently in force, or as later amended or updated, throughout the term of the Franchise on the use of the Right of Way, provided that such pavements and sidewalks and excavations shall be replaced and restored by and at the expense of the Company to Louisville Metro standards in accordance with the Utility Policy and all laws and ordinances, presently in force, or as later amended or updated, throughout the term of the Franchise, as required by the Director of Public Works. Should the Company fail or refuse to replace or restore said pavement, sidewalk or excavation to Louisville Metro standards or condition in accordance with the Utility Policy and all laws and ordinances, in force, as amended or updated, throughout the term of the Franchise as required by the Director of Public Works within a reasonable time, then same may be replaced and restored by Louisville Metro under the direction of the Director of Public Works at the cost and expense of the Company. Work by the Company hereunder shall be done in a workmanlike manner and so as not to unnecessarily interfere with public use of any of said Right of Way.

(b) Replacement, patching and restoration of the Right of Way shall be performed according to the applicable standards and with the materials specified by Louisville Metro, in accordance with the Utility Policy and all laws and ordinances, in force, as amended or updated, throughout the term of the Franchise as required by the Director of Public Works. The Director of Public Works shall have the authority to prescribe the manner and extent of the restoration on reasonable terms, and may do so in written procedures of general application. The Company agrees to comply with all applicable requirements as set forth in the Utility Policy and all laws

and ordinances, in force, as amended or updated, throughout the term of the Franchise.

(c) Material failure of the Company to adhere to this Franchise Agreement--which incorporates the Utility Policy and all laws and ordinances concerning Louisville Metro's Right of Way, presently in force, or as later amended or updated--shall be deemed a violation of this Franchise Agreement. Louisville Metro reserves all rights to enforce said policies and laws. Subject to Section 4(d) below, in the enforcement of its policies and laws, Louisville Metro may utilize any available legal remedy including, but not limited to, the following options: (a) the remedial or penalty provisions of the Utility Policy, (b) ordinal penalty provisions, if any, or (c) suit for breach of the Franchise Agreement.

(d) The agreement to incorporate by reference the Utility Policy and all laws and ordinances concerning Louisville Metro's Right of Way is without waiver of or prejudice to the Company's right to challenge the reasonableness or lawfulness of the provisions contained therein, including, without limitation, that a combination of remedies addressed in Section 4(c) would be unduly punitive. The Company reserves all rights and remedies available to it to challenge any provision contained in the Utility Policy and all laws and ordinances concerning Louisville Metro's Right of Way.

Section 5. Whenever Louisville Metro or any of its departments or agencies shall grade, regrade, widen or alter any Right of Way or shall construct, reconstruct or alter any other municipal public works therein, it shall be the duty of the Company, when so ordered by Louisville Metro, to changes its mains, pipes and appurtenances in the Right of Way at its own expense so as to conform to the established grade or line of such Right of Way and so as not to interfere with such municipal public works so constructed, reconstructed or altered. However, the Company shall not be required to make any such change when the Right of Way in which its Facilities are located is vacated or when the Right of Way is altered for the convenience of abutting property owners or for

private purposes and not as an incident to a public improvement, unless the reasonable cost of such relocation and the loss and expense resulting therefrom is first paid to the Company.

Section 6. (a) As consideration for the granting of the Franchise, the Company agrees it shall defend, indemnify, and hold harmless Louisville Metro from and against claims, suits, causes of action, proceedings, judgments for damages or equitable relief, and costs and expenses asserted against Louisville Metro 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 Louisville Metro's negligence.

(b) Louisville Metro shall notify the Company in writing within a reasonable time of receiving notice of any issue it determines may require indemnification.

(c) The Company shall maintain in full force and effect a commercial general liability insurance policy reasonably acceptable to Louisville Metro with a minimum policy limit of ten million dollars (\$10,000,000.00) per occurrence and twenty million dollars (\$20,000,000.00) in the aggregate and shall provide Louisville Metro with a certificate of insurance evidencing the insurance policy required by this section. The Company may elect to self-insure all or part of this requirement.

(d) The rights reserved to Louisville Metro with respect to the indemnity and insurance provisions under this Section are in addition to all other rights of Louisville Metro, whether reserved by this Franchise or authorized by law, and no action, proceeding or exercise of a right with respect to such insurance policy shall affect any other right Louisville Metro may have.

Section 7. (a) When requested to do so by Louisville Metro, Company shall make available to Louisville Metro copies of its regular monthly or annual statements, reports and records as to heat value and pressure of gas distributed pursuant to this Franchise, and such other

reports as Louisville Metro may reasonably request.

(b) Louisville Metro reserves the right to make such tests of gas meters, pressure, specific gravity and heat value of the gas furnished by Company hereunder as it shall deem necessary or advisable.

(c) The Company agrees further to furnish the Mayor, the Metro Council and the County Attorney for Jefferson County written notice, by certified mail, concurrent with its filing an application with the Public Service Commission for an increase in base rates; and such notice shall specify amount and type of increase to be sought and alerting to Louisville Metro that such a filing is being made. The Company agrees to maintain "as-built" drawings of all Facilities within the Right of Way, and to provide said drawings to the Director of Public Works, as requested.

Section 8. The Company agrees to continue to cooperate with state and local government low-income energy assistance efforts, including state and local government energy assistance programs, and further agrees to the continued operation of a voluntary customer check off system for customer contributions to energy assistance efforts, such as Winterhelp.

Section 9. The Franchise hereby created is not exclusive and shall be of a term of five (5) years contingent upon: (1) the issuance by the Commission of all approvals and certificates required by law; and (2) the award of the Franchise by Louisville Metro to the Company, unless terminated sooner under the terms of this Franchise Agreement. The Franchise may be renewed by subsequent agreement between Metro Council and Company three (3) times subject to the passage of an appropriate ordinance by Metro Council; however no renewals shall extend the total term of the Franchise beyond twenty years from the date of the inception of the Franchise.

The Company is hereby given the right to assign the Franchise created by this Franchise Agreement to any person, firm or corporation able, ready and willing to carry out the terms of this

Franchise, but shall, prior to such assignment, obtain consent from Louisville Metro to such assignment, which consent shall not be unreasonably withheld or delayed.

Section 10. In the event that the Public Service Commission of Kentucky shall cease to have jurisdiction over the Company's retail gas rates and service and no other regulatory authority shall have by law such jurisdiction over retail gas rates and service in Louisville Metro, then Metro Council shall have regulatory jurisdiction over the Company's gas rates and service in the jurisdiction of Louisville Metro within the limits permitted by law and to the extent that the Public Service Commission of Kentucky presently has such jurisdiction; provided, however, the Company shall have the right to seek redress in court by appeal or otherwise from any regulatory order or action of Metro Council on the ground that such order or action is unjust, unreasonable, unlawful or confiscatory.

If Metro Council acquires regulatory jurisdiction as aforesaid, the then existing rules and regulations of the Public Service Commission of Kentucky (or other regulatory authority having jurisdiction) and the rates, rules and regulations of the Company as contained in its filing with such Commission or other authority as to matters of rates and service, shall continue in effect unless and until changed, after hearing, by final order of Metro Council or of court, or unless and until changed by agreement between Louisville Metro and the Company.

In the event that the provision of gas service is deregulated by state legislation, then this Franchise may be terminated upon ninety (90) days written notice by Louisville Metro to the Company if it is determined by Louisville Metro that continuation of the Franchise would be unfair and unreasonable to Louisville Metro or to the customers of the Company, or upon the agreement between Louisville Metro and the Company.

Section 11. Franchise Fee. (a) As compensation for the Franchise granted to the Company, Louisville Metro shall receive payment as determined by the Metro Council, at its

discretion, throughout the term of the Franchise. The total annual payment shall be capped and shall not exceed a total annual Franchise Fee of three percent (3%) of Gross Receipts within the Franchise Area. The Franchise Fee remitted to Louisville Metro may be based, at the discretion of the Metro Council, throughout the term of the Franchise, on: (1) the number of the linear feet of in-service pipeline segments in the LG&E Geographic Information System (GIS) owned or operated by the Company, whether said pipe is used for transmission or distribution, within the Franchise Area; (2) each thousand cubic foot (mcf) of gas utilizing the Company's pipe, pipeline, main, pumping stations or other means to transport, whether for transmission or distribution, for the purpose of providing natural gas service to customers as a local distribution company within the Franchise Area (using the measured mcf of gas delivered to customers as a substitute). Basing any portion of the Franchise Fee upon gas delivered to all LG&E customers does not equate to approval or acquiescence by the Company that customer use outside of the Franchise Area is reasonably related to the calculation of the Franchise Fee for Louisville Metro. If appropriate, this issue may be part of the litigation contemplated in Section 12; (3) a percentage of Gross Receipts; (4) a flat fee; or (5) a combination of any of the above named options. Company will be notified of any intended change by certified mail and shall have 60 days from Metro Council action to make changes to the payment terms. Payment of any amount due under this Franchise shall be made on a monthly basis within thirty (30) days of the end of the preceding calendar month.

