

ORDINANCE NO. _____

AN ORDINANCE GRANTING TO UNITED ELECTRIC COOPERATIVE SERVICES, INC., ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC POWER FRANCHISE TO USE THE PRESENT AND FUTURE STREETS, ALLEYS, HIGHWAYS, PUBLIC UTILITY EASEMENTS, PUBLIC WAYS AND OTHER PUBLIC PROPERTY (PUBLIC RIGHTS-OF-WAY) OF MANSFIELD, TEXAS, PROVIDING FOR THE REPEAL OF ALL PRIOR FRANCHISE ORDINANCES TO UNITED ELECTRIC COOPERATIVE SERVICES, INC., ITS PREDECESSORS AND ASSIGNS, PROVIDING FOR COMPENSATION THEREFOR, PROVIDING FOR AN EFFECTIVE DATE AND A TERM OF SAID FRANCHISE, PROVIDING FOR WRITTEN ACCEPTANCE OF THIS FRANCHISE, AND FINDING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC.

BE IT ORDAINED BY THE CITY COUNCIL OF MANSFIELD, TEXAS:

SECTION 1. GRANT OF AUTHORITY:

A. The City of Mansfield, Texas ("City") hereby grants to United Electric Cooperative Services, Inc., its successors and assigns (herein called "Company"), the right, privilege and franchise to construct, extend, maintain, repair, upgrade, remove, relocate, reconstruct 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 City, electric power lines with all necessary or desirable appurtenances including underground conduits, poles, towers, wires, transmission lines and other structures, 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 10, subject to this consent by the City which is granted in accordance with Texas Utilities Code, Section 181.043. City also hereby grants to Company, for the term set out in Section 10, the following additional rights: (1) the right to install separate telephone and separate communication lines in the Public Rights-of- Way solely for the Company's own use; (2) the right to use Company's electric power lines to send and receive data solely for Company's own use; and (3) the right to use Company's electric power lines to provide "broadband over power lines" as defined in Section 43.003 of the Texas Utilities Code and related uses as permitted under Section 43.101 of the Texas Utilities Code. The Company's right to use its electric power lines to provide broadband over power lines services (BPL) shall be in accordance with state law.

B. The provisions set forth in this ordinance represent the terms and conditions under which Company shall construct, extend, maintain, repair, upgrade, remove, relocate, reconstruct and operate its system facilities within the Public Rights-of-Way of the City. Company, by its acceptance of this Franchise, agrees that all such lawful regulatory powers and rights as the same may be from time to time vested in the City shall be in full force and effect and subject to the exercise thereof by the City at any time. The grant to Company in Section 1 is subject to the terms and conditions

contained herein, and is subject, to the extent applicable and controlling, to the Texas Constitution, **Texas Public Utilities Regulatory Act (PURA)**, and, except as specifically provided herein, the City's Code of Ordinances, all as amended, and subject to applicable and controlling local, state and federal laws, including the rules and regulations of any and all agencies thereof, whether presently in force or whether enacted or adopted at any time in the future, except as specifically provided herein. This Franchise agreement shall in no way affect or impair the rights, obligations or remedies of the parties under PURA, other state or federal laws, rules or regulations, and the Texas Constitution to the extent such laws, rules, or regulations are applicable and controlling. 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 Company believes is in violation of any federal, state, or local law or regulation. The City shall provide Company notice and opportunity to review and comment upon proposed ordinances relating to the Public Rights-of-Way.

C. This Franchise does not grant to the Company the right, privilege or authority to engage in any other activities within the City other than those set forth in Section 1.A.

SECTION 2. USE OF PUBLIC RIGHTS-OF-WAY:

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

B. Company 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 Public Rights-of-Way if connection does not require a pavement cut in the Public 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 City reasonable advance notice, and obtain a permit, (if required by City 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 City's enactment of any ordinance providing the contrary. Company shall construct and maintain its facilities in conformance with the applicable provisions of the National Electric Safety Code or such comparable standards as may be adopted, provided comparable standards are not in conflict with the National Electric Safety Code, and in a good and workmanlike manner.

