**AGREEMENT FOR SCHEDULING SEPA ALLOCATION RESOURCES**

This Agreement (the “Agreement”) is entered into as of the 1st day of May, 2019, between **KENTUCKY MUNICIPAL ENERGY AGENCY**, a joint public agency established and existing pursuant to the laws of the Commonwealth of Kentucky (the “Agency”), and the **ELECTRIC PLANT BOARD OF THE CITY OF BENHAM, KENTUCKY** (“Benham”) (each a “Party” and together, the “Parties”).

WITNESSETH:

WHEREAS, the Agency was organized pursuant to Sections 65.210 to 65.300 of the Kentucky Revised Statutes, as amended, known as the "Interlocal Cooperation Act" and was created by virtue of the Interlocal Cooperation Agreement Creating the Kentucky Municipal Energy Agency by and among municipal electric systems in the Commonwealth of Kentucky (the “Interlocal Cooperation Agreement”), which Interlocal Cooperation Agreement was filed with and approved by the Attorney General of the Commonwealth of Kentucky in accordance with law; and

WHEREAS, Benham has a contractual entitlement to electric capacity and energy marketed by the Southeastern Power Administration (“SEPA”) from the Cumberland System of Projects of the United States Army Corps of Engineers pursuant to Benham’s SEPA Contract as defined herein (Benham’s “SEPA Entitlement”); and

WHEREAS, Benham’s contract with SEPA has been subject to a declaration of force majeure by SEPA, and SEPA has adopted a Revised Interim Operations Plan (“RIOP”) effective July 1, 2014 reflecting the completion of repairs to Wolf Creek Dam and continuing repairs to Center Hill Dam; and

WHEREAS, Benham and the Agency have determined that it would be mutually beneficial for the Agency to schedule and integrate on Benham’s behalf the Attributes of Benham’s SEPA Entitlement for the benefit of Benham in accordance with the terms of this Agreement; and

WHEREAS, the Agency is performing similar services for its Members and other municipalities with SEPA entitlements;

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, it is agreed by and between the Parties hereto as follows:

# Definitions

**Agency** means the Kentucky Municipal Energy Agency, as identified in the first paragraph of this Agreement.

**Agreement** means this Agreement for Scheduling SEPA Allocation Resources, as defined in the first paragraph of this Agreement.

**Attributes** means, with respect to Benham’s SEPA Entitlements, all aspects of the entitlements from which value may be derived, including electric capacity, electric energy, and any other characteristics.

**Benham** means the Electric Plant Board of the City of Benham, Kentucky identified in the first paragraph of this Agreement.

**LG&E/KU** means Louisville Gas and Electric Company and Kentucky Utilities Company and their respective successors.

**Notified Termination Date** means the last day of the calendar month which occurs no less than ninety (90) days following the date on which one Party hereto has given notice to the other Party that it intends to terminate, at its option, this Agreement.

**Point of Delivery** or **POD** means the TVA balancing authority export interface with the LG&E/KU balancing authority import interface (LGEE.TVA). The Agency may designate one or more different PODs for the mutual benefit of the Parties.

**SEPA** means the Southeastern Power Administration of the United States Department of Energy, or its successor.

**SEPA Capacity Entitlement** means the then-current allocation by SEPA to Benham of electric generation capacity through Benham’s SEPA Entitlement, as it may be adjusted by SEPA from time to time to reflect operating conditions of the hydroelectric resources marketed by SEPA or to reflect any other revisions SEPA may make to its allocation of electric capacity to Benham. SEPA’s original allocation and RIOP allocation of capacity to Benham and to other municipal SEPA customers in Kentucky is set forth in Appendix A to this Agreement.

**SEPA Contract** means the contract executed by the United States Department of Energy, acting by and through the Southeastern Power Administration and Benham, executed on December 31, 1996, Contract No. 89-00-1501-1066, as it may be amended or replaced during the term of this Agreement.

