

**An Ordinance of the City of Plano, Texas, granting to Denton County Electric Cooperative, Inc., d/b/a CoServ Electric, a Texas electric cooperative corporation, its successors and assigns, a non-exclusive franchise to use the present and future streets, avenues, alleys, roads, highways, sidewalks, easements and other public rights-of-way in the City of Plano, Texas for the purposes of constructing and operating an Electric Distribution System; setting forth terms and conditions to govern the franchise; providing a repealer clause, a severability clause, a savings clause, a publication clause, and an effective date.**

**WHEREAS**, pursuant to Ordinance No. 2019-11-15, Denton County Electric Cooperative, Inc., d/b/a CoServ Electric ("CoServ Electric" or "Cooperative"), was granted a non-exclusive franchise to use the present and future streets, avenues, alleys, roads, highways, sidewalks, easements and other public rights-of-way in the City of Plano, Collin County, Texas, for the purposes of constructing and operating an electric distribution system ("Franchise") by the City Council of the City of Plano ("City"); and

**WHEREAS**, Ordinance No. 2019-11-15 was amended on May 22, 2023, by Ordinance No. 2023-5-8, to extend the term of the Franchise to June 9, 2024; and

**WHEREAS**, the term of the existing Franchise will terminate on June 9, 2024; and

**WHEREAS**, any action or use in regard to the subject matter previously governed by Ordinance No. 2023-5-8 taken between June 10, 2024, and the effective date of this Ordinance is hereby fully ratified as if at all times occurring under the terms and conditions of Ordinance No. 2023-5-8; and

**WHEREAS**, the City Council hereby finds that it is to the mutual advantage of both the City and the Cooperative to enter into a new franchise agreement establishing the conditions under which the Cooperative will operate its system of electric power lines, with all necessary or desirable appurtenances for delivering such electric power including underground conduits, poles, towers, wires, electric lines, and other structures, equipment, and facilities in the City; and

**WHEREAS**, pursuant to Articles 2 and 10 of the City's Charter, the City Council hereby determines that a grant of this Ordinance is in the best interests and will inure to the benefit of the City and its citizens.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:**

#### **SECTION 1.** **DEFINITIONS**

For the purpose of this Ordinance (also "Franchise Agreement" or "Agreement"), the following terms, phrases, words, abbreviations and their derivations shall have the meaning given herein. 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.

- 1.1 **“CITY”** shall mean the home rule municipal corporation designated as the City of Plano, Texas, and includes the territory that currently is or may in the future be included within the boundaries of the City of Plano.
- 1.2 **“CIAC”** shall mean all payments received by Cooperative for contributions in aid of construction performed within the boundaries of the City, including but not limited to System Benefit Charges and Facilities Charges, under contracts entered into after the Effective Date.
- 1.3 **“COOPERATIVE”** shall mean Denton County Electric Cooperative, Inc., d/b/a CoServ Electric, a Texas electric cooperative corporation, its successors and assigns.
- 1.4 **“EFFECTIVE DATE”** shall be thirty (30) days after final passage and publication of this Ordinance as required by the Plano City Charter, provided that Cooperative has filed its written acceptance of this Ordinance and agreement with the City Secretary of the City of Plano prior to the expiration of the thirty-day period.
- 1.5 **“ELECTRIC DISTRIBUTION SYSTEM” or “COOPERATIVE FACILITIES”** shall mean the Cooperative’s system of cables, wires, lines, poles, towers, anchors, guy wires, insulators, transformers, substations, conduits, ducts, communication cable and devices, and any associated equipment, or plant, or other facilities designed and constructed for the purpose of producing, transmitting or distributing electricity to or from customers or locations within the City, as the same now exists and may from time to time be placed, removed, constructed, reconstructed, extended and maintained.
- 1.6 **“GROSS REVENUES”** shall mean CIAC plus the gross operating revenue for electric services provided by Cooperative to its customers within the corporate boundaries of the City pursuant to the accounting principles established by the Rural Utilities Service of the U.S. Department of Agriculture in 7 CFR 1767 and specifically 1767.26, Accounts 440-456, as amended, except as modified herein, including:
  - (a) all operating revenues received by the Cooperative from the sale of electricity to all classes of customers within the City;
  - (b) all operating revenues derived from the Cooperative’s service fees as defined in CFR 1767.26, Accounts 440-456, including, but not limited to, the following:
    - (i) charges to connect, disconnect, or reconnect service within the City;
    - (ii) charges to handle returned checks from consumers within the City;