C. The City retains the right to make visual, non-invasive inspections of the Company's facilities and upon reasonable notice and request, to require the Company to make available for inspection records or data to demonstrate its current compliance with the terms of this Franchise.

D. The location of Company's facilities in the Public Rights-of-Way shall be subject to approval by the City Manager or the City Manager's designated representative prior to construction; provided however, said approval shall not be unreasonably withheld. This approval will be obtained through the City's permitting process (if a permit is required by City Ordinance). In the event of a conflict between the location of the proposed facilities of Company and the locations of the facilities of City or other Public Rights-of-Way users which exist or have been authorized by the City, the City shall resolve the conflict and determine the location of the respective facilities within the Public Rights-of-Way. The City will designate a reasonable alternate location for Company's facilities if a reasonable alternate location exists. The Company will use reasonable efforts to work with the City to avoid installing its facilities in park or City property other than utility easements or street, alley, or highway right-of-way. Company has the right to request City Council review of this or any actions concerning Company's use of the Public Rights-of-Way.

E. The Company shall restore at the Company's expense, all work within the City Rights-of-Way, to a condition equally as good as it was prior to being disturbed by Company's construction, excavation, repair or removal or to a condition agreed upon by City and Company. In the event the City shall adopt a Right-of-Way Management Ordinance, the Company shall restore the City's Right-of-Way as described above and in accordance with such ordinance, as applicable, provided such ordinance does not conflict with the terms of this Franchise Ordinance.

F. Company shall cooperate with the City in providing complete information regarding the location of current and future overhead and underground conduits, other appurtenances, wires and poles within City's Public Rights-of-Way. Reproducible copies of maps showing the location (horizontal and vertical information) of all of Company's system facilities, including overhead and underground wires and poles within the Public Rights-of-Way shall be furnished to the City upon request. The maps shall be provided in electronic digital format, if available.

SECTION 3: RELOCATION AND ABANDONMENT:

A. The City reserves the right to lay, and permit to be laid, storm, sewer, gas, water, wastewater and other pipe lines, cables, and conduits, or other improvements or to do and permit to be done any underground or overhead work that City in its sole discretion determines may be necessary or proper in, across, along, over, or under Public Rights-of-Way occupied by Company. 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 like facilities of the City and to require the relocation of Company's facilities if reasonably necessary. In the event the exercise of such rights by the City are reasonably anticipated to necessitate the relocation of facilities of the Company, City shall provide Company with at least ninety (90) days prior written notice and shall specify a new location for such facilities along the Public Rights-of-Way of the City. The City shall have the right to remove, repair, or abate in a reasonable manner any part of the Company's facilities that is unreasonably and

unnecessarily dangerous to life or property, and if Company, after reasonable advance notice, fails or refuses to cure such condition within a reasonable time. In the event of such failure to cure on the part of Company, the City shall have the power to remove, repair, or abate the same to the extent reasonably necessary, at the expense of Company, without compensation or liability for damages to Company.

B. The Company shall relocate its facilities at its expense to permit the widening, straightening, or any change whatsoever of a street, including, but not limited to the addition of any acceleration, deceleration, center or side turn lanes, sidewalks, alleys, and like property, when reasonable and necessary and to permit the movement of any storm water, drainage water or sewer facilities necessitated by street widening, provided that the City shall provide Company with at least sixty (60) days prior written notice and shall specify a new location for such facilities along the Public Rights-of-Way of City.

C. If the City 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 reimbursed or committed in writing, with good and sufficient bond, to timely 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.

