

ORDINANCE NO. 2003-6-3

AN ORDINANCE OF THE CITY OF PLANO, TEXAS, GRANTING TO DENTON COUNTY ELECTRIC COOPERATIVE, INC., D/B/A COSERV ELECTRIC, A TEXAS CORPORATION, ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE FRANCHISE TO USE THE PRESENT AND FUTURE STREETS, AVENUES, ALLEYS, ROADS, HIGHWAYS, SIDEWALKS, EASEMENTS AND OTHER PUBLIC RIGHTS-OF-WAY IN THE CITY OF PLANO, TEXAS FOR THE PURPOSES OF CONSTRUCTING AND OPERATING AN ELECTRIC DISTRIBUTION SYSTEM; SETTING FORTH TERMS AND CONDITIONS TO GOVERN THE FRANCHISE; PROVIDING A REPEALER CLAUSE, A SEVERABILITY CLAUSE, A SAVINGS CLAUSE AND AN EFFECTIVE DATE.

WHEREAS, on September 28, 1987, by Ordinance No. 87-9-38, the City of Plano, Texas, granted a non-exclusive franchise to Denton County Electric Cooperative, Inc. and its successors and assigns to construct, erect, build, equip, own, maintain and operate in, along, under, over and across the streets, avenues, alleys, bridges, viaducts and public grounds of the City of Plano, Texas, for the purpose of transmitting, supplying, distributing and selling electricity; and

WHEREAS, pursuant to Ordinance No. 87-9-38, Denton County Electric Cooperative, Inc., d/b/a CoServ Electric, a Texas Corporation ("the Cooperative"), is now and has been engaged in the electric utility business in the State of Texas and the City of Plano and, in furtherance thereof, has erected and maintained portions of its physical plant in the City; and

WHEREAS, the franchise authority granted by Ordinance No. 87-9-38 has expired; and

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

WHEREAS, pursuant to Articles 2 and 10 of the City's Charter, the City Council hereby determines that a grant of this Ordinance is in the best interests and will inure to the benefit of the City and its citizens.

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

SECTION 1.
DEFINITIONS

For the purpose of this ordinance the following terms, phrases, words, abbreviations and their derivations shall have the meaning given herein. 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.

- 1.1 **"CITY"** shall mean the home rule municipal corporation designated as the City of Plano and includes the territory that currently is or may in the future be included within the boundaries of the City of Plano.
- 1.2 **"COOPERATIVE"** shall mean Denton County Electric Cooperative, Inc., d/b/a CoServ Electric, a Texas corporation, its successors and assigns.
- 1.3 **"EFFECTIVE DATE"** shall be thirty (30) days after final passage and publication of this Ordinance as required by the Plano City Charter, provided that Cooperative has filed its written acceptance of this Ordinance and agreement with the City Secretary of the City of Plano prior to the expiration of the thirty-day period.
- 1.4 **"ELECTRIC DISTRIBUTION SYSTEM"** shall mean the Cooperative'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 for the purpose of producing, transmitting or distributing electricity to or from customers or locations within the City, as the same now exists and may from time to time be placed, removed, constructed, reconstructed, extended and maintained.

- 1.5 **"GROSS REVENUES"** shall mean the gross operating revenue for all services provided by Cooperative to its customers within the corporate boundaries of the City as accrued on the Cooperative's books pursuant to the accounting principles established by the Rural Utilities Service of the U. S. Department of Agriculture in 7 CFR 1767 and specifically 1767.26, Accounts 440-456, as amended. The term "gross revenues" shall not include (1) local, state, or federal taxes collected by Cooperative that have been billed to its customers and separately stated on customers' bills, (ii) revenue uncollectible from customers (i.e., bad debts) with billing addresses in the City that was previously included in Gross Revenues, or (iii) contributions in aid of construction (CIAC). "Gross Revenues" shall include Franchise Fees paid hereunder.
- 1.6 **"LAWS"** shall mean any and all statues, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, tariffs, administrative orders, certificates, orders, or other requirements of the City or other governmental agency having joint or several jurisdiction over the parties to this Franchise Agreement, in effect either as of the Effective Date or at any time during the term of the Franchise Agreement.
- 1.7 **"PUBLIC RIGHT-OF-WAY"** shall mean all dedicated or City acquired public rights-of-way, streets, highways, and alleys, and all public utility easements that allow the use of Cooperative's facilities. This term shall not include county, state, or federal rights of way or any property owned by any person or agency other than the City, except as provided by applicable Laws or pursuant to an agreement between the City and any such person or agency.

