

CITY OF COMMERCE, TEXAS

ORDINANCE NO. 2023 – 09 - 01

AN ORDINANCE OF THE CITY OF COMMERCE, TEXAS GRANTING TO FARMERS ELECTRIC COOPERATIVE, INC., A TEXAS CORPORATION, ITS SUCCESSORS THE NON-EXCLUSIVE RIGHT, PRIVILEGE AND FRANCHISE, INCLUDING ALL NECESSARY AND REQUIRED EASEMENTS, TO CONDUCT THE BUSINESS OF ACQUIRING, INSTALLING, CONSTRUCTING, MAINTAINING, USING, AND OPERATING AN ELECTRIC POWER UTILITY SYSTEM TO THE CITY OF COMMERCE, TEXAS AND THE INHABITANTS THEREOF IN ALL AREAS OF THE CITY OF COMMERCE, TEXAS IN WHICH FARMERS ELECTRIC COOPERATIVE HAS THE RIGHT TO SERVE; GRANTING THE RIGHTS TO USE AND OCCUPY PRESENT AND FUTURE STREETS, AVENUES, ALLEYS, ROADS, PARKWAYS, HIGHWAYS, SIDEWALKS, RIGHTS-OF-WAY, EASEMENTS AND OTHER PUBLIC GROUNDS AND PLACES OF THE CITY FOR THE CONSTRUCTION, OPERATION AND MAINTAINENCE OF AN ELECTRIC POWER UTILITY SYSTEM BY THE AFORESAID ELECTRIC COOPERATIVE; PRESCRIBING THE CONDITIONS, RESTRICTIONS, OBLIGATIONS AND LIMITATIONS UNDER WHICH SUCH FRANCHISE SHALL BE EXERCISED; PROVIDING FOR A FEE OR CHARGE TO BE PAID TO THE CITY FOR THE USE OF THE STREETS, ALLEYS AND OTHER PUBLIC WAYS, GROUNDS AND PLACES; PROVIDING THAT IT SHALL BE IN LIEU OF OTHER FEES AND CHARGES; PROVIDING FOR SAVING, REPEALING AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, Farmers Electric Cooperative, Inc. ("Cooperative"), is now and has been engaged in the electric power utility business in the State of Texas; and

WHEREAS, in furtherance of such business and for many years, the Cooperative has constructed, operated and maintained certain aspects of its electric power utility system within the State of Texas and within the City of Commerce ("City"), pursuant to rights granted the Cooperative under the laws and regulations of the State of Texas and other Governmental or Regulatory Authorities (as defined in Article II, Section 7 herein) with the authority to contract with and regulate the Cooperative; and

WHEREAS, the City Council for the City has investigated and determined that it will be advantageous and beneficial for the citizens of the City to grant to the Cooperative the right to conduct its electric power utility business in the City and to enter into an agreement governing the terms and conditions of that business; and

WHEREAS, it is to the mutual advantage of both the City and the Cooperative that an agreement should be entered into between the Cooperative and the City establishing the conditions under which the Cooperative shall operate in the City.

NOW, THEREFORE, BE IT ORDERED BY THE CITY COUNCIL OF THE CITY OF COMMERCE, TEXAS:

DEFINITIONS

For the purpose of this Agreement the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context and whenever the sense of the text requires, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive.

1. Days means calendar days unless otherwise specified.
2. Electric Power Utility System means all interrelated lines, equipment, poles, installations, systems, fixtures and other facilities or appurtenances including substation facilities used, desired, or necessary for the transmission and distribution of Electric Utility Service to Consumers in the City by the Cooperative, including but not limited to poles, wires, guy wires, anchors, associated appurtenances, primary cables and conductor, secondary cables and conductor, secondary pedestals, conduits, ducts, vaults and manholes, junction boxes, padmounted sectionalizing enclosures, padmounted switchgear, transformers, insulators, street lights, metering equipment and any and all other facilities and equipment (collectively called "Electric Facilities")
3. Electric Utility Service or Electricity means the sale, distribution, conveyance, or other transmission of energy (kWh) and power (kW) and all other services offered by the Cooperative within the City by the Cooperative.
4. Force Majeure means delays due to acts of God, pandemic, civil disturbances, fire, unavoidable casualty, weather, failure of suppliers, or for other similar causes beyond the control of Cooperative.
5. Member means any person, consumer, customer, or other entity that has completed membership requirements with the Cooperative and has been accepted by the Cooperative's Board of Directors as a member or that receives electric utility service from the Cooperative.
6. NESC means National Electric Safety Code.
7. Service Regulations means the service standards of the Cooperative.

