

**ORDINANCE NO. 2022-01**

**AN ORDINANCE 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 EAGLE PASS, TEXAS; FINDING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE**

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EAGLE PASS, TEXAS, as follows:**

**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, (“Company”) is granted the non-exclusive right, privilege, franchise and authority until November 7, 2036, to acquire, construct, maintain, and operate in, above, under, across, over and along the streets, alleys, thoroughfares and bridges and public places (“Public Rights-of-Way”), as the same now exist or may hereafter be laid out in the City of Eagle Pass, 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, to license or lease space on or within Company's poles, conduit and appurtenant facilities for the attachment of third-party facilities authorized by the Federal Pole Attachment Act, and for all other facilities Company deems reasonably necessary for the provision of safe, reliable, and economical electric service to the City.

Company shall not install, construct, or extend any new facilities in parks or other City-owned property other than public utility easements, streets, alleys or highways without first obtaining written approval from the City.

**SECTION 2:** Poles and towers must be erected so as not to unreasonably interfere with traffic over streets, sidewalks and alleys, and the City may make and impose reasonable requirements fixing the location of poles, towers and conduits, and regulating the presence of Company facilities, personnel and operations in the Public Rights-of-Way provided that no such requirement may be unreasonably burdensome upon Company or unreasonably interfere with the operation or maintenance of its electric facilities. Upon receiving a request by the City to inspect or repair a Company-owned streetlight within the City, Company will return the lamp to service within three business days after the outage has been reported. For any lamp where an outage produces an imminent danger to persons or property, Company will repair the lamp as soon as practicable after the outage has been reported, but no later than the three business day period established by this section.

**SECTION 3:** The City grants to Company permission to cut down, trim, remove and otherwise control any trees, branches, vegetation, or brush upon and overhanging the Public Rights-of-Way in the vicinity of Company's electric facilities where such trees and other vegetation 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. Except in the event of an emergency, power restoration or severe damage to Company's electric facilities, Company will provide reasonable advance notice to affected landowners before Company begins work in the Public Rights-of-Way.

**SECTION 4:** Company shall fully indemnify and save the City harmless from 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 \$0.002839 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 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.

**SECTION 9.** Severability. If any phrase, clause, sentence, paragraph or section of this Ordinance is declared unconstitutional or unlawful by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the phrases, clauses, sentences, paragraphs,

and sections would have been enacted by the city council without the incorporation in this Ordinance of any such unconstitutional or unlawful phase, clause, sentence, paragraph, or section.

**SECTION 10.** This Ordinance shall be in full force and effect from and after its final passage and publication thereof, in accordance with the City Charter of the City of Eagle Pass.

**READ, PASSED, AND APPROVED ON FIRST READING on this 7<sup>th</sup> Day of December, A.D., 2021.**

AYES:	Salinas, Diaz, Ramon, and Cruz
NAYS:	None
ABSTAINED:	None
ABSENT:	Davis

ATTEST:

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Rolando Salinas  
Mayor

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Imelda B. Rodriguez  
City Secretary

**READ, PASSED, AND APPROVED ON SECOND READING, this 4<sup>th</sup> Day of January, A.D., 2022.**

AYES:	Salinas, Davis, Diaz, Ramon, and Cruz
NAYS:	None
ABSTAINED:	None
ABSENT:	None

ATTEST:

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Rolando Salinas  
Mayor

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Imelda B. Rodriguez  
City Secretary

**READ, PASSED, AND APPROVED ON THIRD AND FINAL READING this 25<sup>th</sup> Day of January, A.D., 2022.**

AYES: Salinas, Davis, Diaz, Ramon, and Cruz  
NAYS: None  
ABSTAINED: None  
ABSENT: None

ATTEST:

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Rolando Salinas  
Mayor

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Imelda B. Rodriguez  
City Secretary

**APPROVED AS TO LEGALITY:**

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Langley & Banack, Inc.  
City Attorney