- 1.8 **"PUBLIC UTILITY COMMISSION OF TEXAS" or "PUC"** shall mean that agency as presently constituted by the laws of the State of Texas or any successor agency.

SECTION 2.

GRANT OF AUTHORITY

- 2.1 **PERMISSION/FRANCHISE AGREEMENT:** Subject to all the terms and conditions contained herein, the Texas Constitution, the Code of Ordinances of the City of Plano, Texas, the City's Right-of-Way Management Ordinance, as amended, and Home Rule Charter for the City of Plano, Texas as from time to time is in effect, City hereby grants Cooperative non-exclusive permission to erect, construct, install and maintain an Electric Distribution System in, over, under, along and across the Public Rights-of-Way in the City. Should Cooperative use such Electric Distribution System for a use other than delivery of electric service, Cooperative must notify City of such use.
- 2.2 **NO PRIORITY:** This Franchise Agreement does not establish any priority for the use of the streets and Public Rights-of-Way by Cooperative or by any present or future recipients of franchise agreements, franchisees or other permit holders. In the event of any dispute as to the priority of use of the Public Rights-of-Way, the first priority shall be to the public generally, the second priority to City, the third priority to the State of Texas and its political subdivisions in the performance of their various functions, and thereafter, as between recipients of franchise agreements, franchisees and other permit holders, as determined by City in the exercise of its powers, including the police power and other powers reserved to and conferred on it by the State of Texas.
- 2.3 **CITY'S RIGHTS IN PUBLIC RIGHTS-OF-WAY:** Cooperative acknowledges that by this Franchise Agreement it obtains no rights to or further use of the Public Rights-of-Way other than those expressly granted herein. Cooperative acknowledges and accepts at its own risk, provided that City has the legal

authority for the use or uses in question, that City may make use in the future of the streets and Public Rights-of-Way in which the Electric Distribution System is located in a manner inconsistent with Cooperative's use of such streets and Public Rights-of-Way for its placement and use of such System and in that event Cooperative shall not be entitled to compensation or reimbursement from City.

- 2.4 **COMPLIANCE WITH LAW:** Cooperative shall be subject to and comply with all 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. In constructing, maintaining and operating the Electric Distribution System, Cooperative shall act in a good and workmanlike manner, observing high standards of engineering and workmanship and using materials of good and durable quality. Cooperative shall comply in all respects with applicable codes and industry standards, including but not limited to the National Electrical Safety Code (latest edition) and the National Electric Code (latest edition).
- 2.5 **CONTINUED OBLIGATIONS:** This Franchise Agreement does not relieve Cooperative of the obligation to obtain permits, licenses and other approvals from City or other units of government, which are required for the construction, repair or maintenance of the Electric Distribution System; or from compliance with generally applicable municipal codes and ordinances such as zoning and land use ordinances, pavement cut ordinances, subdivision and project improvement ordinances, curb cut permits, building permits and the like.
- 2.6 **RIGHT OF CONDEMNATION RESERVED:** Nothing in this Franchise Agreement shall limit any right the City may have to acquire by eminent domain any property of the Cooperative.
- 2.7 **FEES:** Nothing in this Franchise Agreement shall be construed to limit the authority of the City to impose a tax, fee, or other assessment of any kind on any

person. Cooperative shall pay all fees necessary to obtain all applicable Federal, State, and local licenses, permits, and authorizations required for the construction, installation, maintenance, or operation of its Electric Distribution System.

SECTION 3.

TERM OF FRANCHISE

This Ordinance shall become effective thirty (30) days after its final passage and publication as required by the Plano City Charter, provided that Cooperative has filed with the City Secretary its written acceptance of this Ordinance and agreement prior to the Effective Date, and shall extend for a term of five (5) years from such approval date unless earlier terminated by either party in accordance with the provisions herein. Upon mutual agreement of the parties, the term of this Franchise Agreement may be renewed for two additional terms of five (5) years on the same terms and conditions as set forth herein or as negotiated by the parties hereto. Negotiations for renewal may commence no later than six (6) months prior to the expiration of any term of this Franchise Agreement.

SECTION 4.

PUBLIC RIGHT-OF-WAY AND CONSTRUCTION

- 4.1 **GOVERNANCE:** Public Rights-of-Way and Construction shall be governed by the City of Plano Right-of-Way Management Ordinance, as amended.
- 4.2 **CONSTRUCTION-GENERAL:** Cooperative shall meet or exceed all the construction, reconstruction and service requirements set out in this Franchise Agreement and those set out in the local, state, and federal laws.
- 4.3 **RIGHT OF INSPECTION:** City shall have the right to inspect all reconstruction or installation work and to make such tests as it deems necessary to ensure compliance with the terms of the Franchise Agreement, Municipal Code, and any local, state, or federal laws.

