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1 (A) Grant. The City, a home rule municipality and municipal corporation
2 created under Article X, Section 6 of the New Mexico Constitution and Chapter
3 3 of the New Mexico Statutes Annotated, 1978, hereby grants to PNM, its
4 successors, and assigns (collectively referred to as the “Public Service
5 Company of New Mexico” or “PNM”) the right and privilege to use, construct,
6 maintain and operate electric power infrastructure in the City’s streets and
7 other public rights-of-way. More specifically, the City grants to PNM the right
8 and privilege to use, construct, install, place, erect, lay, remove, change,
9 expand, alter, improve, maintain and operate electric power infrastructure in,
10 upon, over and under the public rights-of-way, including the streets, alleys,
11 avenues, thoroughfares, highways, and other similar public property within
12 the City, as they exist now and as they may be hereafter extended, dedicated,
13 annexed, owned or controlled by the City; such electric power infrastructure
14 includes PNM’s generation, transmission, and distribution facilities and
15 equipment within the City limits.

16 (B) Franchise Not Exclusive. The franchise rights and privileges
17 extended by this grant shall never be construed or held to be exclusive. The
18 City retains and shall ever be considered as having and retaining the right and
19 power to allow and to grant to any other person, firm or corporation and other
20 electrical companies, including the City itself, these same franchise rights and
21 privileges to be exercised in and upon its streets, highways, alleys, and roads,
22 and other public places as permitted by the City.

23 (C) Jurisdiction of the Public Regulation Commission. The New Mexico
24 Public Regulation Commission (“Commission”) has the sole authority in New
25 Mexico to grant a company the right to provide electric service. The rates to
26 be charged by PNM for furnishing electricity shall be those rates effective by
27 tariffs or contracts filed with the Commission, as the same may be amended
28 from time to time, in accordance with the rules and regulations of the
29 Commission and the Statutes of the State of New Mexico.

30 SECTION 3. TERM.

31 (A) Term. The rights, privileges, and franchise herein granted shall
32 continue in full force and effect for the period of fifteen (15) years from and
33 after the date this Ordinance becomes effective. This Ordinance shall be

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1 subject to any and all State and Federal legislative enactments. The Parties
2 agree to negotiate the franchise fee percentage upon receipt by PNM of a
3 proposal from the City following the completion of the tenth (10th) year of the
4 term, provided that such negotiation of the franchise fee percentage shall not
5 obligate or otherwise require PNM to agree to the City's proposal. The Parties
6 agree to negotiate an amendment pursuant to the process set out in Section
7 8(D) for amendments and addenda. Any amendment of the franchise fee
8 percentage would be effective only upon the mutual agreement of the Parties
9 and upon Council approval.

10 SECTION 4. FRANCHISE FEE.

11 (A) Franchise Fee. In consideration of the rights, privileges, and
12 franchise hereby granted, PNM shall pay the City, from and after the date of
13 the acceptance of this franchise, on a monthly basis, a total aggregate sum of
14 an amount equal to three percent (3%) of the gross receipts which PNM
15 receives from the sale of electricity and the collection of energy transition
16 charges within the municipal boundaries of the City as such boundaries exist
17 as of the effective date or as later expanded by the City pursuant to applicable
18 law, provided that in the event of such expansion, the City provides PNM with
19 written notice specifying such boundary expansion pursuant to Section 8(C)
20 of this Franchise Ordinance for the next preceding one-month period to all
21 PNM retail customers as classified by PNM's rate schedules. PNM shall make
22 payments on a monthly basis on or before the thirtieth (30th) day following the
23 close of such month.