- (iii) such other service charges and charges as may, from time to time, be authorized in the rates and charges of the Cooperative;
    - (iv) pole attachment revenues received by the Cooperative; and
  - (c) franchise fees collected from the Cooperative's customers located within the corporate boundaries of the City.
- 1.6.1 The term "Gross Revenues" shall not include: (i) local, state, or federal taxes collected by Cooperative that have been billed to its customers and separately stated on customers' bills; (ii) revenues billed but not ultimately collected or received by the Cooperative; (iii) the revenues of any person, including without limitation, an affiliate of the Cooperative, to the extent that such revenue is also included in Gross Revenues of the Cooperative; (iv) other than Franchise Fees, any taxes or fees required to be remitted to a third party including the City; (v) any interest or investment income earned by the Cooperative; (vi) any money received from the lease or sale of real or personal property; (vii) any amounts billed or collected from Cooperative's members for refundable membership fees and deposits; (viii) reimbursements for damage to or relocation any part of the Cooperative's system; (ix) amounts billed or collected by Cooperative from its customers for charitable contributions such as Operation Roundup®; and (x) State or Federal grants or reimbursements.
- 1.7 **"LAWS"** shall mean any and all statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, tariffs, administrative orders, certificates, orders, or other requirements of the City or other governmental agency having joint or several jurisdictions over the parties to this Franchise Agreement, in effect either as of the Effective Date or at any time during the term of the Franchise Agreement.
- 1.8 **"PUBLIC RIGHT(S)-OF-WAY"** shall mean all dedicated or City acquired public rights-of-way, streets, highways, and alleys, and all public utility easements that allow the use of Cooperative's facilities. This term shall not include county, state, or federal rights-of-way or any property owned by any person or agency other than the City, except as provided by applicable Laws or pursuant to an agreement between the City and any such person or agency.
- 1.9 **"PUBLIC UTILITY COMMISSION OF TEXAS"** or **"PUC"** shall mean that agency as presently constituted by the laws of the State of Texas or any successor agency.
- 1.10 **"TARIFF"** shall mean the Tariff for Electric Service of Cooperative, effective as of February 1, 2023, and as subsequently revised or amended.

## **SECTION 2.**

### **GRANT OF AUTHORITY**

- 2.1 **PERMISSION/FRANCHISE AGREEMENT**: Subject to all the terms and conditions

contained herein, the Texas Constitution, the Code of Ordinances of the City of Plano, Texas, the Right-of-Way Management Ordinance, as amended, and the Home Rule Charter for the City of Plano, Texas as from time to time is in effect, City hereby grants Cooperative non-exclusive permission to erect, construct, install, maintain, repair, remove, and operate an Electric Distribution System in, over, under, along and across the Public Rights-of-Way in the City. Should Cooperative use such Electric Distribution System for a use other than delivery of electric service, Cooperative must notify City of such use.

- 2.2 **NO PRIORITY:** This Franchise Agreement does not establish any priority for the use of the streets and Public Rights-of-Way by Cooperative or by any present or future recipients of franchise agreements, franchisees or other permit holders. In the event of any dispute as to the priority of use of the Public Rights-of-Way, the first priority shall be to the public generally, the second priority to City, the third priority to the State of Texas and its political subdivisions in the performance of their various functions, and thereafter, as between recipients of franchise agreements, franchisees and other permit holders, as determined by City in the exercise of its powers, including the police power and other powers reserved to and conferred on it by the State of Texas.
- 2.3 **CITY'S RIGHT IN THE PUBLIC RIGHTS-OF-WAY:** Cooperative acknowledges that by this Franchise Agreement it obtains no rights to or further use of the Public Rights-of-Way other than those expressly granted herein and also granted by state and federal laws, rules, and regulations, including any amendments thereto. Cooperative acknowledges and accepts at its own risk, provided that City has the legal authority for the use or uses in question, that City may make use in the future of the streets and Public Rights-of-Way in which the Electric Distribution System is located in a manner inconsistent with Cooperative's use of such streets and Public Rights-of-Way for its placement and use of such System, and Cooperative shall only be entitled to compensation or reimbursement from City as provided by Section 4 or any applicable state and federal laws, rules, and regulations including any amendments hereto.
- 2.3.1 Cooperative will get approval from the City prior to installing Cooperative Facilities in a City park or City property other than public utility easements, streets, alleys, or highway Public Rights-of-Way.
- 2.3.2 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 Cooperative. 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, screening walls, and the like.

- 2.3.3 City-requested relocations of Cooperative Facilities in the Public Rights-of-Way shall be at Cooperative's expense; provided however, if the City is the end use Retail Customer (customer who purchases electric power or energy and ultimately consumes it) requesting the removal or relocation of Cooperative Facilities for its own benefit, or the project requiring the relocation is solely aesthetic/beautification in nature, it will be at the total expense of the City.
- 2.3.4 City shall provide Cooperative with at least thirty (30) days' notice when requesting Cooperative to relocate facilities. Cooperative shall remove and relocate its facilities within the time frame and as provided by City's Right-of-Way Management Ordinance, as amended, unless otherwise agreed by City and Cooperative. Provided further, if the relocation request includes, or is for, Cooperative to relocate above-ground facilities to an underground location, City shall be fully responsible for the additional cost of placing the facilities underground.
- 2.3.5 City shall have the ability at any time to require Cooperative to repair, remove or abate any distribution pole, wire, cable, or other distribution structure in City's Public Rights-of-Way that is determined to be unnecessarily dangerous to life or property. After receipt of notice, Cooperative shall either cure said dangerous condition within (30) thirty days, or provide City with facts defending its position that said condition is not a condition that is unnecessarily dangerous to life or property. In the event City finds that Cooperative has not sufficiently addressed said dangerous condition by either of the aforementioned methods, City shall be entitled to exercise the remedies in Sections 13 and 14.
- 2.4 **COMPLIANCE WITH LAWS:** Cooperative shall be subject to and comply with all applicable and controlling local, state and Federal laws, including the City's Right-of-Way Management Ordinance, as amended, and the rules and regulations of any and all agencies thereof, whether presently in force or whether enacted or adopted at any time in the future. In constructing, maintaining and operating the Electric Distribution System, Cooperative shall act in a good and workmanlike manner, observing industry standard levels of engineering and workmanship and using materials of good and durable quality. Cooperative shall comply in all respects with applicable codes and industry standards, including but not limited to the National Electrical Safety Code (latest edition) and the National Electric Code (latest edition).
- 2.5 **CONTINUED OBLIGATIONS:** This Franchise Agreement does not relieve Cooperative of the obligation to obtain permits, licenses and other approvals from City or other units of government, which are required for the construction, repair or maintenance of the Electric Distribution System; or from compliance with generally

