

ORDINANCE NO. 2022-40

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WYLIE, TEXAS, GRANTING TO FARMERS ELECTRIC COOPERATIVE, INC., A TEXAS CORPORATION AND ITS PERMITTED SUCCESSORS AND ASSIGNS, THE NON-EXCLUSIVE RIGHT, PRIVILEGE AND FRANCHISE TO CONDUCT THE BUSINESS OF ACQUIRING, INSTALLING, CONSTRUCTING, MAINTAINING, USING, AND OPERATING AN ELECTRIC POWER UTILITY SYSTEM IN THE CITY OF WYLIE, TEXAS; GRANTING THE RIGHTS TO USE AND OCCUPY PRESENT AND FUTURE PUBLIC RIGHTS-OF-WAY OF THE CITY FOR THE CONSTRUCTION, OPERATION AND MAINTENANCE 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 THEREOF; PROVIDING THAT SUCH FEE OR CHARGE 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 Wylie ("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 4 herein) with the authority to contract with and regulate the Cooperative; and

WHEREAS, the Cooperative is using the public rights-of-way within the City for the above-referenced purposes under the terms of franchise Ordinance No. 2022-40, heretofore duly passed by the City Council of the City; and

WHEREAS, the City Council has investigated and determined that it will be advantageous and beneficial for the citizens of the City to grant to the Cooperative a non-exclusive right to conduct its electric power utility business in the City pursuant to this Ordinance, which governs the terms and conditions of that business; and

WHEREAS, it is to the mutual advantage of both the City and the Cooperative that this Ordinance establish the conditions under which the Cooperative shall operate in the City; and

WHEREAS, all required legal notices have been given in the manner and form set forth by law.

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

SECTION 1: Findings Incorporated. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2: Repeal of Ordinance No. 1996-21; Adoption of Exhibit A. Ordinance No. 1996-21 is hereby repealed in its entirety and replaced by this Ordinance, including Exhibit A attached hereto and incorporated herein for all purposes. The effective date of the repeal discussed in this Section shall not occur until the effective date of this Ordinance, and the acceptance by the Cooperative as set forth below, at which time Ordinance No. 1996-21 shall be repealed. Such repeal shall not abate or extinguish any obligations that have been incurred but not fulfilled under Ordinance No. 1996-21, including but not limited to the payment of any franchise fees which are due and owing.

SECTION 3: Severability. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional and/or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, regardless of whether any one or more sections, subsections, sentences, clauses or phrases is declared unconstitutional and/or invalid.

SECTION 4: Acceptance by Franchisee. This Ordinance shall be effective if the Cooperative files its written acceptance, in the form attached as Exhibit B, with the City Secretary, not later than sixty (60) days after the date of the City Council's passage of this Ordinance. A failure to file a fully executed acceptance within the sixty (60) day period shall render the City Council's passage and approval of this Ordinance void without further action.

SECTION 5: Effective Date: If the Cooperative accepts this Ordinance, the Ordinance becomes effective as of _____.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF WYLIE, TEXAS on this 31st day of May, 2022.

Matthew Porter, Mayor

**ATTESTED TO AND
CORRECTLY RECORDED BY:**

Stephanie Storm, City Secretary

Dates of Publication: _____, 2022 in *The Wylie News*

EXHIBIT A

DEFINITIONS

For the purpose of this Ordinance, 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. “City” shall mean the City of Wylie, Texas.
2. Days means calendar days unless otherwise specified.
3. Electric Power Utility System means all interrelated lines, equipment, poles, installations, systems, fixtures, and other facilities or appurtenances used or necessary for the transmission and distribution of Electric Utility Service 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, pad-mounted sectionalizing enclosures, pad-mounted switchgears, transformers, insulators, street lights, metering equipment, communications equipment, and other facilities and equipment related thereto.
4. Electric Utility Service or Electricity means the sale, distribution, conveyance, or other transmission of energy (kWh) and power (kW) and related services within the City by the Cooperative.
5. Force Majeure means delays due to acts of God, civil disturbances, acts of civil or military authority, governmental priorities, strikes or other labor disturbances, epidemics, fire, unavoidable casualty, weather, failure of suppliers, war, riots, and any other cause or occurrences beyond the control of the Cooperative.
6. Governmental or Regulatory Authority means any court, tribunal, arbitrator, authority, agency, commission, official or other instrumentality of the United States, or any state, county, city or other political subdivision.
7. Member means any person, consumer, customer, or 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.
8. NESC means National Electric Safety Code.
9. “Public Right(s)-of-Way” shall mean City public streets, avenues, alleys, roads, parkways, highways, thoroughfares, public utility easements and other authorized public grounds that allow electric utilities, as they now exist or may be hereafter constructed, opened, laid out or extended within the present corporate limits of the City, or in such territory as may hereafter be annexed to the City.
10. Service Regulations means the service standards of the Cooperative.

