TOWN OF POETRY, TEXAS
ORDINANCE NO. 2021-09-01

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF POETRY, TEXAS GRANTING TO FARMERS ELECTRIC COOPERATIVE, INC., ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC POWER FRANCHISE TO USE THE PRESENT AND FUTURE STREETS, ALLEYS, HIGHWAYS, PUBLIC UTILITY EASEMENTS, PUBLIC WAYS AND PUBLIC PROPERTY OF THE TOWN OF POETRY, TEXAS, IN ACCORDANCE WITH STATE LAW; PROVIDING FOR COMPENSATION THEREFOR; PROVIDING FOR THE INCORPORATION OF PREMISES; APPROVING THE TERMS OF THE FRANCHISE AGREEMENT AS PROVIDED HEREIN; PROVIDING FOR THE ADOPTION OF AN APPROPRIATE FRANCHISE FEE APPLICABLE TO SERVICES PROVIDED; PROVIDING A TERM OF SAID FRANCHISE AGREEMENT; PROVIDING FOR WRITTEN ACCEPTANCE OF THIS FRANCHISE BY FRANCHISEE; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT; PROVIDING A CUMULATIVE REPEALER CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR ENROLLMENT AND ENGROSSMENT; PROVIDING FOR THE REPEAL OF ALL EXISTING FRANCHISE ORDINANCES TO FARMERS ELECTRIC COOPERATIVE, ITS PREDECESSORS AND ASSIGNS; AND FINDING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC.

WHEREAS, the Town of Poetry, Texas (the "Town") is a general law municipal corporation duly organized and validly existing under the laws of the State of Texas and located within Kaufman and Hunt Counties, Texas; and

WHEREAS, on November 3, 2020 the Town of Poetry, Texas (the "Town") incorporated and ordinances granting franchise authority are now required; and

WHEREAS, the Town and Farmers Electric Cooperative, Inc. desire to execute a franchise agreement setting the terms and conditions of the franchise granted to Farmers Electric Cooperative, Inc.; and

WHEREAS, the Town is legally authorized to regulate and franchise the use of Town owned rights of way; and

WHEREAS, all legal prerequisites for the passage of this Ordinance have been met, including but not limited to the requirements of the Texas Open Meetings Act; and

WHEREAS, the Town Council of the Town of Poetry, Texas (the "Town Council") has found that the passage of this Ordinance serves the best interests of the health, safety, and welfare of the public.

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

SECTION 1. RECITALS

The Town Council hereby finds that the statements set forth in the recitals of this Ordinance are true and correct, and the Town Council hereby incorporates such recitals as part of this Ordinance.

SECTION 2. GRANT OF AUTHORITY:

That there is hereby granted to Farmers Electric Cooperative, Inc., its successors and assigns (herein called "Company"), the right, privilege and franchise to use, occupy, have, acquire, erect, install, construct, reconstruct, extend, upgrade, maintain, use, lease, remove, replace, repair and operate in, along, under and across the present and future streets, alleys, highways, public utility easements, public ways and other public property (Public Rights-of-Way) of the Town of Poetry, Texas (herein called "Town") an Electric Power Utility System, with all necessary or desirable appurtenances (including underground conduits, poles, towers, wires, transmission lines, telephone and communication lines, and other structures for its own use), (herein called "Facilities") for the purpose of selling, distributing, and transmitting electricity to the Town, the inhabitants thereof, and persons, firms and corporations beyond the corporate limits thereof, for the term set out in Section 26. For purposes of this Ordinance, Electric Power Utility System shall mean Company's system of cables, wires, lines, poles, towers, anchors, guy wires, insulators, transformers, substations, conduits, ducts, and any associated equipment or plant, or other facilities designed and constructed generally for the purpose of producing, transmitting, or distributing electricity to or from customers or locations within the Town.

