

AN ORDINANCE GRANTING FOR A PERIOD OF TWENTY (20) YEARS TO CUIVRE RIVER ELECTRIC COOPERATIVE, INC., A CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE RIGHT PERMISSION AND AUTHORITY TO CONSTRUCT, RECONSTRUCT, EXCAVATE FOR, PLACE, MAINTAIN, OPERATE, AND USE ITS POLES, TOWERS, WIRES, CONDUITS, CONDUCTORS, MANHOLES, UNDERGROUND VAULTS, MAINS, SERVICE PIPES AND OTHER EQUIPMENT AND APPLIANCES IN CONNECTION THEREWITH IN, ALONG, ACROSS, OVER AND UNDER THE STREETS, ROADS, ALLEYS, SIDEWALKS, SQUARES, BRIDGES AND OTHER PUBLIC PLACES IN THE CITY OF MOSCOW MILLS AND AREAS DEDICATED TO THE CITY FOR PUBLIC UTILITY USE, FOR THE PURPOSE OF TRANSMITTING, FURNISHING AND DISTRIBUTING ELECTRICITY FOR LIGHT, HEAT, POWER AND OTHER PURPOSES WITHIN AND THROUGH SAID CITY, PRESCRIBING THE TERMS AND CONDITIONS OF SUCH GRANT, IMPOSING CERTAIN OBLIGATIONS UPON THE GRANTEE, ITS SUCCESSORS AND ASSIGNS, SUCCESSIVELY, IN CONNECTION THEREWITH, AND PROVIDING THAT THIS ORDINANCE SHALL NOT BE EFFECTIVE UNLESS AND UNTIL SUCH GRANT BE APPROVED BY THE BOARD OF ALDERMEN OF THE CITY.

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF MOSCOW MILLS, MISSOURI, AS FOLLOWS:

SECTION 1. The non-exclusive franchise, right permission and authority is hereby granted to, and vested in Cuivre River Electric Cooperative, Inc., a Missouri corporation, its successors and assigns, hereinafter called "Cooperative", to construct, reconstruct, excavate for, place, maintain, operate and use all necessary or appropriate poles, towers, wires, conduits, conductors, manholes, underground vaults, mains, service poles and other equipment, with all necessary or appropriate appurtenances and appliances in connection therewith, in, along, across, over and under the streets, roads, alleys, sidewalks, squares, bridges, and other public places within the corporate limits of the City Of Moscow Mills, hereinafter called "Municipality", as now fixed and as hereafter extended, and areas dedicated to the Municipality for public utility use, for the purpose of furnishing and distributing electricity for light, heat, power and other purposes within said Municipality, and for the purpose of transmitting electricity through said Municipality; all such equipment, appliances and apparatus to be installed and maintained with due regard to and the rightful use by other persons, with vehicles or otherwise, of the streets, roads, alleys, sidewalks, squares, bridges and other public places and areas dedicated to the Municipality for public utility use, and Cooperative's exercise of the rights, permission and authority hereby granted shall at all times be subject to proper regulation by the Municipality in the exercise of its police powers.

SECTION 2. As consideration for the rights and privileges conferred by the Ordinance, and in lieu of any payments required by any previous ordinance, Cooperative shall pay to said Municipality on or before the twenty-fifth (25<sup>th</sup>) day of each calendar month during the term of this franchise and amount equal to four point one six six (4.166%) of its gross receipts from sales of electricity or electric service from each customer for the preceding calendar month. All payments made hereunder shall be reduced by the total of payments

made by Cooperative for the applicable periods of time or portions thereof on account of any tax levied or imposed by said Municipality upon the business of providing electricity or electric service, or upon the proceeds of sales of electricity or electric service or upon the right or privilege of engaging in such business within said corporate limits, whether said tax be designated as an occupation tax, a license tax, or otherwise; but not including a sales tax levied or imposed pursuant to the City Sales Tax Act. The first franchise payment shall be due on or before the twenty-fifth (25<sup>th</sup>) day of each calendar month after the effective date of this ordinance calculated on gross receipts for the preceding calendar month. With each franchise payment hereunder, the Cooperative shall file with the City Clerk of said Municipality a sworn statement of the gross receipts for applicable period and also a sworn statement of all payments made by it for such period on account of any of the taxes herein above in this section enumerated. The term “gross receipts” means the aggregate amount of all sales and charges from the business of supplying electricity or electric service made by Cooperative in said Municipality during any period less discounts, credits, refunds, sales taxes and uncollectible accounts. Gross receipts derived from the furnishing of such service to the Municipality shall not be included in gross receipts nor shall the franchise payment be due on such gross receipts.