ARTICLE I. GRANT OF AUTHORITY

SECTION 1: There is hereby granted to the Cooperative, its successors and assigns, the non-exclusive right, privilege and franchise to have, acquire, construct, expand, reconstruct, install,

maintain, use, and operate an Electric Power Utility System in the City for the purpose of providing Electric Utility Service to the City and its inhabitants for the considerations, and subject to the conditions, terms, duties, obligations, limitations and regulations, hereinafter prescribed and subject to all lawful statutes, charter provisions, ordinances, rules and regulations applicable to the Cooperative and its operations. In addition, Cooperative is authorized to lease capacity on its Electric Power Utility System to other service providers. The use of the term City in this Ordinance shall hereinafter include in its meaning the City's current corporate limits as they presently exist or as they may be changed by the City from time to time.

SECTION 2: The Cooperative, its successors and assigns, is hereby granted the non-exclusive rights to use and occupy; and, the rights to have, acquire, place, remove, construct, reconstruct, upgrade, extend, replace, maintain, and operate along, across, on, over, through, above, and under the City's present and future streets, avenues, alleys, roads, parkways, highways, sidewalks, general utility easements, other public thoroughfares and other public grounds and places (collectively called "Rights-of-Way") within the City where the City holds the property rights in regard to the use for utilities, the Cooperative's Electric Power Utility System and to provide Electric Power Utility Service to end-use customers who purchase and ultimately consume Electricity in the City, said consent being granted for an initial term of thirty (30) years, in accordance with Article V, Section 1 of this Ordinance.

SECTION 3: Nothing in this agreement shall be construed to require or authorize Cooperative to exceed its certification rights granted by the Public Utility Commission of Texas, except as may be mutually agreed upon by the City and the Cooperative.

ARTICLE II. CONSTRUCTION, RETIREMENT, MAINTENANCE AND OPERATION OF ELECTRIC POWER UTILITY SYSTEM

SECTION 1: The Electric Power Utility System will be installed pursuant to the Cooperative's standard electric utility construction practices; the NESC; and, the rules, regulations and code requirements of any appropriate Governmental or Regulatory Authorities.

SECTION 2: The Cooperative will maintain all of its Electric Power Utility System in reasonable operating condition and in compliance with all applicable standards and regulations at all times during the continuance of this Ordinance. An exception to the requirements imposed by this paragraph is automatically in effect when services furnished by the Cooperative are interrupted, impaired or prevented by force majeure, acts of civil or military authority, governmental priorities, strikes or other labor disturbances, hurricanes, tornadoes, storms, earthquakes, fires, floods, epidemics, embargoes, war, riots and any other causes or occurrences not under the control of the Cooperative; however, in the case of such events or occurrences, the Cooperative shall use reasonable efforts to restore normal electric power utility service. Nothing contained herein shall be construed to require either Party to prevent or settle a strike or labor dispute or disturbance against its will.

SECTION 3: The Cooperative may offer line extensions and types of services to the City and its inhabitants, taking into consideration the circumstances, conditions and costs involved. The City shall not regulate the rates, services, or operations of the Cooperative, except, with respect

to operations, to the extent necessary to protect the public's health, safety, and welfare related to the use and occupancy of the City's Rights-of-Way.

SECTION 4: In conducting its business and in the construction, reconstruction, location or relocation of any Electric Power Utility System as provided herein, the Cooperative shall comply with all reasonable and lawful statutes, regulations and requirements of the City or other applicable Governmental or Regulatory Authority. "Governmental or Regulatory Authority" means any court, tribunal, arbitrator, authority, agency, commission, official or other instrumentality of the United States, or any country, state, county, city or other political subdivision or of any foreign country or international body.

ARTICLE III. CONDITIONS OF RIGHTS-OF-WAY OCCUPANCY

SECTION 1: That portion of the surface of any of the City's Rights-of-Way disturbed by the Cooperative in the building, constructing, retiring, renewing, replacing, operating or maintaining Electric Power Utility System shall be restored to substantially the same state and condition as existed prior to the disturbance by the Cooperative within a reasonable period of time

SECTION 2: If reasonably requested by the City; in connection with the City's construction, relocation, maintenance, repair, widening, or altering the grade of any public thoroughfare; or in connection with the City's construction, improvement, maintenance, repair or removal of any public property, structure or facility; or in connection with any other type of City public improvement project; where it shall be necessary for the Cooperative to move, relocate, change, alter or modify any Cooperative Electric Power Utility System located on City Rights-of-Way, the Cooperative shall use reasonable efforts to comply with such City request, subject to the availability of materials and equipment. All costs and expense associated with the aforementioned changes to Electric Power Utility System on City Rights-of-Way shall be paid for, in advance, by the Cooperative. Upon receiving (i) the reasonable and lawful request, (ii) all necessary, required and approved final plans based upon the City's engineering and planning requirements, (iii) not less than one hundred eighty (180) days advance written notice and (iv) any advance payment shall be from the Cooperative, the Cooperative shall relocate, change, alter or modify the Electric Power Utility System, located in the City Rights-of-Way as so directed by the City, provided, however, that any such necessitated move is to another public right-of-way, public easement or other public ground or place provided by the City.