**SEPA Entitlement** has the meaning as defined in the second recital of this Agreement.

**Service Term** means the period from May 1, 2019, through the end of the term as set forth in Section 2.

**TVA** means the Tennessee Valley Authority, or its successor.

**Uncontrollable Force** means any cause beyond the control of the Party affected, including failure of facilities, flood, earthquake, storm, lightning, fire, explosion, epidemic, pestilence, war, riot, an act of domestic or international terrorism, civil disturbance, labor disturbances, sabotage, or an act of civil or military authorities, including court orders, injunctions, or orders of governmental agencies with proper jurisdiction, which by due diligence and foresight such Party could not reasonably have been expected to avoid.

# Term and Termination

This Agreement shall become effective as of the date first entered above. The Agreement shall remain in effect until the earliest of (a) the Notified Termination Date, (b) the effective date of termination of Benham’s SEPA Contract, or (c) the effective date of termination resulting from the occurrence of an Event of Default in accordance with Section 7; provided that Benham shall remain responsible for any obligations, including but not limited to the Agency’s Servicing Fees, it may have pursuant to the terms of the marketing and sale of electric capacity made by the Agency on behalf of Benham pursuant to Section 4(h) of this Agreement.

#  Benham Authorizations

In order for Benham to efficiently realize the benefits of its SEPA Entitlement as provided in this Agreement, Benham hereby authorizes the Agency during the Service Term to perform the services set forth in Section 4 of this Agreement and to serve as Benham’s exclusive agent in the performance of those services. Benham authorizes the Agency to include Benham’s SEPA Entitlement as a Designated Network Resource of the Agency on behalf of Benham under the LG&E/KU Open Access Transmission Tariff or its successor.