Metro Council may, by ordinance, make the Franchise Fee contingent upon the adjudication described in Section 12 below. If Metro Council does not make the Franchise Fee contingent upon such adjudication, but does elect to bring an action contemplated in Section 12, payment of the Franchise Fee, if any, will be made pending the issuance of a final order resolving the matter, and until all appeals, if any, are final and concluded. LG&E will collect and remit the

Franchise Fee, if any, based upon its tariff on file with, and approved by, the Kentucky Public Service Commission. If Metro Council makes the Franchise Fee contingent upon the adjudication of an action contemplated in Section 12, LG&E will not collect or remit any Franchise Fee during the time period in which the action is pending, including any appeals therefrom, and LG&E will have no retroactive obligation to remit payment of the Franchise Fee following of the conclusion of the adjudication and any appeals therefrom. Any decision by Metro Council to reinstate an obligation to remit the Franchise Fee or any change in the recovery method resulting from any action described in Section 12 below shall be treated as a Franchise Fee change described above and the Company shall have 60 days from Metro Council action, final Kentucky Public Service Commission or court action, including from any appeals therefrom, and whichever occurs later, to make changes to payment terms.

(b) At the commencement of the Franchise upon passage, the Franchise Fee shall be a combination of: (1) zero per linear foot as described in Section 11(a) above; (2) six percent (6%) of forty-three cents (\$0.43) per thousand cubic feet (mcf) of gas as described in Section 11(a) above; (3) zero % of Gross Receipts; and (4) no fee is to be collected beginning with bills rendered for the October 2016 billing cycle, and remitted monthly thereafter until such time as Metro Council changes the term by subsequent ordinance. Metro Council makes the Franchise Fee contingent upon the adjudication of an action contemplated in Section 12_; LG&E will not collect or remit any Franchise Fee during the time period in which the action is pending, including any appeals therefrom, and LG&E will have no retroactive obligation to remit payment of the Franchise Fee following of the conclusion of the adjudication and any appeals therefrom. Should the adjudication and any appeals therefrom, conclude that the franchise fee should be recovered from the Company's ratepayers as a line item on the bills of customers only in the franchise area, the amount of the fee will automatically revert to zero and no fee will be due from the Company.

(c) Gross Receipts means those amounts of money which the Company receives annually from its customers, including, but not limited to residential, industrial and commercial entities, within the Franchise Area for the retail sale, distribution and/or transportation of gas, under rates, temporary or permanent, authorized by the Kentucky Public Service Commission and represents amounts billed under such rates as adjusted for refunds, the net write-off of uncollectible accounts, corrections or other regulatory adjustments. Gross Receipts also includes but is not limited to any amounts of money earned within Louisville Metro for the use, rental, or lease of the Company's Facilities. Gross Receipts do not include home energy assistance funds ("HEA") or miscellaneous service charges, including but not limited to turn-ons, meter sets, non-sufficient fund charges, late fees and interest, which are related to but are not a part of the actual retail sale of gas.

(d) At a minimum, the Franchise Fee is intended to apply to Gross Receipts related to those services which include the Franchise Fee as part of the Company's tariff filed with the Kentucky Public Service Commission as of the date of the adoption of this Franchise, and the Company expressly agrees that it will continue to pay the Franchise Fee on Gross Receipts derived from these services for the duration of this Franchise. The Company will also assess and pay the Franchise Fee on any such Gross Receipts from revised, amended, or additional tariffs (except for nonrecurring charges in Louisville Metro) unless Louisville Metro specifically indicates that it does not want the Franchise Fee to apply to such Gross Receipts, and subject to any necessary approval by the Kentucky Public Service Commission. Following any changes to calculations of amounts payable hereunder, such payments shall commence with the first billing period following any necessary tariff approval by the Kentucky Public Service Commission. Until such time, the Company will continue collecting and remitting payments to Louisville Metro under the terms of its existing tariff and Franchise Agreement until such time as this tariff approval is obtained.

(e) The Company shall file a complete and accurate report of all Gross Receipts received

within the Franchise Area during the previous month. The report shall be of a design agreed to by the Company and Louisville Metro's Office of Management & Budget (OMB) with sufficient information to confirm the accuracy of the submitted monthly Franchise Fee.

(f) The Company shall file a complete and accurate report, to the best of its ability and knowledge, at the beginning of the Franchise Agreement designating the linear feet of in-service pipeline segments in the LG&E GIS, owned and operated by the Company, whether transmission or distribution, within the Franchise Area. The report may be based upon the same data set as relied upon for the Company's annual report certified to the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration. After the initial report, updated reports, indicating changes to the linear feet of in-service pipeline segments in the LG&E GIS, owned and operated by the Company, whether transmission or distribution, within the Franchise Area shall be supplied annually when the Company certifies its report to the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration. The report shall be provided to Louisville Metro's Office of Management & Budget (OMB) with sufficient information to confirm the accuracy of the submitted monthly franchise fee.

(g) The Company shall file a complete and accurate report, to the best of its ability and knowledge, at the beginning of the Franchise Agreement of all natural gas mcf, utilizing the company's pipe, pipeline, main, pumping stations or other means to transport, whether for transmission or distribution, gas within the Franchise Area during the previous month. After the initial report, an updated report, indicating changes to all natural gas mcf utilizing the company's pipe, pipeline, main, pumping stations or other means to transport, whether for transmission or distribution, gas within the Franchise Area during the previous month, shall accompany the submission of the monthly Franchise Fee. The report shall be of a design agreed to by Louisville Metro's Office of Management & Budget (OMB) with sufficient information to confirm the

accuracy of the submitted monthly Franchise Fee.

(h) No acceptance of any Franchise Fee payment by Louisville Metro 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 Louisville Metro may have for future or additional sums pursuant to this Franchise. Louisville Metro shall have the right to inspect the Company's income, financial, and records relating to gross revenues in order to audit, and to re-compute any amounts determined to be payable under this Franchise. The Company shall respond to a reasonable request for information related to obtaining audit information within ten (10) business days unless agreed otherwise by the parties. This provision in Section 11(h) shall survive the term of any Franchise Agreement awarded pursuant to this Franchise for a period of one (1) year. Any additional amount due to Louisville Metro as a result of the audit shall be paid within ten (10) days following written notice to the Company by Louisville Metro which notice shall include a copy of the audit report. If as a result of such audit or review Louisville Metro determines that the Company has underpaid its Franchise Fee by one percent (1%) or more for any one (1) month period then in addition to making full payment of the relevant obligation it shall reimburse Louisville Metro for all of the reasonable costs associated with the audit or review. If such audit or review is performed in connection with the granting of a new Franchise, a sale or transfer of control of the Company, or a substantive modification of the terms to, or an assignment of this Franchise, the Company shall reimburse Louisville Metro for all of the reasonable costs associated with the audit or review including all out-of-pocket costs for attorneys, accountants and other consultants.

(i) In the event that any Franchise payment or recomputed amount is not made on or before the applicable dates heretofore specified, interest shall be charged from such date at the annual rate of eight percent (8%). With respect to its billing of Louisville Metro, Company agrees to, upon request; provide an explanation of any and all billing adjustments or credits including the account(s)

impacted and any and all late payments.

(j) The Company shall have the right to a refund from Louisville Metro of any fees paid pursuant to this section which are paid in excess of the amount due under this Franchise or are paid in excess of the amount lawfully owed. Any refund amount due to the Company shall be paid within ten (10) days following written notice to Louisville Metro by the Company.

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

Section 12. The agreement of a Franchise Fee structure in Section 11 and implemented throughout the term of the Franchise by the Company does not equate to approval or acquiescence by Louisville Metro to the Company's method of recovery of the entire Franchise Fee, or some portion of the Franchise Fee from the Company's ratepayers within the Franchise Area. This Franchise Agreement contemplates that Louisville Metro reserves the right to challenge the Company's method of recovery of the Franchise Fee at the Kentucky Public Service Commission or any other court of competent jurisdiction. Both Louisville Metro and the Company reserve the right to challenge the jurisdiction of any forum where the Company's method of recovering the cost of the Franchise Fee from its customers is challenged. The Company and Louisville Metro, separately, reserve the right to seek all administrative relief from the Kentucky Public Service Commission or any other court of competent jurisdiction, including appeals of any final orders as permitted by law. The reference to "any other court of competent jurisdiction" in the preceding sentence does not imply or express any agreement by or consent from the Company that any forum other than the Kentucky Public Service Commission has jurisdiction over the Company's recovery of Franchise Fees from its customers.

