

CITY OF FAYETTE, MISSOURI

BILL NO. 2024-01

ORDINANCE NO. 2024-01

AN ORDINANCE AUTHORIZING A FRANCHISE AGREEMENT AND A TERRITORIAL AGREEMENT BETWEEN THE CITY OF FAYETTE, MISSOURI AND HOWARD ELECTRIC


**BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FAYETTE,
MISSOURI**, as follows:

SECTION ONE. The Mayor is hereby authorized to execute a franchise agreement with the Howard Electric Cooperative in a form substantially similar to the attached Exhibit A.

SECTION TWO. The Mayor is further authorized to execute a territorial agreement with Howard Electric substantially in the form of the attached Exhibit B.

SECTION THREE. This ordinance shall be in full force and effect upon final passage.

Read two times by title, copies of the proposed ordinance having been made available for public inspection prior to the time the bill is under consideration by the Board of Aldermen and passed by the Board of Aldermen of the City of Fayette, Missouri this 23rd day of January 2024.


Jeremy Dawson
Mayor

ATTEST:


Judith Thompson
City Clerk



EXHIBIT "A"

FRANCHISE AGREEMENT
**BY AND BETWEEN HOWARD ELECTRIC COOPERATIVE AND
THE CITY OF FAYETTE, MISSOURI**

The parties to this Agreement, the City of Fayette, Missouri, a Missouri a city of the Fourth Classification located in Howard County, Missouri, hereinafter referred to as “City,” and Howard Electric Cooperative, a Missouri Rural Electric Cooperative Corporation, Organized and existing under the laws of the State of Missouri, with its headquarters in Fayette, Missouri, hereinafter referred to as “Cooperative,” in recognition that Cooperative and its predecessors have in the past provided electrical services to citizens of City utilizing the public roads, streets, and ways of the City with the consent of the City, and being desirous of continuing this relationship in the future with Cooperative paying a reasonable fee for such use in the future, do hereby enter into this non-exclusive Franchise Agreement effective January 23, 2024, pursuant to General Ordinance No. 2024-01 of the City.

SECTION 1, Use of Public Rights of Way.

The franchise, right, permission and authority is hereby granted to and vested in Howard Electric Cooperative, a Missouri rural electric cooperative corporation, its successors and assigns, to construct, reconstruct, excavate for, place, maintain, operate and use all necessary or appropriate poles, towers, wires, conduits, conductors, manholes, underground vaults, mains, service pipes 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 Fayette, as now fixed and as hereafter extended, and areas dedicated to the City for public utility use, for the purpose of furnishing and

distributing electricity for light, heat, power and other purposes within said City, and for the purpose of transmitting electricity through said City; 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 City 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 City in the exercise of its police powers.

SECTION 2, Franchise fee.

As consideration for the rights and privileges conferred by this Ordinance, and in lieu of any payments required by any previous ordinance, Cooperative shall pay to said City on or before the twentieth (20th) day of each calendar month during the term of this franchise an amount equal to seven percent (7.00%) of its gross receipts from sales of electricity or electric service furnished by Cooperative to residential and commercial customers residing within the corporate limits of the City, which the Cooperative shall collect from each customer located within the City for the preceding calendar month, except that the Cooperative shall not pay the franchise fee on its gross receipts from the sale of electricity or electric service furnished by Cooperative to the City.

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 City 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 twentieth (20th) 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, Cooperative shall file with the City Clerk of said City a sworn statement of the gross receipts for the 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 City during any period less discounts, credits, refunds, sales taxes and non-collectible accounts. Gross receipts derived from the furnishing of such service to the City shall not be included in gross receipts nor shall the franchise payment be due on such gross receipts.

It is recognized and agreed by the parties hereto that Cooperative will charge customers residing within the Corporate limits of City the franchise fee applicable hereunder as a separate line item on their electrical service bill.

All payments made hereunder shall be in lieu of, and not in addition to, any other occupational or gross receipts tax now in effect or hereinafter imposed by City, except for property tax, and nothing herein shall be construed to exempt payment of any tax levied upon real or personal property.

SECTION 3, Rules and Regulations of the Missouri Public Service Commission Apply

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

SECTION 4, Use of public rights of way.

In order for Cooperative to render efficient and continuous electrical service, it may be necessary for Cooperative to trim the trunks and branches of trees along or over streets, sidewalks, alleys, avenues, squares, bridges and other public places in said City, and other areas dedicated to the City 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, Successorship.