SECTION 3: The Cooperative shall, at all times, use reasonable methods to provide and supply electric power utility service to the City and its inhabitants within the Cooperative's service area, taking into consideration the circumstances, conditions and costs involved.

SECTION 4: Nothing contained within this Ordinance shall affect the right of the Cooperative to make claims, including claims for costs or damages, in the event that the City requires or requests the Cooperative to move, relocate, change, alter or modify any of the Electric Power Utility System located in private easements, private rights-of-way or real property owned by the Cooperative.

SECTION 5: In the event the City is considering a relocation, change, alteration or modification of the Electric Power Utility System located in private easements, private rights-of-

way or real property owned by the Cooperative, the City shall first provide a description of the Electric Power Utility System, its location and relocation, change, alteration or modification requirements and request an estimate of the costs for the proposed project. The Cooperative shall estimate the costs of the proposed project and provide such estimate to the City. If the City requires or requests the Cooperative to relocate, change, alter or modify its Electric Power Utility System, then, to the extent such Electric Power Utility System are located in private easements, private rights-of-way or real property owned by the Cooperative, the City shall remit to the Cooperative payment in full for the Cooperative's estimate within thirty (30) days of the receipt of the Cooperative's invoice. The City hereby agrees that the Cooperative has no obligation to perform until the City's payment has been received by the Cooperative.

SECTION 6: In connection herewith, if any of the aforementioned relocations, changes, alterations or modifications to the Electric Power Utility System is eligible for reimbursement, as permitted and to the extent allowed by law, pursuant to any reimbursement programs of any Governmental or Regulatory Authority, the City shall, if requested, assist the Cooperative in obtaining any or all such allowed reimbursements for costs and expenses incurred by the Cooperative to which it is properly and legally entitled for the completion of said projects.

SECTION 7: The Cooperative, its successors and assigns, is hereby granted the right, license, privilege and permission needed to trim or cut trees or use any other commercially acceptable method, such as herbicide, in the vicinity of the Electric Power Utility System and to keep the Rights-of-Way, easements, and other public grounds and places clear and accessible for construction, operation, maintenance and repair of the Electric Power Utility System. Reasonable tree trimming and vegetation control on the City's Rights-of-Way, performed as ordinary, routine, operations, and maintenance of the Cooperative's Electrical Facilities, shall be allowed.

SECTION 8: Nothing contained in this Ordinance shall be interpreted or construed to require the Cooperative to accept, or to permit or allow the City, other utility companies, or any other third party, to place or install attachments for their own benefit and use, into or on the Electric Power Utility System. An additional, separate, non-contingent written agreement between the Cooperative and the entity requesting such use shall be prerequisite to the installation of any such attachments or such use of the Electric Power Utility System by the City. The aforementioned separate, non-contingent agreements, do not, are not, and shall not, by any way or means, be considered, construed or interpreted to be an addendum, amendment or other type of modification to the terms and conditions contained in this Ordinance.

ARTICLE IV. INDEMNIFICATION AND LIABILITY FOR DAMAGES

SECTION 1: WITHOUT WAIVING ANY IMMUNITY OR LIMITATION OF LIABILITY, THE COOPERATIVE SHALL INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICIALS, AGENTS AND EMPLOYEES AGAINST ALL CLAIMS, COSTS, EXPENSES AND DAMAGES TO PERSONS OR PROPERTY THAT ARE DIRECTLY RELATED TO THE CONSTRUCTION, RETIREMENT, MAINTENANCE OR OPERATION OF THE ELECTRIC POWER UTILITY SYSTEM IN CITY RIGHTS-OF-WAY, WHICH ARE SUBJECT TO THIS ORDINANCE, TO THE EXTENT SUCH COSTS, EXPENSES AND DAMAGES ARE FOUND TO BE CAUSED BY THE DIRECT NEGLIGENT ACT OR

OMISSION OR INTENTIONAL MISCONDUCT OF THE COOPERATIVE, ITS OFFICERS, AGENTS OR EMPLOYEES, PROVIDED HOWEVER THAT THE INDEMNITY PROVIDED BY THIS ARTICLE IV, SECTION 1 SHALL NOT APPLY TO CLAIMS, COSTS, EXPENSES OR DAMAGES CAUSED IN WHOLE OR IN ANY PART BY ANY ACT OR OMISSION OF THE CITY, ITS OFFICIALS, AGENTS OR EMPLOYEES.

