



Staff Report

CITY COUNCIL MEETING DATE: April 28, 2025

TYPE OF AGENDA ITEM: Second reading

TO: Mayor and City Council
CC: City Manager, City Clerk, Staff and Attorney
FROM: Jessica Leavins, Administrative Services Director
DATE: 4/24/2025
SUBJECT: Ordinance 1981 - Choctawhatchee Electric Cooperative Franchise

BACKGROUND:

In 2009, the City approved a non-exclusive franchise for CHELCO to construct and operate in the City a system for distribution of electricity to CHELCO customers located in the City. The term of the agreement was for 15 years, ending in October 2024. Since October, the City and Chelco have worked together to craft a new franchise agreement. This proposed franchise agreement is the product of the discussions between the parties.

DISCUSSION:

This ordinance is a new franchise, for a term of 10 years with two five-year renewals. The purpose of having two renewals is because the development of technology is driving rapid change in the legacy electrical distribution industry, and it may make sense to revisit terms, conditions or rates prior to the end of a 20 year agreement that would not necessarily require a new franchise to be considered.

The City will receive 6% of gross revenue derived from this franchise agreement, commencing in June, 2025 which is the second month after planned adoption of this ordinance in November. If CHELCO pays a higher franchise fee to any other unit of government, the rate paid to the City of Crestview will adjust to equal the highest rate paid by CHELCO. In addition, other issues have been addressed such as pole relocation and removal of abandoned poles, which is an issue that has become more frequent with storm hardening upgrades in our area and which we expect will continue to be an issue in the future.

GOALS & OBJECTIVES

This item is consistent with the goals in A New View Strategic Plan 2020 as follows;

Foundational- these are the areas of focus that make up the necessary foundation of a successful local government.

Financial Sustainability- Achieve long term financial sustainability

Organizational Capacity, Effectiveness & Efficiency- To efficiently & effectively provide the highest quality of public services

Infrastructure- Satisfy current and future infrastructure needs

Communication- To engage, inform and educate public and staff

Quality of Life- these areas focus on the overall experience when provided by the city.

Community Character- Promote desirable growth with a hometown atmosphere

Safety- Ensure the continuous safety of citizens and visitors

Mobility- Provide safe, efficient and accessible means for mobility

Opportunity- Promote an environment that encourages economic and educational opportunity

Play- Expand recreational and entertainment activities within the City

Community Culture- Develop a specific identity for Crestview

FINANCIAL IMPACT

The City currently receives franchise fee payments from CHELCO under the existing franchise, and there will be a slight increase to the franchise fee receipts. Otherwise, there will not be a financial impact to the City.

RECOMMENDED ACTION

Staff requests a motion to adopt Ordinance 1981 on second reading.

Attachments

1. Ordinance No 1981 Chelco Franchise

ORDINANCE: 1981

**AN ORDINANCE OF THE CITY OF CRESTVIEW, FLORIDA
GRANTING A NON-EXCLUSIVE FRANCHISE TO
CHOCTAWHATCHEE ELECTRIC COOPERATIVE, INC., TO
MAINTAIN AND OPERATE AN ELECTRIC PLANT AND AN
ELECTRIC TRANSMISSION AND DISTRIBUTION SYSTEM IN THE
CITY OF CRESTVIEW AND TO CONSTRUCT, MAINTAIN, OPERATE
AND EXTEND ELECTRIC TRANSMISSION AND DISTRIBUTION
LINES IN THE STREETS AND PUBLIC PLACES OF SAID CITY;
PROVIDING THE TERMS AND CONDITIONS OF SUCH GRANT,
PROVIDING FOR SCRIVENER'S ERRORS; PROVIDING FOR
LIBERAL INTERPRETATION; PROVIDING FOR REPEAL OF
CONFLICTING CODES AND ORDINANCES; AND PROVIDING AN
EFFECTIVE DATE.**

WHEREAS, Choctawhatchee Electric Cooperative, Inc. ("CHELCO") is providing electrical power to residents of the City of Crestview, Florida (the "City"); and

WHEREAS, CHELCO is providing electrical power to residents of Okaloosa County, Florida whose property may be annexed into the corporate limits of the City; and

WHEREAS, the City is not granting to CHELCO an exclusive franchise to provide electrical power to residents of the City; and

WHEREAS, CHELCO and the City have agreed for CHELCO to continue to utilize the City's streets and rights of way to provide electrical power to such persons and their property; and

WHEREAS, CHELCO has agreed to pay the fees as provided herein and to conduct operations in the City in accordance with the requirements of this ordinance.