applicable municipal codes and ordinances such as zoning and land use ordinances, pavement cut ordinances, Right-of-Way Management Ordinance, subdivision and project improvements, curb cut permits, building permits and the like.

- 2.6 **RIGHT OF CONDEMNATION RESERVED:** Nothing in this Franchise Agreement shall limit any right the City may have to acquire by eminent domain any property of the Cooperative.
- 2.7 **FEES:** Nothing in this Franchise Agreement shall be construed to limit the authority of the City to impose a tax, fee, or other assessment of any kind on any person in accordance with, but subject to the terms of, Section 7.1.6. Cooperative shall pay all fees necessary to obtain all applicable Federal, State, and local licenses, permits, and authorizations required for the construction, installation, maintenance, or operation of its Electric Distribution System in accordance with, but subject to the terms of, Section 7.1.6.

### **SECTION 3.** **TERM OF FRANCHISE**

This Ordinance shall become effective thirty (30) days after its final passage and publication as required by the Plano City Charter, provided that Cooperative has filed with the City Secretary its written acceptance of this Ordinance and agreement prior to the Effective Date, and shall extend for a term of ten (10) years from the Effective Date unless earlier terminated by either party in accordance with the provisions herein; provided that, unless written notice is given by either party hereto to the other not less than one hundred and twenty (120) days before the expiration of the current term of this Agreement, the term of this Agreement shall be automatically renewed for an additional period of five (5) years from such expiration date and shall be automatically renewed thereafter for like periods until canceled by written notice given not less than one hundred and twenty (120) days before the expiration of any such renewal period; provided that, in no event shall the maximum term under this Franchise Agreement exceed twenty (20) years from the Effective Date.

**SECTION 4.**  
**OPERATION, CONSTRUCTION AND MAINTENANCE OF ELECTRIC DISTRIBUTION  
SYSTEM**

- 4.1 **GOVERNANCE**: Public Rights-of-Way and construction shall be governed by the City of Plano Right-of-Way Management Ordinance, as amended.
- 4.2 **CONSTRUCTION-GENERAL**: Cooperative shall meet all the construction, reconstruction and service requirements set out in this Franchise Agreement and those set out in the local, state, and federal laws.
- 4.3 **RIGHT OF INSPECTION**: City shall have the right to inspect all construction, reconstruction, or installation work and to make such tests as it deems necessary to ensure compliance with the terms of the Franchise Agreement, Municipal Code, and any local, state, or federal laws.
- 4.4 **IDENTIFICATION**: Cooperative shall identify its Electric Distribution System and cable drops (by color code, stamping, engraving, tags, stickers, or other appropriate method selected by Cooperative) so as to distinguish Cooperative's lines from that of all other electric operator(s), utilities, and service providers in the City.
- 4.5 **EASEMENTS**: Any easements over or under private property necessary for the construction or operation of the Electric Distribution System shall be arranged by Cooperative. Any easements over or under property owned by City other than the Public Rights-of-Way shall be separately negotiated with City, except that Cooperative may use general utility easements that are dedicated for compatible uses on property owned by City.
- 4.6 **PLANS OF RECORD**: Cooperative shall provide plans of record to the City in accordance with the City's Right-of-Way Management Ordinance, as amended.
- 4.7 **PLACEMENT OF FIXTURES**: The Cooperative shall not place poles, towers or similar fixtures where the same will unduly interfere with any gas, electric, or telephone fixture, water hydrant or main, drainage facility or sanitary sewer, and all such poles, towers and similar facilities shall be placed in such manner as not to unreasonably interfere with the usual travel or use of the streets.
- 4.7.1 Cooperative may not use any portion of its Electric Distribution System in the City's Public Rights-of-Way for any purpose other than the delivery of electric service (or in support of Cooperative's Distribution System), including renting, licensing or otherwise sharing use of facilities with third parties, including third parties receiving electric service, without first entering into a separate agreement for Cooperative's ancillary service; however, Cooperative is hereby expressly permitted to allow

telecommunications companies (e.g., telephone and cable) to attach to Cooperative Facilities so long as Federal laws (if and to the extent applicable to Cooperative) and Cooperative's requirements are met, which includes allowed attachment fees.