24 (B) Franchise Fee in Lieu of Other Payments for the Occupancy and Use
25 of the Public Rights-of-Way. The franchise fee and payments made hereunder
26 are and shall be in lieu of any and all other franchise, license, right-of-way
27 privilege, occupancy or use fees during the term of this franchise; provided,
28 however, that no acceptance of payment by the City shall be construed as an
29 accord and in satisfaction as to any underpayment of amounts due under
30 Section 4(A). This Franchise Ordinance expressly provides that ad valorem
31 property taxes, special assessments for local improvements, gross receipts
32 taxes, and other assessments, taxes, and fees of general applicability shall
33 remain applicable and payable by PNM. Without limiting the foregoing, the

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1 City does not waive the obligation of PNM to obtain all applicable permits and
2 to comply with codes, ordinances, and regulations governing the operation,
3 maintenance, and construction of its System.

4 SECTION 5. CONSTRUCTION ACTIVITIES.

5 (A) Construction Activities in General; Excavations. PNM shall have the
6 right to excavate any public right-of-way, including highways, streets, alleys,
7 avenues, thoroughfares, roads, sidewalk and other similar public property
8 now or hereafter dedicated, owned, or controlled by the City within its
9 municipal boundaries, as now existing or hereafter extended, as such
10 excavations are necessary for the construction, operation, and maintenance of
11 PNM's electric utility system and the facilities and components associated
12 therewith, provided that all such construction activities shall be subject to any
13 and all right-of-way management ordinances of general applicability which
14 may be adopted pursuant to the City's police powers. In addition and except
15 as otherwise provided by state law or regulation, all construction activities of
16 PNM within the municipal limits of the City shall be done in compliance with
17 the then-applicable construction, planning and zoning rules, regulations,
18 ordinances or orders of the City and any other agency having jurisdiction.

19 (B) Restorations. There shall be no unreasonable delay in the backfilling
20 of excavations by PNM under this Section 5, and all such excavations shall be
21 restored by PNM at its own cost in accordance with valid ordinances and
22 regulations which the City may adopt to reasonably control and monitor such
23 activities. If such ordinances and regulations are not adopted or effective, it
24 shall then be the responsibility of PNM to restore such property, insofar as
25 practicable, to the condition of such property immediately prior to the
26 excavation.

27 (C) Relocations. Any location or relocation of PNM's Facilities in the
28 public rights-of-way reasonably required, caused, or occasioned by any City
29 project, including without limitation, the installation of storm drainage,
30 landscaping, traffic facilities, and road reconstruction, shall be at the cost of
31 PNM and implemented in accordance with valid ordinances and regulations
32 which the City may adopt to reasonably control and monitor such activities.
33 Nothing in the Ordinance shall be construed in any way to prevent the City

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1 from opening, grading, paving, repairing, altering, or improving any of the
2 streets, alleys, avenues, thoroughfares, and public highways, or undertaking
3 other municipal projects affecting public health, safety and general welfare
4 within the City's rights-of-way in which PNM has its facilities located. Prior to
5 such activity and in the pre-design phase of any project, the City and PNM
6 shall make a good faith effort to coordinate activities to avoid unnecessary
7 cost for both parties. Except as otherwise provided by State regulation or law,
8 PNM, at its expense, shall protect, support, temporarily disconnect, relocate,
9 or remove along under or over any street, alley, or any other public place as
10 permitted by the City, PNM's equipment or facilities when notified in writing
11 and reasonably required by the City for reasons attributable to a municipal
12 project undertaken to promote public safety, health or general welfare in the
13 exercise of the City's police powers. Notwithstanding the foregoing, this
14 provision shall not apply to any move, regrading, rerouting, improvement, or
15 widening undertaken for the benefit or convenience of or at the request of a
16 third party, including a private developer or development entity or any other
17 person who develops property within the City in a manner which necessitates
18 such regrading, rerouting, improving or widening of any street, avenue,
19 easement, right-of-way, alley, highway, sidewalk, bridge or other structure, or
20 other public places as permitted by the City, or in a manner which
21 necessitates such construction, reconstruction, removal, or relocation of
22 traffic signal systems or utility systems owned or operated by or on behalf of
23 the City. This section shall also be subject to any applicable State regulation
24 or legislation affecting payment by a state or local public agency or body for
25 certain relocation costs, or any other agreements with the City affecting
26 relocation.

