

# **Ordinance**

## **3-1005**

AN ORDINANCE TO GRANT TO TRI-COUNTY ELECTRIC COOPERATIVE, INC. THE NON-EXCLUSIVE RIGHT, POWER AND AUTHORITY TO ERECT AND TO INSTALL, MAINTAIN, AND OPERATE IN, OVER, UNDER, AND UPON THE STREETS, ALLEYS, AND PUBLIC PLACES OF THE TOWN OF EASTOVER, ITS LINES, POLES, WIRES, GUYS, PUSH BRACES AND APPURTENANT FACILITIES, WHETHER USED TO RENDER SERVICE TO THE TOWN OF EASTOVER OR NOT, TOGETHER WITH ANY NECESSARY RIGHT OF ACCESS THERETO, FOR SUCH PERIOD AS THE SAME ARE NEEDED BY THE COOPERATIVE TO RENDER ELECTRIC SERVICE TO ITS CUSTOMERS IN THE TOWN OF EASTOVER, SOUTH CAROLINA; ALSO, TO SET THE AMOUNT OF THE FRANCHISE FEE TO BE PAID BY TRI-COUNTY ELECTRIC COOPERATIVE, INC. TO THE TOWN OF EASTOVER, SOUTH CAROLINA.

Section 1.

That wherever the word "Cooperative" appears in the Ordinance, it is hereby to designate, and shall be held to refer to, Tri-County Electric Cooperative, Inc., a corporation duly authorized and doing business pursuant to the laws of the State of South Carolina, its successors and assigns.

Section 2.

That the non-exclusive right, power and authority is hereby granted and vested in said Cooperative to erect and to install, maintain, and operate in, over, under, and upon the streets, alleys, public places of the Town, its electric lines, poles, wires, guys, push braces and appurtenant facilities whether used to render service to the Town or not, together with any necessary right of access thereto, for such period as the same are needed by the Cooperative to render electric service to its customers in said Town; all for a term of ten (10) years and continuing thereafter in ten (10) year terms, unless cancelled by written notice by either party not less than one (1) year prior to any expiration date.

### Section 3.

That no street, alley, bridge or other public place used by said Cooperative shall be obstructed longer than necessary during its work of construction or repair, and shall be restored to the same good order and condition as when said work commenced. No part of any street, alley, bridge, or other public place of said Town, including any public drain, sewer, catch basin, water pipes, pavement or other public improvement, shall be injured, but if, due to the Cooperative's failure to use due care, any such damage shall occur, the Cooperative shall repair the same, as promptly as possible, and, in default thereof, the Town may make such repairs and charge the reasonable cost thereof to and collect the same from the said Cooperative. Said Cooperative shall save the Town harmless from all liability or damage (including judgments, decrees and legal court costs) resulting from its failure to use due care in the exercise of the privileges hereby granted.

### Section 4.

That said Cooperative shall have the non-exclusive right, power, and authority to construct and extend its electric distribution system within the present and/or extended Town limits and shall supply standard electric service at standard voltages under general terms and conditions as approved by the Board of Trustees of Tri-County Electric Cooperative, Inc.

### Section 5.

That Town and Cooperative agree that:

- (1) Throughout the life of the Agreement the Cooperative will supply to the Town, and the Town agrees that it will purchase from the Cooperative, all

electric energy required by the Town for its own use in the portion of the Town served by the Cooperative for miscellaneous lighting and power service, including traffic signal lighting, lighting and power for public buildings, pumping stations, or other installations now owned or hereafter constructed or acquired by the Town, and for all other uses. All such electric energy shall be metered by standard meters to be owned, furnished, and maintained by the Cooperative. All wires, fixtures, lamps, and appliances used in said buildings shall be installed, owned, maintained, and operated by the Town at its own cost and expense.

(2) None of the electric energy furnished hereunder shall be sold or disposed of by the Town to others without the express written consent of the Cooperative.

(3) The power hereunder is not guaranteed to be free of minor interruption or from major outages beyond the control of the Cooperative, and the Town will save and hold the Cooperative blameless therefrom.

#### Section 6.

The work of erecting poles and all work upon the streets and public places of said Town shall be done under the general supervision of the Mayor and Council (or other legally constituted governing body) of said Town, and that all sidewalks or street pavements or street surface which may be displaced by reason of such work shall be properly replaced and re-laid by the Cooperative, its successors and assigns, to the reasonable requirements of the Mayor and Council (or other legally constituted governing body) of said Town.

Section 7.

That said Cooperative shall, as to all other conditions and elements of service not fixed herein, be and remain subject to the reasonable rules and regulations as approved by the Board of Trustees of Tri-County Electric Cooperative, Inc. No provision of this ordinance, however, shall prevent the Town from exercising any other lawful authority or regulatory power that may now or hereafter be possessed by said Town.

Section 8.

As consideration for the rights and privileges granted herein and as payment for the total franchise fee for the initial ten (10) years of this Agreement, the Cooperative shall pay unto the Town, upon execution of this Agreement, the sum of Ten Thousand and No One-Hundredths (\$10,000) Dollars. This sum shall constitute prepayment by the Cooperative to the Town of an annual franchise fee of One Thousand and No One-Hundredths (\$1,000) Dollars. The total annual franchise fee shall be this One Thousand and No One-Hundredths (\$1,000) Dollars or an amount equal to three percent (3%) of the total gross sales paid to the Cooperative from all electrical service accounts, including any Town accounts, within the corporate limits of the Town for the preceding calendar year, whichever is greater. If in the event that the three percent (3%) referred to above shall within any calendar year exceed the sum of One Thousand and No One-Hundredths (\$1,000) Dollars, the Cooperative shall pay to the Town the additional amount over and above the One Thousand and No One-Hundredth (\$1,000) Dollars. Payment, if any, shall be made on or before the fifteenth day of \_\_\_\_\_ each year beginning with the year \_\_\_\_\_.

The payment of the percentage of gross sales provided for herein shall be in lieu of all occupation, license, excise and other special taxes, and in full payment of all money demands and charges, except ad valorem taxes on property.

Should the Town itself ever at any time construct, purchase, lease, acquire, own, hold, or operate an electric distribution system, then and in that event, the payment of the percentage of gross sales revenue herein provided to be paid by the Cooperative, its successors and assigns, shall abate, cease, and be no longer due, and shall forever thereafter be uncollectible.

Section 9.

That the electric franchise granted by this Ordinance, when accepted by the Cooperative shall constitute a contract superseding all preceding agreements between the Town and the Cooperative.

Section 10.

That the electric franchise granted by this Ordinance is given upon the express understanding and provision that it is given subject to the constitution and laws of the State of South Carolina.

Section 11.

That this Ordinance shall not become effective until accepted in writing by the Cooperative within thirty (30) days from the date of its ratification.

Section 12.

Default by the Cooperative of any of the terms of this Agreement will constitute a breach of the electric franchise.

DONE AND RATIFIED IN COUNCIL DULY ASSEMBLED THIS \_\_\_\_\_  
DAY OF \_\_\_\_\_.

ATTEST: TOWN OF EASTOVER,  
SOUTH CAROLINA

By: \_\_\_\_\_ By: \_\_\_\_\_

ACCEPTANCE of the electric franchise granted by within Ordinance  
acknowledged by TRI-COUNTY ELECTRIC COOPERATIVE, INC., THIS \_\_\_\_\_  
DAY OF \_\_\_\_\_.

ATTEST: TRI-COUNTY ELECTRIC COOPERATIVE, INC.

By: \_\_\_\_\_ By: \_\_\_\_\_  
Secretary  
Its: \_\_\_\_\_