

**ORDINANCE 2010 - 01**

**GRANTING TO AEP TEXAS CENTRAL COMPANY, 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 RIGHTS-OF-WAY OF THE CITY OF PORT ARANSAS, TEXAS**

**WHEREAS**, AEP Texas Central Company, (hereinafter “AEP”) has been engaged in the electric power business in the State of Texas and the City of Port Aransas (hereinafter the “City”) for many years; and,

**WHEREAS**, AEP has operated under franchises from the City for many years, and it is to the mutual benefit of AEP and the City that the City renew its grant of a franchise to AEP under the terms and conditions contained herein.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORT ARANSAS, TEXAS, THAT:**

**SECTION 1. Grant of Franchise.** Pursuant to Article XI of its Charter and other applicable law, City hereby grants to AEP and its successors and assigns the non-exclusive right, privilege, franchise, and authority to set, erect, construct, support, attach, connect, extend, and stretch Facilities between, and maintain and operate and use lines and other Facilities in, above, under, across, and along the Public Rights-of-Way of the City, as the same now exist or may hereafter be laid out, in the City of Port Aransas, Texas, 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: 1) underground conduits, poles, towers, wires and transmission lines, ducts, cables, braces, guys, anchors, manholes and vaults, transformers, switches, meter-reading devices, outdoor lighting, and fixtures, 2) communication systems and fiber optic cable and telegraph and telephone wires for its own use in its delivery of electricity, and 3) any and all other equipment, appliances, attachments, appurtenances and other items necessary, convenient, or in any way appertaining to any and all of the foregoing (hereinafter “Facilities”) for the purpose of transmitting and distributing electrical energy to said City and the inhabitants thereof, and persons and corporations within and beyond the limits thereof, for light, heat, power and similar purposes (and for broadband over power lines as set forth below) and to license or lease space on or within the AEP’s poles, conduit and appurtenant facilities for the attachment of third party facilities required or authorized under applicable law. “Public Rights-of-Way” shall mean all rights-of-way for public roads, streets, avenues, alleys, sidewalks, highways, and all other public property of the City as the same now exist or may be hereafter laid out, platted, dedicated, acquired or improved within the present limits of the City and as such limits may be hereafter extended; and all utility easements either City owned, controlled or dedicated for the placement and location of various

utilities (whether over public or private lands), except those dedicated for water, sewer, gas or other specific purposes only. Public Rights-of Way also specifically includes public parks, public squares, greenbelts, green space, drainage easements, and other areas set aside by the City for public recreation or other public use. The grant made herein is effective only to the extent of the City's interest in a particular right-of-way; it does not grant any interest lawfully owned or retained by another person.

This grant does not include the right to use the Public Rights-of-Way to conduct other businesses such as telecommunications or cable television even though electrical energy may be used for those purposes. The City acknowledges AEP's right under Texas Utilities Code Section 43.101(d) to operate a Broadband Over Power Lines ("BPL") System without additional compensation for use of the Public Rights-of-Way so long as such right exists under law. The City reserves its rights under Texas Utilities Code Section 43.101(e) or other existing or subsequently enacted laws with respect to imposition of charges on the provision of BPL services.

From and after the effective date of this franchise, the placement and location of Facilities in public parks, public squares, greenbelts, green spaces, and other areas set aside by the City for public recreation or other public use will be covered under a special permit or specific express easement granted to AEP for such purposes. Facilities existing in those areas at the commencement of this franchise shall be exempted from such requirement. Requests for special permits or specific express easements shall not be unreasonably withheld, so long as the location and placement of the Facilities does not unreasonably interfere with the City's use and enjoyment of the area for public recreation or other public purposes.

The right granted to AEP to license or lease space on or within the company's poles, conduit and appurtenant facilities for the attachment of third party facilities shall not constitute a grant by the City to the third party to locate and place facilities in, above, under, across, or along the Public Rights-of-Way nor does it delegate the right to AEP to grant such a right. AEP shall, within a reasonable time following its acceptance of this franchise and to the extent such information is available, furnish to City a list of the names, addresses, phone numbers, and representatives of each person or entity licensing or leasing space on AEP's poles, conduits and appurtenant facilities for the attachment of third party facilities so that City can ensure that each such person or entity has been authorized by City to use City property. For the purposes of this section, "reasonable time" shall not be more than 60 days, unless both AEP and the City agree to extend the period of time as may be necessary for AEP to comply with this provision. AEP will update the list annually thereafter. AEP does not warrant the accuracy of any such information provided, and to the extent locations of attachment and/or locations of Facilities are described or shown, such locations of attachment and locations of Facilities are described or shown in their approximate locations. All information provided respecting attachments and locations of Facilities shall be deemed confidential information and used by the City solely for auditing and managing the Public Rights-of-Way and City shall take all prudent steps required by applicable law to prevent disclosure or dissemination of such information, without the prior express written consent of AEP.

