

ORDINANCE NO. _____

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COPPELL, TEXAS, GRANTING TO TEXAS-NEW MEXICO POWER COMPANY, THE NON-EXCLUSIVE RIGHT, PRIVILEGE AND FRANCHISE FOR A TERM NOT EXCEEDING TEN (10) YEARS TO ERECT, MAINTAIN, OPERATE, AND REMOVE ELECTRIC LINES AND PERTINENT FACILITIES IN, OVER, UNDER, ACROSS, UPON AND ALONG THE PRESENT AND FUTURE PUBLIC STREETS, ALLEYS, AND OTHER PUBLIC PROPERTY WITHIN THE CITY; AND PRESCRIBING COMPENSATION FOR THE RIGHTS, PRIVILEGES, AND FRANCHISE CONFERRED HEREUNDER.

CITY OF COPPELL, TEXAS

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

1. Parties. The City of Coppell, Texas, herein called the City, a home-rule municipal corporation created under the laws of the State of Texas, hereby grants the non-exclusive right, privilege, and franchise herein stated to Texas-New Mexico Power Company, a corporation, its successors and assigns, herein called Grantee.
2. Nature of Grant. The City hereby grants to Grantee a non-exclusive right, privilege and franchise to erect, maintain, operate and remove electric lines and pertinent facilities, herein referred to as “Grantee’s Facilities,” over, under, across, upon, and along the streets, alleys and other public rights of way within the City, herein referred to as “Public Rights-of-Way.”
3. Purposes. The provisions set forth in this ordinance represent the terms and conditions under which Grantee shall erect, maintain, operate and remove Grantee’s Facilities within the City. In granting this franchise (“Franchise”), City does not in any manner surrender or waive its regulatory or other rights and powers under and by virtue of the Constitution and Statutes of the State of Texas as the

same may be amended, nor any of its rights and powers under or by virtue of present or future ordinances of the City. Grantee, 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.

4. Term. This franchise shall exist for a term of 10 years from the date of passage.
5. Location of Facilities. Grantee's Facilities shall be placed and maintained in such manner as not to interfere with traffic, and the location, relocation, construction, and manner of erection of Grantee's Facilities shall at all times be subject to the police power of the City, and Grantee shall submit the required plans and specifications for any work in said rights-of-way to ensure appropriate location and non-interference with other infrastructure and utilities as provided in the City's Code of Ordinances.
6. Relocation of Facilities. Grantee, whenever ordered to do so by the governing body of the City, shall at its own expense change, rearrange, relocate, alter or remove any of Grantee's Facilities maintained by Grantee under this Franchise when the changing, rearranging, relocation, altering or removal thereof may be reasonably necessary in the reconstruction or construction of any public work or project or public improvement undertaken or directed by the City, alone or jointly. The City acknowledges that any modifications to the Grantee's Facilities may affect the safety and reliability of electric transmission and delivery within the City and the City hereby agrees to consult with Grantee on any such rearrangement, relocation, alteration or removal before ordering Grantee to do so.

Notwithstanding the foregoing, Grantee shall not be responsible for relocations costs:

- a. where by City application, specific monies can be and are obtained from federal and state sources for relocation costs, provided that no City matching funds would be required, the scope of the City project would not be diminished, and the City would not be required to spend additional monies;
 - b. if the specific excavation, construction or relocation is done to accommodate the actions or plans of private individuals or entities who are developing or intend to develop property, then such private individuals or entities shall be responsible for the relocation costs, provided that in no event shall the City be liable for such relocation costs; or
 - c. state or federal law requires the City to pay for such relocation.
7. Excavations and Obstructions. Any and all excavations and obstructions in and upon the Public Rights-of-Way and other public places in the City caused by Grantee's operations under this Franchise shall be repaired and removed by Grantee as quickly as is reasonably possible, under the circumstances.
8. Indemnity. The Grantee shall hold the City harmless from any liability arising from any negligent act or omission of the Grantee in the erection, maintenance, and operation of Grantee's Facilities in the City.
9. Street Rents. As compensation for the right, privilege, and franchise herein conferred, Grantee shall pay to the City for each calendar quarter, or portion thereof, during the term of this franchise, a fee for the use of the public streets

based on all kilowatt hours (kWh) delivered within the City limits regardless of customer class, on a schedule as follows:

<u>Payment Due Date</u>	<u>Quarter Upon Which Payment is Based</u>
<u>May 15</u>	<u>January 1 - March 31</u>
<u>August 15</u>	<u>April 1 - June 30</u>
<u>November 15</u>	<u>July 1 - September 30</u>
<u>February 15</u>	<u>October 1 - December 31</u>

The charge per delivered kWh shall be \$0.003056 per kWh. The charge herein made shall be in lieu of, to the extent permitted by law, any other charges or fees of any kind by the City based on, connected with, or incident to the exercise of the non-exclusive rights, privilege, and franchise herein granted.