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 City.

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 if those powers exceed assignor Cooperatives' statutory charter, and any limit on Cooperative's authority shall not be construed or applied to limit the powers of assignee.

SECTION 6, Term.

This Agreement shall remain in full force and effect for a period of twenty (20) years, and shall expire twenty years from the date of the election whereby a majority of the voters of the City pass and approve an Ordinance adopting the terms and conditions of the Franchise Agreement set forth herein.

SECTION 7, Validity of Agreement

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

SECTION 8, Effective upon enactment of Ordinance.

So agreed to by execution of this agreement by Howard Electric Cooperative manifested by signature on the date indicated below. So agreed to by the City of Fayette by attestation by the City Clerk of enactment of Ordinance adopting this Agreement on the date indicated below.

HOWARD ELECTRIC COOPERATIVE

By *Ann L. Onfelt*
General Manager

ATTEST:

Debbie Wassell
Secretary

CITY OF FAYETTE

By *Stephen Paul Gray*
Mayor

ATTEST:

Judith Thompson
City Clerk

EXHIBIT "B"

TERRITORIAL AGREEMENT

THIS AGREEMENT is made and entered into as of this 23rd day of January, 2024, by and between the CITY OF FAYETTE, MISSOURI, a City organized and existing under and pursuant to _____, RSMo. 2000, with its principal office located at 117 S. Main Street, Fayette, Missouri 65248, ("CITY") and HOWARD ELECTRIC COOPERATIVE, a Missouri rural electric cooperative corporation organized and existing pursuant to Chapter 394, RSMo. 2000, with its office located at 205 Hwy. 5 & 240 N., Fayette, Missouri 65248, ("COOPERATIVE").

WITNESSETH:

WHEREAS, CITY and COOPERATIVE are authorized by law to provide electric service within certain areas of Missouri, including portions of Howard County; and

WHEREAS, Sections 394.312 and 416.041 RSMo. 2000, provides that competition to provide retail electrical service as between rural electric cooperatives such as COOPERATIVE and municipally owned electrical utility corporations such as CITY may be displaced by written territorial agreements;

WHEREAS, CITY and COOPERATIVE desire 1) to promote the orderly development of retail electrical service within a portion of the city of Fayette, Missouri and Howard County, Missouri, 2) to avoid unnecessary duplication of electrical facilities therein, and 3) to most effectively avail themselves of prior investment and planning for serving the public; and

WHEREAS, this Territorial Agreement does not require any customer of either CITY or COOPERATIVE to change its supplier;

NOW, THEREFORE, CITY and COOPERATIVE, in consideration of the mutual covenants and agreements herein contained, the adequacy and sufficiency of which are hereby acknowledged, agree as follows:

1. Territory Affected.

A. This Agreement pertains only to land in and around the city of Fayette, Missouri within Howard County, Missouri. For purposes of this Agreement, the affected territory is comprised of one tract as follows:

1) **Tract "A"** shall be real property described more particularly as:

Commencing at a POINT OF BEGINNING in the Northeast Quarter of Section 14, Township 50N, Range 16W which lies N90°0'0.000"E a distance of 0 Feet from NE Property Line of Parcel 4226 monument located at 39°7'59.664"N, 92°40'58.159"W in the Northeast Quarter of Section 14, Township 50N, Range 16W;
thence N86°47'28.920"E a distance of 1420 Feet;
thence N1°49'5.897"E a distance of 1313 Feet;
thence S87°37'46.677"E a distance of 399 Feet;
thence N1°56'12.495"E a distance of 539 Feet;
thence S87°25'9.837"E a distance of 925 Feet;
thence N2°8'34.694"E a distance of 2020 Feet;
thence S87°55'13.224"E a distance of 1866 Feet;
thence S3°39'8.020"W a distance of 613 Feet;
thence S43°36'44.933"W a distance of 1065 Feet;
thence S13°1'6.764"W a distance of 3272 Feet;
thence N87°14'51.048"W a distance of 3254 Feet;
thence N1°53'32.098"E a distance of 591 Feet to the POINT OF TERMINATION located in the Northeast Quarter of Section 14, Township 50N, Range 16W.

An aerial map depicting the above-described Tract "A" is attached hereto and incorporated herein by reference as Exhibit 1.