#  Agency Services to Benham

* 1. The Agency hereby agrees to schedule the delivery of the full amount of the Attributes of Benham’s SEPA Entitlement and to integrate those Attributes with those of other power supply resources available to the Agency as the Agency determines to be advantageous to the Agency and not detrimental to Benham. The Agency shall serve as Benham’s agent in communications and coordination between Benham and SEPA. The Agency shall comply with all scheduling requirements and limitations applicable to the Attributes of Benham’s SEPA Entitlement in accordance with the provisions of Benham’s SEPA Contract.
	2. The Agency hereby agrees to arrange for all transmission and related ancillary services required for the scheduling and integration of the Attributes of Benham’s SEPA Entitlement. The Agency will comply with any applicable TVA, LG&E/KU or other transmission provider’s tariff, business practices, and procedures in performing the services under this Agreement.
	3. The Agency or its scheduling agent, currently ACES Power Marketing (“ACES”), shall schedule the delivery of the full amount of energy available from Benham’s SEPA Entitlement at such times and for such use as the Agency determines to be appropriate to achieve the maximum benefit for the Parties. If transmission limitations on the TVA transmission system or at the scheduled POD prevent the Agency from obtaining delivery of the full amount of energy available under Benham’s SEPA Entitlements, the Agency shall accept whatever portion of the entitlements that can be delivered, but shall have no obligation with respect to any remaining energy that is not delivered to the POD, other than making reasonable efforts to find suitable alternatives for obtaining economic benefit from such energy while such transmission limitations occur, including through deferred delivery of such energy to the POD, if permitted. The Agency has already procured firm network transmission service sufficient to deliver energy associated with Benham’s RIOP allocation of SEPA Capacity from the POD to the Agency’s Load, but not sufficient for Benham’s additional capacity increment, if its original SEPA Capacity Entitlement is reinstated. Any costs to acquire additional firm network service for that capacity increment, if requested by Benham, or reduced compensation to Benham resulting from the absence of firm transmission service for delivery of energy associated with that capacity increment shall be Benham’s responsibility.
	4. Transactions shall normally be scheduled “Day-Ahead” Eastern Prevailing Time. The Agency may utilize its scheduling agent for these transactions. The Agency will be responsible for sourcing and delivering the energy scheduled for receipt at a TVA interface. The Agency’s scheduling agent will enter the eTags. The Agency and Benham agree to act in a timely manner and in accordance with any applicable TVA, LG&E/KU or MISO tariff, business practices and procedures to facilitate the effectuation of this Agreement.
	5. The Agency may elect to absorb all or any portion of Benham’s SEPA Entitlement (referred to herein as “Absorbed Energy”) to serve the Agency’s Members’ load the “Agency Load”). To the extent that the Agency determines that any portion of Benham’s SEPA Entitlement scheduled for delivery will not be absorbed to serve the Agency Load, the Agency, or its scheduling agent, will use its best efforts to market, schedule and dispatch an amount of energy each hour equal to the amount of energy associated with the portion of Benham’s SEPA Entitlement scheduled for delivery that exceeds the Absorbed Energy in that hour (referred to herein as “Equivalent Energy”). The Agency shall schedule such Equivalent Energy upon such terms as it deems most advantageous to the Parties, in the forward, day ahead, real-time, or bilateral market. The Agency will use its best judgment in this regard. In the event that transmission service for any portion of the Equivalent Energy is curtailed, the Agency shall seek an alternative market for the energy for which transmission is curtailed (“Curtailed Equivalent Energy”). If no attractive and feasible alternative market for the Curtailed Equivalent Energy is found, the Agency may choose to absorb the Curtailed Equivalent Energy to serve the Agency’s Load (the “Absorbed Curtailed Equivalent Energy”). If no market is found for Curtailed Equivalent Energy and the Agency does not elect to absorb it, such Curtailed Equivalent Energy will be effectively stranded at the TVA-LG&E/KU interface and presumably will be absorbed by TVA (“Stranded Energy”).
	6. The Agency shall compensate Benham monthly for the use of its SEPA Entitlements as provided herein. For the portion of Benham’s SEPA Entitlements representing Absorbed Energy, the Agency will pay Benham the hourly Midcontinent ISO Day Ahead Locational Marginal Price at the LGEE-MISO interface if such Absorbed Energy is scheduled day-ahead. If the Absorbed Energy is scheduled intra-day, the Agency will still pay Benham the hourly Midcontinent ISO Day Ahead Locational Marginal Price at the LGEE-MISO interface, and the Agency will be responsible for any day-ahead/real-time charges/credits associated with such intra-day Absorbed Energy. For the portion of Benham’s SEPA Entitlements representing Absorbed Curtailed Equivalent Energy, the Agency will pay Benham its avoided costs, if any.
	7. For the portion of the Equivalent Energy or Curtailed Equivalent Energy that the Agency succeeds in marketing, the Agency will pay Benham the Net Revenue from the Agency’s sale of such energy. “Net Revenue” shall be the sale revenue realized by the Agency for Equivalent Energy and Curtailed Equivalent Energy, less any costs incurred by the Agency associated with the sale, including, but not limited to, losses, transmission charges, RTO charges, or other costs associated with the sale.
	8. The Agency hereby agrees to market the electric capacity of Benham’s SEPA Entitlements through the MISO annual auctions and the Agency shall pass through to Benham all revenues obtained for the electric capacity, less any direct expenses associated with the sale and marketing. In the alternative the Agency and Benham may agree to market the electric capacity through independent arrangements for the utilization with a third party.
	9. The Agency may elect to absorb all or any portion of the electric capacity of Benham’s SEPA Entitlement (referred to herein as “Absorbed Capacity”) to serve the Agency’s Members’ capacity requirements. If the Parties are unable to agree on the level of compensation for any Absorbed Capacity, then the electric capacity shall be marketed by the Agency pursuant to the preceding paragraph (h).

#  Service Fees

* 1. To compensate the Agency for its scheduling services, so long as Benham is a member of the Agency, Benham shall pay to the Agency the Dispatch/MAC fees, plus any direct costs or expenses assessed to the Agency associated with the scheduling and dispatching of Benham’s SEPA Entitlement (the “Servicing Fees”) set forth in Appendix B attached to this Agreement, which terms are incorporated herein.
	2. The Agency shall deduct its Servicing Fees from the compensation it owes Benham each month. If the net compensation owed to Benham in a month exceeds the amount owed to the Agency by Benham for that month, the Agency shall pay Benham the difference no later than the last day of the immediately following month. If the amount owed to the Agency by Benham in a month exceeds the net compensation owed to Benham by the Agency for that month, Benham shall pay the Agency the difference no later than the last day of the immediately following month.