ARTICLE I. GRANT OF AUTHORITY

SECTION 1: There is hereby granted to the Cooperative, its permitted 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 Public Rights-of-Way 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, the Cooperative is authorized to lease capacity on its Electric Power Utility System to other service providers.

SECTION 2: The Cooperative, its permitted successors and assigns, is hereby granted the non-exclusive rights to use and occupy; and, the non-exclusive rights to place, remove, construct, reconstruct, upgrade, extend, replace, maintain, and operate along, across, on, over, through, above, and under the Public Rights-of-Way, the Cooperative's Electric Power Utility System and to provide Electric Utility Service to end-use customers who purchase and ultimately consume Electricity in the City, said consent being granted for a term of twenty (20) years, in accordance with Article V, Section 1 of this Ordinance.

SECTION 3: Nothing in this Ordinance 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 a Governmental or Regulatory Authorities with jurisdictional authority.

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. However, when services furnished by the Cooperative are interrupted, impaired or prevented by Force Majeure, the Cooperative shall use commercially reasonable efforts to restore normal electric utility service as soon as practical. Nothing contained herein shall be construed to require either Cooperative or City to prevent or settle a strike or labor dispute or disturbance against its will.

SECTION 3: The Cooperative shall use commercially reasonable efforts to offer line extensions and 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 in violation of applicable law.

SECTION 4: In conducting its business and in the acquiring, placing, expanding, installing, using, building, removing, upgrading, extending, constructing, retiring, renewing, replacing, operating or maintaining of the Electric Power Utility System as provided herein, the Cooperative shall comply with all lawful statutes, regulations and requirements of the City or other applicable Governmental or Regulatory Authority.

ARTICLE III. CONDITIONS OF RIGHTS-OF-WAY OCCUPANCY

SECTION 1: That portion of the surface of any of the Public Rights-of-Way or adjacent property disturbed by the Cooperative, its agents, employees, contractors or representatives in the acquiring, placing,

expanding, installing, using, building, removing, upgrading, extending, constructing, retiring, renewing, replacing, operating or maintaining the Electric Power Utility System shall be restored as close to the condition in which it was found before such work was undertaken by Cooperative, its agents, employees, contractors or representatives within a commercially reasonable period of time or three (3) months, whichever is sooner, all in accordance with all applicable City regulations and ordinances. The Cooperative shall, except in the case of a bona fide emergency, provide notice to the City Engineer before commencing any excavation in any portion of the Public Rights-of-Way and, in the case of a bona fide emergency, provide notice to the City Engineer of any such excavation as soon as reasonably practicable. The Cooperative shall, in the acquiring, placing, expanding, installing, using, building, removing, upgrading, extending, constructing, retiring, renewing, replacing, operating or maintaining the Electric Power Utility System within the Public Rights-of-Way; minimize interference with traffic, with the flow of water in any gutter or drain, with the operations of any City-owned utility, with any existing electric, water, sewer or telephone facilities, traffic control signals, street lights, fire lines or communications lines; follow all State and City regulations regarding erosion control, and place or cause to be placed appropriate barriers to mark excavations or obstructions, all in accordance with all applicable City regulations and ordinances. The Cooperative, its agents, employees, contractors or representatives working on behalf of the Cooperative shall obtain permits for construction, excavation and/or obstructions in Public Rights-of-Way, as provided in City regulations and ordinances, but shall not be required to pay for such permits. City shall have the right to inspect all construction, reconstruction, installation work and/or any other work performed the Cooperative, its agents, employees, contractors or representatives working on behalf of the Cooperative and to make such tests as it deems necessary to ensure compliance with the terms of this Ordinance, City regulations and ordinances, and any other local, state or federal laws. The Cooperative shall not place any part of the Electric Power Utility System where the same will unduly interfere with any gas, electric, or telephone fixture, water hydrant or main, drainage facility or sanitary sewer, or other utility and all such improvements shall be placed in such manner as not to unreasonably interfere with the usual travel or use of the Public Rights-of-Way. The right to place any part of the Electric Power Utility System under this Ordinance is limited to the Public Rights-of-Way.