SECTION 1. Findings. The City deems it necessary, desirable and in the interest of its citizens to establish a franchise granting CHELCO permission to occupy rights of way in the City for the purpose of providing electrical services.

SECTION 2. Grant of Franchise Privilege. In consideration of the benefits that will accrue to the City of Crestview and the inhabitants thereof, Choctawhatchee Electric Cooperative, Inc. a corporation under the laws of the State of Florida, its successors and assigns, hereinafter sometimes referred to as the Grantee, is hereby given, granted and vested with the right, authority, easement, privilege, and franchise to construct, erect, suspend, install, extend, renew, repair, maintain, operate and conduct in said City of Crestview a plant or plants and system for the generation, transmission and distribution of electric energy for all purposes whatsoever.

SECTION 3. Rights to Operate. The Grantee, its successors and assigns, is hereby further given, granted and vested with the right, authority, easement, privilege and franchise to construct, erect, suspend, install, extend, renew, repair, maintain, operate and conduct in the City of Crestview, a system of poles, towers, conduits, cables, conductors, transforming stations, fittings, appliances and appurtenances necessary or desirable to the transmission, distribution or sale of electric energy for all purposes whatsoever in, over, under, along, upon and across all streets, avenues, alleys, ways, bridges and public places in said City of Crestview, as they now exist or as they may hereafter be laid out or extended within the present and future limits of the City, together with the further right, privilege and franchise to construct, erect, suspend, install, extend, renew, repair and maintain and operate a system of poles, towers, conduits, cables, wires, conductors, transforming stations, generating stations, fittings and all appliances and appurtenances necessary or desirable to the generation and transmission within, unto, through, over and beyond the City of Crestview and to the furnishing, supplying and distributing to the City and the inhabitants and corporations both within and beyond the limits thereof, of electric energy for lighting, heating, power and all other purposes for which electric energy may be used now or hereafter,

and for the purpose of extending its lines and furnishing electric energy beyond the limits of the City. Grantor retains the right to purchase or generate electric power for its own use but not for sale. The electric system, facilities and associated equipment and vehicles shall be located or relocated, erected or operated to interfere as little as possible with vehicular and pedestrian traffic over, along and across said public rights-of-way, streets, alleys, bridges, and public places and with reasonable egress and ingress to abutting and adjoining property.

SECTION 4. Franchise Area and Franchise Fees.

(a) The franchise area shall include all customers of the Grantee located within the municipal boundaries of the City. Grantee agrees that the Franchise Area is subject to expansion or reduction by annexation and contraction of municipal boundaries. If Grantor approves a Franchise Area expansion or reduction by annexation or contraction, Grantor will provide written notice to Grantee. Grantee must revise its payments due to any expansion or reduction by annexation or contraction within a reasonable time after notice to Grantee, but no later than sixty (60) days after receipt of notice.

(b) As further consideration for the granting of the rights, privileges and franchises hereby granted, effective the first day of the second month after the effective date of this Ordinance, the Grantee, its successors and assigns, shall pay to the City within thirty (30) days after the first day of each month a franchise fee of six percent (6%) of grantee's revenue from the furnishing of electric service to customers served under all of its rate schedules within the corporate limits of the City collected during the preceding month. The percentage of such revenue to be collected by Grantee and paid to the City as a franchise fee may be changed by the City from time to time by ordinance at intervals of no less than (5) years, provided that the percentage shall in no event exceed that permitted by law and further provided that the provisions of Section 5 below shall control to the extent of any conflict with the fee amendment provisions of this Section 4. The City may grant such exemptions from payment of the fee as it may provide by ordinance from time to time, at intervals of no less than (5) years, within the limits allowed by law. The monthly payment may be made by wire transfer or check. Any monthly payment or any portion thereof received twenty (20) days after the due date shall be subject to interest at the rate of five percent (5%) per annum until all payments are paid in full.

SECTION 5. Most Favored Nations Provision.

(a) In the event Grantee shall hereafter accept an electric utility franchise from any other unit of government or municipal corporation providing for the payment of a franchise fee more than the amount provided for per Section 4 above, or a franchise which includes in the base rate or franchise fee calculation any additional revenue received by Grantee from its poles or pole locations (such as pole attachment charges to third parties), the Grantee shall immediately notify the Grantor, and the Grantor reserves the right to immediately amend this Franchise to require the Grantee to pay the Grantor such additional franchise fees. The Grantee's failure to notify Grantor of such additional payments does not limit Grantor's rights to such additional franchise fees nor limit Grantee's liability with respect thereto including late payments.