#  Benham Obligations

* 1. Benham shall be exclusively responsible for maintaining its SEPA Contract in good standing during the Service Term, including by making all payments to SEPA in the amounts and manner required under Benham’s SEPA Contract.
	2. Benham shall fully exercise its rights under its SEPA Contract to enable the Agency to perform the services specified in this Agreement. Upon request from the Agency, Benham shall inform SEPA that the Agency is Benham’s authorized agent for managing Benham’s SEPA Entitlement. Benham shall take no action the effect of which would be to prevent, hinder or delay the Agency from the timely fulfillment of its obligations under this Agreement or from being able to effectively integrate the Attributes of Benham’s SEPA Entitlement with those of other power supply resources available to the Agency as the Agency determines to be advantageous to the Agency and its members and not detrimental to Benham.
	3. Benham and the Agency shall cooperate with each other and with SEPA to fulfill the objectives of this Agreement, including by furnishing information to each other as may be reasonably requested from time to time and by Benham promptly providing to the Agency copies of all notices and correspondence with SEPA regarding the SEPA Entitlement.

#  Default and Remedies

* 1. It shall constitute an “Event of Default” under this Agreement if any one or more of the following occurs and the corresponding cure period, if any, has expired without cure:
		1. The Agency fails in any material respect to comply with or observe any material covenant, warrant, or obligation under this Agreement (except a failure due to causes excused by Uncontrollable Forces or attributable to Benham’s act or failure to act) and such failure continues for a period of thirty (30) days after delivery of notice thereof by Benham, or, if such failure cannot reasonably be cured within such 30-day period, such further period as shall reasonably be required to effect such cure, provided that the Agency commences within the first thirty (30) days to effect such cure and at all times thereafter proceeds diligently to complete such cure as quickly as possible, but in no event shall such failure continue longer than one hundred twenty (120) days.
		2. Benham fails in any material respect to comply with or observe any material covenant, warrant, or obligation under this Agreement (except a failure due to causes excused by Uncontrollable Forces or attributable to the Agency’s act or failure to act) and such failure continues for a period of thirty (30) days after delivery of notice thereof by the Agency, or, if such failure cannot reasonably be cured within such 30-day period, such further period as shall reasonably be required to effect such cure, provided that Benham commences within the first thirty (30) days to effect such cure and at all times thereafter proceeds diligently to complete such cure as quickly as possible, but in no event shall such failure continue longer than one hundred twenty (120) days.
		3. A Party becomes insolvent, or generally does not pay its debts as they become due; or admits in writing its inability to pay its debts; or makes an assignment for the benefit of creditors; or insolvency, reorganization, bankruptcy, or receivership proceedings are commenced by or against a Party and such proceedings are not dismissed or stayed within sixty (60) days.
	2. Upon the occurrence of an Event of Default, the nondefaulting Party may at its option terminate this Agreement by giving twenty-one (21) days’ prior notice thereof to the defaulting Party.
	3. Upon the effective date of termination, this Agreement shall be of no further effect, and neither Party shall have any further obligation to the other under this Agreement except for the payment of any amounts due for services provided prior to cancellation.
	4. In the event of termination of this Agreement upon the occurrence of an Event of Default, the nondefaulting Party shall have the right to seek remedies at law or in equity or damages for the breach of any term, condition, covenant, warranty or obligation under this Agreement.

#  Uncontrollable Force

Neither the Agency nor Benham shall be considered to be in default in respect to any obligation hereunder (other than the obligation of the Agency to compensate Benham for Attributes of Benham’s SEPA Entitlement made available hereunder to the extent compensation is owed under Section 5 hereof) if prevented from fulfilling such obligations by reason of an Uncontrollable Force. The Party claiming an Uncontrollable Force shall give notice and reasonable details of any potential or actual Uncontrollable Force to the other Party as soon as is reasonably practicable, shall provide regularly updated information as to the anticipated occurrence or duration of the Uncontrollable Force, and shall provide prompt notice when it is able to resume performance of those obligations that were affected as a result of the Uncontrollable Force. Either Party rendered unable to fulfill any obligation by reason of an Uncontrollable Force shall exercise due diligence to remove such inability with all reasonable dispatch.