SECTION 2: In connection with the City's construction, reconstruction, relocation, maintenance, repair, improvement, widening, or altering the grade of any public street, avenue, alley, road, parkway, highway or thoroughfare; or in connection with the City's construction, reconstruction, relocation, maintenance, repair, improvement or removal of any public property, structure or facility; or in connection with any other type of City public improvement project; if ordered by the City for the Cooperative to move, relocate, change, alter or modify any Cooperative Electric Power Utility System located along, across, on, over, through, above or under Public Rights-of-Way, the Cooperative shall comply with such City request. All costs and expenses associated with the aforementioned changes to Electric Power Utility System on Public Rights-of-Way shall be paid for by the Cooperative where the Electric Power Utility System is in conflict, unless such work is for the sole purpose of beautification. The Cooperative and City shall jointly determine whether and the extent to which the Electric Power Utility System are in conflict in reference to electric distribution industry standard safe operating practices for existing facilities. All such removals or relocations shall be performed in accordance with applicable City regulations and ordinances.

SECTION 3: The Cooperative shall, at all times, use commercially reasonable methods to provide and supply electric 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 reasonable and necessary 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 reasonable and necessary cost 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, and such reimbursement is required to be handled through City, the Cooperative's costs and expenses incurred by the Cooperative to which it is properly and legally entitled for the completion of said projects shall be included in any application by City for reimbursement if the Cooperative submits its cost and expense documentation to City prior to the filing of the application. The City shall provide notice to the Cooperative of the deadline for the Cooperative to submit documentation of the costs and expenses of such relocation to City in order for City to be able to submit its application for reimbursement to such program in a timely manner.

SECTION 7: The Cooperative, its permitted successors and assigns, is hereby granted the right, license, privilege and permission needed to reasonably manage vegetation, including but not limited to trimming or cutting trees or using any other commercially and lawfully acceptable method, such as herbicide, so as to prevent the vegetation from coming in contact with the wires or cables of the Cooperative's Electric Power Utility System and to keep the Rights of Way, easements, and other public grounds and places clear and accessible for operations, maintenance, and repair of the Cooperative's Electric Power Utility System. The Cooperative shall trim only so much of such vegetation as is reasonable and necessary to prevent contact with the Electric Power Utility System and to keep the Rights of Way, easements, and other public grounds and places clear and accessible for operations, maintenance, and repair of the Cooperative's Electric Power Utility System. All tree trimming shall be performed in accordance with the standards promulgated by the National Arborist Association and the International Society of Arboriculture. The Cooperative shall be responsible for trimming any tree that contacts the Electric Power Utility System at the request of the City Manager or his/her designated representative, and the City shall have the right to supervise any such request. If a dispute arises between the Cooperative and any property owner regarding vegetation management or tree trimming as described herein, the Cooperative shall immediately cease all work and the Cooperative and the City shall mutually determine a reasonable solution to said conflict.

SECTION 8: The Cooperative, upon the written request of any person or entity, shall remove, raise or lower its wires temporarily to permit the moving of houses, buildings, or other bulky structures provided that the person or entity requesting this service has either a building moving permit issued by the City or some other showing of authorization that is recognized by the City as being an appropriate and authoritative document. The expense and cost of such temporary removal, raising or lowering wires shall be paid by requesting party or parties. The Cooperative may require such payment in advance and is without obligation to perform until such payment shall have been made by the requesting party or parties and is received by the Cooperative. The Cooperative shall be given not less than fifteen (15) business days' advance written notice to arrange for such temporary wire changes and cable adjustments. The clearance of wires above ground, subsequent to the move, shall conform to the basic standards of the National Electrical Safety Code, in effect at the time of original installation and any other lawful regulations controlling such installations.

SECTION 9: Nothing contained in this Ordinance shall be interpreted or construed to require the Cooperative to accept, or to permit, or to 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.

SECTION 10: The franchise granted herein is not exclusive, and nothing herein 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.

