

AN ORDINANCE GRANTING A FRANCHISE TO SANTA FE COUNTY
WATER COMPANY

and providing indemnification; providing for the charging of certain expenses, fees and charges; providing for certain performance standards; providing for audits and information; prescribing the term and effective date of the Franchise; providing for governmental immunity.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY, NEW MEXICO:

Section 1. Short Title.

 This Ordinance may be cited as the Santa Fe County Water Company Franchise Ordinance.

Section 2. Table of Contents.

Section 1.	Short Title.
Section 2.	Table of Contents.
Section 3.	Purpose.
Section 4.	Definitions.
Section 5.	Grant of Franchise.
Section 6.	Condition of Franchise.
Section 7.	Sale and Resale of Water
Section 8.	Construction and Installation of Company Facilities; Maintenance; Excavation; Relocation of of Facilities.
Section 9.	Indemnification.
Section 10.	Expansion of Service Area.
Section 11.	Forfeiture, Termination and Expiration.
Section 12.	Notice.
Section 13.	Assignment.
Section 14.	Lease Charge, Reports, and Audit.
Section 15.	County Police Power.
Section 16.	Access to Information.
Section 17.	No Waiver.
Section 18.	Severability
Section 19.	Penalties

Section 3. Purpose.

 The Board of County Commissioners finds it necessary and desirable to grant a franchise to Santa Fe County Water Company to construct, locate, maintain, operate, and extend into, with-

in and through the County of Santa Fe those plants, works, systems and facilities that are necessary for the water utility service to certain residents of Santa Fe County, and fixing the terms and conditions thereof.

Section 4. Definitions.

For the purpose of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given in this Section. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined in this Section shall be given their common and ordinary meaning.

- A. "Board" means the Board of County Commissioners of Santa Fe County, New Mexico, its employees and designees.
- B. "Company" means the Santa Fe County Water Company, a non-profit corporation organized and incorporated under the laws of the State of New Mexico.
- C. "County" means all lands within the County of Santa Fe, State of New Mexico, and outside of any municipality.
- D. "Facilities" are and include, but are not limited to, plants, works, systems, improvements and equipment of the Company such as pipes, mains, conduits, wells, hydrants, tanks, water storage, underground lines and meters.
- E. "Public places" means all streets, sidewalks, boulevards, alleys, or other public ways and any public parks, spaces, and grounds within the County.F.

- F. "Service Area" means the area of land within the County that the Company is permitted by the Board to provide water utility service.
- G. "Total annual demand" means the amount of water taken from all water sources of a Company and measured by the Company's master meter and includes all domestic, commercial, and other uses, and calculated on an annual basis.
- H. "Utility" means the provision of water or septage services, or the facilities thereof, to more than one domestic use (one dwelling unit, one guesthouse, and other reasonable household uses), commercial use, or other use within the County.

Section 5. Grant of Franchise.

The Company is hereby granted a Franchise to provide water utility services, pursuant to the terms and conditions of this Ordinance.

Section 6. Condition of Franchise.

- A. The Company shall obtain and maintain water rights and actual water adequate to supply the Company's users in the Service Area, and as requested by the State Engineer.
- B. The Company will provide the Board with the amount, location, purchase price, and date of acquisition of all water rights (declared or finalized) and associated land owned or purchased by the Company and its subsidiaries or parents.

- C. The Company will provide to the Board the purchase price, amount, location, and disposition of any land attached to the acquisition of water rights which have been included in its Water Rate Base. The Company shall update this information when water and associated land purchases are made by either the Company, its subsidiaries, or parents. The information shall include the sale price of any land separated from water rights and sold, and the value, use and amount of any water rights which have been transferred for use in the Company's water system. The Board will take reasonable steps to protect the confidentiality of all such information provided by the Company. The Company may comply with this paragraph by submitting a signed statement that the utility owns no land in conjunction with water rights, or by providing copies of the deed, real estate contract, or other titled documents, together with the most recent assessment to the Board on any such property. The Company must update this information to the Board, as any of the information changes.
- D. The Company from time to time may promulgate such rules, regulations, terms and conditions governing the conduct of its business, including the utilization of water and/or septage, and the interference with, or alteration of any of the Company's property upon the premises of its customers or members, as

shall be necessary to ensure continuous and uninterrupted service to each and all of its customers or members and the proper measurement thereof and payment therefor. The Company shall keep on file in its office, available to the public, and also in the office of the County Clerk, copies of the Company's rate schedules, standards for service, rules and regulations, and service connection and extension policies currently in effect with the Public Utility Commission.

