

Ordinance No. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GEORGETOWN, TEXAS EXTENDING THE FRANCHISE OF PEDERNALES ELECTRIC COOPERATIVE, INC.; AMENDING CHAPTER 14.20 OF THE CODE OF ORDINANCES RELATING TO THE TERMS AND CONDITIONS OF THE FRANCHISE; REPEALING CONFLICTING ORDINANCES AND RESOLUTIONS; ESTABLISHING A PENALTY; INCLUDING A SEVERABILITY CLAUSE; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the City of Georgetown, Texas (the “City”) is a home-rule municipality incorporated under Article XI of the Texas Constitution;

WHEREAS, pursuant to Section 1.04 of the Home Rule Charter (the “Charter”) of the City, the City has “exclusive dominion, control and jurisdiction in, upon, over and under the public streets, sidewalks, alleys, highways, public squares and public ways (except those under State control if required by State law) that are within the corporate limits of the city, and in, upon, over, and under all public property of the City”;

WHEREAS, the Charter provides for the inalienability of all public streets, highways, sidewalks, alleys, parks, public squares, and public places of the City and prohibits the renewal or amendment of any franchise affecting said places except as provided in the Charter;

WHEREAS, the Charter grants the City Council the power by ordinance to amend and extend all franchises of public utilities operating within the City of Georgetown;

WHEREAS, Section 14.008 of the Texas Utilities Code states that the Public Utilities Regulatory Act “does not restrict the rights and powers of a municipality to grant or refuse a franchise to use the streets and alleys in the municipality or to make a statutory charge for that use”;

WHEREAS, Pedernales Electric Cooperative, Inc. (“PEC”) is an electric utility organized under Chapter 161 of the Texas Utilities Code, with a Certificate of Convenience and Necessity (a “CCN”) to serve portions of Georgetown;

WHEREAS, in December 2008, the City granted PEC a franchise to operate within the City’s rights-of-way and other public places, but said franchise expired in September 2020;

WHEREAS, since such time the City and PEC have continued to negotiate a renewal of the franchise;

WHEREAS, PEC desires to extend its franchise to operate within the City's rights-of-way, and the City is willing to extend the PEC franchise as requested if PEC agrees to certain material changes to improve communication and coordination regarding work within the City's rights-of-way, to limit PEC's activities within City parkland, to require the undergrounding of overhead electrical lines except under certain conditions, to require relocation and removal of PEC facilities when necessary, and to clarify the types of PEC revenues to which the Franchise Fee applies; and

WHEREAS, the City Council finds it necessary to amend Chapter 14.20 of the Code of Ordinances as set out herein to extend the term of the franchise upon the terms and conditions as set forth herein.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GEORGETOWN, TEXAS THAT:

Section 1. The facts and recitations contained in the preamble of this ordinance are hereby found and declared to be true and correct and are incorporated by reference herein and expressly made a part hereof, as if copied verbatim.

Section 2. The meeting at which this ordinance was approved was in all things conducted in compliance with the Texas Open Meetings Act, Texas Government Code Chapter 551.

Section 3. Chapter 14.20 of the Code of Ordinances is amended as shown on **Exhibit A** attached hereto.

Section 4. All ordinances or resolutions that are in conflict with the provisions of this ordinance are, and the same are hereby, repealed and all other ordinances or resolutions of the City not in conflict with the provisions of this ordinance shall remain in full force and effect; however, nothing in this agreement is intended to waive any legal right held by or granted to the City in the regulation of franchises within the City and no waiver or relinquishment shall be deemed to have been made by the City unless such waiver or relinquishment is in writing and signed by the City.

Section 5. If any provision of this ordinance, or application thereof, to any person or circumstance, shall be held invalid, such invalidity shall not affect the other provisions, or application thereof, of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are hereby declared to be severable.

Section 6. The Mayor is hereby authorized to sign this ordinance and the City Secretary to attest. This ordinance shall become effective and be in full force and effect 30 days after final passage, pursuant to the City's Charter. Notwithstanding the foregoing, in accordance with Section 14.20.160 of the agreement, in order to accept this franchise, PEC must file with the City Secretary its written acceptance of the Franchise within 30 days after the final passage and approval of this ordinance by the City, otherwise this ordinance shall be rendered null and void.

PASSED AND APPROVED on First Reading on the ____ of ____, 2021.

PASSED AND APPROVED on Second Reading on the ____ of ____, 2021.

ATTEST:

THE CITY OF GEORGETOWN

Robyn Densmore, City Secretary

Joshua Schroeder, Mayor

APPROVED AS TO FORM:

Skye Masson, City Attorney

EXHIBIT A

CHAPTER 14.20 - PEDERNALES ELECTRIC COOPERATIVE, INC.

Sec. 14.20.010. - Term.

This agreement and franchise ("Franchise") shall be in force and effect for a period of ten (10) years from and after its Effective Date as defined in Section 14.20.160 herein. To the extent that there is a conflict between this Franchise and any City Ordinance that renders impossible or impractical compliance with both, the terms and conditions of this Franchise shall supersede any City Ordinance to the extent of such conflict only.