**SECTION 2. Term.** The franchise granted by this ordinance shall be for a term of twenty (20) years, commencing at midnight on January 10, 2010, and expiring at midnight on January 10, 2030.

**SECTION 3. Construction and Maintenance Activities.**

(a) AEP Facilities shall be constructed and maintained in accordance with Good Utility Practices, as defined by the Public Utility Regulatory Commission of Texas (“PUCT”), and in conformity with the National Electrical Safety Code (“NESC”) and all applicable federal, state, and local laws and regulations governing operations in the Public Rights of Way, and so as not to interfere unreasonably with traffic over streets, alleys, and sidewalks, the flow of storm water in any gutter, drain, sewer, or open drainage system, or with the City’s wastewater, storm water and gas utility operations. “Constructed and maintained” includes installation, construction, relocation, maintenance, repair, and removal.

(b) The surface of any Right-of-Way disturbed by AEP in the construction or maintenance of its Facilities shall be restored within a reasonable time after the completion of the work to as near as practical to its original condition as before the commencement of the work. Absent some independent intervening event or condition beyond AEP’s reasonable control, should the City reasonably determine, within one year from the date of such restoration, that such surface requires additional restoration work to place it in as near as practical to its original condition as before the commencement of the work, AEP shall perform such additional restoration work to the reasonable satisfaction of the City. No Right-of-Way shall be obstructed for a longer period or to a greater extent than shall be reasonably necessary to execute all work.

(c) In constructing and maintaining its Facilities, AEP shall not disturb City’s street pavement, wastewater, gas, and storm water facilities without the approval of the City Engineer, except during an emergency. Other than its regulatory fees governing excavations, no fees shall be charged by the City for its review and approval, which shall not be unreasonably withheld, delayed or conditioned so as not to unreasonably interfere with AEP’s obligation to serve or with customer response time. As soon as practicable after an emergency, AEP shall report the emergency work performed to the City Engineer. AEP shall, at its sole cost and expense, refill and repair (including by repaving any cut in any pavement or sidewalk) all excavations made by AEP in the Public Rights-of-Way and all damage to City’s streets, wastewater, gas, and storm water facilities in connection with the construction and maintenance of AEP’s Facilities. Likewise, City shall, at its sole cost and expense, refill, repair and return to grade all excavations made by City in the Public Rights-of-Way and all damage to AEP’s Facilities in connection with the construction, maintenance and modification of City’s Facilities. Provided, however, the City’s liability for damages under this Section 3(c) shall not exceed its limits of liability under the Texas Tort Claims Act.

(d) AEP shall contain loose dirt and prevent erosion caused by its construction and maintenance activities, all in accordance with applicable Texas Commission on Environmental Quality (“TCEQ”) storm water regulations.

#### **SECTION 4. Relocations and Securing Facilities.**

(a) City reserves the right to construct, maintain, and modify its facilities for City operations including streets, curbs, sidewalks, water, wastewater, gas, storm water, and communications for its own use (herein “City Facilities”). City shall give written notice to AEP whenever City has determined that removal, relocation, change or alteration of AEP’s Facilities is reasonably necessary for construction, maintenance, or modification of City Facilities. The amount of notice provided to AEP shall be reasonable under the circumstances, but not less than thirty (30) days. Upon notice by City, AEP shall, temporarily or permanently, remove, relocate, change or alter the position of AEP’s Facilities as soon as reasonably practical. AEP shall bear the expenses for any removal, relocation, change or alteration to permit the widening or straightening of a street, in accordance with Section 37.101(c), Texas Utilities Code. City shall bear the expenses for any other City requested removal, relocation, change or alteration unless applicable state or federal law requires AEP to bear such expenses.

(b) In situations where City does not require removal, relocation, change or alteration of AEP Facilities, AEP shall take responsibility for securing its poles and Facilities during City operations.