10. Grantee, in its next general rate case before the Texas Public Utility Commission, will seek, and the City will support, approval of rates that will provide for recovery in base rates of the franchise fee charge provided in Section 9 above. In that rate case, Grantee will also seek, and the City will not oppose, the additional recovery of franchise fee amounts provided in Section 9 above paid by Grantee to the City under this Franchise agreement between the effective date of this Franchise agreement and the effective date for implementing modified rates in that rate case.
11. Accounting Matters. The parties shall keep accurate records for the purpose of determining the amount due under this Franchise.
 - a. The City may conduct an audit or other inquiry in relation to a payment made by Grantee. City may, if it sees fit, upon reasonable written notice to the

Grantee, have the records of the Grantee examined by representatives of the City to ascertain the correctness of any reports agreed to be filed. Such review may be conditioned on execution of a confidentiality agreement executed by the parties' representative(s), the parties, or both. In the course of an audit or other inquiry as described in this section, City shall use reasonable efforts to respond to Grantee's inquiries regarding Grantee's payments to City.

- b. The Grantee shall make available to the auditor during regular business hours and upon reasonable written notice, such records associated with the franchise fee payments for the audit, and shall make no charge therefore.
- c. If either party provides confidential or proprietary information to the other party, the producing party shall be solely responsible for identifying such information with markings calculated to bring the other party's attention to the proprietary or confidential nature of the information. The parties agree to maintain the confidentiality of any information obtained from the other party so designated to the extent allowed by law. Neither party shall be liable to the other party for the release of any information required to be released by law. Each party shall provide written notice to the other party of any request for release of non-public information prior to releasing the information so as to allow the other party adequate time to pursue available remedies for protection. If the City receives a request under the Texas Public Information Act that includes Grantee's proprietary or confidential information, City will notify the Texas Attorney General of the proprietary or confidential nature of the document(s). The City also will provide Grantee with a copy of this

notification, and thereafter Grantee is responsible for establishing that an exception under the Texas Public Information Act allows the City to withhold the information.

12. Annexation. This franchise shall extend to and include any and all territory that is annexed by or otherwise added to the corporate limits of the City during the term of this franchise. Upon receipt of written notification by the City of newly annexed areas, or other areas added to the city limits, Grantee shall promptly initiate a process to reclassify affected customers into the city limits in a timely manner. The annexed areas or other areas added to the city limits will be included in future franchise payments in accordance with the effective date of the annexation. Upon request from the City, the Grantee will provide documentation to verify that affected customers were appropriately reclassified and included for purposes of calculating franchise payments.

13. Right-of-Way Management or Related Ordinance. This Franchise is in addition to any ordinance addressing construction in, or management of, public rights-of-way that exists as of the adoption of this Franchise, as amended from time to time, or any such ordinance adopted in the future. Specifically, Grantee and City acknowledge that such requirements are currently found in, but may not be limited to, Article 6-14 of City's Code of Ordinances. In the event of a conflict between this Franchise and any such ordinance, this Franchise shall control, and such ordinance shall in no event require Company to act contrary to its Tariffs or applicable law and shall not add to or modify in any way the fees and charges payable by Company for use of public rights-of-way, which shall be limited to the amounts provided for in Section 9 and

10 hereof.

14. Acceptance by Grantee. To be effective, the Grantee shall, within thirty (30) days from the date this Ordinance is passed and approved, file with the City a written statement signed in its name and behalf, in the following form:

“To the City of Coppell, Texas:

The Grantee for itself, its successors and assigns, hereby accepts the above and foregoing Ordinance and agrees to be bound by all of its terms and provisions.

Texas-New Mexico Power Company

By: _____

Dated the _____ day of _____, 2020.”

15. Adoption. Passed and adopted with all necessary procedural formalities by the City Council of the City of Coppell, Texas, at a regular meeting held at the regular place, at which a quorum was present throughout, and approved by the Mayor, on this _____ day of _____, 2020.

Mayor Karen Hunt

ATTEST:

Christel Pettinos, City Secretary

THE STATE OF TEXAS §

COUNTY OF DENTON §

I, Christel Pettinos, duly appointed and Secretary of the City of Coppell, Texas do hereby certify that the above and forgoing is a true copy of an Ordinance of the City of Coppell, Texas, duly passed by the City Council and approved by the Mayor on the _____ day of _____, 2020, and now appearing in the records of Ordinances of the City Coppell, Texas.

GIVEN UNDER MY HAND AND SEAL of the State of Texas this the _____ day of _____, 2020.

Christel Pettinos, City Secretary