

Gloria M. Rodriguez
Mayor

Rene Rodriguez
At Large/Mayor Pro Tem

Maria Reyes
District 1



Alejandro Garcia
District 2

Victor Perez
District 3

Yvonne Colon-Villalobos
District 4

Adriana Rodarte
City Manager

**ADDENDUM
TO REGULAR COUNCIL MEETING
OF THE CITY COUNCIL
OF THE
CITY OF SOCORRO**

.....
THE FACILITY IS WHEELCHAIR ACCESSIBLE AND ACCESSIBLE PARKING SPACES ARE AVAILABLE. REQUESTS FOR ACCOMMODATION FOR INTERPRETIVE SERVICES MUST BE MADE 48 HOURS PRIOR TO THIS MEETING. PLEASE CONTACT THE CITY CLERK'S OFFICE AT (915) 858-2915 FOR FURTHER INFORMATION.

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NOTICE IS HEREBY GIVEN THAT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF SOCORRO, TEXAS WILL BE HELD ON THURSDAY THE 5TH, DAY OF JANUARY, 2017 AT 6:00 P.M. AT THE CITY HALL CHAMBERS, 860 N. RIO VISTA RD., SOCORRO, TEXAS AT WHICH TIME THE FOLLOWING WILL BE DISCUSSED:

1. Call to order
2. Pledge of Allegiance and a Moment of Silence
3. Establishment of Quorum

REGULAR AGENDA

4. **Discussion and action** to direct staff and attorneys to prepare an ordinance abolishing R3 as an available classification.

Rene Rodriguez

PUBLIC HEARINGS / ORDINANCES

5. **Introduction, First Reading and Calling for a Public Hearing** of an amended Ordinance granting a franchise to El Paso Electric Company to maintain, erect, construct, equip and operate its business within the City of Socorro, Texas and to prescribe the terms and conditions of such grant.

James A. Martinez

The City Council of the City of Socorro may retire into EXECUTIVE SESSION pursuant to Section 3.08 of the City of Socorro Charter and the Texas Government Code, Sections 551, Subchapter D to discuss any of the following: (The items listed below are matters of the sort routinely discuss in Executive Session, but the City Council of the City of Socorro may move to Executive Session any of the items on this agenda, consistent with the terms of the Open Meetings Act.) The City Council will return to open session to take any final action and may also, at any time during the meeting, bring forward any of the following items for public discussion, as appropriate.

Section 551.071 CONSULTATIONS WITH ATTORNEY
Section 551.072 DELIBERATION REGARDING REAL PROPERTY
Section 551.073 DELIBERATION REGARDING PROSPECTIVE GIFT
Section 551.074 PERSONNEL MATTERS
Section 551.076 DELIBERATION REGARDING SECURITY
Section 551.087 DELIBERATION REGARDING ECONOMIC DEVELOPMENT NEGOTIATIONS

Discussion on the following:

6. ***Discussion and action*** regarding Samuel Campos et al V. City of Socorro, Cause No. 2013DCV4546, in the 120th District Court of El Paso County [551.071]. ***James A. Martinez***

7. ***Adjourn***

DATED THIS 30th DAY OF DECEMBER, 2016.

By: 

Olivia Navarro, City Clerk

I, the undersigned authority, hereby certify that the above notice of the meeting of the City Council of Socorro, Texas is a correct copy of the notice and that I posted this notice at least Seventy-two (72) hours preceding the scheduled meeting at the City Administration Building, 124 S. Horizon Blvd., in Socorro, Texas.

DATED THIS 30TH DAY OF DECEMBER, 2016.

By: 

Olivia Navarro, City Clerk

Agenda posted: 12-30-16 @ 9:24 am

Removed: _____ Time: _____ by: _____

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ORDINANCE NO. 408

AN ORDINANCE GRANTING A FRANCHISE
TO EL PASO ELECTRIC COMPANY TO MAINTAIN, ERECT,
CONSTRUCT, EQUIP AND OPERATE ITS BUSINESS WITHIN THE
CITY OF SOCORRO, TEXAS, AND TO PRESCRIBE THE TERMS
AND CONDITIONS OF SUCH GRANT.