(c) In situations where AEP is required by the City to remove or relocate its Facilities to accommodate widening or straightening of a street by City, and AEP is eligible under federal, state, county, City or other local agencies or programs for reimbursement of costs and expenses incurred by AEP as a result of such removal or relocation and such reimbursement is required to be handled through the City, AEP’s costs and expenses shall be included in any application by the City for reimbursement, if AEP submits its cost and expense documentation to the City prior to the filing of the application. City shall provide reasonable notice to AEP of the deadline for AEP to submit documentation of the costs and expenses of such relocation to the City.

(d) As to any removal, relocation, change or alteration of AEP’s Facilities whereby the cost and expense thereof is to be borne by AEP in accordance with this Section 4, AEP may, after receipt of written notice requesting such removal, relocation, change or alteration, submit in writing to the City alternatives to City’s construction plans, which would obviate the need for AEP to remove, relocate, change or alter its Facilities. Upon the City’s receipt from AEP of such written alternatives, the City shall evaluate such alternatives and shall advise AEP in writing if one or more of such alternatives are acceptable to the City. In evaluating such alternatives, the City shall give each alternative proposed by AEP full and fair consideration with due regard to all facts and circumstances including those which bear upon the economics and practicality of removing, relocating, changing or altering AEP’s Facilities. The City shall not evaluate alternatives proposed by AEP in an arbitrary or capricious manner. In the event the City

determines that such alternatives are not appropriate, then AEP shall remove, relocate, change or alter its Facilities as otherwise provided herein.

#### **SECTION 5. Consideration.**

(a) For and as full consideration and compensation for this franchise and the rights granted herein and as rental for the use of the Rights-of-Way, AEP shall pay City an amount authorized by Section 33.008(b) of the Texas Utilities Code, currently the product of a factor of \$0.002729 per kilowatt hour multiplied by the number of kilowatt hours of electricity delivered by AEP to Retail Customers whose consuming facility's point of delivery is located within the City, 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.

(b) Payments will be made each month throughout the term of the franchise, with each such payment to be made by electronic funds transfer not later than the first business day of the second month following the month in which deliveries occurred for the billing cycle for that month. For example, payment for May 2008 deliveries, which covers a billing cycle from April 29th through May 28th, would be paid not later than July 1st. With each monthly payment, AEP shall furnish to the City a report that accurately reflects the number of kilowatt hours for the month (meaning for the billing cycle for the month) delivered within the city limits and the charge per kilowatt hour determined in accordance with Section 33.008(b), Texas Utilities Code, or any alternate methodology upon which the parties have agreed payments shall be made.

(c) The City shall notify AEP in writing of newly annexed and de-annexed areas. The notice shall 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. AEP shall have no responsibility for commencing payments to City for kilowatt hours delivered in newly annexed areas until it shall have received City's notification. Upon City's notification and starting the 91<sup>st</sup> day after receipt of such notice, AEP 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 shall be made back to the effective date of the ordinance.

#### **SECTION 6. Alternate Compensation.**

(a) Under the authority granted by PURA Section 33.008(f), and in consideration of the City granting AEP a twenty (20) year franchise, City and AEP agree to the possible implementation of a different level of compensation for the use of the Public Rights-of-Way than that prescribed by PURA Section 33.008(b). City shall have the opportunity to enact a factor increase by ordinance once every four (4) years during the term of this franchise, beginning on the date of final approval of this franchise ordinance, provided

however, the total franchise fee factor may not exceed \$0.0040935 per kilowatt hour, unless authorized by other law. Upon written notification of City's passage of such an ordinance, in form and substance satisfactory to AEP, approving a tariff for the collection and recovery by AEP of a municipal franchise fee charge equal in amount to the difference between compensation currently authorized under Section 33.008(b), at \$0.002729 per kilowatt hour, plus any incremental factor amount previously authorized by ordinance, basing the charge on the product of the currently authorized total factor multiplied by the number of kilowatt hours of electricity delivered by AEP within the City, and compensation that would be received by the City basing the charge instead on the new, approved total factor, but not more than \$0.0040935 per kilowatt hour, AEP and City shall amend Section 5 of this franchise agreement to reflect compensation basing the charge on the new approved total factor, but not more than \$0.0040935 per kilowatt hour. The effective date of the increase in the franchise fees shall be the effective date of the recovery mechanism (e.g. tariff schedule) for the collection and recovery of the incremental fee approved by City's ordinance; provided however, payments for such increased fees shall not commence until 90 days after such effective date.