SECTION 2: WITHOUT WAIVING ANY IMMUNITY OR LIMITATION OF LIABILITY, TO THE EXTENT ALLOWED BY LAW, THE CITY SHALL INDEMNIFY AND HOLD HARMLESS THE COOPERATIVE, ITS OFFICERS, AGENTS AND EMPLOYEES AGAINST ALL CLAIMS, COSTS, EXPENSES AND DAMAGES TO PERSONS OR PROPERTY THAT ARE DIRECTLY RELATED TO THE CONSTRUCTION, RETIREMENT, MAINTENANCE OR OPERATION OF THE ELECTRIC POWER UTILITY SYSTEM IN CITY RIGHTS-OF-WAY, WHICH ARE SUBJECT TO THIS ORDINANCE, TO THE EXTENT SUCH COSTS, EXPENSES AND DAMAGES ARE FOUND TO BE CAUSED BY THE NEGLIGENT ACTIONS OR OMISSIONS OR WILLFUL MISCONDUCT OF THE CITY, ITS OFFICIALS, AGENTS OR EMPLOYEES, PROVIDED HOWEVER THAT THE INDEMNITY PROVIDED BY THIS ARTICLE IV, SECTION 2 SHALL NOT APPLY TO CLAIMS, COSTS, EXPENSES OR DAMAGES CAUSED IN WHOLE OR IN PART BY THE NEGLIGENT ACTIONS OR OMISSIONS OR WILLFUL MISCONDUCT OF THE COOPERATIVE, ITS OFFICERS, AGENTS OR EMPLOYEES.

SECTION 3: If a claim or cause of action is filed against the City, its officials, agents or employees, that the City may legally be required to pay, as a result of claims for damages or penalties arising out of the installation, retirement, operation or maintenance of the Electric Power Utility System within City Rights-of-Way, whether or not any act or omission complained of is authorized, allowed or prohibited by this Ordinance, the Cooperative shall have no obligation to reimburse the City for any such costs and expenses incurred unless the City immediately provides the Cooperative with prompt notice of any such claim or cause of action brought against the City and the Cooperative has had the opportunity to defend against such claim, or cause of action, and its allegations.

SECTION 4: The aforementioned indemnity provisions are not intended to, and shall not, create or allow any claim, cause of action, liability or other rights and remedies for the benefit of any third parties, but are solely and only for the benefit of the Cooperative and the City.

SECTION 5: The City's obligations under this Ordinance, expressly including all indemnity obligations, are payable solely from current operating and maintenance funds of the City appropriated and available for these purposes in accordance with City policies and ordinances. All payment obligations of the City under this Ordinance are special limited obligations of the City, payable solely from the revenues of the City and not from any tax or other revenues of the City, and this Ordinance does not constitute an indebtedness or a loan of the credit of the State, the City or any subdivision of the State within the meaning of any constitutional or statutor provisions. Neither the faith and credit nor the taxing power of the State, the City or any subdivision of the State is pledged to the payment obligation of the City under this Ordinance.

ARTICLE V. TERM AND PAYMENT TO THE CITY

SECTION 1: This Ordinance shall be in full force and effect for the period beginning with the Effective Date herein and ending twenty (20) years after such date , provided, however, that termination shall not affect the Cooperative's statutory obligation to provide Electric Power Utility Service to customers within the City in accordance with the Cooperative's Certificate of Convenience and Necessity issued by the Public Utility Commission of Texas in accordance with the Texas Utilities Code.

SECTION 2: To compensate the City for use of the Rights-of-Way authorized hereby, and to compensate the City for its superintendence of this Ordinance and the performance of the City's regulatory functions (which such regulation the City shall exercise and to which the Cooperative shall be subject to the extent authorized by law), the Cooperative agrees to pay to the City annually a sum of money equal to three percent (3%) of the annual Gross Receipts for the preceding calendar year, or portion thereof, received by the Cooperative from the sales of all Electric Power Utility Service provided by the Cooperative within the City (the "Fee"). For the purposes of this Section 2, "Gross Receipts" shall mean all amounts classified as electric service revenues collected by the Cooperative, its licensees and designees, from the Cooperative's members for the provision of Electric Power Utility Service received by the Cooperative's members at a location within the City. The term Gross Receipts shall exclude, but not be limited to, the following: revenue billed but not received; reimbursements for damage to the Electric Power Utility System; reimbursements for relocation cost of moving the Electric Power Utility System; contributions in aid of construction; advances in aid of construction; line extension charges in the form of one-time payments or monthly facilities charges; taxes; revenues from materials or equipment sales; principal and interest payments on amounts loaned by the Cooperative; membership fees; deposits; revenues and receipts received from electric utilities for the use of Cooperative transmission lines and Electric Power Utility System; rental or fees paid by third parties for joint use attachments to or other use of the Electric Power Utility System; other miscellaneous non-operating revenues and receipts not directly related to the provision of Electric Power Utility Service (i.e. interest income on Cooperative bank accounts); or any receipts required to be remitted by the Cooperative to third parties.

