

CITY OF GRANITE SHOALS

“Granting a transmission and distribution electric utility franchise to PEC”

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GRANITE SHOALS, TEXAS, GRANTING A TRANSMISSION AND DISTRIBUTION ELECTRIC UTILITY FRANCHISE TO PEDERNALES ELECTRIC COOPERATIVE, INC. FOR A SEVEN YEAR TERM COMMENCING ON THE EFFECTIVE DATE; CONTAINING VARIOUS TERMS AND CONDITIONS WITH REGARD TO THE GRANT OF SUCH FRANCHISE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRANITE SHOALS, TEXAS, that

Section 1. Grant. The City of Granite Shoals, Texas (“City”), pursuant to this ordinance (“Ordinance”) does hereby grant unto Pedernales Electric Cooperative, Inc. and to any of the Cooperative’s successor 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, lanes, alleys, and public utility easements owned or controlled, or hereafter owned or controlled by the City, a system of poles, pole lines, transmission and distribution lines, wires, guys, conduits, conductor, transformers, enclosures, concrete pads, ground rods, cable risers and other instrumentalities and appurtenances (including fiber optic cables or other communication wires used for non-revenue generating communication purpose to service its own system) necessary only for the purpose of transmitting, distributing, carrying, conducting, conveying, supplying, furnishing 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, energy, power, light, heat and energy services. This Ordinance does not grant to the Cooperative the right or authority to engage in any other business within the City other than the transmission and distribution of electricity, energy, power, light, heat and energy services in the City.

Section 2. City Property; Effect of Annexation.

(a) 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.

(b) The City shall notify the Cooperative in writing of the effective date of any annexation of property into the City limits that would require Cooperative to include such properties for purposes of calculations of any amounts due under this Ordinance. Sixty (60) days after notice is given to Cooperative in writing of any annexation, Cooperative shall

include in its accounting system any necessary entries requiring that the gross revenues of those accounts located on properties in the newly annexed areas are included in the calculation of the percentage of gross revenues payable under this Ordinance. Thereafter, the Cooperative shall assure that any and all customers located within such annexed territory be included and shown on its accounting system as being within the City. Pro-rated amounts payable under this annexation provision shall be included within the next quarterly payment made by Cooperative, with accruals of such pro-rated amounts to begin at the end of the 60-day notice period. Cooperative shall not be liable for any late payments, penalties or interest on the portion of a quarterly payment that does not include gross revenues for Cooperative customers within a newly annexed area until sixty (60) days after written notice from the City to the Cooperative of any such annexation.

Section 3. Relocation; Electric Facilities; Pole Attachments.

(a) If the City shall require any structures, lines, guys, or other installations of the Cooperative located in a street or other City right-of-way 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; provided, however, the City shall work with Cooperative in good faith to determine the most cost effective method of relocation or shifting of the Cooperative's facilities. City shall give the Cooperative reasonable prior written notice of its projects requiring relocation of the Cooperative's facilities.

(b) 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 rights-of-way, 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.

(c) Subject to the limitations of safety and sound engineering and that the attachment is feasible and does not interfere with the Cooperative's ability to utilize its facilities, Cooperative agrees to allow other entities to use its poles and other facilities in accordance with the Cooperative's pole attachment/rental agreement and under the terms of applicable state and federal law and state and federal regulatory decisions. The Cooperative shall endeavor to notify the City of any person, firm or corporation that enters into an agreement of any type with Cooperative to attach facilities on Cooperative's facilities located within the City's rights-of-way.

Section 4. Operations and Maintenance.

(a) Poles, structures and other appurtenances shall be so erected consistent with the then- current version of the National Electrical Safety Code and Cooperative standards and any other then current applicable state and national standards and shall be maintained in accordance with Cooperative standards and any other then current applicable state and national standards. Poles, structures and other appurtenances erected and maintained in

compliance with the aforementioned codes and standards shall not interfere unreasonably with traffic over streets and alleys, and such activities shall cause the least interference reasonably possible with pavement, sidewalks, drainage features, existing water pipes, sewer lines, telephone lines, and cable television lines and any other authorized installations.

(b) The Cooperative may, subject to Section 4(a) above, open-cut streets, curbs and sidewalks, and may bore, or utilize any other methods (including, but not limited to tree trimming) it deems reasonably necessary to construct, operate and maintain the Cooperative facilities within the City and remove obstructions to the Cooperative's facilities that endanger or interfere with the efficiency of the Cooperative's facilities. Cooperative shall trim trees in accordance with current ANSI industry standards in effect at the time of the work for tree pruning.

(c) The surface of any street, alley, or public way or place disturbed by the Cooperative shall be restored to as good a condition as existed prior to the work by the Cooperative within a reasonable time after the completion of the work. No street, alley, or public way or place shall be encumbered by the Cooperative for a longer period than shall be reasonable necessary to execute the work.

Section 5. Indemnification. THE COOPERATIVE WILL INDEMNIFY, DEFEND AND HOLD HARMLESS 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 OT 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, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, OR CONSULTANTS.

