

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, GRANTING TO TRINITY VALLEY ELECTRIC COOPERATIVE, INC., ITS SUCCESSORS AND ASSIGNS, THE NONEXCLUSIVE RIGHT TO USE AND OCCUPY RIGHTS-OF-WAY WITHIN THE CITY OF MESQUITE FOR THE CONSTRUCTION AND OPERATION OF AN ELECTRIC TRANSMISSION AND DISTRIBUTION SYSTEM; PRESCRIBING CONDITIONS GOVERNING THE USE OF THE PUBLIC RIGHTS-OF-WAY; PROVIDING FOR COMPENSATION THEREFORE; PROVIDING FOR AN EFFECTIVE DATE AND A TERM OF SAID FRANCHISE; PROVIDING FOR WRITTEN ACCEPTANCE OF THIS FRANCHISE; FINDING THAT THE MEETINGS AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC; AND PROVIDING FOR SEVERABILITY.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1.      **GRANT OF AUTHORITY.**

There is hereby granted to Trinity Valley Electric Cooperative, Inc., its successors and assigns (herein called “**Cooperative**”), the right, privilege and franchise (“**Franchise**”) to construct, extend, maintain and operate in, along, under and across the present and future streets, alleys, highways, public places and public ways (“**Public Rights-of-Way**”) of the City of Mesquite, Texas (herein called the “**City**”), an Electric Transmission and Distribution System (“**System**”) consisting of electric power lines, with all necessary or desirable appurtenances (including underground conduits, poles, towers, wires, transmission lines and other structures, and telephone and communication lines for Cooperative’s own use), for the purpose of delivering electricity to the City, the inhabitants thereof, and persons, firms and corporations beyond the corporate limits thereof, for the term set out in Section 11 of this Franchise. Upon reasonable request by the City, Cooperative shall provide information to the City Council, and shall attend City Council meetings to discuss Cooperative’s performance of its obligations and responsibilities under this Franchise.

Cooperative shall not install, construct or extend any Facilities in parks or other City-owned property other than public utility easements, streets, alleys or highways without first obtaining written approval from the City.

SECTION 2.      **PURPOSE.**

The provisions set forth in this ordinance represent the terms and conditions under which Cooperative shall construct, operate and maintain the System within the Public Rights-of-Way of the City. In granting this Franchise, the City does not in any manner surrender or waive its regulatory or other rights and powers under and by virtue of the Constitution and statutes of the State of Texas as the same may be amended, or any of its rights and powers under or by virtue of present or future ordinances of the City, as may be amended from time to time, except as may be set out herein. Cooperative also retains all of its lawful authority and rights under the Public Utility

Regulatory Act (“**PURA**”) and any other applicable laws, rules and regulations. Not included in this Franchise are any facilities (including any equipment attached in any way to Cooperative’s facilities, whether owned by Cooperative or not) that provide data delivery, cable service, telephone service and/or any other service or product not required by Cooperative for, or in support of, the transmittal and delivery of electricity.

**SECTION 3. OPERATION, CONSTRUCTION AND MAINTENANCE OF ELECTRIC TRANSMISSION AND DISTRIBUTION SYSTEM.**

- A. Use of the Public Rights-of-Way by Cooperative shall be governed by National Electrical Safety Code (“**NESC**”), and applicable local, state and federal laws, rules and regulations, including any amendments thereto. Nothing in this agreement shall prohibit Cooperative from asserting a claim before the Mesquite City Council, another regulatory agency or a court having jurisdiction to contest any requirements of the City’s Public Rights-of-Way Management Ordinance that Cooperative believes is unconstitutional, conflicts with this Franchise Agreement or conflicts with any other local, state and federal laws, rules and regulations including the NESC.
- B. The City shall endeavor to provide Cooperative with reasonable notice and opportunity to review and comment upon any new or revised City laws, rules or regulations that impact Cooperative’s use of the Public Rights-of-Way, but the failure to do so shall not affect the applicability of such laws, rules or regulations to Cooperative. This Franchise shall in no way affect or impair the rights, obligations or remedies of the parties under PURA, or other state or federal law, rules or regulations. Nothing herein shall be deemed a waiver, release or relinquishment of either party’s right to contest, appeal or file suit with respect to any action or decision of the other party, including ordinances adopted by the City that Cooperative may believe are contrary to any federal, state or local law, rules or regulations.
- C. Cooperative shall cooperate with the City by providing reasonable information regarding the location of current and future overhead and underground wires and poles within the Public Rights-of-Way. Reproducible copies of available maps showing the location of all overhead and underground wires and poles within the Public Rights-of-Way shall be furnished to the City Engineer upon request. The maps shall be provided in electronic digital format, if available.
- D. Cooperative shall have in place a vegetation management program, and shall provide City with a current copy of same, upon request. If the City requests a current copy of Cooperative’s vegetation management program, release of such shall be pursuant to the same confidential protection process identified in Section 8.E of this Franchise. Cooperative will conduct its tree-trimming activities in accordance with its vegetation management guidelines, 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 system tree-trimming activities.