(b) The change in the franchise fee rate provided in Subsection (a) above is expressly conditioned upon AEP's ability to concurrently recover the additional franchise fees paid to the City. In the event that the PUCT or a court of competent jurisdiction finds that any portion of the franchise fees calculated in accordance with Subsection (a) above may not be concurrently recovered by AEP from customers or in some manner prevents AEP from recovering said franchise fees, then AEP shall not be obligated to pay to the City any amount above the amount AEP is allowed to recover from its customers. If the PUCT or a court of competent jurisdiction orders AEP to refund to customers any amounts collected for franchise fees paid in accordance with Subsection (a), such amount refunded shall be a credit against future franchise fees owed by AEP to City.

(c) In the event any regulatory proceeding before any federal or state agency results in the approval of a more favorable franchise fee amount and/or method of recovery than that provided by the mechanism set out in this Section 6, the City and AEP agree to the further amendment of Section 5 to provide for payment in accordance with such approved franchise fee amount and/or method of recovery.

(d) City and AEP agree that AEP may, in its sole discretion, support a legislative or regulatory initiative to provide for the collection and recovery of increased franchise fees, but in any event, AEP will not oppose such an initiative.

## **SECTION 7. Indemnity.**

(a) AEP shall release, protect, defend, and hold harmless City, its employees, officers, directors, agents and legal representatives from any and all claims, demands, and liability, including defense costs and attorneys fees, relating in any way to damages, claims, or fines arising by reason of or in connection with AEP's, or its contractors', agents', or employees' negligent acts or omissions in the construction, maintenance, and operation of its Facilities in the Public Rights-of-Way of the City.

(b) To the extent permitted by Texas law, City shall release, protect, defend, and hold harmless AEP, its employees, officers, directors, agents and legal representatives from any and all claims, demands, and liability, including defense costs and attorneys fees, relating in any way to damages, claims, or fines arising by reason of or in connection with City's, or its contractors', agents', or employees' negligent acts or omissions in exercising the rights granted City hereunder. Provided, however, the City's liability for an occurrence under this Section 6(b) shall not exceed its limits of liability under the Texas Tort Claims Act.

**SECTION 8. Assignment.** This franchise may be transferred in accordance with Article XI, Section 1(a) of City's Charter. This franchise shall inure to the benefit of and be binding upon the transferee.

**SECTION 9. Termination.** This franchise may be terminated at any time by City for failure of AEP to comply with the terms of this franchise, but only by action of the City Council after notice and hearing.

**SECTION 10. Maps.**

(a) Upon the City's reasonable request, on a project-by-project basis, AEP will provide to the City copies of available maps, plats and drawings in use by AEP showing the location of its Facilities at locations within the Public Rights-of-Way. To the extent possible, AEP will provide such information to City in an electronic format, but AEP shall have no obligation to provide such information in any specific format. As to any such maps, plats and drawings so provided, AEP does not warrant the accuracy thereof and, to the extent the locations of the Facilities are shown, such Facilities are shown in their approximate locations. In addition, AEP and the City agree to share information about additions or modifications to their Facilities that could reasonably be expected to have a material impact on the other.

(b) Any maps, plats and drawings and/or other information concerning the location of AEP's Facilities provided by AEP to City shall be deemed confidential information and used by City solely for management of the Public Rights-of-Way. City shall take all prudent steps required by applicable law to prevent disclosure or dissemination of such maps, plats and drawings and/or any other information to any unauthorized third party, without the prior express written consent of AEP.

**SECTION 11. Accounting and Audits.**

(a) AEP shall maintain adequate books and records relating to the performance of its obligations under this franchise.

