

RESOLUTION 2012-79

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF WILLCOX, COCHISE COUNTY, ARIZONA, "CITY", REAFFIRMING RESOLUTION NOS. 2012-71 AND 2012-72, REGARDING THE GRANTING AND RENEWAL OF A FRANCHISE AGREEMENT TO SULPHUR SPRINGS VALLEY ELECTRIC COOPERATIVE, INC., AN ARIZONA CORPORATION, PROVIDING FOR THE PUBLICATION OF THE PROPOSED FRANCHISE AGREEMENT AND DIRECTING AUTHORIZED CITY OFFICERS AND AGENTS TO CARRY OUT THE PURPOSES AND INTENT OF THIS RESOLUTION.

WHEREAS, the City passed and adopted Resolution No. 2012-71 on the 6th day of August, 2012, approving for placement before the qualified electors of the City, a 25 year Franchise Agreement to be granted to Sulphur Springs Valley Electric Cooperative, Inc.; and,

WHEREAS, the City passed and adopted Resolution No. 2012-72 on the 6th day of August, 2012, deeming the granting of the Franchise Agreement beneficial to the municipal corporation and ordering the submittal of the question to the qualified electors of the City; and,

WHEREAS, pursuant to A.R.S. §9-502(C), the proposed Franchise Agreement as hereinafter set forth shall be published in full prior to the election.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF WILLCOX, ARIZONA, as follows:

SECTION 1. That the granting of the following Franchise Agreement shall be submitted to a vote of the qualified electors of the City of Willcox:

ORDINANCE NO. 130 (Franchise Agreement)

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF WILLCOX, ARIZONA, GRANTING TO SULPHUR SPRINGS VALLEY ELECTRIC COOPERATIVE, INC., AN ARIZONA CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE AND FRANCHISE TO CONSTRUCT, MAINTAIN AND OPERATE AN ELECTRIC ENERGY TRANSMISSION AND DISTRIBUTION SYSTEM WITHIN THE PUBLIC RIGHTS-OF-WAY WITHIN THE CORPORATE LIMITS OF THE CITY OF WILLCOX; PRESCRIBING CERTAIN RIGHTS, DUTIES, TERMS AND CONDITIONS; PROVIDING FOR THE SUBMISSION HEREOF TO THE ELECTORS FOR THEIR APPROVAL; AND DECLARING AN EMERGENCY.

corrected drawings showing the actual location of the underground facilities in those cases where the actual location differs significantly from the proposed location.

A. If City requires Grantee to relocate Grantee's facilities that were lawfully located before the public dedication of the associated public street or right-of-way, or before the acquisition of that property by the City, the entire cost of relocating Grantee's facilities (including the cost of purchasing a new private easement if necessary) shall be borne by the City. City shall also bear the entire cost of all subsequent relocations of any relocated, pre-existing facilities required by City, until such time as City condemns or purchases rights of way. Grantee will use good faith efforts to advise City of any such situation that may require City financial responsibility during the planning and design phase of any such City project, as necessary, to allow City to mitigate any such potential expense.

B. Except as covered in paragraph A above, Grantee shall bear the entire cost of relocating its facilities located within the public rights-of-way, including the acquisition of new private easements, if necessary, provided the relocation is deemed necessary for City's carrying out of its governmental functions. Any such removal and relocation shall be completed within a reasonable time period following written notification from City. Notwithstanding the foregoing, if Grantee is requested by City to perform work of a temporary nature on a governmental project to relieve construction problems which could be relieved by other reasonably available and less costly means, the cost of said temporary work will be borne by City or City's contractor working on the governmental project. Governmental functions are those duties imposed on City, where the duties involve a general public benefit, not in the nature of a corporate or business undertaking for the corporate benefit and interest of City. Governmental functions include, but are not limited to, the following:

1. Any and all improvement to City's public rights-of-way;
2. Establishing and maintaining public streets, traffic control devices, transit bus shelters/pullouts, domestic water systems, sanitary sewers, storm drains, and related facilities;
3. Establishing and maintaining municipal parks, parking spaces, parkways, pedestrian sidewalks/malls, multi-use paths, or grass, shrubs, trees and other vegetation for the purpose of landscaping any street or public property;
4. Providing fire protection and other public safety functions; and,
5. Collection and disposal of solid waste and recyclables.

