

ORDINANCE NO. 14-01

AN ORDINANCE GRANTING TO FARMERS ELECTRIC COOPERATIVE, INC., ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC POWER FRANCHISE TO USE THE PRESENT AND FUTURE STREETS, ALLEYS, HIGHWAYS, PUBLIC UTILITY EASEMENTS, PUBLIC WAYS AND PUBLIC PROPERTY OF THE CITY OF COMMERCE, TEXAS, PROVIDING FOR COMPENSATION THEREFOR, PROVIDING FOR AN EFFECTIVE DATE AND A TERM OF SAID FRANCHISE, PROVIDING FOR WRITTEN ACCEPTANCE OF THIS FRANCHISE, PROVIDING FOR THE REPEAL OF ALL EXISTING FRANCHISE ORDINANCES TO FARMERS ELECTRIC COOPERATIVE, ITS PREDECESSORS AND ASSIGNS, AND FINDING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COMMERCE, TEXAS:

SECTION 1. GRANT OF AUTHORITY: That there is hereby granted to Farmer's Electric Cooperative, Inc., its successors and assigns (herein called "Company"), the right, privilege and franchise to construct, extend, maintain and operate in, along, under and across the present and future streets, alleys, highways, public utility easements, public ways and other public property (Public Rights-of-Way) of the City of Commerce, Texas (herein called "City") electric power lines, with all necessary or desirable appurtenances (including underground conduits, poles, towers, wires, transmission lines, telephone and communication lines, and other structures for its own use), (herein called "Facilities") for the purpose of delivering electricity to the City, the inhabitants thereof, and persons, firms and corporations beyond the corporate limits thereof, for the term set out in Section 7.

SECTION 2. Poles, towers and other structures shall be so erected as not to unreasonably interfere with traffic over streets, alleys and highways.

SECTION 3. The City reserves the right to lay, and permit to be laid, storm, sewer, gas, water, wastewater and other pipelines, cables, and conduits, or other improvements and to do and permit to be done any underground or overhead work that may be necessary or proper in, across, along, over, or under Public Rights-of-Way occupied by Company. The City also reserves the right to change in any manner any curb, sidewalk, highway, alley, public way, street, utility lines, storm sewers, drainage basins, drainage ditches, and the like. Upon request by City, Company shall relocate its facilities at the expense of the City except as otherwise required by Section 37.101(c) of the Texas Public Utility Regulatory Act (PURA), which statutory provision currently states, the governing body of a municipality may require an electric utility to relocate the utility's facility at the utility's expense to permit the widening or straightening of a street. City and Company further agree that widening and straightening of a street includes the addition of any acceleration, deceleration, center or side turn lanes, and

sidewalks (meaning sidewalks done in conjunction with widening or straightening of a street), provided that the City shall provide Company with at least thirty (30) days notice and shall specify a new location for such facilities along the Public Rights-of-Way of the street. Company shall, except in cases of emergency conditions or work incidental in nature, obtain a permit, if required by City ordinance, prior to performing work in the Public Rights-of-Way, except in no instance shall Company be required to pay fees or bonds related to its use of the Public Rights-of-Way, despite the City's enactment of any ordinance providing the contrary. Company shall construct its facilities in conformance with the applicable provisions of the National Electric Safety Code.

If the City requires the Company to adapt or conform its Facilities, or in any manner to alter, relocate, or change its Facilities to enable any other corporation or person to use, or use with greater convenience, said street, alley, highway, or public way, the Company shall not be bound to make such changes until such other corporation or person shall have undertaken, with good and sufficient bond, to reimburse the Company for any costs, loss, or expense which will be caused by, or arises out of such change, alteration, or relocation of Company's Facilities.

If City abandons any Public Rights-of-Way in which Company has facilities, such abandonment shall be conditioned on Company's right to maintain its use of the former Public Rights-of-Way and on the obligation of the party to whom the Public Rights-of-Way is abandoned to reimburse Company for all removal or relocation expenses if Company agrees to the removal or relocation of its facilities following abandonment of the Public Rights-of-Way. If the party to whom the Public Rights-Of -Way is abandoned request the Company to remove or relocation shall be done within a reasonable time at the expense of the party requesting the removal or relocation. If relocation cannot practically be made to another Public Rights-of-Way, the expense of any right-of-way acquisition shall be considered a relocation expense to be reimbursed by the party requesting the relocation.

SECTION 4.