- E. The Company may impose water conservation measures to be imposed, in the discretion of the Company, to protect the water resource of the Company. No such plan shall be, at any time, in derogation of any water conservation plan implemented by the Board.
- F. The Company will keep on record in its offices and available to the County upon request the following information: all water rights of each well used by the Company, calculated in terms of "acre-feet/year," as recognized by the New Mexico State Engineer, with all supporting documents; all sources of water used by the Company, including contracts for such sources; the total amount of proven water available for use by the Company, calculated in terms of "acre-feet/year," (which includes all proven water rights, adjudicated water rights, and contracts, and for the purposes of this Ordinance is referred to as "Inventory"); and

total annual demand. The Company must obtain permission from the County before hooking up any additional Company customers or members whenever the Inventory, multiplied by 75%, is less than the total annual demand. The Company shall not serve, commit to serve or otherwise promise to serve any person or entity whenever the Company's Inventory, multiplied by 80%, is less than the total annual demand. However, the Company can serve its customers or members, up to the point that its Inventory equals its total annual demand, provided that the Company agrees not to serve any customers, members, users, or purchasers of any kind beyond its current hookups at the current level of water service, and provided further that the Company agrees not to relax any of its water conservation measures or requirements that affect its customers. The Company shall notify the County, in writing, when the Inventory multiplied by 75% equals the total annual demand. If the actual or projected use of the Company's water ever exceeds the actual water rights of the Company, then the Company shall not permit any further or expanded water hookups or service.

- G. If the Company determines that any curtailment or restriction of service is necessary in its Service Area, it shall present its plan for restriction or curtailment of service to the Board at least 90 days before the curtailment takes place. The Company

shall then include the changes suggested by the Board in its written policies and procedures. The Company shall provide the Board with a copy of any petition to obtain a restriction or curtailment of service.

- H. The Company shall provide a water measuring device (meter) to measure the water utilized from any source to provide water in the Service Area. In addition, the Company shall require each residence, place of business, for other person or entity to whom service is provided to utilize an individual meter. The Company shall keep records of meter usage in a reasonable form acceptable to the Board and shall make such records available to the Board upon request. The Company shall present a plan for general use restriction to encourage conservation in a form acceptable to the Board.
- I. There is hereby imposed on the Company a fee of two cents (\$.02) per one thousand (1,000) gallons of water produced, delivered and/or sold by the Company to customers in the County. This fee shall be used solely to defray the County's cost of short-term and long-term water planning programs and for procedures necessary to investigate and verify water issues in the County.
- J. The Company shall establish rates and fees to its customers for the provision of water utility service.

- K. The Company can acquire other water utility companies to provide such service within the County.
- L. The Company may, with the permission of the Board, utilize Board-owned facilities for the purpose of operating the water utility.

Section 7. Sale and Resale of Water

The Company shall not allow any of its customers to resell any of the water supplies to any customer. The Company may, in its discretion, charge a higher rate for use of its water to customers who are not residents of the County.

Section 8. Construction and Installation of Company Facilities; Maintenance; Excavation; Relocation of Facilities.

A. Location and maintenance.

All Company facilities constructed or maintained by the Company within the County shall be located so as to cause minimum interference with County and public use of public places, and shall be maintained in good repair and condition. Facilities located on, upon, over and under public places shall be constructed, installed, maintained, and cleared of vegetation in accordance with such reasonable requests as the County may impose from time to time on the Company, and in accordance with reasonable aesthetic and safety concerns.

B. County use of rights of way.

The Company will offer to grant use of rights of way which it now, or in the future, owns or has an interest in, within the County, to the Board for the purposes of parks,

drainage facilities, bikeways, traffic conduits, mass transit corridors, sanitary sewer lines in transmission rights of way use, pedestrian area parking, or open spaces, provided that the Company shall not be required to make such an offer in any circumstances where such offer would interfere with the Company's use of the right of way, and it being recognized that the Company assumes no liability for any claims of loss or injury occurring in any such multiple use area.

C. Zoning.

The Company will obtain proper and necessary zoning for any buildings, other facilities or any development that requires zoning approval.

D. Excavation and specific placement.

The Company shall have the right to excavate in, occupy and use any public places as described in its Lease with the County after obtaining appropriate excavation permits from the Board and complying with applicable County Ordinances. The Board may require specific placement of utility facilities in such a way as to accommodate reasonable safety and beautification concerns, subject to Public Utility Commission authority, if any.

E. Reclamation of right of way.

When any location or relocation of the Company's facilities in the public places is required, caused or occasioned by any Board project or when the Company's facilities are located in an easement, including a joint-use

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utility easement, the installations of water, sanitary sewer, storm drainage, landscaping, or traffic signal facilities, then road reconstruction and construction shall be performed at the cost of the Company, in a timely manner, to a condition acceptable to the Board consistent with reasonable standards of safety and appearance, which includes restoring as practicably as possible, the affected property to the condition it was prior to excavation or development.