BE IT ORDAINED BY THE GOVERNING BODY
OF THE CITY OF SOCORRO, TEXAS:

Section 1. Grant of Authority

There is hereby granted to El Paso Electric Company (the "Company"), a Texas corporation, its legal representatives, successors, and assigns, for the term beginning on the Effective Date of this Franchise (defined below) through June 30, 2046 (notwithstanding any payment to be due on or before July 31, 2046), a Franchise, pursuant to Section 33.008 of the Texas Utilities Code, as may be amended, the right, privilege, and franchise to: (i) construct, extend, reconstruct, repair, access, maintain, use, and operate in, along, across, over or under the present and future streets, highways, alleys, sidewalks, bridges, public ways, parks, public utility easements, and public places and extensions thereof of the City of Socorro, Texas (the "City"), electric power lines and facilities with all necessary or desirable appurtenances (including poles, towers, wires, underground conduits, related telephone and communication lines) for the transmission and distribution of electrical energy; and (ii) promote, construct, extend, reconstruct, repair, access, maintain, use, build, equip, conduct, or otherwise establish and operate in said City, works or systems and plants to generate, manufacture, use, store, sell, distribute, transmit, serve, supply, furnish, and convey electrical energy; in each instance whether now installed and in operation or as may be hereafter installed and operated in the City for the use of the City, its inhabitants thereof and properties therein, and persons, firms, and corporations beyond the corporate limits thereof.

Section 2. Police Power

Work done in connection with the construction, repair, maintenance and operation of distribution facilities is subject to the continuing police power of the City, and the Company shall comply with all present and future laws, ordinances, regulations, and standards except such as conflicts with any provision hereof lawfully surrendering the City's authority.

The Company shall within a reasonable time restore to their original condition as before working thereon as nearly as reasonably possible all streets excavated by it. In the event

of an emergency requiring immediate excavation, the Company shall notify the City as soon as practicable thereafter.

If the City abandons any public rights-of-ways in which the Company has facilities, such abandonment shall be conditioned on Company's right to maintain its use of the former public rights-of-ways and on the obligation of the party to whom the public rights-of-way is abandoned to reimburse Company for all removal or relocation expenses if Company agrees to the removal or relocation of its facilities following abandonment of the public rights-of-way.

The City shall have the power at any time to require the Company to change the route and position of its transmission or distribution facilities such as poles, lines, conduits or other related construction located on the property identified and pursuant to the rights granted in Section 1 at the Company's expense when the Socorro City Council (the "City Council") shall find, by resolution, that such change is necessary in the closing, opening, or relocating of streets or alleys, or water or sewer lines, or the changing of grade of streets or alleys, the construction and maintenance of parks and public improvements, the construction or use of driveways, and under other conditions which the City Council shall find necessary under the lawful exercise of its police power. Provided, however, the Company shall be entitled to be paid for its costs and expense of any relocation, raising or lowering of its wires or cables required by the City if (i) such expenses or costs are reimbursable or payable to the Company or to the City by the State of Texas, the United States, or any agency or subdivision of either, or by any other party, whether directly or indirectly; or (ii) such move is for the benefit and convenience of or at the request of a third party, including a private developer or development. Furthermore, such change is subject to applicable laws and regulations that may or may not require an amendment to the Company's certificate of convenience and necessity and industry standards for the safe and reliable operation and maintenance of an electric utility system. The City shall not be liable to the Company for any damages to poles, lines, conduits or other construction occurring in the change of the grade of streets, alleys or public places after notice to the Company has been provided. The City shall consult and confer with the Company before requiring any such relocation or raising or lowering of its lines or cables for its facilities. The Company shall within a reasonable time restore to as good condition as before working thereon as nearly as reasonably possible all streets excavated by it. The Company shall not excavate any pavement or street at any time without first obtaining permission of the City if required by the City, but such permission shall be given if such action is necessary, reasonable and in accordance with this Franchise, City ordinance, or state or federal law or regulation. In the event of an emergency requiring immediate excavation, the Company shall notify the City as soon as practicable thereafter.