(b) In the event Grantor exercises its right to amend this Ordinance to adjust payment of the franchise fee in accordance with Section 5 (a), Grantee agrees to execute any such amendment and to continue to abide by all terms of this Ordinance as well as any amendments.

(c) In no event shall Grantor receive a franchise fee that is less, in terms of percentage, than any other governmental entity within Grantee's service area.

SECTION 6. Non-Exclusive Use. The right to use and occupy Rights-of-Way for the purposes herein set forth shall be non-exclusive, and the Grantor reserves the right to grant similar use of said Rights-of-Way to any person at any time during the period of this. The incorporated area of Grantor, and areas which may be annexed into the corporate limits of the Grantor in the future, are served by one or more electric distribution utilities other than Grantee in service territories established by agreements approved by the Florida Public Service Commission. Nothing in this Ordinance is intended nor shall be construed to interfere with or prohibit such other electric distribution utilities' use of Grantor's Rights-of-Way for such purposes in their respective service territories, or to modify or restrict modification of territorial agreements as the same may be amended, modified, or approved by the Florida Public Service Commission from time to time.

SECTION 7. Proper Operations.

(a) The poles, towers, conduits, cables, conductors, transforming stations, generating stations, fittings, appliances and appurtenances shall be constructed in accordance with good engineering practices and so as not to unreasonably interfere with the proper use and appearance of streets, avenues, alleys, ways, bridges, and public places in the City and shall be maintained in reasonably good condition and repair.

(b) Poles and pole attachments shall at all times comply with NESC guidelines, including but not limited to Table 232-1

in effect on and after January 1, 2023.

- i. Should Grantor notice a violation and report the violation to Grantee, Grantee will within 30 days from the date of receipt of written notification correct the violation and advise Grantor that the violation has been corrected, except in the case of a safety violation, in which case the Grantee will within 5 days from the date of receipt of written notification correct the violation. If there is a determination by Grantee there is no violation, Grantee through its qualified engineer will notify Grantor in writing within 30 days of the notification from Grantor of the reasons why there is no violation.
- (c) Whenever right-of-way considerations, including road construction and maintenance improvements to existing roadways, make relocation of a pole or poles necessary, such relocations will be made by Grantee at its own expense.
 - i. Grantor will notify Grantee in writing of the need for pole relocations, and Grantee shall have 20 days of receipt of the relocation notice to provide an estimated time for completion, including removal of the original pole or poles, which will not exceed 150 days from the date of Grantor's relocation notice unless agreed in writing by Grantor.
 - ii. If Grantee fails to relocate poles as provided herein, it shall be a breach of this agreement. In the event of a breach, Grantor may remove poles and bill Grantee for all costs incurred and Grantor retains all other rights and remedies available to it, including termination of the franchise.

SECTION 8. Excavation, Maintenance and Restoration. Whenever the Grantee shall cause any opening or alteration to be made in any of the streets, avenues, alleys, ways, bridges or public places of the City for the purpose of installing, maintaining, operating or repairing any poles, towers, conduits, cables or other appliances, the work shall be completed at Grantee's expense within a reasonable time and the Grantee shall upon the completion of such work restore such portions of the streets, avenues, alleys, ways or other public places to as good condition as it was before the opening or alteration was so made and will promptly remove any debris.

SECTION 9. Hold Harmless. The Grantor shall in no way be liable or responsible for any accident or damage which may occur due to the construction, location, relocation, operation, or maintenance by the Grantee of said poles, towers, conduits, wires, cables and other appliances, equipment and vehicles subject to the terms and conditions of this franchise. The Grantee hereby agrees to indemnify the Grantor and to hold it harmless against any and all liability, loss, cost, damage or any expense connected therewith including a reasonable attorney's fee incurred in the defense of any type of court action related hereto, which may accrue to the Grantor by reason of negligence, default or other misconduct of the Grantee in its construction, location, relocation, operating or maintenance of the facilities, vehicles, equipment of the electric system subject to this franchise.

SECTION 10. LIABILITY INSURANCE. Grantee shall always during the franchise term maintain, at Grantee's cost, a commercial general liability insurance policy protecting Grantor against all claims or demands that may arise or be claimed on account of Grantee's use of Grantor's streets and rights-of-way as provided herein. The minimum limits of liability for the policy shall be Three Million Dollars (\$3,000,000) for injuries to persons in one accident, One million Dollars (\$1,000,000) for any one person, and Two Hundred Fifty Thousand Dollars (\$250,000) for damages to property. Grantee shall furnish Grantor proof such insurance is in effect and remains in effect.

SECTION 11. Rates, Rules, and Regulations.

