

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS GRANTING TO ENTERGY TEXAS, INC. THE RIGHT, PRIVILEGE AND FRANCHISE TO CONDUCT WITHIN THE CITY AN ELECTRICAL LIGHTING AND POWER BUSINESS; PROVIDING AN EFFECTIVE DATE UPON ACCEPTANCE IN WRITING BY ENTERGY TEXAS, INC.

WHEREAS, Entergy Texas, Inc. (the "Company") is an electric utility operating within the municipal limits of the City of Montgomery, Texas (the "City"); and

WHEREAS, it is convenient and necessary for the Company to use the public rights-of-way of City for the placement of facilities and appurtenances (including communications facilities) necessary or proper for the transmission and distribution of electricity and communication including broadband over power line communications services within and through the municipal limits of City; and

WHEREAS, the City is the steward of public property and it is reasonable and proper to collect a fee for the use and occupation of public rights-of-way under Public Utilities Regulatory Act ("PURA") § 33.008; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS:

Section 1. Findings of Fact. All of the matters and facts set out in the preamble hereof are true and correct and are adopted as findings of the City Council.

Section 2. Franchise Agreement. That the Franchise Agreement attached hereto is approved.

Section 3. Effective Date. This Ordinance is effective on July 1, 2022 for a term of twenty-five (25) years.

Section 4. Filing. The City Secretary is hereby instructed to include this Ordinance in the records of the City.

Section 5. Proper Notice and Meeting. The City Council officially finds, determines, recites and declares that a sufficient written notice of the date, hour, place and subject of this meeting of the City Council was posted at a place convenient to the public at the City Hall of the City for the time required by law preceding this meeting, as required by the Open Meetings Law, Texas Government Code, Chapter 551 and that this meeting has been open to the public as required by law at all times during which this Ordinance and the subject matter thereof has been discussed, considered and formally acted upon. The City Council further ratifies, approves and confirms such written notice and the contents and posting thereof.

Section 6. Severability. It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this Ordinance are severable, and if any phrase, clause sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Ordinance, and the remainder of this Ordinance shall be enforced as written.

PASSED AND APPROVED this ____ day of _____ 2022.

CITY OF MONTGOMERY:

BYRON SANFORD, Mayor

APPROVED:

ATTEST:

ALAN P. PETROV, Attorney

NICOLA BROWE, City Secretary

FRANCHISE AGREEMENT

Section 1: That, subject to the terms, conditions and provisions of this ordinance, the City of Montgomery, Texas, hereinafter referred to as “City,” does hereby grant unto Entergy Texas, Inc., hereinafter referred to as “Company”, the right, privilege and franchise to conduct within the City an electrical lighting and power business and to enter upon, erect, construct, maintain, extend, repair, replace and remove in, under, upon, over, above, across and along any and all of the present and future public roads (notwithstanding any use restrictions), highways, parks, streets, lands, alleys, whether designated or undesignated and other public areas and rights of way of the City and over, under, above, along and across any and all streams, canals, bayous, embankments and bridges, now or hereafter owned or controlled by the City (hereinafter referred to as “Public Rights-of-Way”), a system of poles, pole lines, towers, distribution lines, transmission lines, wires, guys, cables, conduits, transformers and other distribution and transmission instrumentalities, facilities and appurtenances (including communications facilities) necessary or proper for the transmission and distribution of electricity and communication including broadband over power line communications services (“BPL”) into, in, within, from, across, and through the City, as now existing, or as said City limits may hereafter be extended (hereinafter referred to as “Company Facilities”); and Company is authorized to use Company Facilities for the transmission, distribution, delivery and sale of electricity and communication to the municipality and to the inhabitants of the City and to any governmental agency, and to any governmental subdivision, and to any person, firm or corporation, wherever located, within or without the City limits of the City of Montgomery, Texas, for use by such purchaser, or

purchasers, for light, power, cooling and heat, and for any other purpose, or purposes, whether same or different from those herein specified, for which electricity may be used. Provided, this Franchise does not include places where the City's authority to permit such installations is or hereafter may be withdrawn by the State, or where the Texas Department of Transportation or other State agency constructs or maintains such public facility or place and lawfully excludes the authority of the City to permit such public utility and BPL installations therein. In the event that the City abandons a Public Right-of-Way, City shall ensure that the Company has access to sufficient and reasonable Right-of-Way to maintain Companies Facilities.