**SECTION 4. INDEMNITY.**

- A. **IN CONSIDERATION OF THE GRANTING OF THIS FRANCHISE, COOPERATIVE SHALL, TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, AND AT ITS SOLE COST AND EXPENSE, INDEMNIFY AND HOLD THE CITY AND ITS PAST AND PRESENT OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL LIABILITY ARISING FROM SUITS, ACTIONS OR CLAIMS REGARDING INJURY OR DEATH TO ANY PERSON OR PERSONS OR DAMAGES TO ANY PROPERTY ARISING OUT OF, OR OCCASIONED BY THE INTENTIONAL AND/OR NEGLIGENT ACTS OR OMISSIONS OF COOPERATIVE OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES IN CONNECTION WITH COOPERATIVE'S CONSTRUCTION, MAINTENANCE AND OPERATION OF COOPERATIVE'S SYSTEM IN THE CITY PUBLIC RIGHTS-OF-WAY, INCLUDING ANY COURT COSTS, REASONABLE EXPENSES AND REASONABLE DEFENSES THEREOF.**
- B. This indemnity shall only apply to the extent that the loss, damage or injury is attributable to the negligence or wrongful act or omission of the Cooperative or its officers, agents or employees, and does not apply to the extent such loss, damage or injury is attributable to the negligence or wrongful act or omission of the City or the City's officers, agents, employees or any other person or entity. This provision is not intended to create a cause of action or liability for the benefit of third parties but is solely for the benefit of Cooperative and the City.
- C. 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 between the City and Cooperative 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 party.
- D. In fulfilling its obligation to defend and indemnify the City, Cooperative shall have the right to select defense counsel, subject to the City's approval, which will not be unreasonably withheld. Cooperative shall retain defense counsel within seven (7) business days of the City's written notice that the City is invoking its right to indemnification under this Franchise. If Cooperative fails to retain counsel within such time period, the City shall have the right to retain defense counsel on its own behalf, and Cooperative shall be liable for all reasonable defense costs incurred by the City, except as otherwise provided in Sections 4.B and 4.C.

**SECTION 5. LIABILITY INSURANCE.**

- A. Cooperative will, at its sole cost and expense, insure against the risks undertaken pursuant to the Franchise, including indemnification under Section 4 hereof. Such insurance may be in the form of self-insurance to the extent permitted by applicable

law, including a PUC-approved formal plan of self-insurance maintained in accordance with sound accounting practices. Otherwise, Cooperative shall maintain reasonable adequate insurance covering its obligations of indemnity under Section 4 hereof, duly issued by a company authorized to do business in the State of Texas, which at no time will be less than One Million Dollars (\$1,000,000.00) in any one incident and Two Million Dollars (\$2,000,000.00) aggregate on liability due to physical damage to property in any single policy year; and One Million Dollars (\$1,000,000.00) as to any one person and One Million Dollars (\$1,000,000.00) in any one incident for bodily injury and/or death. Cooperative shall provide proof of Certificate of Insurance to the City within thirty (30) days of the Effective Date, and annually thereafter. The City shall be named as additional insured on all policies required under this Section.

