

**CITY OF BELLEVUE**

**ORDINANCE 2021-05-04**

**AN ORDINANCE OF THE BOARD OF COUNCIL OF THE CITY OF BELLEVUE, CAMPBELL COUNTY, KENTUCKY, PROVIDING FOR THE CREATION OF A FRANCHISE FOR THE DISTRIBUTION OF ELECTRICAL AND NATURAL GAS ENERGY WITHIN THE CITY OF BELLEVUE, CAMPBELL COUNTY, KENTUCKY, DEFINING THE TERMS AND CONDITONS THEREOF AND PROVIDING FOR A BID PROCEDURE THEREFOR; AND ALTERNATIVELY PROVIDING FOR THE PAYMENT OF MINIMUM FRANCHISE FEE FOR ALL PUBLIC UTILITIES DOING BUSINESS IN THE CITY OF BELLEVUE, CAMPBELL COUNTY, KENTUCKY, NOT NOW COVERED BY A CURRENT FRANCHISE.**

WHEREAS, there are certain public utilities, operating their respective businesses within the corporate limits of the City of Bellevue, Kentucky, without current valid franchises from the City of Bellevue, and

WHEREAS, the Board of Council has found and determined that all public utilities operating within the City of Bellevue utilize public streets and rights of way for their operation and that such utilization is a valuable property right and benefits said utilities in that such utilities would otherwise be required to invest substantial capital in right of way costs and acquisition without the use of public streets and rights of way, and such use by utilities results in certain added burden and/or damages to public improvements thereon, so that a public purpose would be served by requiring all public utilities operating within the City to be covered by the terms of the franchise therein, and

WHEREAS, the Constitution of the Commonwealth of Kentucky, Section 162, 163 and 164 and Chapter 96 of the Kentucky Revised Statutes, authorize municipal corporations to require public utilities operating within their boundaries to operate under franchise agreements and to grant utilities the right to use public properties on such conditions as seem proper, and further, KRS 82.082 authorized the City to exercise such powers within its boundaries as are not in conflict with other state law.

**BE IT ORDAINED BY THE CITY OF BELLEVUE, KENTUCKY:**

**SECTION I**

**CREATION OF FRANCHISE.** There is hereby created a franchise granting the right, privilege and franchise for furnishing and to furnish to the City of Bellevue, Kentucky, and to its citizens, residents, and industries, electricity and natural gas for heat, fuel, light and power purposes by one or more persons, companies, or corporations, or other entities capable and willing to provide such service by and through a non-exclusive franchise, and such franchisee shall be granted the right to go upon or under the streets, alleys, or other public ways or places of the City, to lay, maintain, operate and remove poles, electric lines or other suitable structures and wires or any other

appurtenance necessary to transmit electrical current and to lay and maintain mains and other suitable structures or any other appurtenance necessary for the providing of natural gas, subject to limitations by state and local law, and the franchise agreement so entered.. This franchise, granted herein by the City, shall not be exclusive and the City reserves the right to grant a similar franchise to any other person or entity at any time. Upon application by franchisee to the Board of Council, any franchise granted hereunder may be extended to newly annexed territory upon the same terms and conditions herein, subject to approval of the state regulatory authorities if applicable.

## SECTION II

TERM OF FRANCHISE. The franchise herein, pursuant to Kentucky Constitution §164, shall be for a minimum term of five (5) years and a maximum term of twenty (20) years, as may be bid, from the date of the franchise as awarded by the Board of Council.

## SECTION III

OPERATION AND MAINTENANCE. In the maintenance and operation of its transportation and distribution system in the streets, alleys and other public places and in the course of any new construction or addition to its facility, franchisee shall proceed so as to cause the least possible inconvenience to the general public. Franchisee shall be subject to all state and county laws, rules and regulations; additionally franchisee shall be subject to all ordinances and regulations of City including but not limited to the Historical Preservation Commission and Tree Commission.

