

# PROPOSED

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AMENDING ORDINANCE NO. 16090, WHICH GRANTED A FRANCHISE TO EL PASO ELECTRIC COMPANY, (AS AMENDED BY ORDINANCES NO. 17460 AND 18772, EACH OF WHICH INCREASED THE STREET RENTAL CHARGE) TO REMOVE THE RESTRICTION ON THE ADDITIONAL FEE, AND PROVIDE FOR ADDITIONAL CONSIDERATION TO THE CITY OF EL PASO AS A CONDITION OF THE PROPOSED TRANSACTION.**

**WHEREAS**, the City Council of the City of El Paso, Texas, (“City”) granted to El Paso Electric Company (“Company”) a franchise to operate the electric utility for transmission and distribution of electrical energy within the boundaries of the City on July 12, 2005, by Ordinance No. 16090;

**WHEREAS**, the City and Company amended Ordinance No. 16090 to increase the street rental charge on November 16, 2010, and again on March 20, 2018; and

**WHEREAS**, Sun Jupiter, IIF US Holding 2 LP (“**IIF US 2**”), and EPE filed the Joint Report and Application of EPE, Sun Jupiter, and IIF US 2 for Regulatory Approvals under Texas Utilities Code §§ 14.101, 39.262, and 39.915 with the Public Utility Commission of Texas (“**PUCT**”) on August 13, 2019, ( “**Joint Application**”) seeking the PUCT’s approval of the Agreement and Plan of Merger (“**Merger Agreement**”) by and among EPE, Sun Jupiter, and Sun Merger Sub Inc. dated as of June 1, 2019, and assigned PUCT Docket No. 49849 ( “**Proposed Transaction**”);

**WHEREAS**, the City wishes to remove the restriction on the use of the Additional Fee by the City;

**WHEREAS**, as consideration to the City for the Joint Application and Proposed Transaction, the parties agree that Sun Jupiter, IIF US 2 and EPE will provide additional compensation and assurances to City as provided herein (referred to collectively with the removal of the Additional Fee Restriction as “**Franchise Amendment**”).

**NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS, THAT:**

## **SECTION 1.**

Section 1.5 is hereby added to read as follows:

### **Section 1.5 Conditions of Grant.**

- (a) Company must accept the Franchise Amendment within thirty days of the adoption of this Ordinance.
- (b) Final Stipulation in PUCT Docket No. 49849. The Parties will use best efforts to obtain

## PROPOSED

prompt adoption of a final order by the PUCT approving the Joint Application consistent with the terms of this Agreement.

- (c) Sun Jupiter agrees that it will not relocate jobs outside of the EPE service territory and will not reduce EPE's workforce as a result of the Proposed Transaction. Furthermore, EPE will maintain sufficient employment levels as required to furnish EPE's customers with safe, adequate, efficient, and reasonable electric service.
- (d) Sun Jupiter will never move EPE's headquarters outside the City of El Paso.

**Commented [HK1]:** This section is located in Section 1, Paragraph 2 of the Jan. 2020 Proposed Ordinance.

### SECTION 2.

Subsection (b) of Section 13, Compensation, of the Franchise Ordinance, is hereby amended to read as follows:

(b) The City will increase the Street Rental Charge to be paid by the Company to the City on a quarterly basis during the remaining life of this Franchise by an additional three quarters of one percent (0.75%) effective 2010 ("Additional Fee") and a supplemental one percent (1.0%) ("Auxiliary Fee") for a total amount of (i) five percent (5.0%) of the gross revenues the Company receives for the generation, transmission, and distribution of electrical energy and other services within the City and (ii) five and three quarters percent (5.75%) of BPL-related gross revenues within the City of El Paso, except however for any revenues from municipal accounts to the extent that any such revenues are excepted from the Company's Rate Schedule 94, Supplemental Franchise Fee Rider. A portion of the Street Rental Charge equal to one and three quarters of one percent (1.75%) of the gross revenues the Company receives for the generation, transmission, and distribution of electrical energy and other services, including BPL services, within the City shall be allocated by the City for promotion of economic development, including economic development incentives for new commercial customers with high electric energy needs, the attraction of companies that will make significant investments of capital and human resources in the community, solar or other renewable energy rebates or incentives, or to increase the City's capacity in alternative energy research, development, manufacturing and generation, and for such other economic development public purposes including infrastructure as reasonably determined by the City (the "Economic Development Allocation"). After July 29, 2030, the Economic Development Allocation will be reduced to one percent (1.00%). The Economic Development Allocation will be placed in a restricted fund to be used solely for the economic development purposes described herein and cannot be commingled with existing Street Rental Charges to support or supplement general fund operations. The City will provide an annual update on the status, uses, and economic impact of Economic Development Allocation to the City Council and the public.