- (1) Products/completed operations to be maintained for the warranty period of two (2) years.
  - (2) Personal and advertising injury.
  - (3) Contractual liability.
  - (4) Explosion, collapse or underground (XCU) hazards.
- B. Automobile liability coverage with a minimum policy limit of One Million Dollars (\$1,000,000.00) combined single limit each accident. This coverage shall include all owned, hired and non-owned automobiles.
- C. **Workers' compensation and employers' liability coverage.** Statutory coverage limits for Coverage A and Five Hundred Thousand Dollars (\$500,000.00) bodily injury each accident, Five Hundred Thousand Dollars (\$500,000.00) each employee bodily injury by disease and Five Hundred Thousand Dollars (\$500,000.00) policy limit bodily injury by disease Coverage B employers' liability are required. Cooperative must provide the City with a waiver of subrogation for workers' compensation claims.
- D. Cooperative must name the City, which includes all authorities, commissions, divisions and departments, as well as elected and appointed officials, agents and volunteers, as additional insureds under the coverage required herein, except workers' compensations coverage. The Certificate of Insurance must state that the City is an additional insured.
- E. Cooperative will require its contractors and subcontractors to maintain, at their sole cost and expense, a minimum of One Million Dollars (\$1,000,000.00) each occurrence or each accident general liability and automobile liability insurance throughout the course of work performed. Also, contractors and subcontractors will be required to maintain statutory workers' compensation benefits in accordance with the regulations of the State of Texas or state of jurisdiction as applicable. The minimum limits for employers' liability insurance will be Five Hundred Thousand Dollars (\$500,000.00) bodily injury each accident, Five Hundred Thousand Dollars (\$500,000.00) each employee bodily injury by disease, Five Hundred Thousand Dollars (\$500,000.00) policy limit bodily injury by

disease. The Cooperative will provide proof of its insurance in accordance with this Franchise within thirty (30) days of the effective date of the Franchise and annually thereafter. Cooperative will not be required to furnish separate proof of insurance when applying for permits.

**SECTION 6. NON-EXCLUSIVE FRANCHISE.**

This Franchise is not exclusive, and nothing herein contained shall be construed so as to prevent the City from granting other like or similar rights, privileges and franchises to any other person, firm or corporation.

**SECTION 7. COMPENSATION TO THE CITY.**

In consideration of the grant of said right, privilege and franchise by the City and as full payment for the right, privilege and franchise of using and occupying the said Public Rights-of-Way, and in lieu of any and all occupation taxes, assessments, municipal charges, fees, easement taxes, franchise taxes, license, permit and inspection fees or charges, street taxes, bonds, street or alley rentals, and all other taxes, charges, levies, fees and rentals of whatsoever kind and character which the City may impose or hereafter be authorized or empowered to levy and collect, excepting only the usual general or special ad valorem taxes which the City is authorized to levy and impose upon real and personal property, sales and use taxes, and special assessments for public improvements, Cooperative shall pay to the City as follows:

- A. Pursuant to PURA Section 33.008(g), Cooperative shall pay four percent (4%) of its total gross receipts received from the provision of electric service within the corporate limits of the City, with such payment occurring on a quarterly basis on January 10, April 10, July 10 and October 10 of each year.
- B. After the final payment date of October 10, 2040, Cooperative shall continue to make additional quarterly payments in accordance with the above schedule. The City acknowledges that such continued payments are for periods that extend beyond the term of this Franchise and that such continued payments will be recognized in any subsequent franchise as full payment for the relevant quarterly periods.
- C. By January 31 of each year, Cooperative shall furnish to the City an annual report, executed by an authorized officer of Cooperative or designee, reflecting the total amount of gross revenues received by Cooperative for residential and commercial meters in the City.
- D. If either party discovers that Cooperative has failed to pay the entire or correct amount of compensation due, the correct amount shall be determined by mutual written agreement between the City and Cooperative, and the City shall be paid by Cooperative within thirty (30) calendar days of such determination. Any overpayment to the City through error or otherwise will, at the sole option of the City, either be refunded to Cooperative by the City within thirty (30) days of such determination or offset against the next payment due from Cooperative. Acceptance by either party of any payment due under this Section shall not be deemed to be a waiver by either party of any claim of breach of this Franchise, nor shall the acceptance by either party of any such payments preclude either party from later establishing that a larger amount was actually due or from collecting any

balance due. Nothing in this Section shall be deemed a waiver by either party of its rights under law or equity.