- 4.4 **IDENTIFICATION:** Cooperative shall identify its Electric Distribution System and cable drops (by color code, stamping, engraving, tags, stickers, or other appropriate method selected by Cooperative) so as to distinguish Cooperative's lines from that of all other electric operator(s), utilities, and service providers in the City.
- 4.5 **EASEMENTS:** Any easements over or under private property necessary for the construction or operation of the Electric Distribution System shall be arranged by Cooperative. Any easements over or under property owned by City other than the Public Rights-of-Way shall be separately negotiated with City, except that Cooperative may use general utility easements that are dedicated for compatible uses on property owned by City.
- 4.6 **PLANS OF RECORD:** Cooperative shall provide plans of record to the City in accordance with the City's Right-of-Way Management Ordinance, as amended.
- 4.7 **PLACEMENT OF FIXTURES:** The Cooperative shall not place poles, towers or similar fixtures where the same will unduly interfere with any gas, electric, or telephone fixture, water hydrant or main, drainage facility or sanitary sewer, and all such poles, towers and similar facilities shall be placed in such manner as not to unreasonably interfere with the usual travel or use of the streets.
- 4.8 **USE OF POLES AND DUCTS:** Nothing contained in this Franchise shall be construed to require or permit any pole attachments for electric light or power wires or electrical facilities or systems not provided by the Cooperative to be attached to the Cooperative's poles or other physical plant by the City, or for the City, nor to require or permit any electric light or power wires or electrical facilities or systems not provided by the Cooperative to be placed in any duct in the Cooperative's conduit by the City or for the City. If the City desires pole attachments for electric light or power wires or electrical facilities or systems not

provided by the Cooperative, or if the City desires to place electric light or power wires or communications facilities or systems not provided by the Cooperative in any Cooperative duct, then a further separate, non-contingent agreement shall be prerequisite to such attachments or such use of any duct by the City.

- 4.9 **VACATION**: If a street or Public Right-of-Way where Cooperative has facilities is proposed to be vacated, eliminated, discontinued or closed, Cooperative shall be notified of same at least sixty (60) days prior to such vacation and all rights of Cooperative under this Franchise Agreement to use same shall terminate, provided that an alternate route within a street or Public Right-of-Way is available for relocation of such facilities. Cooperative shall remove the Electric Distribution System from such street or Public Right-of-Way within sixty (60) days, unless otherwise approved by the City Engineer or unless Cooperative obtains any necessary easements from the affected property owners to use the former street or Public Right-of-Way or a court orders the provision of such easements. Where reasonably possible and to the extent consistent with the treatment of other utility facilities in the former street or Public Right-of-Way, City shall reserve easements for Cooperative to continue to use the former street or Public Right-of-Way. Cooperative shall bear the cost of any removal or relocation of the Electric Distribution System unless the vacation is primarily for the benefit of a private party, in which case the private party shall bear such costs. Cooperative shall be provided thirty (30) days notice of any proposed vacation proceedings involving its facilities.

SECTION 5.

INDEMNIFICATION AND LIABILITY FOR DAMAGES

- 5.1 **INDEMNIFICATION**: Cooperative shall release, defend, indemnify and hold harmless City and its officers, agents and employees from and against all damages, injuries (including death), claims, property damages (including loss of use), losses, demands, suits, judgments and costs, including attorney's fees and expenses, in any way arising out of, related to, or resulting from the

Cooperative's performance of the work or caused by the negligent act or omission of Cooperative, its officers, agents, employees, subcontractors, licensees, invitees or any other third parties for whom Cooperative is legally responsible (hereinafter "Claims"). Cooperative is expressly required to defend City against all such Claims. The Cooperative will not be liable to any indemnified party or parties under the foregoing indemnification provisions to the extent that any loss, claim, damage, liability or expense otherwise subject to indemnification hereunder is finally judicially determined by a court of competent jurisdiction to have resulted from an indemnified party's negligence, willful misconduct or gross negligence. Pending judicial determination, Cooperative shall continue to indemnify City.

- 5.2 **DEFENSE OF CITY:** In its sole discretion, City shall have the right to select or to approve City's defense counsel to be retained by Cooperative in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. City reserves the right to provide a portion or all of its own defense; however, City is under no obligation to do so. Any such action by City is not to be construed as a waiver of Cooperative's obligation to defend City or as a waiver of Cooperative's obligation to indemnify City pursuant to this Contract. Cooperative shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Contract. If Cooperative fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Cooperative shall be liable for all defense costs incurred by City.

SECTION 6.