SECTION 3. CONSTRUCTION, MAINTENANCE, OPERATION AND RELOCATION OF FACILITIES:

Poles, towers and other structures shall be so erected as not to unreasonably interfere with traffic over streets, alleys and highways.

The Town reserves the right to lay, and permit to be laid, storm, sewer, gas, water, wastewater and other pipelines, cables, and conduits, or other improvements and to do and permit to be done any underground or overhead work that may be necessary or proper in, across, along, over, or under Public Rights-of-Way occupied by Company. The Town 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 the like. Upon request by Town, Company shall relocate its facilities at the expense of the Town except as otherwise required by Section 37.101(c) of the Texas Public Utility Regulatory Act (PURA), which statutory provision currently states, the governing body of a municipality may require an electric utility to relocate the utility's facility at the utility's expense to permit the widening or straightening of a street. Town and Company further agree that widening and straightening of a street 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). All costs and expense associated with the aforementioned changes to Company facilities shall be paid for, in advance, by the Town. Upon receiving (i) the reasonable and lawful request, (ii) all necessary, required, and approved final plans based on the Town's engineering and/or planning requirements, (iii) not less than ninety (90) days' written notice and (iv) the advance payment from the Town, the Company shall use commercially reasonable efforts to comply with the Town's request, subject to the availability of materials and equipment. Company shall, except in

cases of emergency conditions or work incidental in nature, obtain a permit, if required by Town ordinance, prior to performing work in the Public Rights-of-Way, except in no instance shall Company be required to pay fees or bonds related to its use of the Public Rights-of-Way, despite the Town's enactment of any ordinance providing the contrary. Company shall construct its facilities in conformance with the applicable provisions of the National Electric Safety Code.

If the Town requires the Company to adapt or conform its Facilities, or in any manner to alter, relocate, or change its Facilities to enable any other corporation or person to use, or use with greater convenience, said street, alley, highway, or public way, the Company shall not be bound to make such changes until such other corporation or person shall have undertaken, with good and sufficient bond, to reimburse the Company for any costs, loss, or expense which will be caused by, or arises out of such change, alteration, or relocation of Company's Facilities.

If Town abandons any Public Rights-of-Way in which Company has facilities, such abandonment shall be conditioned on Company'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 Company for all removal or relocation expenses if Company 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 request the Company to remove 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.

In the event that the Town requests the move of Company's Facilities located in private easements or private rights-of-way, the Town shall first provide a description of the Facilities, its location and relocation, change, alteration or modification requirements and request an estimate of the costs for the proposed project. Company shall estimate the costs of the proposed project within ninety (90) days and provide such estimate to the Town. Any payment owed to Company in association with removal or relocation estimate shall be remitted to Company in full within thirty (30) days of the receipt of Company's invoice. The Town hereby agrees that Company has no obligation to perform until the Town's payment has been received by Company.

Nothing contained within this Ordinance shall affect the right of Company to make claims, including claims for costs or damages, in the event that the Town requires or requests Company to move, relocate, change, alter or modify any of the Facilities owned by Company located in private easements or private rights-of-way.

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

Company, its successors and assigns, is hereby granted the right, license, privilege and or permission needed to trim or cut vegetation or use any other commercially acceptable

method, such as herbicide, to prevent any detrimental effect on the Facilities and to keep the Rights-of-Way, easements, and other public grounds and places clear and accessible for construction, operation, maintenance and repair of the Facilities. Reasonable tree trimming and vegetation control on the Town's Rights-of-Way, performed as ordinary, routine, operations, and maintenance of Town's Electric Power Utility System, shall be allowed. Company shall restore all pre-existing surface conditions of, and appurtenances on, any public land disturbed by Company pursuant to this Agreement in any capacity to pre-disturbance conditions, including but not limited to, soil conditions, sodding, fencing, landscaping, and irrigation systems.