- (a) All rates for electrical service and rules and regulations governing the receipt of said service within the Grantor's limits, established by the Grantee from time to time, shall be reasonable and shall always be subject to such public regulation as may be provided by law. The Grantee recognizes its obligations to provide electric energy and power service within the City on reasonable terms and conditions at just, reasonable, and nondiscriminatory rates to all who request said service during the term of this franchise and thereafter, as required by law or by duly constituted public regulatory body.
- (b) The Grantee agrees to file with the City upon request a complete set of rules and regulations and a complete set of tariffs or rate schedules under which electric service is provided within the City. Grantee shall also furnish any revisions of rules, regulations, and rates that have been adopted since the last previous filing, upon request.
- (c) Grantor may, at its option and at its expense, and upon reasonable notice to Grantee, at any time within ninety (90) days after each anniversary date of this franchise examine the records of operations and accounting files, books and records as such records relate to the calculation of the franchise fee payments to the Grantor, as provided herein. The examination of such books, accounts, records or other materials necessary for determination of compliance with the terms, provisions and requirements of this franchise shall be during regular hours of business of the Grantee and at the corporate offices of the Grantee.

SECTION 12. Interruption of Service. In the event the supply of electric energy should be interrupted or fail by reason

of accident or any cause beyond the control of the Grantee, the Grantee shall at its own expense, restore the service within a reasonable time and such interruption shall not constitute a breach of this franchise nor shall the Grantee be liable for any loss or damages by reason of such interruption or failure.

SECTION 13. Metering of Service. The Grantee shall install and maintain, free of charge, meters for measuring current, and shall have free access to the premises of the consumer, from time to time, for the purpose of reading repairing, testing, and maintaining the meters and appurtenances. Such meters shall remain the property of the Grantee.

SECTION 14. Term of Franchise. The franchise granted by this ordinance shall exist and continue for a period of ten (10) years, with two five (5) year renewals that may be exercised by the parties by mutual agreement. The franchise granted by this ordinance is also subject to the terms and conditions of all applicable provisions of the Code of the City of Crestview.

SECTION 15. Forfeiture of this Franchise. Failure by the Grantee to comply in any substantial respect with any of the provisions, terms, or requirements of this Ordinance, shall be grounds for forfeiture of this franchise, but no such forfeiture shall take effect if the reasonableness and propriety thereof is timely protested and satisfactorily addressed or until a court of competent jurisdiction shall have found that the Grantee has failed to comply in a substantial respect with any of the provisions, terms or requirements of this Ordinance. Both the Grantor and Grantee reserve the right of appeal of such court findings. The Grantee shall have six (6) months after the final determination of the question to make restitution or make good the default or failure before forfeiture shall result. The Grantor, at its discretion, may grant additional time to the Grantee for restitution and compliance as the necessities of the case may require.

SECTION 16. Other Franchises. Upon the request of the City, Grantee shall furnish the City a copy of all other franchises that it is granted from time to time during the life of this franchise.

SECTION 17. Monitoring Performance and Compliance. To fully implement the provisions of this franchise, Grantee agrees that, upon request from Grantor, Grantee's representative will meet the representative of Grantor to review the quality of services provided under this franchise. For the purpose of this function, "quality of services" shall include the performance of such other duties, tasks and obligations as are generally and reasonably regarded as incident to the safe and satisfactory discharge of responsibilities in the electric utility industry.

SECTION 18. Electrical Interference. It will be the responsibility of the Grantee to locate, monitor, and eliminate or repair any of its equipment that may be causing electrical interference of any kind with the radio or television facilities in the City. Should the Grantor discover interference problems, the Grantee will be notified, in which case the Grantee will have reasonable time to correct the problem. Further, the Grantee shall not install or replace existing equipment with new or novel equipment which will have an adverse effect on the performance of other communication systems or services or data transmission systems in the City.

SECTION 19. Tree Trimming. The Grantee shall be responsible for all tree trimming duties that are necessary to keep its power lines from being obstructed by limbs or branches. Reasonable care shall be exercised to prevent damage to City property. In the event of damage, Grantee will immediately inform the City of the extent and location of damage and be liable for said damages. The Grantee shall be expected to perform periodic inspections of its power lines within the City limits to assure that its lines are clear from the above-mentioned obstructions.

SECTION 20. Severability of Ordinance Sections. Should any section or provision of this Ordinance or any portion hereof be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder, as a whole or any part hereof, other than the part declared to be invalid.

SECTION 21. Successors and Assigns. Whenever in this Ordinance either the City of Crestview or the Grantee is named or referred to, it shall be deemed to include the respective successor, successors or assigns of either, and all rights, privileges and obligations herein conferred shall bind and inure to the benefit of such successor, successor or assigns of the Grantor or the Grantee.