D. If City receives a request for or itself initiates the abandonment of any Public Rights-of-Way in which Company has facilities, Company shall be notified of such and given opportunity to comment about the impact of the proposed abandonment. If the City adopts an ordinance which abandons any Public Rights-of-Way in which Company has facilities in use, such abandonment shall provide that, to the extent permitted by law, it is conditioned upon (a) Company's right to maintain its use of the abandoned Public Rights-of-Way and (b) the obligation of each 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 requests the Company to remove or relocate its facilities and Company 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 and prepayment or bonding of such amount may be required by the Company prior to any such relocation.

E. When Company is required by City to remove or relocate its poles, towers, conduits, cables, and other facilities to accommodate construction of streets and alleys by City, and Company is eligible under Federal, State, County, City or other local agencies or programs for reimbursement of costs and expenses incurred by Company

as a result of such removal or relocation and such reimbursement is required to be handled through City, Company costs and expenses shall be included in any application by City for reimbursement only when the City applies for a reimbursement where the eligible removal or relocation costs are delineated separately such that the City has constructive notice that Company relocation costs are eligible for reimbursement and only if Company submits its costs and expenses documentation to City prior to the filing of the application. City shall not be required to include Company's costs and expenses in an application if the application calls for a lump sum or total project cost representing all costs together rather than an itemized list of costs eligible for reimbursement. City shall provide reasonable prior written notice to Company of the deadline for Company to submit documentation of the costs and expenses of such relocation to City. Upon receipt of reimbursement as outlined above, the City shall remit to the Company its portion related to the relocation or removal of Company's facilities only if the reimbursement received delineates separately Company's eligible relocation costs or the City's costs have been paid in full. Notwithstanding the foregoing, City shall not be responsible for any relocation costs to the extent Company is reimbursed for such relocation costs from another source; and in the event of receipt by Company of reimbursement from a third party for relocation costs previously paid by City to Company, Company shall return to City the duplicated payment. This paragraph applies exclusively to the Company's recovery of its relocation costs and nothing herein shall prohibit the City from denying a request by Company to increase or modify its other rates, charges, fees or tariffs, or prohibit Company from requesting or implementing any such increase or modification. Further, notwithstanding the foregoing, nothing herein shall limit Company's right to seek reimbursement for any relocation costs from any source.

SECTION 4. INDEMNIFICATION:

A. In consideration of the granting of this Franchise, Company shall, at its sole cost and expense, indemnify, defend, and hold harmless the City, and its past and present officers, agents and employees (the "Indemnitees") against any and all liability arising from suits (including court costs and reasonable related expenses incurred by City with respect to any liability against which City is indemnified by the Company), actions or claims of injury to any person or persons, or damages to any property 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 caused by Company or any of its officers, agents, or employees, intentional and/or negligent acts or omissions in connection with Company's construction, maintenance and operation of Company's facilities in the Public Rights-of-Way.

B. The indemnity provided for in this paragraph shall not apply to any liability determined by a court of competent jurisdiction to have resulted from the sole negligence or intentional acts or omissions of the City, its officers, agents and employees.

C. In the event of joint and concurrent negligence or fault of both the Company and the City, responsibility and indemnity, if any, shall be apportioned comparatively between the City and Company in accordance with the laws of the State of Texas without, however, waiving any governmental immunity available to the City under Texas law and without waiving any of the defenses of the parties under Texas law. Further, in the event of joint and concurrent negligence or fault of both the Company and the City, responsibility for all costs of defense shall be apportioned between the City and Company based upon the comparative fault of each. It is not the intent of the City or Company to create any right or claim for the benefit of any third party. This indemnification provision is solely for the benefit of the City and Company and does not create or grant any rights, contractual or otherwise, to any other person or entity.

D. In fulfilling its obligation to defend and indemnify City, the Company shall have the right to select defense counsel, subject to City's approval, which will not be unreasonably withheld. The Company shall in cooperation with its insurers, endeavor to retain defense counsel within seven (7) business days of receipt of City's written notice that City is invoking its right to indemnification under this Franchise. If the Company fails to retain defense counsel within such time period, City shall have the right to retain defense counsel on its own behalf, but subject to subsequent selection and substitution of defense counsel by Company as above provided in coordination with its insurer, as applicable and Company shall be liable for all reasonable defense costs (including court costs and reasonable related expenses) incurred by City with respect to any liability against which City is indemnified by the Company.