Section 13(a). In addition to all other rights and powers pertaining to Louisville Metro by virtue of the Franchise created by this Franchise or otherwise, Louisville Metro, 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 Louisville Metro 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 Louisville Metro;

(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 Louisville Metro.

(b) Prior to attempting to terminate or cancel this Franchise pursuant to this section, Louisville Metro 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 13(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, Louisville Metro may place its request for termination of this Franchise as early as the next regular Metro Council meeting agenda. Louisville Metro shall cause to be served upon Company, at least ten (10) days prior to the date of such Metro 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 Metro Council shall consider the request of Louisville Metro 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 Metro 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 Metro Council determines such violation by the Company was without just cause, then the Metro 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 Metro 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 13(a).

Section 14. Louisville Metro shall have the right to cancel this Franchise 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/her 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 approve 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 15. The Company will work and discuss plans with Louisville Metro's Infrastructure Coordination Committee to help coordinate work with Louisville Metro and other utilities.

Section 16 (a). The Company warrants that it will maintain an Emergency Response Plan that is in compliance with the applicable requirements of local, state and federal agencies with jurisdiction and will notify the Department of Public Works and 911 Emergency Communications Center anytime telephonic notice to the Kentucky Public Service Commission is required pursuant to 807 KAR 5:027, Section (3)(a), (c), (d), (f) or (g). Upon written request by Louisville Metro, the Company agrees to meet periodically to review the Emergency Response Plan.

(b) The Company's Emergency Plans shall designate the Company's responsible local emergency officials and a 24 hour emergency contact number. The Company shall, after being notified of an emergency, cooperate with Louisville Metro and respond as soon as possible to protect the public's health, safety and welfare. The response will be subject to the Unified Command Structure of the National Incident Management System (NIMS).

(c) The Company shall cooperate with Louisville Metro and respond to protect public health and safety in the event of an emergency.

(d) In the course of construction, modification, or removal of any of its Facilities in the Right of Way, the Company shall remove and remediate all hazardous substances encountered in the course of its activities in accordance with all applicable state and federal laws, statutes,

regulations, and orders.

Section 17. This Franchise 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 Franchise shall be in a court of competent jurisdiction in Kentucky.

Section 18. This Franchise does not create a contractual relationship with or right of action in favor of a third party against either Louisville Metro or the Company.

Section 19. If any section, sentence, clause or phrase of this Franchise is held unconstitutional or otherwise invalid, such infirmity shall not affect the validity of the remaining Franchise.

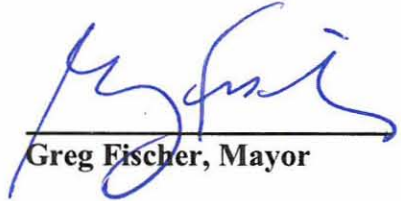
Section 20. In case the Company shall fail within thirty (30) days after this bid to comply with the provisions of this Ordinance, the Director of Public Works shall again advertise such Franchise for sale in the manner in which the first sale was made and shall again sell said Franchise in the same manner, and upon the same conditions and requirements in all respects as the original sale of said Franchise was made, and in case the successful bidder at such sale shall fail or refuse to comply with the terms of said sale within the time prescribed, then the Director of Public Works may again advertise such Franchise for sale in the manner prescribed herein and may continue to do so until said Franchise is purchased by some bidder who shall comply with the terms of said sale.

IN WITNESS WHEREOF, the Parties have executed this Franchise Agreement this 30th of

August, 2016.

**LOUISVILLE/JEFFERSON COUNTY
METRO GOVERNMENT**

**LOUISVILLE GAS AND
ELECTRIC COMPANY**



Greg Fischer, Mayor

By: _____

Title: _____

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT by and between **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT** of the Commonwealth of Kentucky (the "Louisville Metro", and **LOUISVILLE GAS AND ELECTRIC COMPANY**, a Kentucky corporation having a business address of 220 West Main Street, Louisville, Kentucky 40232 (the "Company"):

WHEREAS, Metro Council passed Ordinance No. 132, Series 2016, to create a Franchise for the transmission, distribution, transportation and sale of gas; and

WHEREAS, the Company submitted its bid for said Franchise which bid has been determined to be the highest and best bid; and

WHEREAS, Metro Council passed Ordinance 214 Series 2016 accepting the bid of the Company;

NOW, THEREFORE, for good and valuable consideration, the parties hereto, agree as follows:

Section 1. There is hereby created a Franchise to acquire, lay, maintain and operate in the public streets, avenues, alleys and other public ways of Louisville Metro, but not within the jurisdiction of any other city located in Jefferson County, Kentucky (the "Franchise Area"), a system of mains, pipes, fixtures and appliances for the transmission, transportation, distribution and sale of gas for heating and other purposes, subject to all the provisions of this Franchise Agreement.

Section 2. The following definitions apply to this Franchise:

(a) "*Company*" means the Party or Person that shall become the purchaser of said Franchise, or any successor or assignee of such Party or Person.

(b) "*Facility*" or "*Facilities*" means any tangible component of the Company's

gas distribution and transmission system, located within the Right of Way of the Franchise Area, including, but not limited to, mains, pipes, pipelines, conduit, valves, meters, or other physical assets used for the delivery of natural gas.

(c) "*Franchise*" or "*Franchise Agreement*" means this Franchise Agreement, as approved by the Metro Council and accepted by the Company.

(d) "*Metro Council*" means the legislative body of Louisville Metro.

(e) "*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.

(f) "*Right of Way*" means the surface of and the space above and below a property, Street or sidewalk, to the extent Louisville Metro has the authority to allow the Company to use them, and shall include Rights of Way as shall be now held or hereafter held by Louisville Metro within the Franchise Area.

(g) "*Street*" means the surface of, and the space below, any public street, road, alley, bridge or highway within Louisville Metro, used or intended to be used by the general public for travel, to the extent Louisville Metro has the authority to allow the Company to use them.

(h) "*Utility Policy*" means the Louisville Metro Public Works & Assets Utility Policy presently in force, or as later amended or updated, throughout the term of the Franchise.

Section 3. The Company shall have the right and privilege of laying and maintaining gas mains and pipes, and appurtenances necessary or appropriate in connection therewith, in, along, under, above and across the said Right of Way, and transmit, transport, distribute and sell gas through said pipes, within the Franchise Area as they now exist or may hereafter be extended; subject to the provisions hereof, Louisville Metro regulations or laws on the use of the Right of

Way by utilities, and to all powers (including police power) inherent in, conferred upon or reserved to said Louisville Metro.

Section 4. (a) No pavements or sidewalks shall be disturbed and no excavation in any of the said Rights of Way will be made, except in strict accordance with the Utility Policy and all laws and ordinances, presently in force, or as later amended or updated, throughout the term of the Franchise on the use of the Right of Way, provided that such pavements and sidewalks and excavations shall be replaced and restored by and at the expense of the Company to Louisville Metro standards in accordance with the Utility Policy and all laws and ordinances, presently in force, or as later amended or updated, throughout the term of the Franchise, as required by the Director of Public Works. Should the Company fail or refuse to replace or restore said pavement, sidewalk or excavation to Louisville Metro standards or condition in accordance with the Utility Policy and all laws and ordinances, in force, as amended or updated, throughout the term of the Franchise as required by the Director of Public Works within a reasonable time, then same may be replaced and restored by Louisville Metro under the direction of the Director of Public Works at the cost and expense of the Company. Work by the Company hereunder shall be done in a workmanlike manner and so as not to unnecessarily interfere with public use of any of said Right of Way.

(b) Replacement, patching and restoration of the Right of Way shall be performed according to the applicable standards and with the materials specified by Louisville Metro, in accordance with the Utility Policy and all laws and ordinances, in force, as amended or updated, throughout the term of the Franchise as required by the Director of Public Works. The Director of Public Works shall have the authority to prescribe the manner and extent of the restoration on reasonable terms, and may do so in written procedures of general application. The Company agrees to comply with all applicable requirements as set forth in the Utility Policy and all laws

and ordinances, in force, as amended or updated, throughout the term of the Franchise.

(c) Material failure of the Company to adhere to this Franchise Agreement--which incorporates the Utility Policy and all laws and ordinances concerning Louisville Metro's Right of Way, presently in force, or as later amended or updated--shall be deemed a violation of this Franchise Agreement. Louisville Metro reserves all rights to enforce said policies and laws. Subject to Section 4(d) below, in the enforcement of its policies and laws, Louisville Metro may utilize any available legal remedy including, but not limited to, the following options: (a) the remedial or penalty provisions of the Utility Policy, (b) ordinal penalty provisions, if any, or (c) suit for breach of the Franchise Agreement.