Nothing contained in this Ordinance shall be interpreted or construed to require Company to accept, or to permit or allow the Town, other utility companies, or any other third party, to place or install attachments for their own benefit and use, into or on the Facilities. An additional, separate, non-contingent written agreement between Company and the entity requesting such use shall be prerequisite to the installation of any such attachment or such use of the Facilities by the Town. The 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 4. INDEMNITY AND INSURANCE:

A. **IN CONSIDERATION OF THE GRANTING OF THIS FRANCHISE, COMPANY, SHALL, AT ITS SOLE COST AND EXPENSE, INDEMNIFY AND HOLD THE TOWN, AND ITS PAST AND PRESENT OFFICERS, AGENTS AND EMPLOYEES (THE "INDEMNITIES") HARMLESS AGAINST ANY AND ALL LIABILITY ARISING FROM SUITS, ACTIONS OR CLAIMS REGARDING INJURY OR DEATH TO ANY PERSON OR PERSONS, OR DAMAGES TO ANY PROPERTY ARISING OUT OF OR OCCASIONED BY THE INTENTIONAL AND/OR NEGLIGENT ACTS OR OMISSIONS OF COMPANY CONSTRUCTION, MAINTENANCE AND OPERATION OF COMPANY'S SYSTEM IN THE PUBLIC RIGHTS-OF-WAY, INCLUDING ANY COURT COST, 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 COMPANY, ITS OFFICERS, AGENTS OR EMPLOYEES, AND DOES NOT APPLY TO THE EXTENT SUCH LOSS, DAMAGE OR INJURY IS ATTRIBUTABLE TO THE NEGLIGENCE OR WRONGFUL ACT OR OMISSION OF THE TOWN, OR THE TOWN'S OFFICERS, AGENTS, OR 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 COMPANY AND THE TOWN.

C. IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OR FAULT OF BOTH COMPANY AND THE TOWN, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY BETWEEN THE TOWN AND COMPANY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND 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 COMPANY AND THE TOWN, RESPONSIBILITY FOR ALL COST OF DEFENSE SHALL BE APPORTIONED BETWEEN THE TOWN AND COMPANY BASED UPON THE COMPARATIVE FAULT OF EACH.

D. IN FULFILLING ITS OBLIGATION TO DEFEND AND INDEMNIFY TOWN, COMPANY SHALL HAVE THE RIGHT TO SELECT DEFENSE COUNSEL, SUBJECT TO TOWN'S APPROVAL, WHICH WILL NOT BE UNREASONABLY WITHHELD. COMPANY SHALL RETAIN DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF TOWN'S WRITTEN NOTICE THAT TOWN IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS FRANCHISE. IF COMPANY FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, TOWN SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND COMPANY SHALL BE LIABLE FOR ALL REASONABLE DEFENSE COSTS INCURRED BY TOWN, EXCEPT AS OTHERWISE PROVIDED IN SECTION 4(B) AND 4(C).

E. Company shall, at its sole cost and expense, obtain, maintain, or cause to be maintained, and provide, throughout the term of this 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 of five million dollars ($5,000,000) per occurrence and ten million dollars ($10,000,000) aggregate. This coverage shall include the following:
   (1) Products/completed operations to be maintained for the warranty period.
   (2) Personal and advertising injury.
   (3) Contractual liability.
   (4) 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) 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 Coverage B employers' liability are required. Company must provide the Town with a waiver of subrogation for worker's compensation claims.

4. Company must name the Town, which includes all authorities, commissions, divisions and departments, as well as elected and appointed officials, agents, and volunteers, as an additional insureds under the coverage required herein, except Worker's Compensation Coverage. The certificate of insurance must state that the Town is an additional insured. Additionally, a waiver of subrogation shall be provided on all policies.

5. Company will require its contractors and subcontractors to maintain, at their sole cost and expense, insurance coverage in commercially reasonable amounts. Such coverage shall include general liability, automobile, and statutory workers' compensation benefits, as applicable to the work to be performed.

The Company will provide proof of its insurance in accordance with this Franchise within 30 days of the effective date of the Franchise and annually thereafter.