SECTION 22. Repealing Clause. All ordinances or parts of ordinances in conflict herewith be and the same hereby repealed to the extent of such conflict.

SECTION 23. Surrender of Rights. As a further consideration for the granting of the rights, privileges and franchises

granted hereby, the Grantee surrenders all rights, privileges and franchises heretofore granted by the City of Crestview or the State of Florida for any of the purposes stated herein and now enjoyed by Grantee in the City of Crestview. Provided, however, that such surrender shall not be effective unless and until this Ordinance shall be finally adopted and in effect and the rights, privileges and franchises granted hereby shall be validly in force and effect.

SECTION 24. Written Acceptance by Grantee. The Grantee, its successors, or assigns, shall, within thirty (30) days after this Ordinance shall take effect, file a written acceptance of the Ordinance with the City Clerk of Crestview.

SECTION 25. Effective Date. This ordinance shall take effect upon passage.

Passed and adopted by the City Council of Crestview, Florida on the ____ day of April 2025.

Approved this ____ day of April, 2025.

J. B. Whitten, Mayor

ATTEST:

Maryanne Girard, City Clerk

ORDINANCE NO. 1981

AN ORDINANCE OF THE CITY OF CRESTVIEW, FLORIDA GRANTING A NON-EXCLUSIVE FRANCHISE TO CHOCTAWHATCHEE ELECTRIC COOPERATIVE, INC., TO MAINTAIN AND OPERATE AN ELECTRIC PLANT AND AN ELECTRIC TRANSMISSION AND DISTRIBUTION SYSTEM IN THE CITY OF CRESTVIEW AND TO CONSTRUCT, MAINTAIN, OPERATE AND EXTEND ELECTRIC TRANSMISSION AND DISTRIBUTION LINES IN THE STREETS AND PUBLIC PLACES OF SAID CITY; PROVIDING THE TERMS AND CONDITIONS OF SUCH GRANT, PROVIDING FOR SCRIVENER'S ERRORS; PROVIDING FOR LIBERAL INTERPRETATION; PROVIDING FOR REPEAL OF CONFLICTING CODES AND ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Choctawhatchee Electric Cooperative, Inc. ("CHELCO") is providing electrical power to residents of the City of Crestview, Florida (the "City"); and

WHEREAS, CHELCO is providing electrical power to residents of Okaloosa County, Florida whose property may be annexed into the corporate limits of the City; and

WHEREAS, the City is not granting to CHELCO an exclusive franchise to provide electrical power to residents of the City; and

WHEREAS, CHELCO and the City have agreed for CHELCO to continue to utilize the City's streets and rights of way to provide electrical power to such persons and their property; and

WHEREAS, CHELCO has agreed to pay the fees as provided herein and to conduct operations in the City in accordance with the requirements of this ordinance.

SECTION 1. Findings. The City deems it necessary, desirable and in the interest of its citizens to establish a franchise granting CHELCO permission to occupy rights of way in the City for the purpose of providing electrical services.

SECTION 2. Grant of Franchise Privilege. In consideration of the benefits that will accrue to the City of Crestview and the inhabitants thereof, Choctawhatchee Electric Cooperative, Inc. a corporation under the laws of the State of Florida, its successors and assigns, hereinafter sometimes referred to as the Grantee, is hereby given, granted and vested with the right, authority,

easement, privilege, and franchise to construct, erect, suspend, install, extend, renew, repair, maintain, operate and conduct in said City of Crestview a plant or plants and system for the generation, transmission and distribution of electric energy for all purposes whatsoever.

SECTION 3. Rights to Operate. The Grantee, its successors and assigns, is hereby further given, granted and vested with the right, authority, easement, privilege and franchise to construct, erect, suspend, install, extend, renew, repair, maintain, operate and conduct in the City of Crestview, a system of poles, towers, conduits, cables, conductors, transforming stations, fittings, appliances and appurtenances necessary or desirable to the transmission, distribution or sale of electric energy for all purposes whatsoever in, over, under, along, upon and across all streets, avenues, alleys, ways, bridges and public places in said City of Crestview, as they now exist or as they may hereafter be laid out or extended within the present and future limits of the City, together with the further right, privilege and franchise to construct, erect, suspend, install, extend, renew, repair and maintain and operate a system of poles, towers, conduits, cables, wires, conductors, transforming stations, generating stations, fittings and all appliances and appurtenances necessary or desirable to the generation and transmission within, unto, through, over and beyond the City of Crestview and to the furnishing, supplying and distributing to the City and the inhabitants and corporations both within and beyond the limits thereof, of electric energy for lighting, heating, power and all other purposes for which electric energy may be used now or hereafter, and for the purpose of extending its lines and furnishing electric energy beyond the limits of the City. Grantor retains the right to purchase or generate electric power for its own use but not for sale. The electric system, facilities and associated equipment and vehicles shall be located or relocated, erected or operated to interfere as little as possible with vehicular and pedestrian traffic over, along and across said public rights-of-way, streets, alleys, bridges, and public places and with reasonable egress and ingress to abutting and adjoining property.

