

ORDINANCE NO. 211

AN ORDINANCE GRANTING TO TRI-COUNTY ELECTRIC COOPERATIVE, INC., A TEXAS ELECTRIC COOPERATIVE CORPORATION, ITS SUCCESSORS AND ASSIGNS THE RIGHT, PRIVILEGE, AND ALL NECESSARY EASEMENTS TO CONDUCT THE BUSINESS OF OPERATING AN ELECTRIC COOPERATIVE UTILITY IN THE TOWN OF ANNETTA, TEXAS IN ALL AREAS OF THE TOWN IN WHICH TRI-COUNTY ELECTRIC COOPERATIVE HAS THE RIGHT TO SERVE; GRANTING THE RIGHTS TO USE AND OCCUPY PRESENT AND FUTURE STREETS, AVENUES, ALLEYS, ROADS, BRIDGES, PARKWAYS, HIGHWAYS, SIDEWALKS, RIGHTS-OF-WAY, EASEMENTS, VIADUCTS AND OTHER PUBLIC GROUNDS AND PLACES OF THE TOWN (“RIGHTS-OF-WAY”) FOR THE CONSTRUCTION, OPERATION AND MAINTAINENCE OF AN ELECTRIC SYSTEM BY THE AFORESAID ELECTRIC COOPERATIVE; PRESCRIBING THE CONDITIONS, RESTRICTIONS, OBLIGATIONS AND LIMITATIONS UNDER WHICH SUCH RIGHTS SHALL BE EXERCISED; PROVIDING FOR A FEE OR CHARGE TO BE PAID TO THE TOWN FOR THE USE OF THE RIGHTS-OF-WAY; PROVIDING THAT IT SHALL BE IN LIEU OF OTHER FEES AND CHARGES, PROVIDING FOR SAVING, REPEALING AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, the Town of Annetta, Texas (the “Town”) is a general law municipality created in accordance with the provisions of Chapter 6 of the Local Government Code and operating pursuant to the enabling legislation of the State of Texas; and

WHEREAS, Tri-County Electric Cooperative, Inc. (the “Cooperative”), is now and has been engaged in the electric power utility business in the State of Texas; and

WHEREAS, the Town has adopted Ordinance No. 82 regulating the installation, repair and maintenance of facilities within the Town’s Rights-of-Way (“Town ROW Ordinance”);

WHEREAS, on 12-17-2020, by Ordinance No. 211, the Town grants a non-exclusive franchise to Cooperative and its successors and assigns to construct, erect, build, equip, own, maintain and operate in, along, under, over and across present and future streets, avenues, alleys, roads, bridges, parkways, highways, sidewalks, rights-of-way, public easements, viaducts and other public grounds and places of the Town (the “Rights-of-Way”) for the purpose of operating an electric cooperative utility in the areas of the Town in which the Cooperative has the right to provide electric service (the “Cooperative Areas”); and

WHEREAS, pursuant to Ordinance No. 6, the Cooperative is now and has been engaged in the business of operating an electric cooperative utility in the State of Texas and the Town and in furtherance thereof has erected and maintained portions of its physical plant, lines or other footprint in the Town; and

**WHEREAS**, the Cooperative has been since on or about 1-1-2021 and will continue to fully compensate the Town for the Cooperative's use of the Rights-of-Way from the Effective Date of this Ordinance; and

**WHEREAS**, the Town of Annetta Town Council hereby finds that it is to the mutual advantage of both the Town and the Cooperative to establish the conditions under which the Cooperative will continue to operate in the Town; and

**WHEREAS**, the Annetta Town Council hereby determines that the continuation of a franchise pursuant to this Ordinance is in the best interests and will inure to the benefit of the Town and its citizens.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF ANNETTA, TEXAS:**

#### **ARTICLE I. GRANT OF AUTHORITY**

**SECTION 1:** The findings set forth above are incorporated herein as if set forth verbatim.

**SECTION 2:** There is hereby granted to the Cooperative, its successors and assigns, the right and privilege to operate an electric cooperative utility in the Town for the purpose of providing electric power utility service to the Town 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. The use of the term Town in this Ordinance shall hereinafter include in its meaning the Town's current authorized boundaries or limits or as they may be changed by the Town from time to time. This Franchise does not authorize the Cooperative to use any property owned by the Town that is not public Rights-of-Way.