Section 2: The right, privilege and franchise granted under this Franchise Ordinance is, at all times, subject to the continuing police power of the City; and the Company shall comply with all present and future laws, ordinances and regulations of the State of Texas and the City enacted pursuant to the City's or State's police power.

Section 3: Upon the filing with the City by Company of the acceptance required hereunder, this franchise shall be in full force and effect for a term and period of twenty-five (25) years commencing upon, and extending from July 1, 2022 ("Effective Date").

Provided that if, subsequent to the Effective Date of this Agreement, any Texas municipality or City, within the Company's service area ("Other City or Municipality") enters into with Company a franchise term of less than twenty-five (25) years, the City will have the right after reasonable notice to receive the same term. If the City elects to exercise this right, the new contract term will begin upon passage of an amendment to this franchise approving of the same term as the other municipality and end when the new term has run in its entirety, no matter how many years had expired under the original

twenty-five year term. Provided however, this provision is not applicable if the Other City or Municipality is precluded from entering into a twenty-five (25) year term by law or city charter.

Section 4: Company, on written request of any person, shall relocate, raise or lower its wires temporarily to permit construction work in the vicinity thereof, or to permit the moving of houses or other bulky structures. The expense of such temporary relocation, raising or lowering of such wires shall be paid by the benefited party or parties and the Company may require the payment in advance, being without obligation to remove, raise or lower its wires until such payment shall have been made. The Company shall be given not less than forty-eight hours prior notice to arrange for such temporary wire change.

Section 5: The City shall have the power at any time to require the Company to change permanently the route and position of Company Facilities when the City shall find, by resolution, that such change is necessary in the closing, opening, widening or relocating of streets or alleys, or water or sewer lines, or the changing of grade of streets or alleys. The City shall use its best reasonable efforts to consult and confer with the Company before requiring any such relocation or raising or lowering of its lines or cables, with a view to accomplishing the result in a reasonable and economical manner. If it becomes necessary to relocate any lines or facilities, City will provide suitable Right of Way adjacent to the relocated street, alley, water line, or sewer line, without any cost or expense to Company. The obligation to change the route does not require the placement of overhead lines underground unless the City pays for the increased costs of placing the lines underground. With the exception of costs incurred by the City in the

preceding sentence, all other costs of relocation pursuant to this section shall be paid by the Company. Provided, however, the Company shall be entitled to be paid for its costs of relocation required by the City if such expenses or costs are reimbursable or payable to the Company or to the City or the State of Texas, the United States, or any agency or subdivision of either whether directly or indirectly.

Section 6: To the extent that the City has authority to do so, it gives to Company, during the life of this Franchise, the right, license, privilege and permission to trim and remove trees and other vegetation, using generally accepted methods within the vegetation management industry, located upon and overhanging the streets, alleys, easements, sidewalks and public places of City, that interfere or offer hazards to the operation of Company's facilities used or useful for the rendition of electric service. The Company is responsible for the prompt removal and disposal of all trimmings associated with maintenance of its lines and facilities.

Section 7: Nothing contained in this ordinance shall ever be construed as conferring upon Company any exclusive rights or privileges of any nature whatsoever.

Section 8: If any provision, section, sub-section, sentence, clause, or phrase of this ordinance is, for any reason, held to be unconstitutional, void, or invalid (or for any reason unenforceable) the validity of the remaining portions of this ordinance shall not be affected thereby, it being the intent of the City in adopting this ordinance that no portion thereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion, provision or regulation, and, to this end, all provisions of this ordinance are declared to be severable.