F. Restoration of property.

The Company shall reconstruct, replace or restore any public place, facilities, or other property of the Board disturbed by the Company, in a timely fashion without cost to the Board, to a condition acceptable to the Board consistent with reasonable standards of safety and appearance, which includes restoring as practicably as possible, the affected property to the condition it was prior to excavation or development. All use of the rights of way by the Company shall interfere as little as reasonably practicable with the use of the rights of way by others.

Section 9. Indemnification.

The Company, as a condition of the grant of any lease or license, and in consideration thereof, shall protect, indemnify, and hold the Board harmless against all claims for damages to persons or property by reasons of the construction, maintenance and operation of its facilities within the rights of way of the Board, and conduct of business by the Company, or any

way growing out of the granting of any lease or license, directly, or indirectly, when injury is caused, or alleged to have been caused by any act, omission, negligence, or misconduct of the Company or any of its contractors, officers, agents, or employees, or by any person for whose act, omission, negligence, or misconduct, the Company is by law responsible. This provision is not intended to create liability for the benefit of third parties but is solely for the benefit of the Company and the Board.

Upon commencement of any suit, proceeding at law or in equity against the Board relating to or covering any matter covered by this Ordinance, whereby the Company has agreed to indemnify and hold the Board harmless, or to pay said final judgment and costs, as the case may be, the County shall give the Company immediate notice of such suit or proceeding; whereupon, the Company shall provide a defense to any such suit or suits, including any appellate proceedings brought in connection therewith, and pay as aforesaid any final judgment or judgments that may be rendered against the Board by reason of such damage suit. Upon failure of the Company to comply with the "defense of suit" provisions of this Ordinance, after reasonable notice to it by the Board, the Board shall have the right to defend the same, in addition to being reimbursed for any such judgment that may be rendered against the Board, together with all case or cases, as well as all expenses incurred by reason of undertaking the defense of such suit or suits,

whether such suit or suits are successfully defended, settled, compromised, or fully adjudicated against the County.

In any event the Board is compelled to undertake the defense of any such suit by reason the Company's failure to perform as here and above provided, the Board shall have the full right and authority to make or enter into any settlement or compromise of such adjudication as the governing body shall deem in the best interest of the Board, this without the prior approval or consent of the Company with respect to the terms of such compromise or settlement.

Section 10. Expansion of Service Area.

The Company has provided the Board with a map of its Service Area, which the County has approved and which is attached to this Ordinance and is made a part hereof. The Company must apply to the Board for any expansion of its Service Area for any business that the Company performs outside the limits of the approved Service Area, and which matter will be decided at a public hearing called for such purpose.

Section 11. Forfeiture, Termination and Expiration.

- A. General. The Board shall have the option to forfeit, cancel, or terminate the franchise at any time for failure of the Company to comply with any terms, conditions, or provisions of the Company's franchise granted pursuant to this Ordinance, or for any other violation of this Ordinance, or any other applicable ordinances of the Board, in accordance with the following procedures.

B. Notice of Violation.

If the Board believes that the Company has not complied with the terms of an Ordinance, it shall notify the Company in writing of the exact nature of the alleged noncompliance.

C. Company's Right to Cure or Respond.

Company shall have thirty (30) days from receipt of the notice described above to (a) respond to the Board contesting the assertion of noncompliance, or (b) to cure such default or, in the event that by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Board of the steps being taken and the projected date that they will be completed.

D. Forfeiture Notice.

If the Company fails to respond to the notice or to take curative steps as described above for a period of thirty (30) days after the Company has received the notice described above, then the Company shall be deemed to have forfeited and annulled its Franchise and shall thereby forfeit and annul all rights and privileges granted by this Ordinance; provided, however, that if the Company a) within five (5) working days of receipt of the written notice submits to the County a Schedule of Compliance outlining the steps to remedy or correct the problem within thirty (30) days of receipt of the notice, and b) com-

mences work or other efforts to cure such violations within thirty (30) days after receipt of written notice and shall thereafter prosecute such curative work with reasonable diligence until such curative work is completed, then the Board may elect to hold in abeyance its decision to treat the Company as violating this Ordinance, and the requirements and terms of this Ordinance shall remain in full force and effect, pending the Company's curative actions.

E. Public Hearing.

The forfeiture set forth in this subsection, shall be declared only by a written decision of the Board after conducting a public hearing to afford the Company an opportunity to be heard and to respond to any such notice of violation or failure to comply. All due process requirements shall be met by providing the Company at least fifteen (15) days prior written notice of any public hearing concerning the forfeiture of the Lease or License and, in addition, ten (10) days notice by publication shall be given of the date, time and place of any public hearing to interested members of the public, which notice shall be paid for by the Company.