The Company shall pay the Street Rental Charge to the City by electronic funds transfer or by other means of immediately available funds within forty-five (45) days of the end of each calendar quarter (the "Payment Date"). If the Street Rental Charge or any portion thereof is not paid on or before the Payment Date, the unpaid

## PROPOSED

balance shall bear interest at a daily rate equivalent to the prime rate of interest as published by the Wall Street Journal for that date, plus one percent (1%) per annum from the Payment Date until the date such payment is made. If any payment shall be more than thirty (30) days late, the interest shall be paid at such prime rate plus three percent (3%) per annum.

**Commented [HK2]:** This section is located in Section 4 of the Jan. 2020 Proposed Ordinance.

### SECTION 3.

Section 13 Compensation, of the Franchise Ordinance, is hereby amended to add the following:

- (d) **Economic Development Fund:**
- (1) Eighty million dollars (\$80,000,000) of the Economic Development Fund will be jurisdictionally allocated to Company's Texas service territory and held in a restricted account for the purpose of promoting economic development in Company's Texas service territory ("**Texas Economic Development Fund**").
  - (2) Company will fund the Texas Economic Development Fund through fifteen (15) equal annual installments of five million three hundred thirty-three thousand three hundred thirty-three dollars and 33/100 cents (\$5,333,333.33). Contributions to the Texas Economic Development Fund will be due by the 15<sup>th</sup> day of December of each year, with the first of the fifteen (15) installments to be due by the first December 15<sup>th</sup> to occur after the close of the Proposed Transaction.
  - (3) The City's Economic Development Department will administer the Texas Economic Development Fund through an economic development policy to be developed by the City of El Paso and approved by Company within six (6) months after the close of the Proposed Transaction ("**Incentive Policy**").
  - (4) The City will make reports, at least annually, to the Company's Board of Directors regarding the activities and uses of the Texas Economic Development Fund.
  - (5) The City's Economic Development Department will make reasonable efforts to coordinate with other state and local agencies within EPE's Texas service territory regarding the uses of the Texas Economic Development Fund.
  - (6) If the City eliminates the Economic Development Department or the Incentive Policy, the City and Company will find a replacement entity to administer the balance, if any, of the Texas Economic Development Fund
- (e) **General Fund Payments.** In addition to the franchise fees currently due to the City of El Paso under the Franchise Agreement, Sun Jupiter agrees to pay the City of El Paso for use in its general fund seven hundred fifty thousand dollars (\$750,000) per year for a period of ten (10) years. The first payment shall be made no later

## PROPOSED

than thirty (30) days after the close of the Proposed Transaction by electronic funds transfer as designated by the City of El Paso. Each remaining annual payment will be made on or before the 30th day of June of each corresponding year.

**Commented [HK3]:** These sections are located in Section 1, paragraphs 2, C. (2) (3) and (4) of the Jan. 2020 Proposed Ordinance.

(f) Renewable Generation Study.

- (1) Within one year after the close of the Proposed Transaction, EPE will complete a study concerning renewable generation, as defined in Texas Utilities Code § 39.904(d) (“**Renewable Generation Study**”). EPE will share the results of the Renewable Generation Study with the City of El Paso within thirty (30) days of the Renewable Generation Study’s completion. Should EPE not be able to complete the study within one year, EPE may request additional time to complete the Renewable Generation Study from the City of El Paso, and the City of El Paso shall not unreasonably withhold its consent to the extension.
- (2) The Renewable Generation Study will cover, but is not limited to, the following topics:
  - i. Possible costs and operational impacts related to the integration of utility-scale renewable generation into EPE’s Texas service territory;
  - ii. Legislative or regulatory changes, if any, that may be required to increase utility-scale renewable generation in EPE’s Texas service territory and the legislative strategies necessary to implement such legislative or regulatory changes;
  - iii. Potential voluntary renewable generation program offerings to allow customers to increase their use of renewable resources within the El Paso, Texas, city limits and EPE’s Texas service territory;
  - iv. Reasonable commitments that EPE can make to increase the integration of renewable generation in EPE’s Texas generation portfolio; and
  - v. Grant opportunities for EPE, the City of El Paso, or both to increase the integration of renewable generation in EPE’s Texas generation portfolio.
- (3) EPE shall designate material contained in the Renewable Generation Study as confidential to the extent that it relates to critical infrastructure, as that phrase is understood in Texas Government Code § 418.181, or to the extent that it contains sensitive information that would not be subject to public release under the Texas Public Information Act, as codified in chapter 552 of the Texas Government Code. The City of El Paso will use its best efforts to not publicly distribute such designated material to parties outside of the City El Paso. The

## PROPOSED

City of El Paso will also provide EPE with notice of an open records request implicating such material so that EPE may assert its rights under the Texas Public Information Act.