Section 9: The City, by granting this Franchise, does not surrender or to any extent lose, waive, impair or lessen the lawful powers and rights, now or hereafter vested in the City under the constitution and statutes of the State of Texas to regulate the rates for services of Company; and Company, by its acceptance of this franchise, agrees that all such lawful regulatory powers and rights, as the same may be from time to time vested in the City, shall be in full force and effect and subject to the exercise by the City at any time.

Section 10: As compensation to City for the use and occupancy of its Public Rights-of-Way, and in consideration for the other rights and privileges herein granted, Company agrees to pay to the City and City agrees to accept from Company on September 1, 2022, and on each September 1 thereafter occurring during the continuance of this agreement, a fee equal to \$0.0021903 (“Base Franchise Fee Factor”) multiplied times the number of kilowatt hours delivered during the period commencing on July 1 of the previous calendar year and ending on June 30 of the calendar year in which the payment is due, inclusive, by Company to retail customers whose consuming facility’s point of delivery is within the City’s boundaries. Each payment herein provided shall compensate the City for the use of its Public Rights of Way by the Company for the twelve months period commencing upon, and extending from July 1 of the calendar year that such particular payment is actually due and paid.

At the time of each annual September 1 payment, Company shall also submit to the City a sworn statement showing the following: (i) its kilowatt hour sales delivered in total to the retail customers whose consuming facilities’ points of delivery are located within the City’s boundaries for the preceding year upon which the franchise fee

payments are calculated; and (ii) a calculation of the annual Base Franchise Fee payment. The statement shall be in a form substantially similar to attachment “A.”

Provided that if, subsequent to the Effective Date of this Agreement, any Texas municipality within the Company’s service area negotiates with Company a methodology for calculation of the payment of the franchise different than the Base Franchise Fee kWh factor methodology used in this section and the Incremental Franchise Fee kWh factor methodology used in Section 11(A), the City will have the right after reasonable notice to utilize the same methodology.

The parties agree that the payments due under this franchise are reasonable and necessary and that the parties shall use their best efforts to enable Company to recover these payments through its electric rates.

Section 11: In the event that City shall seek to increase the amount it receives from Company as compensation under this Agreement, such increase shall be controlled by the following language with the Incremental Franchise Fee as referenced below determined by subsequent ordinance.

Section 11(A): In addition to the compensation set out in Section 10, and subject to the provisions of Subsection 11(C), Company shall pay on or before the 15th day of May, August, November and February (“Payment Date”) an amount equal to a \$(To be determined) charge per kilowatt hour (“Incremental Franchise Fee”) multiplied times the number of kilowatt hours delivered by Company during the preceding calendar quarter ending March, June, September, and December (“Calculation Period”), in total to retail customers whose consuming facilities points of delivery were located within the City’s boundaries less any applicable taxes including gross receipts taxes. This amount shall be

referred to as “Incremental Amounts.” The first quarterly payment due under this subsection will be due on the first Payment Date following the first complete Calculation Period after the surcharge set forth in 11(B) has been approved. Notwithstanding Section 11(B), the first payment will include any Surcharge collections during any partial Calculation Period.

At the time of each quarterly payment for Incremental Amounts, Company shall also submit to the City a sworn statement showing the following: (i) its kilowatt hour sales delivered in total to the retail customers whose consuming facilities’ points of delivery are located within the City’s boundaries for the preceding quarter upon which the franchise fee payments are calculated; and (ii) a calculation of the quarterly Incremental Franchise Fee payment. The statement shall be in a form substantially similar to attachment “B.”

Section 11(B): An underlying premise of this Franchise Agreement is that the Company shall be kept financially whole with respect to any and all Incremental Amounts, as defined above in this Section 11(A). The Incremental Amounts will be collected through a Surcharge adopted and approved by City applicable to all retail customers whose consuming facility’s point of delivery are located within the City’s boundaries. The amount to be paid to City on each Payment Date shall never exceed the amount collected by Company during the corresponding Calculation Period while the Surcharge is in effect.