SECTION 5. NON-EXCLUSIVE FRANCHISE:

This franchise is not exclusive, and nothing herein contained shall be construed so as to prevent the Town from granting other like or similar rights, privileges and franchises to any other person, firm, or corporation. Any Franchise granted by the Town to any other person, firm, or corporation shall not unreasonably interfere with this Franchise.

SECTION 6. PAYMENTS TO TOWN:

In consideration of the grant of said right, privilege and franchise by the Town 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 Town may impose or hereafter be authorized or empowered to levy and collect, excepting only the usual general or special ad valorem taxes which the Town is authorized to levy and impose upon real and personal property, sales and use taxes, and special assessments for public improvements, Company shall pay to the Town the following:

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 Company from the sales of all Electricity by the Company within the Town (the "Fee"). For the purposes of this Section 6., "Gross Receipts" shall mean all amounts classified as electric service revenues collected by the Company from the Company's Members for the provision of Electric Utility Service received by the Company's Members at a location within the Town. The term Gross Receipts shall exclude: revenue billed but not received; reimbursements for damage to the Facilities; reimbursements for relocation cost of moving the 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; revenues from materials or equipment sales; principal and interest payments on amounts loaned by the Company; membership fees; deposits; revenues and receipts received from electric utilities for the use of transmission lines, Facilities, and wholesale distribution sales; rental or fees paid by third parties for joint use attachments to or other use of the Facilities; other miscellaneous non-operating revenues and receipts not directly related to the provision of Electricity (i.e. interest income on Company bank accounts); or any receipts required to be remitted by the Company to third parties. For purposes of this Section 6. Electricity means the sale, distribution, conveyance, or other transmission of energy (kWh) and power (kW) and related services within the Town by the Company.

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 Company is expressly authorized by the Town to surcharge each of Company's Members within the Town the full amount of the Fee attributable to that Member. The Company's obligation to pay the Fee shall extend for so long as, but no longer than and only to the extent that, the Company may lawfully surcharge the Fee to Company customers within the Town.

C. In no event shall the Company 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 Town. Should the Company be required, at any time, to pay a fee or tax to any entity other than the Town, for the use and occupancy of all or any part of the Public Rights-of-Way of said Town, the amount of the fee herein payable to the Town 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 Company be required to pay 1% of its Gross Receipts to another entity as an additional fee, the fee to the Town would be reduced to 3% of the Gross Receipts.

D. For the period beginning contemporaneously with the effective date of this ordinance and ending December 31, 2023, the Company shall pay to Town the amounts due contemplated under this Section 6 on the following timeline:

a. September 30, 2021: for fees collected from the effective date of this ordinance through August 31, 2021;

b. December 31, 2021: for fees collected from September 1, 2021 through November 30, 2021;

c. March 31, 2022: for fees collected from December 1, 2021 through February 28, 2022;

d. June 30, 2022: for fees collected from March 1, 2022 through May 30, 2022;

e. September 30, 2022: for fees collected from June 1, 2022 through August 31, 2022;

f. December 31, 2022: for fees collected from September 1, 2022 through November 30, 2022.

g. March 31, 2023: for fees collected from December 1, 2022 through February 28, 2023;

h. June 30, 2023: for fees collected from March 1, 2023 through May 30, 2023;

i. September 30, 2023: for fees collected from June 1, 2023 through August 31, 2023;

j. December 31, 2023: for fees collected from September 1, 2023 through November 30, 2023;

k. Subsequent to December 31, 2023, payments of fees collected will be made as contemplated by Section 6.A. herein.