(d) The agreement to incorporate by reference the Utility Policy and all laws and ordinances concerning Louisville Metro's Right of Way is without waiver of or prejudice to the Company's right to challenge the reasonableness or lawfulness of the provisions contained therein, including, without limitation, that a combination of remedies addressed in Section 4(c) would be unduly punitive. The Company reserves all rights and remedies available to it to challenge any provision contained in the Utility Policy and all laws and ordinances concerning Louisville Metro's Right of Way.

Section 5. Whenever Louisville Metro or any of its departments or agencies shall grade, regrade, widen or alter any Right of Way or shall construct, reconstruct or alter any other municipal public works therein, it shall be the duty of the Company, when so ordered by Louisville Metro, to changes its mains, pipes and appurtenances in the Right of Way at its own expense so as to conform to the established grade or line of such Right of Way and so as not to interfere with such municipal public works so constructed, reconstructed or altered. However, the Company shall not be required to make any such change when the Right of Way in which its Facilities are located is vacated or when the Right of Way is altered for the convenience of abutting property owners or for

private purposes and not as an incident to a public improvement, unless the reasonable cost of such relocation and the loss and expense resulting therefrom is first paid to the Company.

Section 6. (a) As consideration for the granting of the Franchise, the Company agrees it shall defend, indemnify, and hold harmless Louisville Metro from and against claims, suits, causes of action, proceedings, judgments for damages or equitable relief, and costs and expenses asserted against Louisville Metro 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 Louisville Metro's negligence.

(b) Louisville Metro shall notify the Company in writing within a reasonable time of receiving notice of any issue it determines may require indemnification.

(c) The Company shall maintain in full force and effect a commercial general liability insurance policy reasonably acceptable to Louisville Metro with a minimum policy limit of ten million dollars (\$10,000,000.00) per occurrence and twenty million dollars (\$20,000,000.00) in the aggregate and shall provide Louisville Metro with a certificate of insurance evidencing the insurance policy required by this section. The Company may elect to self-insure all or part of this requirement.

(d) The rights reserved to Louisville Metro with respect to the indemnity and insurance provisions under this Section are in addition to all other rights of Louisville Metro, whether reserved by this Franchise or authorized by law, and no action, proceeding or exercise of a right with respect to such insurance policy shall affect any other right Louisville Metro may have.

Section 7. (a) When requested to do so by Louisville Metro, Company shall make available to Louisville Metro copies of its regular monthly or annual statements, reports and records as to heat value and pressure of gas distributed pursuant to this Franchise, and such other

reports as Louisville Metro may reasonably request.

(b) Louisville Metro reserves the right to make such tests of gas meters, pressure, specific gravity and heat value of the gas furnished by Company hereunder as it shall deem necessary or advisable.

(c) The Company agrees further to furnish the Mayor, the Metro Council and the County Attorney for Jefferson County written notice, by certified mail, concurrent with its filing an application with the Public Service Commission for an increase in base rates; and such notice shall specify amount and type of increase to be sought and alerting to Louisville Metro that such a filing is being made. The Company agrees to maintain "as-built" drawings of all Facilities within the Right of Way, and to provide said drawings to the Director of Public Works, as requested.

Section 8. The Company agrees to continue to cooperate with state and local government low-income energy assistance efforts, including state and local government energy assistance programs, and further agrees to the continued operation of a voluntary customer check off system for customer contributions to energy assistance efforts, such as Winterhelp.

Section 9. The Franchise hereby created is not exclusive and shall be of a term of five (5) years contingent upon: (1) the issuance by the Commission of all approvals and certificates required by law; and (2) the award of the Franchise by Louisville Metro to the Company, unless terminated sooner under the terms of this Franchise Agreement. The Franchise may be renewed by subsequent agreement between Metro Council and Company three (3) times subject to the passage of an appropriate ordinance by Metro Council; however no renewals shall extend the total term of the Franchise beyond twenty years from the date of the inception of the Franchise.

The Company is hereby given the right to assign the Franchise created by this Franchise Agreement to any person, firm or corporation able, ready and willing to carry out the terms of this

Franchise, but shall, prior to such assignment, obtain consent from Louisville Metro to such assignment, which consent shall not be unreasonably withheld or delayed.

Section 10. In the event that the Public Service Commission of Kentucky shall cease to have jurisdiction over the Company's retail gas rates and service and no other regulatory authority shall have by law such jurisdiction over retail gas rates and service in Louisville Metro, then Metro Council shall have regulatory jurisdiction over the Company's gas rates and service in the jurisdiction of Louisville Metro within the limits permitted by law and to the extent that the Public Service Commission of Kentucky presently has such jurisdiction; provided, however, the Company shall have the right to seek redress in court by appeal or otherwise from any regulatory order or action of Metro Council on the ground that such order or action is unjust, unreasonable, unlawful or confiscatory.

If Metro Council acquires regulatory jurisdiction as aforesaid, the then existing rules and regulations of the Public Service Commission of Kentucky (or other regulatory authority having jurisdiction) and the rates, rules and regulations of the Company as contained in its filing with such Commission or other authority as to matters of rates and service, shall continue in effect unless and until changed, after hearing, by final order of Metro Council or of court, or unless and until changed by agreement between Louisville Metro and the Company.

In the event that the provision of gas service is deregulated by state legislation, then this Franchise may be terminated upon ninety (90) days written notice by Louisville Metro to the Company if it is determined by Louisville Metro that continuation of the Franchise would be unfair and unreasonable to Louisville Metro or to the customers of the Company, or upon the agreement between Louisville Metro and the Company.

Section 11. Franchise Fee. (a) As compensation for the Franchise granted to the Company, Louisville Metro shall receive payment as determined by the Metro Council, at its

discretion, throughout the term of the Franchise. The total annual payment shall be capped and shall not exceed a total annual Franchise Fee of three percent (3%) of Gross Receipts within the Franchise Area. The Franchise Fee remitted to Louisville Metro may be based, at the discretion of the Metro Council, throughout the term of the Franchise, on: (1) the number of the linear feet of in-service pipeline segments in the LG&E Geographic Information System (GIS) owned or operated by the Company, whether said pipe is used for transmission or distribution, within the Franchise Area; (2) each thousand cubic foot (mcf) of gas utilizing the Company's pipe, pipeline, main, pumping stations or other means to transport, whether for transmission or distribution, for the purpose of providing natural gas service to customers as a local distribution company within the Franchise Area (using the measured mcf of gas delivered to customers as a substitute). Basing any portion of the Franchise Fee upon gas delivered to all LG&E customers does not equate to approval or acquiescence by the Company that customer use outside of the Franchise Area is reasonably related to the calculation of the Franchise Fee for Louisville Metro. If appropriate, this issue may be part of the litigation contemplated in Section 12; (3) a percentage of Gross Receipts; (4) a flat fee; or (5) a combination of any of the above named options. Company will be notified of any intended change by certified mail and shall have 60 days from Metro Council action to make changes to the payment terms. Payment of any amount due under this Franchise shall be made on a monthly basis within thirty (30) days of the end of the preceding calendar month.

Metro Council may, by ordinance, make the Franchise Fee contingent upon the adjudication described in Section 12 below. If Metro Council does not make the Franchise Fee contingent upon such adjudication, but does elect to bring an action contemplated in Section 12, payment of the Franchise Fee, if any, will be made pending the issuance of a final order resolving the matter, and until all appeals, if any, are final and concluded. LG&E will collect and remit the

Franchise Fee, if any, based upon its tariff on file with, and approved by, the Kentucky Public Service Commission. If Metro Council makes the Franchise Fee contingent upon the adjudication of an action contemplated in Section 12, LG&E will not collect or remit any Franchise Fee during the time period in which the action is pending, including any appeals therefrom, and LG&E will have no retroactive obligation to remit payment of the Franchise Fee following of the conclusion of the adjudication and any appeals therefrom. Any decision by Metro Council to reinstate an obligation to remit the Franchise Fee or any change in the recovery method resulting from any action described in Section 12 below shall be treated as a Franchise Fee change described above and the Company shall have 60 days from Metro Council action, final Kentucky Public Service Commission or court action, including from any appeals therefrom, and whichever occurs later, to make changes to payment terms.