**SECTION 3:** Except as otherwise expressly provided in this Ordinance and the Town ROW Ordinance, the Cooperative, its successors and assigns, is hereby granted the right to use and occupy; and, the right to have, acquire, place, remove, construct, reconstruct, upgrade, extend, replace, maintain, and operate along, across, on, over, through, above, and under the Town's present and future Rights-of-Way within the Town, the Cooperative's system of 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 switchgear, transformers, insulators, street lights, metering equipment and other facilities and equipment (collectively called "**Electric Facilities**") used in or incident to the provision or termination of electric power utility service in, out of and through the Town and to provide electric power utility service to end-use customers who purchase and ultimately consume electricity in the Town, said consent being granted for an initial term of fifteen (15) years, in accordance with Article IV, Section 1 of this Ordinance.

**SECTION 4:** The rights, privileges and easements granted by this Ordinance are non-exclusive, provided, however, that the Town shall not grant, at any time, like privileges, rights, or easements to any other person or entity for the purpose of furnishing electric power utility service and Electric

Facilities to and for the Town and the inhabitants thereof in the Cooperative Areas unless such other person or entity has obtained the right to furnish electric power utility service in the Cooperative Areas under the laws and regulations of the State of Texas or other Governmental or Regulatory Authorities (as defined in Article II, Section 9) with the authority to contract with and regulate such other person or entity.

## **ARTICLE II. CONSTRUCTION, RETIREMENT, MAINTENANCE AND OPERATION OF THE ELECTRICAL FACILITIES**

**SECTION 1:** Any and all Electric Facilities will be constructed, installed, retired, maintained and operated pursuant to the Cooperative's Tariff for Electric Service, standard electric utility construction practices; the National Electric Safety Code, as amended; and, the rules, regulations and code requirements of any appropriate Governmental or Regulatory Authorities having jurisdiction over the Cooperative, including the Town ROW Ordinance. Construction of non-typical or non-standard Electric Facilities and those that are not in accordance with the Cooperative's standard electric utility construction practices shall only be done by the Cooperative under the terms and conditions of a separately negotiated, stand alone, agreement with the Town or other person or entity requesting the non-standard work that does not, is not and shall not, in any way, be considered, construed or interpreted to be an addendum, amendment or modification to the terms and conditions contained in this Ordinance. Construction of non-typical or non-standard Electric Facilities shall be done at the requesting party's expense and not the Cooperative's.

**SECTION 2:** Cooperative shall, except in cases of (i) emergency conditions or (ii) routine maintenance and repair of facilities that does not involve any of the following (a) cutting or breaking of pavement or (b) closure of traffic lane for longer than 24 hours or (c) boring or (d) excavation greater than 100 cubic feet or (iii) connection of real property to a utility service on the same side of the Rights-of-Way if connection does not require a pavement cut in the Rights-of-Way or (iv) replacement of a single damaged pole and associated work within a ten (10) foot radius of the damaged pole or (v) installation of aerial lines on existing poles or installation of aerial lines on not more than 10 new poles, provide Town advance notice, and obtain a permit, as required by Town ROW Ordinance, prior to performing work in the Rights-of-Way, except in no instance shall Cooperative be required to pay fees or bonds related to its use of the Rights-of-Way other than the fee set out in Article IV, Section 2 herein. In the event of a conflict between the location of the proposed Electric Facilities of Cooperative and the location of the existing facilities of Town or other users of public Rights-of-Way within public Rights-of-Way that cannot otherwise be resolved, Town or an authorized agent of Town shall resolve the conflict and determine the location of the respective facilities within the public Rights-of-Way. Unless otherwise specifically addressed in this Ordinance, Town shall retain all of the powers of regulation of its Rights-of-Way granted to it either by the Constitution or the laws of the State of Texas, by general law or charter.