Section 3. Interference with Public or Private Property

All poles placed within the City and all excavations or other construction in the streets, alleys or public places shall be done so as to minimize interference with the use of streets, alleys, and public places and with the use of private property as may be reasonably accomplished, in accordance with direction given by or under the authority of the City Council under the police and regulatory power of the City. Future installations of the Company shall not conflict with then existing gas pipes, water pipes, telephone lines or conduits, or sewers, except with the consent of the City. Nothing herein shall be construed in any way to restrict or limit the Company's right of eminent domain as to private property.

Section 4. Trimming Trees

The Company may trim trees or vegetation upon and overhanging the streets, alleys, sidewalks, and public places of the City so as to eliminate or minimize interference with the wires, cables, or system of the Company; provided, however, upon streets bordered by parks, whenever trees shall have attained a size or height which interferes with pole lines) the City Council may require such pole lines to be relocated or removed to adjacent alleys when feasible and when such relocation or removal will not entail excessive or unreasonable cost.

Section 5. Wire Changes to Permit Moving of Structures

The Company on request of any person shall within a reasonable period of time remove, rearrange, raise, or lower its aerial distribution cables or wires temporarily to permit the moving of houses, machinery, or other objects or structures. The expense of such temporary removal, rearrangement, raising, or lowering of the aerial distribution cables or wires shall be paid by the benefited party or parties, and the Company may require such payment in advance. The Company shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes.

Section 6. Furnishing Service

The Company shall furnish service under approved laws, tariffs, service rules, and regulations to any person, firm, or corporation that shall request service within the City and shall make connections therefore on request, without unreasonable delay, provided that the extension of service demanded is not prohibited by state or federal law.

The Company shall have the right to operate and control all meters, wires, appliances, and appurtenances owned by the Company. In case of refusal or failure on the part of any customer to pay the Company proper charges for electricity consumed and other related services, or to observe approved rules and regulations established by the Company, the Company shall have the right to disconnect its service and wires to the premises of such customer and to remove all facilities furnished and owned by the Company.

Section 7. Other Utility Installations

The City reserves the right to install and permit to be installed, gas, water, other utility lines, cable television lines, fiber optic lines and facilities and permits to be done any work that may be deemed necessary or proper by the City Council in, across, over, or under any street, alley, or public place occupied by the Company and to change any curb or sidewalk or the grade of any street. However, such installation shall not interfere with the operations or assets of the Company or violate safety standards and the City shall not require the Company to allow others use of Company's assets without prior express written permission of the Company. In doing or permitting such reasonable work, the City shall not be liable to the Company for any damage so occasioned. However, the City shall not require the Company (except as provided in Section 2) to move its line(s) entirely from any street, alley, or public place. If the City shall require the Company to adapt or conform its lines or in any way or manner to alter, relocate, or change its property to enable any other corporation or person except the City to use with greater convenience such street, alley, or public place, the Company shall not be bound to make any such changes until such other corporation or person shall have undertaken with

solvent bond to reimburse the Company for any loss and relocation of the Company property; provided, however, that the City shall not be liable for such reimbursement.

Section 8. Indemnification

The Company shall indemnify and save the City harmless from and against all claims, demands, or causes of action against the City for injury to persons or property occasioned by or arising out of the construction, reconstruction, maintenance, repair, or operation of its system or by the conduct of its business in the City.