- 4.7.2 Cooperative agrees to notify other persons, firms, or corporations that desire to attach facilities to Cooperative's Electric Distribution System located within the City that they have a responsibility to obtain all legally required franchises, licenses, waivers, consents, easements, rights of way, and permits needed to construct and operate its equipment within the City. However, in no event is Cooperative responsible or liable to City or any other person or entity if the persons, firms, or corporations that desire to attach to Cooperative's Electric Distribution System fails to obtain anything required by the City. City may request a list of persons or corporations who have a contract to attach facilities to Cooperative equipment within the City limits, and Cooperative shall provide such information within a reasonable time after the City's request.

- 4.8 **USE OF POLES, DUCTS, AND OTHER STRUCTURES:** Nothing contained in this Franchise shall be construed to require or permit any pole attachments for electric light or power wires or electrical facilities or systems not provided by the Cooperative to be attached to the Cooperative's poles or other physical plant by the City, or for the City, nor to require or permit any electric light or power wires or electrical facilities or systems not provided by the Cooperative to be placed in any duct in the Cooperative's conduit by the City or for the City. If the City desires pole attachments for electric light or power wires or electrical facilities or systems not provided by the Cooperative, or if the City desires to place electric light or power wires or communications facilities or systems not provided by the Cooperative in any Cooperative duct, then a further separate, non-contingent agreement shall be prerequisite to such attachments or such use of any duct by the City.

- 4.8.1 Cooperative must share trench space for cables and ducts with another person, firm, or corporation for the placement of cables or wires underground; provided, however, Cooperative has no obligation to comply if said person or corporation does not agree with Cooperative's reasonable terms and requirements for sharing trench space including cost of sharing of trench and including any required contract or agreement with Cooperative. Cooperative may require another person, firm, or corporation to furnish evidence of adequate insurance and provide indemnity covering Cooperative and adequate bonds covering the performance of the person, firm or corporation sharing the trench space. Cooperative's requirement for such insurance and indemnity must be reasonable. Ducts, cables, or wires shall be placed in trenches in compliance with applicable National Electrical Safety Code (NESC) requirements and in a manner that does not interfere with Cooperative's cables and wires. Each person, firm or corporation that



is permitted to share Cooperative trench space must first acquire their own permits with the City; and Cooperative's sole responsibility regarding this provision is the same responsibility as stated in Section 4.7.2 of this Franchise Agreement.

- 4.8.2 If any other corporation or person (other than City) requests Cooperative to relocate Cooperative Facilities located in Public Rights-of-Ways, Cooperative shall not be bound to make such changes until such other corporation or person shall have undertaken, with good and sufficient bond, to reimburse Cooperative for any costs, loss, or expense which will be caused by, or arises out of such change, alteration, or relocation of Cooperative's Facilities. City may not request Cooperative to pay for any relocation which has already been requested, and paid for, by any entity other than City.
- 4.8.3 Cooperative 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 Cooperative be required to pay fees or bonds related to these permits, licenses, or other approval processes required for placing Facilities in the Public Rights-of-Way.
- 4.8.4 Cooperative may permit the wires of the City to be attached to the poles or use of spare conduit in duct systems owned and maintained by Cooperative, under separate agreement, upon securing a Cooperative "Pole Attachment/Duct Use" agreement which specifies the requirements and compensation for said use. Cooperative does not warrant or guarantee there will be space made available on Cooperative poles or spare conduits in Cooperative duct systems for the City's use. Cooperative may require the City to furnish evidence of adequate insurance and provide adequate bonds covering the performance of the City or City's contractor prior to attaching wires to Cooperative's poles and prior to City's use of conduit in Cooperative's duct systems.
- 4.8.5 Cooperative shall have in place Vegetation Management Guidelines, and shall provide City with a current copy of same, upon request. If the City requests a current copy of Cooperative's Vegetation Management Guidelines, release of such shall be pursuant to the same confidential protection process identified in Section 8 of this Franchise. Cooperative shall conduct its tree-trimming activities in accordance with its Vegetation Management Guidelines, including as amended by Cooperative from time to time, and will address concerns or complaints with regard to its tree-trimming activities upon reasonable request by the City. Except in emergency situations or in response to outages, and in accordance with Cooperative Vegetation Management Guidelines, Cooperative shall notify

affected property owners and the City prior to beginning planned distribution tree-trimming activities within City limits.

- 4.9 **VACATION**: If a street or Public Right-of-Way where Cooperative has facilities is proposed to be vacated, eliminated, discontinued or closed, Cooperative shall be notified of same at least sixty (60) days prior to such vacation and all rights of Cooperative under this Franchise Agreement to use same shall terminate, provided that an alternate route within a street or Public Right-of-Way is available for relocation of such facilities. Cooperative shall remove the Electric Distribution System from such street or Public Rights-of-Way within ninety (90) days, unless otherwise approved by the City Engineer or unless Cooperative obtains any necessary easements from the affected property owners to use the former street or Public Right-of-Way or a court orders the provision of such easements. Where reasonably possible and to the extent consistent with the treatment of other utility facilities in the former street or Public Right-of-Way, City shall reserve easements for Cooperative to continue to use the former street or Public Right-of-Way. Cooperative shall bear the cost of any removal or relocation of the Electric Distribution System unless the vacation is primarily for the benefit of a private party, in which case the private party shall bear such costs. Cooperative shall be provided ninety (90) days' notice of any proposed vacation proceedings involving its facilities.