(b) At the commencement of the Franchise upon passage, the Franchise Fee shall be a combination of: (1) zero per linear foot as described in Section 11(a) above; (2) six percent (6%) of forty-three cents (\$0.43) per thousand cubic feet (mcf) of gas as described in Section 11(a) above; (3) zero % of Gross Receipts; and (4) no fee is to be collected beginning with bills rendered for the October 2016 billing cycle, and remitted monthly thereafter until such time as Metro Council changes the term by subsequent ordinance. Metro Council makes the Franchise Fee contingent upon the adjudication of an action contemplated in Section 12; LG&E will not collect or remit any Franchise Fee during the time period in which the action is pending, including any appeals therefrom, and LG&E will have no retroactive obligation to remit payment of the Franchise Fee following of the conclusion of the adjudication and any appeals therefrom. Should the adjudication and any appeals therefrom, conclude that the franchise fee should be recovered from the Company's ratepayers as a line item on the bills of customers only in the franchise area, the amount of the fee will automatically revert to zero and no fee will be due from the Company.

(c) Gross Receipts means those amounts of money which the Company receives annually from its customers, including, but not limited to residential, industrial and commercial entities, within the Franchise Area for the retail sale, distribution and/or transportation of gas, under rates, temporary or permanent, authorized by the Kentucky Public Service Commission and represents amounts billed under such rates as adjusted for refunds, the net write-off of uncollectible accounts, corrections or other regulatory adjustments. Gross Receipts also includes but is not limited to any amounts of money earned within Louisville Metro for the use, rental, or lease of the Company's Facilities. Gross Receipts do not include home energy assistance funds ("HEA") or miscellaneous service charges, including but not limited to turn-ons, meter sets, non-sufficient fund charges, late fees and interest, which are related to but are not a part of the actual retail sale of gas.

(d) At a minimum, the Franchise Fee is intended to apply to Gross Receipts related to those services which include the Franchise Fee as part of the Company's tariff filed with the Kentucky Public Service Commission as of the date of the adoption of this Franchise, and the Company expressly agrees that it will continue to pay the Franchise Fee on Gross Receipts derived from these services for the duration of this Franchise. The Company will also assess and pay the Franchise Fee on any such Gross Receipts from revised, amended, or additional tariffs (except for nonrecurring charges in Louisville Metro) unless Louisville Metro specifically indicates that it does not want the Franchise Fee to apply to such Gross Receipts, and subject to any necessary approval by the Kentucky Public Service Commission. Following any changes to calculations of amounts payable hereunder, such payments shall commence with the first billing period following any necessary tariff approval by the Kentucky Public Service Commission. Until such time, the Company will continue collecting and remitting payments to Louisville Metro under the terms of its existing tariff and Franchise Agreement until such time as this tariff approval is obtained.

(e) The Company shall file a complete and accurate report of all Gross Receipts received

within the Franchise Area during the previous month. The report shall be of a design agreed to by the Company and Louisville Metro's Office of Management & Budget (OMB) with sufficient information to confirm the accuracy of the submitted monthly Franchise Fee.

(f) The Company shall file a complete and accurate report, to the best of its ability and knowledge, at the beginning of the Franchise Agreement designating the linear feet of in-service pipeline segments in the LG&E GIS, owned and operated by the Company, whether transmission or distribution, within the Franchise Area. The report may be based upon the same data set as relied upon for the Company's annual report certified to the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration. After the initial report, updated reports, indicating changes to the linear feet of in-service pipeline segments in the LG&E GIS, owned and operated by the Company, whether transmission or distribution, within the Franchise Area shall be supplied annually when the Company certifies its report to the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration. The report shall be provided to Louisville Metro's Office of Management & Budget (OMB) with sufficient information to confirm the accuracy of the submitted monthly franchise fee.

(g) The Company shall file a complete and accurate report, to the best of its ability and knowledge, at the beginning of the Franchise Agreement of all natural gas mcf, utilizing the company's pipe, pipeline, main, pumping stations or other means to transport, whether for transmission or distribution, gas within the Franchise Area during the previous month. After the initial report, an updated report, indicating changes to all natural gas mcf utilizing the company's pipe, pipeline, main, pumping stations or other means to transport, whether for transmission or distribution, gas within the Franchise Area during the previous month, shall accompany the submission of the monthly Franchise Fee. The report shall be of a design agreed to by Louisville Metro's Office of Management & Budget (OMB) with sufficient information to confirm the

accuracy of the submitted monthly Franchise Fee.

(h) No acceptance of any Franchise Fee payment by Louisville Metro 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 Louisville Metro may have for future or additional sums pursuant to this Franchise. Louisville Metro shall have the right to inspect the Company's income, financial, and records relating to gross revenues in order to audit, and to re-compute any amounts determined to be payable under this Franchise. The Company shall respond to a reasonable request for information related to obtaining audit information within ten (10) business days unless agreed otherwise by the parties. This provision in Section 11(h) shall survive the term of any Franchise Agreement awarded pursuant to this Franchise for a period of one (1) year. Any additional amount due to Louisville Metro as a result of the audit shall be paid within ten (10) days following written notice to the Company by Louisville Metro which notice shall include a copy of the audit report. If as a result of such audit or review Louisville Metro determines that the Company has underpaid its Franchise Fee by one percent (1%) or more for any one (1) month period then in addition to making full payment of the relevant obligation it shall reimburse Louisville Metro for all of the reasonable costs associated with the audit or review. If such audit or review is performed in connection with the granting of a new Franchise, a sale or transfer of control of the Company, or a substantive modification of the terms to, or an assignment of this Franchise, the Company shall reimburse Louisville Metro for all of the reasonable costs associated with the audit or review including all out-of-pocket costs for attorneys, accountants and other consultants.

(i) In the event that any Franchise payment or recomputed amount is not made on or before the applicable dates heretofore specified, interest shall be charged from such date at the annual rate of eight percent (8%). With respect to its billing of Louisville Metro, Company agrees to, upon request; provide an explanation of any and all billing adjustments or credits including the account(s)

impacted and any and all late payments.

(j) The Company shall have the right to a refund from Louisville Metro of any fees paid pursuant to this section which are paid in excess of the amount due under this Franchise or are paid in excess of the amount lawfully owed. Any refund amount due to the Company shall be paid within ten (10) days following written notice to Louisville Metro by the Company.

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

Section 12. The agreement of a Franchise Fee structure in Section 11 and implemented throughout the term of the Franchise by the Company does not equate to approval or acquiescence by Louisville Metro to the Company's method of recovery of the entire Franchise Fee, or some portion of the Franchise Fee from the Company's ratepayers within the Franchise Area. This Franchise Agreement contemplates that Louisville Metro reserves the right to challenge the Company's method of recovery of the Franchise Fee at the Kentucky Public Service Commission or any other court of competent jurisdiction. Both Louisville Metro and the Company reserve the right to challenge the jurisdiction of any forum where the Company's method of recovering the cost of the Franchise Fee from its customers is challenged. The Company and Louisville Metro, separately, reserve the right to seek all administrative relief from the Kentucky Public Service Commission or any other court of competent jurisdiction, including appeals of any final orders as permitted by law. The reference to "any other court of competent jurisdiction" in the preceding sentence does not imply or express any agreement by or consent from the Company that any forum other than the Kentucky Public Service Commission has jurisdiction over the Company's recovery of Franchise Fees from its customers.

Section 13(a). In addition to all other rights and powers pertaining to Louisville Metro by virtue of the Franchise created by this Franchise or otherwise, Louisville Metro, 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 Louisville Metro 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 Louisville Metro;

(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 Louisville Metro.

(b) Prior to attempting to terminate or cancel this Franchise pursuant to this section, Louisville Metro 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 13(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, Louisville Metro may place its request for termination of this Franchise as early as the next regular Metro Council meeting agenda. Louisville Metro shall cause to be served upon Company, at least ten (10) days prior to the date of such Metro 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 Metro Council shall consider the request of Louisville Metro 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 Metro 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 Metro Council determines such violation by the Company was without just cause, then the Metro 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 Metro 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 13(a).

Section 14. Louisville Metro shall have the right to cancel this Franchise 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/her 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 approve 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 15. The Company will work and discuss plans with Louisville Metro's Infrastructure Coordination Committee to help coordinate work with Louisville Metro and other utilities.

Section 16 (a). The Company warrants that it will maintain an Emergency Response Plan that is in compliance with the applicable requirements of local, state and federal agencies with jurisdiction and will notify the Department of Public Works and 911 Emergency Communications Center anytime telephonic notice to the Kentucky Public Service Commission is required pursuant to 807 KAR 5:027, Section (3)(a), (c), (d), (f) or (g). Upon written request by Louisville Metro, the Company agrees to meet periodically to review the Emergency Response Plan.

(b) The Company's Emergency Plans shall designate the Company's responsible local emergency officials and a 24 hour emergency contact number. The Company shall, after being notified of an emergency, cooperate with Louisville Metro and respond as soon as possible to protect the public's health, safety and welfare. The response will be subject to the Unified Command Structure of the National Incident Management System (NIMS).

