

ORDINANCE NO. 382

CITY COUNCIL OF THE CITY OF BANDERA, TEXAS, AN ORDINANCE GRANTING TO BANDERA ELECTRIC COOPERATIVE, INC., A TEXAS CORPORATION, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO FURNISH AND SUPPLY ELECTRICITY AND TELECOMMUNICATION SERVICES TO THE CITY OF BANDERA, TEXAS, THE INHABITANTS THEREOF AND PERSONS, ASSOCIATIONS AND CORPORATIONS WITHIN AND BEYOND THE CITY LIMITS FOR LIGHT, HEAT, POWER AND OTHER PURPOSES, TO USE THE STREETS, ALLEYS AND PUBLIC PLACES THEREFOR UNDER REGULATIONS OF SAID CITY PROVIDING FOR PAYMENT OF A FEE OR CHARGE FOR USE OF THE STREETS, ALLEYS AND PUBLIC PLACES AND OTHER MATTERS INCIDENT THERETO.

BE IT ORDAINED BY THE CITY COUNCIL of the City of Bandera, Texas, as follows:

Section 1. GRANTING OF FRANCHISE

- (A) There is hereby granted to Bandera Electric Cooperative, Inc., a Texas corporation, its successors and assigns, herein called "Grantee", the non-exclusive right, privilege and franchise, at Grantee's expense, to construct, expand, maintain, replace, use and operate in the public rights-of-way of the City electric light and power lines with all necessary or reasonably desirable appurtenances including, without limitation intended, underground conduits, poles, towers, wires and transmission lines, (including telegraph or telephone wires) for the purposes of supplying electricity and telecommunication services to the City; its inhabitants and persons, firms, associations or corporations within and beyond the limits of the City.
- (B) The Grantee shall not allow the use of its system by another entity to provide any service, unless the entity warrants that it has obtained all the authorizations required by the City in order to provide the service and written approval by the Council has been given. The Grantee shall not install or construct facilities within public rights-of-way for services which are not authorized by this franchise, by applicable law, or by another franchise.
- (C) This franchise does not authorize the Grantee to attach any part of its system to any City owned conduits or facilities until the Grantee has entered into a separate agreement with the City, supported by independent consideration, for the rights of attachment and use.
- (D) The operation, construction, use and maintenance of the Grantee's transmission and distribution system and other property subject to this franchise shall be performed in accordance with all applicable laws of the United States, the State of Texas, the City

Ordinances, rules and regulations. Further, this franchise is subject to the provisions of the Constitution and laws of the United States of America and the State of Texas and the Ordinances of the City.

- (E) The Grantee shall not unreasonably discriminate in furnishing electric utility service on the terms provided in the Grantee's service regulations and line extension policy, as they may be in effect from time to time. The Grantee shall not deny electric utility service, or otherwise discriminate against applicants for service or customers, on the basis of race, color, religion, national origin, sex, or sexual orientation. Electric utility service shall be provided to all areas of the City.

Section2. CONSTRUCTION WORK

- (A) Grantee shall lay, maintain, construct, operate and replace its lines and appurtenances so as to least interfere with traffic and shall promptly restore to approximate original condition, all public places it may disturb.
- (B) Grantee shall hold the City harmless from and indemnify the City against all injury or damage to person or property by reason of the construction, operation or maintenance of Grantee's system and protect and keep City harmless from any and all liability in connection therewith, whether installation be directed by the City or not.
- (C) All poles, towers and lines shall be erected so as not to interfere unreasonably with traffic over streets, alleys and public places, *as well as* existing water pipes, sewer, other electric power lines (if any), telephone lines, cable lines and other authorized installations and the City may make and impose requirements fixing the location of poles, towers and conduits that are not unreasonably burdensome upon Grantee and which do not unreasonably interfere with the operation of Grantee's facilities.
- (D) All work done by the Grantee in connection with the construction, expansion, reconstruction, maintenance or repair of its facilities in the public rights-of-way, including but not limited to excavations, shall be performed in accordance with all applicable City ordinances and requirements, and applicable federal and state rules and regulations.
- (E) Grantee shall, within ninety (90) days following written notice from the City, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any of the system or other parts of its facilities that are within the public rights-of-way if the City determines that the removal, relocation, change or alteration is reasonably necessary for (1) the construction, repair maintenance or installation of any City or other public improvement in or upon the public rights-of-way; or (2) the operations of the City or other governmental entity in or upon the public rights-of-way.
- (F) Grantee shall have the authority to trim trees or other natural growth overhanging any of its utility system or facilities so as to reasonably prevent branches from coming in