(b) City may cause, upon reasonable notice, an audit to be made of the books and records of AEP relating to AEP's performance under this franchise only if any such audit concerns a payment made less than two (2) years before the commencement of such audit

in accordance with Section 33.008(e), Texas Utilities Code, or such other period as may be subsequently established by applicable state law. In the event City elects to exercise its right of audit, City shall provide to AEP written notice at least ten (10) business days in advance of the audit. City shall select the auditor. AEP shall make available to the auditor personnel and records reasonably necessary to complete the audit. AEP shall answer questions and provide records or information within a reasonable period of time under the circumstances, including records maintained outside the State of Texas. City shall bear the cost of the audit; provided that AEP shall bear the cost if the audit reveals underpayment of fees of more than three and one half percent during the audit period. City and AEP shall meet and attempt in good faith to resolve any disputed issues arising from the audit report. Any underpayments discovered as a result of the audit shall be promptly paid by AEP, and likewise, City shall promptly refund any overpayments discovered.

### **SECTION 12. Underground Electric Distribution Lines.**

AEP acknowledges the City's desire to promote a policy of undergrounding Facilities within the Public Rights-of-Way whenever possible. The City acknowledges that the Facilities Extension Schedule of AEP's approved Tariff for Electric Delivery Service ("Tariff") provides that electric service will be provided to Retail Customers utilizing construction with standard facilities, which consist of overhead distribution facilities installed above ground. Underground electric connections and conversions from overhead to underground electric connection are specifically considered requests for non-standard facilities for which AEP may require a Contribution in Aid of Construction.

AEP currently encourages, and will continue to encourage, the utilization of underground Facilities in new subdivisions and commercial installations within the City. AEP agrees to work with the City to install underground Facilities in all instances where it is practical and economically and operationally feasible to do so, all in accordance with the Tariff and AEP's Underground Distribution Policy.

AEP acknowledges that City has adopted an ordinance requiring developers to place residential distribution Facilities underground in new subdivisions. City will provide AEP a copy of such ordinance. Following receipt of a copy of such ordinance, AEP agrees not to install overhead distribution Facilities in new subdivisions covered by such ordinance without confirmation from City that City has exempted the installation from the City's undergrounding requirement. For purposes of this paragraph, "underground" Facilities do not include primary feeders or other lines of a similar nature and function that comprise AEP's distribution infrastructure.

### **SECTION 13. Vegetation Management**

AEP shall have the right, consistent with its Tariff, to cut, trim, treat and dispose of trees and other vegetation upon and overhanging the Public Rights-of-Way adjacent to AEP's Facilities where such trees and other vegetation, in AEP's reasonable opinion, constitute a hazard to AEP's personnel or Facilities, or the provision of continuous

electric service. City and AEP agree that disputes between City and AEP concerning vegetation management shall be subject to mediation.

**SECTION 14. Access to City Facilities.**

Upon reasonable advance notice by the City, AEP grants to City the right to cross AEP property to access or maintain City Facilities, provided such access shall not unreasonably interfere with AEP's maintenance and operation of its Facilities or adversely impact site safety and/or security, and that determination shall be at the sole discretion of AEP.

**SECTION 15. Attachment of City Facilities to AEP Poles.**

AEP grants to City the right to attach lines for City purposes to poles and other Facilities used by AEP for distribution purposes, provided City agrees that such grant shall be in accordance with and subject to the terms and provisions of an appropriate Pole Attachment Agreement, Wi-Fi Agreement or other such agreement covering attachments to AEP Facilities.

**SECTION 16. Extension to City Property Line.**

Consistent with the Facilities Extension Schedule of AEP's Tariff, AEP will ensure that reasonable consideration will be made to minimize the cost to the City for new distribution line extensions installed for the City and located inside city limits as well as for conversions from overhead to underground electric connection for existing lines within the city limits.

**SECTION 17. Compliance with Law; Police Power.** AEP shall carry out operations under this franchise in compliance with all valid and applicable federal, state, and local laws, and AEP specifically agrees to comply with the provisions of any such City promulgated laws or regulations, provided that any such City promulgated laws or regulations shall not be in conflict or inconsistent with the express terms and conditions of this franchise and shall not conflict with the laws of the State of Texas or the laws of the United States of America. Nothing in this franchise shall be construed to contract away any City police power to regulate and legislate to protect and promote the public health, safety, and welfare. City shall provide reasonable public notice and opportunity to review and comment on any new or revised City laws, rules or regulations that may impact AEP's use of the Public Rights-of-Way.

**SECTION 18. Venue.** For proceedings and actions other than those required or authorized to be conducted before the Public Utility Commission of Texas ("PUCT"), venue for actions concerning any matter or controversy growing out of or incident to the duties and obligations in this franchise shall be the State courts of competent jurisdiction of Nueces County, Texas, unless Texas law requires a matter to be submitted to a particular regulatory body or court outside Nueces County.