SECTION 5. LIABILITY INSURANCE: 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 a self-insurance plan to the extent permitted by applicable law or by obtaining insurance which meets the following:

- A. Commercial general or excess liability on an occurrence or claims made form. When coverage is maintained on an occurrence basis, the minimum limits are five million dollars (\$5,000,000) per occurrence and ten million dollars (\$10,000,000) aggregate. To the extent that coverage is maintained on a claims made form, the minimum limits are ten million dollars (\$10,000,000) per occurrence and twenty million dollars (\$20,000,000) aggregate. This coverage shall include the following:
- (1) Products/completed operations to be maintained for one (1) year after termination of the Franchise.
 - (2) Personal and advertising injury.
 - (3) Contractual liability.
 - (4) Explosion, collapse, or underground (XCU) hazards.

- B. Automobile liability coverage with a minimum policy limit of one million dollars (\$1,000,000.00) combined single limit each accident. This coverage shall include all owned, hired and non-owned automobiles.
- C. Workers compensation and employers liability coverage. Statutory coverage limits for Coverage A and five hundred thousand dollars (\$500,000) 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 is required.
- D. Company must name the City, which includes all authorities, commissions, divisions and departments, as well as elected and appointed officials, agents, employees, and volunteer fire department volunteers providing services to the City, as an additional insureds under the coverage required herein, except Worker's Compensation Coverage; provided, however, that notwithstanding any other provisions to the contrary additional insureds shall be limited to persons or organizations listed above, and the including of any such person or organization as an additional insured shall only be with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by Company's acts or omissions or the actual omissions of those acting on behalf of the Company the performance of the Company's ongoing operations; or in connection with the Company's premises owned by Company or rented to Company. The certificate of insurance must state that the City is an additional insured.
- E. Coverages required to be maintained under Sections 5.A, 5.B., and 5.C. shall include a waiver of subrogation in favor of the City, its officers, agents and employees.
- F. Company will require its contractors and subcontractors to maintain insurance consistent with Company's requirements of its contractor or subcontractor for similar work performed.
- G. Company shall provide the City with evidence of the form and basis for insurance coverage or self-insurance, as applicable, within 30 days of the effective date of the Franchise and annually thereafter as applicable insurance coverages renew. Company will not be required to furnish separate proof when applying for permits.
- H. 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.

- I. The Company is required to provide the City 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.

SECTION 6. NON-EXCLUSIVITY: 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. CONSIDERATION: 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 or the costs to repair damages to the Public Rights-of-Way or to indemnify the City as required herein, Company shall pay to the City the following:

- A. On an annual basis, as authorized by Section 33.008(f) of the Texas Utilities Code, as amended, a charge of (a) \$0.0032 for calendar years one (1) through five (5) beginning with the period of January 1, 2014 through December 31, 2014 and (b) a charge of \$0.0034 for calendar years six (6) through ten (10) and any renewal period applicable pursuant to Section 10, multiplied by each kilowatt hour of electricity delivered by Company to each retail customer whose consuming facility's point of delivery is located within the City's municipal boundaries, payable as follows:
 1. The annual payment will be due and payable on or before April 1 of each year throughout the life of this Franchise. The payment will be based on each kilowatt hour of electricity delivered by Company to each retail customer whose consuming facility's point of delivery is located within the City's municipal boundaries during the preceding twelve month period ended December 31 (January 1 through December 31). The payment will be for the rights and privileges granted hereunder for the calendar year (January 1 through December 31) preceding the payment date.
 2. The first payment hereunder shall be due and payable on or before April 1, 2015 and shall be based on the period of January 1, 2014 through December 31, 2014 for the privilege period of January 1, 2014 through December 31, 2014. The final payment under this Franchise is due on or before April 1, 2025 and covers the basis

period of January 1, 2024 through December 31, 2024 and for the privilege period of January 1, 2024 through December 31, 2024; and