C. City will bear the entire cost of relocating any of Grantee's facilities, the relocation of which is necessitated by the construction of improvements by or on behalf of the City in furtherance of a proprietary function. All functions of the City which are not governmental are proprietary.

inspection. It is expressly understood that the above computation in regard to Grantee's base rates shall be defined, equal to and the same as the rate base as provided for in Arizona Revised Statutes Section 42-5063, as may be amended from time to time, for the calculation of Arizona Transaction Privilege Tax. Provided, however, if it is shown that Grantee has failed to pay the amounts due hereunder solely due to its failure to include in its calculations energy sales within an area or areas that have come within the corporate limits of Municipality subsequent to the date of this Agreement, and Municipality did not provide Grantee timely notice of such annexation, then Municipality shall have no right to collect such payments based on energy sales within the areas omitted for the first twelve months following the area's annexation.

Section 7 – Additional Fees and Taxes: Notwithstanding any provision contained herein to the contrary, Grantee shall pay, in addition to the payment provided in Section 6, the following charges, taxes, and fees as established in a code or ordinance property adopted by the City:

1. General ad valorem property tax;
2. Transaction privilege tax as authorized by law and collected by Grantee, for its retail sales to its electric energy customers, within the present and future corporate limits of City;
3. Other charges, taxes or fees generally levied upon businesses by City, provided that the annual amount of such fees does not exceed the amount of similar fees, paid by other businesses operated with City; and,
4. Applicable and customary permit and inspection fees, as established by ordinance or regulation.
- 5.

Section 8 – Use of Grantee's Poles: The City shall have the right, without cost, to make attachments to poles owned and used by the Grantee within the City, for City's wires used by it in connection with its governmental operations, such as fire alarm, police signal system, utility system controls or for seasonal decorations. Such attachments to be installed and maintained in accordance with the requirements of the National Electrical Safety Code pertaining to such construction, and only after written notice to the Grantee, in accordance with Grantee's procedures for pole placement. Grantee shall assume no liability nor be put to an additional expense, in connection therewith and, provided further, that the City's use thereof shall be in such manner as not to interfere with the Grantee's use of the same. The Grantee shall have the right to make attachments to its poles owned and used by the Grantee within the Municipality for its own use.

Section 9– Term: This Franchise shall continue and exist for a period of twenty-five (25) years from January 1, 2013, provided, however, that upon mutual written consent, both parties may meet and discuss minor revisions of the terms of this agreement after the close of the fifth (5th) year, or renegotiation if economic or other conditions warrant such consideration.

deemed effective either (i) upon hand delivery to the person then holding the office shown on the attention line of the address below, or, if such office is vacant or no longer exists, to a person holding a comparable office, or (ii) on the third business day following its deposit with the United States Postal Service, first class and certified or registered mail, return receipt requested, postage prepaid, addressed as follows:

- A. To City:
 - City Clerk
 - City of Willcox
 - 101 S. Railroad Ave., Suite B
 - Willcox, Arizona 85643

- B. To SSVEC:
 - Chief Executive Officer
 - Sulphur Springs Valley
 - Electric Cooperative, Inc.
 - 350 N. Haskell Ave.
 - Willcox, AZ 85643

Section 18 – Adoption: We, the undersigned, have adopted this document on the dates written below in accordance with the results of the City of Willcox Election on November 6, 2012.

City of Willcox

SSVEC

By _____
Robert A. Irvin, Mayor
On behalf of the City of Willcox

By _____
Creden Huber, CEO
On behalf of Sulphur Springs
Valley Electric Cooperative, Inc.

Date: _____

Date: _____

Section 19. To preserve the public peace, health and safety, it is necessary that this Ordinance become immediately operative. It is, therefore, declared to be an emergency measure to take effect upon its enactment by the Mayor and City Council of the City of Willcox, following its submission to the electors of the City of Willcox as required by law and its approval by said electors and upon compliance with requirements as to publication or posting.

ATTEST:

APPROVED TO FORM:

Virginia A. Mefford, City Clerk

Ann P. Roberts, City Attorney