LIABILITY INSURANCE

- 6.1 Cooperative shall obtain, maintain, and provide insurance in accordance with the City's Right-of-Way Management Ordinance, as amended.

6.2 Any changes to the insurance requirements contained in the City's Right-of-Way Management Ordinance shall inure to this franchise.

SECTION 7.

PAYMENT TO THE CITY

7.1 **FRANCHISE FEE:** Cooperative shall pay City throughout the term of this Franchise Agreement a franchise fee in an amount equal to 4% of Cooperative's Gross Revenues, as follows:

7.1.1 Cooperative shall pay franchise fees on a quarterly basis as provided below:

<u>Due Date</u>	<u>Quarter</u>
April 15	First (January 1 - March 31)
July 15	Second (April 1 - June 30)
October 15	Third (July 1 - September 30)
January 15	Fourth (October 1 - December 31)

7.1.2 Interest on late payments shall accrue at the prime interest rate in effect on the date the original payment was due plus 2%.

7.1.3 Cooperative shall furnish to the City with each payment of compensation required by this Section a statement, executed by an authorized officer of Cooperative or his or her designee, showing the amount of Gross Revenues for the period covered by the payment.

7.1.4 If either party discovers that Cooperative 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 Cooperative within thirty (30) days of such discovery. Any overpayment to the City through error or otherwise shall, at the option of the City, be refunded or offset against the next payment due from Cooperative. 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 Agreement occurring prior thereto, 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.

- 7.1.5 The Grantee is hereby authorized to surcharge to customers within the City all or any portion of the gross revenues assessment. All bills for services rendered within the City shall be adjusted by the same percentage as the gross revenues assessment specified herein, less any percentage that is recovered by the Cooperative through base rates or other charges.
- 7.1.6 No taxes, fees, or other payments by Cooperative to the City, including, but not limited to, ad valorem taxes, shall reduce the Franchise Fees payable to City hereunder. Nothing in this Franchise agreement shall be construed to prohibit the City from levying the usual general or special ad valorem taxes which the City is authorized to levy and impose upon real and personal property, general sales and use tax, assessments for public improvements, and sums to which the City may be entitled under the Texas Utility Code (the Texas Public Utility Regulatory Act), and no reduction of the Franchise Fee will occur pursuant to the Texas Public Utility Regulatory Act.

SECTION 8.
ACCOUNTING MATTERS

- 8.1 **MAINTENANCE OF RECORDS:** Cooperative shall keep accurate books of account at its principal office in Corinth, Texas, for the purpose of determining the amount due to the City under this Franchise Agreement.
- 8.2 **AUDIT:** The City may inspect Cooperative's books of accounts relative to the City at any time during regular business hours and on ten (10) business days' prior written notice and may audit the books from time to time. All records reasonably necessary for such audit shall be made available by Cooperative at Cooperative's offices in Corinth, Texas. Cooperative agrees to give its full cooperation in any audit and shall provide complete responses to inquiries within fifteen (15) business days of a written request.
- A. If the results of any audit indicate that Cooperative (i) paid the correct Franchise Fee, (ii) overpaid the Franchise Fee and is entitled to a refund or credit, or (iii) underpaid the franchise fee by five percent (5%) or less, then the City shall pay the costs of the audit. If the results of the audit indicate the cooperative underpaid the Franchise fee by more than five percent (5%), then Cooperative shall pay the costs of the audit. City agrees that any audit shall be performed in good faith.
- B. If the results of the audit indicate that Cooperative underpaid the Franchise Fee by more than five percent (5%), and Cooperative is unable to produce contrary evidence that in City's reasonable judgment is satisfactory to demonstrate to City that the results of the audit are not accurate, then Cooperative shall pay to the City a penalty equal to 20% of the total amount underpaid in addition to the total amount underpaid. Interest on the total amount of underpayment shall be paid at the prime interest rate in effect on the date the original payment was due plus 2%,

and interest shall be calculated from the time the original amount was due. Any additional amount due to City hereunder shall be paid within thirty (30) days from the date of invoice. Any amount not paid within thirty (30) days from the date of the invoice will cause interest to be payable at the prime interest rate in effect on the date of the invoice plus 2% on the entire amount from the date of invoice.