## **SECTION 5.**

### **INDEMNIFICATION AND LIABILITY FOR DAMAGES**

- 5.1 **INDEMNIFICATION**: In consideration of the granting of this Franchise, Cooperative agrees to indemnify, defend, and hold harmless the City, its officers, agents and employees from and against all suits, actions or claims of injury to any person or persons, or damages to any property brought or made for or on account of any death, injuries to, or damages received or sustained by any person or persons or for damage to or loss of property arising out of, or occasioned by Cooperative's intentional and/or negligent acts or omissions in connection with Cooperative's operations; except that the indemnity provided for in this paragraph shall not apply to any liability determined by a court of competent jurisdiction to have resulted from the sole negligence or intentional acts or omissions of the City, its officers, agents and employees. In the event of joint and concurrent negligence or fault of both Cooperative and the City, responsibility and indemnity, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas 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 Cooperative and the City, responsibility for all costs of defense shall be apportioned between the City and Cooperative based upon the comparative fault of each.

- 5.2 **DEFENSE OF CITY:** In fulfilling its obligation to defend and indemnify City, Cooperative shall have the right to select defense counsel, subject to City's approval, which will not be unreasonably withheld. Cooperative 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 Agreement. If Cooperative fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Cooperative shall be liable for all defense costs incurred by City, except as set out in Section 5.1.

## **SECTION 6.** **LIABILITY INSURANCE**

Cooperative shall obtain, maintain, and provide insurance in accordance with the City's Right-of-Way Management Ordinance, as amended. Any changes to the insurance requirements contained in the City's Right-of-Way Management Ordinance shall inure to this Franchise.

## **SECTION 7.** **PAYMENT TO THE CITY**

- 7.1 **FRANCHISE FEE:** In consideration of the grant of said right, privilege, and franchise by the City of using and occupying the Public Rights-of-Way, Cooperative shall pay City throughout the term of this Franchise Agreement a Franchise Fee in an amount equal to four percent (4%) of Cooperative's Gross Revenues as follows:

7.1.1 Cooperative shall pay Franchise Fees on a quarterly basis as provided below:

<u>Due Date</u>	<u>Quarter</u>
May 15	First (January 1- March 31)
Aug 15	Second (April 1 – June 30)
November 15	Third (July 1 – September 30)
February 15	Fourth (October 1 – December 31)

7.1.2 Interest on late payments accrue at the same interest rate in effect for customer deposits established by the PUC on the date the original payment was due.

7.1.3 Cooperative shall furnish to the City with each payment of compensation required by this section a statement, executed by an authorized officer of Cooperative or his or her designee, showing the amount of Gross Revenues for the period covered by the payment.

- 7.1.4 If either party discovers that Cooperative has failed to pay the entire or correct amount of compensation due, the correct amount shall be determined and the City shall be paid by Cooperative within thirty (30) days of such discovery. Any overpayment to the City through error or otherwise shall, at the option of the City, be refunded or offset against the next payment due from Cooperative. Acceptance by the City of any payment due under this section shall not be deemed to be a waiver by the City of any breach of this Franchise Agreement occurring prior thereto, nor shall the acceptance by the City of any such payments preclude the City from later establishing that a larger amount was actually due or from collecting any balance due to the City.
- 7.1.5 The Cooperative is hereby authorized to surcharge to customers within the City all or any portion of the Gross Revenues assessment. All bills for services rendered within the City shall be adjusted by the same percentage as the Gross Revenues assessment specified herein, less any percentage that is recovered by the Cooperative through base rates or other charges.
- 7.1.6 No taxes, fees, or other payments by Cooperative to the City, including, but not limited to, ad valorem taxes, shall reduce the Franchise Fees payable to City hereunder. Nothing in this Franchise Agreement shall be construed to prohibit the City from levying the usual general or special ad valorem taxes which the City is authorized to levy and impose upon real and personal property, general sales and use tax, assessments for public improvements, and sums to which the City may be entitled under the Texas Utilities Code (the Texas Public Utility Regulatory Act), and, subject to Section 2.4, no reduction of the Franchise Fee will occur pursuant to the Texas Public Utility Regulatory Act.

## **SECTION 8.**

### **ACCOUNTING MATTERS**

- 8.1 **MAINTENANCE OF RECORDS:** Cooperative shall keep accurate books of account at its principal office in Corinth, Texas, for the purpose of determining the amount due to the City under this Franchise Agreement. Cooperative shall retain such books, records, and documents and other evidence pertaining to the Franchise granted herein and Franchise Fee payments due hereunder for a period of not less than five (5) years, except if an audit is in progress or audit findings are yet unresolved, in which case records shall be kept until all audits tasks are completed and resolved. Each of the terms "books," "records," "documents," and "other evidence" as used herein shall be construed to include electronic files.
- 8.2 **AUDIT:** The City may inspect Cooperative's books of accounts relative to the payment of Franchise Fees to the City for the prior two calendar years at any time during regular business hours and on at least ten (10) business days' prior written

notice and may audit the books from time to time for such two-year period. All records reasonably necessary for such audit shall be made available by Cooperative at Cooperative's offices in Corinth, Texas. Cooperative agrees to give its full cooperation in any audit and shall provide complete responses to inquiries within fifteen (15) business days of a written request.