3. After the final payment date of April 1, 2025, Company may continue to make payments in accordance with the above schedule. City acknowledges that such continued payments will correspond to privilege periods that extend beyond the term this Franchise and that such continued payments will be recognized in any subsequent franchise agreement as full payment for the relevant periods.
- B. With each payment required by Section 7. A, the Company shall provide the City a statement by an employee of Company which certifies the payment as correct.
- C. If Company fails to pay when due any payment provided for in this Section, Company shall pay such amount plus interest from such due date until payment is received by City. Interest shall be calculated in accordance with the interest rate for customer deposits established by the PUC in accordance with Texas Utilities Code Section 183.003 for the time period involved.

SECTION 8. OTHER FRANCHISES:

A. This Section 8 applies only if, after the effective date of this Franchise Agreement:

1. Company enters into a new municipal franchise agreement or renews an existing municipal franchise agreement with another municipality; and
2. Such municipality has a population of 5,000 or more; and
3. Such new or renewed franchise agreement provides for a different method of calculation of franchise fees for use of the Public Rights-of-Way which methodology is different than a fixed fee per kilowatt hour, and such different method of calculation is arrived at by mutual agreement of Company and the other municipality as permitted under 33.008(f) of PURA; and
4. Such agreed and permitted method of calculation, if applied to the City, would result in a greater amount of franchise fees (excluding all franchise fees that may be attributable to discretionary, ancillary or other services) owed the City than under this Franchise Agreement.

B. In the event of an occurrence as described in Section 8 hereof, City shall have the option to:

1. Have Company select, within 30 days of the City's request, any or all portions of the franchise agreement with the other municipality or comparable provisions that, at Company's sole discretion, must be considered in conjunction with the different method of the calculation of franchise fees included in that other franchise agreement; and
2. Modify this Franchise agreement to include both the different method of calculation of franchise fee found in the franchise agreement with the other municipality and all of the other provisions identified by Company pursuant to Section 8.B.1. In no event shall City be able to modify the Franchise to include the different method of calculation of franchise fee found in the franchise agreement with the other municipality without this franchise also being modified to include all of the other provisions identified by Company pursuant to Section 8.B.1.

C. City may not exercise the option provided in Section 8 if any of the provisions that would be included in this Franchise are, in Company's sole opinion, inconsistent with or in any manner contrary to any then-current rule, regulation, ordinance, law, Code, or Charter of City.

D. In the event of a regulatory disallowance of the increase in franchise fees paid pursuant to City's exercise of its option under Section 8, then at any time after the regulatory authority's entry of an order disallowing recovery of the additional franchise fee expense in rates, Company shall have the right to cancel the modification of the franchise made pursuant to Section 8, and the terms of the Franchise shall immediately revert to those in place prior to City's exercise of its option under Section 8.

E. Notwithstanding any other provision of this Franchise, should the City exercise the option provided in Section 8.B, and then adopt any rule, regulation, ordinance, law, Code, or Charter of City that, in Company's sole opinion, is inconsistent with or in any manner contrary to the provisions included in this Franchise pursuant to Section 8.B, then Company shall have the right to cancel all of the modifications to this Franchise made pursuant to Section 8 and, effective as of the date of the City's adoption of the inconsistent provision, the terms of the franchise shall revert to those in place prior to the City's exercise of its option under Section 8.

F. The provisions of Section 8 apply only to the amount of the franchise fee to be paid and do not apply to other franchise fee payment provisions, such as the timing of such payments. The provisions of Section 8 do not apply to differences in the franchise fee factor that result from the application of the fixed fee per kilowatt hour methodology set out in Section 33.008(b) of PURA or a successor methodology.

