

ORDINANCE NO. 2008-22

AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS, GRANTING TO CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE AND FRANCHISE, FOR A PERIOD OF THIRTY (30) YEARS, TO CONDUCT AN ELECTRIC DELIVERY BUSINESS AND TO ERECT, CONSTRUCT, MAINTAIN, OPERATE, USE, EXTEND, REMOVE, REPLACE AND REPAIR IN, UNDER, UPON, OVER, ACROSS, AND ALONG ANY AND ALL OF THE PRESENT AND FUTURE PUBLIC ROADS, HIGHWAYS, STREETS, AND ALLEYS OF THE CITY, AND OVER AND ACROSS ANY STREAM OR STREAMS, BRIDGE OR BRIDGES, AND/OR EASEMENT, NOW OR HEREAFTER OWNED OR CONTROLLED BY THE CITY, A SYSTEM OF POLES, POLE LINES, TOWERS, TRANSMISSION AND DISTRIBUTION LINES, WIRES, GUYS, GAS AND OTHER PIPELINES, FIBER OPTIC AND OTHER CABLES, CONDUITS, METERS AND OTHER DESIRABLE EQUIPMENT, FACILITIES, INSTRUMENTALITIES, AND APPURTENANCES (INCLUDING FACILITIES FOR THE GRANTEE'S OWN USE) NECESSARY OR USEFUL FOR THE TRANSMISSION, DISTRIBUTION, FURNISHING AND/OR SELLING OF ELECTRICITY FOR LIGHT, POWER, AND HEAT, AND FOR ANY OTHER PURPOSE FOR WHICH ELECTRICITY AND OTHER RELATED SERVICES PROVIDED BY GRANTEE MAY BE USED, TO THE CITY AND ITS INHABITANTS, AND FOR ANY OTHER BUSINESS PURPOSE AS THE COMPANY MAY DESIRE FROM TIME TO TIME, SPECIFICALLY INCLUDING, BUT NOT LIMITED TO, THE GRANTING OF ACCESS TO THOSE FACILITIES FOR THE DELIVERY BY THIRD PARTIES OF BROADBAND THROUGH POWER LINES OR SIMILAR SERVICE; PROVIDING CONDITIONS CONTROLLING THE USE OF PUBLIC THOROUGHFARES AND EXTENSIONS THEREIN; ESTABLISHING STANDARDS OF SERVICE; PROVIDING FOR ACCEPTANCE; PROVIDING FOR COMPENSATION TO BE PAID TO THE CITY; PROVIDING THAT THE FRANCHISE GRANTED BY THIS ORDINANCE SHALL NOT BE EXCLUSIVE; PROVIDING THE GRANTEE'S OBLIGATION TO FURNISH EFFICIENT ELECTRICAL SERVICE AT RATES SPECIFIED IN THE TARIFF FOR ELECTRICAL SERVICES BETWEEN THE GRANTEE AND THE CITY; PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR OTHER MATTERS RELATING TO THE SUBJECT.

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BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TOMBALL:

ARTICLE I
GRANT OF AUTHORITY

Sec. 1.01. Use of Public Streets and Ways. Subject to the terms, conditions and provisions of this Ordinance, the City of Tomball, Texas, hereinafter referred to as "City," hereby grants to CenterPoint Energy Houston Electric, LLC, its successors and assigns, hereinafter

referred to as "Grantee," the right, privilege and franchise to conduct, within the boundaries of City as such boundaries now exist or may hereafter be extended, an electric delivery business. City further grants to Grantee the right, privilege, and franchise to erect, construct, maintain, operate, use, extend, remove, replace, and repair, in, under, upon, over, across, and along any and all of the present and future public roads, highways, streets, lanes, and alleys owed or controlled by City, and over and across any stream, bridge, and/or utility easement now or hereafter owned or controlled by City (collectively, "Public Rights-of-Way"), a system of poles, pole lines, towers, transmission and distribution lines, wires, guys, gas and other pipelines, fiber optic and other cable, conduits, meters or other desirable equipment, facilities, instrumentalities and appurtenances (collectively, "Facilities"), including facilities for Grantee's own use, necessary or useful for the purpose of transmitting, distributing, furnishing, and/or selling to the City and its inhabitants, and/or to any other person, firm or corporation located therein, electricity for light, power and heat, and for any other purpose for which electricity and other facilities and services utilized or provided by, to or for Grantee may be used; to transmit, distribute, and/or furnish electricity by means of said Facilities; and to sell same to said City and inhabitants thereof, and/or to any other person, firm, or corporation (the foregoing, and any part hereof, being sometimes referred to in this Ordinance as an "Electrical Power Business"); and to use, license, or exploit the Facilities for such other purposes as Grantee may desire from time to time, including, but not limited to, the granting of access to those Facilities for the delivery by third parties of broadband over power lines ("BPL") or similar service within the City.

