

ORDINANCE NO. 2016-02-\_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, GRANTING TO GRAYSON-COLLIN ELECTRIC COOPERATIVE, INC., A TEXAS ELECTRIC COOPERATIVE CORPORATION, ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE RIGHT TO USE AND OCCUPY RIGHTS-OF-WAY WITHIN THE CITY OF MCKINNEY 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 MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC; AND PROVIDING FOR SEVERABILITY**

**WHEREAS**, Grayson-Collin Electric Cooperative, Inc., a Texas electric cooperative corporation (“Cooperative”), is now and has been engaged in the electric utility business in the State of Texas and the City of McKinney, Texas (“City”) and, in furtherance thereof, has erected and maintained portions of its electric power utility system in the City; and,

**WHEREAS**, the City Council of the City of McKinney hereby finds that it is to the mutual advantage of both the City and the Cooperative to enter into a new franchise establishing the conditions under which Cooperative will operate in the City.

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

Section 1. **GRANT OF AUTHORITY.**

There is hereby granted to Cooperative and its successors and assigns, 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 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 its own non-commercial 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.

Section 2. **PURPOSE.**

The provisions set forth in this Ordinance represent the terms and conditions under which Cooperative shall construct, extend, 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, except as may be set out herein. 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 DISTRIBUTION SYSTEM.**

- A. As required by McKinney Code of Ordinances, Cooperative and its agents are required to obtain permits from the City for all excavations of the Public Rights-of-Way but Cooperative will not be required to pay permitting fees, an annual Right-of-Way registration fee, or any other fee, save and except the Compensation described in Section 7 hereafter. Cooperative shall be responsible for requesting a waiver of any and all permitting fees, annual Right-of-Way registration fee, and any other fees of which the City usually requires payment under its Code of Ordinances.
- B. Cooperative's property and operations within the City Public Rights-of-Way shall be subject to such reasonable rules and regulations of the City as may be authorized by applicable law from time to time for the protection of the general public. 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 the Texas Public Utility Regulatory Act ("PURA"), or other state or federal law. 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 construct its facilities in accordance with the applicable provisions of the National Electric Safety.
- D. 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.
- E. Cooperative shall have the authority to trim trees or other natural growth overhanging any of Cooperative's System so as to reasonably prevent branches from coming in contact with Cooperative's System. Cooperative shall have in place a Vegetation Management Plan, including a Distribution Vegetation Management Program and Guidelines, and shall provide City with a current copy of same, upon request. If the City requests a current copy of any of the foregoing documents, release of such shall be pursuant to the same confidential protection process identified in Section 8.E of this Franchise. Cooperative shall conduct its tree-trimming activities in accordance with i) its Vegetation Management Plan, as amended, and ii) its related Distribution Vegetation Management Program and Guidelines, as amended by Cooperative from time to time and will address concerns or complaints with regard to its tree-trimming activities upon reasonable request. situations or in response to outages, and in accordance with Cooperative Vegetation Management Guidelines, Cooperative shall provide reasonable notice and opportunity to meet with affected property owners and the City prior to beginning planned Distribution tree-trimming activities.

Section 4. **INDEMNITY.**

- A. In consideration of the granting of this Franchise, Cooperative shall, 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 any claim, lawsuit, or action 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 or any of its officers', agents', or employees' intentional and/or negligent acts or omissions in connection with Cooperative's construction, maintenance, and operation of Cooperative's System in the Public Rights-of-Way, including any court costs, expenses and defenses thereof.
- B. This indemnity shall only apply to the extent that the loss, damage or injury is attributable to the negligence or wrongful act or omission of the Cooperative, its officer, agents or employees, and does not apply 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 the 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, waving 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 Cooperative and the City Cooperative based upon the comparative fault of each.
- D. In fulfilling its obligations 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 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 City, except as otherwise provided in Sections 4.B and 4.C of this Franchise.