B. This Agreement shall have no affect whatsoever upon service by COOPERATIVE or CITY in any area other than Tract "A".

2. Definitions.

A. For purposes of this Agreement, the references to "structure" have the same meaning as the statutory definition of the term "structure" found in Sections 393.106 and 394.315 RSMo. in effect at the relevant time. In the event no such statutory definitions exist or are not otherwise applicable, the term shall be construed to give effect to the intent of this agreement which is to designate an exclusive provider, as between the

parties hereto, of retail electric service for anything using or designed to use electricity that is located within the Service Areas described herein.

B. The term “permanent service” shall have the same meaning as the definition of “permanent service” found in Section 394.315 RSMo., in effect at the relevant time. The term shall be liberally construed to give effect to the expressed intent of this Agreement.

C. The term “new structure” shall mean (i) one on which construction has not commenced by the Effective Date, or (ii) one on which construction has commenced by the Effective Date but on the Effective Date is not complete from the standpoint that permanent wiring for the electrical power and energy to be utilized by or within the structure has not been permanently installed and permanently energized by physical connection to the facilities of an electrical supplier, or (iii) one for which the respective electrical inspection authority has not granted a permit by the Effective Date for it to be energized, or (iv) one for which the respective building authority has not granted an occupancy permit by the Effective Date.

D. The term “Effective Date” shall mean 12:01 a.m. of the date on which the Report and Order of the Commission approving this Agreement is effective pursuant to the terms of such Report and Order, unless a writ of review or other proceeding is taken challenging the Report and Order, in which case there shall be no Effective Date of this Agreement until CITY and COOPERATIVE both execute a document which establishes an Effective Date for purposes of this Agreement.

3. Exclusive Service Areas Established.

A. COOPERATIVE, pursuant to this Territorial Agreement, shall be entitled to provide permanent service to all structures now located within Tract “A” and all future new structures within Tract “A” and therefore it shall be considered to be the exclusive Service Area of COOPERATIVE, as between CITY and COOPERATIVE.

B. This Agreement does not purport to affect the rights of any electric supplier not a party to this Agreement.

4. Condition Precedent – Regulatory Approvals. This Agreement is conditioned upon receipt of approval of it by the Commission with no changes, or those changes which have been expressly agreed to by CITY and COOPERATIVE. Either party may file an application for rehearing or other document with the Commission prior to the effective date of a Commission order approving this Agreement if the party objects to the form or content of the Commission’s order approving the Agreement. If neither party files such an application for rehearing or document prior to the effective date of the Commission order approving this Agreement, it shall be presumed that the approval is satisfactory in form and content to both parties.

5. Service to Structures Receiving Service as of the Date of this Agreement. CITY and COOPERATIVE retain the right to furnish electric service to all existing structures that they are serving by either permanent or temporary electric service on the Effective Date of this Agreement, regardless of their location. To the knowledge of CITY and COOPERATIVE, there are no other suppliers of electricity providing permanent or temporary electric retail service within Tract “A” besides COOPERATIVE.

6. Structures Coming Into Existence During Interim Period.

A. During the interim period between the date of execution of this Agreement and the Effective Date, the parties shall abide by the territorial division provisions of this Agreement and may provide provisional service to any customer seeking service. Pending the issuance of a decision by the Commission either granting or denying approval of this Agreement, however, neither party shall construct primary or secondary electric facilities within the territory assigned exclusively to the other pursuant to this Agreement, unless (i) ordered to do so by the Commission or a court of competent jurisdiction or (ii) as a necessary part of the provision of service to its customers in other areas and such construction is within a previously established easement obtained for the purpose of providing service in other areas. During the time period between the filing date of this Agreement with the Missouri Public Service Commission and the Effective Date of the Agreement, if a customer requests new electric service for a Structure located in the Exclusive Service Area of one party from the other party the parties will meet and determine the party and means to serve the Structure. In the event the parties cannot

agree, the new Structure shall be served by the party whose customer equipment is located closer to the new Structure.

7. Location of a Structure.

A. The location of a Structure for purposes of this Agreement shall be the geographical location at which electric energy is used, regardless of the metering point or point of delivery.

The first owner of a New Structure who requests and receives electric service at said Structure which is located on or crossed by any mutual boundary line, as described herein, defining the service areas of the parties shall be permitted to choose either party for permanent electric service; provided that the Customer's meter is installed within that service area. Thereafter, that party shall exclusively serve that Structure.