ARTICLE II

CONDITIONS OF STREET OCCUPANCY, OPERATIONAL STANDARDS

Sec. 2.01. Grantee's use and occupancy of the Public Rights-of-Way within the corporate limits of City shall be subject to the lawful exercise of the City's police power, and its statutory rights to regulate utility services and the City's Public Rights-of-Way. To the extent permitted by law, if there is a conflict between this franchise ordinance and any ordinance or regulation regarding the use and occupancy of the Public Rights-of-Way, including any right-of-way management ordinances, the franchise ordinance shall control.

Sec. 2.02. All poles erected by Grantee pursuant to the authority herein granted shall be built in accordance with generally accepted industry standards and shall be set, to the extent practical, so that they will not unreasonably interfere with the flow of water in any gutter or drain

or with the ordinary travel on the streets, sidewalks, or other Public Rights-of-Way. Within the streets or other Public Rights-of-Way of City, the location and reroute of all poles, stubs, guys, anchors, lines, conduits, and cables placed and/or constructed by Grantee in the construction and maintenance of the electrical lighting and power system in City shall be subject to the reasonable and proper regulation, control, and direction of City, or any City official to whom such duties have been or may be duly delegated, which regulation and control shall include, but not by way of limitation, the right to require in writing a reasonable amount of time in advance, at no cost to City, the timely relocation of Grantee's Facilities, exclusive of street lighting and facilities installed for service directly to City, within the streets or other Public Rights-of-Way whenever such shall be reasonably necessary on account of the construction, widening, change of grade, or relocation by City of streets or Public Rights-of-Way, or construction or relocation by City of City utility lines or drainage facilities. The failure by Grantee to provide for the timely relocation of such facilities, under the circumstances then existing and in accordance with applicable tariff standards, shall be deemed a material breach of this franchise. Grantee may seek compensation for such relocation from third parties, including other political subdivisions, instrumentalities, or agencies of the State of Texas. City shall bear the costs of all relocations of street lighting and Facilities installed for service directly to the City and of any relocation of other Facilities requested by the City for reasons other than the construction, widening, change of grade, or relocation by City of streets or Public Rights-of-Way, or construction or relocation by the City of City utility lines or drainage facilities. Except in the event of an emergency, City shall give Grantee at least seventy-two (72) hours notice when requesting the bracing of Grantee's poles. Grantee shall pay for the bracing to accommodate the City's construction, widening, change of grade, or relocation of streets or Public Rights-of-Way, or construction or relocation by the City of City utility lines or drainage facilities.

Sec. 2.03. Except as provided in Section 2.02, above, in consideration for the compensation set forth in Section 6.01, the City agrees that if the City sells, conveys, or surrenders possession of any portion of the Public Rights-of-Way that is being used by Grantee pursuant to this Ordinance, the City, to the maximum extent of its right to do so, shall first grant Grantee an easement for such use; and the sale, conveyance, or surrender of possession of the portion of the Public Rights-of-Way shall be subject to the right and continued use of Grantee.

Sec. 2.04. The surface of any Public Right-of-Way disturbed by Grantee in erecting, constructing, maintaining, operating, using, extending, removing, replacing, or repairing its Facilities shall be restored within a reasonable time after the completion of the work to as good a condition as before the commencement of the work. No Public Right-of-Way shall be encumbered by construction, maintenance, or removal work by Grantee for a longer period than shall be reasonably necessary to execute such work.

Sec. 2.05. Grantee shall furnish the grade of service to retail customers as provided in its tariffs and shall maintain its Facilities in reasonable operating condition during the continuance of this Ordinance. Grantee's tariffs shall govern the rates, access to service, terms, and quality of electric delivery services provided by Grantee. An exception to this requirement is automatically in effect when due to force majeure. In any force majeure event, Grantee shall do all things reasonably within its power to restore normal service. As used herein, force majeure shall mean forces or conditions not reasonably within the control of a party (including, but not limited to: a strike; war or act of war (whether an actual declaration of war is made or not); insurrection; riot; act of public enemy; accident; fire; flood or other act of God; sabotage; shortages in materials, supplies, and equipment; governmental regulations; limitations and restrictions as to the use and availability of materials, supplies, and equipment and as to the use of services; unforeseen and unusual demands for service or other events) where the affected party has exercised all due care in the prevention thereof and such causes or other events are without the fault or negligence of the affected party.