Further, the parties agree as follows:

- A. Payments for each calendar year subsequent to the initial period, or portion thereof, as previously defined, shall be made on or before April 15 of the year immediately following.
- B. The City agrees that the consideration as set forth in the preceding paragraphs shall be paid and received in lieu of any other tax, license, charge, fee, rental, expense, or any other character of charge for use and occupancy of the Rights-of-Way in the City and for conducting business in the City. This consideration is in lieu of, but not limited to, any pole tax, inspection fee tax or other form of tax, inspection or other fees, any lawful permit or other fees and any easement or franchise tax whether levied as an ad valorem, general, special or other character of tax. However, this consideration (i) shall not be in lieu of any imposition expressly provided for herein, (ii) shall not be in lieu of the usual, general ad valorem or special assessments to abutting land owners on property now or hereinafter levied, whether on real or personal property, owned or used by the Cooperative, situated within the jurisdiction of any Governmental or Regulatory

Authority authorized to impose and collect such usual, general ad valorem or special assessment to abutting landowners taxes, and (iii) shall not be in lieu of any other ordinary and necessary trade obligation of the Cooperative to make payments or reimbursements to the City for materials or services rendered as provided or required by applicable law.

- C. The Cooperative is expressly authorized by the City to surcharge each Cooperative customer within the City the full amount of the Fee attributable to that customer. The Cooperative's obligation to pay the Fee shall extend for so long as, but no longer than and only to the extent that, the Cooperative may lawfully surcharge the Fee to Cooperative customers within the City.

SECTION 3: In no event shall the Cooperative or its licensee(s) or designee(s) be obligated to pay a total Fee in excess of three percent (3%) in the aggregate by reason of more than one entity having jurisdiction over all or any part of the City. Should the Cooperative, its licensee(s) and/or designee(s) be required, at any time, to pay a Fee or other fee or tax to any entity other than the City, for the use and occupancy of all or any part of the Rights-of-Way of said City, the amount of the Fee herein payable to the City shall be reduced dollar for dollar by the amount of all fees, taxes and charges paid to such other entities. By way of example, should the Cooperative be required to pay 2% of its Gross Receipts to another entity as an additional Fee, the Fee to the City would be reduced to 1% of the Gross Receipts.

ARTICLE VI. RECORDS, REPORTS AND AREA OF CITY AFFECTED

SECTION 1: The Cooperative shall keep complete and accurate books of account and records of its business and operations from which the Gross Receipts and the Fee liability may be determined. If reasonably requested and to the extent practicable, copies of relevant portions of such books of account and records may be made available to the City.

SECTION 2: Upon receiving reasonable advance notice, the City, its officials, or authorized personnel and agents shall have access to all books of account and records of the Cooperative relating to this Ordinance, as reasonably needed, to determine the accuracy of the Cooperative's calculation of the Gross Receipts and the Fee. Such information shall be considered confidential or proprietary matters disclosed to the City and shall be held in confidence by the City being disclosed only with the prior written consent of the Cooperative.

SECTION 3: The Cooperative shall make available a map setting forth its Electric Power Utility System located within the City which map shall be corrected and brought up to date from time to time.

SECTION 4: This Ordinance shall extend to any and all territory within the incorporated limits of the City served by the Cooperative, and to that which may be annexed by the City during the term of this Ordinance. In the event of deannexation by the City this Ordinance shall be reduced to the remaining territory used by the Cooperative that continues to be within the City.

SECTION 5: In the event of annexing or deannexing territory, the City shall provide written notice to the Cooperative. At a minimum, notice to the Cooperative shall include a copy of the

City engineer's map of the annexed or deannexed territory along with the related ordinance affecting the annexed or deannexed territory. Upon receiving notice and verification from the State of Texas of the City's annexation or deannexation, the Cooperative shall identify all customers located within such annexed or deannexed area and adjust its maps and accounting records accordingly. Cooperative shall have one hundred eighty (180) days from such notice to begin collecting and paying the Fee for any revenues received from the Cooperative's customers or consumers residing in the newly annexed territories.

ARTICLE VII. SAVING, REPEALING AND SEVERABILITY

SECTION 1: The Cooperative shall not be declared in default or be subject to any sanction under any provision of this Ordinance in those cases in which performance of such provision is prevented by force majeure or other causes and occurrences beyond the reasonable control of the Cooperative.