ARTICLE IV. INDEMNIFICATION AND LIABILITY FOR DAMAGES

SECTION 1: Without waiving any immunity or limitation of liability, the Cooperative shall defend, indemnify and hold harmless the City, its officials, agents and employees from and against all claims, costs, lawsuits, expenses and damages to persons or property that arise out of or occasioned by the intentional and/or negligent acts or omissions of the Cooperative or any of its officials, agents, employees and contractors in connection with the acquiring, placing, expanding, installing, using, building, removing, upgrading, extending, constructing, retiring, renewing, replacing, operating or maintaining of the Electric Power Utility System in the Public Rights-of-Way, provided however that the indemnity provided by this Article IV, Section 1 shall not apply to claims, costs, lawsuits, expenses and damages caused in whole or in any part by the intentional and/or negligent acts or gross negligence or omissions of the City, its officials, agents or employees, and further provided that the City provides the Cooperative with reasonably prompt notice of any such claims, costs, lawsuits, expenses and damages brought against the City. In the event of joint and concurrent negligence or fault of both the Cooperative and the City, responsibility, if any, shall be apportioned comparatively between the City and the 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 the Cooperative and the City, responsibility for all costs of defense shall be apportioned between the City and the Cooperative based upon the comparative fault of each. In fulfilling its obligation to defend and indemnify the City, the Cooperative shall have the right to select defense counsel, subject to City's approval, which will not be unreasonably withheld. The Cooperative shall retain defense counsel within seven (7) business days of City's written notice that City is invoking its right to defense and indemnification under this Ordinance. If the Cooperative fails to retain counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and the Cooperative shall be liable for all reasonable defense costs incurred by City.

SECTION 2: The Cooperative will maintain an appropriate level of insurance and/or self-insurance in consideration of the Cooperative's obligations and risks undertaken pursuant to this Ordinance. To the extent the Cooperative's insurance of its obligations and risks undertaken pursuant to this Ordinance is in the form of self-insurance then such self-insurance must be permitted by applicable law and be administered by the Cooperative under a plan of self-insurance maintained in accordance with sound accounting and risk-management practices. The Cooperative shall furnish the City with a letter evidencing such self-insurance signed by an authorized representative of the Cooperative. The Cooperative will furnish a new insurance certificate should there be any material reduction in the Cooperative's insurance coverage. The Cooperative shall require its self-insurance to respond to the same extent as if an insurance policy had been purchased naming the City as an additional insured, and any excess coverage purchased for the sole purpose of insuring the Cooperative's obligations pursuant to this agreement will name the City as an additional insured up to the amounts required by the City's regulations and ordinances.

SECTION 3: 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.

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.

SECTION 2: To compensate the City for use of the Public Rights-of-Way authorized hereby, the Cooperative agrees to pay to the City annually a sum of money equal to four percent (4%) of the annual Gross Receipts for the preceding calendar year, or portion thereof, received by the Cooperative from the sales of all Electric 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 from the Cooperative’s Members for the provision of Electric Utility Service received by the Cooperative’s Members at a location within the City, including revenue billed but not received, contributions in aid of construction rental and fees paid by third parties for joint use attachments to or other use of the Electric Power Utility System. The term Gross Receipts shall exclude, but not limited to, the following: reimbursements for damage to the Electric Power Utility System; reimbursements for relocation cost of moving the Electric Power Utility System; 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, Electric Power Utility System, and wholesale distribution sales; 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 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 shall be made on or before March 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 Public Rights-of-Way 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 Member within the City the full amount of the Fee attributable to that Member. 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.

- D. With each payment of the Fee as required herein, the Cooperative shall furnish to City a statement, executed by an authorized officer of the Cooperative, or his or her designee, certifying the total amount of Gross Revenues received, as defined herein, by the Cooperative for the payment period as being true and correct.
- E. Interest on late payments shall be calculated in accordance with the interest rate for customer deposits established by the Public Utility Commission in accordance with § 183.003, TEX. UTIL. CODE, as amended, for the time period involved. If the requirement that interest be paid on customer deposits be removed from State law, then the interest rate shall be annual interest identified as the “US Prime Rate” in the Money Rates column published each day in the Wall Street Journal, as amended, and sometimes defined generally therein as the “base rate on corporate loans posted by at least seventy percent (70%) of the nation’s ten (10) largest banks.” If the Wall Street Journal should cease publishing such rate, then the interest rate shall be based on another similar source that identifies the interest rate on corporate loans at large U.S. money center commercial banks.

