

ORDINANCE NO. 10388A

AN ORDINANCE GRANTING TO PEDERNALES ELECTRIC COOPERATIVE, INC., ITS SUCCESSORS AND ASSIGNS AN ELECTRIC LIGHT, HEAT AND POWER FRANCHISE AND REPEALING ALL PREVIOUS ORDINANCES OF THE TOWN OF NIEDERWALD, TEXAS, GRANTING A FRANCHISE FOR SUCH PURPOSE

BE IT ORDAINED BY THE TOWN OF NIEDERWALD, TEXAS:

Section 1: That there is hereby granted to Pedernales Electric Cooperative, Inc., its successors and assigns (herein called the "Grantee"), the right, privilege and franchise until September 1, 2013, to construct, maintain and operate in the present and future streets, alleys, and public places of the Town of Niederwald, Texas, and its successors, electric light and power lines, with all necessary or desirable appurtenances (including underground conduits, poles, wires, transmission lines, and other structures and telephone wires for its own use), for the purpose of supplying electricity to the said Town, the inhabitants thereof, and persons and corporations beyond the limits thereof, for light, heat, power and other purposes.

Section 2: Poles, structures and other appurtenances shall be so erected and maintained as not to interfere unreasonably with traffic over streets and alleys. The location of all poles, conduits and other structures shall be fixed under the supervision of the Council of Alderman of the Town of Niederwald, Texas, or to such official or committee to which it may lawfully delegate such authority, but not so as to interfere unreasonably with the proper operation of said lines.

Section 3: The service furnished hereunder to said Town and its inhabitants shall be first class in all respects considering all circumstances, and shall be subject to such reasonable rules and regulations as the Grantee may make from time to time, and shall be subject to such reasonable regulations promulgated in a lawful manner and as may be imposed by proper authority by such Town.

Section 4: The Grantee shall hold the Town harmless from all expense or liability for any act or neglect of the Grantee hereunder.

Section 5: That on the 1st day of October, 1988, and quarterly for the life of this franchise, Pedernales Electric Cooperative Inc., its successors and assigns, shall pay to the Town of Niederwald, Texas, a sum equal to two percent (2%) of its gross revenue received from the sale of electric power and energy by said Cooperative within the corporate limits of said Town for the preceeding three months ending the last day of each Quarter in full payment or the privilege of using and occupying the streets, highways, easements, alleys, parks, and other public places in the Town of Niederwald,

Texas, whether as rental, supervision and inspection charges, or otherwise, for three months preceding the first day of each quarter in which payment is made. This payment shall be in lieu of any other tax or other imposition, assessment, or charges, except ad valorem taxes.

Section 6: The Grantee shall file its written acceptance of this franchise within sixty (60) days after its passage and approval.

Section 7: This franchise is not exclusive, and nothing herein shall be construed so as to prevent the Town of Niederwald, Texas from granting other like or similar rights and privileges to any other person, firm or corporation.

Section 8: When this franchise ordinance shall have become effective, all previous ordinances of the Town of Niederwald, Texas granting a franchise to Pedernales Electric Cooperative, Inc. for electric light, heat and power purposes, shall be automatically cancelled and annulled, and the same, together with any existing street rental agreement between the Town and Grantee, shall be of no further force and effect.

Section 9: This franchise shall be a privilege to be held in personal trust by the original Grantee, and cannot in any event be sold, transferred, leased, assigned or disposed of, in whole or in part, without prior consent of the Council of Aldermen of the Town; shall consent shall not be unreasonable withheld, however, the proposed Assignee must show financial responsibility and must agree to comply with this ordinance.

Section 10: In addition to all other rights and powers pertaining to the Town by virtue of this franchise or otherwise, the Town reserves the right to terminate this franchise and all rights and privileges of the Grantee hereunder in the event that the Grantee: (1) violates any provision of this franchise or any rule, order, of determination of the Town or Council of Aldermen made pursuant to this franchise, except where such violation is without knowledge or through excusable neglect. (2) Becomes insolvent, unable or unwilling to pay its debts or is adjudged bankrupt. (3) Attempts to evade any of the provisions of this franchise, or practices any fraud or deceit upon the Town.

Such termination and cancellation shall be by ordinance duly adopted after thirty (30) days notice to the Grantee, and shall in no way affect any of the Town's right under this franchise or any provisions of law. In the event that such termination and cancellation depends upon a finding of fact, such finding of fact as made by the Council of Aldermen or its lawful representative shall be conclusive. Provided, however, that before this franchise may be terminated and cancelled under this Section, the Grantee must be provided with an opportunity to be heard by the Council of Aldermen.

Section 11: Grantee shall pay to said Town a percentage of gross receipts as set forth above; and if Grantee is paying a greater percentage to other Cities, Towns and Villages then the figure contained herein shall be adjusted upward to equal such percentage; such adjustment shall be reduced to writing and signed by the Mayor, or other authorized official of the Town, and by an authorized representative of Grantee.

PASSED AND APPROVED THIS 3rd DAY OF OCTOBER, 1988.

Clay Hodges
Mayor

ATTEST:

Connie Young
City Secretary

SEAL