- 8.3 **ALLOCATION FOR BUNDLED AND/OR DISCOUNTED SERVICES:** If Cooperative bundles, ties, or combines Electric Services (which are subject to the franchise fee under this Franchise) with non-Electric Services (which are not subject to the franchise fee under this Franchise) and assesses a customer only one fee, the total revenue therefrom shall be allocated to the Electric Services to the full extent that would have been charged by Cooperative if the customer had received only Electric Services. The rebuttable presumption shall be that the discount offered is not attributable to a discount in Electric Services but is in fact attributable to a discount in the non-Electric Services provided by Cooperative. In the event that Cooperative receives from a customer an amount less than the mandatory tariff rate amount that it would be entitled to receive for Electric Services due to bundling, then Section 8.4 shall apply. However, City shall not require Cooperative to remit franchise fees based on an amount that is more than Cooperative actually receives for the bundled services or more than would be due from Cooperative as a franchise fee based on the actual tariffed rate for Electric Services.

For example, assume that Cooperative offers a price of \$100 to customers for bundling Electric Services, cable services and local telephone services. Based on mandatory tariff rates, the Cooperative should have received \$80 for Electric Services, \$30 for cable service and \$10 for local telephone service for a total of

\$120. The rebuttable presumption shall be that the \$20 discount offered is not attributable to a discount in Electric Services but is in fact attributable to a discount in the cable and/or telephone services provided by Cooperative. Therefore, Cooperative's franchise fees would be based on the full \$80 that is attributable to the Electric Services unless Cooperative proves to City pursuant to the provisions of Section 8.4 below that Electric Services were actually discounted in addition to the discounted non-Electric Services.

A. Notwithstanding any interpretation to the contrary, this Franchise does not authorize Cooperative to vary or alter any payments or amounts of compensation to the City that may be dictated by another franchise, ordinance, agreement or by applicable law and are related to the use of the Public Rights-of-Way in the provision of non-Electric Services in the City.

B. If Cooperative offers its customers any kind of discount for receipt of both Electric Services (which are subject to the Franchise Fee under this Franchise) and non-Electric Services (which are not subject to the Franchise Fee under this Franchise), the discount shall be applied proportionately to Electric Services and non-Electric Services upon notification to the City of such discount methodology. Such notification shall include the amount of the discount being applied to each service and documentation demonstrating the promotion and billing of such discount. This Section shall also apply to any and all price increases.

For example, assume that a customer's monthly charge for Electric Services alone would be \$40; for local telephone service alone, \$30; and for gas service alone, \$30, for a total of \$100. If Cooperative offers a single rate to the customer for taking all three

services from Cooperative that, in effect, amounts to a 20% discount from the rates that would apply to the services if purchased individually, the aggregate discount in this example is \$20. For computation of the Franchise Fee, the \$20 discount would be applied pro rata so that Gross Revenue hereunder would be deemed to be \$32 (a 20% discount from the \$40 fee for Electric Services). The result would be the same if Cooperative offers a specific dollar discount for any services provided, such as, for example, a \$20 discount for local telephone services offered on the condition that the subscriber also take Electric Services at the standard \$40 rate.

- 8.4 The City agrees to hold in confidence any non-public information it learns from Cooperative to the fullest extent permitted by Law. City shall not be liable to Cooperative for the release of any information obtained as a result of an audit where the City is required to release that information by law or court order.
- 8.5 The omission by the City to exercise its rights to an audit shall not constitute waiver of such right. Acceptance of any payment shall not estop City from asserting that an amount paid is not the amount due.

SECTION 9.

AREA OF THE CITY AFFECTED

- 9.1 This Franchise shall extend to and include any and all territory that is within the corporate limits of the City that have been certificated to the Cooperative by the Public Utility Commission of Texas.
- 9.1.1 Additionally, this franchise shall extend to any and all territory that is annexed by the City during the term of this Franchise and certificated to the Cooperative by the Public Utility Commission of Texas. In the event of

disannexation, this Franchise shall be reduced to the territory that continues to be in the City.

9.1.2 Upon request, the City shall furnish the Cooperative with maps of the affected franchise area in the event of an annexation or disannexation. Within sixty (60) days from the date such maps are furnished, the Cooperative shall identify all customers located within such annexed or disannexed territory and adjust its accounting system accordingly. For purposes of calculating Gross Revenues, customers, if any, included within an annexed area shall be deemed to commence 60 days from the date the City furnishes the maps to the Cooperative.

SECTION 10. RIGHT OF RENEGOTIATION

Should either party hereto determine that it is in its best interest to renegotiate all or some of the provisions of this Franchise, then the other party agrees to enter into good faith negotiations. Said negotiations shall involve reasonable, diligent, and timely discussions about the pertinent issues and a resolute attempt to settle those issues. The obligation to engage in such negotiations does not obligate either party to agree to an amendment of the Franchise as a result of such negotiations. If, as a result of renegotiation, the City and Cooperative agree to a change in a provision of this Ordinance, the change shall become effective upon passage of an Ordinance by the City in accordance with the City Charter and acceptance of the amendment by Cooperative. Cooperative agrees to provide the City any and all requested information related to any changes in conditions, practices, or services provided by Cooperative through the use of the Public Rights-of-Way of the City. If the requested information is voluminous, the information will be provided at the Cooperative's office.