**SECTION 3:** If Town, in constructing its public systems, should request that Cooperative remove or relocate its facilities within public Rights-of-Way, Cooperative shall do so at expense of the Town.

**SECTION 4:** The Electric Facilities and other equipment currently installed and being used in or

incident to the provision or termination of electric power utility service and/or the other operation and maintenance of the electric power utility service and system by the Cooperative within the Town as of the Effective Date shall remain as now constructed, subject to: (1) such lawful changes as may be reasonably required by the Town to protect the public's health, safety and welfare; (2) any changes required as a result of compliance with the limitations and conditions herein prescribed; and (3) any lawful changes required by any applicable statute, charter provision, ordinance, rule and regulation governing the operation of the Cooperative's business of providing or terminating electric power utility service.

**SECTION 5:** All new Electric Facilities and equipment, including line extensions, construction, location, relocation, routing and re-routing undertaken by the Cooperative within the Town, either overhead or underground, shall be subject to the lawful regulation of the Town in accordance with ~~the Town's rules and Ordinances governing the use and occupancy of the Town's Rights-of-Way.~~ The Cooperative's Electric Facilities shall be set so that they will interfere as little as practicable with other public utilities and the ordinary travel on Rights-of-Way. The location of Cooperative's new Electrical Facilities in the Rights-of-Way shall be subject to approval by the Town's Mayor or the Mayor's designated representative prior to construction; provided however, said approval shall not be unreasonably withheld. This approval will be obtained through the Town's permitting process. In the event of a conflict between the location of the proposed facilities of Cooperative and the locations of the facilities of Town or other Rights-of-Way users which exist or have been authorized by the Town, the Mayor shall resolve the conflict and determine the location of the respective facilities within the Town's Rights-of-Way, subject to Cooperative's right to request review of the matter by any court or regulatory agency having jurisdiction. To avoid a facilities location conflict, the Mayor will designate a reasonable alternate location within the Town's Rights-of-Way for Cooperative's Electrical Facilities if a reasonable alternate location exists. The Cooperative will use reasonable efforts to work with the Town to avoid installing its Electrical Facilities in park or Town property other than utility easements or street, alley, or highway.

**SECTION 6:** In portions of the Town where all new utility lines are placed underground as required by the Town, any and all of the Cooperative's new extensions, lines, cables and wires installed after the Effective Date of this Ordinance shall also be buried, provided, however, that overhead lines may be installed as necessary to provide electric power utility service on a temporary basis until underground lines are installed. The Town hereby recognizes that requiring such installation of underground Electric Facilities creates additional costs and that the Cooperative may require developers or other third parties to bear such costs and expense. Placing said facilities underground does not preclude the use of ground-mounted appurtenances. These appurtenances may include but are not limited to street lights, junction boxes, switchgears, transformers, pedestals and cabinets and pole risers. All such above ground appurtenances must be placed in accordance with the Town's applicable code requirements and rules regulating use and occupancy of the Rights-of-Way, including all visibility and easement requirements. In areas where existing facilities are aerial, the Cooperative may also install aerial facilities if doing so does not violate any other Town rule or Ordinance. This provision does not affect the existing Electric Facilities or any future substitutions, replacements, upgrades, reconstruction, maintenance or repair to the Electric Facilities installed prior to the Effective Date of this Ordinance.

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**SECTION 7:** The Cooperative will maintain all of its Electric Facilities in reasonable operating condition at all times during the continuance of this Ordinance. An exception to the requirements imposed by this paragraph is automatically in effect when services furnished by the Cooperative are interrupted, impaired or prevented by force majeure, acts of civil or military authority, governmental priorities, strikes or other labor disturbances, hurricanes, tornadoes, storms, earthquakes, fires, floods, epidemics, embargoes, war, riots and any other causes or occurrences beyond the reasonable control of the Cooperative; however, in the case of such events or occurrences, the Cooperative shall use commercially reasonable efforts to restore normal electric power utility service as soon as practical. Nothing contained herein, however, shall be construed to require either Party to prevent or settle a strike or labor disturbances against its will.