In the event the Public Utility Commission of Texas (“PUCT”) or a court of competent jurisdiction finds the amounts collected by Company through the Surcharge are improper and disallows or requires repayment (“Disallowed Amounts”), Company

shall be entitled to collect all Disallowed Amounts through either direct payment by City or a reduction of any subsequent franchise payments to City as provided in this Subsection. Prior to Company's reduction in franchise payments, Company shall provide the City 30 days for a one-time opportunity to make a direct payment to Company of any Disallowed Amounts, such 30 days to run from City's receipt of Company's written notice, which shall identify the Disallowed Amounts, the time period over which the Disallowed Amounts accrued and an explanation of the calculations. Subsequent to said 30-day period, and in the absence of timely direct payment by the City of the entirety of the Disallowed Amounts, Company is authorized to reduce any future franchise payment(s) in an amount equal to any Disallowed Amounts not paid by the City. Company is authorized to implement the procedures set forth in this Subsection periodically as Company, in its sole discretion, determines is necessary to recover any ongoing Disallowed Amounts.

The corresponding Surcharge described in this Subsection 11(B) shall appear as a line item on Company's retail electric bill and identified as a "Municipal Franchise Fee."

Notwithstanding any other provision in this Franchise Agreement, if at any time the Incremental Franchise Fee portion is ever included in base rates, the Incremental Franchise Fee Surcharge will cease as of the Effective Date of the new base rates that incorporate the previously surcharged Incremental Amounts and the incremental amounts will continue to be paid as set forth in Section 11(A).

Section 11(C): Upon the occurrence of any of the following events, the Incremental Franchise Fee rate and quarterly payments provided for in Subsection 11(A)

shall no longer be applicable or effective for the purpose of calculating the franchise payment:

i. the PUCT or a court of competent jurisdiction 1) finds the corresponding Surcharge unlawful or otherwise prohibits the Surcharge recovery of the Incremental Amounts; 2) finds that the franchise fees calculated under this Section 11(A), or the amounts collected through the corresponding surcharge or through a reduction in franchise payments, as provided herein, may not be recovered by Company from its customers; or 3) in some manner prevents or prohibits Company from recovering said Incremental Amounts; and

ii. with respect to the preparation for, or implementation of, retail open access in Company's Texas service territory, Company or Entergy's affiliate distribution company in Texas ("DISCO") or Entergy's affiliate retail electric provider in Texas ("REP"), at any time, is not permitted to implement the monthly Surcharge described in Subsection 11(B).

Upon the occurrence of any of the events enumerated in Subsections 11(C) i or ii, only the franchise rate contained in Section 10 shall be applicable and effective for the purpose of calculating and paying the franchise payment under this Franchise Agreement and Cities shall have the option, for one year, to terminate the Franchise Agreement and negotiate a new Franchise Agreement so long as the Company is not required to make a franchise fee payment greater than it is authorized to collect in rates. Further, in the event the PUCT or a court of competent jurisdiction finds a portion of the corresponding Incremental Franchise Fee Surcharge unlawful or otherwise prohibits a portion of the Incremental Franchise Fee Surcharge recovery of the Incremental Amounts, the

Incremental Franchise Fee rate and quarterly payments provided for under Subsection 11(A) and (B) shall be amended and adjusted such that the franchise payment made by the Company pursuant to this Section 11(A) to the City is no greater than the amounts the Company is authorized to collect through the corresponding Surcharge. Nothing in the immediately preceding sentence requires that Company agree to a realignment or allocation of the recovery of any portion of the Incremental Amounts from the corresponding Surcharge to the Company's base rates.

Section 11(D): City agrees that (a) if City intervenes in any regulatory proceeding before a federal or state agency in which the recovery of Company's franchise fees is an issue, the City will take an affirmative position supporting 100% recovery of franchise fees by Company in the manner consistent with this agreement; and (b) in the event of an appeal of any such regulatory proceeding in which the City has intervened, the City will take an affirmative position in any such appeals in support of the 100% recovery of such franchise fees by Company in the manner consistent with this Agreement.

i. City agrees that it will take no action, nor cause any other person or entity to take any action, to prohibit the recovery of such Incremental Amounts by Company.

ii. Neither the adoption of this Franchise Agreement, nor the corresponding Surcharge shall be used by either the City or the Company, in any proceeding before a regulatory authority or state or federal court of law, as precedent for a reduction in the Company's rates or as evidence of or support for the positions taken by the City or the Company in such matters.