All rights and duties are herein granted and acknowledged for such term and subject to the provisions of this Chapter.

Sec. 14.20.015. – Definitions

For the purpose of this Franchise the following terms, phrases, words, abbreviations and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

- A. "Audit" shall mean the City's inspection, review, and examination of all the books, records and invoices of PEC applicable to this Franchise.
- B. "City" shall mean the home rule municipal corporation designated as the City of Georgetown, Texas.
- C. "City Ordinances" shall mean ordinances duly adopted by the City.
- D. "Cooperative" or "PEC" shall mean Pedernales Electric Cooperative, Inc., a Texas electric cooperative corporation, and its successors and assigns.
- E. "Effective Date" shall be the date specified in Section 14.20.160 of this Franchise.
- F. "Facilities" shall mean the poles; pole lines; wire; transmission and distribution lines; anchors; cables; manholes; conduits; conductors; transformers; enclosures; concrete pads; ground rods; cable risers; fiber optic cables and other communication lines for monitoring, communicating with, and control of PEC's electric system necessary for electric or energy services; facilities; guys; and other equipment, instrumentalities, and appurtenances used in or incident to the providing of electric utility services by PEC.

- G. "Governmental or Regulatory Authority" means any court, tribunal, arbitrator, authority, agency, commission, official or other instrumentality of the United States, or any state, county, municipality, or other political subdivision, with jurisdiction.
- H. "Gross Revenues" shall mean all gross operating revenue received by PEC for all services involving the sale of energy and power by PEC to its customers within the city limits, as accrued on PEC's books during such previous year or previous quarter, except as otherwise provided pursuant to this Franchise. Gross Revenues shall not include local, state, or federal taxes collected by PEC that have been billed to its customers and separately stated on customers' bills; the franchise fee collected under this Franchise, revenues uncollectible from customers with billing addresses in the City that were previously included in Gross Revenues (i.e., bad debts); or pole attachment fees.
- I. "Law" or "Laws" shall mean any and all federal, state and local statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, tariffs, administrative orders, certificates, orders, or other requirements of the City or other Governmental or Regulatory Authority having joint or several jurisdiction over the parties to the Franchise granted herein, including but not limited to the Federal Power Act, the Public Utility Regulatory Act of Texas ("PURA"), Texas Utility Code Ch. 161, and all City Ordinances, rules, and regulations, which are in effect either as of the Effective Date or at any time during the term of the Franchise granted herein.
- J. "Permit" shall mean any permit requested, granted, or denied pursuant to the Right-of-Way Regulations and this Franchise.
- K. "Public Rights-of-Way" or "Public Right-of-Way" shall mean all present and future public streets, alleys, public utility easements, or public ways owned by City. This term shall not include county, state, or federal rights-of-way or any property owned by any person or agency other than the City, except as provided by applicable laws or pursuant to an agreement between the City and any such person or agency.
- L. "Public Utility Commission of Texas" or "PUC" shall mean that agency as presently constituted by the laws of the State of Texas or any successor agency.
- M. "Right-of-Way Regulations" means Chapter 12.08 of the City's Code of Ordinances and the City's Public Works Department's Right-of-Way Regulations adopted by the City on October 27, 2020, and effective on November 9, 2020, together with all amendments and revisions thereto.
- N. "Standards" shall mean Cooperative's standards and the National Electric Safety Code ("NESC"), to the extent not adopted as Law.

- O. "TPIA" shall mean the Texas Public Information Act.

Sec. 14.20.020. – Permits.

- A. Except as provided herein, Cooperative shall obtain a Permit for work within the Public Rights-of-Way, in accordance with the Right-of-Way Regulations.
- B. Cooperative shall not be required to obtain a Permit for the following activities, so long as no excavation of the Public Right-of-Way is involved; Cooperative's activities do not involve the closure of a travel lane or public sidewalk; Cooperative provides advance notice to City of any planned activities in accordance with Subsection 14.20.125.B; and Cooperative's activities comply in all aspects with all other provisions of the Right-of-Way Regulations:
 - 1. Maintenance Activities, as defined in the Right-of-Way Regulations;
 - 2. Storage Activities, as defined in the Right-of-Way Regulations, provided such Storage Activities do not continue longer than ninety (90) days without City's written consent;
 - 3. Placement of Facilities outside the Right of Way;
 - 4. Crossing a Public Right-of-Way; or
 - 5. Emergency Repairs, as defined in the Right-of-Way Regulations, provided Cooperative provides City with any plans or as-built drawings showing any new or relocated Facilities installed within the Public Right-of-Way within ten (10) business days of Cooperative's completion of construction. For purposes of this Section, PEC's replacement of Facilities with the same or substantially similar Facilities occupying the same footprint shall not constitute an installation of new Facilities requiring the submission of such plans or drawings.
- C. Except for franchise fees as provided herein, Cooperative shall not be required to pay any Permit fees, fees listed in the Right-of-Way Regulation's fee schedule, bonds, or any other assessments related to its work in, Facilities in, or use of the Public Rights-of-Way. Notwithstanding the foregoing, Cooperative shall be required to pay any fines or other penalties assessed by the City in its exercise of its police powers, pursuant to the Right-of-Way Regulations or any other City Ordinance.
- D. Cooperative is exempt from the insurance requirements in the Right-of-Way Regulations.