SECTION 2: The Cooperative shall not be in default under this Ordinance until written notice of any alleged failure to perform has been given. After written notice to the Cooperative, the Cooperative shall have an opportunity to be heard, and thereafter, a subsequent period of not less than one hundred eighty (180) days for the Cooperative to cure the default. If the Cooperative fails to cure such default upon expiration of the one hundred (180) days, or if such default cannot reasonable be cured with in one hundred eighty (180) days, and if the Cooperative fails to commence to cure the default within such one hundred eighty (180) days, the City may purpose its remedies pursuant to provisions herein. The City shall not rescind this Ordinance unless the Cooperative has failed to cure a default after being given notice and an opportunity to cure in accordance with the Section.

SECTION 3: It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, phrases and words of this Ordinance are severable and if any sections, paragraphs, sentences, clauses, phrases and words of this Ordinance shall be declared unconstitutional, illegal or invalid by any judgment or decree of a court of competent jurisdiction, such unconstitutional, illegal or invalid sections, paragraphs, sentences, clauses, phrases and words shall not affect any other remaining sections, paragraphs, sentences, clauses, phrases and words of this Ordinance; and the City Council hereby declares it would have passed the remaining portions even though it had known the affected parts would be held unconstitutional, illegal or invalid. If modification of this Ordinance by severance of valid provisions from invalid provisions results in an ordinance that is not practicable, in the opinion of either party, then the parties agree to meet promptly and discuss any necessary amendments or modifications to this Ordinance. The obligation to engage in such negotiations does not obligate either party to agree to an amendment of this Ordinance as a result of such negotiations. Failure to agree does not show a lack of good faith. If, as a result of renegotiation, the City and the Cooperative agree to a change in a provision of this Ordinance, the change shall become effective upon passage of an ordinance by the City in accordance with the City Charter and acceptance of the ordinance by the Cooperative.

SECTION 4: When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. Headings, titles and subtitles contained in the body

this Ordinance are for the convenience of the parties and, as such, are not intended to be used in construing or interpreting this Ordinance.

SECTION 5: If the City should consider terminating this Ordinance and the rights, privileges and franchise granted herein, the City shall notify the Cooperative, in writing, not less than sixty (60) business days in advance of the City Council meeting at which the question of forfeiture or termination shall be considered. The City recognizes the Cooperative's right and obligation to provide electric power utility service in accordance with the Cooperative's Certificate of Convenience and Necessity issued and authorized by the Public Utility Commission of Texas in accordance with the Texas Utilities Code and, as such, said termination shall not affect the Cooperative's statutory obligation to provide electric power utility service to customers within the City.

ARTICLE VIII. RESERVATION OF REGULATORY POWERS; RESERVATION OF LEGAL RIGHTS

SECTION 1: The City, by the granting of this franchise, does not surrender or to any extent lose, waive, imperil or lessen the lawful powers and rights now or hereinafter vested in the City under the Constitution and Statutes of the State of Texas and the United States of America; and the Cooperative, by its acceptance of this franchise, agrees that all such lawful regulatory power and rights as the same may be vested in the City shall be in full force and effect and subject to the exercise thereof by the City at any time and from time to time.

SECTION 2: The Cooperative by accepting this franchise does not surrender or to any extent lose, waive, impair or lessen the lawful powers and rights now or hereafter vested in the Cooperative under the Constitution and the Statutes of the State of Texas and the United States of America and/or the Governmental or Regulatory Authorities having jurisdiction over the Cooperative's operation, provision and termination of electric power utility service, which may, from time to time, supercede the regulatory power vested in the City.

SECTION 3: Nothing contained in this Ordinance shall limit or interfere with any power conferred upon the Public Utility Commission of Texas, or its successor entities, or any rights conferred, by the Public Utility Commission of Texas or other Regulatory Authority having jurisdiction, upon the Cooperative's acquiring, installing, maintaining and operating of an electric power utility business and system, which is contained within the City. The City hereby expressly reserves the right to grant, at any time, like rights and franchises as it may see fit to any other person or entity for the purpose of furnishing utility services to and for the City and the inhabitants thereof.

ARTICLE IX. DISPUTE RESOLUTION

In accordance with the provisions of Subchapter I, Chapter 271, Tex. Local Government Code, Parties agree that, prior to instituting any lawsuit or other proceeding arising from a dispute under this Contract, the parties will first attempt to resolve the dispute by taking the following steps:

1. A written notice substantially describing the nature of the dispute shall be delivered by the dissatisfied party to the other party, which notice shall request a

written response to be delivered to the dissatisfied party not less than 5 (five) days after receipt of the notice of dispute.

