

DEVELOPER'S ELECTRIC SERVICE AGREEMENT

Based on the mutual promises and covenants herein, the parties agree as follows:

1. Parties:

- 1.1 _____(hereinafter referred to as the “**Developer**”)
- 1.2 City of Kings Mountain, d/b/a Kings Mountain Energy Services, 1013 N. Piedmont Ave., Kings Mountain, North Carolina 28086, (hereinafter referred to as “**COKM**”).

2. Definitions:

- 2.1 The “**Site**” is a residential or commercial development known as_____. More specifically, this agreement pertains to the electric distribution facilities/infrastructure that will be constructed in _____.
- 2.2 “**Electric Service**” shall include:
 - a. the provision of the electric power and energy to the Customers within the Site, and;
 - b. the installation, operation and maintenance of the electric distribution system (the “**Infrastructure**”) required to provide electric power and energy to each meter location within the Site.
- 2.3 “**Customer(s)**” shall mean any person or entity (, developer, owner, business, etc.) within the Site that may become customer(s) of City of Kings Mountain.
- 2.4 A “**Section**” is a portion of the Site with an approved plat, construction specifications, and drawings ready for installation of streets and utilities, and utility services including Electric Service.
- 2.5 The City of Kings Mountain is a municipal energy provider which has been granted the required certificates, franchises and approvals to lawfully provide Electric Service to an area which includes the Site.

3. Purpose:

- 3.1 By virtue of this Agreement, the Developer requests COKM to install and provide Electric Service to the Site according to terms and conditions defined in this Agreement.
- 3.2 The general purpose of this Agreement is to provide for the installation and operation by COKM of the Infrastructure within the Site and the provision of Electric Service by COKM to Customers within the Site.
- 3.3 By virtue of this Agreement, the parties herein agree to cooperate in the design of the Infrastructure, to coordinate the installation of the Infrastructure with the installation of other utilities, and to establish a plan for provision of Electric Service by COKM.
- 3.4 COKM Tariff for Electric Line Extension and Electric Meter Connect Policy as approved by COKM City Council (the “**Tariff**”) is hereby made a part of this Agreement and is on file and available at COKM offices in Kings Mountain, NC. To the extent that there is any inconsistency between the Tariff and the terms of this Agreement, the terms of this Agreement shall control.

4. Term:

- 4.1 The commitments specified in Section 6 and 7 below shall become effective on the date executed by COKM (the “**Effective Date**”) and shall remain in effect until construction and installation of the Infrastructure to the last location within the Site as defined in section 2.1 is complete. (the “**Term**”).

5. Term of Financial Obligation:

It is agreed that any applicable invoiced cost will be due within 90 days of the date of the execution of this document. Any cost estimate, aid-to-construction, invoiced cost and all agreements considered in this Electric Service Agreement will become null and void if payment(s) have not been received by the City of Kings Mountain within this timeframe.

6. Commitments to the City of Kings Mountain:

- 6.1 Developer agrees to provide the requirements detailed in the Electric Line Extension and Electric Meter Connect Policy – Cost Estimate letter that was provided to the Developer by COKM and is attached to this document as Attachment A.
- 6.2 Developer agrees to promote COKM as the Electric Service provider for the Site.
- 6.3 During the term of this Agreement, the Developer agrees that COKM shall have exclusive rights to market and advertise Electric Service within development information centers and/or model facilities as such may exist.
- 6.4 The Developer agrees to provide to COKM the necessary consents, agreements, easements and access to effectuate the provision of Electric Service, to effectuate the intent of this Agreement and to enter onto the Site to install the Infrastructure consistent with the development of the Site. The costs and expenses incurred to obtain the items mentioned, be borne by the developer.
- 6.5 Developer agrees to provide all electrical requirements for the Commercial Development in writing prior to the initial design by COKM. Any subsequent changes to the electrical requirements after the infrastructure has been installed may result in additional costs to the Developer, Tenant, or the Owner at the time of the request. Any additional charges will be made in accordance with COKM’s then current Line Extension Policy.
- 6.6 The Developer agrees to provide Site plans in an AutoCAD.dwg or ESRI shape file that includes designs for streets, wet utilities, mechanical, electrical, plumbing, and landscaping plans, etc. Developer will also provide notice of construction start dates and construction schedules that are reasonable and industry typical for the type of work to be performed.
- 6.7 Developer agrees to provide at its own cost, survey points for grades, lot corners, street ROW, and other locations reasonably necessary for installation of the Infrastructure.
- 6.8 Upon installation of Infrastructure in accordance with Section 3.3 and as shown and attached as Exhibit A, Developer agrees to pay the cost of Infrastructure relocations required due to Developer request or incorrect survey information.
- 6.9 In the event that the Developer has been provided with a mutually agreed to construction design plan as mentioned in section 7.2.2 and the COKM is then requested by Developer to provide

additional or major revisions to the construction design plan; at the COKM's sole discretion, the Developer may be charged a re-design fee per occurrence that must be paid prior to additional designs being provided. In addition, if Developer fails to pay an invoice prior to the expiration date causing this agreement to become null and void (Section 5); at the COKM's sole discretion, the COKM may charge the Developer a re-design fee per occurrence that must be paid prior to additional invoices being provided. The re-design fee will be assessed as specified in the then current edition of COKM's Line Extension policy. Once the Developer's Agreement has been executed by the Developer, any re-design will necessitate a new Agreement and this Agreement will become null and void.

