

## **ORDINANCE NO. F-1-21**

**AN ORDINANCE OF THE CITY OF PORT LAVACA, TEXAS GRANTING TO AEP TEXAS INC., ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE FRANCHISE TO CONSTRUCT, MAINTAIN AND OPERATE LINES AND APPURTENANCES AND APPLIANCES FOR CONDUCTING ELECTRICITY IN, OVER, UNDER, AND THROUGH THE STREETS, AVENUES, ALLEYS AND PUBLIC PLACES OF THE CITY OF PORT LAVACA, TEXAS.**

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF PORT LAVACA, TEXAS:**

**SECTION 1:** That AEP Texas Inc., a corporation organized under the laws of the State of Delaware, its successors and assigns ("Company") is granted the non-exclusive right, privilege, franchise and authority until January 14, 2037, to acquire, construct, maintain, and operate in, above, under, across, over, and along the streets, alleys, thoroughfares, bridges, and public places ("Public Rights-of-Way"), as the same now exist or may hereafter be laid out in the City of Port Lavaca, State of Texas, (the "City"), lines for the transmission and distribution of electric energy and services incidental thereto, either by means of overhead or underground conductors, with all necessary or desirable appurtenances and appliances as currently installed or that may be installed in the future including but not limited to electric substations, underground conduits, poles, towers, wires and transmission and distribution lines, and fiber optic cable and telegraph and telephone wires for audio, video and data communications for use in support of transmission and distribution operations and the electric system and grid and matters appurtenant thereto, all for the purpose of transmitting and distributing electrical energy to the City and its inhabitants, and persons and corporations within and beyond the limits thereof for light, heat, power and any other purpose or purposes for which electric energy is now or may hereafter be used, and to license or lease space on or within Company's poles, conduit, and appurtenant facilities for the attachment of third-party facilities, and for all other facilities Company deems reasonably necessary for the provision of safe, reliable, and economical electric service to the City.

**SECTION 2:** Poles and towers must be erected so as not to interfere unreasonably with traffic over streets and alleys, and the City may make and impose reasonable requirements fixing the location of poles, towers, and conduits, provided that no such requirement may be unreasonably burdensome upon Company or unreasonably interfere with the operation or maintenance of its facilities.

**SECTION 3:** The City grants to Company permission to cut down, trim, remove, and otherwise control using herbicides or tree growth regulators, any trees, branches, vegetation, or brush upon and overhanging the Public Rights-of-Way of the City in the vicinity of Company's electric facilities where such trees and other vegetation, in Company's reasonable opinion, may endanger the safety of Company's personnel or interfere with the construction, operation or maintenance of Company's facilities or ingress or egress to, from, or along the Public Rights-of-Way.

**SECTION 4:** Company shall fully indemnify and save the City harmless from any and all damage, loss, action, or cause of action arising in whole or in part from Company's exercise of any of its rights, privileges, franchises, and obligations hereunder except to the extent arising out of the City's negligence or willful misconduct.

**SECTION 5:** For and as full consideration and compensation for this franchise and the rights, privileges, and easements granted and conferred thereby and as rental for the use of the Public Rights-of-Way within or that may in the future be within the City, Company must pay the City an amount calculated in accordance with the methodology prescribed by applicable law, as it exists today in the form and substance of the Texas Public Utilities Regulatory Act (PURA) Section 33.008(b), Texas Utilities Code, currently the product of a factor of \$0.002804 per kilowatt hour multiplied times the number of kilowatt hours delivered by Company to retail customers within the City's boundaries as such charge may be revised from time to time in accordance with Section 33.008(b) of the Texas Utilities Code or any other applicable provision of law regarding franchise fee payments. A payment made based on the foregoing applicable law or any change, modification, or replacement thereof will be made each month throughout the term provided for in this ordinance, with each such payment to be made on the first business day of the second month following the month in which the deliveries occurred, for the billing cycle for that month.

The City must notify the Company in writing of newly annexed and de-annexed areas. The notice must include the ordinance number authorizing the action, an appropriate map identifying the areas and documentation of the notice to the State of Texas regarding the annexation or de-annexation. The Company will have no responsibility for commencing payments to the City for kilowatt hours delivered in newly annexed areas until it has received the City's notification. Upon the City's notification and starting the 91st day after receipt of such notice, Company will commence payments to the City for kilowatt hours delivered in each newly annexed area and will make any appropriate adjustments in payments reflecting over deliveries of kilowatt hours in any prior month resulting from inclusion of kilowatt hours from de-annexed areas in the calculation of the monthly charge. Payments for deliveries in newly annexed areas and adjustments for over deliveries in de-annexed areas must be made back to the effective date of the ordinance.

**SECTION 6:** References made in this ordinance to the City or Company will include the respective successor or assign of either the City or Company, and all rights, privileges, franchises and obligations contained in this ordinance will bind and benefit each successor or assign, in which event the predecessor of each successor or assign is divested of all such rights, privileges, franchises, or obligations, whether or not so expressed.

**SECTION 7:** The terms and provisions of this franchise are joint and several, and the invalidity of any part will not affect the validity of the remainder of the franchise.

**SECTION 8:** This ordinance will take effect from and after the earliest period allowed by law, provided that Company must file its written acceptance of this ordinance within ninety days after its adoption. Once this ordinance takes effect, the electric franchise under which the City has been operating until this time will stand surrendered.

FIRST READING this 13th day of December, 2021.

---

Jack Whitlow, Mayor

SECOND READING this 10<sup>th</sup> day of January, 2022.

---

Jack Whitlow, Mayor

APPROVED AND ADOPTED this 10<sup>th</sup> day of January, 2022.

---

Jack Whitlow, Mayor

ATTEST:

---

Mandy Grant, City Secretary

Approved by:

---

Anne Marie Odefey, City Attorney



## RECORD OF VOTE

	First Reading	Second and Final	Passed and Approved
Councilman Smith	Aye		
Councilman Dent	Aye		
Councilman Tippet	Aye		
Councilwoman Padron	Aye		
Councilman Ward	Aye		
Councilman Barr	Aye		

Record of approval by City Council: City Council Minute Records, Volume 3H, Page \_\_\_\_.

## ACCEPTANCE OF FRANCHISE

WHEREAS, the City of Port Lavaca, Texas, by Ordinance No. F-1-21 passed, adopted and approved at a meeting of the City held on the 10<sup>th</sup> of January, 2022, granted to AEP Texas Inc., (formerly known as AEP Texas Central Company) a franchise in accordance with applicable law to supply electricity to the City of Port Lavaca, Texas, until January 14, 2037 (the "Franchise Ordinance"); and

WHEREAS, in compliance with the terms of the Franchise Ordinance, AEP Texas Inc. desires to file its written acceptance thereof.

NOW, THEREFORE, AEP Texas Inc., a Texas corporation, acting by its duly authorized officer, accepts the Franchise Ordinance and files this acceptance and agrees that it and its successors and assigns, are and shall be entitled to all of the rights, privileges, authority, and franchise thereby granted and are and shall be bound by and will comply with all of the duties, liabilities, terms, and provisions of the Franchise Ordinance.

IN WITNESS WHEREOF, AEP Texas Inc. has caused this Acceptance of Franchise to be executed by its duly authorized officer this the 10<sup>th</sup> day of January, 2022.

AEP Texas, Inc.

By:

\_\_\_\_\_  
Robert Black  
Vice President of External Affairs