27 (D) No Interference with Other Authorized Uses. PNM shall make a good
28 faith effort in the conduction of its activities so as not to interfere with the
29 activities of other franchisees. The City shall, in the grant of other franchises,
30 require that said franchisees similarly conduct their activities to avoid
31 interference with those of PNM.

32 SECTION 6. TREE TRIMMING, MAINTENANCE, AND MOVING OF AERIALS.

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1 (A) Tree Trimming and Obstructions. PNM shall have the right and
2 authority to trim or remove trees or parts of trees overhanging or within any
3 public way and to remove any obstruction within any public way to eliminate
4 or minimize interferences with its lines, system, plant, equipment, service or
5 facilities. PNM shall comply with the Revised City Ordinances, Article 6,
6 Sections 6-6-2-1 to 6-6-2-9, to the extent they are applicable, in the activities
7 described in this subsection.

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

24 SECTION 7. INSURANCE AND INDEMNITY.

25 (A) Commercial General Liability Insurance. PNM shall procure and maintain
26 for the duration of this Franchise insurance against all claims for injuries to
27 persons or damages to property which may arise from or in connection with
28 the exercise of the rights, privileges and authority granted hereunder to PNM,
29 its agents, representatives or employees.

30 (B) Proof of Insurance; Policy Limits. PNM shall provide evidence of an
31 insurance certificate, together with an endorsement naming the City, its
32 elected and appointed officers and employees as additional insureds, to the
33 City for its inspection prior to the commencement of any work or installation

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1 of any Facilities pursuant to this Ordinance or not later than ten (10) business
2 days after approval of this Franchise Ordinance by the City Council, whichever
3 comes sooner, and such insurance certificate shall evidence the following
4 minimum coverages:

5 (1) Commercial General Liability Insurance:

6 (a) Bodily Injury/Property Damage in the minimum amount of
7 One Million Dollars (\$1,000,000.00) for each occurrence and Two Million
8 Dollars (\$2,000,000.00) general aggregate; and

9 (b) Property Damage Liability Insurance shall not exclude
10 Explosion –Collapse – Underground Coverage (XCU).

11 (2) Workers' Compensation Insurance:

12 (a) Part I. Workers' Compensation – in accordance with
13 statutory requirements; and

14 (b) Part II. Employers' Liability – in the minimum amount of
15 One Million Dollars (\$1,000,000.00); and

16 (c) PNM shall comply with the provisions of the Workers'
17 Compensation Act of the State of New Mexico (the "Act"). If PNM has
18 determined that it is not subject to the Act, it will certify, in a signed statement,
19 that it is not subject to the Act. PNM will notify the City and comply with the
20 Act should it employ three (3) or more persons during the term of this
21 Franchise. If PNM fails to comply with the Act and applicable rules, this
22 Ordinance may be terminated.

23 (3) Products and Completed Operations in the minimum amount of
24 One Million Dollars (\$1,000,000.00) for each occurrence and Two Million
25 Dollars (\$2,000,000.00) general aggregate.

26 (4) Pollution Legal Liability in the minimum amount of One Million
27 Dollars (\$1,000,000.00) for each occurrence (if applicable).

28 (5) Business Automobile Liability in the minimum amount of
29 combined single limit of One Million Dollars (\$1,000,000.00) for each
30 occurrence; and Pollution Liability (form MCS90) for transportation exposure
31 of One Million Dollars (\$1,000,000.00) for each occurrence. Business
32 Automobile Liability Insurance shall include coverage for the use of all owned,
33 non-owned and hired automobiles and vehicles.

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1 (6) Coverage for independent contractors and their work on behalf
2 of PNM in public rights-of-way and any Contractual Liability must be included
3 in all policies that PNM obtains pursuant to Section 7.