Sec. 2.06. Grantee, on the written request of any person shall temporarily remove, raise, or lower its wires and/or other Facilities to permit construction work in the vicinity thereof or to permit the moving of houses or other large or bulky structures. The reasonable expense of Grantee (including, but not limited to administrative expenses of Grantee) of such temporary removal, raising, or lowering of its wires and/or other Facilities shall be paid for by the benefited party or parties. Grantee may require such payment in advance and Grantee shall not be obligated to temporarily remove, raise, or lower its wires and/or other Facilities until such payment has been made. Grantee shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary removal, raising, or lowering of its wires and/or other Facilities.

Sec. 2.07. Grantee shall construct, operate, and maintain its Facilities in substantial accordance with Grantee's own Service Standards and the applicable provisions of the National Electrical Safety Code, as the same is amended from time to time (together with any replacement code of comparable industry acceptance, the "NESC"). Grantee shall determine the method of construction and types of materials used in building, maintaining, and operating Grantee's Facilities. City shall require its employees and contractors performing work for the benefit of City to report as soon as practicable any damage done to Grantee's Facilities. Grantee also agrees to require its employees and contractors performing work for the benefit of Grantee to report as soon as practicable any damage done to City's Facilities.

Sec. 2.08. In addition to other considerations set forth herein, Grantee shall furnish, free of charge, subject to the use of City, such pole and/or duct space as may be required from time to time for the installation of City-owned traffic signal light systems, police and fire alarm system conductors, fiber optic cable, computer cable, Christmas lights and banners; provided such conductor space on any pole does not exceed the capacity of one cross arm on any one pole or one interior duct and provided such space is then available on existing poles or ducts. The specific location for these traffic signal light systems, police and fire alarm conductors, fiber optic cable, computer cable, Christmas lights and banners on Grantee's poles and/or ducts shall be determined by Grantee and shall be allotted at the time specific applications for space are received from City. All City traffic signal light systems, police and fire alarm circuits, fiber optic cable, computer cable, Christmas lights and banners on Grantee's poles and ducts shall be designed and installed, operated, and maintained in compliance with the applicable provisions of the NESC and other laws, statutes, codes and ordinances applicable to private parties and so as to create no interference, corrosion, harm, damage, or hazard with, to or from the Facilities or Grantee's use thereof. All plans for City traffic signal light systems, police and fire alarms circuits, fiber optic cable, computer cable, Christmas lights and banners on Grantee's poles and ducts must be submitted for Grantee's written approval prior to installation. Any modifications to Grantee's Facilities necessary to accommodate such installation will be paid by the City.

It is further agreed that Grantee shall not be responsible to any party or parties whatsoever for any third party suits, proceedings, causes of action, claims, losses, damages, fines, penalties, costs and expenses, including reasonable attorneys' fees and court costs, for damages or injuries to persons or the property of third parties by reason

of the installation, maintenance, inspection, operation and/or non-operation of the City-owned traffic signal light systems, police and fire alarm system conductors, fiber optic cable, computer cable, Christmas lights, and banners constructed upon Grantee's poles or in its ducts, or street light pole, ballast, and bulbs belonging to the City, even if installed and/or maintained by Grantee on behalf of City, and City shall, to the extent permitted by law, indemnify and hold Grantee harmless from and against all such third party suits, proceedings, causes of action, claims, losses, damages, fines, penalties, costs and expenses, including reasonable attorneys' fees and court costs, for damages or injuries to persons or property (including that of Grantee), but City does not, by this ordinance, admit primary liability to any third party by reason of City's operation and use of such City-owned traffic signal light systems, police and fire alarm system conductors, fiber optic cable, computer cable, Christmas lights, and banners and street light poles, ballast and bulbs, such being a function of government.