Section 9. Quality of System and Service

The Company shall construct, install, and maintain its system with appropriate apparatus and equipment in reasonable operating condition at all normal times. The service shall be sufficient to meet reasonable demands without undue interruption or fluctuation, except when interrupted, prevented, or impaired by fire, strikes, riots, war, storms, floods, state or federal restrictions, reliability or safety standards, or any other occurrences beyond the control of the Company in any of which events the Company shall do all things reasonably within its power to restore service, but shall not be liable for claims, demands, causes of action, or damages occasioned by interruption or fluctuations so caused. It is understood and agreed that the settlement of strikes, walkouts, lockouts, or other labor disputes shall be entirely within the discretion of the Company.

Section 10. Reports

The City shall have the right to keep informed as to the operation and services of the Company within the incorporated limits of the City. The Company will make available such pertinent information as may from time to time be reasonably required by the City related to information furnished to the Public Utility Commission of Texas, or its successor agency, and the records of the Company related to its operations within the incorporated limits of the City. The Company shall make the information available for inspection by the City at its corporate offices in El Paso, Texas, at a reasonable time; provided that such information can be produced from the Company's records existing at the time of the request without unreasonable burden or expense. Further, the Company shall have no obligation to provide any information to the extent such disclosure is limited by any law, regulation, or confidentiality agreement.

Upon request of the City, the Company will file with the City Clerk an operating statement for the previous calendar year.

Section 11. Compensation

As full compensation for the rights herein granted, the Company (i) will pay the City the Initial Payment (as defined below) and (ii) will pay the City quarterly during the remaining life of its Franchise, a sum of money equal to three and one quarter percent (3.25%) of the quarterly gross revenues, excluding revenues from the City or its departments, and all municipal, county, state and Federal government agencies and institutions received by the Company, its successors, lessees and assigns, from the sale of electric energy within the corporate limits of the City including any extension of those City limits from time to time. Said payments shall be based on gross receipts for each calendar quarter beginning January 1, 2017. Such sums shall be payable no later than the last day of January, April, July, and October of each year (or the following business day

if payment is due on a weekend or legal holiday) following the quarter with respect to which sum shall be payable.

The Initial Payment under this Franchise shall be a sum of money equal to two percent (2%) of the quarterly gross revenues, excluding revenues from the City or its departments, and all municipal, county, state and Federal government agencies and institutions received by the Company, its successors, lessees and assigns, from the sale of electric energy within the corporate limits of the City including any extension of those City limits for the quarter beginning October 1, 2016, and ending December 31, 2016. Such sum shall be payable no later than the later of (i) the last day of January 2017 or (ii) the Effective Date of this Franchise. The payment of such sum shall be in lieu of, and not in addition to, any payment due based on quarterly gross revenues on or after October 1, 2016, under the Ordinance passed and approved by the City on November 3, 1986, and accepted by the Company on November 14, 1986.

The consideration set forth above in this Section shall be in lieu of any other tax, fee, or charge, by whatever name called, for the privileges granted in this Franchise. The City will not assess against the Company any additional street rental charge, pole tax, inspection tax, or charge for the occupancy or use of the places to which this Franchise relates under Section 1, or tax on this Franchise as property. This does not bar the City from assessing against the Company or its property ad valorem taxes levied on property generally, fees charged generally to the public for the services of departments or agencies of the City, excise taxes levied generally, or other taxes, fees, and charges that are general and not compensation for the privileges herein granted.

Should the City not have the legal power to agree that payment of the foregoing consideration shall be in lieu of any of the additional taxes or charges as above set forth, the City will apply so much of such payments set forth in this Section as may be necessary to the satisfaction of the Company's obligation to pay the additional tax charged here and agreed to be waived.

The payment or rendition of the consideration provided in this Grant shall not, except as otherwise provided herein, in any way limit any of the privileges or rights of the City that it may now or hereafter have under the Constitution and laws of the State Texas.

The provisions of Section 11 shall not be construed to excuse the Company from collecting from its electric service customers and paying over to the City or the state for the benefit of the City additional municipal sales tax levied in the event said City or state shall, at any time during the term of this Franchise, enact such additional municipal sales tax.

