

**ORDINANCE NO. O-2015-008**

**AN ORDINANCE GRANTING AN ELECTRIC FRANCHISE TO TEXAS-  
NEW MEXICO POWER COMPANY, A TEXAS CORPORATION**

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF  
THE CITY OF LA MARQUE, TEXAS:**

**ARTICLE I PARTIES**

The City of La Marque, herein called the City, a municipal corporation created under Title 28 of the Texas Revised Civil Statutes, does hereby grant to Texas-New Mexico Power Company, its successors and assigns, herein call Grantee, the nonexclusive right, privilege and franchise herein contained.

**ARTICLE II**

**NATURE OF GRANT**

The City acting pursuant to Sections 181.004-181.006 and Sections 181.041-181.047 of the Texas Utilities Code, and Articles II and XII of the Charter of the City of La Marque, does hereby grant to Grantee the nonexclusive right, privilege and franchise to erect, maintain, operate and remove electric lines and pertinent facilities over, under, across, upon and along the streets, alleys and other public property in the City or any future extension thereof, subject to the terms and conditions herein set forth.

**ARTICLE III**

**PURPOSE**

This franchise is granted for the purposes of providing electric service within the City and adjacent areas and transporting electric energy to, from, and beyond the city.

**ARTICLE IV**

**TERM**

This franchise shall exist for a term of ten (10) years from date of passage, which date is hereinafter set forth.

## ARTICLE V

### LOCATION OF FACILITIES

1. Location of Facilities. All poles placed or maintained under this grant shall be reasonably straight. All poles, and other equipment placed or maintained by Grantee under this grant, shall at all times be of sound material and kept in a safe condition. All of such poles and other equipment shall be so placed, constructed and maintained as not to interfere with drainage within the City or with any public activity maintained and operated by the City, and also so as not to constitute any danger or hazard to members of the public using the street, avenues and alleys within the City. Nothing herein contained shall be construed as authorizing the violation of, or interference with any right of ingress or egress to, or from any private property.

The location, route and position of all poles conduits, stubs, guys, anchors and other appurtenance placed or maintained under the provision hereof shall be subject to reasonable and proper regulation, control and direction of the City Council or of any City official to whom such duties have been or may be delegated.

2. Excavations. The surface of all streets, avenues, and alleys cut, broken, excavated or disturbed by Grantee in exercising any right or privilege hereunder shall be by Grantee, at its own expense and as soon as practical, restored to as good a condition as previously existed prior to the cutting, breaking, excavating or disturbance thereof to the satisfaction of the governing body of the City of La Marque.

3. Relocation of Facilities. Grantee whenever ordered to do so by the governing body of the City of La Marque, shall expeditiously rearrange, relocate alter or remove any pole, wire, cable, conduit, anchor, or any other appurtenance placed or maintained by Guarantee under this grant at its own expense, when the changing, rearranging, relocation, altering or removal thereof may be reasonable, necessary, or desirable in the prosecution or construction of any public work or project or public improvement undertaken by the City of La Marque, alone or jointly.

4. Temporary Removal of Wires. Grantee, on the request of any person, shall remove or raise or lower its wires temporarily to permit the moving of houses or other bulky structures. The expense of such temporary removal, raising or lowering of wires shall be paid by the benefited party or parties provided, however, that no charge shall be made when the house or other bulky structure is not more than twenty-two feet above the surface of the street. Grantee reserves the privilege of determining the route of removal of such structures to avoid raising the larger cables and lines where possible, and shall be given not less than three (3) business days advance notice to arrange for such temporary changes, unless a longer time is provided in the Tariff issued to TNMP by the Public Utility Commission of Texas.

## **ARTICLE VI**

### **INDEMNITY**

Grantee shall fully indemnify and save harmless the City from any and all damage, loss, action or less, action or cause of action arising in whole or in part from Grantee's exercise of any of its rights, privileges, franchises and obligations hereunder, except to the extent arising out of the City's sole negligence or willful misconduct. In the event of joint and concurrent negligence or fault of both Grantee and the City, responsibility and indemnity, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas without, however, waiving any governmental immunity available to the City under Texas law and without waiving any of the defenses of the parties under Texas law. It is understood that it is not the intention of the parties hereto to create liability for the benefit of third parties, but that this section shall be solely for the benefit of the parties hereto and shall not create or grant any rights, contractual or otherwise, to any person or entity.

## **ARTICLE VII**

### **STREET RENT**

Grantee shall report and pay to the City Council during January, April, July and October of each year of the term of this franchise a street rental equal to \$0.0035779 per kWh or the amount set forth by law and calculated per kWh of electricity delivered by Grantee to each retail customer whose consuming facility's point of delivery is located within the City's Boundaries. This effective rate is based upon the Texas Utilities Code Section 33.008(b).

Upon request of the City Council Grantee shall, within a reasonable time, present to the City Council any and all records, accounts and books for inspection relative to the total kilowatt hours of electricity delivered to retail customers within the corporate limits of LaMarque.

The charge herein made shall be in lieu of, to the extent permitted by law, any other charges or fees of any kind of the City based on, connected with, or incident to the exercise of the nonexclusive right, privilege and franchise here granted, but shall not in anywise impair or diminish Grantee's obligation to pay city ad valorem taxes or in anywise interfere with the collection thereof.