SECTION 4. Franchise Area and Franchise Fees.

- (a) The franchise area shall include all customers of the Grantee located within the municipal boundaries of the City. Grantee agrees that the Franchise Area is subject to expansion or reduction by annexation and contraction of municipal boundaries. If Grantor approves a Franchise Area expansion or reduction by annexation or contraction, Grantor will provide written notice to Grantee. Grantee must revise its payments due to any expansion or reduction by annexation or contraction within a

reasonable time after notice to Grantee, but no later than sixty (60) days after receipt of notice.

- (b) As further consideration for the granting of the rights, privileges and franchises hereby granted, effective the first day of the second month after the effective date of this Ordinance, the Grantee, its successors and assigns, shall pay to the City within thirty (30) days after the first day of each month a franchise fee of six percent (6%) of grantee's revenue from the furnishing of electric service to customers served under all of its rate schedules within the corporate limits of the City collected during the preceding month. The percentage of such revenue to be collected by Grantee and paid to the City as a franchise fee may be changed by the City from time to time by ordinance at intervals of no less than (5) years, provided that the percentage shall in no event exceed that permitted by law and further provided that the provisions of Section 5 below shall control to the extent of any conflict with the fee amendment provisions of this Section 4. The City may grant such exemptions from payment of the fee as it may provide by ordinance from time to time, at intervals of no less than (5) years, within the limits allowed by law. The monthly payment may be made by wire transfer or check. Any monthly payment or any portion thereof received twenty (20) days after the due date shall be subject to interest at the rate of five percent (5%) per annum until all payments are paid in full.

SECTION 5. Most Favored Nations Provision.

- (a) In the event Grantee shall hereafter accept an electric utility franchise from any other unit of government or municipal corporation providing for the payment of a franchise fee more than the amount provided for per Section 4 above, or a franchise which includes in the base rate or franchise fee calculation any additional revenue received by Grantee from its poles or pole locations (such as pole attachment charges to third parties), the Grantee shall immediately notify the Grantor, and the Grantor reserves the right to immediately amend this Franchise to require the Grantee to pay the Grantor such additional franchise fees. The Grantee's failure to notify Grantor of such additional payments does not limit Grantor's rights to such additional franchise fees nor limit Grantee's liability with respect thereto including late payments.

(b) In the event Grantor exercises its right to amend this Ordinance to adjust payment of the franchise fee in accordance with Section 5 (a), Grantee agrees to execute any such amendment and to continue to abide by all terms of this Ordinance as well as any amendments.

(c) In no event shall Grantor receive a franchise fee that is less, in terms of percentage, than any other governmental entity within Grantee's service area.

SECTION 6. Non-Exclusive Use. The right to use and occupy Rights-of-Way for the purposes herein set forth shall be non-exclusive, and the Grantor reserves the right to grant similar use of said Rights-of-Way to any person at any time during the period of this franchise. The incorporated area of Grantor, and areas which may be annexed into the corporate limits of the Grantor in the future, are served by one or more electric distribution utilities other than Grantee in service territories established by agreements approved by the Florida Public Service Commission. Nothing in this Ordinance is intended nor shall be construed to interfere with or prohibit such other electric distribution utilities' use of Grantor's Rights-of-Way for such purposes in their respective service territories, or to modify or restrict modification of territorial agreements as the same may be amended, modified, or approved by the Florida Public Service Commission from time to time.

SECTION 7. Proper Operations.

(a) The poles, towers, conduits, cables, conductors, transforming stations, generating stations, fittings, appliances and appurtenances shall be constructed in accordance with good engineering practices and so as not to unreasonably interfere with the proper use and appearance of streets, avenues, alleys, ways, bridges, and public places in the City and shall be maintained in reasonably good condition and repair.

(b) Poles and pole attachments shall at all times comply with NESC guidelines, including but not limited to Table 232-1 in effect on and after January 1, 2023.

