City of Pattison, Texas

Ordinance No. 177-2024

AN ORDINANCE OF THE CITY OF PATTISON, TEXAS GRANTING A NON-EXCLUSIVE FRANCHISE TO SAN BERNARD ELECTRIC COOPERATIVE, INC.

WHEREAS, San Bernard Electric Cooperative, Inc. is engaged in the business of furnishing and supplying electricity; and

WHERAS, the City Council of the City of Pattison wishes to secure the supply of electricity for the city and its citizens at a rate that is reasonable and fair to all parties; and

WHEREAS, in supplying such electricity, San Bernard Electric requires use of the public streets, alleys and other public property of the city under the terms of this ordinance, which is hereby duly passed by the City Council and proposed to be duly accepted by San Bernard Electric Cooperative, Inc.; and

WHEREAS, the City Council finds that granting a franchise to San Bernard Electric Cooperative, Inc. under the terms of this Ordinance is in the best interest of the city and its citizens;

NOW, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PATTISON, TEXAS:

Section 1 – Findings.

1.1 All of the facts recited above are hereby found to be true and correct and are hereby adopted.

Section 2 – Definitions.

The following definitions apply:

2.1 "City" shall mean the City of Pattison, Texas, including all territory that currently is, or might in the future be, included within the boundaries thereof.

2.2 "Company" shall mean San Bernard Electric Cooperative, Inc., a Texas electric cooperative.

2.3 "Effective Date" means the date on which this franchise becomes effective.

2.4 "Interest Rate" means the annual interest rates for overcharges as set by the Texas Public Utility Commission

2.5 "Public Rights of Way" shall mean the surface of, and the space above, below and along, any and all present and future public streets, alleys, viaducts, public utility easements, highways, county roads, and other public roadways and public property which the City owns or has an agreement or contract to control, regulate, or maintain, as they now exist or as may be hereafter constructed or extended within the corporate limits of the City.

2.6 "System" shall mean the poles; lines; anchors; guys; conduits; manholes; conductors; transformers; ground rods; enclosures; pads; and other structures, hardware, equipment and appurtenances used in, or incident to, the provision of electricity and any applicable broadband services by the Company.

2.7 "System Standards" shall mean San Bernard's standards for constructing, maintaining and operating its system, which at a minimum, must comply with all valid federal, state and local laws, ordinances, rules, regulations and orders, and to the extent not inconsistent therewith, the National Electric Safety Code.

Section 3 – Franchise; Term.

3.1 The Company is hereby granted a non-exclusive franchise to construct, maintain and operate its System over, under, across, on and along the Public Rights of Way of the City.

3.2 This franchise shall be in force and effect for a period of 10 years, beginning on the Effective Date. It shall automatically renew for successive 1-year terms unless the City or the Company provides timely notice of non-renewal. Notice of non-renewal is timely if it is given not more than 180 days and not less than 90 days prior to the expiration of the term in effect immediately prior to the renewal.

3.3 The Company may allow third parties to use its System, and it shall not be responsible for any act or omission of such third parties. This provision does not relieve the Company from complying with the System Standards, nor does it relieve such third parties from obtaining any franchises or other authorizations which might be required by law.

Section 4 – Construction, Maintenance and Operation.

4.1 This franchise shall constitute a permit for the Company and its contractors to perform all work on the Company's System within the Public Rights of Way and to park vehicles and place equipment therein when necessary to accommodate the work. Company must notify City of all work within the Public Rights of Way via email to the City Secretary and Mayor using the contact information provided in Section 10 below.

4.2 The franchise fee payable hereunder shall be the total compensation payable by the Company to the City for the Company's use of Public Rights of Way for the conduct of its business under this franchise. The City shall not separately charge the Company or its contractors for the use or occupancy of the Public Rights of Way in the City. If the City imposes any such charges, the Company may deduct the amount charged from future franchise payments until they are fully offset.

4.3 The Company shall carry out all construction, maintenance and operations in accordance with the System Standards. Company must comply with the City's Right of Way Management Ordinance, as amended.

