

## SUMMARY AND CHRONOLOGY OF THE EL PASO ELECTRIC COMPANY 2005 FRANCHISE AS AMENDED

### -Ordinance No. 016090, July 2005-

The Ordinance granting a franchise to El Paso Electric Company (“EPE” or “Company”) contains 17 sections. This document is not a complete detail of each provision of the Franchise Ordinance, but is merely a summary of issues that are pertinent to the 2020 proposed amendment.

Section 2 is regarding construction of a power plant. Sections 3 through 8 are regarding the City’s authority related to public health and safety. Section 9 allows for other utilities to occupy the same space, and section 10 provides for indemnification by EPE to the City. Section 11 requires quality and up-to-date service. Other sections are discussed in more depth below.

#### **Section 1. Grant:**

EPE is granted a franchise to build and maintain facilities or transmission and distribution of electricity and broadband over power line (“BPL”) communication services on, over and under City streets, alleys, public ways, parks, and public places for the use of the City and its residents and properties. EPE shall interfere as little as possible with public use of rights of way and with residents’ private property. §1.

#### **Section 1. Term:**

Effective from August 2, 2005 through July 31, 2030 per Ordinance 16090.

#### **Section 13. Compensation:**

The Company will pay the City:

- \$50,000 in 2005 at acceptance plus reasonable costs of advertising (the “Acceptance Fee”). §13(a) Ord. No. 16090.
- Street Rental Charge: 3.25% of the gross revenues of the Company and 4% of BPL - related gross revenues within the City were paid to the City within 45 days of the end of each quarter.

#### **Option to Purchase:**

None in existing Franchise, as amended.

#### **Section 14. Assignment:**

- a) “If the Company shall assign this Franchise to any other person or corporation (the “Assignee”) acquiring and duly authorized to acquire, own and operate the Company’s property and to carry on the Company’s business as then conducted, the Assignee shall execute and deliver to the City an agreement in writing to be bound by all of the Company’s obligations, liabilities and undertakings under this Franchise, the Assignee shall thereupon be deemed to be substituted for the Company, and the Company shall stand released from all obligations under this Franchise except such as have already accrued. If the Assignee fails to file such agreement within thirty (30) days after said assignment, this Franchise shall terminate.” §14(a) of Ord. No. 16090.
- b) “This grant shall not be assignable without the express consent of the governing body of the City. Said consent shall be evidenced by an ordinance that fully recites the terms and conditions, if any, upon which such consent is given. If the governing body does not grant said consent then this Agreement shall terminate. In the context of this Agreement, consent is required in the event of any merger or acquisition of the Company, sale of substantially all of the assets of the Company or change in control of the Company. A formal assignment of the Franchise is required subsequent to merger

or acquisition. “Change in Control” is defined to mean the occurrence of any of the following: (i) the sale, lease, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the assets of the Company and its Subsidiaries taken as a whole, (ii) the adoption of a plan relating to the liquidation or dissolution of the Company, (iii) the consummation of any transaction (including, without limitation, any merger or consolidation) the result of which is that any “person” or “group” (as such terms are defined in Sections 13(d)(3) and 14(d)(2) of the Exchange Act) becomes the “beneficial owner” (as such term is defined in Rule 13d-3 and Rule 13d-5 under the Exchange Act), directly or indirectly, or more than 50% of the voting stock of the Company, or (iv) the first day on which a majority of the members of the Board of Directors of the Company are not Continuing Directors. For purposes of this definition, any transfer of an equity interest of an entity that was formed for the purpose of acquiring voting stock of the Company shall be deemed to be a transfer of such portion of such voting stock as corresponds to the portion of the equity of such entity that has been so transferred.” §14(b) of Ord. No. 16090.

In summary, a formal assignment of the Franchise is required subsequent to a merger. The Franchise is not assignable without the express consent of the City through an ordinance listing the conditions of consent. If the City does not grant consent, then the Franchise terminates. City consent to a merger or acquisition is also required.

#### **Section 12. Reports; Rate Regulation:**

- a) The City has the right “to keep informed of the reasonableness of the Company’s rates”. The Company will give the City pertinent information as may be reasonably required by the City and the Company’s original records are open to the City’s inspection “at any reasonable time”. §12.
- b) Annually, no later than March 31, the Company will file an operating statement for the previous year with the City Clerk (income, expenditures, profit, and rate of return). §12.

#### **-Ordinance No. 17460, December 2010-**

#### **Section 13. Compensation:**

The 2010 Amendment: Increased the Street Rental Charge by 0.75% to a total of 4% of EPE gross revenues and increase to 4.75% BPL revenues within the City;

- 0.75% of the gross revenues, received as Street Rental Charge, was restricted as an allocation for Economic Development in the City (“Economic Development Restriction”).

#### **-Ordinance No. 18772, March 2018-**

#### **Section 1. Term**

The 2018 Amendment extended the term of the Franchise through July 31, 2060.

#### **Section 2. Compensation**

The 2018 amendment: Increased the Street Rental Charge to 5% of EPE gross revenue and increase to 5.75% BPL revenues within the City.

- 1.75% of the gross revenues received as Street Rental Charge is allocated to the Economic Development Restriction.

## **-2019 ASSIGNMENT APPLICATION BY EPE/CONDITIONS OF CITY'S CONSENT-**

The Proposed Ordinance that is posted for introduction on January 21, 2020 contemplates the following conditions for the City's consent to EPE's 2019 assignment application, which was submitted as required by Ordinance 016090.

City's consent to EPE's 2019 Assignment Application is conditioned upon the following:

- a) Sun Jupiter, for so long as IIF US 2 owns it:
  1. will not relocate jobs outside of the EPE service territory and will not reduce EPE's workforce; and
  2. will never move EPE's headquarters outside of the City of El Paso.
- b) Sun Jupiter will provide \$80,000,000 over 15 years for an Economic Development Fund to serve EPE's Texas service territory.
- c) Sun Jupiter will provide \$750,000 per year for 10 years for the City's general fund.
- d) Sun Jupiter will pledge up to \$1,000,000 over a period of five years to support enhancements to EPE's low income assistance programs.

## **-2020 PROPOSED AMENDMENTS TO FRANCHISE-**

### **Section 3. Police Power:**

In addition to City's continuing police power, EPE will be required to meet with the City quarterly to ensure that EPE conducts appropriate maintenance of its street lights and rights of way.

### **New Section 9.5. Renewable Generation Study:**

Per the Jan. 2020 Ordinance Amendment, EPE will provide a renewable generation study to include information regarding:

- a) Costs and operational impacts;
- b) Legislative or regulatory changes require to increase renewable generation, and how to implement such changes;
- c) Potential voluntary renewable offerings to increase customer use;
- d) Commitments that EPE can make to increase renewable generation; and
- e) Grant opportunities to increase renewable generation.

EPE will report to City Council two times per year on its progress towards increasing renewable generation in accordance with the findings of the study.

### **Section 13. Compensation:**

- a) The Economic Development Restriction will be reduced as of July 29, 2030, to 1% of the gross revenues received as Street Rental Charge.
- b) EPE will pay \$200,000 for the City's reasonable consultants and attorneys fees incurred due to the City's intervention in Docket No. 49849.

### **New Section 18. Future Purchase Option:**

In the event Sun Jupiter considers selling 100% of its equity in EPE, it shall first notify the City, and the City will have the exclusive right, for 120 days, to make an offer to purchase EPE or waive the right.

Thereafter, the City may make an offer to purchase EPE at any time, which may be in competition with other parties making offers to purchase EPE.