B. Either party, if requested by an existing customer who is located in the Exclusive Service Area of the other party, may provide its customer with additional facilities and/or electric service to New Outbuildings, so long as the New Outbuildings are located on the Consumer's contiguous tracts of land. This section shall apply to the original customer's successors who continue to reside at or operate the premises. This section shall not apply to a customer who receives electric service from both Company and COOPERATIVE on the same tract of land, and requests additional electric service. These customers shall receive their additional electric service from the designated exclusive service provider, unless the customer, Company, and COOPERATIVE agree otherwise and follow the procedures set out herein.

8. Case-by-Case Exception Procedure.

A. The parties may agree on a case-by-case basis by an Addendum hereto to allow a Structure to receive service from one party though the Structure is located in the Exclusive Service Area of the other party.

B. Such Addendum shall be filed with the Commission for approval in the same manner as a motion or other pleading, with a copy submitted to the Office of Public Counsel.

C. Each Addendum shall consist of a notarized statement identifying the Structure, the party to serve the Structure, the justification for the Addendum, and indicating that the parties support the Addendum.

D. Each Addendum shall be accompanied by a notarized statement, signed by the customer to be served, which acknowledges such customer's receipt of notice of the contemplated electric service to be provided and that the Addendum represents an exception to the territorial boundaries approved by the Commission and shall indicate the customer's consent to be served by the service contemplated by the Addendum.

E. Each party, pursuant to an executed Addendum, shall have the right to provide temporary service, as defined in Section 393.106 RSMo., until the Commission approves or disapproves the Addendum. No party shall be required to remove any facilities installed pursuant to an agreement until the effective date of an Order of the Commission or a court regarding the removal of same.

9. Indirect Provision of Service to Structures Not Permitted. The intent of this Agreement is to designate an exclusive provider of electric service for structures or anything else using or designed to use electricity to be located within the described areas. Neither party shall furnish, make available, assist in providing, render or extend electric service to a structure, which that party would not be permitted to serve directly pursuant to this Agreement, by indirect means such as through a subsidiary corporation, through another entity, or by metering services outside of the area for delivery within the area. This shall not be construed to otherwise prohibit sales of electric power and energy between the parties to this Agreement.

10. Term. The term of this Agreement shall be perpetual commencing on the Effective Date of the Order of the Commission regarding the approval of same.

11. Cooperation. CITY and COOPERATIVE agree to undertake all actions reasonably necessary to implement this Agreement. CITY and COOPERATIVE will cooperate in presenting a joint application to the Commission demonstrating that this Agreement is in the public interest. COOPERATIVE shall pay all the costs assessed by the Commission for seeking administrative approval of this Agreement. All other costs, including but not limited to the attorney's fees of each party, will be borne by the respective party incurring the costs.

12. General Terms.

A. Land Descriptions: The map utilized in this Agreement is assumed by the parties to be accurate and reliable.

B. No Constructive Waiver: No failure of CITY or COOPERATIVE to enforce any provision hereof shall be deemed to be a waiver.

C. Modifications: Neither the boundaries described in this agreement nor any provision of this Agreement may be modified or repealed except by a signed writing of the parties which is approved by all applicable regulatory authorities.

D. Survival: This Agreement shall inure to the benefit and be binding upon the parties, their respective successors and assigns.

E. Lack of Approval: If the Commission or any other regulatory authority having jurisdiction does not approve this Agreement, this Agreement shall be nullified and of no legal effect between the parties. Further, if any part of this Agreement is declared invalid or void by a court or agency of competent jurisdiction, then the parties shall replace such provision as similarly as possible to the provision which was declared invalid or void so as to return each of them, as much as practical, to the status quo prior to the declaration.

F. This Agreement shall not be construed to prevent either party from obtaining easements or right of way through or in any part of the Service Area of the other if the acquisition of such easement or right of way is reasonably necessary to or

desirable for the performance of the party's duties to provide electric service to its customers in other areas.

G. The subsequent platting, re-platting, subdividing, re-subdividing, or re-naming of any parcel or subdivision covered by this Agreement shall not affect the respective rights of CITY or COOPERATIVE established by this Agreement.