Sec. 2.09. Emergency Repairs; Restoration of Service. During an Emergency where, in the good faith judgment of Grantee, failure to act immediately could jeopardize public health, safety, or general welfare, or in situations where a repair is necessary to restore service to a customer, Grantee may perform repairs to Facilities in the Public Rights-of-Way, including repairs that involve the alteration or disturbance of the surface of such Public Rights-of-Way, without prior notification to, or acquisition of a construction permit from, the City. In such cases, Grantee shall notify the Mayor, or his or her designee, as promptly as possible after beginning the work, but in no event later than the close of business on the next business day, stating the nature of such repairs and, if not completed, the length of time estimated to complete same. The Grantee shall apply for any required approvals as soon as reasonably practicable, and any work performed that is not consistent with then applicable standards shall be corrected upon notice thereof from the City. As used in this Section 2.09, "Emergency" shall mean a situation which, unless immediate remedial action is taken, will likely result in harm to public health, safety, and/or welfare.

ARTICLE III INDEMNIFICATION

Sec. 3.01. Indemnity. *Grantee, and each person or entity performing work within a Public Right-of-Way as a contractor on behalf of Grantee, shall indemnify and hold City*

harmless as set forth below. If any person or entity other than Grantee is required to provide such indemnity, the provisions referring to a Grantee herein below shall be construed to mean such person or entity.

Sec. 3.02. Subject to Section 2.08, Grantee shall promptly defend, indemnify, and hold the City harmless (i) from and against all claims for damages, costs, losses, or expenses for the repair, replacement, or restoration of City's property, equipment, materials, structures, and facilities which are damaged, destroyed, or found to be defective as a result of Grantee's acts or omissions; and (ii) from and against any and all claims, demands, suits, causes of action, and judgments for (a) damage to or loss of the property of any person (including, but not limited to, Grantee, its agents, officers, employees, and subcontractors, and City, its agents, officers, and employees, and third parties); and/or (b) death or bodily injury of any person (including, but not limited to, the officers, agents, and employees of Grantee, Grantee's contractors, and City's officers, agents, and employees, and third parties), arising out of, incident to, concerning, or resulting from, the negligent or willful acts or omissions of the Grantee, its officers, agents, employees, and/or subcontractors, in the performance of activities pursuant to this Ordinance.

This indemnity provision is intended to include liability arising from City's alleged negligence, but only to the extent such liability arises out of a claim or claims that city was negligent in authorizing Grantee to use or occupy the Public Rights-of-Way, in regulating the conduct of Grantee, or in failing to prevent Grantee from acting in a negligent or wrongful manner.

For purposes of this indemnification provision, acts or omissions of the officers, agents, employees and contractors of Grantee shall be considered the acts and omissions of Grantee. The indemnity provision set forth above is solely for the benefit of City and Grantee and is not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

ARTICLE IV
MATERIAL BREACH OF FRANCHISE, NOTICE, AND LIQUIDATED DAMAGES

Sec. 4.01. Material Breach of Franchise. In addition to all rights and powers of the City by virtue of this franchise or otherwise, the City reserves as an additional and as a separate and distinct power the right to take any of the actions described in Section 4.02 in accordance with the procedures specified therein if any of the following events occur or for any of the following reasons:

- A. Grantee, by act or omission, violates any material term, condition, or provision of this franchise;
- B. Grantee knowingly or willingly attempts to evade any material provision of this Ordinance; or
- C. Grantee attempts to or does practice any fraud or deceit in its conduct or relations under this franchise with the City, customers or potential customers.

Sec. 4.02. Notice of Default: Opportunity to Remedy.

A. **Notice of Default.** The City Council shall exercise the rights provided in Section 4.02(B) hereof in accordance with the procedures set forth below:

1. The City shall notify Grantee, in writing, of an alleged failure to comply with a material provision of this Ordinance, which notice shall specify the alleged failure with reasonable particularity. Grantee shall, within thirty (30) days after receipt of such notice or such longer period of time as the City may specify in such notice, either remedy such alleged failure or, in a written response to the City, either present facts and arguments in refutation or excuse of such alleged failure or state that such alleged failure will be remedied and set forth the method and time schedule for accomplishing such remedy.

2. The City shall determine (i) whether a failure to comply with a material provision has occurred; (ii) whether such failure is excusable; and (iii) whether such failure has been remedied or will be remedied by the Grantee. The Grantee shall make

available to the City, if requested, any records, documents or other information necessary to make the determination.

3. If the City determines that a failure to comply with a material provision has occurred and that such failure is not excusable and has not been or will not be remedied by the Grantee in a manner and in accordance with a schedule reasonably satisfactory to the City, then the City may take any actions provided in Section 4.02(B) hereof, provided that if the City acts on its own motion it shall follow the procedural steps set forth in Section 4.02 (A, 1-3) hereof.