4 (7) Professional Liability in the minimum amount of One Million
5 Dollars (\$1,000,000.00) for each occurrence and Two Million Dollars
6 (\$2,000,000.00) general aggregate.

7 If such limits are higher than the minimum limits required by the City, such
8 limits shall apply to the coverage afforded the City under the terms and
9 conditions of the Ordinance. PNM shall furnish to the City copies of any
10 insurance policy endorsements that are subsequently issued amending
11 coverage or limits.

12 PNM or its contractor(s) shall not begin work under this Franchise Ordinance
13 until the required insurance has been obtained and the proper insurance
14 certificates have been provided to the City, adding the City as an additional
15 insured, as applicable. Neither the City's approval nor failure to approve any
16 insurance certificates shall relieve PNM or its contractors of their full
17 responsibility to maintain the required insurance policies in full force.

18 (C) Single Primary; Excess Policy. The minimum limits may be
19 provided for through a single primary insurance policy providing such
20 coverage or through the addition of an excess liability policy written in excess
21 of the primary general liability and automobile liability policies.

22 (D) Insurance Certificate Requirements. Any insurance certificate
23 required by Section 7 shall provide that the described policies and
24 coverages will not be canceled or modified before the expiration date
25 thereof, without the issuing company giving thirty (30) days written notice
26 to the certificate holder and those named as additional insureds. In the
27 event of any cancellation, modification or intent not to renew, PNM shall
28 obtain and furnish to the City evidence of replacement insurance policies
29 meeting the requirements of this Section by the cancellation or
30 modification date.

31 (E) Insurance Rating. Any commercial insurance carrier providing any
32 required coverage must have an A.M. Best rating of A-VII or higher.

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1 (F) Indemnification, Defend and Hold Harmless. PNM, for itself and its
2 agents, employees, subcontractors, and the agents and employees of any
3 subcontractors, shall, at its own expense and throughout the term of this
4 Ordinance, indemnify, defend, and hold harmless the City and any of its
5 elected or appointed officers and employees, from any and all claims,
6 demands, actions, proceedings (formal or informal) or suits (including on
7 and through any final non-appealable order or judgment) which the City, or
8 such elected or appointed officers or employees, may suffer, or which may
9 be recovered from, or obtainable against the City, or such elected or
10 appointed officers or employees, to the extent arising: (1) as a result of the
11 installation, use, or maintenance by PNM of its Facilities in the Right-of-
12 Way; (2) as a result of the exercise by PNM of any or all of the rights,
13 privileges, permission, and authority conferred under this Ordinance; or
14 (3) as a result of any alleged act or omission on the part of PNM in
15 performing or failing to perform any of its obligations under this
16 Ordinance. PNM is not, however, liable and is not required to indemnify or
17 hold harmless the City for any damages caused by the negligence of any
18 agents, servants and/or employees of the City. Notwithstanding any other
19 provisions in this Ordinance, PNM's obligation to provide indemnification
20 to the City shall be limited to PNM's proportionate share of fault, as
21 determined by judgment or by agreement with City, with respect to any
22 claim for which indemnity is applicable.

23 (G) Risks Associated with Operation of PNM's Facilities; Liability Limits.
24 By entering into this Ordinance, the City is not assuming any risks for the
25 operations of PNM's Facilities and PNM shall be responsible and
26 answerable for any and all injuries to persons or property to the extent
27 arising out of its negligent operations pursuant to this Ordinance. The
28 amounts and types of required insurance coverages, as set forth in this
29 Ordinance, shall in no way be construed as limiting the scope of indemnity
30 or liability set forth in this Section.

31 (H) PNM Recourse for Loss. PNM acknowledges that its recourse
32 against the City for any loss, cost, expense, or damage caused by the acts or

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1 omissions of the City are subject to and may be limited by the New Mexico
2 Tort Claims Act, NMSA 1978, 41-1-1 to 41-1-30.