13. Subsequent Legislation. This Agreement is reached between the parties based upon their understanding of the current state of the law in Missouri under Sections 393.106 and 394.315 RSMo. 2000, which allow an electrical supplier, once it lawfully commences supplying retail electric energy to a structure through permanent service facilities, to have the right to continue serving such structure. Further, the concept of service under those sections at the current time contemplates not only the physical provision of the conductors to provide an electrical path and connection between the structure and the conductors of the electrical supplier, but also the provision of electrical power and energy through such conductors. In the event the law in Missouri is changed during any term of this Agreement the provider of the electrical facilities (i.e. conductors) within the Service Area is not also required or assumed to be the provider of electrical power and energy (i.e., the electricity), and thereby give customers a choice as to who provides their electricity, as contrasted with who owns the wires over which such electricity is provided, then nothing in this Agreement shall be construed to prohibit CITY from providing electrical power and energy to structures within the Service Area of COOPERATIVE established by this Agreement, or COOPERATIVE from providing electrical power and energy to structures within the Service Area of CITY established by this Agreement, under the terms of such future legislation, notwithstanding the terms of this Agreement to the contrary. However, if either §393.106, §394.315 or §394.312 RSMo. are repealed and not reenacted in a form substantially equivalent to their status on the Effective Date, this Agreement shall terminate, coincident with the effective date of the elimination of the current content of §393.106, §394.315 or §394.312, as the case may be.

IN WITNESS WHEREOF, the parties have executed this Agreement as of this 23rd day of January, 2024.

CITY OF FAYETTE, MISSOURI

HOWARD ELECTRIC COOPERATIVE

By: Stephen Paul Protem

By: Ann L Orfelt

Title: Mayor Pro Tem

Title: General Manager / CEO

Attest: Judith Thompson

Attest: Dakota Whinnell

Title: City Clerk

Title: Board Secretary

(seal)

(seal)

Exhibit 1



**MEMORANDUM OF ACCEPTANCE
BY HOWARD ELECTRIC COOPERATIVE
OF ORDINANCE NO. 2024-01 OF THE
CITY OF FAYETTE, MISSOURI**

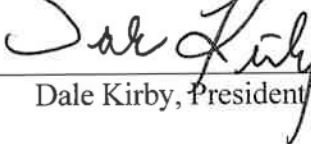
TO THE CITY COUNCIL AND CITY CLERK OF THE CITY OF FAYETTE, MISSOURI:

HOWARD ELECTRIC COOPERATIVE, for itself, its successors and assigns, hereby accepts all of the terms and provisions of Ordinance No. 2024-01 of the City of FAYETTE, MISSOURI:


which ordinance was duly passed by the City Council and signed by the Mayor of the City of Fayette on the 23rd day of January, 2024.

Dated at Fayette, Missouri, as of the 23rd day of January, 2024.

HOWARD ELECTRIC COOPERATIVE

By 
Dale Kirby, President

CITY OF FAYETTE

By 
Jeremy Dawson, Mayor

Attest:


Debbie Wiswall, Secretary

Attest:


Judy Thompson, City Clerk

Filed in the office of the City Clerk of the City of Fayette, Missouri, this 13th day of February, 2024.

STATE OF MISSOURI)
) ss
COUNTY OF HOWARD)

I, Judy Thompson, City Clerk within and for the City of Fayette, in the County and State aforesaid, do hereby certify that the foregoing constitutes a full, true and correct copy of the acceptance by Howard Electric Cooperative, of the terms and provisions of Ordinance No. 2024-01 of the City of FAYETTE, MISSOURI as filed with me on the 13th day of February, 2024, as the same appears in the records in my office.

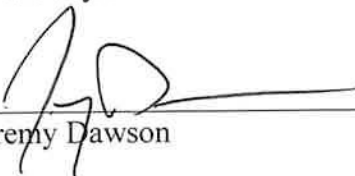
IN WITNESS WHEREOF, I have hereunto set my hand at my office in the City of FAYETTE, MISSOURI, this 13th day of February, 2024.


Judy Thompson, City Clerk

VERIFICATION

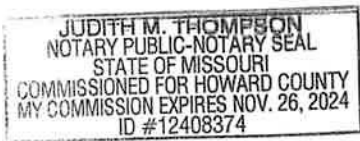
STATE OF MISSOURI)
) SS
COUNTY OF HOWARD)

On the 12th day of March, 2024, before me appeared Jeremy Dawson, to me personally known, who being by me first duly sworn, states that he is the Mayor of Fayette, Missouri; that he has read the foregoing Application; that the facts and allegations contained therein are true and correct to the best of his knowledge, information and belief; and, that he is authorized to make this statement on behalf of the City of Fayette. Said City of Fayette has not had any communications with the office of the Commission (as defined by 20 CSR 4240-4.015(10) regarding any substantive issue likely to be in this case during the preceding 150 days.



Jeremy Dawson

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the date first written above.





Notary Public