(c) The Company shall cooperate with Louisville Metro and respond to protect public health and safety in the event of an emergency.

(d) In the course of construction, modification, or removal of any of its Facilities in the Right of Way, the Company shall remove and remediate all hazardous substances encountered in the course of its activities in accordance with all applicable state and federal laws, statutes,

regulations, and orders.

Section 17. This Franchise 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 Franchise shall be in a court of competent jurisdiction in Kentucky.


Section 18. This Franchise does not create a contractual relationship with or right of action in favor of a third party against either Louisville Metro or the Company.

Section 19. If any section, sentence, clause or phrase of this Franchise is held unconstitutional or otherwise invalid, such infirmity shall not affect the validity of the remaining Franchise.

Section 20. In case the Company shall fail within thirty (30) days after this bid to comply with the provisions of this Ordinance, the Director of Public Works shall again advertise such Franchise for sale in the manner in which the first sale was made and shall again sell said Franchise in the same manner, and upon the same conditions and requirements in all respects as the original sale of said Franchise was made, and in case the successful bidder at such sale shall fail or refuse to comply with the terms of said sale within the time prescribed, then the Director of Public Works may again advertise such Franchise for sale in the manner prescribed herein and may continue to do so until said Franchise is purchased by some bidder who shall comply with the terms of said sale.

IN WITNESS WHEREOF, the Parties have executed this Franchise Agreement this 30th of August, 2016.

**LOUISVILLE/JEFFERSON COUNTY
METRO GOVERNMENT**



Greg Fischer, Mayor

**LOUISVILLE GAS AND
ELECTRIC COMPANY**

By: _____

Title: _____

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT by and between **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT** of the Commonwealth of Kentucky (the "Louisville Metro", and **LOUISVILLE GAS AND ELECTRIC COMPANY**, a Kentucky corporation having a business address of 220 West Main Street, Louisville, Kentucky 40232 (the "Company"):

WHEREAS, Metro Council passed Ordinance No. 132, Series 2016, to create a Franchise for the transmission, distribution, transportation and sale of gas; and

WHEREAS, the Company submitted its bid for said Franchise which bid has been determined to be the highest and best bid; and

WHEREAS, Metro Council passed Ordinance 214 Series 2016 accepting the bid of the Company;

NOW, THEREFORE, for good and valuable consideration, the parties hereto, agree as follows:

Section 1. There is hereby created a Franchise to acquire, lay, maintain and operate in the public streets, avenues, alleys and other public ways of Louisville Metro, but not within the jurisdiction of any other city located in Jefferson County, Kentucky (the "Franchise Area"), a system of mains, pipes, fixtures and appliances for the transmission, transportation, distribution and sale of gas for heating and other purposes, subject to all the provisions of this Franchise Agreement.

Section 2. The following definitions apply to this Franchise:

(a) "*Company*" means the Party or Person that shall become the purchaser of said Franchise, or any successor or assignee of such Party or Person.

(b) "*Facility*" or "*Facilities*" means any tangible component of the Company's

gas distribution and transmission system, located within the Right of Way of the Franchise Area, including, but not limited to, mains, pipes, pipelines, conduit, valves, meters, or other physical assets used for the delivery of natural gas.

(c) "*Franchise*" or "*Franchise Agreement*" means this Franchise Agreement, as approved by the Metro Council and accepted by the Company.

(d) "*Metro Council*" means the legislative body of Louisville Metro.

(e) "*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.

(f) "*Right of Way*" means the surface of and the space above and below a property, Street or sidewalk, to the extent Louisville Metro has the authority to allow the Company to use them, and shall include Rights of Way as shall be now held or hereafter held by Louisville Metro within the Franchise Area.

(g) "*Street*" means the surface of, and the space below, any public street, road, alley, bridge or highway within Louisville Metro, used or intended to be used by the general public for travel, to the extent Louisville Metro has the authority to allow the Company to use them.

(h) "*Utility Policy*" means the Louisville Metro Public Works & Assets Utility Policy presently in force, or as later amended or updated, throughout the term of the Franchise.

Section 3. The Company shall have the right and privilege of laying and maintaining gas mains and pipes, and appurtenances necessary or appropriate in connection therewith, in, along, under, above and across the said Right of Way, and transmit, transport, distribute and sell gas through said pipes, within the Franchise Area as they now exist or may hereafter be extended; subject to the provisions hereof, Louisville Metro regulations or laws on the use of the Right of

Way by utilities, and to all powers (including police power) inherent in, conferred upon or reserved to said Louisville Metro.

Section 4. (a) No pavements or sidewalks shall be disturbed and no excavation in any of the said Rights of Way will be made, except in strict accordance with the Utility Policy and all laws and ordinances, presently in force, or as later amended or updated, throughout the term of the Franchise on the use of the Right of Way, provided that such pavements and sidewalks and excavations shall be replaced and restored by and at the expense of the Company to Louisville Metro standards in accordance with the Utility Policy and all laws and ordinances, presently in force, or as later amended or updated, throughout the term of the Franchise, as required by the Director of Public Works. Should the Company fail or refuse to replace or restore said pavement, sidewalk or excavation to Louisville Metro standards or condition in accordance with the Utility Policy and all laws and ordinances, in force, as amended or updated, throughout the term of the Franchise as required by the Director of Public Works within a reasonable time, then same may be replaced and restored by Louisville Metro under the direction of the Director of Public Works at the cost and expense of the Company. Work by the Company hereunder shall be done in a workmanlike manner and so as not to unnecessarily interfere with public use of any of said Right of Way.

(b) Replacement, patching and restoration of the Right of Way shall be performed according to the applicable standards and with the materials specified by Louisville Metro, in accordance with the Utility Policy and all laws and ordinances, in force, as amended or updated, throughout the term of the Franchise as required by the Director of Public Works. The Director of Public Works shall have the authority to prescribe the manner and extent of the restoration on reasonable terms, and may do so in written procedures of general application. The Company agrees to comply with all applicable requirements as set forth in the Utility Policy and all laws

and ordinances, in force, as amended or updated, throughout the term of the Franchise.

(c) Material failure of the Company to adhere to this Franchise Agreement--which incorporates the Utility Policy and all laws and ordinances concerning Louisville Metro's Right of Way, presently in force, or as later amended or updated--shall be deemed a violation of this Franchise Agreement. Louisville Metro reserves all rights to enforce said policies and laws. Subject to Section 4(d) below, in the enforcement of its policies and laws, Louisville Metro may utilize any available legal remedy including, but not limited to, the following options: (a) the remedial or penalty provisions of the Utility Policy, (b) ordinal penalty provisions, if any, or (c) suit for breach of the Franchise Agreement.

(d) The agreement to incorporate by reference the Utility Policy and all laws and ordinances concerning Louisville Metro's Right of Way is without waiver of or prejudice to the Company's right to challenge the reasonableness or lawfulness of the provisions contained therein, including, without limitation, that a combination of remedies addressed in Section 4(c) would be unduly punitive. The Company reserves all rights and remedies available to it to challenge any provision contained in the Utility Policy and all laws and ordinances concerning Louisville Metro's Right of Way.

Section 5. Whenever Louisville Metro or any of its departments or agencies shall grade, regrade, widen or alter any Right of Way or shall construct, reconstruct or alter any other municipal public works therein, it shall be the duty of the Company, when so ordered by Louisville Metro, to changes its mains, pipes and appurtenances in the Right of Way at its own expense so as to conform to the established grade or line of such Right of Way and so as not to interfere with such municipal public works so constructed, reconstructed or altered. However, the Company shall not be required to make any such change when the Right of Way in which its Facilities are located is vacated or when the Right of Way is altered for the convenience of abutting property owners or for

private purposes and not as an incident to a public improvement, unless the reasonable cost of such relocation and the loss and expense resulting therefrom is first paid to the Company.

Section 6. (a) As consideration for the granting of the Franchise, the Company agrees it shall defend, indemnify, and hold harmless Louisville Metro from and against claims, suits, causes of action, proceedings, judgments for damages or equitable relief, and costs and expenses asserted against Louisville Metro 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 Louisville Metro's negligence.

(b) Louisville Metro shall notify the Company in writing within a reasonable time of receiving notice of any issue it determines may require indemnification.

(c) The Company shall maintain in full force and effect a commercial general liability insurance policy reasonably acceptable to Louisville Metro with a minimum policy limit of ten million dollars (\$10,000,000.00) per occurrence and twenty million dollars (\$20,000,000.00) in the aggregate and shall provide Louisville Metro with a certificate of insurance evidencing the insurance policy required by this section. The Company may elect to self-insure all or part of this requirement.