- E. Interest on late payments shall be calculated in accordance with the interest rate for customer deposits established by the Public Utility Commission of Texas in accordance with the Texas Utilities Code, Section 183.003, as amended, for the time period involved.
- F. The Franchise fee payable to the City pursuant to Sections 7.A and 7.B shall not be offset by any payment by Cooperative to the City relating to ad valorem taxes.

**SECTION 8.      ACCOUNTING MATTERS.**

- A. Cooperative shall keep accurate books of account at its principal office for the purpose of determining the amount due to the City under this Franchise.
- B. Pursuant to Section 33.008(e) of the Texas Utilities Code, the City may conduct an audit or other inquiry in relation to a payment made by Cooperative less than two (2) years before the commencement of such audit or inquiry. The City may, if it sees fit, and upon reasonable notice to the Cooperative, have the books and records of the Cooperative examined by a representative of the City to ascertain the correctness of the reports agreed to be filed herein.
- C. The Cooperative shall make available to such auditor or representative as set forth in Section 8.B during the Cooperative's regular business hours and upon reasonable notice, such personnel and records as the City may, in its reasonable discretion, request in order to complete such audit, and shall make no charge to the City therefore.
  - (1) If as the result of any City audit, Cooperative is refunded/credited for an overpayment or pays the City for an underpayment of the Franchise fee, such refund/credit or payment shall be made pursuant to the terms established in Sections 7.F, 7.G and 7.H.
  - (2) If as a result of a subsequent audit, initiated within (2) years of an audit which resulted in Cooperative making a payment to the City due to an underpayment of the Franchise fee of more than four percent (4%), Cooperative makes another payment to the City due to an underpayment of the Franchise fee of more than four percent (4%), the City may immediately treat this underpayment as an Uncured Event of Default and exercise the remedies provided for in Section 12.C.
- D. The Cooperative shall assist the City in its review by responding to all requests for information no later than thirty (30) days after receipt of a request.
- E. The City agrees to maintain the confidentiality of any non-public information obtained from Cooperative to the extent allowed by law. The City shall not be liable to Cooperative for the release of any information the City is required by law to release. City shall provide notice to Cooperative of any request for release of non-public information marked by Cooperative as proprietary or confidential 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 (the “Act”) that includes Cooperative’s proprietary or confidential information, the City will notify the Texas Attorney General of the proprietary or confidential nature of the document(s). The City will also provide Cooperative with a copy of this notification, and thereafter Cooperative is responsible for establishing that an exception under the Act allows the City to withhold the information.

**SECTION 9.      **RIGHT OF RENEGOTIATION.****

- A.     Should either Cooperative or the City have cause to believe that a change in circumstances relating to the terms of this Franchise may exist, either party 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.
  
- B.     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, 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 of this 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 the 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 within sixty (60) days after passage and approval by City.

**SECTION 10.      **RELOCATION AND ABANDONMENT OF FACILITIES.****

- A.     The City reserves the right to lay, and permit to be laid, any City-owned facilities, such as storm water, sanitary sewer, gas, water, communications and other pipe lines, cable 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 City-owned curb, sidewalk, highway, alley, public way, street and City-owned utility lines, storm sewers, drainage basins, drainage ditches and other City facilities. The City shall provide Cooperative with at least thirty (30) days’ notice when requesting Cooperative to relocate facilities. 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 its use of the Public Rights-of-Way, despite the City’s enactment of any ordinance providing the contrary. Upon reasonable request by the City, Cooperative shall provide information to the City regarding the status of a relocation request.
  
- B.     City-requested relocations of Cooperative facilities in the Public Rights-of-Way

shall be at the 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. Provided further, if the relocation request includes, or is for, the Cooperative to relocate above-ground facilities to an underground location, City shall be fully responsible for the additional cost of placing the facilities underground.