#  Assignment of Agreement

This Agreement shall inure to the benefit of and shall be binding upon the respective successors and assigns of the Parties to this Agreement; provided, however, that neither this Agreement nor any interest herein shall be transferred or assigned by either Party except with the consent in writing of the other Party, which the Party may grant or deny in its sole discretion. The Party seeking to assign this Agreement must provide at least ninety (90) days’ prior written notice to the other Party. No assignment or transfer of this Agreement shall relieve the Parties of any obligation hereunder.

#  Records and Accounts

The Agency shall keep accurate records and accounts of its operations and its determination of amounts owed to Benham under this Contact. Benham shall have the right at any reasonable time to examine such records and accounts. The Agency shall have the right at any reasonable time to examine Benham’s records and accounts regarding implementation of the SEPA Contract.

# Amendment

Neither this Agreement nor any terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing executed by each Party to this Agreement.

#  Indemnification and Liability

The Agency and Benham shall defend and hold each other harmless from any and all claims, liability, and expense, including attorneys' fees, litigation expenses, and any judgment arising out of any bodily injury, death, or damage to property (other than bodily injury, death, or damage to property proximately caused by the other Party or its servants or employees), occurring on their respective properties, including such injury, death, or damage as may be suffered by the Agency or Benham or by third parties, except that the Agency and Benham shall each be responsible for all claims of its respective employees, agents, and servants under workmen's compensation laws or any similar statutes. In no event shall either the Agency or Benham be liable to each other for any indirect, special, incidental, or consequential damages with respect to any claim arising out of this Agreement whether based on contract, tort, strict liability, or otherwise.

#  Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky.

#  Consent to Jurisdiction and Venue

The Agency and Benham hereby consent to the jurisdiction of any state or federal court located within the County of Jefferson, Commonwealth of Kentucky, and each waives any objection it may have based on improper venue or *forum non conveniens* to the conduct of any proceeding in any such court.

#  Waiver of Immunity

Each Party agrees that with respect to obligations under this Agreement and performance thereof, it will not claim immunity, on the grounds of its status as a municipality or an agency comprising municipalities, from: (i) suit, (ii) jurisdiction of court (including a court located outside the jurisdiction of the municipality), (iii) relief by way of injunction, order for specific performance, or recovery of property, (iv) attachment of assets, or (v) execution or enforcement of any judgment.

#  Notices

All notices, invoices, consents, waivers, and other communications required or permitted hereby shall be in writing and shall be deemed to have been given when (i) delivered to the other Party’s address personally, by facsimile, by messenger, by a nationally or internationally recognized overnight delivery service, or otherwise, or (ii) received or rejected by the other Party, if sent by certified mail, return receipt requested, in each case, addressed to the other Party at its address, marked to the attention of the person designated below. In addition, notice shall be provided by email to the other Party’s email address designated below.

If to the Agency:

Kentucky Municipal Energy Agency

Attn: President and CEO

1700 Eastpoint Parkway, Suite 220

Louisville, Kentucky 40223

Email: dburesh@kymea.org

If to Benham:

Electric Plant Board of the City of Benham, Kentucky

Attn: Chairman

P.O. Box 528

Benham, Kentucky 40807

Email: powerboard-deb@hotmail.com

The foregoing names and addresses may be changed by similar written notice at any time.

#  Waivers

* 1. Any waiver at any time by either Party hereto of its rights with respect to a default or any matter arising in connection with this Agreement shall not be deemed to be a waiver with respect to any subsequent default or matter.
	2. The failure of either Party hereto to enforce at any time any of the provisions of this Agreement or to require at any time performance by the other Party hereto of any of the provisions hereof shall in no way be construed to be a waiver of such provisions nor in any way to affect the validity of this Agreement or the right of such Party thereafter to enforce each and every provision hereof.