8.2.1 If the final results of any audit indicate that Cooperative (i) paid the correct Franchise Fee, (ii) overpaid the Franchise Fee and is entitled to a refund or credit, or (iii) underpaid the Franchise Fee by five percent (5%) or less, then the City shall pay the costs of the audit. If the final results of the audit indicate the Cooperative underpaid the Franchise Fee by more than five percent (5%), then Cooperative shall pay the costs of the audit. City agrees that any audit shall be performed in good faith.

8.2.2 If the results of the audit indicate that Cooperative underpaid the Franchise Fee by more than five percent (5%), and Cooperative is unable to produce contrary evidence that in City's reasonable judgment is satisfactory to demonstrate to City that the results of the audit are not accurate, then Cooperative shall pay to the City a penalty equal to five percent (5%) of the total amount underpaid in addition to the total amount underpaid. Interest on the total amount of underpayment shall be paid at the same interest rate in effect for overbillings and underbillings established by the PUC, and interest shall be calculated from the time the original amount was due. Any additional amount due to City hereunder shall be paid within (30) days from the date of invoice. Any amount not paid within thirty (30) days from the date of the invoice will cause interest to be payable at the same interest rate in effect for overbillings and underbillings established by the PUC in effect on the date of the invoice on the entire amount from the date of invoice.

8.3 **NON-PUBLIC INFORMATION:** If Cooperative provides confidential or proprietary information to the City, Cooperative shall be solely responsible for identifying such information with markings reasonably calculated to bring the City's attention to the proprietary or confidential nature of the information. It is expressly understood and agreed that all maps and all information marked confidential concerning Franchise Fee calculation and payments and audit information furnished by or on behalf of the Cooperative to the City or its auditors or consultants shall be deemed strictly confidential, non-public information and subject to the City's agreement in the next sentence. The City agrees to maintain the confidentiality of any non-public information obtained from Cooperative so designated to the extent allowed by law. When a court or regulatory agency (other than the City) requires the City to release non-public information, City shall provide notice to Cooperative prior to releasing the information so as to allow Cooperative adequate time to pursue available remedies for protection. If the City receives a request under the Texas Public Information Act that includes Cooperative's proprietary information, City will notify

the Texas Attorney General of the proprietary nature of the document(s). The City will also provide Cooperative a copy of the official notification in writing, and thereafter Cooperative is responsible for establishing that an exception under the Act allows the City to withhold the information. If the Texas Attorney General requires release, the City has no liability to Cooperative for such release.

- 8.4 **NO WAIVER BY CITY:** The omission by the City to exercise its rights to an audit shall not constitute waiver of such right. Acceptance of any payment shall not estop City from asserting that an amount paid is not the amount due.

## **SECTION 9.**

### **AREA OF THE CITY AFFECTED**

- 9.1 **CORPORATE LIMITS OF CITY:** This Franchise shall extend to and include any and all territory that is within the corporate limits of the City that has been certificated to the Cooperative by the Public Utility Commission of Texas.
- 9.2 **ANNEXATION/DISANNEXATION:** Additionally, this franchise shall extend to any and all territory that is annexed by the City during the term of this Franchise and certificated to the Cooperative by the Public Utility Commission of Texas. In the event of disannexation, this Franchise shall be reduced to the territory that continues to be in the City.
- 9.3 **MAPS OF FRANCHISE AREA AND ACCOUNTING:** Upon request, the City shall furnish the Cooperative with maps of the affected franchise area in the event of an annexation or disannexation. Within sixty (60) days from the date such maps are furnished, the Cooperative shall identify all customers located within such annexed or disannexed territory and adjust its accounting system accordingly. For purposes of calculating Gross Revenues, customers, if any, included within an annexed area shall be deemed to commence sixty (60) days from the date the City furnishes the maps to the Cooperative.

## **SECTION 10.**

### **RIGHT OF RENEGOTIATION**

- 10.1 **CHANGE IN CIRCUMSTANCES:** Should either Cooperative or the City have cause to believe that a change in circumstances relating to the terms of this Franchise may exist, it may request that the other party provide it with a reasonable amount of information to assist in determining whether a change in circumstances has taken place.
- 10.2 **GOOD FAITH NEGOTIATIONS:** Should either party hereto determine that, based on a change in circumstances, it is in the best interest to renegotiate all or some of the provisions of this Franchise Agreement, then the other party agrees to enter into good faith negotiations. Said negotiations shall

involve reasonable, diligent, and timely discussions about the pertinent issues and a resolute attempt to settle those issues. The obligation to engage in such negotiations does not obligate either party to agree to an amendment to the Franchise as a result of such negotiations. A failure to agree does not show a lack of good faith. If, as a result of renegotiation, the City and Cooperative agree to a change in a provision of this Franchise, the change shall become effective upon passage of an ordinance by the City in accordance with the City Charter and written acceptance of the amendment by Cooperative.