- i. Should Grantor notice a violation and report the violation to Grantee, Grantee will within 30 days from the date of receipt of written notification correct the violation and advise Grantor that the violation has been corrected, except in the case of a safety violation, in which case the Grantee will within 5 days from the date of receipt of written notification correct the violation. If there is a determination by Grantee there is no violation, Grantee through its qualified engineer will notify

Grantor in writing within 30 days of the notification from Grantor of the reasons why there is no violation.

- (c) Whenever right-of-way considerations, including road construction and maintenance improvements to existing roadways, make relocation of a pole or poles necessary, such relocations will be made by Grantee at its own expense.
- i. Grantor will notify Grantee in writing of the need for pole relocations, and Grantee shall have 20 days of receipt of the relocation notice to provide an estimated time for completion, including removal of the original pole or poles, which will not exceed 150 days from the date of Grantor's relocation notice unless agreed in writing by Grantor.
 - ii. If Grantee fails to relocate poles as provided herein, it shall be a breach of this agreement. In the event of a breach, Grantor may remove poles and bill Grantee for all costs incurred and Grantor retains all other rights and remedies available to it, including termination of the franchise.

SECTION 8. Excavation, Maintenance and Restoration. Whenever the Grantee shall cause any opening or alteration to be made in any of the streets, avenues, alleys, ways, bridges or public places of the City for the purpose of installing, maintaining, operating or repairing any poles, towers, conduits, cables or other appliances, the work shall be completed at Grantee's expense within a reasonable time and the Grantee shall upon the completion of such work restore such portions of the streets, avenues, alleys, ways or other public places to as good condition as it was before the opening or alteration was so made and will promptly remove any debris.

SECTION 9. Hold Harmless. The Grantor shall in no way be liable or responsible for any accident or damage which may occur due to the construction, location, relocation, operation, or maintenance by the Grantee of said poles, towers, conduits, wires, cables and other appliances, equipment and vehicles subject to the terms and conditions of this franchise. The Grantee hereby agrees to indemnify the Grantor and to hold it harmless against any and all liability, loss, cost, damage or any expense connected therewith including a reasonable attorney's fee incurred in the defense of any type of court action related hereto, which may accrue to the Grantor by reason of negligence, default or other misconduct of the Grantee in its construction, location, relocation, operating or maintenance of the facilities, vehicles, equipment of the electric system subject to this franchise.

SECTION 10. LIABILITY INSURANCE. Grantee shall always during the franchise term maintain, at Grantee's cost, a commercial general liability insurance policy protecting Grantor against all claims or demands that may arise or be claimed on account of Grantee's use of Grantor's streets and rights-of-way as provided herein. The minimum limits of liability for the policy shall be Three Million Dollars (\$3,000,000) for injuries to persons in one accident, One million Dollars (\$1,000,000) for any one person, and Two Hundred Fifty Thousand Dollars (\$250,000) for damages to property. Grantee shall furnish Grantor proof such insurance is in effect and remains in effect.

SECTION 11. Rates, Rules, and Regulations.

- (a) All rates for electrical service and rules and regulations governing the receipt of said service within the Grantor's limits, established by the Grantee from time to time, shall be reasonable and shall always be subject to such public regulation as may be provided by law. The Grantee recognizes its obligations to provide electric energy and power service within the City on reasonable terms and conditions at just, reasonable, and nondiscriminatory rates to all who request said service during the term of this franchise and thereafter, as required by law or by duly constituted public regulatory body.
- (b) The Grantee agrees to file with the City upon request a complete set of rules and regulations and a complete set of tariffs or rate schedules under which electric service is provided within the City. Grantee shall also furnish any revisions of rules, regulations, and rates that have been adopted since the last previous filing, upon request.
- (c) Grantor may, at its option and at its expense, and upon reasonable notice to Grantee, at any time within ninety (90) days after each anniversary date of this franchise examine the records of operations and accounting files, books and records as such records relate to the calculation of the franchise fee payments to the Grantor, as provided herein. The examination of such books, accounts, records or other materials necessary for determination of compliance with the terms, provisions and requirements of this franchise shall be during regular hours of business of the Grantee and at the corporate offices of the Grantee.

SECTION 12. Interruption of Service. In the event the supply of electric energy should be interrupted or fail by reason of accident or any cause beyond the control of the Grantee, the Grantee

shall at its own expense, restore the service within a reasonable time and such interruption shall not constitute a breach of this franchise nor shall the Grantee be liable for any loss or damages by reason of such interruption or failure.

SECTION 13. Metering of Service. The Grantee shall install and maintain, free of charge, meters for measuring current, and shall have free access to the premises of the consumer, from time to time, for the purpose of reading repairing, testing, and maintaining the meters and appurtenances. Such meters shall remain the property of the Grantee.