Sec. 14.20.025. - Placement of plant.

- A. Facilities within the city limits may remain as now constructed, subject to such changes as under the limitations and conditions herein prescribed may be considered necessary by the City in the exercise of its lawful powers subject to the Laws.
- B. PEC shall have the right, privilege, and franchise to place, remove, construct and reconstruct, extend, operate, use, remove, replace, and repair and maintain its Facilities and other instrumentalities and appurtenances necessary or proper 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 for the purposes for which it is or may be from time to time required along, across, on, over, through, above, and under Public Rights-of-Way in the city limits, in accordance with the terms of this Franchise.
- C. The City shall not operate or perform work on PEC's Facilities. If the City becomes aware of any Cooperative Facilities that the City determines create an immediate public health or safety hazard because of their condition, the City shall notify Cooperative of such hazard through emergency contacts set forth in Section 14.20.125, and also in writing. Cooperative shall promptly repair the Facilities or otherwise remedy the situation. If Cooperative fails to respond to an emergency situation within a reasonable period of time, and upon notice to Cooperative, the City may take reasonable actions under the circumstances to protect the immediate public health and safety, excluding any such action which would require operation of the Facilities of Cooperative. All reasonable expenses incurred by the City in taking such actions shall be reimbursed to the City by Cooperative upon receipt of a request for same from the City.
- D. Properties owned by the City in fee, including public parkland, are not Public Rights-of-Way under this Franchise. If PEC desires to install Facilities on or under City fee-owned property that is not a Public Right-of-Way, including public parkland, it shall seek specific permission for such installation from City and shall comply with all applicable Law, including Chapter 26 of the Texas Parks and Wildlife Code and all applicable City Ordinances, rules, and regulations.
- E. Cooperative's installation of facilities in the Public Rights-of-Way shall be in conformance with all applicable City requirements, including placing all new distribution facilities underground; provided, however, the City acknowledges that certain new distribution facilities relating to substations, reliability and redundancy improvements, and riser poles that transition overhead lines into underground facilities, may be placed overhead, and system upgrades for existing facilities may remain overhead, and to the extent that safety standards required by the NESC or

Cooperative standards require facilities to be placed overhead or remain overhead, such lines may be placed overhead. The Cooperative shall, when planning improvements in the Public Rights-of-Way to existing distribution facilities to increase capacity or for system improvement, give reasonable consideration to installing upgraded facilities underground; provided that the City may require undergrounding facilities upon the City's payment in advance of associated engineering costs to determine the cost differential between overhead and underground construction and if determined to proceed with underground construction, the payment in advance of the differential cost between overhead and underground construction and facilities.

- F. Notwithstanding the foregoing requirements of Section 14.20.025.E, Cooperative's installation of facilities in the Public Rights-of-Way at the request of, or for the benefit of, a third party shall be in conformance with all applicable City requirements, including placing all new and relocated distribution facilities underground, if so required by the City. Incremental costs associated with the initial placement, or subsequent relocation, of Facilities in underground locations will be borne by the third party or the City.

Sec. 14.20.030. - Location of Facilities.

- A. All poles placed shall be of sound material and reasonably straight, in accordance with the Standards and the Law as to material and placement and in no event shall be a standard less than may be required by good utility practice, and shall be so set as to not interfere with the flow of water in any gutter or drain and so that same will interfere as little as practicable with the ordinary travel on the street or sidewalk and with ingress and egress to and from all property. The location and route of all poles, stubs, guys, anchors, conduits, and cables placed and constructed in the City shall comply with applicable Laws, including but not limited to the Americans with Disabilities Act and applicable City Ordinances, rules, and regulations, and shall be subject to the regulation, control, and direction of the City as expressed by City Ordinances, rules, and regulations.
- B. PEC is not authorized to license or lease to any person or entity the right to occupy or use Public Rights-of-Way for any reason, except that PEC shall have the right to allow other entities that have franchises or other authorization from the City to occupy Public Rights-of-Way to use PEC's poles, conduits, and other Facilities on such terms as PEC may choose, and in compliance with all Laws. PEC is not responsible for the compliance or non-compliance of a third-party with Laws.
- C. PEC shall at its sole expense, at the request of the City, remove or change the location of any of its Facilities in Public Rights-of-Way for the purpose of permitting full and free ingress and egress

to and from Public Rights- of-Way, or for any other lawful purpose; provided, however, the City shall work with the Cooperative in good faith to determine the most cost effective method of relocation or shifting of Cooperative's Facilities, and provided that the City may utilize eminent domain and condemnation proceedings to acquire easements, which may be required for a public purpose to provide an alternate easement for relocation, at the Cooperative's expense. The City shall give the Cooperative reasonable prior written notice of its projects requiring relocation of the Cooperative's Facilities.