#### **SECTION 11.** **FORCE MAJEURE**

In the event that the performance by either party of any of its obligations or undertakings hereunder shall be interrupted or delayed by any occurrence, whether such occurrence is by an act of god or the common enemy or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not party or privy hereto, then such party shall be excused from performance for a period of time as is reasonably necessary after such occurrence to remedy the effects thereof, and each party shall bear the cost of any expense it may incur due to the occurrence.

#### **SECTION 12.** **ASSIGNMENT**

The rights granted by this Franchise Agreement 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 Franchise Agreement 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. Cooperative shall give the City ninety (90) days prior written notice of any such assignment to a parent, subsidiary, affiliate or successor entity. Any attempted assignment in violation of this section shall be void and shall be grounds for termination by City.

#### **SECTION 13.** **DEFAULTS**

- 13.1 **EVENTS OF DEFAULT:** The occurrence, at any time during the term of the Franchise Agreement, of any one or more of the following events, shall constitute an Event of Default by the Cooperative under this Franchise Agreement.

- 13.1.1 The failure of Cooperative to pay the Franchise Agreement fee, on or before the due dates specified herein.
- 13.1.2 Cooperative's breach or violation of any of the material terms, covenants, representations or warranties contained herein or Cooperative's failure to perform any material obligation contained herein, including, but not limited to, Cooperative's failure to submit permit request, or begin relocation after permit approval, pursuant to Section 2.3.4.
- 13.2 **UNCURED EVENTS OF DEFAULT:** Upon the occurrence of an Event of Default which can be cured by the immediate payment of money to City or a third party, Cooperative shall have thirty (30) days from written notice from City to Cooperative of an occurrence of such Event of Default to cure same before City may exercise any of its rights or remedies provided for in Section 14. Upon the occurrence of an Event of Default by Cooperative which cannot be cured by the immediate payment of money to City or a third party, Cooperative shall have ninety (90) days from written notice from City to Cooperative of an occurrence of such Event of Default to cure before City may exercise any of its rights or remedies provided for in Section 14.
  - 13.2.1 If any Event of Default is not cured within the time period allowed for curing the Event of Default, as provided for herein, such Event of Default shall, without additional notice, become an Uncured Event of Default, which shall entitle City to exercise the remedies provided for in Section 14.

#### **SECTION 14.** **REMEDIES**

- 14.1 **REMEDIES:** Upon the occurrence of any Uncured Event of Default as described in Section 13.2, City shall be entitled to exercise any and all of the following cumulative remedies:
  - 14.1.1 The commencement of an action against Cooperative at law for monetary damages.
  - 14.1.2 The commencement of an action in equity seeking injunctive relief or the specific performance of any of the provisions which, as a matter of equity, are specifically enforceable.
  - 14.1.3 City shall have the right to forfeit and terminate the Franchise Agreement. City shall notify Cooperative in writing at least fifteen (15) business days in advance of the City Council meeting at which the question of forfeiture or termination shall be considered and Cooperative shall have the right to appear before the City Council in person or by counsel and raise any



objections or defenses Cooperative may have that are relevant to the proposed forfeiture or termination. The final decision of the City Council may be appealed to any court or regulatory authority having jurisdiction.

- 14.2 **REMEDIES NOT EXCLUSIVE:** The rights and remedies of City and Cooperative set forth in this Franchise Agreement shall be in addition to, and not in limitation of, any other rights and remedies provided by law or in equity. City and Cooperative understand and intend that such remedies shall be cumulative to the maximum extent permitted by law and the exercise by City, at the same or different times, of any other such remedies for the same Uncured Event of Default. However, notwithstanding this section or any other provision of this Franchise Agreement, City shall not recover both liquidated damages and actual damages for the same violation, breach, noncompliance, or Uncured Event of Default, either under this section or under any other provision of this Franchise Agreement.

## **SECTION 15.** **NOTICES**

- 15.1 **NOTICES:** All notices which shall or may be given pursuant to this Franchise Agreement shall be in writing and delivered personally or transmitted: (a) through the United States mail, by registered or certified mail, postage prepaid; (b) by means of prepaid overnight delivery service; or (c) by facsimile or email transmission, if a hard copy of the same is followed by delivery through the U.S. mail or by overnight delivery service as just described, addressed as follows:

If to the City:

**City of Plano**

Attn: City Manager's Office  
P.O. Box 860358  
Plano, TX 75086-0358

If to the Cooperative:

**Denton County Electric Cooperative, Inc., d/b/a CoServ Electric**

Attn: President  
7701 South Stemmons  
Corinth, Texas 76210-1842

- 15.2 **DATE OF NOTICES: CHANGING OF NOTICE ADDRESS:** Notices shall be deemed given upon receipt in the case of personal delivery; three (3) days after deposit in the mail; or the next day in the case of facsimile or overnight delivery. Either party may from time to time designate any other address for this purpose by written notice to the other party delivered in the manner set forth above.

