

~~DATE: February~~ January 17, 2021  
~~THE CITY OF LAS VEGAS, NEW MEXICO~~  
~~ORDINANCE NO. 21-021~~

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LAS VEGAS, SAN MIGUEL COUNTY, NEW MEXICO:

- SECTION 1 DEFINITION
- SECTION 2 SHORT TITLE
- SECTION 3 GRANT OF FRANCHISE
- SECTION 4 TERM
- SECTION 5 FRANCHISE FEE
- SECTION 6 CONSTRUCTION ACTIVITIES
- SECTION 7 TREE TRIMMING, MAINTENANCE AND MOVING OF AERIALS
- SECTION 8 INSURANCE AND INDEMNITY
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- SECTION 10 ACCEPTANCE
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1. AN ORDINANCE GRANTING TO PUBLIC SERVICE COMPANY OF NEW MEXICO (“PNM”), A NEW MEXICO CORPORATION, A FRANCHISE TO FURNISH ELECTRICITY WITHIN THE CITY OF LAS VEGAS, SAN MIGUEL COUNTY, NEW MEXICO, AND GRANTING TO PNM, THE RIGHT TO USE ANY PUBLIC HIGHWAY, STREET, ALLEY, ROAD OR OTHER PUBLIC PLACE WITHIN THE PRESENT OR FUTURE MUNICIPAL LIMITS OF THE CITY OF LAS VEGAS.

2. **SHORT TITLE.** This Ordinance shall be known and may be cited as the “PNM Electric Franchise Ordinance.”

3. **GRANT OF FRANCHISE.**

**3-1 Grant of Franchise.** The City of Las Vegas, New Mexico (the “City”), a home-rule municipality created under Article X, Section 6 of the New Mexico Constitution, hereby grants to PNM, its successors and assigns (collectively referred to as “PNM”), the right and privilege to operate an electric utility and provide electric service within the municipal boundaries of the City, and to place, erect, lay, maintain and operate in, upon, over and under the streets, alleys, avenues, thoroughfares, and public highways, places and grounds within the City, as existing now and hereafter extended, dedicated, annexed, owned or controlled by the City, including the right to construct, install, remove, change, expand, alter, improve, operate and maintain electric plant, transmission and distribution system and facilities and all components thereof as may be necessary or reasonably convenient for the proper operation of such electric utility system.

**3-2 Franchise Not Exclusive.** The franchise rights and privileges extended by this grant shall never be construed or held to be exclusive. The City retains and shall ever be considered as having and retaining the right and power to allow and to grant to any other person, firm or corporation and other electrical companies, including the City itself, electric franchise rights and privileges to be exercised in and upon its streets, highways, alleys, roads and other public places.

**3-3 Jurisdiction of Public Regulation Commission.** The New Mexico Public Regulation Commission has the sole authority in New Mexico to grant a company the right to provide electric service. The rates to be charged by PNM for furnishing electricity shall be those rates effective by tariffs filed with the New Mexico Public Regulation Commission, as the same may be amended from time to time, in accordance with the rules and regulations of the New Mexico Public Regulation Commission and the Statutes of the State of New Mexico.

**4. TERM.** The rights, privileges and franchise herein granted shall continue in full force and effect for the period of twenty (20) years from and after the date this Ordinance becomes effective. This Ordinance shall be subject to any and all State or Federal legislative enactments.

**5. FRANCHISE FEE.**

**5-1 Franchise Fee:** In consideration of the rights, privileges, and franchise hereby granted, PNM shall pay the City, from and after the date of the acceptance of this franchise, on a monthly basis, a total aggregate sum of an amount equal to three percent (3%) of the gross receipts which PNM receives from the sale of electricity within the municipal boundaries of the City as such boundaries exist as of the Effective Date, or as later expanded by the City pursuant to applicable law, provided that in the event of such expansion, the City provides PNM with written notice specifying such boundary expansion pursuant to Section 9-3 of this Agreement, for the next preceding one-month period to residential and commercial customers as classified by PNM's rate schedules. PNM shall make payments on a monthly basis on or before the 30<sup>th</sup> day following the close of each month.

**5-2 Franchise Fee in Lieu of Other Taxes.** The franchise fee and payments made hereunder are and shall be in lieu of any and all other franchise, license, privilege, occupation, excise or revenue taxes upon the business, revenue or property of PNM, or any part thereof, situated in the City during the term of this franchise, provided that ad valorem property taxes and special assessments for local improvements as well as gross receipt taxes shall remain applicable. Without limiting the foregoing, the City does not waive the obligation of PNM to obtain all applicable permits and to comply with codes, ordinances and regulations governing the operation, maintenance and construction of its System.