**SECTION 8:** The Cooperative shall use commercially reasonable efforts to offer line extensions and types of services to the Town and its inhabitants, taking into consideration the circumstances, conditions and costs involved.

**SECTION 9:** In conducting its business and in the construction, reconstruction, location or relocation of any Electric Facilities or equipment as provided herein, the Cooperative shall comply with all reasonable and lawful statutes, regulations and requirements of the Town or other applicable Governmental or Regulatory Authority having jurisdiction. "Governmental or Regulatory Authority" means any court, tribunal, arbitrator, authority, agency, commission, official or other instrumentality of the United States, or any country, state, county, town or other political subdivision, or of any foreign country or international body having jurisdiction. Upon failure of the Cooperative to comply with any reasonable, specific statute, regulation or requirement of the Town, or other applicable Governmental or Regulatory Authority having jurisdiction, the Town shall give written notice to the Cooperative specifying each particular instance of failure to comply along with the controlling and applicable statutes, regulations or requirements for each instance. After written notice to the Cooperative, the Cooperative shall be subject to the default provisions of Article VI.

### **ARTICLE III. CONDITIONS OF STREET OCCUPANCY**

**SECTION 1:** That portion of the Town's Rights-of-Way disturbed by the Cooperative in the building, constructing, retiring, renewing, replacing, operating or maintaining Cooperative Electric Facilities shall be restored to substantially the same state and condition as existed prior to the disturbance by the Cooperative within a reasonable period of time. The Town may adopt lawful regulations and policies regulating such work within the Town's Rights-of-Way subsequent to the adoption of this Ordinance, and the Cooperative agrees to be bound by those policies and regulations. None of the Town Rights-of-Way shall be encumbered for a longer period than shall be necessary to execute the work designated by the Cooperative.

**SECTION 2:** The Cooperative shall relocate its facilities at its expense if reasonably requested by the Town in connection with the construction, relocation, widening, or raising/lowering the grade of any public thoroughfare, or in connection with the construction, improvement, maintenance or removal of any public property, facility or other public improvement project, where it shall be necessary for the Cooperative to move, relocate, change, alter or modify any Cooperative Electric Facilities, in like kind, located on Town Rights-of-Way. Upon receiving (1)

the reasonable and lawful request, (2) all necessary, required and approved final plans based upon the Town's engineering and/or planning requirements, and (3) not less than ninety (90) days advance written notice, the Cooperative shall relocate, change, alter or modify the Cooperative Electric Facilities, in like kind, located in the Town Rights-of-Way as so directed by the Town.

**SECTION 3:** The Cooperative shall, at all times and with commercially reasonable diligence, provide and supply electric power utility service to the Town and its inhabitants within Cooperative Areas.

**SECTION 4:** Nothing contained within this Ordinance shall affect the right of the Cooperative to make claims, including claims for costs or damages, against third parties other than the Town, in the event that the Town requires or requests the Cooperative to move, relocate, change, alter or modify any of the Cooperative's Electric Facilities located in private easements, private rights-of-way or real property owned by the Cooperative.

**SECTION 5:** In the event the Town is considering a relocation, change, alteration or modification of the Cooperative's Electric Facilities located in private easements, private rights-of-way or real property owned by the Cooperative, the Town shall first provide a description of the Cooperative Electric Facilities, their location and relocation, change, alteration or modification requirements and request an estimate of the costs for the proposed project. The Cooperative shall estimate the costs of the proposed project within ninety (90) days and provide such estimate to the Town. If the Town requires or requests the Cooperative to relocate, change, alter or modify its facilities, then, to the extent such Cooperative Electric Facilities are located in private easements, private rights-of-way or real property owned by the Cooperative, the Town shall remit to the Cooperative payment in full for the Cooperative's estimate within thirty (30) days of the receipt of the Cooperative's invoice. The Town hereby agrees that the Cooperative has no obligation to perform until the Town's payment has been received by the Cooperative and new or additional private easements, rights-of-way, or other acceptable permission has been provided to the Cooperative by the Town prior to commencement of construction.

