

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF CORPUS CHRISTI AMENDING THE FRANCHISE WITH AEP TEXAS INC. TO CHANGE COMPENSATION OR CONSIDERATION TO BE PAID FOR USE OF THE PUBLIC RIGHTS-OF-WAY; PROVIDING AN EFFECTIVE DATE; PROVIDING FOR ACCEPTANCE BY AEP TEXAS INC.; FINDING AND DETERMINING THAT THE MEETINGS AT WHICH THIS ORDINANCE WAS CONSIDERED WERE OPEN TO THE PUBLIC AND IN ACCORDANCE WITH TEXAS LAW.**

**WHEREAS**, Section 5 of the Franchise Agreement by and between the City of Corpus Christi (“City”) and AEP Texas Inc. (“AEP”), passed and approved by the Corpus Christi City Council on January 13, 2009, in the form of Ordinance No. 028022, provides for a franchise fee to be paid by AEP to the City in accordance with Section 33.008(b) of the Texas Utilities Code, and the rate provided by said statute is \$0.002417 per kWh delivered by AEP to each retail customer whose consuming facility’s point of delivery is located within the corporate limits of the City; and,

**WHEREAS**, Section 6 of said Franchise Agreement provides that the City may enact a franchise factor increase once every four (4) years during the term of the franchise, and that no such increase has been enacted since the effective date of the franchise; and,

**WHEREAS**, the City desires to increase the amount of consideration or compensation paid by AEP to City for use of the public rights-of-way by five percent (\$0.0001208 per kWh), resulting in an increase in the total franchise fee from a rate of \$0.002417 per kWh to a rate of \$0.0025378 per kWh delivered by AEP to each retail customer whose consuming facility’s point of delivery is located within the corporate limits of the City; and,

**WHEREAS**, it is reasonable to condition the payment of the incremental franchise fee payments by AEP to the City upon the recovery of such payments from AEP’s customers; and

**WHEREAS**, by separate ordinance of even date herewith the City of Corpus Christi is authorizing AEP to recover the incremental franchise fee.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CORPUS CHRISTI, TEXAS THAT:**

**Section 1.** The findings and provisions set out in the preamble to this ordinance are hereby in all things approved and adopted..

**Section 2.** The existing franchise between the City and AEP is incorporated by reference herein and will be in full force and effect upon the effective date of this Ordinance except to the extent Section 5 thereof is modified by the following sections.

**Section 3.** The amount of the franchise fee due from AEP, instead of that being provided by the existing ordinance and paid in accordance with Section 33.008(b) of the Texas Utility Code, shall be calculated by multiplying a factor of \$0.0025378 per kWh times the total kWh delivered by AEP during each billing month to each retail customer whose consuming facility's point of delivery is located within the corporate limits of the City of Corpus Christi.

**Section 4.** The change in the franchise fee rate provided by Section 3 above is expressly conditioned upon AEP's ability to recover from its customers within the corporate limits of Corpus Christi the additional franchise fees paid to the City. In the event that the Public Utility Commission of Texas ("Commission") or a court of competent jurisdiction orders that any portion of the franchise fees calculated under Section 3 above may not be recovered by AEP from its customers or in some manner prevents AEP from recovering said franchise fees, this Ordinance shall not obligate AEP to pay to the City of Corpus Christi any amount above the amount AEP is allowed to recover from its customers in accordance with Section 33.008(b) of the Texas Utility Code, subject to City of Corpus Christi appeal of such order. If the Commission or court of competent jurisdiction orders AEP to refund to customers any amounts

collected for the franchise fees paid hereunder, such amount refunded shall be a credit against future franchise fees owed by AEP to the City of Corpus Christi, subject to City of Corpus Christi appeal of such order.

**Section 5.** The increased rate provided by Section 3 above shall become effective for any delivery of electricity that will be billed to the customers identified within the City of Corpus Christi limits commencing January 1, 2020.

**Section 6.** This Ordinance shall take effect upon its final passage, provided that AEP shall, within thirty (30) days from the final passage of this Ordinance, file its written acceptance of this Ordinance with the Office of the City Secretary, which acceptance shall not be unreasonably withheld.

**Section 7.** It is hereby officially found and determined that the meetings at which this Ordinance was read and passed were open to the public as required by law and that notice of the time, place and purpose of said meetings was given as required by the Texas Open Meetings Act.

**READ, CONSIDERED, PASSED AND APPROVED,** on first reading, this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**READ, CONSIDERED, PASSED AND FINALLY APPROVED,** on second reading, this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

CITY OF CORPUS CHRISTI

BY:

\_\_\_\_\_  
Joe McComb, Mayor

ATTESTED:

1646313.3

BY: \_\_\_\_\_  
Rebecca L. Huerta, City Secretary

APPROVED AS TO FORM:

BY: \_\_\_\_\_  
Miles Risley, City Attorney

STATE OF TEXAS §

COUNTY OF NUECES §

I, the undersigned, City Secretary of the City of Corpus Christi, Texas, hereby CERTIFY that the above and foregoing is a true and correct copy of an ordinance finally passed, adopted and approved by the City Council of the City of Corpus Christi, Texas, at a meeting duly and regularly called and held on \_\_\_\_\_, 2019.

IN TESTIMONY WHEREOF, witness my hand and seal of office, this \_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Rebecca L. Huerta, City Secretary  
of the City of Corpus Christi, Texas