## **ARTICLE VIII**

### **VALUE OF FRANCHISE**

The value of this franchise shall not be considered in filing reasonable rates and charges for utility service extended by Grantee within the City. Nor shall any value be affixed to or allowed for this franchise in any proceeding or for any purpose whatsoever, whether related to rate fixing or any other matter.

## **ARTICLE IX**

### **RESERVATION OF POLICE POWER**

The City of La Marque does not part with, but expressly reserves the right and duty at all times to exercise in the interest of the public, full superintendence, regulation and control in respect of all matters connected with the police powers of the City of La Marque, now or hereafter vested in it or its governing body.

## **ARTICLE X**

### **ASSIGNMENT**

Notwithstanding anything herein contained to the contrary, Grantee shall not assign the franchise herein granted and contained to any person, firm or corporation without first obtaining the consent of the City Council to such assignment or transfer.

## **ARTICLE XI**

### **FORCE MAJEURE**

Grantee will make reasonable provision to insure satisfactory and continuous service, but does not guarantee a continuous supply of electrical energy, and shall not be liable for damages or for failure to perform any provision of this franchise occasioned by interruptions or failure to commence delivery caused by an Act of God, or the public enemy, fire, explosion, strikes, riots, war, order or any court or judge granted in any bona fide adverse legal proceedings or action, or any order of any committee or tribunal having jurisdiction in the premises; or, without limitation by the preceding enumeration, any other act or thing reasonable beyond its control; or interruptions necessary for repairs or changes in Grantee's generating equipment or distribution system.

## ARTICLE XII

### ALARM SYSTEM AND OTHER FACILITIES

Grantee does consent to the use of its poles and other facilities for the erection and maintenance of the City Fire and Police alarm system upon the execution of a Pole Attachment Agreement. Street lights will be erected and maintained by Grantee in accordance with Grantee's Tariff.

## ARTICLE XIII

### SAVINGS

#### CLAUSE

It any section, paragraph, subdivision, clause, phrase or provision of this ordinance shall be adjudged invalid or held unconstitutional, the same shall not affect the validity of this ordinance as a whole or any part or provision thereof other than the part so decided to be invalid or unconstitutional.

## ARTICLE XIV

### ACCEPTANCE OF AGREEMENT

Grantee shall have thirty (30) days from and after the passage and approval of this ordinance to file its written acceptance thereof with the City Clerk and upon such acceptance being filed this ordinance shall take effect and be in force from and after the date of its passage and approved by the City Council.

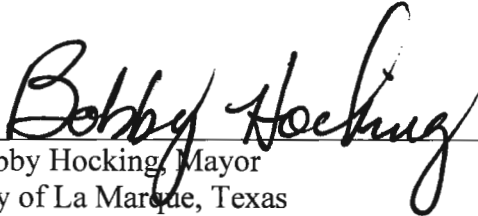
## ARTICLE XV

### REPEAL AND CODIFICATION

Ordinance Number 997 adopted by the City Council of the City of La Marque, Texas, on April 28, 2008, granting an electric franchise to Texas-New Mexico Power Company is hereby repealed. This Ordinance shall be codified as Appendix B to the City Code of ordinance and shall be substituted for the present Appendix B, Electric Franchise, of the City Code of Ordinances.

**PASSED AND APPROVED** on first reading this 27th day of April, 2015.

**PASSED AND APPROVED** on second and final reading this the 18th day of  
May, 2015.

  
\_\_\_\_\_  
Bobby Hocking, Mayor  
City of La Marque, Texas

**ATTEST:**

  
\_\_\_\_\_  
Robin Eldridge, City Clerk

**APPROVED:**

  
\_\_\_\_\_  
Ellis J. Ortego, City Attorney

STATE OF TEXAS       §  
                                  §  
COUNTY OF DENTON   §

WHEREAS, there was finally passed and approved on May 18, 2015, Ordinance No. O-2015-008 granting to Texas-New Mexico Power Company, its successors and assigns, a franchise to furnish and deliver electricity to the general public in the City of La Marque, Galveston County, Texas, for the transporting, delivery and distribution of electricity in, out of and through said municipality for all purposes, which is recorded in the Minutes of the City Council of said City; and

WHEREAS, Article XIV of said ordinance provides as follows:

**“XIV. ACCEPTANCE OF AGREEMENT**

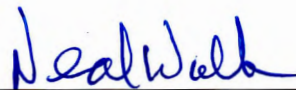
Grantee shall have thirty (30) days from and after the passage and approval of this ordinance to file its written acceptance thereof with the City Clerk and upon such acceptance being filed this ordinance shall take effect and be in force from and after the date of its passage and approved by the City Counsel.”

WHEREAS, it is the desire of Texas-New Mexico Power Company, the holder of the rights, privileges, and grants under the aforesaid franchise ordinance, to comply with the above-quoted provisions of Article XIV thereof.

NOW, THEREFORE, premises considered, Texas-New Mexico Power Company, acting by and through its duly authorized officers, and within the time prescribed by Article XIV quoted above, does hereby agree to and accept the franchise granted to it by the above-described ordinance, in accordance with its terms, provisions, conditions, and requirements and subject to the stipulations and agreements therein contained.

WITNESS THE EXECUTION HEREOF, on this the 5<sup>TH</sup> day of June, 2015.

Texas-New Mexico Power Company



Name: Neal Walker

Title: President