- D. In the event that Cooperative is required by City to remove or relocate its Facilities and City is eligible under federal, state, county, local or other programs for reimbursement of costs and expense incurred by Cooperative as a result of such removal or relocation, and such reimbursement is required to be handled through the City, Cooperative costs and expenses shall be included in any application by City for reimbursement. City shall provide reasonable notice to Cooperative of the deadline for Cooperative to submit documentation of the costs and expenses of such relocation to City. If Cooperative's costs and expenses are approved for reimbursement, the Cooperative shall receive its portion of reimbursement payments attributable to its Facilities. The City shall remit to PEC any amounts paid to the City by any third party to as approved reimbursements to compensate the City and/or PEC for the costs of any such removal or relocation.
- E. The City reserves the right to lay, and permit to be laid, storm sewer, gas, water, wastewater, and other pipelines, cables, and conduits, or other improvements and to do and permit to be done any underground or overhead work that may be necessary or proper in, across, along, over, or under Public Rights-of-Way occupied by PEC. The City also reserves the right to change in any manner any curb, sidewalk, highway, City utility lines, storm sewers, drainage basins, drainage ditches, and Public Rights-of-Way.
- F. The City shall provide PEC with reasonable prior written notice of its projects requiring PEC to remove or relocate Facilities. Such notice shall include any deadline(s) for the removal or relocation and shall, in the event of relocation, identify a new location for such Facilities within the Public Rights-of-Way. Subject to Subsection C above, City-requested relocations of overhead PEC Facilities in the Public Rights-of-Way shall be at PEC's expense. However, if the relocation request includes, or is for, PEC to relocate above-ground Facilities to an underground location, the City shall be responsible for the additional costs of placing the Facilities underground. In placing underground Facilities, PEC shall comply with the Standards and the Laws. To the extent

that there is a conflict between any Standards and the Laws, including this Franchise or any other City Ordinance, the Laws shall control; provided, however, if compliance with this Franchise or any other City Ordinance shall render the relocation of the Facilities underground to be impossible or impracticable, PEC may request a variance from the conflicting provision by submitting a written request to the City Manager, who shall grant or deny the request within ten (10) business days from his or her receipt of the same.

- G. In the event that the Public Rights-of-Way are eliminated by an act of the State of Texas or a political subdivision thereof, including the City, the City shall not be required to acquire any new or additional rights-of-way, nor compensate or reimburse PEC for such acquisitions, provided that, at the request of PEC, the City may utilize eminent domain and condemnation proceedings to acquire easements, which may be required for a public purpose to provide an alternate easement for relocation, at the Cooperative's expense. If the City intends to abandon any portion of Public Rights-of-Way in which PEC Facilities are located, the City will give written notice of such intent to Cooperative, and shall include in such notification the expected date by which the abandonment shall take effect. If Public Right-of-Way is sold, conveyed, abandoned, or surrendered by the City to a third party, such action shall be conditioned upon Cooperative's right to maintain use of the former Public Right-of-Way.
- H. If any other corporation or person (other than the City, the State of Texas, or an agent acting on behalf of either entity) requests PEC to relocate Facilities located in Public Rights-of-Way, PEC shall not be bound to make such changes until such other corporation or person shall have undertaken, with good and sufficient bond in such form reasonably satisfactory to PEC, to pay in advance, PEC for any costs, loss, or expense which will be caused by, or arises out of, such change, alteration, or relocation of PEC's Facilities. The City shall endeavor, as part of any agreement with any third party entered into after the date of this Franchise, to attempt to include the requirement of payment to Cooperative for any and all loss, cost or expense occasioned by any necessary alteration, change or relocation.

Sec. 14.20.040. - City property to be restored to substantially similar condition.

- A. After receipt of a Permit from the City as may be required by the Right-of-Way Regulations subject to the terms of this Franchise, 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 Facilities, and remove obstructions to the Facilities that endanger or materially

interfere with the efficiency of the Facilities (including, but not limited to tree trimming, subject to Section 14.20.070), provided such activities are in accordance with the approved Permit.

- B. The surface of any Public Rights-of-Way disturbed by PEC shall be restored in accordance with the Right-of-Way Regulations.
- C. In the event PEC ceases to use a PEC-owned pole for any reason within the Right-of-Way , PEC must remove its pole and all attachments thereto, or otherwise demonstrate that PEC does not own the pole, within a reasonable period of time after cessation of use by PEC, not to exceed 180 days.

Sec. 14.20.050. - Public safety and convenience.