B. **City Council Action in Event of Breach.** In the event that grounds exist which give the City reason to believe that the Grantee has failed to comply with a material provision of this Ordinance, as provided in Section 4.01 hereof, then, in accordance with the procedures provided in Section 4.02(A) hereof, the City Council may, at any time during the term of this Ordinance, to the extent lawful: (i) Seek monetary damages from the Grantee as compensation for such material breach; and/or (ii) in the event that Grantee does not cure the breach of the franchise agreement, or the City Council does not elect to seek monetary damages from Grantee or Grantee does not agree to pay such damages, then, as an alternative to taking the action referred to above, the City Council may revoke the franchise granted pursuant to this Ordinance by termination of this Ordinance.

Sec. 4.03. Liquidated Damages. In addition to any other remedies provided herein, liquidated damages for violations of this franchise are set forth below. Such sums of money shall be considered and treated not as a penalty, but as liquidated damages due the City by Grantee by reason of inconvenience to the public and because of public works supervision and maintenance and other City administrative time and involvement which resulted in the expenditure of public funds due to Grantee's failure to comply with certain provisions in this franchise. If as a result of any acts or omissions by the Grantee pursuant to the franchise and, after notice and opportunity to cure, the Grantee has failed to remedy the act or omission, if it can be remedied, pursuant to Section 4.04 of this franchise the City may charge to and collect from the Grantee the following liquidated damages.

- A. For failure to provide data, documents, reports or information or to participate with the City during a review and evaluation, the damage shall be Twenty-Five Dollars (\$25.00) per day.
- B. For failure of Grantee to comply with the construction, operational, or customer service standards required by this Ordinance, the damage shall be Twenty-Five Dollars (\$25.00) per day.
- C. For failure to comply with any of the provisions of this franchise for which a penalty is not otherwise specifically provided, the damage shall be Twenty-Five Dollars (\$25.00) per day.

To the extent and only to the extent that Grantee is finally found to have violated this franchise and is required to pay liquidated damages pursuant to this Section 4.03, then Grantee shall reimburse the City for its reasonable costs, fees, and expenses, including attorneys' fees, court costs, expert fees, and other reasonable costs incident to the investigation and enforcement of the violation. If a violation by Grantee is found to have been the result of Grantee's malice or fraud, then the liquidated damages set forth above shall be increased from Twenty-Five Dollars (\$25.00) per day to Two Hundred Fifty Dollars (\$250.00) per day.

Sec. 4.04. Procedure for Imposing Liquidated Damages.

A. **Notice.** Whenever the city believes that the Grantee has violated one (1) or more terms, conditions or provisions of this franchise, and liquidated damages will be sought, a written notice shall be given to the Grantee informing it of such alleged violation or liability. The written notice shall describe in reasonable detail the specific violation so as to afford the Grantee an opportunity to remedy the violation, if it can be remedied. The Grantee shall have thirty (30) days subsequent to receipt of the notice in which to remedy the violation, if it can be remedied, before the City may impose liquidated damages unless the violation is of such a nature so as to require more than thirty (30) days and the Grantee proceeds diligently within the thirty (30) days to remedy the violation and maintains its diligence until the violation is remedied.

B. **Dispute of Violation.** The Grantee may, within ten (10) days of receipt of notice, notify the City that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by the Grantee to the City shall specify with particularity the matters disputed by the Grantee.

The City Council shall hear the Grantee's dispute. Grantee shall be given at least ten (10) days notice of the hearing. At the hearing, the Grantee shall be entitled to all the rights of due process consistent with City procedures, including but not limited to, the right to present evidence and the right to be represented by counsel. After the hearing, Grantee will be provided with a copy of the City Council's action, along with supporting documents.

If after hearing the dispute the claim is upheld by the City Council, the City may impose damages against the Grantee after the Grantee has had a reasonable period of time, not less than (30) days, to remedy the alleged violation, if it can be remedied.

C. **Reservation of Rights.** The rights granted the City by this section are in addition to all other rights of the City whether reserved by this franchise or authorized by law, and no action, proceeding or exercise of a right with respect to liquidated damages shall affect any other right the City may have.

Sec. 4.05. Force Majeure. Other than its failure, refusal, or inability to pay its debts and obligations, including, specifically, the payments to the City required by this franchise, Grantee shall not be declared in default or be subject to any sanction under any provision of this franchise in those cases in which performance of such provision is prevented by reasons beyond its control.