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

**SECTION 7:** The Cooperative, 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 Town or some other showing of authorization that is recognized by the Town as being an appropriate and authoritative document. The expense and cost of such temporary removal, raising or lowering wires shall be paid by the 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 8:** The Cooperative, its successors and assigns, is hereby granted the right, license, privilege and/or permission needed to trim or cut trees upon and overhanging the Rights-of-Way of the Town, as necessary, which interfere with the operations, maintenance, and repair of the Cooperative's Electric Facilities. The Cooperative shall be responsible for trimming any such tree, which interferes with the Cooperative's Electric Facilities, located within the Rights-of-Way being used by the Cooperative at the request of the Town, and the Town shall have the right to supervise any such request. All tree trimming pursuant to the section must be done in accordance with all Town ordinances.

**SECTION 9:** Nothing contained in this Ordinance shall be interpreted or construed to require the Cooperative to accept, or to permit or allow other utility companies, or any other third party, to place or install attachments for their own benefit and use, into or on the Cooperative's Electric Facilities. An additional, separate 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 Cooperative's Electric Facilities by the Town, other utility companies, or any other third party, so long as the agreement does not violate Town ordinances, as amended, or state law. The aforementioned separate agreements, do not, are not, and shall not, be interpreted or construed as being amendments, modifications or attachments to this Ordinance.

#### **ARTICLE IV. TERM AND PAYMENT TO THE TOWN**

**SECTION 1:** This Ordinance shall be in full force and effect for the period beginning with the Effective Date herein and ending fifteen (15) years after such date. Thereafter, the rights, privileges and franchise granted herein by this Ordinance may automatically be extended, without action on the part of the Town or the Cooperative, for additional periods of ten (10) years each unless prior written notice of non-renewal is forwarded by the non-renewing party to the other party, delivered no less than ninety (90) days prior to the aforementioned termination dates of this Ordinance; provided however that termination shall not affect the Cooperative's statutory obligation to provide electric power utility service to customers within the Town.

**SECTION 2:** To compensate the Town for use of the Rights-of-Way authorized hereby, and to compensate the Town for its superintendence of this Ordinance and the performance of the Town's regulatory functions (which such regulation the Town shall exercise and to which the Cooperative shall be subject to the extent authorized by law), the Cooperative agrees to pay to the Town annually a sum of money equal to five percent (5%) of the annual Gross Receipts for the preceding calendar year, or portion thereof, received by the Cooperative from the sales of all electric power utility service provided by the Cooperative within the Town (the "**Fee**"). For the purposes of this Section 2, "**Gross Receipts**" shall mean all amounts classified as electric power utility service revenues collected by the Cooperative, its licensees and designees, from the Cooperative's members for the provision of electric power utility service received by the Cooperative's members at a location within the Town. The term Gross Receipts shall exclude the following: revenue billed



but not received; reimbursement for (1) damage to the Cooperative Electric Facilities or (2) relocation of the Cooperative's Electric Facilities; contributions in aid of construction; advances in aid of construction; line extension charges in the form of one time payments or monthly facilities charges; taxes; franchise fees; revenues from materials or equipment sales; principal and/or interest payments on amounts loaned by the Cooperative; membership fees; deposits; revenues and receipts received from electric utilities for the use of Cooperative transmission lines and facilities; rental or fees paid by third parties for joint attachment to or use of the Cooperative's Electric Facilities; other miscellaneous non-operating revenues and receipts not directly related to the provision of electric power utility service (i.e. interest income on Cooperative bank accounts); or any receipts required to be remitted by the Cooperative to third parties.