2. If the response does not reasonably resolve the dispute, in the opinion of the dissatisfied party, the dissatisfied party shall give notice to that effect to the other party whereupon each party shall appoint a person having authority over the activities of the respective parties who shall promptly meet, in person, in an effort to resolve the dispute.
3. If those persons cannot or do not resolve the dispute, then the parties shall each appoint a person from the highest tier of managerial responsibility within each respective party, who shall then promptly meet, in person, in an effort to resolve the dispute.

Nothing in this Article IX shall prohibit the right of either Party to file a lawsuit to toll the running of a statute of limitations or to seek injunctive relief.

ARTICLE X. GOVERNING LAW, LIMITATIONS AND COMPLIANCE

SECTION 1: All City Ordinances in conflict with the provisions of this Ordinance are herewith repealed to the extent they are in conflict with the provisions contained herein. Any remaining portions of said Ordinances not in conflict with the provisions contained herein shall remain in full force and effect. This Ordinance shall supersede any and all other ordinances or franchises granted by the City to the Cooperative, its predecessors and assigns for the delivery of Electric Power Utility Services. All other said City ordinances between the City and Cooperative relating to the subject matter contained herein are hereby repealed. All ordinances of the City in conflict with the provisions of this Ordinance are herewith repealed to the extent they are in conflict with the provisions contained herein. Any remaining portions of said ordinances not in conflict with the provisions contained herein shall remain in full force and effect.

SECTION 2: Notwithstanding any other provision of this Ordinance to the contrary, the City and the Cooperative shall at all times comply with all local, state and federal laws, rules, regulations and any administrative or Regulatory Authorities thereof with respect to the subject matter of this Ordinance.

SECTION 3: This franchise is subject to the provisions of the Constitution and laws of the United States of America and the State of Texas and the ordinances of the City of Commerce, Texas.

ARTICLE XI. MISCELLANEOUS

SECTION 1: Any notice provided for under the terms of this Ordinance by either the City or the Cooperative to the other shall be in writing and delivered personally or transmitted (i) by registered or certified mail, return receipt requested, postage prepaid or (ii) by means of a prepaid overnight delivery service or (iii) by facsimile or email transmission provided that it is followed by a hard copy of the same delivered by the United States Postal Service or by overnight delivery service as just described. Notices shall be deemed received; (i) upon receipt in the case of personal delivery; (ii) when the return receipt requested is dated and signed by the

receiving party in the case of United States Postal Service delivery; or (iii) the next day in the case of facsimile or overnight delivery. Each party may change the address to which notice may be sent to that party by giving notice of such change to the other party in accordance with the provisions of this Ordinance. Said notice shall be provided within ninety (90) days of the date of such change of address.

The City and the Cooperative agree that all notices or communications to the other party permitted or required under this Ordinance shall be delivered as follows.

To the City at the following address:

City of Commerce, Texas
Attn: City Manager
1119 Alamo Street
Commerce, Texas 75428

Fax: _____

With a copy to:

City Attorney for Commerce, Texas
6371 Preston Road, Suite 200
Frisco, Texas 75034

And to the Cooperative at the following address:

Farmers Electric Cooperative, Inc.
2000 Interstate Highway 30 East
Greenville, Texas 75402-9084

SECTION 2: This Ordinance contains the entire understanding between the City and the Cooperative with respect to the subject matter herein. There are no representations, agreements, or understandings (whether oral or written) between or among the parties with respect to the subject matter of this Ordinance that are not fully expressed herein.

SECTION 3: The rights granted by this Ordinance inure to the benefit of the Cooperative, and any parent, subsidiary, affiliate, or successor entity now or hereafter existing. The rights shall not be assignable without the express written consent of the City Council of the City, except the Cooperative may assign its rights under this Ordinance to a parent, subsidiary, affiliate, or successor entity without such consent, so long as (i) such parent, subsidiary, affiliate, or successor assumes all obligations of the Cooperative hereunder, and (ii) is bound to the same extent as the Cooperative hereunder. Any required consent is to be evidenced by an ordinance of the City Council of the City that fully recites the terms and conditions, if any, upon which consent is given. The Cooperative shall give the City written notice within sixty (60) calendar days of such assignment to a parent, subsidiary, affiliate, or successor entity. This Ordinance is binding upon the successors and assigns of the parties hereto.

SECTION 4: The provisions of this Ordinance may not be amended or changed, except pursuant to a written instrument signed by both parties. If the City and the Cooperative agree to amend or change a provision of this Ordinance, the change shall become effective upon (i) passage of an ordinance, in accordance with the City Charter by the City, fully reciting the amendment or change along with the section of this Ordinance being amended or changed and (ii) acceptance of the ordinance by the Cooperative.