SECTION 3: In no event shall the Cooperative be obligated to pay a total Fee in excess of four percent (4%) in the aggregate by reason of more than one entity having jurisdiction over all or any part of the City. Should the Cooperative 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 Public 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 1% of its Gross Receipts to another entity as an additional Fee, the Fee to the City would be reduced to 3% 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 available, copies of relevant portions of such books of account and records shall be made available to the City. The obligations in this article shall survive the termination, rescission or expiration of this Ordinance.

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 or as otherwise required by applicable law, including but not limited to the Texas Public Information Act and the Texas Open Meetings Act.

SECTION 3: The Cooperative shall provide to the City an accurate map setting forth the Cooperative’s Electric Power Utility System located within the City, which map shall be corrected, brought up to date and provided to City within 60 days of the date requested by City.

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: 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 Members or Members residing in the newly annexed territories.

SECTION 6: If Cooperative provides confidential or proprietary information to the City, Cooperative shall be solely responsible for identifying such information with markings calculated to bring the City's attention to the proprietary or confidential nature of the information. City agrees to maintain the confidentiality of any non-public information obtained from Cooperative so designated to the extent allowed by law. City shall not be liable to Cooperative for the release of any information City is required to release by law. If City receives a request under the Texas Public Information Act that includes Cooperative's document(s) of a proprietary or confidential nature, City will request an opinion from the Texas Attorney General as to the confidential or the proprietary nature of the document(s). City also will provide Cooperative with a copy of this request, and thereafter Cooperative is responsible for establishing that an exception under the Texas Public Information Act allows City to withhold the information.

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 period of not less than sixty (60) days for the Cooperative to cure the default. If the Cooperative fails to cure such default upon expiration of the sixty (60) days, or if such default cannot reasonably be cured within sixty (60) days, and if the Cooperative fails to commence to cure the default within such sixty (60) days, the City may pursue remedies pursuant to provisions herein or applicable law. 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: Headings, titles and subtitles contained in the body of 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 4: If the City should consider terminating this Ordinance and the rights, privileges and franchise granted herein, the City shall notify the Cooperative, in writing, as soon as reasonably possible, but in no case 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 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 utility service 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 City Charter; 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 service, which may, from time to time, supersede the powers 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. GOVERNING LAW, LIMITATIONS AND COMPLIANCE

SECTION 1: 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 Utility Services. All other said City ordinances between the City and Cooperative relating to the subject matter contained herein are hereby repealed.

SECTION 2: 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 and City Charter of the City of Wylie. The exclusive venue for all causes of action arising out of or relating to this Ordinance shall be the District Courts of Collin County, Texas.

ARTICLE X. 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 Wylie
Attn: City Manager
Wylie Municipal Complex
300 Country Club Road, Building 100, 1st Floor
Wylie, Texas 75098
Fax: _____

And to the Cooperative at the following address:

Farmers Electric Cooperative, Inc.
Attn: Legal
2000 Interstate Highway 30 East
Greenville, Texas 75402-9084
Fax: (903) 453-0787

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 permitted 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, (ii) is bound to the same extent as the Cooperative hereunder, and (iii) has net capital and liquid assets reasonably equivalent to the Cooperative's as of the month immediately preceding the assignment or there are provided other guarantees or assurances of the authorized assignee's financial ability to perform all obligations of the Cooperative hereunder found to be reasonably acceptable to the City. 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. The waiver by either party of any breach or violation of any provision of this Ordinance 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 Ordinance.

SECTION 6: 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 7: 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 8: Each of the parties represent and warrant that at the time of execution of this Ordinance or its acceptance it has the full right, power, legal capacity, and authority to enter into and perform the parties' respective obligations hereunder and that such obligations shall be binding upon such party. Each signatory represents this Ordinance has been read by the party for which this Ordinance or its acceptance is executed and that such party has had an opportunity to confer with its counsel.

SECTION 9: The parties agree that City has not waived its governmental or sovereign immunity by entering into and performing its obligations under this Ordinance.

EXHIBIT B
ACCEPTANCE BY FRANCHISEE

FRANCHISEE, Farmers Electric Cooperative, Inc. hereby accepts City of Wylie Ordinance No. 2022-40 (a copy of which is attached hereto).

The person whose signature is below is authorized to sign and bind Farmers Electric Cooperative, Inc. to the terms of this acceptance.

ACCEPTED this ____ day of _____, 202__.

Farmers Electric Cooperative, Inc.

By: _____
(Signature)

Its: _____
(Title)

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 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 _____, 2022.

Notary Public Signature

My Commission Expires:
