

**ORDINANCE NO. 3479**

*AN ORDINANCE GRANTING TALLAPOOSA RIVER ELECTRIC COOPERATIVE A FRANCHISE TO PROVIDE ELECTRICAL SERVICE WITHIN THE TERRITORY DEFINED BY THE ALABAMA LEGISLATURE IN ITS TERRITORIAL LEGISLATION WITHIN THE CITY LIMITS OF AUBURN, ALABAMA*

**WHEREAS**, Tallapoosa River Electric Cooperative is furnishing electric energy or electric to consumers within the municipal limits of the City of Auburn in areas as approved by the Alabama Legislature in its territorial legislation; and

**WHEREAS**, the present franchise held by Tallapoosa River Electric Cooperative in the City of Auburn, Alabama will expire on April 19, 2024; and

**WHEREAS**, Tallapoosa River Electric Cooperative has requested a renewal of its franchise to furnish electric energy and current to certain areas within the municipal limits of the City of Auburn; and

**WHEREAS**, the City of Auburn is willing to grant a franchise to Tallapoosa River Electric Cooperative to enable the Cooperative to continue to furnish electric energy and current to certain areas within the municipal limits of the City of Auburn.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Auburn, Alabama, as follows:

In consideration of the benefits that will accrue to the City of Auburn Alabama, and the inhabitants thereof, Tallapoosa River Electric Cooperative, an electric cooperative corporation organized and existing under the laws of the State of Alabama, its successors and assigns, is hereby granted the non-exclusive right, authority, easement, privilege and franchise to operate an electric power business in the City of Auburn within its service area as defined by the Alabama Legislature in its territorial legislation, whether or not such legislation is in effect from time to time, over, under, along, upon and across avenues, streets, alleys, bridges and public places in the City of Auburn in areas as defined by the aforementioned territorial legislation.

Subject to the provisions of the next sentence contained herein, Tallapoosa River Electric Cooperative is further granted the privilege and franchise to construct, erect, repair, renew, maintain, reconstruct and operate such poles, towers, conductors, cables, crossarms, guywires, braces, transformers and all other properties or appurtenances and facilities necessary or convenient for the transmission, delivery, distribution, generating, storing or furnishing of electric energy or current, and supplying and distributing the same to inhabitants or others within its assigned territory within the municipal limits of the City of Auburn herein for lighting, heating, power, and other purposes for which electric energy and electric current may now or hereafter be used; and also the right, privilege and authority to do and perform any and all things necessary, convenient or expedient for the maintaining and operation of said business by furnishing said electric energy and electric current within the area described herein. Notwithstanding anything contained herein to the contrary, however, the City of Auburn reserves the right to approve placement, types, and number of such poles, towers, conductors, cables, crossarms, guywires, braces, transformers and all other properties or appurtenances and facilities on City rights-of-way and easements.

Tallapoosa River Electric Cooperative shall file with the City Manager of the City of Auburn and shall thereafter during the entire term of such franchise maintain in full force and effect a single limit comprehensive liability policy of insurance with limits of not less than one million dollars single limit and will name the City of Auburn as an additional insured under such policy.

Tallapoosa River Electric Cooperative shall submit a written plan, and any future alterations to said plan, to the City Manager for the pruning, trimming, and removal of trees in the City's rights-of-way and easements during the term of such franchise for approval by the City of Auburn.

Tallapoosa River Electric Cooperative shall indemnify and hold harmless the City of Auburn, its officers, boards, commissions, agents and employees against and from any and all claims, demands, causes of action, actions, suits, proceedings, damages (including but not limited to damages to City property), costs or liabilities (including costs or liabilities of the City with respect to its employees), of every kind and nature whatsoever, including, but not limited to, damages for injury or death or damage to person or property, and regardless of the merit of any of the same, against all liability to others, and against any loss, cost and expense resulting or arising out of any of the same, including any attorney fees, accountant fees, expert witness or consultant fees, court costs, per diem expense, traveling and transportation expense, or other costs or expense arising out of or pertaining to the exercise or the enjoyment of any franchise hereunder by franchisee or the granting thereof by the City. The obligation of Tallapoosa River Electric Cooperative to indemnify or hold the City of Auburn harmless hereunder shall be conditioned upon: (a) the City giving Tallapoosa River Electric Cooperative notice of any claim promptly after City has knowledge of any such claim and (b) Tallapoosa River Electric Cooperative having the right to assume the complete defense and settlement of any such claim. The City of Auburn shall not be liable to Tallapoosa River Electric Cooperative for damage to the electric transmission and distribution system thereof except where such damage is caused by the gross negligence or willful misconduct of employees, agents, or contractors of the City when acting within the scope of their authority. Tallapoosa River Electric Cooperative shall, at its own expense, protect, support, temporarily disconnect, or temporarily relocate any property of Tallapoosa River Electric Cooperative when, in the opinion of the City Manager of the City of Auburn, the same is required by reason of any street construction, change or establishment of street grade, installation of sewers, drains, water pipes, signal lines, power lines or movement of buildings.

In the event that the use of any part of the electric transmission and distribution system of Tallapoosa River Electric Cooperative which exists within the city limits of the City of Auburn is discontinued for any reason for a continuous period of ninety days, without prior written notice to and approval by the City Manager of the City of Auburn, or in the event any part of such system has been installed in any street or other area without complying with the requirements hereof. Tallapoosa River Electric Cooperative shall, at the option of the City of Auburn and at the expense of Tallapoosa River Electric Cooperative and at no expense to the City, promptly remove from any street or other area all property of franchisee, and franchisee shall promptly restore the street or other area from which such property has been removed to such condition as the City Manager shall approve; provided that the City Council may, upon written application therefor by Tallapoosa River Electric Cooperative, approve the abandonment of any of such property in place by Tallapoosa River Electric Cooperative and under such terms and conditions as the City Council may prescribe; and upon abandonment of any such property in place, Tallapoosa River Electric Cooperative shall cause to be executed, acknowledged, and delivered to the City such instruments as the City Attorney shall prescribe and approve, conveying the ownership of such property to the City of Auburn.

Upon the failure, refusal or neglect of Tallapoosa River Electric Cooperative to cause any work or other act required by law or by this ordinance to be completed in, on, over, or under any street within its service area within the city limits of the City of Auburn in areas approved by the Alabama Legislature in its territorial legislation within any time prescribed therefor, or upon notice given, where notice is prescribed, the City Manager may cause such work or other act to be completed in whole or in part, and upon so doing shall submit to Tallapoosa River Electric Cooperative an itemized statement of the costs thereof, and Tallapoosa River Electric Cooperative shall, within thirty days after receipt of such statement, pay unto the City of Auburn the entire amount thereof.

No person, firm or corporation within the service area of Tallapoosa River Electric Cooperative within the city limits of the City of Auburn as defined by the Alabama Legislature in its territorial legislation shall be refused service; provided, however, that Tallapoosa River Electric Cooperative shall not be required to provide service to any subscriber or customer who does not pay the applicable connection fee or charges for services provided and who does not comply with other rules and regulations regarding service applicable to similarly situated consumers of grantee. No person, firm or corporation within the city limits of the City of Auburn and outside of

the service area specified above for the operation of an electric power business by Tallapoosa River Electric Cooperative may be served by Tallapoosa River Electric Cooperative.

The authority and franchise granted herein shall continue for a period of thirty (30) years and shall be subject to renewal at the option of the parties upon expiration of its term. The franchise granted hereunder shall be a privilege to be held in personal trust by the original grantee. It cannot in any event be sold, transferred, leased, assigned, or disposed of, in whole or in part, either by forced or involuntary sale, or by voluntary sale, merger, consolidation or otherwise, without prior consent of the City Council and then only under such conditions as may therein be prescribed.

Tallapoosa River Electric Cooperative shall be subject to all ordinances, rules, regulations, and specifications of the City of Auburn heretofore or hereafter established, including but not limited to those pertaining to works and activities in, on, over, under, and about the streets within the city limits. Tallapoosa River Electric Cooperative and its employees and agents are prohibited from entering or encroaching upon or interfering with or obstructing any private property without the express consent of the owner, unless provided for by applicable state or federal law.

Tallapoosa River Electric Cooperative shall at all reasonable times, and to the extent necessary to carry out the provisions of this ordinance, permit any duly authorized agent or representative of the City to examine all franchise property, together with any appurtenant property of franchisee situated within the City and to examine and transcribe any and all maps and other records kept or maintained by grantee. Tallapoosa River Electric Cooperative shall prepare and furnish to the City Manager at such times and in such form as prescribed by the City Manager, references, and materials with respect to the operations, affairs, transactions, or property of Tallapoosa River Electric Cooperative as may be reasonably necessary or appropriate to the performance of any duties of the City Manager with respect to the franchise granted herein.

After notice and reasonable opportunity to correct any breaches of this Agreement, willful failure, refusal, or neglect by Tallapoosa River Electric Cooperative to comply with any requirements herein, or any term or condition of the franchise issued hereunder, shall be sufficient cause for termination of any franchise by the City of Auburn.

Tallapoosa River Electric Cooperative shall evidence its acceptance of this franchise by filing with the City Manager a written statement of acceptance within 30 days after it is given notice of approval by the City Council. This Ordinance shall be published within the corporate limits of the City of Auburn and shall take effect after publication or as otherwise provided by law.

Should any section, provision, or part of this ordinance be declared to be unconstitutional or invalid by a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any other section, provision, or part thereof. All ordinances or parts of ordinances in all sections of the Code of the City of Auburn in conflict herewith, are to the extent of such conflict, hereby repealed.

**ADOPTED AND APPROVED** by the City Council of the City of Auburn, Alabama, this the 19<sup>th</sup> day of March 2024.

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**/s/ Ron Anders, Jr., Mayor**

**ATTEST:**

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**/s/ Megan McGowen Crouch, City Manager**