ARTICLE V **ASSIGNMENT OF FRANCHISE**

Sec. 5.01. This franchise shall be binding on and inure to the benefit of the City and Grantee and their respective successors and assigns. Grantee has the right to assign this franchise in whole or in part to an Affiliate, as hereinafter defined. Grantee also has the right to grant licenses, use rights and partial assignments of the franchise granted to Grantee under this franchise to any person or entity. It is further understood that if Grantee's electrical power business, or any portion of Grantee's electrical power business, shall be sold to or carried on by

another entity that is not or ceases to be an Affiliate of Grantee (a "Third Party Assignee"), then such Third Party Assignee shall automatically be deemed to succeed to the rights, privileges, and franchises granted hereunder, and the Third Party Assignee shall automatically assume the obligations of Grantee, in each case as such rights, privileges, franchises, and obligations pertain to the electrical power business conducted by the Third Party Assignee, accruing from and after the effective date of the transaction in question, and Grantee shall automatically be released from the obligations so assumed by the Third Party Assignee as of such date. As used herein, an "Affiliate" of Grantee shall mean any entity that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with Grantee through the ownership or control of a majority of the voting securities of the entity in question or Grantee, as the case may be. The City agrees that, in connection with any transaction or proposed transaction by which any portion of the electrical power business conducted by Grantee as of the Effective Date of this franchise is or is to be conducted by a Third Party Assignee, the City, promptly following Grantee's request, shall execute confirmation instruments or new franchise agreements on the same terms and conditions hereof with Grantee and the Third Party Assignee pertaining to their respective electrical power businesses to confirm and implement the provisions of this Section 5.01.

The City shall, within ten (10) days of written request, execute and deliver an instrument certifying, if true, (i) that this franchise is in full force and effect; (ii) that this franchise has not been modified or supplemented (or specifying any modifications or supplements); (iii) that Grantee is not in default under this franchise (or specifying any default); and (iv) to such other matters as may reasonably be requested. The City shall also agree to provide notices under this franchise to such lenders of Grantee or other parties as may request same,

Any assignment hereunder shall be subject to applicable reviews by the Public Utility Commission ("PUCT") and the City's participation in any such reviews pursuant to PURA §§14.101, 33.025, 37.152, 37.154 or other applicable provisions in effect at the time of the assignment. Any Third Party Assignee hereunder shall, within ten (10) days of written request, execute and deliver to City an instrument acknowledging that Third Party Assignee is subject to and bound by this franchise:

ARTICLE VI
PAYMENT TO CITY

Sec. 6.01.

(a) In consideration for the rights and privileges herein granted, Grantee agrees to pay to City, an annual franchise fee (referred to herein as "Annual Franchise Fee"), subject to an Annual Adjustment Factor as set forth below. Except as set forth in Section 2.08, payment of the Annual Franchise Fee shall be the total compensation payable to City in consideration for the right, privilege and franchise herein conferred for Grantee's use of the Public Rights-of-Way to construct, operate, use and maintain its Facilities for the provision of electric transmission and distribution service and its right to use, license, or exploit its Facilities as permitted, herein.

The Annual Franchise Fee shall be calculated as follows:

1. The "Annual Franchise Fee" shall be Six Hundred Thirty Three Thousand Six Hundred Sixty Nine and 64/100 Dollars (\$633,669.64).

2. The Annual Franchise Fee for each twelve-month period beginning July 1, 2009, (each a "Franchise Year") shall be adjusted by multiplying \$633,669.64 by the Annual Adjustment Factor. The "Annual Adjustment Factor" for any given year shall be a fraction, the numerator of which shall be the kWh delivered by Grantee within the City (inclusive of street lighting) in the previous calendar year and the denominator of which shall be the kWh delivered by Grantee within the City (inclusive of street lighting) in 2005, said amount being 229,972,868 kWh. (Example: The Annual Franchise Fee for the Franchise Year beginning July 1, 2010 = \$633,669.64) x 2009 kWh / 229,972,868 kWh).

In no case, however, shall the Annual Franchise Fee be less than the Annual Franchise Fee established in (1) above.

(b) In calculating the amount to be paid each year, Grantee shall offset its Annual Franchise Fee payments with the amount of the Municipal Account Franchise Credits and Municipal Franchise Fee Credits provided in Grantee's tariffs and applicable to City in the prior calendar year.