Section 12: In addition to the consideration set forth elsewhere in this franchise agreement and subject to a Joint Use Agreement, the Company shall hold itself ready to furnish free of charge, subject to the use of the City, such pole space as may be required from time to time for the installation of traffic, police and fire alarm system conductors, and alarm or other equipment all of which are owned exclusively by the City; provided that such conductor space does not exceed the capacity of one cross-arm on any one pole, and provided that such space is then available on existing poles. The specific location for these traffic, police and fire alarm conductors, boxes or equipment on Company's poles shall be determined by the Company, and will be allotted at the times specific applications for space are received from the City. Where a main underground ductline is constructed or installed between manholes by Company after the Effective Date of this franchise agreement, Company shall, as part of same, provide free of charge for the installation by City of its traffic, police or fire alarm cables owned exclusively by the City, one top duct having one capped off entry channel and one capped off exit channel between each two manholes, such entry and exit channels leaving the duct bank enclosure outside of, but near to, such manholes, and no cable or other equipment of City shall enter Company's manholes. All cables installed by the City in Company ducts shall be of the non-metallic, sheath type to prevent corrosive or electrolytic action between the City and Company-owned cables. All City-owned conductors and cables, whether on poles or in ductlines, shall be constructed, maintained and operated in such manner as to not interfere with or create a hazard in the operation of the Company's electrical transmission and distribution system. Further, all City-owned traffic, police and fire alarm conductors, and alarm boxes, and any City circuits on Company poles, and all cables installed by City

in ducts constructed by Company, shall be installed in strict compliance with the applicable provisions of the National Electrical Safety Code.

Section 13: The fee payable hereunder shall be the total compensation payable by Company to City for Company's use of the Public Rights-of-Way for the conduct of its business under the franchise. City agrees that any street rental ordinances currently in effect shall not be applicable to Company and City shall not charge any additional fee for the use or occupancy of the Public Rights-of-Way in City. If City does charge Company any additional fee for the use or occupancy of the Public Rights-of-Way in City, then Company may deduct the amount charged from the next succeeding franchise payment or payments until fully reimbursed. This does not bar the City from assessing against the Company or its property ad valorem taxes levied on property, excise taxes levied, or other taxes.

Section 14: City may initiate an audit or other inquiry, or may pursue a cause of action in relation to the payment of the fee only if such audit, inquiry, or pursuit of a cause of action concerns a payment made less than two (2) years before commencement of such audit, inquiry, or pursuit of a cause of action. All books and records related to Company's calculation of the fee shall be available to City. Upon receipt of a written request from City, such documents shall be made available for inspection no later than forty-five (45) days from the receipt of such request. Company shall make such documents available at the place such documents are located, at the Company's Beaumont office, or any location mutually agreed upon according to the needs and abilities of the respective parties. City shall advise Company of the results of the audit within two years of the initiation of the audit. City must make a written demand within

two years of the initiation of the audit or any claims associated with the audit shall be waived. Amounts due to City for past underpayments or amounts due Company for past overpayments shall include interest calculated using the annual interest rates for overcharges as set by the Public Utility Commission of Texas. Said interest shall be payable on such sum from the date the initial payment was due until it is paid.

Section 15: Within thirty (30) days of the Effective Date of any expansion, annexation, or de-annexation, or other lawful means of modifying the City's boundaries, the City shall provide to Company reasonable notification of the change in the City's boundaries.

