

AGREEMENT

THIS AGREEMENT ("Agreement") made and entered into as of the 1st day of November, 2018 by and between the Kentucky Municipal Energy Agency ("KYMEA") and the City Utility Commission of the City of Owensboro, Kentucky, doing business as OMU ("OMU"). KYMEA and OMU may hereinafter be referred to individually as a "Party" and collectively as the "Parties."

In consideration of the premises and mutual covenants contained in this Agreement, KYMEA and OMU agree as follows:

ARTICLE 1 – GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky, without regard to its conflict of laws provisions.

ARTICLE 2 - SERVICES

(a) KYMEA shall perform services relating to the pricing, scheduling, and trading of energy ("Services") as requested from time to time by OMU. A general outline of the Services which may be performed pursuant to this Agreement is set forth in Appendix A attached hereto. The Parties acknowledge and agree, however, that the particular nature of the Services to be provided by KYMEA pursuant to this Agreement shall be agreed to by the Parties. All Services provided by KYMEA related to pricing, scheduling, and trading of energy shall be deemed performed pursuant to the terms and conditions hereof.

(b) OMU acknowledges and agrees that KYMEA shall only be required to perform Services which are not included in Appendix A if they are specifically requested by OMU and agreed to by KYMEA.

(c) OMU acknowledges and agrees that notwithstanding the execution of this Agreement, the principal obligation of KYMEA staff shall be the performance of tasks and duties pertaining to the pricing, scheduling and trading of energy for OMU. KYMEA shall perform the Services as time and resources allow and nothing contained herein shall be construed to require KYMEA to hire any additional staff or engage any independent contractors to perform any Services other than KYMEA's energy service provider, Alliance for Cooperative Energy Services Power Marketing LLC ("ACES") or any successor to ACES. KYMEA represents that it presently believes that it will have the time necessary to perform the Services for OMU and agrees to promptly notify OMU if, and when, it anticipates that KYMEA staff will not have the time or resources necessary to adequately perform the Services.

(d) KYMEA shall provide OMU with trading functions and support for a term of 19 months beginning November 1, 2018 through and including May 31, 2020. The Services OMU receives shall include shared services for scheduling, dispatching and market interactions from KYMEA's energy service provider, ACES, for a 13 month term beginning May 1, 2019 through and including May 31, 2020. OMU will also communicate with ACES regarding the services that ACES provides to OMU.

(e) KYMEA shall supply, at KYMEA's sole expense, all equipment, materials, and/or supplies to accomplish the Services and any services agreed to be performed by KYMEA, including, but not limited to, KYMEA's office and computing facilities; provided, however, that the cost and expenses of any specialized software or computing services required solely for the performance of any Service for OMU shall be the responsibility of OMU.

ARTICLE 3 – RELATIONSHIP OF THE PARTIES

(a) Notwithstanding any provision hereof, for all purposes of this Agreement KYMEA shall be and act as an independent contractor and neither Party shall bind nor attempt to bind the other to any contract or agreement. KYMEA is an independent contractor and is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including, but not limited to, Worker's Compensation Insurance. No Federal, State or local income tax or

payroll tax of any kind shall be withheld or paid by OMU on behalf of KYMEA or the employees of KYMEA. The Parties agree that each of them is and must remain in compliance with all Federal, State and local laws regarding business permits and licenses that may be required to carry out the work to be performed under this Agreement. Normal work tasks will be carried out at KYMEA's office unless otherwise agreed to by the Parties. OMU recognizes and acknowledges that KYMEA is engaged in a business and operations which are similar to the business and operations of OMU and OMU also recognizes that KYMEA will perform work and services for its other Members similar to the Services being provided to OMU.

ARTICLE 4 - STANDARD OF CARE

KYMEA shall exercise independent control and shall act with the same degree of care, skill, and diligence in the performance of the Services as it exercises in regard to the business of KYMEA and as is ordinarily possessed and exercised by a professional consultant with similar experience and resources under similar circumstances. Work that is deemed to not meet this standard shall be re-performed by KYMEA at KYMEA's cost and the re-performance of such work shall be the sole remedy available to OMU. ***NO OTHER WARRANTY, EXPRESSED OR IMPLIED, IS INCLUDED IN THIS AGREEMENT.***

ARTICLE 5 - LIMITATION OF LIABILITY

Notwithstanding any provision in this Agreement to the contrary, and to the fullest extent permitted by law, neither Party (including any of its related or affiliated companies) shall be liable to the other Party and each expressly waives all claims for loss of profits, revenue, use, opportunity, and goodwill; and for any special, indirect, incidental, consequential, punitive, or exemplary damages resulting in any way from the performance or non-performance of the Services whether arising under breach of contract or warranty, tort (including negligence), strict liability or other basis of legal liability.