## SECTION IV

FRANCHISE REQUIREMENTS. In addition to any other franchise requirements hereunder or made or adopted herein as provided, the following requirements shall apply to any franchise granted hereunder.

a) Franchise fee – in consideration of the granting and exercise of a franchise herein, and in further consideration of the grant to the franchisee the right to make use of public streets, alleys, or other public ways in the City, since such public properties are valuable properties acquired and maintained at great expense to the taxpayers of the City, and the grant to franchisee of the right to use same is a valuable property right without which the franchisee would be required to invest substantial capital in right of way costs and acquisitions, franchisee shall pay to the City during the entire life of the franchise a sum equal to three and one-half percent (3½%) annually of the franchisee's gross service revenues, for sales generated within the corporate limits. Franchisee shall pay such sum monthly, on the 15<sup>th</sup> day after the end of each month and shall furnish to the City a certified copy by a public account of its gross revenues received.

b) Any franchise payments to the City by franchisee shall not be in lieu of any occupational, income, license, or property tax, or similar levy, assessment, fee, license or charge which would otherwise apply to be payable by franchisee.

c) Franchisee shall file with the City Clerk of the City of Bellevue, Kentucky and shall thereafter during the entire term of this franchise, maintain in full force and effect, a corporate surety bond or other adequate surety agreement in the

amount and kind specified in this ordinance and conditioned that in the event franchisee shall fail to comply with any one or more of the provisions of the franchise, then there shall be recoverable, jointly and severally, from the principal and surety, any damages or costs suffered or incurred by the City or by any customer of franchisee herein, including attorneys' fees and costs of any action, or proceedings, and including the full amount of any compensation, indemnification, cost of removal of any property or other costs which may be incurred to the principal amount of such bond; and said condition shall be a continuing obligation during the entire term of this franchise, and thereafter, until franchisee shall have satisfied in full any and all obligations of the City and any of its customers hereunder, or other person or entity, which arise out of or pertaining to this franchise. Neither the provisions of this section, nor any bond accepted by the City pursuant hereto, nor any damages recovered by the City thereunder shall be construed to excuse faithful performance by the franchisee or limit the liability of the franchisee under any franchise issued pursuant to this ordinance.

d) Upon acceptance of such franchise, franchisee shall file with the City Clerk of the City of Bellevue, Kentucky, and shall thereafter during the entire term of such franchise, maintain in full force and effect a single limit comprehensive liability policy of insurance with limit comprehensive liability policy of insurance with limits of not less than Two Million Dollars (\$2,000,000) each occurrence and Four Million Dollars (\$4,000,000) aggregate, and which shall insure franchisee, and shall provide primary coverage for the City, its officers, boards, commissions, agents and employees against liability for loss or damage for personal injury, death, and property damage occasioned by any activity or operation of franchisee under such franchise and which shall contain and include a standard cross-liability endorsement thereto. City shall be a named insured on any such policy.

e) Franchisee shall indemnify and hold harmless, the City of Bellevue, Kentucky, its officers, boards, commissions, agents, and employees, against and from any and all claims, demands, causes of actions, actions, suits, proceedings, damages, costs or liabilities (including costs or liabilities of the City with respect to its employees), of every kind and nature whatsoever, including, but not limited to, damages for injury or death or damage to persons or property, and regardless of the merit of any of the same, against all liability to others, and against any loss, costs and expenses resulting or arising out of any of the same, including any attorney fees, accountant fees, expert witness or consultant fees, court costs, per diem expense, traveling and transportation expense, or other costs or expense arising out of or pertaining to actions of franchisee in the exercise or the enjoyment of any privilege hereunder by franchisee, or the granting thereof by the City.

f) Defense of Litigation. Franchisee shall, at its sole risk and expense, upon demand of the City made by and through the City Attorney, David F. Fessler, Esq., or his successor, appear in and defend any and all suits, actions, or other legal proceedings, whether judicial, quasi-judicial, administrative, legislative, or otherwise, brought or instituted or had by third persons or duly constituted authorities, against or affecting the City, its officers, boards, commissions, agents, or employees, and arising out of or pertaining to action of franchisee in the exercise or the enjoyment of such franchise or the granting thereof by the City.

Franchisee shall pay, and satisfy, and shall cause to be paid and satisfied any judgment, decree, order, directive, or demand rendered, made, or issued against franchisee, the City, its officers, boards, commissions, agents or employees in any of

these premises, and such indemnity shall exist and continue without reference to the limitation by the amount of any bond, policy or insurance, deposit, undertaking, or other assurance required hereunder, or otherwise; provided that neither franchisee nor city shall make or enter into any compromise or settlement of any claim, demand, cause of action, action, sit or other proceeding, without first obtaining the written consent of the other.

g) Franchisee shall abide by all provisions of the franchise agreement, and shall further agree that it will not, at any future time, set up as against the City the claim that the provisions of the franchise agreement are unreasonable, arbitrary or void.