(c) The Annual Franchise Fee shall be payable in equal monthly installments due the first day of each calendar month. Grantee shall calculate the new franchise fee to be payable for each Franchise Year beginning July 1, 2009, and shall provide the same along with the basis for such calculation to City for its review no later than April 1st of each year. If Grantee does not receive an objection from City by May 31st, Grantee shall implement the adjusted Annual Franchise Fee payment on July 1st. If the term of this Franchise provided for in Section 9.01, below, ends on any day other than the last day of the last Franchise Year, then the Annual Franchise Fee for the final Franchise Year shall first be calculated pursuant to this Section 6.01 and then pro rated accordingly. Grantee shall begin paying the Annual Franchise Fee on the later of (a) the expiration of the prior franchise or (b) the first day of the month that is three (3) months prior to the Effective Date (the later of (a) or (b) being the "Payment Start Date"). (Example: If the Effective Date is July 15th, the Payment Start Date would be the later of (a) the expiration of the prior franchise or (b) the preceding April 1st.) If the Payment Start Date is any day other than July 1st, then the Annual Franchise Fee for the period between the Payment Start Date and the following July 1st shall first be calculated pursuant to this Section 6.01 and then pro rated accordingly and net of any amounts previously paid for such period.

(d) City may conduct an audit or other inquiry, or may pursue a cause of action in relation to the payment of the Annual Franchise Fee only if such audit, inquiry, or pursuit of a cause of action concerns a payment made within the period that is the shorter of (a) the period provided by PURA §33.008(e) or any similar provision or (b) the five (5) years before commencement of such audit, inquiry, or pursuit of a cause of action.

(e) Except as provided in Section 2.08, the Franchise Fee payable hereunder shall be the total compensation payable by the Grantee to the City for Grantee's use of the Public Rights-of-Way for the conduct of its business under this franchise. City shall not charge any additional license, charge, fee, street or alley rental, permit fee or other character of charge or levy for the use or occupancy of the Public Rights-of-Way in City, or any pole tax or inspection fee tax. If the City does charge Grantee any additional license, charge, fee, street or alley rental, or other character of charge or levy, then Grantee may deduct the amount charged from the next succeeding Franchise Fee payment or payments until fully reimbursed.

(f) If, as the result of a final and non-appealable order issued by the PUCT, all or a portion of the then-effective Annual Franchise Fee is expressly found to be unreasonable or is otherwise expressly rejected or disallowed by the PUCT, then Grantee shall be permitted to reduce the Annual Franchise Fee by such amount; provided, however, that Grantee shall be obligated to support the reasonableness of the Annual Franchise Fee and shall not voluntarily agree to any reduction thereof.

Sec. 6.02. No More Favorable Fee Arrangement. For the entire term of this Ordinance, City shall not enter into any franchise or other agreement granting a franchise over City-owned or controlled property to any other entity producing, generating, transmitting, distributing, furnishing, and/or selling electricity within the corporate limits of City (residential or commercial) (an "Other Provider") that provides for a lower annual franchise fee to City than that payable by Grantee under this Ordinance. Should City enter into any such franchise agreement(s), with an Other Provider in violation of this provision, then, without limiting other remedies available to Grantee, the percentage franchise fee payable to City under this Ordinance shall automatically be reduced to that payable by the Other Provider under such other agreement.

Sec. 6.03. Waiver of Prior Claims. The parties agree to waive any and all claims, asserted or unasserted, arising out of prior franchise agreements including, without limitation, the Prior Franchise, except those claims relating to Grantee's obligations two years prior to the Effective Date of this Franchise.

ARTICLE VII

FAILURE OF CITY TO ENFORCE FRANCHISE

Sec. 7.01. No Waiver of Terms. Grantee shall not be excused from complying with each and all of the terms, conditions, and provisions of this franchise Ordinance even though the City should upon one or more occasions fail to insist upon, to require, or to seek compliance with any such term, condition, or provision.

ARTICLE VIII
NONEXCLUSIVE FRANCHISE

Sec. 8.01. Nonexclusive Franchise. Nothing herein contained shall ever be held or considered as conferring upon Grantee and its successors and assigns any exclusive rights or privileges of any nature whatsoever.

ARTICLE IX
FRANCHISE TERM

Sec. 9.01. Term. Provided Grantee files a written acceptance of this franchise with the City within thirty (30) days after final passage of this Ordinance, this franchise shall take effect on the date it is read, passed and approved on second and final reading as recorded below (the "Effective Date") and shall continue and remain in effect for a term of thirty (30) years.