ARTICLE 6 – FEES

KYMEA is performing the Services under this Agreement as a Member benefit of OMU in consideration of OMU's annual membership fees ("Member Fees") and no additional fees, other than items which are out of pocket expenses, the agreed upon cost share of services provided by ACES, as described in Appendix B, and other additional third party costs, shall be charged by KYMEA to OMU for performing the Services hereunder.

ARTICLE 7 - TERMINATION

This Agreement, or the performance of any Services, may be terminated by either party for any reason, and without cause, upon 60 days' prior written notice to the other Party, except that in the event of a termination of the shared services provided by ACES, either Party may terminate this Agreement upon 30 days' prior written notice to the other Party. Termination or suspension of this Agreement shall not reduce or suspend OMU's payment of its Member Fees.

ARTICLE 8 - COMMUNICATIONS

Any notice required by this Agreement shall be made in writing by hand delivery or by a nationally recognized next day delivery service addressed as specified below:

If to KYMEA:

Mr. Doug Buresh
President and CEO
Kentucky Municipal Energy Agency
1700 Eastpoint Parkway, Suite 220
Louisville, KY 40223

If to OMU:

Mr. Kevin Frizzell
General Manager
Owensboro Municipal Utilities
2070 Tamarack Rd.
Owensboro, KY 42302

ARTICLE 9 – ENTIRE AGREEMENT

This Agreement represents the entire agreement between KYMEA and OMU and may only be supplemented, amended or revised by a writing signed by both Parties.

ARTICLE 10 - DISPUTE RESOLUTION / WAIVER OF JURY TRIAL / VENUE

(a) In the event any dispute or controversy arises between the Parties in connection with this Agreement, or any dispute or controversy which arises out of or relates to this Agreement or the relationship established by this Agreement, any provision hereof, the alleged breach hereof, or in any way relating to the subject matter of this Agreement, involving the Parties and/or their respective representatives (hereinafter “Disputes”), even though some or all of such Disputes allegedly are extra contractual in nature, whether based in contract, tort, or otherwise, at law or in equity, under state or federal law, whether provided by statute or the common law, involving damages or any other relief, the Parties shall endeavor in good faith to resolve any such Dispute through mediation conducted in accordance with the rules of the American Arbitration Association for mediation.

(b) In the event the Parties fail to resolve any Dispute through mediation pursuant to paragraph 10(a), each Party hereby knowingly, voluntarily and intentionally waives any rights it may have to a trial by jury in respect of any litigation arising out of, under, or in connection with any Dispute, any course of conduct, course of dealing, statements (whether oral or written) or actions of OMU or KYMEA related hereto and expressly agree to have any such matter adjudicated by a judge sitting in the Daviess Circuit Court in Owensboro, Kentucky, or the United States District Court for the Western District of Kentucky (Owensboro Division), if such litigation is filed by KYMEA, or in the Jefferson Circuit Court in Louisville, Kentucky, or the United States District Court for the Western District of Kentucky (Louisville Division), if such litigation is filed by OMU.

ARTICLE 11 - THIRD PARTY BENEFICIARIES

This Agreement is intended solely for the benefit of the Parties hereto, and nothing herein will be construed to create any duty to, or standard of care with reference to, or any liability to, any person, entity or public agency not a Party hereto.

ARTICLE 12 - NON-WAIVER

The failure of either Party to insist in any instance upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights under this Agreement shall not be construed as a general waiver of any such provision or the relinquishment of any such right, except to the extent such waiver is in writing and signed by an authorized representative of the waiving Party.

ARTICLE 13 - INTERPRETATION AND CONSTRUCTION

This Agreement was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this Agreement and none of the provisions hereof shall be construed against one Party on the ground that such Party drafted this Agreement or any part hereof.

ARTICLE 14 – SEVERABILITY

If any provision or provisions of this Agreement shall be held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall in no way be affected or impaired thereby; and the Parties hereby agree to effect such modifications to this Agreement as shall be reasonably necessary in order to give effect to the original intention of the Parties.

ARTICLE 15 – ASSIGNABILITY

This Agreement may not be assigned, in whole or in part, by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

ARTICLE 16 – TERM OF AGREEMENT

This Agreement will commence on November 1, 2019 and will terminate at 11:59 pm on May 31, 2020, unless earlier terminated pursuant to Article 7. Provided, however, that if OMU chooses to continue to operate its Elmer Smith Station beyond May 31, 2020, or should OMU still require Services beyond that date, the parties agree to negotiate in good faith to extend this Agreement for a reasonable time upon conditions similar to those set out in this Agreement.