(d) The rights reserved to Louisville Metro with respect to the indemnity and insurance provisions under this Section are in addition to all other rights of Louisville Metro, whether reserved by this Franchise or authorized by law, and no action, proceeding or exercise of a right with respect to such insurance policy shall affect any other right Louisville Metro may have.

Section 7. (a) When requested to do so by Louisville Metro, Company shall make available to Louisville Metro copies of its regular monthly or annual statements, reports and records as to heat value and pressure of gas distributed pursuant to this Franchise, and such other

reports as Louisville Metro may reasonably request.

(b) Louisville Metro reserves the right to make such tests of gas meters, pressure, specific gravity and heat value of the gas furnished by Company hereunder as it shall deem necessary or advisable.

(c) The Company agrees further to furnish the Mayor, the Metro Council and the County Attorney for Jefferson County written notice, by certified mail, concurrent with its filing an application with the Public Service Commission for an increase in base rates; and such notice shall specify amount and type of increase to be sought and alerting to Louisville Metro that such a filing is being made. The Company agrees to maintain "as-built" drawings of all Facilities within the Right of Way, and to provide said drawings to the Director of Public Works, as requested.

Section 8. The Company agrees to continue to cooperate with state and local government low-income energy assistance efforts, including state and local government energy assistance programs, and further agrees to the continued operation of a voluntary customer check off system for customer contributions to energy assistance efforts, such as Winterhelp.

Section 9. The Franchise hereby created is not exclusive and shall be of a term of five (5) years contingent upon: (1) the issuance by the Commission of all approvals and certificates required by law; and (2) the award of the Franchise by Louisville Metro to the Company, unless terminated sooner under the terms of this Franchise Agreement. The Franchise may be renewed by subsequent agreement between Metro Council and Company three (3) times subject to the passage of an appropriate ordinance by Metro Council; however no renewals shall extend the total term of the Franchise beyond twenty years from the date of the inception of the Franchise.

The Company is hereby given the right to assign the Franchise created by this Franchise Agreement to any person, firm or corporation able, ready and willing to carry out the terms of this

Franchise, but shall, prior to such assignment, obtain consent from Louisville Metro to such assignment, which consent shall not be unreasonably withheld or delayed.

Section 10. In the event that the Public Service Commission of Kentucky shall cease to have jurisdiction over the Company's retail gas rates and service and no other regulatory authority shall have by law such jurisdiction over retail gas rates and service in Louisville Metro, then Metro Council shall have regulatory jurisdiction over the Company's gas rates and service in the jurisdiction of Louisville Metro within the limits permitted by law and to the extent that the Public Service Commission of Kentucky presently has such jurisdiction; provided, however, the Company shall have the right to seek redress in court by appeal or otherwise from any regulatory order or action of Metro Council on the ground that such order or action is unjust, unreasonable, unlawful or confiscatory.

If Metro Council acquires regulatory jurisdiction as aforesaid, the then existing rules and regulations of the Public Service Commission of Kentucky (or other regulatory authority having jurisdiction) and the rates, rules and regulations of the Company as contained in its filing with such Commission or other authority as to matters of rates and service, shall continue in effect unless and until changed, after hearing, by final order of Metro Council or of court, or unless and until changed by agreement between Louisville Metro and the Company.

In the event that the provision of gas service is deregulated by state legislation, then this Franchise may be terminated upon ninety (90) days written notice by Louisville Metro to the Company if it is determined by Louisville Metro that continuation of the Franchise would be unfair and unreasonable to Louisville Metro or to the customers of the Company, or upon the agreement between Louisville Metro and the Company.

Section 11. Franchise Fee. (a) As compensation for the Franchise granted to the Company, Louisville Metro shall receive payment as determined by the Metro Council, at its

discretion, throughout the term of the Franchise. The total annual payment shall be capped and shall not exceed a total annual Franchise Fee of three percent (3%) of Gross Receipts within the Franchise Area. The Franchise Fee remitted to Louisville Metro may be based, at the discretion of the Metro Council, throughout the term of the Franchise, on: (1) the number of the linear feet of in-service pipeline segments in the LG&E Geographic Information System (GIS) owned or operated by the Company, whether said pipe is used for transmission or distribution, within the Franchise Area; (2) each thousand cubic foot (mcf) of gas utilizing the Company's pipe, pipeline, main, pumping stations or other means to transport, whether for transmission or distribution, for the purpose of providing natural gas service to customers as a local distribution company within the Franchise Area (using the measured mcf of gas delivered to customers as a substitute). Basing any portion of the Franchise Fee upon gas delivered to all LG&E customers does not equate to approval or acquiescence by the Company that customer use outside of the Franchise Area is reasonably related to the calculation of the Franchise Fee for Louisville Metro. If appropriate, this issue may be part of the litigation contemplated in Section 12; (3) a percentage of Gross Receipts; (4) a flat fee; or (5) a combination of any of the above named options. Company will be notified of any intended change by certified mail and shall have 60 days from Metro Council action to make changes to the payment terms. Payment of any amount due under this Franchise shall be made on a monthly basis within thirty (30) days of the end of the preceding calendar month.

Metro Council may, by ordinance, make the Franchise Fee contingent upon the adjudication described in Section 12 below. If Metro Council does not make the Franchise Fee contingent upon such adjudication, but does elect to bring an action contemplated in Section 12, payment of the Franchise Fee, if any, will be made pending the issuance of a final order resolving the matter, and until all appeals, if any, are final and concluded. LG&E will collect and remit the

Franchise Fee, if any, based upon its tariff on file with, and approved by, the Kentucky Public Service Commission. If Metro Council makes the Franchise Fee contingent upon the adjudication of an action contemplated in Section 12, LG&E will not collect or remit any Franchise Fee during the time period in which the action is pending, including any appeals therefrom, and LG&E will have no retroactive obligation to remit payment of the Franchise Fee following of the conclusion of the adjudication and any appeals therefrom. Any decision by Metro Council to reinstate an obligation to remit the Franchise Fee or any change in the recovery method resulting from any action described in Section 12 below shall be treated as a Franchise Fee change described above and the Company shall have 60 days from Metro Council action, final Kentucky Public Service Commission or court action, including from any appeals therefrom, and whichever occurs later, to make changes to payment terms.

(b) At the commencement of the Franchise upon passage, the Franchise Fee shall be a combination of: (1) zero per linear foot as described in Section 11(a) above; (2) six percent (6%) of forty-three cents (\$0.43) per thousand cubic feet (mcf) of gas as described in Section 11(a) above; (3) zero % of Gross Receipts; and (4) no fee is to be collected beginning with bills rendered for the October 2016 billing cycle, and remitted monthly thereafter until such time as Metro Council changes the term by subsequent ordinance. Metro Council makes the Franchise Fee contingent upon the adjudication of an action contemplated in Section 12, LG&E will not collect or remit any Franchise Fee during the time period in which the action is pending, including any appeals therefrom, and LG&E will have no retroactive obligation to remit payment of the Franchise Fee following of the conclusion of the adjudication and any appeals therefrom. Should the adjudication and any appeals therefrom, conclude that the franchise fee should be recovered from the Company's ratepayers as a line item on the bills of customers only in the franchise area, the amount of the fee will automatically revert to zero and no fee will be due from the Company.

(c) Gross Receipts means those amounts of money which the Company receives annually from its customers, including, but not limited to residential, industrial and commercial entities, within the Franchise Area for the retail sale, distribution and/or transportation of gas, under rates, temporary or permanent, authorized by the Kentucky Public Service Commission and represents amounts billed under such rates as adjusted for refunds, the net write-off of uncollectible accounts, corrections or other regulatory adjustments. Gross Receipts also includes but is not limited to any amounts of money earned within Louisville Metro for the use, rental, or lease of the Company's Facilities. Gross Receipts do not include home energy assistance funds ("HEA") or miscellaneous service charges, including but not limited to turn-ons, meter sets, non-sufficient fund charges, late fees and interest, which are related to but are not a part of the actual retail sale of gas.

(d) At a minimum, the Franchise Fee is intended to apply to Gross Receipts related to those services which include the Franchise Fee as part of the Company's tariff filed with the Kentucky Public Service Commission as of the date of the adoption of this Franchise, and the Company expressly agrees that it will continue to pay the Franchise Fee on Gross Receipts derived from these services for the duration of this Franchise. The Company will also assess and pay the Franchise Fee on any such Gross Receipts from revised, amended, or additional tariffs (except for nonrecurring charges in Louisville Metro) unless Louisville Metro specifically indicates that it does not want the Franchise Fee to apply to such Gross Receipts, and subject to any necessary approval by the Kentucky Public Service Commission. Following any changes to calculations of amounts payable hereunder, such payments shall commence with the first billing period following any necessary tariff approval by the Kentucky Public Service Commission. Until such time, the Company will continue collecting and remitting payments to Louisville Metro under the terms of its existing tariff and Franchise Agreement until such time as this tariff approval is obtained.