Section 5. **LIABILITY INSURANCE.**

Cooperative shall, at its sole cost and expense, obtain, maintain, or cause to be maintained, and provide, throughout the term of the Franchise, insurance in the amounts, types and coverages in accordance with the following requirements. Such insurance may be in the form of self-insurance to the extent permitted by applicable law or by obtaining insurance, as follows:

1. Commercial general or excess liability on an occurrence or claims made form with minimum limits one million dollars (\$1,000,000) per occurrence and ten million dollars (\$10,000,000) aggregate. This coverage shall include the following:
  - (a) Products/completed operations to be maintained for a warranty period of two (2) years;
  - (b) Personal and advertising injury;

- (c) Contractual liability; and
  - (d) Explosion, collapse, or underground (XCU) hazards.
2. Automobile liability coverage with a minimum policy limit of one million dollars (\$1,000,000) combined single limit each accident. This coverage shall include all owned, hired and non-owned automobiles.
  3. 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.
  4. 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' compensation coverage. The certificate of insurance must state that the City is an additional insured.
  5. Cooperative shall require its contractors and subcontractors to maintain, at their sole cost and expense, the following:
    - (a) A minimum of one million dollars (\$1,000,000) each occurrence or each accident and five million dollars (\$5,000,000) aggregate general liability and automobile liability insurance throughout the course of work performed; and
    - (b) Also, contractors and subcontractors shall 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 shall be five hundred thousand dollars (\$500,000) bodily injury each accident, five hundred thousand dollars (\$500,000) each employee bodily injury by disease, and five hundred thousand dollars (\$500,000) policy limit bodily injury by disease.

In the event a claim exceeds the contractors' or subcontractors' insurance coverage, Cooperative shall be responsible for covering any deficiencies between its contractors' or subcontractors' insurance coverages and the amount of the claim. Cooperative shall provide to City upon request proof of its contractors' and subcontractors' compliance with these insurance requirements.

6. Cooperative shall provide proof of 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 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.**

A. 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 the following:

1. A final quarterly payment will be made on or before June 1, 2016 for the basis period of July 1, 2015 through September 30, 2015 and the privilege period of July 1, 2016 through September 30, 2016 in accordance with the provisions in the previous franchise.

B. Payments to the City shall be made per the quarterly schedule as follows:

<u>Payment Due Date</u>	<u>Basis Period</u>	<u>Privilege Period (Following Year)</u>
July 1	Jan. 1 — Mar. 31	Jan. 1 — Mar. 31
October 1	Apr. 1 — Jun. 30	Apr. 1 — Jun. 30
January 1	Jul. 1 — Sept. 30	Jul. 1 — Sept. 30
April 1	Oct.1 — Dec. 31	Oct.1 — Dec. 31

(1) The first quarterly payment hereunder shall be due and payable on or before June 1, 2016. The final payment under this Franchise is due on or before June 1, 2026 and covers the basis period of October 1, 2025 through December 31, 2025.

(2) After the final payment date of June 1, 2026, Cooperative may continue to make additional quarterly payments in accordance with the above schedule. The City acknowledges that such continued payments will correspond to privilege 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. Quarterly payments shall be a sum equal to five percent (5%) of Gross Revenues received by Cooperative from electricity delivered by Cooperative to each retail customer whose consuming facility's point of delivery is located within City's municipal boundaries plus a sum equal to five percent (5%) of payments received by Cooperative for contributions in aid of construction as well as a sum equal to five percent (5%) of payments received by Cooperative from Pole Attachment Revenue received for locations within the City's municipal boundaries.