**6. CONSTRUCTION ACTIVITIES.**

**6-1 Excavations.** PNM shall have the right to excavate any public highway, street, alley, avenue, thoroughfare, road, pavement, sidewalk and other public places and public rights-of-way now or hereafter dedicated, owned or controlled by the City within its municipal boundaries, as now existing or hereafter extended as necessary for the construction, operation and maintenance of the electric utility system and the facilities and components associated therewith.

Except as otherwise provided by state law or regulation, all construction activities of PNM within the municipal limits of the City shall be done in compliance with the then-applicable applicable planning and zoning rules, regulations, ordinances or orders of the City and any other agency having jurisdiction.

**6-2 Restoration.** There shall be no unreasonable delay in the backfilling of excavations by PNM under this Section 6, and all such excavations shall be restored by PNM in accordance with valid ordinances and regulations which may be adopted by the City to reasonably control and monitor such activities. If such ordinances and regulations are not adopted or effective, it shall then be the responsibility of PNM to restore such property, insofar as practicable, to the condition of such property immediately prior to the excavation.

**6-3 Relocation.** Any location or relocation of PNM's Facilities in the Public Rights-of-way reasonably required, caused or occasioned by any City project, including without limitation, the installation of storm drainage, landscaping, traffic facilities, and road reconstruction shall be at the cost of PNM. Nothing in the Ordinance shall be construed in any way to prevent the City from opening, grading, paving, repairing, altering, or improving any of the streets, alleys, avenues, thoroughfares, and public highways, places and grounds within the City's public rights-of-way in which PNM has its facilities located. Prior to such activity and in the pre-design phase of any project, the City and PNM shall make a good faith effort to coordinate activities to avoid unnecessary cost for both parties. Except as otherwise provided by state regulation or law, PNM, at its expense, shall protect, support, temporarily disconnect, relocate or remove along under or over any street, alley or any other public place, PNM's equipment or facilities when notified in writing and reasonably required by the City for reasons of public safety, street or alley excavation, street or alley construction (including rerouting, improving and widening) or the change or establishment of street or alley grade. Notwithstanding the foregoing, this provision shall not apply to any move, regrading, rerouting, improvement or widening is undertaken for the benefit or convenience of or at the request of a third party, including a private developer or development or any other person who develops property within the City in a manner which necessitates such regrading, rerouting, improving or widening of any street, avenue, easement, right-of-way, alley, highway, sidewalk, bridge or other structure or public place or ground, or in a manner which necessitates such construction, reconstruction, removal or relocation of traffic signal systems or utility systems owned or operated by or on behalf of the City. This section shall also be subject to any applicable state regulation or legislation affecting payment by a state

or local public agency or body for certain relocation costs, or any other agreements with the City affecting relocation.

**6-4 No Interference with Other Authorized Uses.** PNM shall make a good faith effort in the conduction of its activities so as not to interfere with the activities of other franchisees. The City shall, in the grant of other franchises, require that said franchisees similarly conduct their activities to avoid interference with those of PNM.

## **7. TREE TRIMMING, MAINTENANCE AND MOVING OF AERIALS.**

**7-1 Tree Trimming and Obstructions.** PNM shall have the right and authority to trim or remove trees or parts of trees overhanging or within any public way and to remove any obstruction within any public way in order to eliminate or minimize interferences with its lines, system, plant, equipment, service or facilities.

**7-2 Moving Aerials.** Whenever it becomes necessary to temporarily rearrange, remove, tower or raise any of PNM's aerial cables, wires, or other apparatus of PNM to permit the passage of any building, machinery or other object moved over the roads, streets, alleys, avenues, thoroughfares and public highways within the City, PNM will rearrange such aerial cables, wires, or other apparatus within a reasonable period after receiving written notice from the owner or contractor-mover who desires that said building, machinery or other objects be moved. All such notices must include the written approval of the City, must set forth in detail the route of movement of the building, machinery, or object, must state that the costs incurred by PNM for such activities will be borne by the contractor-mover and that the contractor-mover will indemnify and save both the City and PNM harmless from any and all damages of claims of whatsoever kind or nature caused directly or indirectly by such activities, and if required by PNM, must include a cash deposit or a good and sufficient bond in an amount reasonably acceptable to PNM to pay any and all such costs as estimated by PNM.

## **8. INSURANCE AND INDEMNITY.**

**8-1 Commercial General Liability Insurance.** Throughout the term of this Agreement, PNM shall, at its own cost and expense, maintain Commercial General Liability Insurance and provide the City certificates of insurance designating the city as additional insured and demonstrating that PNM has obtained the insurance required. Such policy or policies shall be in the minimum amount of One Million Dollars (\$1,000,000.00) for bodily injury or death to any one person, and One Million Dollars (\$1,000,000.00) for property damage resulting from any one accident.

**8-2 Worker's Compensation Insurance.** PNM shall maintain Worker's Compensation Insurance in such amounts as required by law.

