

ORDINANCE NO. 1324, SERIES 2024

AN ORDINANCE OF THE CITY OF CORTEZ, COLORADO, GRANTING TO EMPIRE ELECTRIC ASSOCIATION, INC., A NON-EXCLUSIVE FRANCHISE FOR THE PURPOSES OF ERECTING, MAINTAINING AND OPERATING AN ELECTRICAL SYSTEM; AND FOR THE PURPOSES OF TRANSMITTING, DISTRIBUTING, AND CONVEYING ELECTRICITY; AND PRESCRIBING THE TERMS AND CONDITIONS UNDER WHICH EMPIRE ELECTRIC ASSOCIATION IS TO OPERATE WITHIN THE CITY OF CORTEZ, COLORADO

NOW, THEREFORE, BE IT ORDAINED BY THE CORTEZ CITY COUNCIL AS FOLLOWS:

ARTICLE I

Whenever the word "CITY" is hereinafter employed it shall designate the City of Cortez, Montezuma County, Colorado, and any future annexations or additions thereto, the Grantor, and whenever the word "COMPANY" is used it shall designate not only Empire Electric Association, Inc., the Grantee, but also its lessees, successors and assigns.

ARTICLE II

The Company is hereby granted a non-exclusive franchise (the "Franchise") for a term of five (5) years, commencing on the date of final approval on second reading of this Ordinance (the "Effective Date"), to erect, construct, maintain and operate, an electrical transmission and distribution system and any and all necessary lines, services and other appurtenances and equipment thereunto appertaining in, upon, under, over, across and along the streets, alleys, bridges and public places owned or controlled by the City for the transmission, distribution and sale of electricity for lighting, heating, industrial and all other uses and purposes in the City, and for the purpose of transmitting, and conveying such electricity into or through the limits of the City. This Franchise shall automatically be renewed for a second five (5) year term unless the City gives the Company written notice, prior to ninety (90) days before the expiration of the term of this Franchise, that it desires to negotiate terms and conditions of this Franchise or to cancel this Franchise. The initial five (5) year term and the second five (5) year renewal term, if applicable, shall be referred to hereinafter as the "Term."

ARTICLE III

All construction and repair of facilities within the City is subject to inspection by the City and a determination by the City that said construction and repair has been performed in accordance with all applicable ordinances, rules, and regulations of the City. The Company shall upon request from the City furnish electronic files that show the most current and

accurate locations of its infrastructure within the City limits in such a format that is compatible with City's geographical information system, referencing state plane coordinates.

The Company will endeavor to place all newly constructed or reconstructed electrical distribution lines underground whenever feasible. The Company and the City agree that in some cases, terrain, surrounding improvements, other utilities in the vicinity, or other electrical distribution design requirements may render an underground line infeasible. The Company will place newly constructed electrical distribution lines underground to serve new residential and/or industrial subdivisions in accordance with the Company's rules and regulations and the City's subdivision regulations.

The Company must obtain an excavation permit prior to any excavation, except for emergency work, for work on private property, or for minor work which does not disturb actual street surfaces or other public improvements or other utilities. Should it become necessary for the Company, in exercising its rights and performing its duties hereunder, to interfere with any street or other public or private improvement, the Company shall repair at its own expense, and in a workmanlike manner subject to the approval by the City, such improvement.

The City shall designate the location and the size of any easement on property owned or controlled by the City, together with any further restrictions or requirements deemed appropriate, as long as the designation complies with the latest edition of the National Electrical Safety Code and common practices of the utility industry.