SECTION 9: RECORDS AND REPORTS:

A. The Company shall keep complete and accurate books of accounts and records of its business and operations under and in connection with the franchise. To the extent practicable, all such books of accounts and records shall be made available at its principal office.

B. For the period then subject to audit under Section 33.008(e) of the Texas Utility Code, the City shall, upon 30 days prior written notice to the Company, have the right to have access to, and to inspect the books of accounts and records of the Company to ascertain the correctness of any payments and reports to the City, and as to the Company's compliance with this Franchise.

C. The City may cause to be conducted, no more than once annually, an audit to verify the accuracy of the method used to compute the Company's franchise fee payments to the City and to verify that all accounts for retail electric customers within the City are properly included in the computation of the franchise fee. Said audit shall be limited to the time period subject to audit under the Texas Utility Code Section 33.008. If either party discovers that the Company has failed to pay the entire or correct amount of compensation due, the correct amount shall be determined and the City shall be paid by the Company within thirty (30) calendar days of such determination. Such payments shall include interest as provided for in Section 7.C. Any overpayment to the City by Company through error or otherwise, will, at the option of the City, either be refunded within thirty (30) days of the mutual determination or be offset against the next payment due from Company. If neither party can mutually agree on either the underpayment due the City or an overpayment due the Company, both the City and Company may seek any other rights and remedies provided by law or in equity. Acceptance by the City of any payment due under this Section shall not be deemed to be a waiver by the City of any breach of this Franchise, nor shall the acceptance by the City of any such payments preclude the City from later establishing that a larger amount was actually due or from collecting any balance due to the City.

D. City shall, at least 30 days prior to any applicable franchise fee being due by Company, provide Company with a current map, in electronic format, accurately depicting the corporate limits (boundaries) of the City for use by Company in determination of metered KWh sales per Section 7 A.

SECTION 10. TERM: This Ordinance shall become effective upon Company's written acceptance hereof, said written acceptance to be filed by Company with the City Secretary within sixty (60) days after final passage and approval hereof. The right, privilege and franchise granted hereby shall expire on December 31, 2024 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 for an additional period of one (1) year from such expiration date and shall be automatically renewed thereafter for like periods until canceled by written notice given not less than sixty (60) days before the expiration of any such renewal period.

SECTION 11. REPEALER CLAUSE: This Ordinance shall supersede any and all other franchises granted by the City to Company its predecessors and assigns, provided the parties agree any claim, action or complaint by either party that arose under or pursuant to any such previous franchise ordinance shall be preserved and saved from repeal, subject to all applicable statutes of limitations.

SECTION 12. DEFAULT, REMEDIES, TERMINATION:

A. In addition to all other rights which the City has pursuant to law or equity, the City reserves the right to revoke, terminate or cancel this Franchise, and all rights and privileges pertaining thereto in the event that Company fails to comply with a material provision of this Franchise. Sections 2, 4, 5, , 7, 9 and 10 are material provisions of this Franchise. Before termination, the City shall notify the Company, in writing, of the alleged failure of the Company to comply with a material provision of this Franchise, which notice shall specify the alleged failure with reasonable particularity. The Company shall, upon its receipt of such notice, either:

1. diligently cure such failure, but in any event within not more than thirty (30) days after such receipt; or
2. if such failure does not result from the failure to make a monetary payment and cannot with due diligence be cured within the said thirty (30) day period, then cure such failure within an additional reasonable period of time so long as the Company has submitted to the City in writing its plan (including, without limitation, the time period) to cure such failure and has commenced curative action within the said thirty (30) day period, and thereafter continues to diligently attempt to cure the failure; or
3. if the Company reasonably believes that the failure specified in the notice from the City is not a failure of a material provision of this Franchise, submit to the City within ten (10) days after its receipt of the notice the Company's written response specifying facts and presenting arguments in refutation or defense of such alleged failure (the "Company's Defense").