3 **SECTION 8. MISCELLANEOUS PROVISIONS.**

4 **(A) Inspection of PNM's Books, Confidentiality, and Public Records.**
5 **PNM shall make available to the City, upon ten (10) days written notice, such**
6 **information directly pertinent to the payment of the franchise fees pursuant to**
7 **the terms of this Ordinance, in such form as PNM can reasonably make**
8 **available. Subject to New Mexico public records laws, if PNM considers any**
9 **such information that PNM provides to the City and/or that the City reviews in**
10 **camera as confidential and proprietary, the information shall be so marked**
11 **and shall not be disclosed or used for any purpose, other than verifying and/or**
12 **enforcing proper computation and payment of franchise fees in accordance**
13 **with the terms of this Ordinance. However, if the City must release any such**
14 **confidential material pursuant to a valid court order, the City shall so advise**
15 **PNM in a timely fashion so that PNM may take appropriate steps to protect its**
16 **interests.**

17 **(B) Annual Franchise Fee Reports.** PNM shall submit a report verified by
18 the PNM controller setting forth the computation of gross revenues used to
19 calculate the franchise fee on an annual basis for the preceding year.

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

24 **Public Service Company of New Mexico**
25 **Attn: Tax Department**
26 **MS 1025, 414 Silver SW**
27 **Albuquerque, NM 87102**

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

32 **(D) Amendment and Addendum.** At any time during the term of this
33 Ordinance, the City or PNM may propose an amendment or addendum to the

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1 Ordinance by giving thirty (30) days' written notice to the other of the
2 proposed amendment or addendum desired, and both shall negotiate in good
3 faith in an effort to agree upon a mutually satisfactory amendment. Such
4 amendment shall become effective upon adoption and passage of an
5 amending Ordinance by the City in accordance with the requirements of local
6 and state law.

7 (E) Notices. For the purpose of this Ordinance,
8 Notice to the City will be to:

9 Mayor, City of Albuquerque
10 One Civic Plaza, 11th Floor, P.O. Box 1293
11 Albuquerque, New Mexico 87013

12 With a copy to:
13 City Attorney, City of Albuquerque
14 One Civic Plaza, P.O. Box 2248
15 Albuquerque, New Mexico 87013

16 Notice to PNM will be to:

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

21 With a copy to:
22 PNM Resources Law Department
23 MS 0805, 414 Silver SW
24 Albuquerque, NM 87102

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

27 (F) Reservation of Rights. By accepting this Ordinance, the City and PNM
28 reserve all rights under federal law, state law, and regulation. All provisions
29 contained in this Franchise Ordinance are hereby declared to be for a public
30 purpose and the health, safety, and welfare of the general public; these
31 provisions shall be liberally construed in favor of the public interest in order to
32 effectuate its public purpose. Any members of the governing body, City
33 officials, or employees charged with the enforcement of this Ordinance, who

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1 are acting for the City in the discharge of their duties, shall not render
2 themselves personally liable because of these enforcement activities. By
3 accepting this Ordinance, the City and PNM reserve all their respective rights
4 under federal and state law and regulation; and neither waives its rights to
5 exercise those rights. Further, neither the City nor PNM waives its respective
6 rights to seek all appropriate legal and equitable remedies as allowed by law
7 upon violation of the terms of this Franchise, including seeking injunctive
8 relief and monetary damages in a court of competent jurisdiction. Such right
9 to injunctive relief is expressly reserved.

10 (G) Order of Precedence. In the event of a conflict between this Ordinance
11 and any other ordinance adopted by the City, the terms of this Ordinance shall
12 control; provided, however, that the foregoing does not negate PNM's
13 obligations under Section 5(A) requiring that all construction activities shall
14 be subject to any and all right-of-way management ordinances of general
15 applicability adopted pursuant to the City's police powers.

16 SECTION 9. ACCEPTANCE.

17 (A) PNM to Accept. PNM shall, within thirty (30) days after the passage
18 and approval of this Ordinance, file in the office of the City Clerk, City of
19 Albuquerque, a written statement of acceptance duly signed and
20 acknowledged by the proper officer of PNM authorized to execute such
21 acceptance.

