

CITY OF SEGUIN

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SEGUIN, TEXAS, GRANTING A TRANSMISSION AND DISTRIBUTION ELECTRIC UTILITY FRANCHISE TO THE GUADALUPE VALLEY ELECTRIC COOPERATIVE, INC. FOR A FIFTEEN YEAR TERM COMMENCING ON THE EFFECTIVE DATE; CONTAINING VARIOUS TERMS AND CONDITIONS WITH REGARD TO THE GRANT OF SUCH FRANCHISE; CONTAINING A SEVERABILITY CLAUSE; PROVIDING FOR THE REPEAL OF ANY AND ALL KINDS OF ORDINANCES, REGULATIONS, RULES, OR POLICIES THAT ARE IN CONFLICT WITH THIS ORDINANCE; AND PROVIDING AN EFFECTIVE DATE.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SEGUIN, TEXAS, that:**

Section 1. The City of Seguin, Texas (“City”), pursuant to this ordinance (“Ordinance”) does hereby grant unto the Guadalupe Valley Electric Cooperative, Inc. and to any of the Cooperative’s affiliates, successors and permitted assigns (“Cooperative”), the right, privilege, and franchise to erect, construct, maintain, operate, use, extend, remove, replace, and repair in, under, upon, over, and across, and along any and all of the present and future streets, along the perimeter of squares and parks with City approval, lanes, and alleys owned or controlled, or hereafter owned or controlled by the City and over and across any stream or streams, bridge, or bridges, now or hereafter owned or controlled by the City, a system of poles, pole lines, transmission and distribution lines, wires, guys, conduits, and other desirable instrumentalities and appurtenances necessary or proper for the purpose of carrying, conducting, conveying, supplying, and selling to the City and the inhabitants of the City or other person or persons, firms or corporations, whether within or without the City, electricity and electrical energy for light, heat, power and for any other purpose for which electricity may be now or hereafter used and communication signals or the capability and capacity for transport of communication signals of whatever kind and character; to carry, conduct, supply, and distribute electricity and electrical energy and communication signals by means of said poles, pole lines, transmission and distribution lines, wires, guys, conduits, or other instrumentalities to sell and distribute same to the City, the inhabitants of said City, and any other persons, firms or corporations.

Section 2. It is expressly understood and agreed that this Ordinance grants the Cooperative the rights and privileges contained in Section 1 above only as to property located within the corporate limits of the City presently in the Cooperative’s service area and to property hereinafter annexed by the City which is located within the Cooperative’s service area.

Section 3. Structures, lines, guys, and other installations shall be erected consistent with the National Electrical Safety Code and any other applicable state and

national standards. Upon written notification by the Cooperative to the City of an encroachment in a utility easement substantially interfering with the safe and effective operation of the Cooperative's installed facilities, the City will take reasonable action to resolve the encroachment.

Section 4. If the City, in order to make way for its sewers, water lines, streets or other public works, shall require any structures, lines, guys, or other installations of the Cooperative to be shifted or relocated to a new position in a street or other available right-of-way, such structures, lines, guys, or other installations shall be so shifted or relocated by the Cooperative at the Cooperative's expense. City shall give the Cooperative reasonable prior written notice of its projects requiring relocation of the Cooperative's facilities, and shall provide an alternate public easement or right-of-way for relocation. For the avoidance of doubt, the City may not require the Cooperative to relocate its facilities underground in a public easement, and a location underground in a public easement or right-of-way will not constitute an "alternate public easement" for purposes of this Section, unless the Cooperative's facilities which the City seeks to have relocated are located underground before the City's request for relocation.

If a third-party desires or the City requires Cooperative to adapt or conform any of Cooperative's facilities, or in any way alter, relocate or change Cooperative's property to enable any third party (whether public or private), other than the City, to use the public ways, Cooperative shall have the right, as a condition of any such alteration, change or relocation, to require payment to Cooperative for any and all loss, cost or expense occasioned thereby to be paid by the third party. The City shall, as part of any franchise agreement with any future third party, include the requirement of payment to Cooperative for any and all loss, cost or expense occasioned by any necessary alteration, change or relocation.

Cooperative shall permit private or public entities desiring to provide communication services to the City to use existing Cooperative poles, provided that such attachment and use is feasible, does not interfere with Cooperative's ability to utilize its facilities for its purposes, and is not in conflict with safety procedures or requirements of Cooperative. Such use shall be subject to the entity's execution of Cooperative's form of contract for pole attachment and payment of the Cooperative fees applicable to such service.