ARTICLE IV

The Company shall use due care not to interfere with or damage any water facilities, sanitary sewer facilities, storm water facilities, or other structures now in place or which may hereafter be placed in streets in the City, and the Company shall, at its own expense, repair in a workmanlike manner, and subject to the approval of the City, any such water facilities, sanitary sewer facilities, facilities, storm water facilities, or other structures which are damaged through the action of the Company, provided, however, that the City may make such repairs and charge the reasonable cost thereof to the Company if the Company fails to repair the damages within a reasonable time after receipt of written notice from the City. This grant of authority shall apply to all streets presently platted or otherwise of record, all easements presently owned by or dedicated to the City or the public within the City limits, and to all future streets and easements later acquired by or dedicated to the City and located within the City limits. The Company shall be responsible to remedy any defects and repair work performed by the Company for a period of two (2) years after completion. The City shall have the right to inspect and supervise any work on City property and improvements. The City shall use due care not to interfere with or damage any facilities of the Company now in place or which may hereafter be placed in streets and other properties owned or controlled by the City. If the City causes damage to the Company's facilities, the Company shall make repairs and charge a reasonable cost thereof to the City. This grant of authority shall apply to all streets presently platted or otherwise of record, all easements presently owned by or dedicated to the

City or the public within the City limits, all other property owned by the City, and to all future streets, easements and property later acquired by or dedicated to the City and located within the City limits.

ARTICLE V

The Company, in consideration of the promises made by the City, does hereby agree to construct, operate, and maintain a street lighting system for the lighting of the streets, avenues, and other public places within the City. The Company's charge to the City to maintain the street lighting system shall be according to the Company's most current overhead street lighting tariff. This street light system will be installed in such a manner to minimize outages due to bulb failures.

The City shall from time-to-time request from the Company new street lights within the Cortez City limits. The Company shall install street lights according to its most recent standards that are in effect at the time of installation and charged according to the Company's overhead street lighting tariff.

The Company shall install all new lights with a luminary (the light head) that is designed to minimize light pollution (currently termed as "dark-sky compliant"). The style and light pattern of any new luminaries shall be approved by the City and the Company prior to installation of the luminary by the Company.

For the Term of this Franchise, rate increases under the Overhead Street Lighting Tariff are hereby capped at a value not to exceed increases in the Consumer Price Index for All Urban Consumers (CPI-U) for the West – Size Class B/C for All Items Published by the Bureau of Labor Statistics.

ARTICLE VI

The Company agrees for and in behalf of itself, its lessees, successors and assigns, that for and during the Term of this Franchise, it will maintain in the City an adequate, modern, standard and sufficient electrical system and equipment and to maintain and operate the same in a modern and adequate fashion.

The Company also agrees to use its best efforts to obtain the lowest possible wholesale cost on electricity to be distributed, provided however, that due consideration will be given by the Company to the adequate supply and a reserve to ensure continued operation of the system herein authorized.

The Company will from time to time during the Term of this Franchise make such enlargements and extensions of its electrical system as the business of the Company and the growth of the City justify, in accordance with its Rules and Regulations relating to customer connections, transmission and distribution line extensions currently in effect and on file from time to time with the Colorado Public Utilities Commission or other competent authority

having jurisdiction in the premises; provided, however, that no obligation shall extend to, or be binding upon the Company, to construct or extend its power lines or furnish electricity or electrical service within the City if the Company is, for any reason, unable to obtain an adequate supply of electricity from its wholesale power supplier to warrant the construction or extension of its electrical system, for the furnishing of such electricity or electrical service; provided, further, that when the amount of electricity supplied to the Company is insufficient to meet the firm requirements of connected or new customers, the Company shall have the right to prescribe reasonable rules and regulations for allocating the available supply of electricity.

ARTICLE VII

This Franchise is granted subject to all conditions, limitations and immunities now provided for and applicable to the operations of a public utility by the laws of the State of Colorado. The rates to be charged for electrical service within the City and the rules and regulations with reference to character, quality and standards of service to be furnished by the Company shall be under the jurisdiction and control of such regulatory body as may, from time to time during this grant, be vested by law with authority and jurisdiction of the rates, regulations and quality and standards of service to be supplied by the Company.

