

ELECTRIC UTILITY FRANCHISE AGREEMENT

This Electric Utility Franchise Agreement is between the City of Austin, Texas, which owns and operates a municipal electric utility d/b/a Austin Energy ("AE"), and the City of Sunset Valley, Texas ("the City").

SECTION 1. GRANT OF FRANCHISE

1.1 The City hereby grants AE, for a term of ten years from the effective date of this agreement, a franchise for the transmission, distribution, and sale of electricity within the City. AE may construct, operate and maintain in, upon, over, under, and across the present and future streets, alleys and public ways and places within the City all the facilities AE deems reasonably necessary for the provision of safe, reliable, and economical electric service ("AE Facilities").

1.2 This Franchise shall not be construed to restrict or materially affect or alter any power or authority granted to AE by state or federal law, nor does it grant to the City any right or regulatory authority over AE's rates or operations not otherwise expressly given the City by state or federal law.

SECTION 2. FRANCHISE FEE

2.1 During the term of the franchise granted herein, AE shall pay a Franchise Fee to the City for street rental in the amount of 3% of AE's Gross Receipts from the sale of electricity to customers within the City from the effective date of this agreement written below. "Gross Receipts" shall consist ~~only of monies actually received~~ of amounts actually billed for electric consumption and shall exclude ~~receivables, uncollectibles, and~~ taxes. In the event a customer bill contains charges for services or fees other than for electric service, customer payments shall be allocated between services on a pro-rata basis.

~~2.2 If at any point during the term of this agreement, AE imposes a stand-alone charge upon customers within the City for the direct recovery of the cost of the Franchise Fee rather than recovering the cost through base rates on a system wide basis, the City may opt to terminate this agreement. AE shall provide written notice to the City not later than 60~~

~~days prior to enactment of any such direct recovery charge, and thereafter the City shall have thirty days in which to exercise its termination option.~~ If, during the term of this Franchise Agreement, AE attempts to collect a stand-alone charge from customers within the City for the direct recovery of the cost of the Franchise Fee (rather than recovering the cost through base rates on a system-wide basis), the City may terminate this Franchise Agreement. AE shall provide written notice to the City no later than 60 days prior to enactment of any such direct recovery charge, and the City shall have 180 days after receipt of such notice to terminate this Franchise Agreement. If AE fails to provide written notice to the City at least 60 days prior to enactment of any such direct recovery charge, the City shall have the right to terminate this Franchise Agreement at any time after AE enacts any such direct recovery charge by providing AE with 180 days prior written notice of such termination. ~~Termination of this agreement shall not be construed as a revocation of the City's consent for AE to operate and provide electric service within the municipal limits of the City.~~

2.23 The payment for street rental shall be based upon AE's Gross Receipts on a quarterly basis and will be due and payable to the City within 45 days after the close of each quarter in AE's fiscal year.

2.34 The Franchise Fee is in lieu of all other fees and charges and the City shall not impose upon or collect from AE any other charge or fee in connection with the ~~construction, operation, and maintenance of~~ use of rights-of-way for AE facilities within the City.

SECTION 3. CONSTRUCTION AND OPERATION OF FACILITIES

3.1 AE may open and cut streets, curbs, and sidewalks; bore; or use any other methods it deems reasonably necessary to construct, maintain, and operate AE facilities within the City. The design and construction of AE Facilities and AE's access to and restoration of paved surfaces shall be in accordance with AE's design standards and criteria, as amended by AE from time to time.

63 3.2 Prior to starting work, AE shall give ten days written notice to the City of the scope and
64 duration of the work and shall otherwise follow the City's generally applicable notice and
65 permitting process for work within City rights-of-way. Prior notice may be reduced or
66 waived by the City Administrator. In the event AE deems there is an emergency, the
67 work is necessary to restore interrupted service, or AE otherwise deems that the notice
68 requirement will hamper its ability to maintain safety or reliability, AE may act without
69 prior notice.

71 3.3 The surface of any street, alley, or public way or place disturbed by AE shall be restored
72 by AE within a reasonable time after completion of the work. Restoration shall be made
73 to standards at least equal to those used by AE within the city limits of Austin.

75 3.4 Unless expressly stated herein, this Agreement does not excuse AE from compliance
76 with any City ordinance that may otherwise be lawfully applicable to AE's operations
77 within the City, nor does it impose upon AE any obligation to comply with a City
78 ordinance that would not otherwise lawfully apply to it.

80 SECTION 4. CIVIC IMPROVEMENTS

81 The City shall give AE reasonable prior notice of street widening or straightening
82 projects, ~~and~~ water line or wastewater line replacement projects, and other projects that
83 may affect AE's facilities. AE shall, at its expense, relocate AE facilities in City-owned
84 rights-of-way as is reasonably necessary to accommodate ~~such~~ street widening or
85 straightening, ~~and~~ water or wastewater line replacement, or when otherwise required to
86 relocate by state law.

88 SECTION 5. USE OF POLE SPACE

89 AE shall permit the City to use existing AE poles for the City's communications systems
90 fiber to be used for governmental purposes to the extent AE determines space is
91 available. Such use shall be subject to the City's execution of AE's form contract for
92 pole attachments and payment of the AE fees applicable to such service. The City may

not lease or resell excess ~~fiber~~ capacity on AE poles for non-governmental use without AE's written consent.

SECTION 6. UNIFORM FRANCHISE FEES

If at any time during the term of this Agreement, AE enters into a franchise agreement with another municipality that provides for payment of a franchise fee at a greater percentage than that stated in Section 2, AE shall provide written notice of such event to the City. Within ~~60~~ 180 days after the City's receipt of notice from AE, the City may opt to amend the percentage stated in Section 2 to reflect the percentage given to such other municipality. If AE fails to provide written notice to the City of such an event, the City shall have the right to amend the percentage stated in Section 2 to reflect the percentage given to such other municipality at any time after the effective date of the franchise agreement authorizing a higher franchise fee paid to the other municipality. Such amendment shall take effect on the same date shown in the franchise with such other municipality.

SECTION 7. LIABILITY

Nothing herein creates for one Party legal liability stemming from acts or omissions of the other Party.

SECTION 8. GOVERNING LAW

This Agreement is performable in Travis County, Texas, shall be governed by the Laws of the State of Texas.

SECTION 9. ACCOUNTS AND RECORDS

On not more than an annual basis, AE will provide reasonable records necessary to verify that all payments to the City are accurate within 30 days of a written request.

SECTION 10. NOTICES

Any notices required under this Agreement must be in writing and shall be deemed to have been duly given on the date such notice is delivered by hand (delivery charges

prepaid) or three (3) days after the date such notice is sent by U.S. certified mail, return receipt requested (postage charges prepaid), to a party at the party's address listed below (or to such other address or addresses as a party may designate from time to time by providing notice in accordance with this section): ~~shall be effective when delivered to the City through its City Administrator, when notice to the City is required, or to the General Manager of Austin Energy, when notice to AE is required.~~

City: _____

Mayor

AE: _____ Larry Weis

_____ General Manager

_____ City of Austin d/b/a "Austin Energy"

SECTION 11. SEVERABILITY

Should any of the clauses, sentences, paragraphs, sections or parts of this Agreement be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Agreement.

SECTION 12. SOURCE OF FUNDING

The obligations of AE under this Agreement shall be payable solely from electric utility operating revenues. Nothing herein shall be construed as creating a right or obligation enforceable against the taxing revenues or authority of the City of Austin.

EFFECTIVE AS OF MARCH 1, 2011:

156 City of _____

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160 By: _____

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City of Austin d/b/a Austin Energy

By: _____

Larry Weis

General Manager