Section 5. The Cooperative may open-cut streets, curbs and sidewalks, and may bore, or utilize any other methods it deems reasonably necessary to construct, operate and maintain the Cooperative facilities within the City. Prior to any construction on or in a City street that will require a closure of any street, Cooperative will provide the City with at least five (5) days written notice via electronic mail or facsimile transmission sent to the City Engineer and the Police Department Dispatch Communication Center, describing the work to be done, street to be closed, and the estimated time that the street will be under construction. In the event Cooperative determines there is an emergency, Cooperative may act without any prior notice, but shall provide telephonic notice to the City's Emergency Dispatch at (830) 379-2123. The design and construction of the Cooperative facilities shall be in accordance with reasonable industry

standards. During construction on any City street, Cooperative, or its subcontractors, shall place and utilize warning signs in compliance with the Texas Manual on Uniform Traffic Control Devices.

Prior to cutting into the surface of any street the Cooperative shall apply for an excavation permit. The surface of any street, alley or public way or place disturbed by the Cooperative shall be restored in accordance with the street design set out in the excavation permit issued by the City. No street, alley, or public way or place shall be encumbered by the Cooperative for a longer period than shall be reasonably necessary to execute the work.

Section 6. THE COOPERATIVE WILL INDEMNIFY, HOLD HARMLESS, AND EXEMPT THE CITY, ITS OFFICERS, AGENTS, SERVANTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL SUITS, LEGAL ACTIONS, LEGAL PROCEEDINGS, CLAIMS, DEMANDS, DAMAGES, COSTS, EXPENSES, AND ATTORNEYS' FEES INCIDENT TO ANY WORK DONE IN THE PERFORMANCE OF THIS ORDINANCE ARISING OUT OF A WILLFUL OR NEGLIGENT ACT OR OMISSION OF THE COOPERATIVE, ITS OFFICERS, AGENTS, SERVANTS OR EMPLOYEES, PROVIDED, HOWEVER, THAT THE COOPERATIVE SHALL NOT BE LIABLE FOR ANY SUIT, ACTIONS, LEGAL PROCEEDINGS, CLAIMS, DEMANDS, DAMAGES, COSTS, EXPENSES, AND ATTORNEYS' FEES ARISING OUT OF A WILLFUL ACT OR NEGLIGENT ACT OR OMISSION OF THE CITY, ITS OFFICERS, AGENTS, SERVANTS OR EMPLOYEES.

The City shall give Cooperative prompt written notice of any claims or suits that the City claims to come within these indemnity provisions. Cooperative shall have the right to investigate, defend and compromise any such claims or suits.

Section 7. Nothing herein contained shall be construed as conferring upon the Cooperative any exclusive rights or privileges of any nature whatsoever.

Section 8. The provisions of this Ordinance are severable, and if any section, provision, or part thereof be declared invalid then it is hereby declared the intent of the parties that the remaining parts of this Ordinance would be adopted, notwithstanding such invalid part or parts, and the invalidity of any particular section, provision, or part shall not invalidate this Ordinance, unless such invalidation materially changes the rights or obligations of either party.

Section 9. This Ordinance shall be in force and effect for a period of fifteen (15) years from and after the date, in the form authorized by the Cooperative, which is thirty (30) days after the date of its final adoption (the "Effective Date"). The payments provided for in section 10 of this Ordinance shall be effective for the Cooperative's gross receipts from its services provided within the City commencing on the first day of the month following the Effective Date. This Ordinance shall supersede and take precedence over inconsistent ordinances, resolutions, or regulations hereafter or previously passed by the City.

Section 10. In consideration of the rights granted to the Cooperative herein, the Cooperative, during the term of this Ordinance shall pay quarterly (payable within 45 days of the close of each fiscal quarter) a fee of three percent (3.0%) of the gross receipts derived from the Cooperative's sale of electric energy and from the Cooperative's sale of communication services within the city limits of the City; provided, however, that such fee shall not include the gross receipts derived from the Cooperative's sale of communication services within the city limits provided by Cooperative: (i) through facilities not located on City property; or (ii) through facilities located on City property for which the Cooperative pays the City a rental fee or other consideration outside of this Ordinance. Additionally, the term "gross receipts" shall not include (1) local, state, or federal taxes collected by Cooperative that have been billed to its customers and separately stated on customers' bills, (2) the franchise fee paid hereunder, or (3) revenue uncollectible from customers (i.e., bad debts). It is agreed that such payment is in addition to any ad valorem tax now or hereafter to be assessed and collected under the authority of the City's charter or under the laws of the State of Texas. Other than with respect to such taxes, the payment so provided for in this section is in lieu of all other fees or charges, and the City shall not impose or collect, nor attempt to impose or collect, any other charge or fee in connection with the construction, operation, and maintenance of the Cooperative facilities within the City.