- (1) Cooperative may file a tariff or tariff amendment(s) to provide for the recovery of the franchise fees.
  - (2) The City agrees (i) to the extent the City acts as regulatory authority, to adopt and approve that portion of any tariff which provides for 100% recovery of the franchise fees; (ii) in the event the City intervenes in any regulatory proceeding before a federal or state agency in which the recovery of the franchise fees is an issue, the City will take an affirmative position supporting the 100% recovery of such franchise fees by Cooperative; and (iii) in the event of an appeal of any such regulatory proceeding in which the City has intervened, the City will take an affirmative position in any such appeals in support of the 100% recovery of such franchise fees by Cooperative.
  - (3) City agrees that it will take no action, nor cause any other person or entity to take any action, to prohibit the recovery of such franchise fees by Cooperative.
  - (4) In the event of a regulatory disallowance of the recovery of the franchise fees, Cooperative will not be required to continue payment of such franchise fees.
- D. With each payment of compensation required by Section 7.C, Cooperative shall furnish to the City a statement, executed by an authorized officer of Cooperative or designee, providing the total electricity delivered by Cooperative to each retail customer's point of delivery within the City and the amount of payment for the period covered by the payment.
- E. With each payment of compensation required by Section 7.C, Cooperative shall furnish to the City a statement, executed by an authorized officer of Cooperative or designee, in sufficient detail to show the total amount of gross revenues received by Cooperative for each component of the franchise fees described herein-above, and how the payment described herein was arrived at and how the amount paid to the City was determined for the pertinent quarter.
- F. 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 agreement between the City and Cooperative and the City shall be paid by Cooperative within thirty (30) 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.
- G. 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 Texas Utilities Code Section 183.003, as may be amended, for the time period involved.
- H. The franchise fee payable to the City pursuant to Section 7.C, except as agreed to by Cooperative and the City in Section 7.F, 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, which is currently located in Van Alstyne, Texas, for the purpose of determining the Franchise Fee amount due to the City under this Franchise.
- B. The City may conduct an audit or other inquiry in relation to a Franchise Fee payment made by Cooperative or may pursue a cause of action in relation to Cooperative's payment of any Franchise Fee only if such audit, inquiry, or pursuit of a cause of action concerns a payment made less than two years before the commencement of such audit, inquiry, or pursuit of a cause of action. Provided, the City shall not, after the Effective Date of this Franchise, initiate an audit of or seek any other remedies related to the Franchise Fee payments by the Cooperative for any period prior to the Effective Date of this Franchise. The City may, if it sees fit, upon reasonable notice to the Cooperative, have the books and records of the Cooperative examined by representatives of the City to ascertain the correctness of the reports agreed to be filed herein.
- C. The Cooperative shall make available to the auditor 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.
  - (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 and 7.G.
  - (2) If as a result of a subsequent audit, initiated within two (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 five percent (5%), Cooperative makes another payment to the City due to an underpayment of the franchise fee of more than five percent (5%), 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. 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. The City agrees to maintain the confidentiality of any non-public information obtained from Cooperative so designated to the extent allowed by law. The City shall not be liable to Cooperative for the release of any information the City is required to release by law. City shall provide notice to Cooperative of any request for release of 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 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 also will provide Cooperative with a copy of this notification, and thereafter Cooperative is responsible for establishing that an exception under the Texas Public Information 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, 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.
- B. Should either party hereto determine that based on a change in circumstances, it is in such party's best interest to renegotiate all or some of the provisions of this Franchise, 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. 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 acceptance of the amendment by Cooperative.

Section 10. **RELOCATION OF FACILITIES.**

- A. The City reserves the right to lay, and permit to be laid, any City-owned facilities, such as stormwater, sewer, gas, water, wastewater 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 curb, sidewalk, highway, alley, public way, street, utility lines, storm sewers, drainage basins, drainage ditches, and other City facilities.
- B. Upon request by City, Cooperative shall relocate its facilities at the City's expense, except whenever such relocation, removal, or alteration is made necessary to permit the widening or straightening of a street and which the City and Cooperative agree includes the addition of any acceleration, deceleration, center or side turn lanes, and sidewalks (meaning sidewalks done in conjunction with widening or straightening of a street and including modifications to sidewalks required by the Americans with Disabilities Act for wheelchair ramps), provided that the City shall provide Cooperative with at least thirty (30) days prior written notice and shall specify a new location for such facilities along the Public Rights-of-Way of the street. If Cooperative believes that the cost is excessive to relocate, remove, or alter its facilities per the City request, Cooperative shall have the opportunity to present alternative proposals for the City's consideration.
- C. When Cooperative is required by the City to remove or relocate its poles, towers, conduits, cables, and other facilities to accommodate Public Right-of-Way improvements, and Cooperative is eligible under Federal, State, County, City or other local agencies or programs for reimbursement of costs and expenses incurred by Cooperative as a result of such removal or relocation and such reimbursement is required to be handled through City, Cooperative's costs and expenses shall be included in any application by the City for reimbursement, if Cooperative submits its cost and expense documentation to the City prior to the filing of the application. The City shall provide reasonable notice to Cooperative of the deadline for Cooperative to submit documentation of the costs and expenses of such removal or relocation to City.
- D. If the City abandons any Public Rights-of-Way in which Cooperative has facilities, such abandonment shall be conditioned on Cooperative's right to maintain its use of the former Public Rights-of-Way and on the obligation of the party to whom the Public Rights-of-Way is abandoned to reimburse Cooperative for all removal or relocation expenses if Cooperative agrees