contact with the Grantee's wires, cables, or other equipment; however, Grantee shall not engage in excessive tree trimming. Grantee shall ensure compliance with the North American Electric Reliability Corporation's Transmission Vegetation Management Program, reliability standard FAC-003-1, the safety requirements for pruning, repairing, maintaining, and removing trees endorsed by the American National Standards Institute (specifically the ANSI A300 pruning standards, and state law). Except during an emergency, Grantee shall notify the City and its residents at least three (3) days prior to entering onto property to perform any tree trimming activities. Grantee shall, within one (1) year of its acceptance of this franchise, and on a yearly basis thereafter, engage in a campaign to educate its customers within the city through bill inserts of other reasonable methods regarding prudent tree selection, tree trimming and planting around power lines.

Section 3. The rights, privileges and franchise granted hereby are not exclusive and City reserves the right to grant like rights, privileges and franchises to any other person, firm, association or corporation and reserves the right to itself to furnish the services hereby provided for.

Section 4. The service furnished hereunder to the City and its inhabitants shall be first class and reasonably adequate in all respects provided that. Grantee may make and enforce reasonable rules and regulations with respect thereto and may require reasonable security for payment for services rendered or to be rendered to its customers.

#### Section 5. FEES AND RECORDS

- (A) Grantee agrees to pay and City agrees to accept a sum of money equivalent to 3% of the gross receipts received by Grantee for services rendered to consumers within the corporate limits of the City; excepting however, the gross receipts received by the Grantee for services rendered to any benevolent organization exempt by law from local taxes. Such sum shall be paid monthly on or before the fifteenth (15<sup>th</sup>) day of the month following the end of the monthly period. Provided that the first payment hereunder shall cover the period beginning with the effective date of this ordinance and extending through \_\_\_\_\_.
- (B) Such payment shall be in lieu of any other or additional occupation, easement or franchise taxes or charges, license or inspection fees, other street taxes or street and alley rentals or charges and other municipal taxes, charges, levies, fees and rentals of whatsoever kind which the City may impose or hereafter be authorized to levy and collect; excepting however, the usual general or any special ad valorem taxes which City is authorized to levy upon real and personal property.
- (C) Should City not have legal power to agree that payment of 3% of gross receipts shall be in lieu of the taxes, licenses, fees, rentals, or other charges above mentioned, then City agrees it will apply so much of said sums of money received from said 3% of gross receipts as may be necessary to satisfy Grantee's obligations, if any, for the same.