- A. The design, construction and maintenance of the Cooperative Facilities shall be in accordance with the Standards and the Law, except as may be set forth in this Franchise. Structures, lines, guys, and other installations shall be erected consistent with the Standards and Laws, except as may be set forth in this Franchise. To the extent that there is a conflict between any Standards and the Laws, including this Franchise or any other City Ordinance, the Laws shall control; provided, however, if compliance with the Right-of-Way Regulations shall render the installation of the Facilities to be impossible or impracticable, PEC may request a variance from the conflicting provision by submitting a written request to the City Manager, who shall grant or deny the request within ten (10) business days from his or her receipt of the same.
- B. All Facilities used or useful in enabling PEC to maintain its electric utility services shall be placed and maintained in accordance with requirements of the Standards and the Laws, and any hazards to the Facilities created by storms, accidents, or otherwise will be removed promptly. To the extent that there is a conflict between any Standards and the Laws, including this Franchise or any other City Ordinance, the Laws shall control; provided, however, if compliance with the Right-of-Way Regulations shall render the installation of the Facilities to be impossible or impracticable, PEC may request a variance from the conflicting provision by submitting a written request to the City Manager, who shall grant or deny the request within ten (10) business days from his or her receipt of the same.
- C. PEC and the City shall take all reasonable efforts to coordinate their planning and construction activities. Upon request, PEC will provide the City with information regarding its short-term and long-term plans to upgrade and expand its Facilities, either existing or proposed, in or affecting the Public Rights-of-Way. PEC shall make reasonable efforts to participate in the City's review of

proposed developments and subdivisions, in order to provide PEC with advance notice of such developments and to allow PEC to provide its input into utility-related matters and decisions affecting PEC and the City's utilities.

Sec. 14.20.060. - Outside plant accommodations.

PEC, on request of any person, provided that PEC's safety or reliability standards are not affected, shall raise or lower its overhead wires temporarily to permit the moving of houses or other bulky structures or as otherwise decided by PEC and the requestor. The expense of such temporary removal, raising or lowering of wires or other appurtenances shall be paid by the benefited party or parties, and PEC may require such payment in advance. PEC may require reasonable advance notice to arrange for such temporary changes.

Sec. 14.20.070. - Tree trimming.

PEC shall have the right, license, privilege and permission to trim trees and bushes upon and overhanging the Public Rights-of-Way in accordance with City Ordinances with respect to a public utility performing pruning within the Public Rights-of-Way and with ANSI standards. Heritage tree removal shall be in accordance with the City Ordinances applicable to a public utility, as may be amended.

Sec. 14.20.080. – Indemnification - PEC.

PEC AGREES TO AND SHALL INDEMNIFY AND HOLD HARMLESS CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS AND LIABILITY OF EVERY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY, ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY PEC OR ITS EMPLOYEES, AGENTS, CONTRACTORS, CONSULTANTS, LICENSEES OR PERMITTEES. SUCH INDEMNITY SHALL ONLY APPLY WHERE THE CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS OR LIABILITY ARISES IN WHOLE OR IN PART FROM THE WILLFUL OR NEGLIGENT ACTS OF PEC OR ITS EMPLOYEES, AGENTS, CONTRACTORS, CONSULTANTS, LICENSEES OR PERMITTEES. PEC SHALL HAVE THE RIGHT TO CONTROL THE DEFENSE AND SETTLEMENT OF ANY SUCH CLAIM.

PEC assumes full responsibility for the work to be performed hereunder by it or its agents, and hereby releases, relinquishes and discharges City, its officers, agents and employees, from all claims, demands, and causes of action of every kind and character including the cost of defense thereof, for any injury to, including death of person (whether they be third persons, contractors, or employees of either of the parties hereto) and any loss of or damage to property (whether the same be that either of the parties hereto or of third parties) caused by, arising out of, or in connection with PEC's work to be performed hereunder whether or not said claims, demands and causes of action in whole or in part are covered by insurance. City, by this Franchise does not give consent to litigation of any such claim, demand, or causes of action.

Sec. 14.20.085. – Indemnification - City.

TO THE EXTENT ALLOWED BY LAW, THE CITY WILL AGREE TO AND SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE COOPERATIVE, ITS OFFICERS, AGENTS, SERVANTS, CONTRACTORS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL SUITS, CLAIMS, LEGAL ACTIONS, LEGAL PROCEEDINGS, CLAIMS, DEMANDS, LOSSES, DAMAGES, COSTS, EXPENSES, AND ATTORNEYS' FEES FOR INJURY OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY, ARISING OUT OF OR IN CONNECTIONS WITH INCIDENT TO ANY WORK DONE IN THE PERFORMANCE OF THIS ORDINANCE ARISING OUT OF A WILLFUL OR NEGLIGENT ACT OR OMISSION OF THE CITY, ITS OFFICERS, AGENTS, SERVANTS, CONTRACTORS, OR EMPLOYEES, PROVIDED, HOWEVER, THAT THE CITY 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 COOPERATIVE, ITS OFFICERS, AGENTS, SERVANTS, CONTRACTORS, OR EMPLOYEES.

Sec. 14.20.090. – Franchise Fee.

- A. PEC shall pay to the City for the use of its Public Rights-of-Way during the term of this Franchise a franchise fee as provided in this section. 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 Law 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, including any fees referenced in the City's Right-of-Way Regulations, 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 Facilities within the City. Fines imposed pursuant to the Right-of-Way Regulations are not charges or fees within the meaning of this prohibition.