ARTICLE 17 – CONFIDENTIALITY

The Parties agrees to use their best efforts to prevent and protect all confidential and proprietary information of each of them from disclosure to any person other than the Parties' employees having a need for disclosure of the confidential and proprietary information in connection with its use in the performance of the Services and agree to take steps reasonably necessary to protect the secrecy of the confidential and proprietary information to the full extent permitted by the Kentucky Open Records Act. Any person receiving such information shall be required to agree to the same covenant of confidentiality. The Parties shall be entitled to injunctive relief to enforce this provision of the Agreement. For purposes of this Agreement, "confidential information" shall only include information which is stamped by a Party as "CONFIDENTIAL," information which is generally known to be confidential in the industry, or information which one Party specifically advises the other Party in writing that it intends to be treated as confidential information.

ARTICLE 18 – INVOICING AND PAYMENT TERMS

KYMEA shall submit monthly invoices to OMU for the Services performed under this Agreement and according to the schedule of fees attached as Appendix B. Invoices shall be submitted to OMU within twenty (20) working days of the end of each month. OMU shall not be liable to KYMEA for any expenses paid or incurred by KYMEA, unless otherwise agreed in writing. OMU shall pay KYMEA within thirty (30) days of receipt of invoice.

ARTICLE 19 - HEADINGS

Section headings used throughout this Agreement are for the convenience of the Parties only and are not to be construed as part of this Agreement.

ARTICLE 20 - COUNTERPARTS

This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

IN WITNESS WHEREOF, KYMEA and OMU have executed this Agreement effective as of the date first written above.

Kentucky Municipal Energy Agency

City Utility Commission of the City of
Owensboro, Kentucky

By: _____

Name: Doug Buresh

Title: President and CEO

Date: _____

By: JTF _____

Name: J.T. Fulkerson

Title: Chairman

Date: _____

APPENDIX A

SCOPE OF SERVICES

KYMEA shall provide Services under the direction of the President and CEO of KYMEA or his designee, which Services are specified below:

(a) The planning, negotiating, purchasing, and selling of electric power and energy or any natural gas that is authorized by OMU to be purchased and/or sold by KYMEA on behalf of OMU, including but not limited to assistance with intraday trading and providing input and analysis of short term pricing.

(b) The entering into, making, executing, delivering, and performing such necessary and proper agreements, writings, or other things that may be necessary or proper to be entered into in accordance with OMU's Energy Risk Management policy and required in providing Services for or on behalf of OMU.

(c) The utilization of any other OMU approved agent or broker in accordance with OMU's Energy Risk Management policy that KYMEA may deem necessary or desirable for the purpose of purchasing and selling any electric power and energy or natural gas that is authorized to be purchased and sold by KYMEA on behalf of OMU.

(d) The negotiation and resolution of any errors or disputes which may arise in the normal course of business between KYMEA and any agent, broker, or entity counterparty as a result of this Agreement, provided that any disputes shall not be settled without the prior consent of OMU.

(e) The planning, negotiating, purchasing, scheduling and maintaining monthly hedging and conversion of hedges for the benefit of, authorization of and on behalf of OMU.

(f) Assistance of scheduling OMU's SEPA power for the benefit of and on behalf of OMU.

(g) The analysis of re-direction of OMU's long term firm transmission position.

(h) The execution of emission trades authorized by OMU.

(i) Use of CFTC jurisdictional transactions which may include, but not be limited to:

- Futures and other Exchange-traded Transactions;
- Swaps: Over the Counter ("OTC") financial swaps, OTC financial swaptions, OTC financial commodity options; and
- Physical Trade Options: A Physical Trade Option is defined as a commodity option purchased by a commercial party that, upon exercise, results in the sale of a physical commodity for immediate (spot) or deferred (forward) shipment or delivery. Common

examples may include heat rate call options (with no forward component, such as capacity), or day-ahead fixed strike price call or put options.

(j) Timely submission of Transaction Analysis Forms and reporting of other transactions done for OMU.

(k) Providing advice regarding and analysis of OMU's position in the capacity market.

KYMEA, under authorization from OMU, will initiate and execute short-term trading and operating strategies designed to optimize OMU's portfolio and within the authority and responsibility delegations given to KYMEA by OMU through the OMU's Risk Management Policy. This Service may include the optimization of contracts, generating assets, and power market activity in either the traditional physical markets or in the ISO structured markets.

KYMEA's Market Analytic Center will monitor all trading activity for compliance with both the OMU's trading authority policy. Exceptions to the trading authority policies shall be reported by KYMEA to OMU's Risk Management Committee.

APPENDIX B
FEES FOR SERVICES

Member Fee:

The monthly Member Fee shall be assessed at the annual rate determined by the KYMEA for each fiscal year based upon the Member's previous year's load. The annual Member Fee as of the date this Agreement is assessed at \$.12 per MWh.

Shared Services under KYMEA's agreement with ACES:

For the period May 1, 2019 through June 30, 2019	\$28,320
For the period July 1, 2019 through May 31, 2020	\$156,168