## **SECTION 16.**

### **TERMINATION**

- 16.1 This Franchise Agreement may be terminated by the City in accordance with the provisions of Section 14 of this Ordinance. The City reserves the right to seek revocation of Cooperative's certificate in its entirety or to seek a reduction in Cooperative's service area under its certificate through the Public Utility Commission of Texas, and Cooperative reserves the right to oppose any such action by the City.
- 16.2 Any termination of the Franchise granted by this Agreement in whole or in part shall not release Cooperative from any liability or obligation hereunder which was accruing or had accrued at the time of termination, without limitation. The provisions of Section 4 of this Ordinance shall survive the termination of this Franchise.

## **SECTION 17.**

### **MISCELLANEOUS**

- 17.1 **NON-EXCLUSIVE USE:** This Franchise Agreement does not provide Cooperative with exclusive use of the Public Rights-of-Way and City shall have the right to permit other providers of services, including telecommunications services, to install equipment or devices in the Public Rights-of-Way. Nothing in this Franchise Agreement shall be construed to obligate the City to grant Cooperative permission to use any particular facility or Public Rights-of-Way not covered by this Franchise Agreement.
- 17.2 **GOVERNING LAW:** The laws of the State of Texas and City Code of Ordinances shall govern the interpretation validity, performance and enforcement of this Franchise Agreement. The parties agree that this Franchise Agreement is performable in Collin and Denton County, Texas and that exclusive venue shall lie in Collin County, Texas.
- 17.3 **SEVERABILITY CLAUSE:** If any provision, section, subsection, sentence, clause or phrase of this Ordinance is for any reason found unconstitutional, void or invalid or for any reason unenforceable, the City and Cooperative intend that the remaining portions of this Ordinance are not affected thereby, it being the intent of the City and Cooperative in accepting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion, provision, or regulation, and to this end, all provisions of this Ordinance are declared severable.

- 17.4 **EXHIBITS**: All exhibits referred to in this Franchise Agreement and any addenda, attachments, and schedules which may from time to time be referred to in any duly executed amendment to this Franchise Agreement are by such reference incorporated in this Franchise Agreement and shall be deemed a part of this Franchise Agreement.
- 17.5 **SUCCESSORS AND ASSIGNS**: This Franchise Agreement is binding upon the successors and assigns of the parties hereto.
- 17.6 **CONSENT CRITERIA**: In any case where the approval or consent of the party hereto is required, requested or otherwise to be given under this Franchise Agreement, such party shall not unreasonably delay or withhold consent.
- 17.7 **WAIVER OF BREACH**: The waiver by either party of any breach or violation of any provision of this Franchise Agreement shall not be deemed to be a waiver or a continuing waiver of any subsequent breach or violation of the same or any other provision of this Franchise Agreement.
- 17.8 **ENTIRE AGREEMENT**: This Franchise Agreement contains the entire understanding between the parties with respect to the subject matter herein and supersedes and replaces all prior franchises granted to Cooperative, which shall be rendered null and void as of the Effective Date. There are no representations, agreements, or understandings (whether oral or written) between or among the parties relating to the subject matter of this Franchise Agreement that are not fully expressed herein.
- 17.9 **NO THIRD PARTY BENEFICIARIES**: This Franchise Agreement is for the benefit of Cooperative, any transferee or assignee in accordance with the provisions contained herein, and the City, and not for the benefit of any third party. No provision of this Franchise Agreement shall be construed as creating any third party beneficiaries.
- 17.10 **REPEALER CLAUSE**: This Ordinance shall be cumulative of any and all other permits and franchises granted by the City to Cooperative provided, however, that all ordinances or parts of ordinances that conflict herewith are hereby repealed upon the effective date of this Ordinance.
- 17.11 **SAVINGS CLAUSE**: The repeal of any ordinance of part of any ordinance affected by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying, or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions of any ordinances at the time of passage of this Ordinance.

- 17.12 **PUBLIC MEETING**: 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.
- 17.13 **ACCEPTANCE**: Cooperative must file with the City Secretary its written acceptance of this Ordinance within thirty (30) days after final passage and publication of this Ordinance by City.
- 17.14 **EFFECTIVE DATE**: This Ordinance shall become effective thirty (30) days after final passage and publication, provided that Cooperative has filed its written acceptance of this Ordinance and agreement with the City Secretary of the City of Plano prior to the expiration of the thirty-day period.

SIGNATURES ON FOLLOWING PAGE

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

**PASSED AND APPROVED ON FIRST READING** on the 22nd day of July, 2024.

---

John B. Muns, MAYOR

ATTEST:

---

Lisa C. Henderson, CITY SECRETARY

APPROVED AS TO FORM:

---

Paige Mims, CITY ATTORNEY

**FINALLY PASSED AND APPROVED ON SECOND READING (which date is at least 30 days from the first reading) on the 26th day of August, 2024.**

---

John B. Muns, MAYOR

ATTEST:

---

Lisa C. Henderson, CITY SECRETARY

APPROVED AS TO FORM:

---

Paige Mims, CITY ATTORNEY