- (D) For purposes of this Ordinance, gross receipts shall mean the total amount collected by the Grantee from any and all customers from the retail sale of electric utility service within the franchise area.
- (E) Grantee shall keep complete and accurate books of accounts and records of its business and operations pursuant to this franchise in accordance with generally accepted accounting principles.
- (F) In order to determine the gross revenue received by the Grantee which is subject to franchise fees in accordance with this Ordinance; the Grantee agrees that on the same date that payment is made, it will file with the City Administrator a sworn copy of a report prescribed by the City. The report shall itemize revenues which compromise gross revenue. Without limitation on the discretion of the City to require additional information, this report shall incorporate a statement reflecting the market value of all "trade" revenue (revenues from exchanges or barter which do not involve monetary compensation).
- (G) For purpose of verifying the amount of the franchise fee, the books of the Grantee shall at all reasonable times be subject to inspection by the duly authorized representatives of the City.
- (H) Upon request and not later than ten (10) days thereafter, the Grantee shall provide the City information as to all matters in connection with or affecting the construction, reconstruction, removal, maintenance, operation and repair of the Grantee's system and any other facilities in the public rights-of-way.
- (I) In the event any monthly payment is made after noon on the date due, the Grantee shall pay a late payment charge of the greater of:
  - 1. \$100 or
  - 2. Simple interest at 10% annual percentage rate of the total amount past due.
- (J) The City agrees to maintain the confidentiality of any non-public information obtained from Grantee to the extent allowed by law. Grantee shall clearly identify information that it believes to be of a proprietary nature or confidential at the time the information is provided to City. City shall not be liable to Grantee for the release of any information the City is required to release by law, subpoena, or court order. City shall provide notice to Grantee of any request for release of any information previously designated by Grantee as proprietary or non-public information prior to releasing the information so as to allow Grantee adequate time to pursue available remedies for protection. If the City receives a request under the Texas Public Information Act that includes information previously designated by Grantee as proprietary or confidential information, City will request an opinion from the Texas Attorney General as to the confidential or the proprietary nature of the document(s). The City also will provide Grantee with a copy of this notification, and thereafter Grantee is responsible for establishing that an exception under the Texas Public Information Act allows the City to withhold the information. Nothing herein shall be

construed so as to prevent City from sharing Grantee information with City's employees, contractors, or auditors as necessary to exercise City's rights under this agreement, with appropriate promises from such persons to comply with this subsection.

## Section 6. INSURANCE

- (A) Company shall, at its sole cost and expense, obtain, maintain, and provide, throughout the term of this Franchise, insurance either by a Company approved formal plan of self- insurance maintained in accordance with sound accounting and risk-management practices or by obtaining coverage from an insurance company authorized to issue insurance in this state.
- (B) Company agrees that with respect to the above required insurance, all insurance contracts and certificate(s) of insurance will contain and state, in writing, the following required provisions:
  - 1. Except in the case of workers compensation insurance, name the City of Bandera and its officers, employees and elected representatives as additional insureds to all applicable coverages as their interest as property owner.
  - 2. State that coverage shall not be canceled, non-renewal or materially changed except after thirty (30) days written notice by certified mail *to* the City.
  - 3. Waive subrogation against the City, its officers and employees, for bodily injury (including death), property damage or any other loss.
  - 4. Provide that the Company's insurance is primary insurance with respect to the City, its officers, employees and elected representatives.
- (C) The Company will provide proof of insurance in accordance with this Ordinance within thirty (30) days after the effective date of the Franchise and by February 1st of each year thereafter. If the Company elects to self-insure, a written record describing the parameters of self-insurance by the Company shall be provided to the City annually and upon substantial change in the nature of its coverage under this section. Company will not be required to furnish separate proof when applying for permits. However, all Company contractors and subcontractors will be required to provide proof of insurance when applying for permits under this Franchise unless said contractors or subcontractors has previously provided such insurance within the last twelve months of the permit application.
- (D) General liability insurance requirements that demonstrates liability insurance coverage in the following amounts, and that otherwise complies with the following:
  - 1. Minimum of one hundred thousand dollar (\$100,000.00) per occurrence (combined for property damage and bodily injury);
  - 2. Minimum of five hundred thousand dollar (\$500,000.00) aggregate (total amount the policy will pay for property damage and bodily injury coverage); and
  - 3. Minimum of five hundred thousand dollar (\$500,000.00) aggregate for products and completed operations.

4. The certificate of insurance must contain a clause requiring the company to give the City of Bandera thirty (30) days cancellation notice of the policy.
5. Insurance must be provide by an admitted company, surplus lines carrier or other insurer authorized by law to issue liability insurance in Texas, with minimum financial reserves of not less than one hundred million dollars (\$100,000,000.00) in reported capital, surplus, and conditional reserve funds. Any insurer or re-insurer which is rated shall have an A.M. Best Company rating of B+ or higher or an equivalent rating by another insurance rating company.