SECTION 11.
FORCE MAJEURE

In the event that the performance by either party of any of its obligations or undertakings hereunder shall be interrupted or delayed by any occurrence, whether such occurrence is by an act of god or the common enemy or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not party or privy hereto, then such party shall be excused from performance for a period of time as is reasonably necessary after such occurrence to remedy the effects thereof, and each party shall bear the cost of any expense it may incur due to the occurrence.

SECTION 12.
ASSIGNMENT

The rights granted by this Franchise Agreement inure to the benefit of the Cooperative and any parent, subsidiary, affiliate or successor entity now or hereafter existing. The rights shall no be assignable without the express written consent of the City Council of the City, except the Cooperative may assign its rights under this Franchise Agreement to a parent, subsidiary, affiliate or successor entity without such consent, so long as (i) such parent, subsidiary, affiliate or successor assumes all obligations of the Cooperative hereunder, and (ii) is bound to the same extent as the Cooperative hereunder. Any required consent is to be evidenced by an ordinance of the City Council of the City that fully recites the terms and conditions, if any, upon which consent is given. Cooperative shall give the City thirty (30) days prior written notice of any such assignment to a parent, subsidiary, affiliate or successor entity. Any attempted assignment in violation of this Section shall be void and shall be grounds for termination by City.

SECTION 13.
DEFAULTS

13.1 **EVENTS OF DEFAULT:** The occurrence, at any time during the term of the Franchise Agreement, of any one or more of the following events, shall constitute an Event of Default by the Cooperative under this Franchise Agreement.

13.1.1 The failure of Cooperative to pay the Franchise Agreement fee, on or before the due dates specified herein.

13.1.2 Cooperative's breach or violation of any of the material terms, covenants, representations or warranties contained herein or Cooperative's failure to perform any material obligation contained herein.

13.2 **UNCURED EVENTS OF DEFAULT:** Upon the occurrence of an Event of Default which can be cured by the immediate payment of money to City or a third party, Cooperative shall have thirty (30) days from written notice from City to Cooperative of an occurrence of such Event of Default to cure same before City may exercise any of its rights or remedies provided for in Section 14. Upon the occurrence of an Event of Default by Cooperative which cannot be cured by the immediate payment of money to City or a third party, Cooperative shall have ninety (90) days from written notice from City to Cooperative of an occurrence of such Event of Default to cure same before City may exercise any of its rights or remedies provided for in Section 14.

13.2.1 If any Event of Default is not cured within the time period allowed for curing the Event of Default, as provided for herein, such Event of Default shall, without additional notice, become an Uncured Event of Default, which shall entitle City to exercise the remedies provided for in Section 14.

SECTION 14.
REMEDIES

14.1 **REMEDIES:** Upon the occurrence of any Uncured Event of Default as described in Section 13, City shall be entitled to exercise any and all of the following cumulative remedies:

14.1.1 The commencement of an action against Cooperative at law for monetary damages.

14.1.2 The commencement of an action in equity seeking injunctive relief or the specific performance of any of the provisions which, as a matter of equity, are specifically enforceable.

14.1.3 City shall have the right to forfeit and terminate the Franchise Agreement. City shall notify Cooperative in writing at least fifteen (15) days in advance of the City Council meeting at which the question of forfeiture or termination shall be considered and Cooperative shall have the right to appear before the City Council in person or by counsel and raise any objections or defenses Cooperative may have that are relevant to the proposed forfeiture or termination. The final decision of the City Council may be appealed to any court or regulatory authority having jurisdiction.

14.2 **REMEDIES NOT EXCLUSIVE:** The rights and remedies of City and Cooperative set forth in this Franchise Agreement shall be in addition to, and not in limitation of, any other rights and remedies provided by law or in equity. City and Cooperative understand and intend that such remedies shall be cumulative to the maximum extent permitted by law and the exercise by City of any one or more of such remedies shall not preclude the exercise by City, at the same or different times, of any other such remedies for the same Uncured Event Of Default. However, notwithstanding this Section or any other provision of this Franchise Agreement, City shall not recover

both liquidated damages and actual damages for the same violation, breach, noncompliance, or Uncured Event of Default, either under this Section or under any other provision of this Franchise Agreement.