SECTION 7. BOOKS AND RECORDS AND AREA OF TOWN AFFECTED

A. Town may, upon reasonable notice to Company have the books and records of Company examined by a representative of said Town to ascertain the correctness of the reports agreed to be filed herein. Company shall make available, during normal working hours and upon reasonable notice, such personnel and records as Town may in its reasonable discretion request in order to complete such audit, and shall make no charge to the Town therefore. Company shall assist Town in its review by providing all requested information no later than thirty (30) days after receipt of a request. The cost of the audit shall be borne by Town unless the audit discloses that Company has underpaid the franchise fee by 10 percent or more, in which case the reasonable costs of the audit shall be reimbursed to the Town by Company. If such an examination reveals that Company has underpaid Town, then upon receipt of written notification from Town regarding the existence of such underpayment, Company shall undertake a review of Town's claim and if said underpayment is confirmed, remit the amount of underpayment to Town. Should Company determine through examination of its books and records that Town has been overpaid, upon receipt of written notification from Company regarding the existence of such overpayment, Town shall review Company's claim and if said overpayment is confirmed, remit the amount of overpayment to Company.

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

C. This Ordinance shall extend to any and all territory within the incorporated limits of the Town served by the Company, and to that which may be annexed by the Town during the term of this Ordinance. In the event of deannexation by the Town this Ordinance shall be reduced to the remaining territory used by the Company that continues to be within the Town.

D. In the event of annexing or deannexing territory, the Town shall provide written notice to the Company. At a minimum, notice to the Company shall include a copy of the Town engineer's map of the annexed or deannexed territory along with the related

ordinance affecting the annexed or deannexed territory. Upon receiving notice and verification from the State of Texas of the Town's annexation or deannexation, the Company shall identify all customers located within such annexed or deannexed area and adjust its maps and accounting records accordingly. Company shall have one hundred eighty (180) days from such notice to begin collecting and paying the fee for any revenues received from the Company's Members or Members residing in the newly annexed territories.

SECTION 8. ACCEPTANCE OF FRANCHISE:

A. In order to accept this franchise, Company must file with the Town Secretary its written acceptance of this franchise ordinance within sixty (60) days after its final passage and approval by Town. If such written acceptance of this franchise ordinance is not filed by Company, the franchise ordinance shall be rendered null and void.

B. When this franchise ordinance becomes effective, all previous ordinances of Town granting franchises held by Company, if any, shall be automatically canceled and annulled, and shall be of no further force and effect.

SECTION 9. TERMINATION:

A. Right to Terminate. In addition to any rights set out elsewhere in this Ordinance, Town reserves the right to terminate the Franchise and all rights and privileges pertaining thereto, in the event that Company materially violates any material provision of this Franchise.

B. Procedures for Termination.

(1) Town may, at any time, terminate this Franchise for a continuing material violation by Company of any material terms hereof. In such event, Town shall give to Company written notice, specifying all grounds on which termination or forfeiture is claimed, by registered mail, addressed and delivered to Company at the address set forth in Section 14 hereof. Company shall have one hundred twenty (120) days after the receipt of such notice within which to cease such violation and comply with the terms and provisions hereof. In the event Company fails to cease such violation or otherwise comply with the terms hereof, then Company's Franchise is subject to termination under the following provisions. Provided, however, that if Company commences work or other efforts to cure such violations within sixty (60) working days after receipt of written notice and shall thereafter prosecute such curative work with reasonable diligence until such curative work is completed, then such violations shall cease to exist, and the Franchise will not be terminated.

(2) Termination shall be declared only by written decision of the Town Council after an appropriate public proceeding whereby Company is afforded the full opportunity to be heard and to respond to any such notice of violation or failure to comply. Company shall be provided at least ninety business (90) days prior written notice of any public hearing concerning the termination of the Franchise. In addition, ten (10) days' notice by publication shall be given of the date, time and place of any public hearing to interested members of the public.

(3) Town, after full public hearing, and upon finding material violation or material failure to comply, may terminate the Franchise or excuse the violation or failure to comply, upon a showing by Company of mitigating circumstances or upon a showing of good cause of said violation or failure to comply as may be determined by the Town Council.

(4) Nothing herein stated shall preclude Company from appealing the final decision of the Town Council to a court or regulatory authority having jurisdiction.