Further, the parties agree as follows:

- A. The Fee shall be paid quarterly, within forty-five (45) days after the end of each calendar quarter (i.e., by May 15, August 15, November 15, and February 15 of each year of this Franchise term).
- B. Failure of the Cooperative to make timely payments in accordance with the provisions of paragraph A. of this Section shall constitute a default under the provisions of this Ordinance and the Cooperative shall be subject to the default provisions of Article VI.
- C. The Town agrees that the consideration as set forth in the preceding paragraphs shall be paid and received in lieu of other tax, license, charge, fee, rental, expense or other character of charge for use and occupancy of the Rights-of-Way in the Town. 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.
- D. The Cooperative is expressly authorized by the Town to surcharge each Cooperative member within the Town the full amount of the Fee attributable to that member. The Cooperative's obligation to pay the Fee shall extend for so long as, and to the extent that, the Cooperative may lawfully surcharge the Fee to Cooperative members within the Town. The Cooperative shall provide a template satisfactory to the Town of how the Fee reads on each person's electric bill.
- E. If Cooperative should at any time after the Effective Date of this Ordinance agree to a new municipal franchise ordinance, or renew an existing municipal franchise ordinance, with another municipality in the Cooperative's jurisdiction, which municipal franchise ordinance determines the franchise fee owed to that municipality for the use of its public rights-of-way in a manner that, if applied to the Town, would result in a franchise fee greater than the amount otherwise due Town under this Ordinance, then the franchise fee to be paid by Cooperative to Town pursuant to this Ordinance may, at the election of the Town, be increased so that the amount due and to be paid is equal to the amount that would be due and payable to Town were the franchise fee provisions of that other franchise ordinance applied to Town. The Town acknowledges that the exercise of this right is conditioned upon the Town's acceptance of all terms and conditions of the other municipal





franchise in total. The Town may request waiver of certain terms and Cooperative may grant, in its sole reasonable discretion, such waiver. Requesting such a waiver shall in no way bind the Town to either accept or reject any franchise ordinance terms.

#### **ARTICLE V. RECORDS, REPORTS AND AREA OF TOWN 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/or the Fee may be determined. If reasonably requested and to the extent practicable, copies of relevant portions of such books of account and records may be made available to the Town at any time during regular business hours.

**SECTION 2:** Upon receiving 10 days' advance notice, the Cooperative shall provide the Town, its officials, or authorized personnel/agents access at the Cooperative's main office where such records are maintained, during the Cooperative's regular business hours, to such 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 Gross Receipts or the Fee, provided, however, any copy expenses or other out-of-pocket expenses incurred by the Cooperative as a result by or on behalf of the Town, shall be the responsibility of the Town and the Town shall promptly pay the reasonable cost thereof to the Cooperative. Such information shall be considered confidential or proprietary matters disclosed to the Town and shall be held in the highest confidence being disclosed only as required or mandated by state statute, court order, an opinion from the Attorney General of Texas, or as needed to enforce the Town's rights under this Ordinance. There shall be no other disclosure of said information without the prior written consent of the Cooperative.

**SECTION 3:** The Cooperative shall have available a map setting forth its Electric Facilities located within the Town which map shall be corrected and brought up to date from time to time.

**SECTION 4:** This Ordinance shall extend to any and all territory within the Town's authorized boundaries that are located in Cooperative Areas, and to that territory which may be annexed by the Town during the term of this Ordinance. In the event that territory which was previously annexed is de-annexed by the Town this Ordinance shall be reduced to the remaining territory used by the Cooperative that continues to be within the Town.

**SECTION 5:** In the event of annexing or de-annexing territory, the Town shall provide written notice to the Cooperative. At a minimum, notice to the Cooperative shall include a boundary map of the new Town boundary along with the related Ordinance affecting the annexed or de-annexed territory, as well as the name and address of any new citizens of the Town. Upon receiving notice of the Town's annexation or de-annexation, the Cooperative shall identify all customers located within such annexed or de-annexed area and adjust its maps and accounting records accordingly.