**8-3 Indemnification.** PNM shall assume and pay for all judgments rendered against it for damages to persons or property resulting from the construction or cooperation of its electric business within the City, both present and as may be extended during the life of this PNM Electric Franchise Ordinance. PNM shall indemnify the City, its elected and

appointed officers, employees and agents against all judgments against the City, its officers, agents and employees resulting from PNM's negligence in the construction, operation, maintenance or removal of PNM's electric facilities with the City.

**9. MISCELLANEOUS PROVISIONS.**

**9-1 Reservation of Rights.** By accepting this Ordinance, the City and PNM reserve all rights under federal and state law and regulation.

**9-2 Inspection of PNM's Books.** PNM shall make available to the City, upon ten (10) days written notice, such information directly pertinent only to the payment of the franchise fees pursuant to the terms of this Ordinance in such form as PNM can reasonably make available. Subject to New Mexico public records laws, any information that is provided to the City and/or that the City reviews in camera is confidential and proprietary and shall not be disclosed or used for any purpose, other than verifying and/or enforcing proper computation and payment of franchise fees in accordance with the terms of this Ordinance.

**9-3 Changes in City's Municipal Boundaries.** The City shall notify PNM in writing of any changes in the municipal boundaries of the City within thirty (30) days of any extension or contraction of such municipal boundaries becoming effective. Such notice shall be delivered to:

Public Service Company of New Mexico  
Attn: Tax Department  
MS 1025  
414 Silver SW  
Albuquerque, NM 87102

The notice shall provide a description of the new and former municipal boundaries. PNM shall have no obligation to calculate, collect or pay the franchise fee attributable to any newly extended municipal boundaries until thirty (30) days have elapsed from PNM's receipt of such notice.

**9-4 Amendment and Addendum.** At any time during the term of this Ordinance, the City or PNM may propose an amendment or addendum to the Ordinance by giving thirty (30) days written notice to the other of the proposed amendment or addendum desired, and both shall negotiate in good faith in an effort to agree upon a mutually satisfactory amendment. Such amendment shall become effective upon adoption and passage of an amending Ordinance by the City in accordance with the requirements of local and state law.

**9-5 Notices.** For the purpose of this ordinance, notice to the City will be to:

City of Las Vegas  
Attention: City Manager

1700 N. Grand Ave.  
Las Vegas, NM 87701

With a copy to:

City of Las Vegas  
Attention: City Attorney  
1700 N. Grand Ave.  
Las Vegas, NM 87701

City of Las Vegas  
Attention: City Clerk  
1700 N. Grand Ave.  
Las Vegas, NM 87701

Notice to PNM will be to:

Public Service Company of New Mexico  
Attn: Tax Department  
MS 1025  
414 Silver SW  
Albuquerque, NM 87102

With a copy to:

PNM Resources Law Department  
MS 0805  
414 Silver SW  
Albuquerque, NM 87102

Notice will be effective upon delivery at the above addresses until the City or PNM notifies the other, in writing, of a change in the address.

**9-6 Severability.** If any section, paragraph, sentence, clause, word or phrase of this ordinance is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this ordinance. The Council hereby declares that it would have passed this ordinance and each section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

**10. ACCEPTANCE**

**10-1 PNM to Accept.** PNM shall, within thirty (30) days after the passage and approval of this Ordinance, record in the office of the County Clerk of the County of San Miguel,

and file in the Municipal Clerk of the City of Las Vegas, New Mexico a written statement of acceptance duly signed and acknowledged by the proper officer of PNM authorized to execute such acceptance.

**10-2 Failure to Accept.** In the event such acceptance is not filed within said period, this Ordinance and the rights, privileges and franchise granted hereunder shall be terminated and void; provided, that the City may by resolution extend the time herein for the filing of such acceptance for an additional period.

**10-3 Supersedes Prior Franchise.** This Agreement, if accepted by PNM and hereinbefore provided, shall supersede, cancel and be in lieu of any and all other existing or prior grants of rights, permission and authority to PNM or any predecessor companies or assignors of PNM to construct, operate and maintain any system for the production, transmission, distribution and sale of electricity within the City.

**11. EFFECTIVE DATE.**

**11-1 Effective Date.** This Ordinance shall take effect on \_\_\_\_\_, \_\_\_\_\_ in accordance with statute (NMSA 3-42-1 franchises; authorization).

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

**City of Las Vegas**

\_\_\_\_\_  
Mr. Louie A. Trujillo, Mayor

\_\_\_\_\_  
Ms. Casandra Fresquez, Clerk of the City of Las Vegas, New Mexico

| ACCEPTED THIS \_\_\_\_\_ day of \_\_\_\_\_, 20210.

Public Service Company of New Mexico

By: \_\_\_\_\_

Title: \_\_\_\_\_