B. In the event that the Company does not comply with Section 12A subparagraphs 1, 2, or 3 above, or if the Company does comply with Section 12A subparagraph 3 above but the City, after its review of the Company's Defense, nevertheless believes that the Company has failed to comply with a material provision of this Franchise and has failed to timely cure such failure per Section 12A subparagraphs 1 or 2 above, the City may declare this an Uncured Event of Default, which shall entitle City to exercise the remedies provided for in Section 12C. Notice of such declaration shall be given to the Company prior to the City's exercise of any such remedies.

C. In the event that such cure is not forthcoming, City shall be entitled to exercise any and all of the following remedies:

1. The commencement of an action against Company 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 commencement of any other action which may be available to the City; or
4. The termination of this Franchise in accordance with the provisions of Section 12D.

D. In accordance with the provisions of Section 12.C.4, this Franchise may be terminated upon at least 30 business days' prior written notice to Company. City shall notify Company in writing at least 15 business days in advance of the City Council meeting at which the question of forfeiture or termination shall be considered, and Company shall have the right to appear before the City Council in person or by counsel and raise any objections or defenses Company 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 within 30 days following the effective date of such decision. Upon timely appeal by Company of the City Council's decision terminating the Franchise, the effective date of such termination shall be either when such appeal is withdrawn, or a court or administrative 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 Company's right and obligation to provide service in accordance with the Certificate of Convenience and Necessity authorized by the Public Utility Commission in accordance with the Texas Utilities Code.

E. The rights and remedies of City and Company 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. City and Company 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 breach of this agreement. The failure of the City to insist upon strict performance of any one or more of the terms or provisions of this Franchise Ordinance shall not be construed as a waiver or relinquishment of any such term or provision in the future.

F. This Franchise Ordinance shall be construed and governed by the laws of the State of Texas. City and Company agree that any lawsuit between the City and the Company concerning this Ordinance will be filed in the state of Texas. Nothing in this

Ordinance shall prohibit the City from filing an action related to this Ordinance in Tarrant County, Texas.

SECTION 13. NOTICES: Notices, reports or demands required to be given under this Franchise shall be deemed to be given when delivered in writing, personally to the person designated below, or when five days have elapsed after it is deposited in the United States Mail with registered or certified mail postage prepaid to the person designated below, or on the next business day if sent by Express Mail or overnight air courier addressed to the person designated below:

If to City:

City of Mansfield
Attn: City Manager
1200 East Broad Street
Mansfield, Texas 76063

If to the Company:

United Electric Cooperative Services, Inc.
Attention: General Manager
3309 N. Main
P.O. Box 16
Cleburne, Texas 76033-0016

SECTION 14. SEVERABILITY: If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court or agency of competent jurisdiction, such portion shall be deemed a separate provision and such holding shall not affect the validity of the remaining portions of this Ordinance, so long as the economic or legal effect of such holding upon this Ordinance does not materially adversely affect either party. Upon any such holding, the parties shall negotiate in good faith to modify this Ordinance so as to continue the original intent of the parties as closely as reasonably possible.

SECTION 15. ASSIGNMENT: This Franchise may not be assigned by either party without the prior written consent of the other party.

SECTION 16. ACCEPTANCE: This Ordinance shall become effective upon Company's written acceptance hereof, said written acceptance to be filed by Company with the City Secretary of the City within sixty (60) days after final passage and approval hereof.

SECTION 17. APPROVAL AT PUBLIC MEETINGS: It is hereby officially found that the meetings at which this Ordinance was passed were open to the public and that due notice of such meetings was posted, all as required by law.

PASSED AND APPROVED by the City Council of the City of Mansfield, Texas, on first reading on the _____ day of _____, 2014, at which meeting a quorum was present and voting.

MAYOR

ATTEST:

CITY SECRETARY

APPROVED AS TO FORM AND LEGALITY:

City Attorney

Date: _____

Ashley D. Dierker
Taylor, Olson, Adkins, Sralla & Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107
T: 817.332.2580
F: 817.332.4740