SECTION 3. All facilities of Cooperative in said Municipality shall be installed and maintained in accordance with the applicable rules and regulations of the Missouri Public Service Commission.

SECTION 4. In order for Cooperative to render efficient and continuous electric service it will be necessary for Cooperative to trim the trunks and branches of trees along and over the streets, sidewalks, alleys, avenues, squares, bridges and other public places in said Municipality, and other areas dedicated to the Municipality for public utility use, wherever the same are likely to come in contact with its equipment; therefore, Cooperative or its agent is hereby granted the right to trim such trees, including the trunk branches and all parts thereof, so as to enable it to erect and maintain its equipment in a regular and consistent form and manner and to enable it to provide the most efficient and continuous service that the circumstances will permit; provided, however, that Cooperative and its agents shall exercise proper care and discretion in cutting and trimming said trees and all parts thereof.

SECTION 5. The rights, privileges and authority hereby granted shall inure to and be vested in Cooperative, its successors and assigns, successively, subject to all of the terms, provisions and conditions herein contained, and each of the obligations hereby imposed upon Cooperative shall evolve and be binding upon its successors and assigns, successively, in the same manner. All rights, privileges and authority hereby granted to Cooperative shall be freely assignable without being contingent upon prior or subsequent approval of Municipality. Cooperative shall give reasonable notice of its intent to assign or transfer its rights and obligations to another corporate entity. In the event of such transfer, the assignee shall be entitled

to exercise its full range of statutory powers, even of those powers exceed assignor Cooperatives' statutory charter, and any limit of Cooperative's authority shall not be construed or applied to limit the powers of assignee.

SECTION 6. The ordinance shall not be effective unless and until the grants of rights, permission and authority herein contained by approved by the Board of Aldermen. If such grant be so approved, the ordinance, and the grant herein contained, shall be and continue in force and effect for a period of twenty (20) years from the date of such election. Provided, however, that said cooperative, its successors or assigns, shall within sixty (60) days after the date of such approval, file with the Municipality Clerk an acceptance of the provisions of this Ordinance, and provided further that if such acceptance be not so filed within said period of sixty (60) days, all rights, privileges and authority herein granted shall become null and void.

SECTION 7. Neither acceptance of, nor compliance with, the provisions of this ordinance shall in any way impair or affect or constitute or be construed as a relinquishment or waiver of, any right, permission or authority with Cooperative, its successor or assigns, may have independently of the Ordinance; nor shall use by said Cooperative, its successors, assigns, of public property or places in the Municipality as authorized by this ordinance, or service rendered by said Cooperative, its successors or assigns, in said Municipality, be treated as use solely to the Ordinance or to any obligation of service consequently upon acceptance thereof or as in any way indicating non-use of, or non-compliance with any obligation incident to, any right, permission or authority vested in said Cooperative, its successors or assigns, independently of this Ordinance; and the acceptance provided for in Section 6 of this Ordinance or with any obligation arising from acceptance thereof, shall be subject to, and conditioned by, the provisions of this Section 7 with the same force and affect as though each of the provisions of this section were expressly incorporated in such acceptance and expressly declared by the acceptor, its successors or assigns, at and prior to the time of such compliance by it, as conditions of such compliance.

SECTION 8. All ordinances and parts of ordinances in conflict with the Ordinance or with any of its provisions are, to the extent of such conflict, hereby repealed.

SECTION 9. This Ordinance shall not relieve Cooperative of the obligation to comply with any ordinance now existing in the Municipality or enacted in the future requiring Cooperative to obtain written permits or other approval from the Municipality prior to commencement of construction of facilities within the streets thereof, except Cooperative shall not be required to obtain permits or other approval from the Municipality for the maintenance and repair of its facilities.

SECTION 10. If any provision of this ordinance, or the application of such provision to particular circumstances, shall be held invalid, the remainder of this Ordinance, or the application of such provision to circumstances other than those as to which it is held invalid, shall not be affected thereby.

SECTION 11. This ordinance may be terminated by either the Cooperative or the Municipality upon not less than sixty (60) days written notice.

SECTION 12. The Board does hereby authorize the reading of the above Bill at a regular meeting, and a vote thereon immediately following said reading.

THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT  
FROM THE DATE OF ITS PASSAGE FORWARD.

Passed and approved by the Board of Aldermen of the City of Moscow Mills, Missouri, on this 8<sup>th</sup> day of June, 2020.

By: \_\_\_\_\_  
Patrick Flannigan, Mayor

ATTEST:

By: \_\_\_\_\_  
Linda Haynes, City Clerk