Section 16: If the Company shall assign this Franchise to any other person or corporation (the "Assignee") acquiring and duly authorized to acquire, own and operate the Company's property and to carry on the Company's business, the Assignee shall execute and deliver to the City an agreement in writing to be bound by all of the Company's obligations, liabilities, and undertakings under this Franchise. The Assignee shall thereupon be deemed to be substituted for the Company, and the Company shall stand released from all obligations under this Franchise except such as have already accrued. If the Assignee fails to file such agreement within thirty (30) days after said assignment, City shall so notify in writing the Company and Assignee of this deficiency. Should Assignee fail to cure such deficiency within 30 days of the deficiency notification, this agreement shall terminate.

Section 17: As of the Effective Date, this franchise replaces all former franchise and/or street rental ordinances and agreements with Company, which are hereby repealed as to Company.

Section 18: Company shall, within sixty (60) days from the date of the final passage of this ordinance by the City Council of the City of Montgomery, file with the City Secretary of the City of Montgomery, a written statement signed in its name and behalf in the following form:

“To the Honorable Mayor and the City Council of the City of Montgomery:

Entergy Texas, Inc. hereby accepts the attached ordinance finally passed by the City Council of the City of Montgomery, the __ day of _____, 20____, and agrees to be bound by all of its terms and provisions.

Entergy Texas, Inc.

By _____

Dated the __ day of _____, 20____.”

Section 19: This franchise ordinance, after the passage of this ordinance, conditioned that Company file the written acceptance above provided, within the period provided, after the passage of this ordinance; shall be in force and effective as of the Effective Date, and thereupon this franchise shall become a binding contract; and shall exist for a period of twenty-five (25) years from the Effective Date.

Passed and duly enacted as an ordinance of the City of Montgomery, Texas, a regular meeting of the City Council of the City of Montgomery, Texas, in accordance with the laws of the State of Texas, on this the ____ day of _____, 20____.

Said ordinance was introduced by _____;

Read in full to the members of the City Council/City Commission by _____; _____

moved the passage of such ordinance which was seconded by
_____.

Thereupon, _____, _____,
_____, _____ and _____
voted for the passage of said ordinance and _____,
_____ and _____ voted against the passage of such
ordinance.

Mayor, City of Montgomery, Texas

Attest:

City Clerk

THE STATE OF TEXAS §
COUNTY OF MONTGOMERY §

This is to certify that the above and foregoing is a true and correct copy of an ordinance adopted by the City Council/City Commission of the City of Montgomery, Texas, at a regular meeting held on the ____ day of _____, 20____.

City Clerk

(date)

City of Montgomery

Dear Sir or Madam:

Enclosed is Entergy Texas, Inc.'s annual franchise fee payment for the twelve months ending _____ for the City of Montgomery.

KWh Delivered Within the City During the Twelve Months Ended	XXXXXX
Rate per KWH of electricity	\$.XXXX
Franchise Fee	\$XXXXXX

The information given in this statement has been taken from the books of the company and is, to the best of my knowledge and belief, true and correct.

Please contact _____ at (XXX) XXX-XXXX or me if you have any questions or need additional information.

Sincerely,

(XXX) XXX-XXXX

Please acknowledge receipt of payment by signing the attached copy of this notification and returning it in the envelope provided.

Received by:

Date:

ENTERGY TEXAS, INC.

Attn:
350 Pine Street
Beaumont, Texas 77701
(409) 981-2410

Incremental Franchise Fee Calculation
For the Period _____, 20__ through _____, 20__

CITY OF MONTGOMERY, TEXAS

KWH of electricity delivered by the utility to each retail customer whose consuming facility's point of delivery is located within the municipality's boundaries		xxx,xxx,xxx
Incremental Rate per KWH of electricity		\$0.xxxxxxx
Total Gross Incremental Franchise Fee		\$xxx,xxx.xx
Deductions:		
Texas Gross Receipts Tax	\$.xxxxxx	(\$ x,xxx.xx)
Total Net Incremental Franchise Fee		\$xxx,xxx.xx
Payment will be wired on _____, 20__		

The information given in this statement has been taken from the books of the company and is, to the best of my knowledge and belief, true and correct.

Should you have any questions, please contact Jessica Holmes at (409) 981-2410.

Customer Service Support Manager