4.4 The right, license, privilege and permission is hereby granted to the Company to keep the utility area free and clear of any and all obstructions, except fences. The Company shall have the right to remove, cut down and chemically treat with herbicides all trees, shrubbery and vegetation within said utility area and the right to remove, cut, and trim from time to time all dead, weak, leaning or dangerous trees and vegetation adjacent to, and outside of, the utility area that are tall enough to strike the wires or cables if they fall, so as to prevent the branches of such trees and vegetation from coming in contact with the System. The utility area shall include the Public Rights of Way where the Company has or will have System components. The Company shall immediately clean up all limbs or other trimmings left as a result of its tree trimming activities and shall not leave any limbs or other trimmings in City ditches or other areas impacting the City's drainage system.

4.5 The Company shall give the City reasonable notice of the dates, locations, and nature of work to be performed on the System within Public Rights of Way. Following completion of the work, the Company shall repair the affected Public Rights of Way as soon as possible, and in all cases, it shall comply with all city ordinances governing time periods and standards relating to excavating in the Public Rights of Way. Public Rights of Way may not be encumbered by the Company's work for a longer period than shall be necessary.

4.6 On the written request of any person, the Company shall remove, raise or lower its wires temporarily to permit construction work in the vicinity thereof or to permit the transport of cargo, provided the request can be accommodated in compliance with the System Standards. The Company may charge for such temporary removal, raising or lowering of wires, and the benefited party or parties may be required to pay the charges in advance. The Company shall be provided not less than 48 hours advance notice to arrange for such services.

4.7 The City shall require its employees and contractors to comply with all applicable laws, statutes, codes and standards when working near the Company's System and to report as soon as practicable any damage done to the Company's System. The Company also agrees to report as soon as practicable any damage done to the City's facilities in the course of work performed by the Company and its contractors.

4.8 If requested by the City in writing, the Company shall install, remove, or relocate parts of the System situated within the Public Rights of Way at the Company's own expense, exclusive of street lighting facilities and any other facilities installed to provide utility service directly to the City, to the extent such relocation or modification is reasonably necessary to accommodate public improvement projects by the City affecting such Public Rights-of-Way, including but not limited to street widening; change of grade; water, sewer, gas, or drainage upgrades; construction or reconstruction projects; and traffic lane adjustments or expansions (collectively, "Public Works Improvement Projects"). The City shall bear the costs of all other system relocations requested by the City, including relocation requests for reasons other than being reasonably necessary to accommodate a Public Works Improvement Project.

Section 5 – Reservations of Rights.

5.1 Subject to this franchise, the City reserves, for itself and for third parties with its permission, the right to construct, place, maintain and operate any necessary or desirable transportation, distribution and drainage systems, together with related fixtures, equipment and accessories.

5.2 If the City sells, conveys or surrenders any portion of the Public Rights of Way that is being used by the Company, the City, to the maximum extent of its right to do so, shall first grant the Company an easement for such use, and the sale, conveyance or surrender shall be subject to the rights and continued use of the Company for the remainder of the term then in effect.

Section 6 - Indemnity by the Company.

6.1 The Company shall defend, indemnify and hold harmless the City and its officers and employees from and against all claims for death, personal injury or property damage to the extent caused by the Company or its contractors while engaged in the scope of the activities authorized by this franchise. The Company shall have the right to control the defense and settlement of all such claims.

Section 7 - Franchise Fee.

7.1 "Gross Revenues" means all monies charged by the Company for sales of electricity and broadband services that are consumed within the City's primary jurisdiction. Gross Revenues shall not include the following to the extent they are charged to consumers as separate items:

a. federal, state and local taxes;

b. franchise fees or charges; and

c. fees for products or services which are for other than direct consumption of electricity or broadband service (*e.g.*, connection charges, meter installation, *etc.*).

7.2 The Company shall pay to the City a monthly franchise fee in the amount of 4% of its Gross Revenues, payable by 5:00 p.m. on the last day of the calendar month following the calendar month in which the Gross Revenues were charged. If any such day falls on a weekend or a legal holiday, the date for payment shall be the next business day. Thereafter, interest shall accrue at the Interest Rate on unpaid amounts until they are paid.