- B. PEC's franchise fee shall be a minimum of 4.5% of its Gross Revenues per calendar quarter, payable quarterly. This amount shall be due and payable in quarterly installments on February 15, May 15, August 15, and November 15 of each year for the preceding calendar quarter or any part thereof. PEC shall furnish annually by April 30th of each year a verified statement under oath of all the Gross Revenues of PEC for the prior calendar year. This statement shall be addressed to:

City of Georgetown
Chief Financial Officer
P.O. Box 409
Georgetown, TX 78627

- C. Each quarterly payment shall be due by 5:00 p.m. on dates stated above. In the event any quarterly payment is made after 5:00 p.m. on the date due, PEC shall pay a late payment charge of the greater of one hundred dollars (\$100.00) or simple interest at 10% annual percentage rate of the total amount past due.
- D. Upon notice from either party requesting same, the parties shall discuss amending this Franchise upon terms that are mutually agreeable by the parties.

Sec. 14.20.100. - Right to verify accounts.

As set forth in this section, the City has the right to Audit all the books, records and invoices of PEC applicable to this Franchise not to exceed once per fiscal year, and only if it concerns a payment made less than four (4) years before the Audit is initiated. The City may request financial reports only as they relate to the franchise fee under this Franchise, and in whatever format such reports are prepared or maintained by PEC. PEC shall endeavor to supply or make available the requested information within 30 days. If as the result of any City Audit PEC is found to have failed to pay to the City the applicable franchise fee due, the correct amount shall be paid by PEC within thirty (30) calendar days of written notification of such Audit finding to PEC. PEC may request additional information regarding such Audit findings or contest such audit findings. Payments not made by the thirtieth (30th) calendar day after notification will accrue simple interest at 10% annual percentage rate of the total amount past due. If the Audit results in a finding that PEC has overpaid the City, the City shall notify PEC of the overpayment in writing within 30 days of the determination. The City shall pay directly any amounts of overpayment by PEC, unless this Franchise has been assigned or transferred to a third party, in which case, the City shall reimburse PEC within 30 days

of the City's approval of the transfer or assignment under Section 14.20.130. in an amount corresponding to the period of overpayment under which the Franchise was held by PEC. PEC shall be responsible for paying the City's costs associated with any audit commenced within two (2) years of a prior Audit to the extent that both the prior and subsequent Audits each determine underpayments in excess of 5% on an annual basis.

Sec. 14.20.105. Annexation.

The City shall notify 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 Franchise. 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. 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. After such sixty (60) day written notice from the City to the Cooperative, all customers' accounts located within such annexed territory shall begin accrual for purposes of the franchise fee provisions in Section 14.20.090. If the City disannexes any territory, it will notify Cooperative of such disannexation. Sixty (60) days after receipt of such notification, Cooperative will update its records and cease remitting franchise fees calculated on the Gross Revenues for its customers within the disannexed territory.

Sec. 14.20.110. - Additional regulation.

Pursuant to the City of Georgetown's City Charter and subject to Law, the City may:

- (a) impose reasonable regulations to ensure safe, efficient and continuous service to the public;
- (b) require such expansion, extension, enlargement and improvements of plants and Facilities as are necessary to provide adequate service to the public;
- (c) require PEC to furnish to the City, without cost to the City, full information regarding the location, character, size, length, and terminals of all Facilities of PEC in, over and under the Public Rights-of-Way of the City;
- (d) collect from PEC for operations in the City such proportion of the expense of excavating, grading, paving, repaving, constructing, reconstructing, draining, repairing, maintenance, lighting, sweeping, and sprinkling the streets, alleys, bridges, culverts, viaducts, and other public places of the City

as represents the increased cost of such operations resulting from the occupancy of such public places by PEC, and such proportion of the costs of such operations as results from damage to or disturbance of such public places caused by PEC, provided however that City shall submit reasonable and substantiated documentation of such costs and expenses prior to any reimbursement by PEC; or to compel PEC to perform at its own expense, such operations as above listed which are made necessary by the occupancy of such public places by such utility or by damage to or disturbance of such public places caused by such public utility; and

(e) subject to Section 14.20.100, require the keeping of accounts in such form as will accurately reflect the value of the property of PEC which is necessary in rendering its service to the public and the expenses, and receipts of all kinds of PEC related to this Franchise.

Sec. 14.20.120. - No exclusive privileges conferred.

Nothing herein contained shall be construed as giving to PEC any exclusive privilege or franchise and nothing herein contained shall be construed as diminishing any rights granted to the City or to PEC under Law.

Sec. 14.20.125. - Notice.

- A. All notices or other communications required under this Franchise must be made in writing and delivered by hand, sent by registered or certified United States mail, return receipt requested to the address below or by express overnight mail to the address below. Courtesy notice may additionally be sent by regular mail or fax as may be indicated below, however, such service shall not excuse proper notice by mail as set forth above. Parties may change their address by notifying the other party.

