**Asset Purchase and Sale Agreement**

**This Asset Purchase and Sale Agreement** (“Agreement”) is entered into as of \_\_\_\_\_\_\_\_\_\_, 2018 (the “Effective Date”) by and between **Kentucky Utilities Company** (“Seller”) and **Kentucky Municipal Energy Agency** (“Buyer”).

**Recitals:**

* 1. Seller owns the current transformers, potential transformers, wood poles and wiretapping identified on the table attached hereto as EXHIBIT A and incorporated by reference (the “Property”).
  2. Buyer desires to purchase the Property from Seller and Seller desires to sell the Property to Buyer.

**Agreement:**

**Now, Therefore**, in consideration of the mutual obligations set forth herein, and for othergood and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Sale of Property.** Seller agrees to sell and Buyer agrees to purchase, on the terms hereinafter stated, all of Seller’s right, title and interest in and to the Property.
   1. **Conveyance of Property.** Subject to the conditions set forth below, Seller shall convey the Property to Buyer on May 1, 2019 (the “Closing Date”), by delivering a bill of sale in the form of EXHIBIT B attached hereto and incorporated by reference.
   2. **Documentation.** At least 60 days prior to the Closing Date, Seller shall provide available equipment documentation and drawings related to the Property, including information related to manufacturer, model, description, connections, ratio, voltage/current rating, accuracy and burden rating.
   3. **Access and Investigation**. Between the date hereof and the Closing Date, Seller and its representatives will: (a) afford Buyer and its representatives reasonable access, upon the prior approval of Seller, to Seller's personnel, properties, contracts, books and records and other documents and data as they relate to the Property; and (b) furnish Buyer and Buyer's representatives with such additional information as Buyer may reasonably request.
   4. **Further Assurances**. Each of the parties agrees that it will, upon the request and at the expense of the appropriate party, do, execute, acknowledge and deliver, or will cause to be done, executed, acknowledged and delivered, all such further acts, assignments, transfers, conveyances and such further acts, assignments, transfers, conveyances and assurances as may be required to complete the transactions contemplated herein.
2. **Purchase Price.** On the Closing Date, Buyer shall pay to Seller in immediately available funds the sum of $159,185.00 (the “Purchase Price”).
   1. **Tax on Purchase Price.** Buyer represents to Seller that Buyer is exempt from Kentucky sales and use tax. Buyer acknowledges that Seller is relying on such representation in not collecting and remitting Kentucky sales or use tax. Buyer shall provide documentation of such exemption as may be reasonably requested by Seller.
3. **Force Majeure.** Neither party to this Agreement shall be liable to the other for delays in such party’s performance of its obligations under this Agreement arising from circumstances beyond the reasonable control of such party. Specifically, but without limiting the foregoing, Seller shall not be liable to Buyer for any delay in Seller’s performance arising from Seller’s allocation of resources to the restoration of electric service.
4. **Warranties; Disclaimer of Warranties.**
   1. **Warranty of Title.** Seller expressly warrants that Seller has title to the Property, free of liens or encumbrances created by, through, or under Seller other than the lien under the Indenture from Seller to Bank of New York Mellon, Trustee, dated October 1, 2010, as amended by supplemental indentures (the “Indenture Lien”).
   2. **Disclaimer of Warranties.** SELLER SHALL TRANSFER THE PROPERTY AND BUYER SHALL ACCEPT THE PROPERTY AS IS, WHERE IS AND WITH ALL FAULTS. OTHER THAN THE WARRANTY EXPRESSLY SET FORTH ABOVE, SELLER MAKES NO EXPRESS OR IMPLIED WARRANTIES REGARDING THE PROPERTY INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
5. **Release of Indenture Lien.** Seller shall cause the Indenture Lien to be released with respect to the Property within 90 days following the Closing Date.
6. **Post Conveyance Matters.**
   1. **Responsibility for Claims and Losses.** Buyer shall be responsible for claims and losses arising in connection with the Property which arise after the conveyance of the Property to Buyer.
   2. **Maintenance and Other Obligations.** Buyer acknowledges that the Seller will have no obligation to maintain the Property or any other obligation respecting the Property after the conveyance of the Property to Buyer.
   3. **Limitations of Liability.** In no event will Seller be liable for incidental, consequential, putative, or special damages of any kind, including, without limitation, loss of profits, loss of use, business interruption, loss of product, loss of data, or environmental liability in connection with the Property, whether the claim is based upon theories of contract, negligence, or tort (including, strict liability). SELLER’S AGGREGATE LIABILITY TO BUYER IN CONNECTION WITH THE PROPERTY AND THIS AGREEMENT SHALL NOT EXCEED AN AMOUNT EQUAL TO THE PURCHASE PRICE.
   4. **Indemnity.** Buyer agrees to release, indemnify, hold harmless and defend Seller, its affiliated companies and all of their respective directors, officers, employees, agents and representatives from and against any claim, liability, loss and expense (including, but not limited to, attorney’s fees) arising directly or indirectly from or in connection with Buyer’s use of the Property, including, but not limited to, those arising directly or indirectly from or in connection, to the extent not due to the gross negligence or willful misconduct of Seller.
7. **Termination**
   1. **Termination Events**. This Agreement, by notice given prior to the Closing Date, may be terminated: (1) by either Buyer or Seller if a breach of any provision of this Agreement has been committed by the other party and such breach has not been waived; (2) by mutual consent of Buyer and Seller; or (3) by either Buyer or Seller if the closing has not occurred (other than through the failure of any party seeking to terminate this Agreement to comply fully with its obligations under this Agreement) on or before May 1, 2019, or such later date as the parties may agree upon.
   2. **Effect of Termination**. Each party's right of termination under Section 7 is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of a right of termination will not be an election of remedies. If this Agreement is terminated pursuant to Section 7.1, all further obligations of the parties under this Agreement will terminate; *provided that,* if this Agreement is terminated by a party because of the breach of the Agreement by the other party or because one or more of the conditions to the terminating party's obligations under this Agreement is not satisfied as a result of the other party's failure to comply with its obligations under this Agreement, the terminating party's right to pursue all legal remedies will survive such termination unimpaired.
8. **Entire Agreement; Binding Effect.** This Agreement contains all agreements expressed or implied between the parties hereto concerning the sale and purchase of the Property and shall inure to the benefit of and be binding upon their successors and assigns.
9. **No Adverse Presumption.** The parties acknowledge that this Agreement arose as the result of arm’s-length negotiations between them and that this Agreement is the product of input by all of the parties. Accordingly, any ambiguity or uncertainty is not to be construed against any of the parties.
10. **Notices.** All notices, requests, demands and other communications required or permitted to be given or made under this Agreement, shall be in writing and shall be telecommunicated, delivered either in person, or delivered prepaid by a nationally recognized overnight courier, to the representative of the other party as indicated below. Such representative and address for notices or requests may be changed from time to time by notice by one party to the other.