#  Severability

In the event that any of the terms, covenants, or conditions of this Agreement, or the application of any such term, covenant, or condition, shall be held invalid as to any person or circumstance by any court having jurisdiction under the circumstances, the remainder of this Agreement and the application of its terms, covenants, or conditions to such persons or circumstances shall not be affected thereby.

#  Survival of Obligations

The termination of this Agreement shall not discharge either Party from any obligation it owes to the other Party under this Agreement by reason of any transaction, loss, cost, damage, expense, or liability which shall occur or arise (or the circumstances, events, or basis of which shall occur or arise) prior to such termination. It is the intent of the Parties hereby that any such obligation owed (whether the same shall be known or unknown at the termination of this Agreement or whether the circumstances, events, or basis of the same shall be known or unknown at the termination of this Agreement) shall survive the termination of this Agreement. Cancellation, expiration, or termination of this Agreement shall not relieve the Parties of obligations that expressly survive or by their nature should survive such cancellation, expiration, or termination.

#  Entire Agreement

This Agreement supersedes all previous representations, understandings, negotiations, and agreements, either written or oral, between the Parties or their representatives with respect to the subject matter hereof and constitutes the entire agreement of the Parties with respect to the subject matter hereof.

#  No Third Party Beneficiaries

This Agreement is intended solely for the benefit of the Parties hereto. Nothing in this Agreement shall be construed to create any duty to, or standard of care with reference to, or any liability to, any person not a Party to this Agreement.

#  Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed by its duly authorized official, officer, or representative and its seal to be hereto affixed, if required, effective as of the day, month and year first above written.

[*signatures appear on the next page*]

KENTUCKY MUNICIPAL ENERGY AGENCY

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Doug Buresh, President and CEO

ATTEST:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Rob Leesman, Vice President of Market Analytics

ELECTRIC PLANT BOARD OF THE CITY OF BENHAM, KENTUCKY

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Danny Quillen, Chairman

ATTEST:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Christina Lewis, \_\_\_\_\_\_\_\_\_\_\_

**Appendix A**

**Original and RIOP SEPA Hydropower Allocations**

**for Municipal SEPA Customers in Kentucky**

|  |  |  |
| --- | --- | --- |
| **SEPA Customer** | **SEPA Original Capacity Entitlement****(kW)** | **SEPA RIOP Capacity Entitlement****(kW)** |
| Barbourville | 2,200 | 1,916 |
| Bardstown | 2,247 | 1,957 |
| Bardwell | 542 | 472 |
| Benham | 248 | 216 |
| Corbin | 2,598 | 2,263 |
| Falmouth | 590 | 514 |
| Frankfort | 15,621 | 13,605 |
| Madisonville | 7,803 | 6,796 |
| Benham | 2,556 | 2,226 |
| Paris | 1,364 | 1,188 |
| Providence |  1,231 |  1,072 |
|  |  |  |
| **Total** | **37,000** | **32,225** |

**Appendix B**

**Servicing Fees**

 The cost for the scheduling service as provided for in this Agreement (the “Servicing Fees”) is based on Dispatch/MAC Service Fees. MAC refers to the Agency’s Market Analytics Center through which the Agency tracks, evaluates, and optimizes its operations. The fees as of May 1, 2019 are set forth below. These fees are subject to adjustment from time to time, commensurate with adjustments applicable to the Agency's Members on a non-discriminatory basis.

 Dispatch/MAC Service Fee: The Dispatch/MAC Service Fee is calculated as $0.45 per MWh applied to the total SEPA MWh scheduled. For example, if Benham’s annual scheduled SEPA energy were 3,961 MWh, then its annual Dispatch/MAC Service Fee would be $1,782 (3,961 x $0.45).

**Return to Normal SEPA Operation**

 If and when SEPA returns to normal operation, the Agency will manage and schedule for Benham the resulting increased amounts of energy and capacity plus reserves. All associated increased benefits achieved will be paid to Benham after deducting the Servicing Fees. The extent to which Planning Resource Auction (“PRA”) benefits are able to be achieved for the additional capacity plus reserves will depend on the schedule for the auctions.