The City shall notify the Company (Attention: Tax Department) in writing of any changes in the municipal boundaries of the City within thirty (30) days of any annexation, de-annexation, extension, or contraction of boundaries becoming effective. The notice shall provide a description of the new and former municipal boundaries and provide Company copies of all relevant ordinances and maps. Company shall have no obligation to calculate, collect, or pay the Franchise fee attributable to any newly extended municipal boundaries until at least sixty (60) days have elapsed from Company's receipt of such notice.

Section 12. Dispute Resolution

Resolution of any dispute arising under this Franchise between the City and the Company shall first be attempted by submitting the dispute to mediation. The dispute shall be submitted to mediation upon the written demand of either the City or the Company.

Within thirty (30) calendar days following demand, the mediation shall be held in El Paso County, Texas, at the location designated by the party demanding the mediation. Mediation of any dispute shall be a condition precedent to filing a lawsuit, except that nothing herein shall preclude a party from seeking a mandatory or prohibitive injunction, or equitable relief from any court of competent jurisdiction to enforce or maintain the status quo pending mediation of any dispute. If mediation is unsuccessful, either party may bring suit to enforce the terms of this Ordinance in the courts of El Paso County, Texas.

Failure by the City or the Company to enforce rights under this Franchise does not constitute a waiver of the rights. Following unsuccessful resolution of the dispute under this Section and after reasonable notice and opportunity to be heard, and a reasonable time for correcting any violation of this Franchise, the City Council may forfeit this Franchise if the Company fails to perform its obligations under this Franchise.

If court proceedings are instituted to determine the legality of such forfeiture and the Company does not prevail, the Company will pay the reasonable expenses incurred by the City in connection with such litigation. If the Company does prevail, the City will pay the reasonable expenses incurred by the Company in connection with such litigation. In the absence of agreement between the City and the Company, the reasonableness of any litigation expenses pursuant to this Section will be determined by an appropriate court of law.

Section 13. Acceptance

This Franchise shall not take effect unless, within sixty (60) days of receipt of the Franchise after its passage and approval, the Company files its written acceptance with the City clerk.

Section 14. Assignment and Rights of Successors

Any transfer or assignment of this Franchise shall be governed by Section 8.03 of the City Charter as it exists on the Effective Date, reading as follows: "No public utility franchise may be transferred or assigned by the holder except with the approval of the City Council."

This Franchise shall be binding upon the legal representatives, successors, lessees, and assigns of the parties hereto.

Section 15. Invalidation of Provision

If any section, paragraph, subdivision, clause, phrase, or provision of this ordinance shall be declared or adjudged invalid or unconstitutional, the same shall not affect the validity of this ordinance as a whole or any part of the provisions hereof, other than the part so determined to be invalid or unconstitutional.

Section 16. Supersedes Previous Ordinances

This Franchise shall supersede any and all other franchises granted by the City to Company, its predecessors and assigns.

Section 17. Interpretation

This Franchise is subject to, interpreted to conform to, governed by, and construed pursuant to all applicable laws of the State of Texas. Except for the provision of law referenced in Section 14 of this Franchise, any changes in applicable laws, rules, orders

and regulations shall become effective with regard to this Franchise and any other agreements made pursuant to it as of the effective date of such law. The Company shall have the right and option to terminate this Franchise upon written notice to the City if the Company is required by any law, rule, order or regulation to cease providing one or more of the services or obligations that the Company has agreed to perform under the terms of this Franchise.

Section 18. Effective Date

Subject to Section 13, this Franchise is effective pursuant to Section 8.01(a) of the City Charter.

PASSED AND APPROVED this _____ day of January, 2017.

CITY OF SOCORRO, TEXAS

By:

Gloria M. Rodriguez, Mayor

ATTEST:

Olivia Navarro, City Clerk

APPROVED AS TO FORM:

James A. Martinez, City Attorney