7.3 By April 30 of each year, the Company shall furnish to the City a verified statement under oath setting forth its total Gross Revenues for the prior calendar year.

Section 8 – Audits and Inquiries.

8.1 The City may conduct an audit or other inquiry, or it may commence a cause of action, in relation to the payment of the franchise fee only if such audit, inquiry or cause of action concerns a payment made less than 2 years before commencement of such audit, inquiry or cause of action. The City shall bear the costs of any such audit or inquiry. Costs connected with a cause of action shall be taxed and paid in accordance with applicable laws and rules.

8.2 All books and records related to the Company's revenues under this franchise shall be available to the City. Upon receipt of a written request from the City, such documents shall be made available for inspection and copying no later than 30 days from the receipt of such request. Amounts due to the City for past underpayments shall include interest at the Interest Rate from the date the initial payment was due until it is paid. Amounts due to the Company for past overpayments shall include interest at the Interest Rate from the date the payment was made until it is repaid.

Section 9 - Annexation.

9.1 In the event the City annexes or disannexes property, it shall notify the Company in writing, describing the property and the date of annexation or disannexation, as applicable. Franchise fees shall accrue with respect to annexed property beginning on the later of the date of annexation or the 60th day after notice is provided. Franchise fees shall cease with respect to the disannexed property beginning on the date it is disannexed.

Section 10 - Notices.

10.1 Except as otherwise provided, all notices must be made in writing and delivered in person, by email or by United States mail to the Company and the City as follows.

To the Company:	**To the City:**
Chief Executive Officer SBEC P. O. Box 1208 Bellville, Texas 77418 979-865-3171 info@sbec.org	City Secretary City of Pattison P.O. Box 223 Pattison, Texas 77466 citysecretary@pattison.texas.gov
Include in an Emergency:	**With an electronic copy to:**
SBEC Dispatch Center 979-865-3171 General Info. 979-865-5502 EMERGENCY	Mayor City of Pattison mayor@pattison.texas.gov

10.2 The City and the Company may require each other to provide notices to different people or at different addresses by providing notices of a change of address.

Section 11 – Repeal of Conflicts in Other Ordinances.

11.1 All provisions of the City's ordinances which conflict with this franchise are hereby repealed to the extent of the conflict but shall otherwise remain in force and effect.

Section 12 - Severability.

12.1 The provisions of this franchise are severable. If any court of law enters a final order which determines any provision to be void or unenforceable, such order shall not affect the provisions which are not determined to be void or unenforceable.

Section 13 – Acceptance; Effective Date.

13.1 Within 30 days following the final passage of this ordinance by the City, the Company shall deliver a signed and dated written acceptance hereof to the City Secretary. This ordinance and a corporate resolution authorizing such acceptance shall be attached to the notice of acceptance. Such acceptance shall state:

> To the Honorable Mayor and the City Council of the City of Pattison, Texas:
>
> For itself, its successors and assigns, San Bernard Electric Cooperative, Inc. accepts the attached ordinance and agrees to be bound by all of its terms, conditions and provisions.

San Bernard Electric Cooperative, Inc.

By: _____

Name: MIKE ABLES

Title: CEO

Dated MARCH 25, , 2024.

13.2 Failure to timely deliver such acceptance shall invalidate this ordinance in its entirety. Otherwise, this ordinance shall take effect upon the date of the Company's acceptance.

Section 14 – Governing Law and Venue.

14.1 This franchise shall be governed by the Laws of the State of Texas, and venue for any legal action shall be in the county in Waller County, Texas.

Section 15 – Successors and Assigns

15.1 This franchise shall inure to the benefit of, and be binding upon, the successors and assigns of the City and the Company.

PASSED, APPROVED, AND ADOPTED on March 14, 2024.

City of Pattison, Texas

_____

Joe Garcia, Mayor

ATTEST:

_____

Lorene Hartfiel, Secretary