ARTICLE VIII

Notwithstanding any provision in this Ordinance to the contrary, it is understood by the Company that all the provisions of Article X (Franchises and the Public Utilities) of the Charter of the City of Cortez are incorporated herein and made a part hereof by reference, as fully, and to the same extent as though such provisions were fully presented herein.

ARTICLE IX

The Company shall, at all times, maintain adequate voltage and adequate supply of electricity not less than that prescribed in its Rules and Regulations relating thereto in effect and on file from time to time with the Colorado Public Utilities Commission or other competent authority having jurisdiction in the premises.

ARTICLE X

The Company shall hold the City harmless from any and all claims and actions, litigation or damages, arising out of the passage of this Ordinance or of the construction, erection, installation, maintenance or operation of its properties operated by authority of this Ordinance within the boundaries of the City or the negligence of its employees in the operation thereof, including the Court costs and reasonable attorney fees in making defense against such claims. A copy of the process served upon the City shall be served by the City upon the Company. The Company shall have the right to defend in the name of the City and to employ counsel for such purpose; such right shall not, however, preclude the City Attorney from participating in any such litigation on behalf of the City.

ARTICLE XI

If the Company shall be in default in their performance of any of the terms and conditions of this Ordinance and this Franchise, and shall continue in default for more than thirty (30) days after receiving notice from the City of such default, the said City may, by Ordinance duly passed and adopted, terminate all rights granted under this Franchise and this Ordinance to the Company. The said notice of default shall specify the provision or provisions in the performance of which it is claimed the Company is in default. Said notice shall be in writing and served in the manner provided by laws of Colorado for the service of process in civil actions.

ARTICLE XII

The City has the right to condemn any public utility works or ways, and the rights of the Company in connection therewith, as provided by the Colorado Constitution and Statutes of the State of Colorado, and such right is hereby expressly reserved and may be exercised by the City in accordance with the Colorado Constitution and Statutes of the State of Colorado, with the Company entitled to just compensation as set forth in C.R.S. § 40-9.5-204, as subsequently amended from time to time.

The City Council may authorize the acquisition of the Company's electric facilities, as contemplated in this Article, by ordinance to the extent permitted by the Colorado Constitution and the Statutes of the State of Colorado, and the City retains the right to acquire property outside the City limits by condemnation as allowed by the Colorado Constitution. In the event the City proceeds with an acquisition of the Company's facilities, the Company shall continue to provide service until the effective date of the transfer of such facilities. The Company and the City agree to work together to coordinate the timing of any such acquisition to prevent disruption in service to customers within the City.

If at any time during the Term of this Franchise, the Company proposes to sell or dispose of any of its real property located in whole or in part within the City, it shall grant to the City the right of first refusal to purchase the same. The City shall have 30 days after written notice of sale is received from the Company in which to notify in writing the Company that it will exercise its right. The written notice of sale from the Company shall include the purchase price as determined pursuant to this Article for the property the Company wishes to sell. If the City wishes to exercise its right it must close on the purchase within forty-five days from the date of its written exercise of the right. Failure of the City to close waives the City's right of first refusal for any future attempt by the Company to sell that particular parcel. This right of first refusal shall not apply or be given effect to any sale or disposition involving such property if it is part of a sale or disposition involving other utility property of the Company located outside the City limits.

ARTICLE XIII

That in consideration for the Franchise and in compensation for the use and occupancy of the streets, alleys and public grounds, the Company, its lessees, successors and assigns, shall pay the City a franchise fee of five percent (5%) of gross receipts from the sale of electricity within the limits of said City.

On or before the twentieth (20th) day of each month, the Company shall make a report of the gross sales within the limits of the City and remit to the City five percent (5%) of such sales. An annual adjustment will be made to reflect gross receipts within the City by deducting the portion of the Company's bad debt write-off, attributable to sales within the City from the next ensuing monthly payment of franchisee's fee to said City. This adjustment normally occurs in July.