Section 7. TERM, ACCEPTANCE OF FRANCHISE AND EFFECTIVE DATE

- (A) (A)The term of this Franchise shall be in full force and effect for a period of five (5) years beginning with the Effective Date.
- (B) Grantee shall, within thirty (30) days after the passage of this franchise, file in the office or the City Secretary, a written instrument accepting this franchise and all terms and conditions, signed and acknowledged by its proper officers in a form acceptable to the City. Grantee shall pay all publication expense regarding notification of the franchise ordinance.
- (C) This franchise shall take effect sixty (60) days from its passage by City Council and acceptance in accordance with the provisions of this Ordinance and Grantee, by its acceptance of this franchise, agrees that all such lawful regulatory powers and rights as the same may be from time to time vested in the City shall be in full force and effect and subject to the exercise by the City at any time.

Section 8. DEFAULT, REMEDIES AND TERMINATION

- (A) In addition to all other rights and powers retained by the City under this franchise or otherwise, the City reserves the right to forfeit and terminate this franchise and all rights and privileges of the Grantee hereunder in the event of a material breach of its terms and conditions subject to reasonable notice and opportunity to cure.
- (B) If the Grantee is in violation of this franchise, the City shall notify the Grantee in writing of the violation setting forth the nature of such violation. Within twenty-one (21) days of receipt of such notice, or such period as may be established by the City, the Grantee shall respond in writing that the violation has been cured or provide a cure plan or schedule that satisfies the City or provide an explanation with documentation to support that the alleged violation did not occur.
- (C) Notwithstanding subsection (B) above, the Grantee shall be allowed thirty (30) days to cure violations after written notice is received from the City, by taking appropriate steps to comply with the term of this franchise and any lawful regulations. If the nature of the violation is such that it cannot be fully cured within thirty (30) days due to circumstances not under the Grantee's control, the period of time for cure may be extended by the City in writing for such additional time reasonably necessary to

complete the cure, provided that (1) Grantee has promptly begun to cure and (2) the Grantee is diligently pursuing its efforts to cure in the City's reasonable judgment.

- (D) A termination shall be declared only by a written decision of the City Council after an appropriate public proceeding before the City Council, which shall accord the Grantee due process and full opportunity to be heard and to respond to any notice of ground of termination. All notice requirements shall be met by providing written notice to the Grantee at least fifteen (15) days prior to written notice of a public hearing concerning the proposed termination of this franchise. Such notice shall state the grounds for termination alleged by the City.
- (E) The city Council, after public hearing, and upon finding the existence of grounds to terminate, may either declare this franchise terminated or excuse the breach upon a showing by the Grantee of mitigating circumstances or good cause for the existence of such grounds.

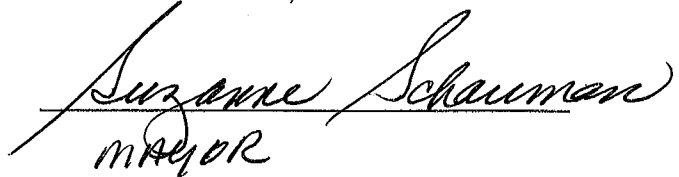
Section 9. City retains and shall have the exclusive control of the use and occupancy of the public streets, alleys and public places.

Section 10. SEVERABILITY

If any provision, section, subsection, sentence, clause or phrase of this Agreement is for any reason held to be unconstitutional, void or invalid (or for any reason unenforceable), the validity of the remaining portions of this Agreement shall not be affected thereby, it being the intent of the parties in adopting this franchise that no provision hereof shall be inoperative or fail by reason of any unconstitutionality or invalidity of any other portion, provision, or regulation, and to that end, all provisions of this Agreement are declared to be severable.

PASSED, ADOPTED AND APPROVED THE 1 day of October 2020.

CITY OF BANDERA

  
MAYOR

ATTEST:

  
CITY SECRETARY