Section 11. Upon City's request, at reasonable intervals not to exceed once per fiscal year, the Cooperative will provide to City reports setting out matters concerning rates charged for services provided and revenues earned by reason of the operation of the Cooperative within the City.

Section 12. This Ordinance may be assigned by the Cooperative to any entity with the consent of the City, which consent shall not be unreasonably withheld.

Section 13. As part of the consideration for the Cooperative's use of the City's streets and public ways under this Ordinance, the Cooperative agrees to provide street lighting service within the areas of the City covered by this Ordinance, and in new subdivisions constructed within the City's extraterritorial jurisdiction as provided for in this section. The design and construction of the street light units shall be in accordance with reasonable industry standards and, where applicable, Chapters 4.7.13, Street Lighting, and 5.8, Lighting, of the City of Seguin Unified Development Code as it now exists or is amended in the future.

- a. Street light units shall be installed in accordance with the Seguin Unified Development Code and maintained by the Cooperative at various locations on City property in the City, as mutually agreed by the parties, but not including locations on farm-to-market roads, State or Interstate highways, or toll roads. Such lights shall be located primarily on street corners and at such other places so that each light is within 500 feet of each other, within the bounds of the City streets, or at other locations on City property. Such lights shall be located for the benefit of the public and in areas which are open to and frequented by the general public. Following initial placements of lights, reasonable additional street light installations may be requested by the City Manager (or his designee) in writing, specifying the location of such light or lights to be installed under the terms of this Ordinance; the Cooperative shall reasonably comply with such requests, in its sole discretion.
- b. The Cooperative shall not be obliged to provide street lights on private property. Existing lights installed under private contracts with various persons or with the City may be absorbed into the street lighting system to be furnished hereunder, at the Cooperative's sole discretion, and the persons contracting for such lighting shall be excused from their obligations under such contract, provided that such lights meet the requirements of this Ordinance.
- c. Street lights in new subdivisions within the City limits and the annexed areas of the City shall be installed from time to time pursuant to this Ordinance. Reasonable design standards shall be used in determining locations as long as the minimum requirements of the Seguin Unified Development Code are met. All new or replacement lights installed will use full cut off type lenses in order to reduce sky lighting.
- d. If the installation of different types of street light units other than those that are in accordance with reasonable industry standards and cut off type lenses should be requested by the City, such units will be installed and maintained by the Cooperative upon a cost-sharing basis. The City shall be billed for the balance of the cost of such light at such location.
- e. For lights requested by the City and installed by the Cooperative that are different than reasonable industry standards, the City shall reimburse the Cooperative monthly for its delivered cost of power consumed by such lights in excess of that applicable to the standard size light unit.
- f. All installations made hereunder shall remain the property of the Cooperative.
- g. The Cooperative's obligation to provide street lighting under this section shall apply only to areas of the City served by the Cooperative. The Cooperative reserves the right to terminate its obligation under this section if its non-

wholesale power revenues are materially reduced as the result of another entity performing a power delivery function (i.e. distribution, transformation, metering, billing, etc.) in any section of the City served by the Cooperative. If this Ordinance is terminated at any time or for any reason, all street lighting provided thereafter at the written request of the City shall be billed to and paid for by the City at the then-existing appropriate tariff or as otherwise agreed by the Cooperative and the City.

**PASSED ON FIRST READING THIS 21<sup>ST</sup> DAY OF JULY 2015.**

**PASSED ON SECOND READING AND ADOPTED THIS THE 4<sup>TH</sup> DAY OF AUGUST, 2015**

CITY OF SEGUIN

\_\_\_\_\_  
Douglas G. Faseler, City Manager

ATTEST:

\_\_\_\_\_  
City Secretary

**GUADALUPE VALLEY ELECTRIC COOPERATIVE, INC.**

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

DATE: \_\_\_\_\_