**Commented [HK4]:** This section, as amended, is located in Section 3 of the Jan. 2020 Proposed Ordinance.

- (g) City Expenses Related to Docket No. 49849. Company will pay the City two hundred thousand dollars and 00/100 cents (\$200,000) for the City's reasonable consultants and attorneys fees incurred due to the City's intervention in Docket No. 49849 ("**City Public Interest Fees**") no later than thirty (30) days after the later of (1) the close of the Proposed Transaction or (2) Company's receipt of invoices supporting the City Public Interest Fees.

**Commented [HK5]:** This section, as amended, is located in Section 5 of the Jan. 2020 Proposed Ordinance.

- (h) Land Use. Company will coordinate with the City's Engineer within 6 months after the close of the Proposed Transaction of to identify:

- (1) Land under the control EPE that the City of El Paso desires to utilize for public recreation, exercise, relaxation, travel, or pleasure in accordance with Section 75.0022 of the Texas Civil Practice and Remedies Code and;
- (2) Poles, lines, conduits, or other construction that EPE maintains that may need to be installed or relocated in accordance with Section 3 of the Franchise Agreement.

**Commented [HK6]:** This Section, as amended, is located in Section 2 of the Jan. 2020 Proposed Ordinance.

### SECTION 4.

That Section 17 is replaced in its entirety with the following:

#### **Section 17. City's Future Purchase Option.**

(a) In the event Sun Jupiter decides to consider a sale of one hundred percent (100%) of its equity interests in, or all of the assets and liabilities of, EPE ("**Sale Transaction**"), Sun Jupiter shall first provide notice to the City of El Paso ("**City**") of the potential Sale Transaction (a "**Potential Sale Notice**"). The City will use best efforts to protect information related to a Sale Transaction from public disclosure consistent with the exceptions in chapter 552 of the Texas Government Code, including, Texas Government Code § 552.110.

(b) Within ninety (90) days of receipt by the City of a Potential Sale Notice, the City will either (i) make a bona fide binding offer to purchase EPE or all the assets and liabilities of EPE ("**Offer**") or (ii) provide a waiver of the right to make an Offer. The City's Offer, if made, shall remain open for at least thirty (30) days during which time Sun Jupiter will consider the City's Offer in good faith.

(c) If the City waives the right to make an Offer or if Sun Jupiter does not accept the Offer, Sun Jupiter shall provide a written acknowledgement that (i) Sun Jupiter has provided the City notice of the potential sale and (ii) either, as the case may be, (A) the City waived the right to make an Offer or (B) the City made an Offer and Sun Jupiter did

## PROPOSED

not accept such Offer (“**Acknowledgment**”). Sun Jupiter may enter into a definitive agreement with a third party for a Sale Transaction if Sun Jupiter reasonably determines such third party’s offer contains terms and conditions that, on the whole, are more favorable to Sun Jupiter than those contained in the Offer, if made.

**Commented [HK7]:** This section, as amended, is located in Section 6 of the Jan. 2020 Proposed Ordinance.

**SECTION 5.** That Section 18 is added to read as follows:

**Section 18. City’s Rights to Application Process.** The City does not waive any rights with respect to franchise assignment as set forth in El Paso City Code § 15.08.013; or Section 14(b) of Ordinance No. 16090 provided, however, that the City shall not unreasonably withhold any required consent to the assignment of the franchise to a third party following Sun Jupiter’s compliance with this provision.

**Commented [HK8]:** This section, as amended, is located in Section 6, paragraph (g) of the Jan. 2020 Proposed Ordinance.

**SECTION 6.** This ordinance shall take effect on \_\_\_\_\_, 2020.

**SECTION 7.** Except as expressly amended herein, the Franchise Ordinance shall continue in full force and effect.

**PASSED AND APPROVED** this \_\_\_\_ day of \_\_\_\_\_, 2020.

**CITY OF EL PASO**

\_\_\_\_\_  
Dee Margo, Mayor

**ATTEST:**

\_\_\_\_\_  
Laura D. Prine  
City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Karla M. Nieman  
City Attorney

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Tomás González  
City Manager

PROPOSED

ACCEPTANCE

The Amendment of the Franchise granted by the City of El Paso on \_\_\_\_\_, 2020, is hereby accepted this \_\_\_\_ day of \_\_\_\_\_, 2020.

**EL PASO ELECTRIC COMPANY**

By: \_\_\_\_\_  
Adrian J. Rodriguez  
Interim Chief Executive Officer

**STATE OF TEXAS**            §  
  §  
**COUNTY OF EL PASO**    §

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_, **Chief Executive Officer of El Paso Electric Company**, a Texas corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public in and for the  
State of Texas

Received for filing this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Laura D. Prine  
City Clerk