SECTION 5: The rights and remedies of the City and the Cooperative set forth in this Ordinance shall be in addition to, and not in limitation of, any other rights and remedies provided by law or equity. The City and the Cooperative understand and intend that such remedies shall be cumulative to the maximum extent permitted by law and the exercise by the City or the Cooperative of any one or more of such remedies shall not preclude the exercise by the City or the Cooperative, at the same time or different times, of any other such remedies.

SECTION 6: This Ordinance, in compliance with the provisions of applicable law, shall be introduced at a regular meeting of the City Council. This Ordinance shall take effect thirty (30) days after its final passage by the City Council and upon written acceptance by the Cooperative, which acceptance shall be filed with the City Secretary within thirty (30) days after the final passage of this Ordinance.

SECTION 7: The City Secretary is hereby authorized and directed to make appropriate endorsements over his/her official hand and seal of the City and attach such endorsements for recording at the conclusion of this Ordinance. The City Secretary shall record the date upon which this Ordinance shall take effect.

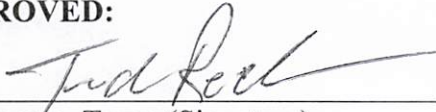
SECTION 8: A caption and summary of this Ordinance shall be published in accordance with applicable law as well as provide for the Effective Date being thirty (30) days after final adoption by the City Council.

SECTION 9: This Ordinance shall become effective on the 19th day of September, 2023 (the "Effective Date").

[SIGNATURE PAGE FOLLOWS]

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF
COMMERCE, TEXAS ON THIS THE 15TH DAY OF AUGUST, 2023 AND ON ITS
SECOND AND FINAL READING ON THIS THE 19TH DAY OF SEPTEMBER, 2023.

APPROVED:

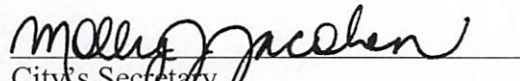

Commerce, Texas (Signature)

Mayer
(Title)



ATTEST:

SEAL


City's Secretary

ACCEPTANCE:

Farmers Electric Cooperative, Inc.

By: _____
(Signature)

Its: _____
(Title)

Street Address:

2000 Interstate Highway 30 East
Greenville, Texas 75402-9084

APPROVED AS TO FORM:


City's Attorney

ACCEPTANCE BY FRANCHISEE

Farmers Electric Cooperative, Inc. hereby accepts City of Commerce Ordinance No. 2023-09-01. The person whose signature is below is authorized to sign and bind Farmers Electric Cooperative, Inc. to the terms of this acceptance.

ACCEPTED this 18 day of October, 2023.

Farmers Electric Cooperative, Inc.

By: _____

Mark Stubbs

Its: _____

General Manager

Street Address:

2000 Interstate Highway 30 East
Greenville, Texas 75402-9084

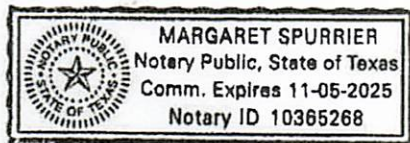
THE STATE OF TEXAS

§
§
§

COUNTY OF HUNT

BEFORE ME, the undersigned authority, on this day appeared, Mark Stubbs, known to me to be one of the persons whose name is subscribed to the foregoing instrument; he acknowledges to me he is the duly authorized representative for Farmers Electric Cooperative, a Texas corporation, and he executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 18th day of October, 2023.



Notary Public Signature

My Commission Expires:

11/05/2025

DATE OF PUBLICATION: 8/31/23 §, in the Herald Banner.

THE STATE OF TEXAS

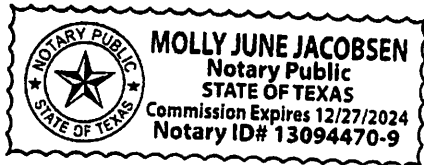
§
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9/5/23

COUNTY OF HUNT§

BEFORE ME, the undersigned authority, on this day appeared, Teddy Reel, Mayor known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledges to me he is the duly authorized representative for the City of Commerce, Texas and he executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 19th day of september, 2023.



Molly June Jacobsen
Notary Public Signature

My Commission Expires:

12/27/2024

THE STATE OF TEXAS

§
§
§

COUNTY OF HUNT

BEFORE ME, the undersigned authority, on this day appeared, MARK STUBBS, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledges to me he is the duly authorized representative for the Farmers Electric Cooperative, Inc., a Texas corporation, and he executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ____ day of _____,
_____.

Notary Public Signature

My Commission Expires:

Notice of Sale of Real Estate

1/12/12

Whereas the undersigned, Notary Public for the State of Texas, do hereby certify that the following is a true and correct copy of the original of the same as the same appears in the records of the County of [County Name], State of Texas, to-wit:

Notice of Sale of Real Estate

1/12/12

[Signature]

1/12/12

