

ORDINANCE NO. 22-15

AN ORDINANCE GRANTING TO AEP TEXAS INC., 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 LYTLE, TEXAS

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LYTLE, TEXAS

SECTION 1: That AEP Texas Inc., formerly known as AEP Texas Central Company, a corporation organized under the laws of the State of Delaware, its successors and assigns, ("AEP") is hereby granted the non-exclusive right, privilege, franchise, and authority until May 10, 2032, 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 be laid out in the future in the City of Lytle, State of Texas, ("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 City limits, 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 AEP's poles, conduit, and appurtenant facilities for the attachment of third-party facilities, and for all other facilities AEP deems reasonably necessary for the provision of safe, reliable, and economical electric service to the City.

SECTION 2: AEP shall construct and maintain its facilities in accordance with Good Utility Practice as defined by the Public Regulatory Commission of Texas and in accordance with the National Electrical Safety Code and all applicable federal, state, and local laws and regulations governing operations in the Public Rights-of-Way. "Constructed and maintained" includes installation, construction, relocation, maintenance, repair, and removal. AEP facilities shall be erected so as not to unreasonably interfere with traffic within the City or with utility lines, open drainage areas, cable, roadways, alleys, traffic control devices, public signs or other publicly owned or publicly franchised facility. 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 AEP or unreasonably interfere with the operation or maintenance of its facilities.

AEP agrees to comply with the provisions of applicable City codes, ordinances, regulations, standards, procedures, permits or approvals and additional provisions City may adopt in the future so long as the additional City codes, ordinances, regulations, standards,

procedures, permits, or approvals are reasonable and not in conflict or inconsistent with the express terms and conditions of this franchise ordinance or state or federal laws.

SECTION 3: At its sole cost and expense and within a reasonable time after completion of construction or maintenance, AEP shall (i) fill and repair its excavations in Public Rights-of-Way; and (ii) repair damage to City streets, water, wastewater, gas, and storm water facilities resulting from AEP's construction and maintenance of its facilities. AEP shall repair the surface of any Public Right-of-Way disturbed by its work within a reasonable time after completion of the work to at least the condition existing before commencement of the work. If AEP fails to restore the Public Rights-of-Way within a reasonable amount of time following completion of its work, City may restore same, and AEP will pay the reasonable cost for such restoration work within thirty days unless AEP and City agree to extend the period for such time necessary for AEP to complete restoration or make payment.

Absent an independent intervening event or condition beyond AEP's reasonable control, if City reasonably determines within one year after the date of such restoration work that the surface requires additional restoration work, AEP shall perform such additional restoration work to City's reasonable satisfaction. AEP shall not obstruct a Public Right-of-Way for longer than necessary to execute its work.

AEP will follow Texas Department of Transportation requirements detailed in the Texas Manual on Uniform Control Devices to utilize traffic control plans appropriate for the circumstances in connection with construction and maintenance of AEP's facilities within the Public Rights-of-Way to lessen interference with traffic.

City grants AEP 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 AEP's electric facilities where such trees and other vegetation, in AEP's reasonable opinion, may endanger the safety of AEP's personnel or interfere with the construction, operation or maintenance of AEP's facilities or ingress or egress to, from or along the Public Rights-of-Way.

This franchise is not intended to affect or impair the rights, obligations, or remedies of the parties under the Texas Public Utilities Regulatory Act or other state or federal law. City may provide AEP with notice regarding any new or revised City laws, rules or regulations that may impact AEP's use of Public Rights-of-Way. City and AEP will inform each other and promptly confer regarding any potential conflict between any state or federal law and any provision of this franchise agreement, regarding any potential concerns regarding new or revised City laws, rules or regulations that may impact AEP's use of Public Rights-of-Way, or other matters potentially affecting the matters addressed in this franchise.

SECTION 4: AEP shall fully indemnify and save harmless the City from all damage, loss, action, or cause of action arising in whole or in part from AEP's exercise of any of its rights, privileges, franchises, and obligations hereunder, except to the extent arising out of 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 hereafter be within the City, AEP shall 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 \$0.002821 per kilowatt hour multiplied times the number of kilowatt hours delivered by AEP 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 herein provided for, 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 shall notify AEP in writing of newly annexed and de-annexed areas. The notice shall 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. AEP 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, the AEP will commence payments to the City for kilowatt hours delivered in each newly annexed area and will make any appropriate adjustments in payments reflecting overdeliveries 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 overdeliveries in de-annexed areas shall be made back to the effective date of the ordinance.

SECTION 6: References made in this ordinance to the City or AEP will include the respective successor or assign of either, and all rights, privileges, franchises, and obligations contained in this ordinance shall bind and benefit of such successor or assign, in which event the predecessor of such successor or assign is divested of all such rights, privileges, franchises or obligations, whether so expressed. Assignment of this franchise is not permitted without the advance written consent of the City, not to be unreasonably withheld; provided, however, that AEP may assign this franchise to an AEP subsidiary or affiliated company, or to a corporate successor upon merger or consolidation of AEP, provided further, that AEP provide the City written notice of any such assignment.

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

SECTION 8: This ordinance shall take effect from and after the earliest period allowed by law so long as AEP files its written acceptance of this ordinance within thirty days after the adoption of this ordinance. Once this ordinance takes effect, the electric franchise under which the City has been operating heretofore, shall stand surrendered.

PASSED, APPROVED, AND ADOPTED at a duly called meeting of the Lytle City Council held on the 28th day of November, 2022.



Ruben Gonzalez, Mayor

ATTEST:



Paola L. Rios, City Secretary

ACKNOWLEDGMENT

STATE OF TEXAS §

COUNTIES OF ATASCOSA AND MEDINA §

I, the undersigned, City Secretary of the City of Lytle, Texas, certify that the above and foregoing is a true and correct copy of a franchise ordinance passed, adopted, and approved by the City Council of Lytle, Texas, at a meeting duly and regularly called and held on the 28th day of November, 2022.

IN TESTIMONY WHEREOF, witness my hand and seal of office, this 30th day of November, 2022.



Paola L. Rios, City Secretary of Lytle, Texas