A. In consideration of the granting of this franchise, Farmer's Electric Cooperative, Inc. shall, at its sole cost and expense, indemnify and hold the City, and its past and present officers, agents and employees (the "indemnities") harmless against any and all liability arising from suits, actions or claims regarding injury or death to any person or persons, or damages to any property arising out of our occasioned by the intentional and/or negligent acts or omissions of Farmer's Electric Cooperative, Inc. construction, maintenance and operation of Farmer's Electric Cooperative, Inc. system in the public rights-of-way, including any court cost, expenses and defenses thereof.

B. This indemnity shall only apply to the extent that the loss, damage or injury is attributable to the negligence or wrongful act or omission of the Farmer's Electric Cooperative, Inc., its officers, agents or employees, and does not apply to the extent such loss, damage or injury is attributable to the negligence or wrongful act or omission of the City, or the City's officers, agents, or employees or any other person or entity. This provision is not intended to create a cause of action or liability for the benefit of third parties but is solely for the benefit of Farmer's Electric Cooperative, Inc. and the City.

C. In the event of joint and concurrent negligence or fault of both Farmers Electric Cooperative, Inc. and the City, responsibility and indemnity, if any, shall be apportioned comparatively between the City and Farmer's Electric Cooperative, Inc. in accordance with the laws of the state of Texas and 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. Further, in the event of joint and concurrent negligence or fault of both Farmer's Electric Cooperative, Inc. and the City, responsibility for all cost of defense shall be apportioned between the City and Farmer's Electric Cooperative, Inc. based upon the comparative fault of each.

D. In fulfilling its obligation to defend and indemnify City, Farmer's Electric Cooperative, Inc. shall have the right to select defense counsel, subject to City's approval, which will not be unreasonably withheld. Farmer's Electric Cooperative, Inc. shall retain defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this franchise. If Farmer's Electric Cooperative, Inc. fails to retain counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Farmer's Electric Cooperative, Inc. shall be liable for all reasonable defense costs incurred by City, except as otherwise provided in section 4(b) and 4(c).

SECTION 5. This franchise is not exclusive, and nothing herein contained shall be construed so as to prevent the City from granting other like or similar rights, privileges and franchises to any other person, firm, or corporation. Any Franchise granted by the City to any other person, firm, or corporation shall not unreasonably interfere with this Franchise.

SECTION 6. In consideration of the grant of said right, privilege and franchise by the City and as full payment for the right, privilege and franchise of using and occupying the said Public Rights-of-Way, and in lieu of any and all occupation taxes, assessments, municipal charges, fees, easement taxes, franchise taxes, license, permit and inspection fees or charges, street taxes, bonds, street or ally rentals, and all other taxes, charges, levies, fees and rentals of whatsoever kind and character which the

city may impose upon real and personal property, sales and use taxes, and special assessments for public improvements, Company shall pay to the City the following:

- (a) On an annual basis, a charge, as authorized by Section 33.008(b) of PURA, equal to a franchise fee factor of 0.002484 (the "Base Factor"), multiplied by each kilowatt hour of electricity delivered by Company to each retail customer whose consuming facility's point of delivery is located within the City's municipal boundaries. Company has agreed to increase the franchise fee factor to 0.002608 (the "Increased Factor"); however, should the PUC at any time in the future disallow Company's recovery through rates of Factor, the franchise fee factor shall immediately revert to the Base Factor of 0.002484 and all future payments, irrespective of the time period that is covered by the payment, will be made using the Base Factor.
 - 1. The annual payment will be due and payable on or before January 15 of each year throughout the life of this franchise. The payment will be based on each kilowatt hour of electricity delivered by Company to each retail customer whose consuming facility's point of delivery is located within the City's municipal boundaries during the preceding twelve month period ended December 31 (January 1 through December 31). The payment will be for the rights and privileges granted hereunder for the twelve calendar month period (January 1 through December 31) the same year in which the payment is made.
 - 2. The first payment hereunder shall be due and payable on or before January 15, 2015 and will cover the basis period of January 1, 2014 through December 31, 2014 for the privilege period of January 1, 2015 through December 31, 2015. The final payment under this franchise is due on or before January 15, 2034 and covers the basis period of January 1, 2034 through December 31, 2034; and
- (b) a sum equal to four percent (4%) of gross revenues received by Company from services identified as DD1 through DD24 in Section 6.1.2 "Discretionary Service Charges," in its Tariff for Retail Delivery Service (Tariff), effective 1/1/2002, that are for the account and benefit of an end-use retail electric consumer. Company will, upon request by City, provide a cross reference to Discretionary Service Charge numbering changes that are contained in Company's current approved Tariff