Section 6. Term. This Ordinance shall be in force and effect for a period of seven (7) years from and after the date on which the City adopts it (the "Effective Date"). The payments provided for in Section 7 of this Ordinance shall be effective for the Cooperative's gross revenues from its sale of energy and power sold within the City commencing on the first day of the month following the date upon which the Cooperative acknowledges, accepts and agrees to the Ordinance, subject to any notices required to be given to the Cooperative's customers.

Section 7. Franchise Fee.

(a) In consideration of the rights granted to the Cooperative herein, the Cooperative, during the term of this Ordinance shall pay a fee of two percent (2%) of the gross revenues received by the Cooperative from the Cooperative's sale of energy and power sold to customers within the city limits of the City during such previous year or quarter. 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

ad valorem taxes, the payment so provided for in this Section is in lieu of all other fees or charges of any nature 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. The term "gross revenues" 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 under this Ordinance, (3) revenue uncollectible from customers (i.e., bad debts) with billing addresses in the City that may have previously been included in gross revenues, or (4) revenue from the Cooperative's pole attachment agreements. Cooperative shall be entitled to list the franchise fee as a separate line item on monthly bills of Cooperative members who have meters within the City limits. The payment provided for in this Section 7 will reflect the Cooperative's gross revenues on a quarterly basis and will be due in the City within forty-five (45) days after the close of each quarter in the Cooperative's fiscal year.

(b) If Cooperative elects to provide customer choice pursuant to the terms of the Public Utility Regulatory Act ("PURA"), the fee due under this Ordinance shall be provided in the Texas Utilities Code Section 33.008 for a transmission and distribution utility.

Section 8. Reports and City's Inspection Rights. Upon City's request, at reasonable intervals, not to exceed twice per fiscal year, the Cooperative will provide to City reports setting out matters concerning energy and power sold by reason of the operation of the Cooperative and within the City, including but not limited to the calculation and payment of franchise fees. The City shall have the right at all reasonable times with prior notice acting through its designated officer, attorney, representative, or agent to inspect, review, audit and examine all the books, records and invoices of the Cooperative relating to the subject matter of this ordinance.

Section 9. Assignment. This Ordinance may be assigned by the Cooperative to any entity with consent of the City, which consent shall not be unreasonably withheld; however, the proposed assignee must show financial responsibility and agree to comply with this Ordinance.,,, The Cooperative shall provide City with written notice no less than sixty (60) days prior to such proposed assignment.

Section 10. Superseding Effect. This Ordinance supersedes for all purposes any other written agreements with respect to the franchise prior to the acceptance of this Ordinance. This Ordinance shall supersede and take precedence over inconsistent ordinances, resolutions, or regulations hereafter or previously passed by the City.

Section 11. Severability. The provisions of this Ordinance are severable, and if any court of competent jurisdiction enters a final order which holds any section, subsection, sentence, clause, phrase, or other portion of this Ordinance is invalid, illegal, or otherwise unenforceable, then any such portion shall be deemed a separate, distinct and independent

provision, and any such ruling shall not affect any other provision of this Ordinance which are not specifically designated as being illegal, invalid or unenforceable.

Section 12. Notices. Notice to the parties under this Ordinance shall be in writing and shall be by certified mail, return receipt requested, or by private delivery service such as Federal Express or U.S.P.S. addressed as follows:

To the City:

City of Granite Shoals, Texas
2221 N. Phillips Ranch Road
Granite Shoals, TX 78654

To the Cooperative:

Pedernales Electric Cooperative, Inc.
Attn: Finance Department
P.O. Box 1
Johnson City, Texas 78636-001

With a copy to:

Pedernales Electric Cooperative, Inc.
Attn: General Counsel
P.O. Box 1
Johnson City, Texas 78636-00010

Notice shall be effective upon the earlier to occur of actual receipt or the expiration of three (3) business days from the date of deposit in an official depository of the United States Postal Service.

Section 13. Confidential Information. To the extent allowed by law, including the Texas Public Information Act, the City agrees to hold in strict confidence any non-public information, information marked as proprietary or confidential that it receives from the Cooperative or such information that by its nature or under the particular circumstances of disclosure should be understood by the City, exercising its reasonable judgment, to be the confidential information of the Cooperative.

Section 14. Effective Date. This ordinance shall take effect immediately from and after its passage and adoption in accordance with the provisions of Chapter 52 of the Texas Local Government Code.

Section 15. Open Meetings. It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

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PASSED AND ADOPTED THIS 27th DAY OF February, 2018.

CITY OF GRANITE SHOALS

Carl J. Bugger
Mayor

ATTEST:

Fannie Simpson
City Secretary

ACKNOWLEDGED, ACCEPTED, AND AGREED TO:

PEDERNALES ELECTRIC COOPERATIVE, INC.

By: Julie C. Parsley

NAME: Julie C. Parsley

DATE: March 6, 2018