- 6.10 COKM agrees to install Infrastructure at locations within the Site designated by COKM and mutually agreed upon by the Developer; and as needed to comply with City, County and/or State ordinances and regulations.

7. Commitments to Developer:

- 7.1 COKM agrees to provide DEVELOPER marketing and other promotional materials and information for promotion within the Site.

7.2 The Infrastructure:

7.2.1 COKM will install Infrastructure (to be owned, operated and maintained by COKM) as required to provide Electric Service to each section and/or Customer meter location within the Site. The distribution facilities will be designed and constructed to allow for the best availability of service on each lot within the development, and in such a manner as to provide a high level of reliability and service quality for the end user.

7.2.2 The Infrastructure may include, but is not limited to, poles, primary wire, secondary cables, secondary pedestals, conduits, pad mounted and pole mounted transformers, switchgear, and metering equipment as needed to provide Electric Service. Installation of the Infrastructure will be according to construction plans prepared by COKM and approved by the Developer prior to installation. Electric Service construction plans will be subject to COKM construction standards, applicable law, National Electric Safety Code, and regulations of entities with regulatory authority.

7.2.3 COKM will install the Infrastructure according to a schedule mutually acceptable to both parties. Each party agrees to negotiate in good faith to establish a commercially reasonable schedule for installation of the Infrastructure within the Site. COKM agrees to use good faith efforts to meet deadlines and construction schedules set forth by the Developer.

7.2.4 In the event that COKM is not allowed by the Developer to begin construction of the Infrastructure within ninety (90) calendar days of the execution of this Agreement, or COKM is requested to halt construction of the approved Infrastructure by the Developer for a cumulative of more than thirty (30) calendar days after construction has commenced; at COKM's sole discretion, this Agreement will become null and void and any unused portion of the Contribution will be reimbursed to the Developer; and a new Agreement, cost estimate and Infrastructure design will be required.

7.2.5 COKM will use its reasonable best efforts, subject to good engineering practice, standard electric utility construction practices, National Electric Safety Code, and regulations of entities with regulatory authority, to meet Developer requirements regarding the placement of Infrastructure, street lights, meter bases, etc. to enhance the aesthetics of the project.

7.3 Street Lighting:

- 7.3.1 COKM agrees to install street lighting at locations within the Site designated by the Developer and mutually agreed upon by COKM and as needed to comply with City, County and/or State ordinances and regulations. Street lighting will be placed in accordance with mutually approved street lighting plans which shall be conveyed to COKM prior to planning and installation. Street lighting will be designed and installed concurrent with the initial installation of the Infrastructure.
- 7.3.2 The Developer may, at their option, choose to select a standard pole and fixture style or non-standard pole and fixture style and color from a catalog of street lighting poles and fixtures offered by COKM. Any costs over and above the street light allowance as specified in the COKM's line extension policy will be borne by the Developer.
- 7.3.3 COKM will own, operate, maintain and repair the lighting facilities. The monthly charge for street lighting service will be according to the applicable rate schedule for lighting service in the Tariff. Payment of the monthly charge for street lighting service will be the responsibility of the developer, or home builder, or HOA, according to city ordinance or in the absence of city ordinance, the responsibility of the Developer, or Development Management Company, or HOA, as such may exist. Application to provide electric service for street lighting should be made in advance of installation.

8. Cost of Infrastructure:

- 8.1 By virtue of this Agreement, Infrastructure and lighting facilities will be furnished and installed by COKM upon payment by the Developer of a non-refundable contribution in aid of construction in the amount of _____ (the "**Contribution**").
- 8.2 The Developer acknowledges that all available line extension credits will be totally allocated to installation of the secondary infrastructure for extension of electric facilities to the proposed meter locations within the "Site".
- 8.3 The Developer agrees that each metered location may be required to pay contribution for extension of electric facilities from the installed infrastructure to the meter location within "Site", to the extent such cost exceeds the then current allowances as specified in the COKM's line extension policy.
- 8.4 In the event that the Developer has been provided with a previously and mutually agreed to project design and the COKM is then requested to provide additional or major revisions to the project design; at the COKM's sole discretion, the Developer may be charged up to a \$2,000.00 re-design fee that must be paid prior to additional designs being provided. In addition, if a Developer fails to pay an invoice prior to the expiration date; at the COKM's sole discretion, the COKM may charge the Developer up to a \$2,000.00 re-design fee that must be paid prior to additional invoices being provided.
- 8.5 If the project is released for construction and then cancelled by the Developer, the original aid in construction; less any and all actual costs, and the lesser of 5% of the original cost or \$2,000.00 to cover engineering and materials fees; will be reimbursed.