The five percent (5%) franchise fee shall be surcharged on billings for electric service to consumers within the City.

It is further agreed that the Company will budget for economic development incentives for business and industrial customers on a case-by-case basis.

ARTICLE XIV

The current Cortez Code of Ordinances refers to outdated and obsolete agreements between the City and Empire Electric Association governing the City's Street Lighting System. This Ordinance, Ordinance No. 1324, Series 2024, has integrated necessary contractual street light details contained in those agreements. Therefore, with the adoption of Ordinance No. 1324, Series 2024, all previously cited or adopted City of Cortez ordinances regarding Street Lighting Systems with Empire Electric Association, whether in effect or not, are hereby repealed as of the Effective Date of this Ordinance, and the current Cortez Code of Ordinances shall be modified to refer to this Ordinance as the agreement between the City and the Company governing the City's Street Lighting System.

ARTICLE XV

Nothing in this Ordinance shall be so construed as to prevent the Company from assigning all of its right, title or interest, granted or authorized under or by virtue of the terms of this Ordinance, provided, however, that the City is notified at least sixty (60) days in advance of the proposed assignment, and that such assignment shall not become effective until approved by the City Council, except that such approval shall not be unreasonably withheld.

ARTICLE XVI

The Company shall not, as to rates, charges, service, facilities, rules, regulations or in any other respect make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage, provided that nothing in this Ordinance shall be taken to prohibit the establishment from time to time of a graduated scale of charges and classified rate schedules to which any customer coming within an established classification would be entitled.

ARTICLE XVII

If any section, subsection, sentence, clause, phrase, punctuation or portion of this Ordinance is for any reason deemed invalid or unconstitutional by any court of competent jurisdiction, such section, subsection, sentence, clause, phrase, punctuation or portion shall be a distinct, independent provision and such holding shall not affect the validity of the remaining portions hereof.

ARTICLE XVIII

If at any time it shall be necessary to relocate any transmission, distribution or service lines or other structures of the Company to permit the City to lay, make or change streets, grades, pavements, City owned storm and sanitary sewers, water mains or other City owned works or improvements, the cost of all such changes shall be shared equally between the City and the Company.

ARTICLE XIX

This Ordinance No. 1324, Series 2024, an ordinance granting a non-exclusive franchise to Empire Electric Association, Inc., is hereby presented and adopted on First Reading on this 9th day of January 2024, and that the public hearing for the Second and Final Reading of this Ordinance is set for the 23rd day of January 2024, at the hour of 7:30 p.m., in the City Council Chambers in City Hall, 123 Roger Smith Avenue, Cortez, Colorado, at which time and place all persons may appear and be heard concerning the same.

ARTICLE XX

REPEALER. Unless otherwise specifically repealed herein, all orders, bylaws, ordinances, and resolutions of the City, or parts thereof, inconsistent or in conflict with this Ordinance, are hereby repealed to the extent only of such inconsistency or conflict.

SEVERABILITY. If any section, paragraph, clause, or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Ordinance, the intent being that the same are severable.

RECORDING AND AUTHENTICATION. Upon adoption hereof, this Ordinance shall be recorded in a book kept for that purpose and shall be authenticated by the signatures of the Mayor and the City Clerk.

EFFECTIVE DATE. This ordinance shall be effective upon publication after Second Reading and final passage.

PASSED AND APPROVED ON FIRST READING THIS 9TH DAY OF JANUARY 2024.

CITY OF CORTEZ


RACHEL B. MEDINA, MAYOR

ATTEST:


LINDA L. SMITH, CITY CLERK

PASSED, APPROVED, AND ADOPTED ON SECOND AND FINAL READING THIS 23RD DAY OF JANUARY 2024.

CITY OF CORTEZ


RACHEL B. MEDINA, MAYOR

ATTEST:


LINDA L. SMITH, CITY CLERK

APPROVED AS TO FORM:


J. PATRICK COLEMAN, CITY ATTORNEY