<p>To Pedernales Electric Cooperative, Inc.:</p> <p>Pedernales Electric Cooperative, Inc. Attn: Public Affairs 201 S. Avenue F Johnson City, Texas 78636-0001</p> <p>With a copy to: Pedernales Electric Cooperative, Inc.</p>	<p>If to City:</p> <p>City of Georgetown Attn: City Manager P.O. Box 409 Georgetown, TX 78627</p> <p>With a copy to: City of Georgetown</p>
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<p>Attn: General Counsel 201 South Avenue F. Johnson City, Texas 78636-0001</p> <p>To the extent the notice references annexation also notice to the following:</p> <p>Pedernales Electric Cooperative, Inc. Attn: Mapping 201 S. Avenue F Johnson City, Texas 78636-0001</p> <p>Pedernales Electric Cooperative, Inc. Attn: Billing 201 S. Avenue F Johnson City, Texas 78636-0001</p>	<p>Attn: City Attorney P.O. Box 409 Georgetown, TX 78627</p>
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- B. The City and PEC shall provide notice in the event of an emergency, for operational concerns or coordination, or when reasonably necessary, to both email and phone number(s) to be provided by either party to the other upon its respective execution of this Franchise. Such email and phone number(s) may be updated periodically by providing notice in writing to the addresses in Subsection 14.20.125.A.

Sec. 14.20.130. - City approval of transfer.

PEC shall have the right to transfer this Franchise to a third party, subject to the City's prior written approval as described below. The written approval by the City Council shall be secured by PEC before it may transfer or assign this Franchise, or any of the rights or privileges included within it; provided, however, nothing within this Franchise restricts PEC from selling its Facilities or otherwise transferring its Facilities. Any successor or assignee of PEC shall be bound by all the duties, obligations, and conditions of the agreement. Such transfer or assignment will be considered only upon the filing with the City Secretary of an instrument duly executed by the assignee agreeing to be bound. The City shall not unreasonably withhold approval of a transfer; provided however, the proposed assignee must show financial

responsibility and must agree to comply with all provision of this Franchise. Once the assignment or transfer of PEC's rights and obligations is approved by the City, PEC shall be absolved of all further obligations under the Franchise.

Sec. 14.20.140. - Default, remedies, and termination.

- A. Events of Default. The occurrence, at any time during the term of the Franchise granted herein, of any one or more of the following events, shall constitute an Event of Default by Cooperative under this Ordinance:
 - 1. The failure of Cooperative to pay the Franchise Fee on or before the due dates specified herein.
 - 2. Cooperative's breach or violation of any of the terms, covenants, representations or warranties contained herein or Cooperative's failure to perform any material obligation contained herein.
- B. Uncured Events of Default.
 - 1. Upon the occurrence of an Event of Default which can be cured by the immediate payment of money to City or a third party, Cooperative shall have thirty (30) calendar days after receipt of written notice from City of an occurrence of such Event of Default (or such longer time as the City may specify in such notice) to cure same before City may exercise any of its rights or remedies pursuant to Subsection C below.
 - 2. Upon the occurrence of an Event of Default by Cooperative which cannot be cured by the immediate payment of money to City or a third party, Cooperative shall have sixty (60) calendar days, unless the Event of Default creates a threat to the public health, safety, or welfare, in which case Cooperative shall have thirty (30) calendar days (or such additional time as may be agreed to by the parties) after receipt of written notice from City of an occurrence of such Event of Default to cure same before City may exercise any of its rights or remedies pursuant to Subsection C below.
 - 3. If the Event of Default is not cured within the time period allowed for curing the Event of Default as provided for herein (or such other time period as agreed to by the parties), such

Event of Default shall, without additional notice, become an Uncured Event of Default, which shall entitle City to exercise the remedies pursuant to Subsection C below.

- C. Remedies. In the event of an Uncured Event of Default, City shall be entitled to exercise any and all of the following cumulative remedies:
1. The commencement of an action against Cooperative at law for monetary damages.
 2. The commencement of an action in equity seeking injunctive relief or the specific performance of any of the provisions, which as a matter of equity, are specifically enforceable.
 3. The termination of the Franchise granted herein.
 4. Take action to cure the Event of Default, at the Cooperative's cost, in order to avoid or remediate impacts to public health, safety, or welfare. Upon completion by City of the curing work, City will provide an invoice to Cooperative for City's expenses, and Cooperative shall promptly reimburse City for all such expenses.
- D. Remedies Not Exclusive. The rights and remedies of City and Cooperative set forth in this Franchise shall be in addition to, and not in limitation of, any other rights and remedies provided by Law or in equity. City and Cooperative understand and intend that such remedies shall be cumulative to the maximum extent permitted by Law and the exercise by City of any one or more of such remedies shall not preclude the exercise by City, at the same or different times, of any other such remedies for the same failure to cure. However, notwithstanding this Section or any other provision of this Franchise, City shall not recover both liquidated damages and actual damages for the same violation, breach, or noncompliance, either under this Section or under any other provision of this Franchise.
- E. Termination. The Franchise granted herein may be terminated only in accordance with the provisions of Subsection C. City shall notify Cooperative in writing at least ten (10) business days in advance of the City Council meeting at which the questions of termination shall be considered, and Cooperative shall have the right to appear before the City Council in person or by counsel and raise any objections or defenses Cooperative may have that are relevant to the proposed forfeiture or termination. The final decision of the City Council may be appealed to District Court. Upon timely appeal by Cooperative of the City Council's decision terminating the Franchise granted herein, the effective date of such termination shall be either when such appeal is withdrawn or a court order upholding the termination becomes final and unappealable. If no appeal is filed, the effective date of such termination shall be the sixtieth (60th) day following the

date of the final termination decision of the City Council. Until the termination becomes effective the provisions of the Franchise granted herein shall remain in effect for all purposes.