Any notice to be given in connection with this Agreement shall be deemed given when sent by personal delivery, facsimile or registered United States mail addressed as follows:

If to KU:

Attention: Paul Tirey

Manager, Supply Chain, Electric and Gas Distribution and Transmission

820 West Broadway

Louisville, Kentucky 40202

Paul.Tirey@lge-ku.com

If to KyMEA:

Attention: Doug Buresh, President and CEO

1700 Eastpoint Parkway, Suite 220

Louisville, Kentucky 40223

dburesh@kymea.org

1. **Survival.** The rights and obligations of the parties under this Agreement shall survive the conveyance of the Property to Buyer.
2. **Miscellaneous.** This Agreement may not be assigned, directly or indirectly by operation of merger or direct or indirect change in control, by either party without the written consent of the other party, which consent shall not be unreasonably withheld. This Agreement shall be interpreted and construed in accordance with the laws of the Commonwealth of Kentucky without regard to the conflicts of laws provisions of such commonwealth. The headings and titles of the paragraphs and sections in this Agreement have been inserted as a matter of convenience of reference only and shall not control or affect the meaning or construction of any of the terms and provisions hereof. This Agreement may be executed in any number of counterparts and each such counterpart shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument. If a court in any proceeding holds any provision of this Agreement or its application to any person or circumstance invalid, illegal or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those to which it was held to be invalid, illegal or unenforceable, shall not be affected, and shall be valid, legal and enforceable to the fullest extent permitted by law, but only if and to the extent such enforcement would not materially and adversely frustrate the parties essential objectives as expressed in this Agreement. Furthermore, in lieu of any such invalid or unenforceable term or provision, the parties intend that the court add to this Agreement a provision as similar in terms to such invalid or unenforceable provision as may be valid and enforceable, so as to effect the original intent of the parties to the greatest extent possible. Any waiver of any power, right, remedy or privilege of either party hereunder shall not be effective unless in writing signed by such party. Waiver at any time by either party of rights with respect to a default or any other matter arising in connection with this Agreement shall not be deemed to be a waiver with respect to any subsequent default or matter. Nothing in this Agreement shall entitle any person other than the undersigned parties to any claim, cause of action, remedy or right of any kind.

**IN WITNESS WHEREOF**, the parties have executed the Agreement on the dates set below but effective as of the Effective Date.