- C. If any other corporation or person (other than the City) requests Cooperative to relocate Cooperative Facilities located in City's Public Rights-of-Way, the 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 the 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 the Cooperative to pay for any relocation that has already been requested, and paid for, by any entity other than the City.
- D. If the City abandons any Public Rights-of-Way in which Cooperative has facilities, such abandonment shall be subject to the provisions of the Code of the City of Mesquite and applicable policies. If the City elects to abandon Public Rights-of-Way, the City shall determine whether it is appropriate to retain a public utility easement in the Public Right-of-Way for use by Cooperative. If the City determines, in its sole discretion, that the continued use of the Public Right-of-Way by Cooperative is compatible with the abandonment of the Public Right-of-Way, then in consideration of the compensation set forth in Section 7, and to the maximum extent of its rights to do so, the City shall grant Cooperative an easement for such use, and the abandonment of the Public Right-of-Way shall be subject to the right and continued use of Cooperative. If the party to whom the Public Rights-of-Way is abandoned requests Cooperative to remove or relocate its facilities and Cooperative agrees to such removal or relocation, such removal or relocation shall be done within a reasonable time at the expense of the party requesting the removal or relocation. If relocation cannot practically be made to another Public Rights-of-Way, the expense of any right-of-way acquisition shall be considered a relocation expense to be reimbursed by the party requesting the relocation.
- E. If the City requires Cooperative to adapt or conform its facilities, or in any manner to alter, relocate or change its property to enable any entity other than the City to use, or use with greater convenience, said Public Rights-of-Way, Cooperative shall not be bound to make such changes until such other entity 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 property or facilities.

#### SECTION 11. TERM.

This ordinance shall become effective upon Cooperative's written acceptance and execution hereof in accordance with Section 16 of this Franchise, said written acceptance to be

filed by Cooperative with the City within sixty (60) days after final passage and approval by the City. The right, privilege and franchise granted hereby shall expire December 31, 2040, provided that, unless written notice of cancelation is given by either party hereto to the other not less than sixty (60) days before the expiration of this Franchise, it shall be automatically renewed for an additional period of six (6) months from such expiration date and shall be automatically renewed thereafter for like periods until canceled by written notice given not less than sixty (60) days before the expiration of any such renewal period. Such renewals may not extend the term of this Franchise beyond thirty (30) years.

**SECTION 12.     **DEFAULT, REMEDIES AND TERMINATION.****

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

- (1)     The failure of Cooperative to pay the Franchise fee on or before the due dates specified herein.
- (2)     Cooperative's material breach or material violation of any material terms, covenants, representations or warranties contained herein.

B.     **Uncured Events of Default.**

- (1)     Upon the occurrence of an Event of Default which can be cured by the immediate payment of money to the City, Cooperative shall have thirty (30) calendar days from receipt of written notice from the City of an occurrence of such Event of Default to cure same before the City may exercise any of its rights or remedies provided for in Section 12.C.
- (2)     Upon the occurrence of an Event of Default by Cooperative which cannot be cured by the immediate payment of money to the City, Cooperative shall have sixty (60) calendar days (or such additional time as may be agreed to by the City) from receipt of written notice from the City of an occurrence of such Event of Default to cure same before the City may exercise any of its rights or remedies provided for in Section 12.C.
- (3)     If the 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 the City to exercise the remedies provided for in Section 12.C.
- (4)     Subsection (1) through (3) above shall not be applicable in instances in which Cooperative does not relocate its facilities in the Public Rights-of-Way within thirty (30) days of a request from the City in accordance with Section 10.A. Such a failure shall be deemed an Uncured Event of Default.

C.     **Remedies.** The City shall notify Cooperative, in writing, of an alleged Uncured Event of Default as described in Section 12.B, which notice shall specify the alleged failure with reasonable particularity. If the Event of Default is a failure to relocate facilities pursuant to Section 12.B(4), the City may exercise the remedies set forth

in this section. For any other Event of Default, Cooperative shall, within thirty (30) days after receipt of such notice or such longer period of time as the City may specify in such notice, either cure such alleged failure or in a written response to the City either present facts and arguments in refuting or defending such alleged failure or state that such alleged failure will be cured and set forth the method and time schedule for accomplishing such cure. In the event that such cure is not forthcoming, the City shall be entitled to exercise any and all of the following cumulative remedies:

- (1) The commencement of an action against Cooperative at law for monetary damages.
  - (2) The commencement of an action in equity seeking injunctive relief or the specific performance of any of the provisions that, as a matter of equity, are specifically enforceable.
  - (3) The termination of this Franchise.
- D. The rights and remedies of the 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. The City and Cooperative understand and intend that such remedies shall be cumulative to the maximum extent permitted by law, and the exercise by the City of any one or more of such remedies shall not preclude the exercise by the City, at the same or different times, of any other such remedies for the same failure to cure. The City shall not recover both liquidated damages and actual damages for the same violation, breach or noncompliance.
- E. **Termination.** In accordance with the provisions of Section 12.C, this Franchise may be terminated upon thirty (30) days prior written notice to Cooperative by the City. The 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. Upon timely appeal by Cooperative of the City Council's decision terminating this Franchise, the effective date of such termination shall be either when such appeal is withdrawn, or when an order upholding the termination becomes final and unappealable. Until the termination becomes effective, the provisions of this Franchise shall remain in effect for all purposes. The City recognizes Cooperative's right and obligation to provide service in accordance with the Certificate of Convenience and Necessity authorized by the Public Utility Commission of Texas in accordance with the Texas Utilities Code.
- F. The failure of either party to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Franchise shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by either party unless said

waiver or relinquishment is in writing and signed by that party.

**SECTION 13. PUBLIC PURPOSE.**

All of the provisions contained in this ordinance are hereby declared to be for a public purpose, and are in the interests of the health, safety and welfare of the general public.

**SECTION 14. SEVERABILITY.**

If any provision, section, subsection, sentence, clause or phrase of the ordinance is for any reason held to be unconstitutional, void or invalid (or for any reason unenforceable) by any court or regulatory agency having jurisdiction, the validity of the remaining portions of this ordinance shall not be affected thereby, it being the intent of the parties in adopting this Franchise that no provision hereof shall be inoperative or fail by reason of any unconstitutionality or invalidity of any other portion, provision or regulation, and to that end, all provisions of this ordinance are declared to be severable.

**SECTION 15. NOTICE.**

Any notices required or desired to be given from one party to the other party to this ordinance shall be in writing and shall be given and shall be deemed to have been served and received if: (i) delivered in person to the address set forth below; (ii) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America and sent by certified mail, return receipt requested and addressed to such party at the address hereinafter specified; or (iii) delivered to such party by courier-receipted delivery. Either party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is actually received by the other party, the last address of such party designated for notice shall remain such party's address for notice.

<u>CITY</u>	<u>COOPERATIVE</u>
City Manager	GM/CEO
City of Mesquite	TVEC
1515 N. Galloway Avenue	P.O. Box 888
Mesquite, TX 75149	Kaufman, TX 75142
City Attorney	
City of Mesquite	
1515 N. Galloway Avenue	
Mesquite, TX 75149	

Upon request, Cooperative shall provide the City with current contact information for the City's use in forwarding customer inquiries and complaints to Cooperative.

**SECTION 16. ACCEPTANCE.**

In order to accept this Franchise, Cooperative must file with the City Secretary its written acceptance of this Franchise, or any amendment, within sixty (60) days after its final passage and approval by the City.

**SECTION 17. FUTURE AMENDMENTS.**

This ordinance may be amended only by the mutual written agreement of the City and Cooperative.

**SECTION 18. ORDINANCE PASSED AT 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 by the City, all as required by law.

**SECTION 19. EFFECTIVE DATE.**

This ordinance shall become effective upon the date Cooperative's written acceptance hereof is filed with the City Secretary as described in Section 16 above.

**SECTION 20. EFFECT ON PRIOR FRANCHISE.**

This ordinance shall supersede any and all other franchises granted by the City to Cooperative, its predecessors and assigns.

PASSED AND APPROVED on the first reading at a regular meeting of the City Council of Mesquite, Texas, on the 19th day of October 2020.

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Bruce Archer  
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

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Sonja Land  
City Secretary



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David L. Paschall  
City Attorney