9. Provision of Easements:

- 9.1 Easements granted to COKM shall be non-exclusive and irrevocable and include the full right, power, and authority to install, use, maintain, repair, and replace the Infrastructure and to use such Infrastructure to provide Electric Service within and outside the Site.
- 9.2 The Developer may use easement areas for purposes that do not unreasonably interfere with COKM' use of the easement areas. Improvements such as landscaping, irrigation equipment, parking, driveways, streets, and other utilities may be placed in, under or upon the easement areas provided that such does not interfere with COKM's use of the easement areas. Improvements such as buildings and walls typically interfere with COKM's use of the easement and may be placed by the Developer in, under or upon the easement areas only with written approval by COKM.
- 9.3 The Developer shall be entitled to relocate easements and easement areas provided that substantially equivalent easement areas are provided prior to such relocation and the Developer pays the cost of relocation of COKM's Infrastructure to the new easement areas.

10 Indemnification and Insurance Requirements:

10.1 Defend, Indemnify, and Hold Harmless.

10.1.1 TO THE FULLEST EXTENT PERMITTED BY LAW, THE DEVELOPER HEREBY RELEASES AND SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS COKM, COKM'S OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS (COLLECTIVELY, THE "INDEMNIFIED PARTIES") FROM AND AGAINST ANY AND ALL LIABILITY, DAMAGES, LOSS, SUITS, CLAIMS, ACTIONS, PENALTIES OR FINES, CAUSES OF ACTION, COSTS AND EXPENSES OF WHATSOEVER NATURE (INCLUDING REASONABLE ATTORNEYS' FEES), CAUSED BY OR ARISING OUT OF OR IN CONNECTION WITH, DIRECTLY OR INDIRECTLY, PROPERTY DAMAGE OR PERSONAL INJURY OR DEATH SUFFERED BY ANY PERSON OR ENTITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE ACT, FAILURE TO ACT OR NEGLIGENCE OF THE DEVELOPER, ITS SERVANTS, AGENTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS AND/OR ANY EMPLOYEES OR AGENTS OF ANY OF THEM AND/OR ANY BREACH BY SERVICES PROVIDER OF THIS AGREEMENT (COLLECTIVELY, THE "LIABILITIES"). SUCH INDEMNIFICATION SHALL, WITHOUT LIMITATION, BE DEEMED A CONTINUING INDEMNIFICATION WITHOUT LIMITATION OF DURATION, WHICH SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT AND THE ACTIVITIES AND OPERATIONS OF SERVICES PROVIDER.

THE DEVELOPER SHALL NOT HAVE ANY RIGHT OR CLAIM AGAINST ANY INDEMNIFIED PARTY BY WAY OF SUBROGATION OR ASSIGNMENT, DEVELOPER HEREBY WAIVING AND RELINQUISHING ANY SUCH RIGHT. TO THE EXTENT THE DEVELOPER IS OBLIGATED TO PROVIDE INSURANCE HEREUNDER, DEVELOPER SHALL REQUIRE ITS INSURANCE CARRIER TO ENDORSE ALL APPLICABLE POLICIES WAIVING THE CARRIER'S RIGHT OF RECOVERY UNDER SUBROGATION OR OTHERWISE IN FAVOR OF THE INDEMNIFIED PARTIES AND PROVIDE A CERTIFICATE OF INSURANCE VERIFYING THIS WAIVER.