F. Board Decision.

The Board, after full public hearing, may in its discretion forfeit the Franchise, or upon finding a violation or failure to comply, impose a lesser penalty than forfeiture of the Franchise, including but not limited to a monetary

penalty of \$300 per day per violation, or excuse the violation or failure to comply upon a showing by the Company of mitigating circumstances or upon a showing of good cause for said violation. Each day the violation occurs or continues to exist without remedy constitutes a separate violation.

G. Termination.

The Franchise shall continue until the termination date set forth in the Franchise, unless terminated sooner pursuant to the terms of this Ordinance. Any and all expansions of the Service Area shall expire and/ or terminate when the original Franchise terminates, unless terminated sooner pursuant to this Ordinance.

Section 12. Notice.

For the purpose of this Ordinance, notice to the Board will be to:

COUNTY MANAGER
P.O. Box 276
Santa Fe, New Mexico 87504

With a copy to:

COUNTY ATTORNEY
P.O. Box 276
Santa Fe, New Mexico 87504

Notice to the Company will be mailed to the address of the Company at the address requested by the Company, in writing, to the County. Notice will be effective upon delivery at the above addresses until the Board or Company notifies the other, in writing, of a change in the address.

Section 13. Assignment.

This Franchise, or any part thereof including the right to serve any given area, shall not be assigned by the Company. Any person desiring to acquire, purchase, lease, or otherwise use any portion of a Company's leased public place must apply to the Board for a separate franchise.

Section 14. Lease Charge, Reports, and Audit.

A. Lease Charge.

The Company may be required to pay a lease charge to the County if the Board adopts, by Resolution or Ordinance, a lease charge schedule that will apply to the Company. The lease charge may be a percentage of gross revenue generated within the County, or any other method adopted by the Board.

B. Annual Reports.

All utility Companies shall annually submit a written report to the Board by June 30 of every year, in a form acceptable to the Board, which shall include:

1. A summary of the previous year's activities and development of the facilities, including, but not limited to, services begun or dropped, and subscriber or member gain or loss;
2. Copies of the financial statements audited by a certified public accounting firm, including the Company's balance sheet, income statement, and working papers relating to subscriber accounts (this item is not required from Associations);

3. A copy of all written complaints received by the Company, and statements how the complaints were handled.

C. Audit.

If the Board reasonably believes that any information required by the Annual Report is inaccurate or incomplete, the Board can require an independent audit to be performed by an outside accounting firm acceptable to both the Board and the Company, and shall be paid by the Company.

Section 15. County Police Power.

The Board expressly reserves, and the Company expressly recognizes, the Board's right and duty to adopt, from time to time, in addition to the provisions herein contained, such ordinances as the Board may deem reasonably necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties. Any work done in connection with the Company's use of the rights-of-way shall be subject to the Board's police power and county governance.

Section 16. Access to Information.

- A. The Company agrees to allow the County Manager or his designee reasonable access to any part of the plant, works and facilities.
- B. The Company agrees to grant the Board reasonable access to the books and records of the Company insofar as they relate to any matters covered by this Ordinance; to provide the County Manager with such reasonable and

necessary reports containing or based on information readily obtainable from the Company's books and records as he may from time to time reasonably request.

- C. The Company agrees to provide the County Manager, upon request, not more than every two (2) years, a list of utility-related real property owned or leased by the Company within the County.

Section 17. No Waiver.

Neither the Board nor the Company shall be excused from complying with any of the terms and conditions of any Franchise because of the failure of the other, or any of its officers, employees, or agents, upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions.

Section 18. Severability.

If any of these sections, subsections, sentences, clauses or phrases of this Ordinance are for any reason found to be invalid or unconstitutional by a Court of competent jurisdiction, the validity of the remaining portions of this Ordinance shall not thereby be affected since it is the express intent of the Board to pass each section, phrase, paragraph, and word separately.

Section 19. Penalties.

If the Company found to be in violation of any portion of this Ordinance, it shall be fined a maximum of three hundred dollars (\$300.00) per day for each such violation. Each day that a violation continues constitutes a new and separate violation.

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PASSED, APPROVED AND ADOPTED, THIS 13th DAY OF September, 1994.

SANTA FE COUNTY BOARD OF COUNTY COMMISSIONERS

Linda Hill
CHAIRMAN

ATTEST:

Jona G. Armijo
JONA G. ARMIJO, COUNTY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY
WILLIAM T. MOYERS,

William T. Moyers
SANTA FE COUNTY ATTORNEY



882.926
COUNTY OF SANTA FE)SS
STATE OF NEW MEXICO)
I hereby certify that this instrument was filed
for record on the 28 day of Oct A.D.
1994 at 9:26 o'clock Am
and was duly recorded in book 1108
page 528-546 of the records of
Santa Fe County.

Witness my Hand and Seal of Office

Jona G. Armijo
County Clerk, Santa Fe County, N.M.

Marcella Ruiz
Deputy