#### SECTION V

The purchase or purchasers of the franchise or franchises created hereunder shall provide the highest and best service, equipment, and repairs/ replacements in accordance with accepted standards of the industry and shall maintain a convenient place to be open at reasonable hours for the purposes of paying bills and transacting business with the public, and further, shall keep and maintain such personnel as are reasonable necessary to provide the service so franchised hereby and to respond to customer complaints and to correct defective service.

#### SECTION VI

The purchaser or purchasers of any franchise created hereby shall have the right to break, take up and remove such portion or part of any pavement to make such excavation in the streets and public ways of the City as may be deemed necessary to provide the service so franchised hereby; provided, however, that any such work first be properly approved pursuant to the Code of Ordinances of the City of Bellevue, including any subsequent amendments thereto, and further provided that any such work or project so commenced by franchisee hereunder be promptly and diligently prosecuted to completion and upon such completion the streets, alleys, sidewalks and public ways of the City shall exist in as good condition and repair, as before such work was commenced, pursuant to the Code or Ordinances of the City of Bellevue, or as be hereafter amended and/or the franchise agreement. Further, the franchisee shall, upon request by the City, move and adjust any of its facilities or properties as shall be located on City property on right-of-way at its own expense, during construction or reconstruction of the improvements on such property right-of-way, and such movement or adjustment shall be accomplished within thirty (30) days after request by the City. In the event of non-compliance with the foregoing, the franchisee shall be liable to the City or the contractor, as the case may be, for damages for delay in construction occasioned thereby.

#### SECTION VII

The consideration paid by franchisee hereunder shall be the full and complete consideration for the franchise, privilege, and right granted by the City of Bellevue, and shall be expressly in lieu of any street or alley rental or of any charge for the use or occupancy of said streets, alleys, or public places in the City.

#### SECTION VIII

It shall be the duty of the City Administrator, Frank Warnock, or his successor as soon as practical after the passage of this ordinance to offer for sale at

public auction the franchise and privilege involved herein. Said franchise shall be sold to the best available bidder on the 6<sup>th</sup> day of July, 2021. The City Clerk shall give notice by advertising pursuant to KRS Chapter 424 for request for bids and the time for receipt of same. Any utility subject to the terms and provisions of this ordinance may provide for in its bid any special or extraordinary matters or circumstances which relate or apply to this particular business; all subject, however to the right of rejection of any such bid by the City of Bellevue.

After the time set for the deadline for receipt of bids hereunder, the City Administrator shall report and submit to the Board of Council at the time of its next regular meeting the bids and proposals for its approval. The Board of Council reserves the right for and on behalf of the City to reject any and all bids for said franchises and privileges, and the Board of Council may direct by resolution or ordinance said franchise or franchises to be again offered for sale from time to time until a satisfactory bid or bids shall be received and approved. Each such bid shall be accompanied by a deposit and each bidder shall post bond in accordance with the provisions of KRS 96.020; provided, however, that such deposit and bond need not be made by any bidder which owns and operates within the corporate limits of the City, the plant and equipment sufficient to render the service or services required by this ordinance.

#### SECTION IX

Any franchisee hereunder shall furnish to the City written notice by certified mail of the filing of any application with the Public Service Commission of Kentucky for an increase in rates and charges for a certificate of public convenience and necessity for capital investment, which notice shall be given concurrently with such filing. The City shall be given access, upon request, to all records of the franchisee related to such application.

#### SECTION X

In the event that no bids are received for the franchises hereunder, or in the event that the City does not accept any bids received hereunder, each and every public utility engaged in operating its respective business within the corporate limits of the City of Bellevue which does not hold a valid current franchise from the City of Bellevue to operate within the corporate limits shall have imposed upon it the terms, conditions, and payment of franchise fees set out hereunder, for the right, power and privilege of engaging and operating its respective business within the corporate limits and the right, power and privilege of using the streets, alleys and other public ways or places in the City for and on behalf of the operation of its business.

#### SECTION XI

Any utility, agency, or other entity providing services herein contemplated which is owned and operated by the City or a subordinate agency thereof is excluded from the terms and provisions hereof.

#### SECTION XII

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION XIII

That this ordinance shall be signed by the Mayor, attested by the City Clerk, recorded, published and effective upon publication.

\_\_\_\_\_  
Charlie Cleves, Mayor

ATTEST:

\_\_\_\_\_  
Mary Scott, City Clerk

First Reading: \_\_\_\_\_

Second Reading: \_\_\_\_\_

Publication: \_\_\_\_\_