ARTICLE X
SEVERABILITY

Sec. 10.01. Severability. If any term or other provision of the franchise is determined by a non-appealable decision by a court, administrative agency, or arbitrator to be invalid, illegal, or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of the franchise shall nevertheless remain in full force and effect so long as the economic or legal substance is not affected in any manner materially adverse to either party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the parties shall negotiate in good faith as to modify the franchise so as to effect the original intent of the parties as closely as possible.

ARTICLE XI
MISCELLANEOUS PROVISIONS

Sec. 11.01. City, by the granting of this franchise, does not surrender, lose, waive, impair, lessen or increase the lawful powers and rights and duties, now or hereafter vested in and imposed on City under PURA and other applicable laws with respect to City's regulation of Grantee and its rates and services.

Sec. 11.02. There are no third party beneficiaries as to any of the undertakings and/or covenants of Grantee under this Ordinance. The undertakings and covenants of Grantee under

this Ordinance are solely for the benefit of City and no duty to any other person or entity is created hereby.

Sec. 11.03. All notices and other communications under this Ordinance shall be in writing and shall be delivered personally, or by overnight courier delivery service that maintains regular records of delivery and receipt, or mailed by certified mail, return receipt requested, postage prepaid. All notices and other communications shall be effective upon receipt or refusal of service. Unless changed by written notice to the other party, all notices and other communications shall be delivered to the following address:

If to City: City of Tomball
 401 Market Street
 Tomball, Texas 77375
 Attn: City Manager

If to Grantee: CenterPoint Energy
 Attn: Service Area Manager

With copy to: 1111 Louisiana
 Houston, TX 77002
 Attn: General Counsel

 P. O. Box 1700
 Houston, Texas 77251-1700
 Attn: General Counsel

Sec. 11.04. Acceptance. Grantee shall, within thirty (30) days from the date this Ordinance is formally adopted by City, file with City a written statement signed in its name and behalf in the following form:

“To the City of Tomball, Texas:

Grantee, for itself, its successors, and assign, hereby accepts the above and foregoing Ordinance and agrees to be bound by all of its terms and provisions.

By: _____
Name: _____
Title: _____

Dated the ____ day of _____, 2008.”

Sec. 11.05. This Ordinance shall take effect and be in force from and after its adoption and, upon acceptance by Grantee, the term of this Ordinance shall begin and continue in accordance with Section 9.01 hereof.

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 18TH DAY OF AUGUST 2008.

COUNCILMAN QUINN	<u>AYE</u>
COUNCILMAN LAZENBY	<u>AYE</u>
COUNCILMAN WEBB	<u>NAY</u>
COUNCILMAN HARVEY	<u>AYE</u>
COUNCILMAN DRIVER	<u>AYE</u>

SECOND READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 2ND DAY OF SEPTEMBER 2008.

COUNCILMAN QUINN	<u>AYE</u>
COUNCILMAN LAZENBY	<u>AYE</u>
COUNCILMAN WEBB	<u>NAY</u>
COUNCILMAN HARVEY	<u>AYE</u>
COUNCILMAN DRIVER	<u>AYE</u>

PASSED, APPROVED, AND ADOPTED on second and final reading this 2ND day of SEPTEMBER 2008.

ATTEST:

(signed) Doris Speer
Doris Speer, **City Secretary**

APPROVED:

(signed) Gretchen Fagan
Gretchen Fagan, **Mayor**

APPROVED AS TO FORM:

(signed) W. A. Olson, Jr.
William A. Olson, Jr.
CITY ATTORNEY

I, Doris Speer, the duly appointed, qualified and acting City Secretary of the City of Tomball, Texas, hereby certify that the above and foregoing Ordinance of CenterPoint Energy was duly adopted, at a regular meeting of the City Council of the City of Tomball, held on the 2nd day of Sept. 2008, and that the same has been duly engrossed and enrolled in the records of the City.

EXECUTED under my hand and the corporate seal of the City of Tomball, Texas, at said City, this 3rd day of Sept. 2008.

(signed) Doris Speer
City Secretary

(SEAL)

To the City of Tomball, Texas:

Grantee, for itself, its successors and assigns, hereby accepts the above and foregoing Ordinance and agrees to be bound by all of its terms and provisions.

By: _____
Title: _____
Title: _____

Dated this ____ day of _____ 2008.