#### **ARTICLE VI. SAVING, REPEALING, SEVERABILITY AND DEFAULT**

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



Cooperative.

**SECTION 2:** The Cooperative shall not be in default under this Ordinance until written notice of any alleged failure to perform has been given. After written notice to the Cooperative, the Cooperative shall have an opportunity to be heard, and thereafter, a subsequent period of not more than ninety (90) days for the Cooperative to cure the default. If the Cooperative fails to cure such default before the expiration of the cure period or if such default cannot reasonably be cured within the cure period and the Cooperative fails to commence to cure the default within the cure period, the Town will be, subject to its obligation to first mediate as described in Article VIII, entitled to exercise any and all of the following remedies: the commencement of an action against Cooperative at law for monetary damages; 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; and the termination of this Ordinance and Cooperative's franchise. The rights and remedies of Town and 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 in equity. Town and Cooperative understand and intend that such remedies shall be cumulative to the maximum extent permitted by law and the exercise by Town of any one or more of such remedies shall not preclude the exercise by Town, at the same or different times, of any other such remedies for the same failure to cure.

**SECTION 3:** It is hereby declared to be the intention of the Town Council that the sections, paragraphs, sentences, clauses, phrases and words of this Ordinance are severable and if any sections, paragraphs, sentences, clauses, phrases and words of this Ordinance shall be declared unconstitutional, illegal or invalid by any judgment or decree of a court of competent jurisdiction, such unconstitutional, illegal or invalid sections, paragraphs, sentences, clauses, phrases and words shall not affect any other remaining sections, paragraphs, sentences, clauses, phrases and words of this Ordinance; and the Town Council hereby declares it would have passed the remaining portions even though it had known the affected parts would be held unconstitutional, illegal or invalid.

**SECTION 4:** When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

**SECTION 5:** If any provision of this Ordinance is deemed to be invalid by present or future laws, the remainder of this Ordinance shall not be affected.

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**ARTICLE VII. RESERVATION OF REGULATORY POWERS;  
RESERVATION OF LEGAL RIGHTS**

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

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

**ARTICLE VIII. DISPUTE RESOLUTION**

**IT IS AGREED THAT ANY CLAIM OR DISPUTE BETWEEN COOPERATIVE AND TOWN ARISING OUT OF OR RELATING TO THIS ORDINANCE SHALL BE SUBMITTED TO NON-BINDING MEDIATION. EXCLUSIVE VENUE SHALL BE IN PARKER COUNTY, TEXAS.**

**ARTICLE IX. INDEMNIFICATION AND LIABILITY FOR DAMAGES**

**SECTION 1:** Without waiving any immunity or limitation of liability, the Cooperative shall, at its sole cost and expense, indemnify, and hold harmless the Town, its past and present officials, agents and employees, in their official and individual capacities, against all claims, costs, expenses and damages to persons or property that are directly related to the construction, retirement, maintenance or operation of the Cooperative's Electric Facilities in the Rights-of-Way, which are subject to this Ordinance, to the extent such costs, expenses and damages are found to be caused by the negligent actions or omissions or willful misconduct of the Cooperative, its past or present officers, agents or employees including any court costs, expenses, and defenses thereof. Provided however that the indemnity provided by this Article IX, Section 1 shall not apply to claims, costs, expenses or damages caused solely by the negligent actions or omissions or willful misconduct of the Town, its officials, agents or employees.

**SECTION 2:** In the event that any such damage or claim is found by a judgment or decree of a court of competent jurisdiction to be caused by the concurrent fault of both the Town and the Cooperative, responsibility, if any, shall be apportioned comparatively between the Town and Cooperative in accordance with the laws of the State of Texas without, however, waiving any governmental immunity available to the Town 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 Town, responsibility for all costs of defense shall be

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apportioned between the Town and Cooperative based upon the comparative fault of each.

**SECTION 3:** The aforementioned indemnity provisions are not intended to, and shall not, create and/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 Town.