22 (B) Failure to Accept. In the event PNM does not file such acceptance
23 within said period, this Ordinance and the rights, privileges and franchise
24 granted hereunder shall be terminated and void; provided, that the City may
25 by resolution extend the time herein for the filing of such acceptance for an
26 additional period.

27 (C) Supersedes Prior Franchise. This Ordinance, if accepted by PNM as
28 hereinbefore provided, shall supersede, cancel and be in lieu of any and all
29 other existing or prior grants of rights, permission, and authority to PNM or
30 any predecessor companies or assignors of PNM to construct, operate, and
31 maintain any system for the production, transmission, distribution, and sale of
32 electricity within the City.

33 SECTION 10. SEVERABILITY CLAUSE.

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1 If any section, paragraph, clause, or provision of this Ordinance, or any
2 section, paragraph, clause, or provision of any regulation promulgated
3 hereunder shall for any reason be held to be invalid, unlawful, or
4 unenforceable, the invalidity, illegality, or unenforceability of such section,
5 paragraph, clause, or provision shall not affect the validity of the remaining
6 portions of this Ordinance or the regulation so challenged.

7 SECTION 11. REPEALER. Sections 13-4-2-1 through 13-4-2-11 are hereby
8 repealed.

9 SECTION 12. COMPILING CLAUSE. This Ordinance shall be incorporated in
10 and compiled as part of the Revised Ordinances of the City of Albuquerque.

11 SECTION 13. EFFECTIVE DATE. This Ordinance shall become effective on
12 May 20, 2020, and in accordance with statute (NMSA 3-42-1 franchises;
13 authorization).

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1 PASSED AND ADOPTED THIS 20th DAY OF April, 2020
2 BY A VOTE OF: 9 FOR 0 AGAINST.

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Patrick Davis, President
City Council

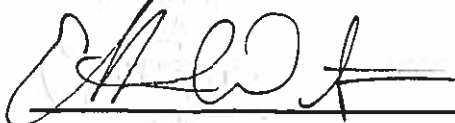
APPROVED THIS 28 DAY OF April, 2020

Bill No. O-20-11



Timothy M. Keller, Mayor
City of Albuquerque

ATTEST:



Ethan Watson, City Clerk

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Mayor Timothy M. Keller

**CITY OF
ALBUQUERQUE**
Albuquerque, New Mexico
Office of the Mayor

INTEROFFICE MEMORANDUM

March 20, 2020

TO: Pat Davis, President, City Council

FROM: Timothy M. Keller, Mayor 

SUBJECT: Public Service Company of New Mexico ("PNM") Franchise Ordinance

This ordinance renews the franchise authority that the City granted Public Service Company of New Mexico ("PNM") in 1967. The franchise authorizes PNM to use the City's rights-of way to construct, maintain, and operate electric power infrastructure in return for fair and reasonable compensation. This franchise authority does not grant PNM authority to sell electricity because the New Mexico Public Regulation Commission ("PRC") has granted PNM this authority; the PRC has the sole authority to do so.

The 1967 PNM franchise expired in 1994, though it continues as an implied contract. The City should update this ordinance. An updated franchise rate of three percent of gross revenues, instead of two percent, will bring the City into parity with the cities of Rio Rancho and Santa Fe. The three percent rate also better represents fair and reasonable compensation based on other factors, such as the franchise fee rates for natural gas and telecommunications, which are three percent of gross revenues. The term of this franchise authority is fifteen years with a review of the franchise fee after the completion of the tenth year of the term.

PNM's activities in the City's rights-of-way are subject to state and local law, including codes and regulations on planning, zoning, and construction. The ordinance contains provisions for the relocation of PNM infrastructure when necessitated by municipal projects and for the restoration of PNM construction sites.

The financial and reporting requirements are comparable to those in other franchise authorities.