to the removal or relocation of its facilities following abandonment of the Public Rights-of-Way. If the party to whom the Public Rights-of-Way is abandoned requests the 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 19 of this Franchise, said written acceptance to be filed by Cooperative with the City within sixty (30) days after final passage by the City and approval hereof. The right, privilege and franchise granted hereby shall expire on March 21, 2026; provided that, unless written notice of cancellation 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 five (5) years from such expiration date.

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

- A. Events of Default. The occurrence, at any time during the term of this Franchise, 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 of the material terms, covenants, representations or warranties contained herein or Cooperative's failure to perform any material obligation 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 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 City may exercise any of its rights or remedies provided 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 City 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 12.C.
  - (3) 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 the City to exercise the remedies provided for in Section 12.C.

- 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. Cooperative shall, within thirty (30) calendar 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, 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. Remedies Not Exclusive. The rights and remedies of City and Cooperative set forth in this Franchise shall be in addition to, and not in limitation of, any other rights and remedies provided at 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 City of any one or more of such remedies shall not preclude the exercise by City, at the same or different times, of any other such remedies for the same failure to cure. However, notwithstanding this Section or any other provision of this Franchise, the City shall not recover both liquidated damages and actual damages for the same violation, breach, or noncompliance, either under this Section or under any other provision of this Franchise.
- E. Termination. In accordance with the provisions of Section 12.C, this Franchise may be terminated upon thirty (30) business days prior written notice to Cooperative. The City shall notify Cooperative in writing at least fifteen (15) business days in advance of the City Council meeting at which the questions 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 the Franchise, the effective date of such termination shall be either when such appeal is withdrawn or 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 the City.

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; ORDINANCE CONTROLLING.**

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), 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.**

- A. 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 as provided above, the last address of such party designated for notice shall remain such party's address for notice.

If to the City:  
**City of McKinney**  
Attn: City Manager's Office  
222 N Tennessee  
McKinney, TX 75070

With a Copy to:  
**City of McKinney**  
Attn: City Attorney's Office  
222 N Tennessee  
McKinney, TX 75070

If to the Cooperative:  
**Grayson-Collin Electric Cooperative, Inc.**  
Attn: General Manager/Chief Executive Officer  
P. O. Box 548  
Van Alstyne, Texas 75495-0548

- B. 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 within sixty (30) days after its final passage and approval by City.

Section 17. **FUTURE AMENDMENTS.**

This ordinance may be amended only by an Ordinance adopted by the City and accepted by the Cooperative in writing.

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, all as required by law.

Section 19. **EFFECTIVE DATE.**

Upon the filing of Cooperative's written acceptance of the Franchise granted herein, this Ordinance shall become effective as of the first day of the calendar month that is not less than thirty (30) days after the final adoption of this Ordinance by the City.

Section 20. **REPEAL.**

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

FIRST PUBLIC HEARING CONDUCTED at a regular meeting of the City Council of McKinney, Texas, on this the 5th day of January, 2016.

SECOND PUBLIC HEARING CONDUCTED at a regular meeting of the City Council of McKinney, Texas, on this the 16th day of February, 2016.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS ON THE 16<sup>th</sup> DAY OF FEBRUARY, 2016.**

CITY OF MCKINNEY, TEXAS

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BRIAN LOUGHMILLER  
Mayor

CORRECTLY ENROLLED:

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SANDY HART, TRMC, MMC  
City Secretary  
DENISE VICE, TRMC  
Assistant City Secretary

APPROVED AS TO FORM:

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MARK S. HOUSER  
City Attorney