(5) Nothing herein stated shall prevent Town from seeking to compel compliance by suit in any court of competent jurisdiction if Company fails to comply with the terms of this Franchise after due notice and the providing of adequate time for Company to comply with said terms.

(6)The Town recognizes the Company's right and obligation to provide electric utility service in accordance with the Company'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 Company's statutory obligation to provide electric utility service within the Town.

SECTION 10. NO THIRD-PARTY BENEFICIARIES:

This Franchise is made for the exclusive benefit of the Town and Company, and nothing herein is intended to, or shall confer any right, claim, or benefit in favor of any third party.

SECTION 11. SUCCESSORS AND ASSIGNS:

A. The rights granted by this franchise inure to the benefit of the Company. The Company may, without consent by Town, transfer or assign the rights granted by this franchise to a parent, subsidiary or affiliate, provided that such parent, subsidiary or affiliate assumes all obligations of Company hereunder and is bound to the same extent as Company hereunder, and has net capital and liquid assets reasonably equivalent to Company's as of the month immediately preceding the transfer or there are provided other guarantees or assurances of the transferee's or assignee's financial ability to perform this franchise reasonably acceptable to the Town. Company shall give Town written notice thirty (30) days prior to such assignment.

B. Town will have the right to approve the transfer or assignment of the franchise, except as provided in Section 11.A. above. Town shall grant approval unless the Assignee is materially weaker than Company. For the purpose of this section, "materially weaker" means that the long-term unsecured debt rating of the Assignee is less than investment grade as rated by both S&P and Moody's. If the Assignee is materially weaker, the Town may request additional documents and information reasonably related to the transaction and the legal, financial, and technical qualifications of the Assignee. The Town will grant approval to a materially weaker proposed Assignee or Transferee unless withheld for good cause such as: (1) the failure of the proposed Assignee or Transferee to agree to comply with all provisions of this Ordinance and such additional conditions as the Council may prescribe in order to remedy existing conditions of non-compliance, and (2) the failure of

the proposed Assignee or Transferee to provide assurances reasonably satisfactory to the Council of its qualifications, character, the effect of the Transfer and such other matters as the Council deems relevant. Town agrees that said approval shall not be unreasonably delayed. Any such assignment or transfer shall require that said Assignee assume all obligations of Company and be bound to the same extent as Company hereunder. If within the first ninety (90) days after assignment to Assignee, Town identifies a failure to comply with a material provision of this franchise, Town shall have the right, after notice and opportunity for hearing before Council, to terminate this franchise.

SECTION 12. COMPLIANCE WITH LAWS AND ORDINANCES:

This Franchise is granted subject to the laws of the United States of America and its regulatory agencies and commissions and the laws of the State of Texas and all other generally applicable ordinances of the Town, not inconsistent herewith, including, but not limited to, ordinances regulating the use of Public Rights-of-Way, as amended.

SECTION 13. NO WAIVER:

Either Town or Company shall have the right to waive any requirement contained in this Ordinance, which is intended for the waiving party's benefit, but, except as otherwise provided herein, such waiver shall be effective only if in writing executed by the party for whose benefit such requirement is intended. No waiver of any breach or violation of any term of this Ordinance shall be deemed or construed to constitute a waiver of any other breach or violation, whether concurrent or subsequent, and whether of the same or a different type of breach or violation.

SECTION 14. NOTICES:

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: (1) delivered in person to the address set forth below; (2) 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; (3) delivered to such party by courier receipted delivery; or (4) by prepaid overnight delivery service. Either party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is actually received by the other party, the last address of such party designated for notice shall remain such party's address for notice. Notice shall be deemed received (1) upon receipt in the case of personal delivery; (2) upon date and signature by the receiving party of return receipt in the case of USPS delivery; or (3) upon confirmation of delivery by an overnight delivery service.

To Town of Poetry
Attn: Town Administrator
20425 County Road 986
Poetry, Texas 75160

To Farmers Electric Cooperative, Inc.:
Attn: Mark Stubbs
2000 E. Interstate 30

Greenville, Texas 75402

SECTION 15. RENEGOTIATION:

If either Town or Company requests renegotiation of any term of this Ordinance, Company and Town agree to renegotiate in good faith revisions to any and all terms of this Ordinance. If the parties cannot come to agreement upon any provisions being renegotiated, then the existing provisions of this Ordinance will continue in effect for the remaining term of the Franchise.

SECTION 16. PREVIOUS ORDINANCES:

When this Franchise becomes effective, all franchise ordinances and parts of franchise ordinances applicable to Company or its predecessors in interest granted by the Town, if any, are hereby repealed.

SECTION 17. SEVERABILITY:

Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional 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. Lavon hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.

SECTION 18. PARAGRAPH HEADINGS. CONSTRUCTION:

The paragraph headings contained in this ordinance are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the preparation of this ordinance and this ordinance shall not be construed either more or less strongly against or for either party.

SECTION 19. CHOICE OF LAW/VENUE.

The Contractor shall comply with all Federal and State laws and Town Ordinances and Codes applicable to the Contractor's operation under this Contract. The resulting specifications and the Contract therefrom shall be fully governed by the laws of the State of Texas, and shall be fully performable in Kaufman or Hunt County, Texas, where exclusive venue for any proceeding arising hereunder will lie.

SECTION 20. SIGNATORY:

The Mayor is hereby authorized to execute the franchise agreement and any necessary counterparts.

SECTION 21. FRANCHISE FEE ADOPTED:

The franchise fees for collection of solid waste within the Town as set forth in the Agreement, are hereby adopted as set out in the Agreement, subject to adjustments as provided in the Agreement, or as further provided by ordinance of the Town.

SECTION 22. CUMULATIVE REPEALER:

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the Town and shall not operate to repeal or affect any such other ordinances, except insofar as the provisions thereof are inconsistent or in conflict with the provisions hereof, and to the extent of such conflict, if any, such other ordinances are hereby repealed.

SECTION 23. SEVERABILITY:

It is hereby declared by the Town Council that if any of the sections, paragraphs, sentences, clauses, phrases, words, or provisions of this ordinance should be declared unconstitutional or otherwise invalid for any reason, such event shall not affect any remaining sections, paragraphs, sentences, clauses, phrases, words, or provisions of this ordinance.

SECTION 24. ENROLLMENT/ENGROSSMENT:

The Town Secretary is hereby directed to engross and enroll this Ordinance by copying the exact Caption and Effective Date clause in the minutes of the Town Council and by filing this Ordinance in the Ordinance records of the Town.

SECTION 25. OPEN MEETING:

That it is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public as required by law, and that public notice of the time, place, and purpose of said meeting was given all as required by Section 551.041, Texas Government Code.

SECTION 26. EFFECTIVE DATE; TERM:

If Company accepts this ordinance, it becomes effective as of June 30, 2021. This Ordinance shall become effective upon Company's written acceptance hereof, said written acceptance to be filed by Company with the Town within sixty (60) days after final passage and approval hereof. The right, privilege and franchise granted hereby shall expire on July 15, 2044; and shall be subject to a renewal option for a period of twenty (20) years provided that, unless written notice is given by either party hereto to the other not less than sixty (60) days before the expiration of this franchise agreement, it shall be automatically renewed thereafter for like periods until canceled by written notice given not less than sixty (60) days before the expiration of any such renewal period.

PASSED AND APPROVED by the Town Council of the Town of Poetry, Texas this 21st day of September, 2021.

Tara Senkevech 9-21-21

Tara Senkevech , Mayor Date

ATTEST: Dorothy Dillon

Notary Public

POETRY TEXAS

DOROTHY DILLON NOTARY PUBLIC STATE OF TEXAS ID 125073917 EXP. 10-01-2024