SECTION 14. Term of Franchise. The franchise granted by this ordinance shall exist and continue for a period of ten (10) years, with two five (5) year renewals that may be exercised by the parties by mutual agreement. The franchise granted by this ordinance is also subject to the terms and conditions of all applicable provisions of the Code of the City of Crestview.

SECTION 15. Forfeiture of this Franchise. Failure by the Grantee to comply in any substantial respect with any of the provisions, terms, or requirements of this Ordinance, shall be grounds for forfeiture of this franchise, but no such forfeiture shall take effect if the reasonableness and propriety thereof is timely protested and satisfactorily addressed or until a court of competent jurisdiction shall have found that the Grantee has failed to comply in a substantial respect with any of the provisions, terms or requirements of this Ordinance. Both the Grantor and Grantee reserve the right of appeal of such court findings. The Grantee shall have six (6) months after the final determination of the question to make restitution or make good the default or failure before forfeiture shall result. The Grantor, at its discretion, may grant additional time to the Grantee for restitution and compliance as the necessities of the case may require.

SECTION 16. Other Franchises. Upon the request of the City, Grantee shall furnish the City a copy of all other franchises that it is granted from time to time during the life of this franchise.

SECTION 17. Monitoring Performance and Compliance. To fully implement the provisions of this franchise, Grantee agrees that, upon request from Grantor, Grantee's representative will meet the representative of Grantor to review the quality of services provided under this franchise. For the purpose of this function, "quality of services" shall include the performance of such other duties, tasks and obligations as are generally and reasonably regarded as incident to the safe and satisfactory discharge of responsibilities in the electric utility industry.

SECTION 18. Electrical Interference. It will be the responsibility of the Grantee to locate, monitor, and eliminate or repair any of its equipment that may be causing electrical interference of any kind with the radio or television facilities in the City. Should the Grantor discover interference problems, the Grantee will be notified, in which case the Grantee will have reasonable time to correct the problem. Further, the Grantee shall not install or replace existing equipment with new or novel equipment which will have an adverse effect on the performance of other communication systems or services or data transmission systems in the City.

SECTION 19. Tree Trimming. The Grantee shall be responsible for all tree trimming duties that are necessary to keep its power lines from being obstructed by limbs or branches. Reasonable care shall be exercised to prevent damage to City property. In the event of damage, Grantee will immediately inform the City of the extent and location of damage and be liable for said damages. The Grantee shall be expected to perform periodic inspections of its power lines within the City limits to assure that its lines are clear from the above-mentioned obstructions.

SECTION 20. Severability of Ordinance Sections. Should any section or provision of this Ordinance or any portion hereof be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder, as a whole or any part hereof, other than the part declared to be invalid.

SECTION 21. Successors and Assigns. Whenever in this Ordinance either the City of Crestview or the Grantee is named or referred to, it shall be deemed to include the respective successor, successors or assigns of either, and all rights, privileges and obligations herein conferred shall bind and inure to the benefit of such successor, successor or assigns of the Grantor or the Grantee.

SECTION 22. Repealing Clause. All ordinances or parts of ordinances in conflict herewith be and the same hereby repealed to the extent of such conflict.

SECTION 23. Surrender of Rights. As a further consideration for the granting of the rights, privileges and franchises granted hereby, the Grantee surrenders all rights, privileges and franchises heretofore granted by the City of Crestview or the State of Florida for any of the purposes stated herein and now enjoyed by Grantee in the City of Crestview. Provided, however, that such surrender shall not be effective unless and until this Ordinance shall be finally adopted and in effect and the rights, privileges and franchises granted hereby shall be validly in force and effect.

SECTION 24. Written Acceptance by Grantee. The Grantee, its successors, or assigns, shall, within thirty (30) days after this Ordinance shall take effect, file a written acceptance of the Ordinance with the City Clerk of Crestview.

SECTION 25. Effective Date. This ordinance shall take effect upon passage.

Passed and adopted by the City Council of Crestview, Florida on the ____ day of April, 2025.

Approved this ____ day of April, 2025.

J. B. Whitten, Mayor

ATTEST:

Maryanne Girard, City Clerk

Grantee, Choctawhatchee Electric Cooperative, Inc. ("CHELCO"), agrees to the terms of the franchise agreement set forth in Ordinance Number 1981 of the City of Crestview, Florida. The individual signing on behalf of CHELCO acknowledges, represents and warrants that he or she has the power to bind CHELCO to the terms and conditions of the franchise agreement and modifications or amendments thereto.

By: _____
(Printed Name)

Its: _____
(Title)

(Signature)

(Date)