Sec. 14.20.150. - Partial invalidity and repeal provisions.

All Ordinances and agreements and parts of Ordinances and agreements in conflict herewith are hereby repealed only to the extent of the conflict herewith; this Franchise shall supersede and take precedence over inconsistent agreements, Ordinances, resolutions, or regulations hereafter or previously passed by the City. Subject to Section 14.20.185, this Franchise supersedes for all purposes any other written agreements with respect to the Franchise prior to the acceptance.

Sec. 14.20.155. - Severability.

The provisions of this Franchise are severable, and if any court of law enters a final order which holds that any section, subsection, sentence, clause, phrase, or other portion of this Franchise is invalid, void, 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 Franchise which is not specifically designated as being invalid, void, or otherwise unenforceable.

Sec. 14.20.160. - Acceptance.

PEC shall have 30 days from and after the final passage and approval of this Franchise, or any amendment hereto, to deliver its written acceptance thereof with the City Secretary, and upon such acceptance being filed by the City, this Chapter shall be considered as taking effect and being in force and effect as soon as allowed after final passage pursuant to the City's Charter, but no sooner than 30 days after the passage and approval by the City and acceptance by PEC (the "Effective Date") and shall effectuate and make binding upon the parties thereto, their successors and assigns, the Franchise provided by the terms hereof. Failure to deliver such acceptance to the City within 30 days from final approval of the ordinance adopting this Franchise shall invalidate the ordinance in its entirety. Notwithstanding the foregoing, to the extent that the franchise fee required herein is adjusted from the amount then in effect, the acceptance of PEC shall be extended an additional thirty (30) days until PEC concludes any required notice to its customers upon a rate change. Further, the payments provided for herein shall be effective for the Cooperative's Gross Revenues commencing on the first day of the month following the thirty (30) day notice period that the Cooperative is required to provide to the Cooperative's

customers upon a rate change. Such notice to be given by PEC no later than thirty (30) days after the final passage by the City.

Sec. 14.20.170. - Performance.

This Franchise has been made under and shall be governed by the Laws of the State of Texas. The parties agree that performance and all matters related thereto shall be in Williamson County, Texas.

Sec. 14.20.180. – No waiver; limitations of Franchise.

Nothing in this Franchise is intended to waive any legal right held by or granted to the City in the regulation of franchises within the City. The failure of the City to insist in any one or more instances upon the strict performance of any one or more terms or provisions of this Franchise shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by the City unless such waiver or relinquishment is in writing and signed by the City.

Nothing in this Franchise is intended to waive any legal or equitable right, defense, obligation, or duty of PEC under any agreement, or local, state, or federal Laws, standards, or protocols, ERCOT Protocols, or PEC's standards or tariff. The failure of PEC to insist in any one or more instances upon the strict performance of any one or more terms or provisions of this Franchise shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the right shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by PEC unless such waiver or relinquishment is in writing and signed by PEC. This Franchise is intended to grant PEC a nonexclusive right to construct, operate, and maintain lines, equipment, and Facilities to provide, monitor, and operate electric services subject to any grant to PEC under state Law.

Nothing herein shall be deemed a waiver, release or relinquishment of either party's right to contest, appeal, or file suit with respect to any action or decision of the other party, including ordinances adopted by the City that Cooperative believes are contrary to applicable Laws. Nothing herein shall interfere with Cooperative's service territory and its requirement under Law to serve its customers.

Sec. 14.20.185 – Extension.

This Franchise replaces the agreement and franchise previously granted by the City to PEC by Ordinance No. 2008-69, as extended by the parties for a term through September 30, 2020 (the "2008

Franchise"). Upon acceptance of this Franchise by PEC, the terms of the 2008 Franchise shall govern any period between September 30, 2020, and the acceptance of this Franchise.

Sec. 14.20.190. – Confidential Information.

To the extent allowed by Law, including the TPIA, the City agrees to hold in strict confidence any non-public information, information marked proprietary or confidential, and critical energy infrastructure information that it receives from the Cooperative to the extent that Cooperative has identified it as such. Consistent with the TPIA, the City will make reasonable efforts to (a) give the Cooperative prior written notice of a request for public information in a reasonably practicable time period to allow the Cooperative to seek a protective order, Texas Attorney General ruling, or other appropriate remedy, and (b) disclose only such information as is required under applicable Law. Notwithstanding anything contained within this Franchise to the contrary, if the release of information received from the Cooperative is required by the TPIA and applicable Texas Attorney General rulings and Law, then such release shall not be considered to be a violation of this Franchise.