1. The franchise fee amounts that are due based on "Discretionary Service Charges" shall be calculated on an annual calendar year basis, i.e. from January through December 31 of each calendar year.
2. The franchise fee amounts that are due based on "Discretionary Service Charges" shall be paid at least once annually on or before April 30 each year based on the total "Discretionary Service Charges", as set out in Section 6(b), received during the preceding calendar year. The initial Discretionary Service Charge franchise fee amount will be paid on or before April 30, 2015 and will be based on the calendar year January 1 through December 31, 2034.
3. Company may file a tariff or tariff amendment(s) to provide for the recovery of the franchise fee on Discretionary Service Charges.
4. City agrees (i) to the extent the City acts as regulatory authority, to adopt and approve that portion of any tariff which provides for 100% recovery of the franchise fee on Discretionary Service Charges; (ii) in the event the City intervenes in any regulatory proceeding before a federal or state agency in which the recovery of the franchise fees on such Discretionary Service Charges is an issue, the City will take an affirmative position supporting the 100% recovery of such franchise fees by Company and; (iii) in the event of an appeal of any such regulatory proceeding in which the City has intervened, the City will take an affirmative position in any such appeals in support of the 100% recovery of such franchise fees by Company.
5. City agrees that it will take no action, nor cause any other person or entity to take any action, to prohibit the recovery of such franchise fees by Company.
6. In the event of a regulatory disallowance of the recovery of the franchise fees on the Discretionary Service Charges, Company will not be required to continue payment of such franchise fees.

SECTION 7. This Ordinance shall become effective upon Company's written acceptance hereof, said written acceptance to be filed by Company with the City within sixty (60) days after final passage and approval hereof. The right, privilege and franchise granted hereby shall expire on December 31, 2034; provided that, unless written notice is given by either party hereto to the other not less than sixty (60) days before the expiration of this franchise agreement, it shall be automatically renewed thereafter for like periods until canceled by written notice given not less than sixty (60) days before the expiration of any such renewal period.

SECTION 8. This Ordinance shall supersede any and all other franchises granted by the City to Company, its predecessors and assigns.

SECTION 9. In order to accept this franchise, Company must file with the City Secretary its written acceptance of this franchise ordinance within sixty(60) days after its final passage and approval by City.

SECTION 10. It is hereby officially found that the meeting at which this Ordinance is passed is open to the public and that due notice of this meeting was posted, all as required by law.

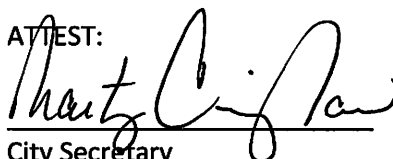
PASSED AND APPROVED on the 1st reading at a regular meeting of the City Council of Commerce, Texas, on this the 17th day of December, 2013.

PASSED AND APPROVED on the 2nd and final reading at a regular meeting of the City Council of Commerce, Texas, on this the 21st day of January, 2014.

THE CITY OF COMMERCE

By: 
Mayor
The City of Commerce

ATTEST:


City Secretary

STATE OF TEXAS §
 §
CITY OF COMMERCE §

WHEREAS, there was finally passed and approved on 1-21-14 Ordinance No. 14-D1 granting Farmer's Electric Cooperative, Inc., its successors and assigns, a franchise to furnish and deliver electricity to the general public in the City of Commerce, Hunt 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, Section 9 of said ordinance provides as follows:

"SECTION 9

In order to accept this franchise, Company must file with the City Secretary its written acceptance of this franchise ordinance within sixty (60) days after its final passage and approval by City"

AND, WHEREAS, it is the desire of Farmer's Electric Cooperative, Inc., the holder of the rights, privileges and grants under the aforesaid franchise ordinance, to comply with the above-quoted provisions of Section 9 thereof.

NOW, THEREFORE, premises considered, Farmer's Electric Cooperative, Inc., acting by and through its duly authorized officers, and within the time prescribed by Section 9 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 ____ day of _____, 201__.

Farmer's Electric Cooperative, Inc.

By: _____

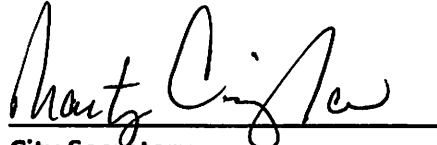
Name: _____

Title: _____

STATE OF TEXAS §
COUNTY OF HUNT §
CITY OF COMMERCE §

I, Marty Cunningham, City Secretary of the City of Commerce, Texas, do hereby certify that the attached Acceptance executed by Farmer's Electric Cooperative, Inc. is a true and correct copy of a formal acceptance of a franchise ordinance finally passed and approved by said City on 1-21-14 and of record in the Minutes of the City;

OF WHICH, witness my official signature and the seal of said City on this the 22 day of January, 2014.



City Secretary
City of Commerce, Texas