SECTION 15
NOTICES

15.1 **NOTICES:** All notices which shall or may be given pursuant to this Franchise Agreement shall be in writing and delivered personally or transmitted (a) through the United States mail, by registered or certified mail, postage prepaid; (b) by means of prepaid overnight delivery service; or (c) by facsimile or email transmission, if a hard copy of the same is followed by delivery through the U.S. mail or by overnight delivery service as just described, addressed as follows:

If to the City:

City of Plano

Attn: City Manager's Office

P. O. Box 860358

Plano, TX 75086-0358

If to the Cooperative:

CoServ Electric

Attn: Bill McGinnis, President

7701 South Stemmons

Corinth, Texas 75065

15.2 **DATE OF NOTICES; CHANGING NOTICE ADDRESS:** Notices shall be deemed given upon receipt in the case of personal delivery; three (3) days after deposit in the mail; or the next day in the case of facsimile or overnight delivery. Either party may from time to time designate any other address for this purpose by written notice to the other party delivered in the manner set forth above.

SECTION 16.
TERMINATION

- 16.1 This Franchise Agreement may be terminated by either party upon forty-five (45) business days' prior written notice to the other party upon a default of any term or provision hereof by the other party, including but not limited to any term or provision contained herein specifically identified as an uncured event of default. The City reserves the right to seek revocation of Cooperative's certificate in its entirety or to seek a reduction in Cooperative's service area under its certificate through the Public Utility Commission of Texas.
- 16.2 Any termination of the franchise granted by this Agreement in whole or in part shall not release Cooperative from any liability or obligation hereunder which was accruing or had accrued at the time of termination, without limitation. The provisions of Section 4 of this franchise shall survive the termination of this franchise.

SECTION 17
MISCELLANEOUS

- 17.1 **NON-EXCLUSIVE USE:** This Franchise Agreement does not provide Cooperative with exclusive use of the Public Rights-of-Way and City shall have the right to permit other providers of services, including telecommunications services, to install equipment or devices in the Public Rights-of-Way. Nothing in this Franchise Agreement shall be construed to obligate the City to grant Cooperative permission to use any particular facility or Public Right-of-Way not covered by this Franchise Agreement.

- 17.2 **GOVERNING LAW:** The laws of the State of Texas and City Code of Ordinances shall govern the interpretation validity, performance and enforcement of this Franchise Agreement. The parties agree that this Agreement is performable in Collin and Denton County, Texas and that exclusive venue shall lie in Collin County, Texas
- 17.3 **AMENDMENT OF FRANCHISE AGREEMENT:** This Franchise Agreement may not be amended except pursuant to a written instrument signed by both parties.
- 17.4 **SEVERABILITY CLAUSE:** If any provision, section, subsection, sentence, clause or phrase of this Ordinance is for any reason found unconstitutional, void or invalid or for any reason unenforceable, the City and Cooperative intend that the remaining portions of this Ordinance are not affected thereby, it being the intent of the City and Cooperative in accepting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion, provision, or regulation, and to this end, all provisions of this Ordinance are declared severable.
- 17.5 **ATTORNEYS' FEES:** Should any dispute arising out of this Franchise Agreement lead to litigation, the prevailing party shall be entitled to recover its costs of suit, including reasonable attorneys' fees.
- 17.6 **EXHIBITS:** All exhibits referred to in this Franchise Agreement and any addenda, attachments, and schedules which may from time to time be referred to in any duly executed amendment to this Franchise Agreement are by such reference incorporated in this Franchise Agreement and shall be deemed a part of this Franchise Agreement.
- 17.7 **SUCCESSORS AND ASSIGNS:** This Franchise Agreement is binding upon the successors and assigns of the parties hereto.

- 17.8 **CONSENT CRITERIA:** In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Franchise Agreement, such party shall not unreasonably delay or withhold consent.
- 17.9 **WAIVER OF BREACH:** The waiver by either party of any breach or violation of any Provision of this Franchise Agreement shall not be deemed to be a waiver or a continuing waiver of any subsequent breach or violation of the same or any other Provision of his Franchise Agreement.
- 17.10 **REPRESENTATIONS AND WARRANTIES:** Each of the parties to this Franchise Agreement represent and warrant that at the time of signing of this Franchise Agreement it has the full right, power, legal capacity, and authority to enter into and perform the parties' respective obligations hereunder and that such obligations shall be binding upon such party without the requirement of the approval or consent of any other person or entity in connection herewith, except as provided in Section 3 above.
- 17.11 **ENTIRE AGREEMENT:** This Franchise Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements, or understandings (whether oral or written) between or among the parties relating to the subject matter of this Franchise Agreement that are not fully expressed herein.
- 17.12 **NO THIRD PARTY BENEFICIARIES:** This Franchise Agreement is for the benefit of Cooperative, any transferee or assignee in accordance with the provisions contained herein, and the City, and not for the benefit of any third party. No Provision of this Franchise Agreement shall be construed as creating any third party beneficiaries.