**Kentucky Utilities Company Kentucky Municipal Energy Agency:**

Signed by:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Signed by:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**EXHIBIT A**

**Listing of Property**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Municipality Location | Delivery Point Location | Current Transformers (“CTs) and Potential Transformers (“PTs”) | Current Transformer Serial Numbers | Potential Transformer Serial Numbers | Sale Price of CTs and PTs | If Expressly Stated, Sale Price Includes Poles or Wiretapping |
| Barbourville | Barbourville City | 2 CTs / 2 PTs | 611627; 611628 | 620787; 620788 | $ 13,277.00 | Sale price includes meter pole and the wiretapping to the pole (including the insulators tapping off of the tap structure). Kentucky Utilities Company (“KU”) will continue to own the tap structure. |
| Bardwell | Bardwell | 3 CTs / 3 PTs | 5919793; 6578117; 6700087 | K376368; K376376; K376380 | $ 2,068.00 | Not applicable. |
| Berea | Berea 2 | 6 CTs / 6 PTs  1CT/PT combo - spare | C14022890001; 14022890002; 14022890006; C14022890004; 14022890005; C14022890007  14022890003 | P14022890001; 14022890002; 14022890006; P14022890004; 14022890005; P14022890007  14022890003 | $ 70,726.00 | Not applicable. |
| Berea | Berea North | 2 CTs / 2 Pts | 1251450901; 1251450902 | 1251460901; 1251460902 | $ 23,837.00 | Not applicable. |
| Corbin | North Woodpole | 2 CTs / 2 Pts | 1047083; 1047095 | 1047086; 1047091 | $ 13,277.00 | Sale price includes wood pole and Buyer ownership will begin at the end of the transmission line switch on the KU structure. KU will continue to own the switch structure and switch. |
| Corbin | South City | 2 CTs / 2 Pts | MC2075; MC2076 | MP1693; MP1694 | $ 25,114.00 | Not applicable. |
| Madisonville | North | 3 CTs / 3 PTs | 6157072; 6162618; 6162619 | 5838545; 5838547; 5839346 | $ 1,333.00 | Not applicable. |
| Madisonville | East | 3 CTs / 3 PTs | 3578750; 3588275; 3588278 | 4078946-Z; 4650479-Z; 4657197-Z | $ 1,333.00 | Not applicable. |
| Madisonville | GE | 3 CTs / 3 PTs | 3543347; 3607850; 3607852 | F198829; F332795; 5498378 | $ 1,768.00 | Not applicable. |
| Madisonville | West | 3 CTs / 3 PTs | 3394924; 3718864; 3718865 | K554276; K559178; K564872 | $ 1,333.00 | Not applicable. |
| Madisonville | Hospital | 3 CTs / 3 PTs | 3521425; 3715217; 3812356 | 3638330; 3638333; 5672640 | $ 1,333.00 | Not applicable. |
| Madisonville | McCoy | 3 CTs / 3 PTs | 4081170; 4144418; 4170127 | 4082807; 4078951; 5696005 | $ 1,333.00 | Not applicable. |
| Providence | East | 3 CTs / 3 PTs | 3594152; 3694676; 3715220 | K101105; K117687; K376374 | $ 1,116 | Not applicable. |
| Providence | Main | 3 CTs / 3 PTs | 4039549; 4039551; 6708060 | 3446006; 5673368; 5674102 | $ 967 | Not applicable. |
|  |  |  |  |  |  |  |
|  |  | Sub Total for Property |  |  | $ 158,815.00 |  |
|  |  | Administration Fee |  |  | $ 1,000.00 |  |
|  |  | **Purchase Price** |  |  | **$ 159,815.00** |  |

**EXHIBIT B**

**Form of Bill of Sale**

**BILL OF SALE**

**THIS BILL OF SALE** is entered into this 1st day of May, 2019, by and between **Kentucky Utilities Company** (the “Seller”) and **Kentucky Municipal Energy Agency** (the “Buyer”).

1. Transfer of Title: In exchange for consideration of $159,185.00, receipt of which is hereby acknowledged by Seller, Seller hereby transfers to Buyer title to the “Property” as such term is defined in that certain Asset Purchase and Sale Agreement between Buyer and Seller dated ­­\_\_\_\_\_\_\_\_\_\_\_\_\_.
2. The Property is transferred subject to the lien under the Indenture from Seller to Bank of New York Mellon, Trustee, dated October 1, 2010, as amended by supplemental indentures (the “Indenture Lien”). Seller shall cause the Indenture Lien to be released with respect to the Personal Property within 90 days following the date of this Bill of Sale.
3. Limited Warranty. Seller expressly warrants that Seller has title to the Property, free of liens or encumbrances created by, through, or under Seller other than the Indenture Lien which shall be released as provided above. Seller transfers the Property and Buyer accepts the Personal Property AS IS, WHERE IS AND WITH ALL FAULTS. OTHER THAN THE WARRANTY EXPRESSLY SET FORTH ABOVE IN THIS BILL OF SALE, SELLER MAKES NO EXPRESS OR IMPLIED WARRANTIES REGARDING THE PROPERTY INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
4. Governing Law. This Bill of Sale shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky.
5. Counterparts. This Bill of Sale may be executed in any number of counterparts and each such counterpart shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

**Kentucky Utilities Company: Kentucky Municipal Energy Agency:**

Signed by:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Signed by:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_