**SECTION 19. Notices.** All notices or other communications hereunder shall be made in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile to the addresses set forth below. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a business day, and otherwise shall be effective at the close of business on the next business day. Notice by overnight United States mail or courier shall be effective on the next business day after it was sent. Notice by United States mail (other than overnight mail) shall be effective three business days after it was sent. A party hereto may change its address by providing notice of same in accordance herewith.

To City: City Manager, City of Port Aransas, 710 West Avenue A, Port Aransas, TX 78373. Fax number: 361-749-4723.

To AEP: Manager of Community Affairs, AEP Texas Central Company, 539 N. Carancahua St, Corpus Christi, Texas, 78401 or P.O. Box 2121, Corpus Christi, Texas, 78403. Fax number: 361-881-5497.

**SECTION 20. Captions.** The captions contained in this franchise are for convenience of reference only and are not intended to restrict, affect, enlarge or be of any weight in the interpretation or construction of the terms and conditions of this franchise.

**SECTION 21. Waiver.** Failure of either party to require the performance of any term in this franchise or the waiver by either party of any breach of this franchise does not prevent subsequent enforcement of such term and is not deemed a waiver of any subsequent breach. The recitation of specific remedies in this franchise does not waive the right of either party to enforce this franchise by initiating legal proceedings to seek or obtain judicial enforcement of the other party's obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

**SECTION 22. Entire Agreement.** This franchise contains the entire agreement of the parties and supersedes all prior and contemporaneous agreements and understandings, oral or otherwise, among the parties with respect to the matters contained in this franchise.

**SECTION 23. Amendment.** This franchise may be amended only by written agreement of AEP and the City.

**SECTION 24. No Third Party Beneficiaries.** The City and AEP are entering into this franchise solely for their own benefit and nothing herein shall be construed to confer any right, privilege, or benefit on any person or entity other than the City and AEP. No action may be commenced or prosecuted against any party by any third party claiming as a third party beneficiary of this franchise agreement. The franchise agreement shall not release or discharge any obligation or liability of any third party to either party.

**SECTION 25. Requests for Confidential Information.** In the event the City receives a request for the release of information provided by AEP, that is characterized in this franchise agreement as confidential or is characterized in writing by AEP as confidential when it provides the information to the City, the City shall follow the procedures in the Texas Public Information Act for requesting a Texas Attorney General's Opinion regarding exemption of the information from disclosure and shall provide AEP with a copy of the request for the release of the information and a copy of its request to the Texas Attorney General asking for the opinion regarding exemption of the information from disclosure. If requested to do so, the City will provide information available to it and other reasonable assistance to AEP to assist AEP in establishing that the information is exempted from disclosure.

**SECTION 26. Severability.** If for any reason any section, paragraph, subdivision, clause, phrase, word or provision of this ordinance shall be held invalid or unconstitutional by final judgment of a court of competent jurisdiction, it shall not affect any other section, paragraph, subdivision, clause, phrase, word or provision of this ordinance, for it is the definite intent of this City Council that every section, paragraph, subdivision, clause, phrase, word or provision hereof be given full force and effect for its purpose; provided, however, that this paragraph does not apply should the compensation provided to City hereunder be held invalid by final judgment of a court of competent jurisdiction after all appeals, if any, and City may in that event declare this franchise null and void.

**SECTION 27. Publication.** Publication shall be made as required by City's Charter.

**SECTION 28. Acceptance.** In order to accept this franchise, AEP must file its written acceptance within 30 days after final passage by the City Council of City. If the franchise is not accepted within 30 days, this ordinance shall be null and void.

**SECTION 29. Effective Date.** Subject to Section 26, and provided AEP accepts the franchise by the filing of its written acceptance, this franchise ordinance shall take effect at midnight on January 10, 2010, contingent upon its final adoption by the City Council in accordance with the City Charter.

**PASSED, ORDAINED, APPROVED AND ADOPTED** this 21<sup>st</sup> day of January, 2010.

CITY OF PORT ARANSAS

BY: 

The Hon. Claude Brown, Mayor

ATTEST:

  
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Esther Arzola, City Secretary

Passed First Reading: November 19, 2009

Passed Second Reading: December 17, 2009

Passed Third Reading: January 21, 2010