(e) The Company shall file a complete and accurate report of all Gross Receipts received

within the Franchise Area during the previous month. The report shall be of a design agreed to by the Company and Louisville Metro's Office of Management & Budget (OMB) with sufficient information to confirm the accuracy of the submitted monthly Franchise Fee.

(f) The Company shall file a complete and accurate report, to the best of its ability and knowledge, at the beginning of the Franchise Agreement designating the linear feet of in-service pipeline segments in the LG&E GIS, owned and operated by the Company, whether transmission or distribution, within the Franchise Area. The report may be based upon the same data set as relied upon for the Company's annual report certified to the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration. After the initial report, updated reports, indicating changes to the linear feet of in-service pipeline segments in the LG&E GIS, owned and operated by the Company, whether transmission or distribution, within the Franchise Area shall be supplied annually when the Company certifies its report to the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration. The report shall be provided to Louisville Metro's Office of Management & Budget (OMB) with sufficient information to confirm the accuracy of the submitted monthly franchise fee.

(g) The Company shall file a complete and accurate report, to the best of its ability and knowledge, at the beginning of the Franchise Agreement of all natural gas mcf, utilizing the company's pipe, pipeline, main, pumping stations or other means to transport, whether for transmission or distribution, gas within the Franchise Area during the previous month. After the initial report, an updated report, indicating changes to all natural gas mcf utilizing the company's pipe, pipeline, main, pumping stations or other means to transport, whether for transmission or distribution, gas within the Franchise Area during the previous month, shall accompany the submission of the monthly Franchise Fee. The report shall be of a design agreed to by Louisville Metro's Office of Management & Budget (OMB) with sufficient information to confirm the

accuracy of the submitted monthly Franchise Fee.

(h) No acceptance of any Franchise Fee payment by Louisville Metro 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 Louisville Metro may have for future or additional sums pursuant to this Franchise. Louisville Metro shall have the right to inspect the Company's income, financial, and records relating to gross revenues in order to audit, and to re-compute any amounts determined to be payable under this Franchise. The Company shall respond to a reasonable request for information related to obtaining audit information within ten (10) business days unless agreed otherwise by the parties. This provision in Section 11(h) shall survive the term of any Franchise Agreement awarded pursuant to this Franchise for a period of one (1) year. Any additional amount due to Louisville Metro as a result of the audit shall be paid within ten (10) days following written notice to the Company by Louisville Metro which notice shall include a copy of the audit report. If as a result of such audit or review Louisville Metro determines that the Company has underpaid its Franchise Fee by one percent (1%) or more for any one (1) month period then in addition to making full payment of the relevant obligation it shall reimburse Louisville Metro for all of the reasonable costs associated with the audit or review. If such audit or review is performed in connection with the granting of a new Franchise, a sale or transfer of control of the Company, or a substantive modification of the terms to, or an assignment of this Franchise, the Company shall reimburse Louisville Metro for all of the reasonable costs associated with the audit or review including all out-of-pocket costs for attorneys, accountants and other consultants.

(i) In the event that any Franchise payment or recomputed amount is not made on or before the applicable dates heretofore specified, interest shall be charged from such date at the annual rate of eight percent (8%). With respect to its billing of Louisville Metro, Company agrees to, upon request; provide an explanation of any and all billing adjustments or credits including the account(s)

impacted and any and all late payments.

(j) The Company shall have the right to a refund from Louisville Metro of any fees paid pursuant to this section which are paid in excess of the amount due under this Franchise or are paid in excess of the amount lawfully owed. Any refund amount due to the Company shall be paid within ten (10) days following written notice to Louisville Metro by the Company.

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

Section 12. The agreement of a Franchise Fee structure in Section 11 and implemented throughout the term of the Franchise by the Company does not equate to approval or acquiescence by Louisville Metro to the Company's method of recovery of the entire Franchise Fee, or some portion of the Franchise Fee from the Company's ratepayers within the Franchise Area. This Franchise Agreement contemplates that Louisville Metro reserves the right to challenge the Company's method of recovery of the Franchise Fee at the Kentucky Public Service Commission or any other court of competent jurisdiction. Both Louisville Metro and the Company reserve the right to challenge the jurisdiction of any forum where the Company's method of recovering the cost of the Franchise Fee from its customers is challenged. The Company and Louisville Metro, separately, reserve the right to seek all administrative relief from the Kentucky Public Service Commission or any other court of competent jurisdiction, including appeals of any final orders as permitted by law. The reference to "any other court of competent jurisdiction" in the preceding sentence does not imply or express any agreement by or consent from the Company that any forum other than the Kentucky Public Service Commission has jurisdiction over the Company's recovery of Franchise Fees from its customers.

Section 13(a). In addition to all other rights and powers pertaining to Louisville Metro by virtue of the Franchise created by this Franchise or otherwise, Louisville Metro, 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 Louisville Metro 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 Louisville Metro;

(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 Louisville Metro.

(b) Prior to attempting to terminate or cancel this Franchise pursuant to this section, Louisville Metro 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 13(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, Louisville Metro may place its request for termination of this Franchise as early as the next regular Metro Council meeting agenda. Louisville Metro shall cause to be served upon Company, at least ten (10) days prior to the date of such Metro 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 Metro Council shall consider the request of Louisville Metro 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 Metro 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 Metro Council determines such violation by the Company was without just cause, then the Metro 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 Metro 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 13(a).

Section 14. Louisville Metro shall have the right to cancel this Franchise 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/her 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 15. The Company will work and discuss plans with Louisville Metro's Infrastructure Coordination Committee to help coordinate work with Louisville Metro and other utilities.

Section 16 (a). The Company warrants that it will maintain an Emergency Response Plan that is in compliance with the applicable requirements of local, state and federal agencies with jurisdiction and will notify the Department of Public Works and 911 Emergency Communications Center anytime telephonic notice to the Kentucky Public Service Commission is required pursuant to 807 KAR 5:027, Section (3)(a), (c), (d), (f) or (g). Upon written request by Louisville Metro, the Company agrees to meet periodically to review the Emergency Response Plan.

(b) The Company's Emergency Plans shall designate the Company's responsible local emergency officials and a 24 hour emergency contact number. The Company shall, after being notified of an emergency, cooperate with Louisville Metro and respond as soon as possible to protect the public's health, safety and welfare. The response will be subject to the Unified Command Structure of the National Incident Management System (NIMS).

(c) The Company shall cooperate with Louisville Metro and respond to protect public health and safety in the event of an emergency.

(d) In the course of construction, modification, or removal of any of its Facilities in the Right of Way, the Company shall remove and remediate all hazardous substances encountered in the course of its activities in accordance with all applicable state and federal laws, statutes,

regulations, and orders.

Section 17. This Franchise 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 Franchise shall be in a court of competent jurisdiction in Kentucky.

Section 18. This Franchise does not create a contractual relationship with or right of action in favor of a third party against either Louisville Metro or the Company.

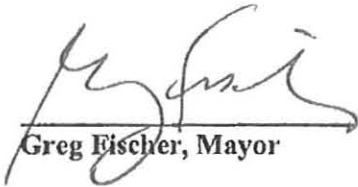
Section 19. If any section, sentence, clause or phrase of this Franchise is held unconstitutional or otherwise invalid, such infirmity shall not affect the validity of the remaining Franchise.

Section 20. In case the Company shall fail within thirty (30) days after this bid to comply with the provisions of this Ordinance, the Director of Public Works shall again advertise such Franchise for sale in the manner in which the first sale was made and shall again sell said Franchise in the same manner, and upon the same conditions and requirements in all respects as the original sale of said Franchise was made, and in case the successful bidder at such sale shall fail or refuse to comply with the terms of said sale within the time prescribed, then the Director of Public Works may again advertise such Franchise for sale in the manner prescribed herein and may continue to do so until said Franchise is purchased by some bidder who shall comply with the terms of said sale.

IN WITNESS WHEREOF, the Parties have executed this Franchise Agreement this 30th of

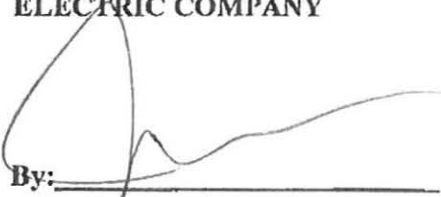
August, 2016.

LOUISVILLE/JEFFERSON COUNTY
METRO GOVERNMENT



Greg Fischer, Mayor

LOUISVILLE GAS AND
ELECTRIC COMPANY



By: _____

Title: VP Customer Services