**SECTION 5:** Cooperative shall, at its sole cost and expense, obtain, maintain, or cause to be maintained, and provide, throughout the term of this Ordinance, insurance in the amounts, types and coverages in accordance with the Town ROW Ordinance. Cooperative shall provide the Town with evidence of the form and basis for insurance coverage or self-insurance, as applicable, within 30 days of the effective date of this Ordinance and annually thereafter as applicable insurance coverages renew. All insurance shall be provided through valid and enforceable policies, insured ~~by insurers licensed to do business in the State of Texas. All insurance carriers and surplus line carriers shall be rated A- or better by A.M. Best.~~ Cooperative is required to provide the Town with at least thirty (30) days prior written notice of any intention not to renew or prior to cancellation of such policy, such notice to be given by certified or registered mail.

#### **ARTICLE X. GOVERNING LAW, LIMITATIONS AND COMPLIANCE**

**SECTION 1:** Notwithstanding any other provision of this Ordinance to the contrary, the Town and the Cooperative shall at all times comply with all local, state and federal laws, rules, regulations and any administrative or Regulatory Authorities having jurisdiction thereof with respect to the subject matter of this Ordinance.

#### **ARTICLE XI. MISCELLANEOUS**

**SECTION 1:** Any notice required to be given to either Party under the terms and provisions of this Ordinance may be given by mailing such notice to that Party by United States registered or certified mail, return receipt requested or by facsimile. The notice shall bear the date of its mailing ~~and shall become effective on and after receipt. Each Party may change the address, or designated~~ person of that Party, to which notice may be sent 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 or designated person.

To the Town at the following address:

Town of Annetta, Texas  
P.O. Box 1150  
450 Thunder Head Lane  
Annetta, Texas 76008  
Fax: (817) 441-5666

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And to the Cooperative at the following address:

Tri-County Electric Cooperative, Inc.  
200 Bailey Ranch Road  
Aledo, Texas 76008  
Fax: (817) 444-3542

**SECTION 2:** This Ordinance shall take effect upon adoption by the Town Council and upon written acceptance by the Cooperative, which acceptance shall be filed with the Town Secretary within thirty (30) days after the adoption of this Ordinance.

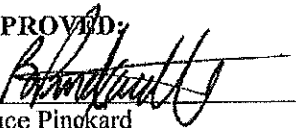
**SECTION 3:** The Mayor is authorized to execute and the Town Secretary or Town Assistant Secretary is authorized to attest this Ordinance on behalf of the Town Council.

**SECTION 4:** 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 operating an electric cooperative utility within the Town. The Town hereby expressly reserves the right to grant, at any time, like rights as it may see fit to any other person or entity for the purpose of furnishing utility services, to and for the Town and the inhabitants thereof in the Cooperative Areas.

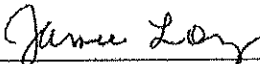
**SECTION 5:** This Ordinance shall become effective on or about 12-17, 2020 (the "Effective Date") and applies to all collections on or after that date.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF ANNETTA, TEXAS ON THIS THE 17 DAY OF December, 2020

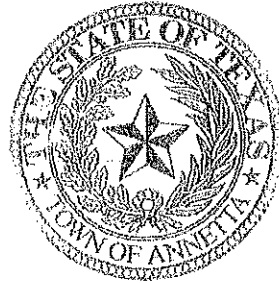
APPROVED:

  
\_\_\_\_\_  
Bruce Pinokard  
Mayor, Town of Annetta

ATTEST:

  
\_\_\_\_\_  
Town Secretary

SEAL:



ACCEPTANCE:

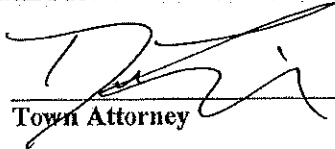
Tri-County Electric Cooperative, Inc.

By:

  
\_\_\_\_\_  
Darryl W. Schriver  
President & CEO

Street Address:  
200 Bailey Ranch Road  
Aledo, Texas 76008

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Town Attorney