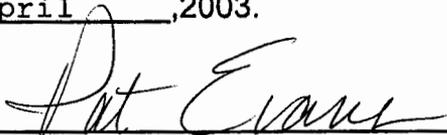
- 17.13 **REPEALER CLAUSE:** This Ordinance shall be cumulative of any and all other permits and franchises granted by the City to Cooperative provided, however, that all ordinances or parts of ordinances that conflict herewith are hereby repealed upon the effective date of this Ordinance.

- 17.14 **SAVINGS CLAUSE:** The repeal of any ordinance or part of any ordinance affected by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying, or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions of any ordinances at the time of passage of this Ordinance.

- 17.15 **PUBLIC MEETING:** It is hereby officially found that the meeting at which this Ordinance is passed is open to the public and that due notice of this meeting was posted, all as required by law.

- 17.16 **EFFECTIVE DATE:** This Ordinance shall become effective immediately upon its passage and publication as required by law.

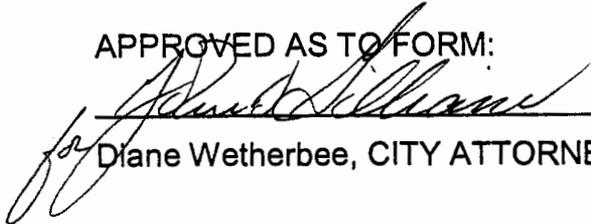
PASSED AND APPROVED ON FIRST READING by the City Council of the City of Plano, Texas, on the 28th day of April, 2003.



Pat Evans, MAYOR

ATTEST:

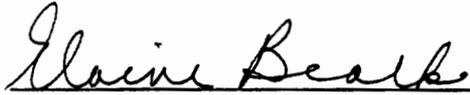

Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:


Diane Wetherbee, CITY ATTORNEY

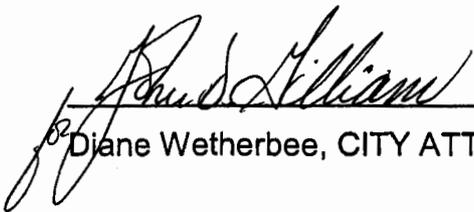
Pat Evans, MAYOR

ATTEST:



Elaine Bealke, CITY SECRETARY

APPROVED AS TO FORM:



Diane Wetherbee, CITY ATTORNEY

DATED:

First Reading: April 28th, 2003

Second Reading: June 2nd, 2003

ACCEPTANCE

WHEREAS, the City Council of the City of Plano, Texas, did on the 2nd day of June, 2003, enact an ordinance entitled:

AN ORDINANCE OF THE CITY OF PLANO, TEXAS, GRANTING TO DENTON COUNTY ELECTRIC COOPERATIVE, INC., D/B/A COSERV ELECTRIC, A TEXAS CORPORATION, ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE FRANCHISE TO USE THE PRESENT AND FUTURE STREETS, AVENUES, ALLEYS, ROADS, HIGHWAYS, SIDEWALKS, EASEMENTS AND OTHER PUBLIC RIGHTS-OF-WAY IN THE CITY OF PLANO, TEXAS FOR THE PURPOSES OF CONSTRUCTING AND OPERATING AN ELECTRIC DISTRIBUTION SYSTEM; SETTING FORTH TERMS AND CONDITIONS TO GOVERN THE FRANCHISE; PROVIDING A REPEALER CLAUSE, A SEVERABILITY CLAUSE, A SAVINGS CLAUSE AND AN EFFECTIVE DATE; and

WHEREAS, said ordinance was on the 2nd day of June, 2003, duly approved by the Mayor of said City and, the Seal of said City was thereto affixed and attested by the City Secretary.

NOW THEREFORE, in compliance with the terms of said ordinance as enacted, approved and attested, Denton County Electric Cooperative, Inc., d/b/a CoServ Electric hereby accepts said ordinance and files this its written acceptance with the City Secretary of Plano, Texas in her office.

Dated this 9th day of June, 2003.

**DENTON COUNTY ELECTRIC
COOPERATIVE, INC. d/b/a CoSERV
ELECTRIC**

BY: *Curtis Trivitt*
(Signature)
CURTIS TRIVITT
(Print name)
SENIOR VICE PRESIDENT-
(Title) ENERGY SERVICES

Acceptance filed in the office of the City Secretary of Plano, Texas this 9th day of June, 2003.

Eloise Sealke
City Secretary