10.2 Insurance

- 10.2.1 Without limiting any liabilities or any other obligations of DEVELOPER, DEVELOPER shall provide and maintain the minimum insurance coverage listed below. Coverage will be provided with forms and insurers acceptable to COKM, until all obligations under this Agreement are satisfied.
- 10.2.1.1 Comprehensive General Liability insurance with a minimum combined single limit of not less than ONE MILLION DOLLARS (\$1,000,000) per occurrence and a general aggregate of not less than TWO MILLION DOLLARS (\$2,000,000). The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (with coverage for contractual and employee claims), blanket contractual liability (including coverage for liabilities assumed under this Agreement), and products and completed operations.
- 10.2.1.2 The policies of insurance shall be in such form and issued by an insurer licensed to do insurance business in the State of North Carolina that is satisfactory to COKM. All policies identified above are to be written with insurance companies rated A-VII or greater according to the AM Best rating organization and on a form satisfactory to COKM.
- 10.2.1.3 The policies required above shall be endorsed to include COKM and COKM's officers, directors, agents, and employees as additional insureds and shall be specified as primary insurance and non-contributory regardless of other insurance carried by COKM. The coverage afforded to COKM as an additional insured shall not be restricted to "ongoing operations," coverage for vicarious liability, or circumstances in which the DEVELOPER is primarily negligent. Any policy that limits coverage afforded to COKM as additional insureds to liabilities arising out of the acts or omissions of COKM, or which contain other similar limitations, shall not be in compliance with the requirements of this Agreement.
- 10.2.1.4 A certificate of insurance acceptable to COKM shall be issued to COKM as evidence that policies providing the required coverages, conditions and limits are in full force and effect. Such certificate(s) shall provide that all insurance requirements contained in this Agreement have been met and contain provisions that coverage afforded under the policies will not be canceled, terminated or materially altered until at least 30 days prior written notice has been given to COKM.
- 10.2.1.5 COKM reserves the right to require certified copies of any or all policies or policy endorsements.
- 10.2.1.6 DEVELOPER hereby waives all rights of subrogation against COKM and its directors, officers, employees, agents and insurers and all policies of insurance required to be obtained shall contain a provision stating that the insurance carriers and underwriters waive all rights of subrogation in favor of COKM and its directors, officers, employees, agents and insurers.
- 10.2.1.7 Failure on the part of DEVELOPER to procure or maintain required insurance shall constitute a material breach of contract upon which COKM may immediately terminate this Agreement.

10.3 Damage to COKM's Equipment or Materials

10.3.1 In the event that COKM's equipment or Materials are damaged by the Developer or their sub-contractors, COKM shall be reimbursed by the Developer for said damages in a timely manner.

10.4 Term of Insurance Requirements

10.4.1 The Developer shall be required to provide the insurance coverages listed as a condition of the execution of this Agreement and shall continue to maintain said coverages for two (2) years following the completion of the Term of this Agreement.

11 Miscellaneous:

11.1 The provisions of this agreement are severable, and in the event a portion of this Agreement is determined by a court of competent jurisdiction to be invalid, in whole or in part, the remaining provisions shall remain in full force and effect.

11.2 This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successors-in-interest, legal representatives and assigns. Developer agrees that its obligations under this Agreement shall constitute covenants running with the land.

11.3 This Agreement contains confidential information that is legally privileged and intended only for the use of COKM and Developer. Disclosure of this information outside of the intended users is strictly prohibited. If disclosure of a Party's confidential information is sought through process of a court, or a state or federal regulatory agency or other legal compulsion, the Party receiving such request will notify the other Party immediately to afford the other Party the opportunity to oppose such disclosure or otherwise seek a protective order or other relief as may be available but shall not be obligated to incur any expense to do so. The Party receiving such disclosure request will cooperate with the other Party in its attempts to obtain such protections.

11.4 All notices, payments, consents, or presentments to be given pursuant to this Agreement by any party shall be in writing and shall be deemed given when personally delivered or when sent by certified or registered mail, return receipt requested, or by facsimile with printed confirmation, to the other parties, addressed to the parties as shown in Section 1 of this Agreement.

11.5 Neither party shall be liable for delays in delivery or performance, or for failure to deliver or perform when caused by any of the following: Acts of God, acts of the public enemy, acts or failures by the other party, acts of civil or military authority, governmental priorities, strikes or other labor disturbances, hurricanes, earthquakes, fires, floods, epidemics, embargoes, war, riots, delays in transportation, loss or damage to goods in transit, and other causes beyond the reasonable control of the party. In the event of such delay, the date of delivery or performance shall be extended for a period equal to the effect of the time lost by reason of the delay. The delayed party shall use its reasonable efforts to minimize the period of delay wherever possible.

11.6 This Agreement shall be construed in accordance with, and under the laws of, the State of North Carolina, and COKM's obligations under this Agreement are subject to all laws, rules, regulations, ordinances, statutes, licenses and franchise agreements of all governmental or other authorities with jurisdiction over COKM, the Site or the provision of services hereunder. Situs for any disputes or claims shall be in the General Courts of Justice for Cleveland County, North Carolina.

- 11.7 This Agreement may be executed in multiple counterparts, and each counterpart shall be considered as if it were an original.
- 11.8 This Agreement constitutes the complete and final agreement between the Parties with respect to the subject matter hereof and may not be contradicted by evidence of prior or contemporaneous oral agreements of the Parties. There are no oral agreements between the Parties.
- 11.9 This agreement may not be assigned without the express written consent and permission of the City.

EXECUTED to be effective as of the date executed by COKM as shown below.

DEVELOPER:

By: _____

Name: _____

Date: _____

COKM:

City of Kings Mountain

By: _____

Name: _____

Date: _____