

Santa Fe County Ordinance No. 1998 - 12**"An Ordinance Granting a Sewer Franchise to Ranchland Utility Company"**

This Franchise Ordinance is passed, adopted and approved this 13th day of October, 1998, by the County of Santa Fe, Board of County Commissioners (hereinafter, referred to as "County").

WHEREAS, the County of Santa Fe has the power to grant a franchise to public utility companies operating within the County of Santa Fe pursuant to NMSA 1978, Sections 3-42-1 and 4-37-1; and

WHEREAS, Ranchland Utility Company (hereinafter, "Franchisee") owns a sewage collection and treatment system located within the area subject to the Rancho Viejo de Santa Fe Master Plan and desires to operate its sewer plant, and if necessary, utilize certain public rights-of-way owned and maintained by the County; and

WHEREAS, the County is willing to grant to Franchisee the nonexclusive right to operate its sewage treatment plant within the County of Santa Fe, subject to the terms and conditions of this Ordinance.

NOW, THEREFORE, pursuant to NMSA 1978, Section 3-42-1, be it ordained by the Board of County Commissioners of the County of Santa Fe that the County, through this Ordinance No. 1998 - 12, hereby grants to Ranchland Utility Company, pursuant to the terms and conditions of this Ordinance, a non-exclusive franchise to construct, maintain and operate a sewer collection system (hereinafter referred to as "Sewer System") within the County of Santa Fe and to enter upon and use that portion of the County's rights-of-way as is necessary for the construction, use and maintenance of Franchisee's Sewer System, in compliance with and as shown on Franchisees' map or plan, which map or plan must be approved by the County, and is incorporated herein by reference as Exhibit A.

1. Franchisee's Authority. Franchise shall utilize County's right-of-way only for the Sewer System, as set out above, in accordance with Exhibit "A", as approved by the County; Franchisee shall not interfere with any existing uses of this right-of-way. In the event

Franchisee uses said right-of-way for any other purpose than above mentioned, then County, its successors and assigns, may declare this Franchise Ordinance at an end and Franchisee shall immediately discontinue use of the right-of-way, leaving it in a good, clean and workmanlike condition or, at the option of the County, return the right-of-way to its original condition.

2. Plans and Specifications. The Sewer System shall be constructed and all improvements completed in compliance with required County and State of New Mexico development and construction permits, and in compliance with the plats and maps filed therewith. Work shall begin within eighteen (18) months of County approvals.

3. Construction and Maintenance Costs.

A. Franchisee shall be solely and completely liable for all costs and expenses incurred in connection with the construction and maintenance of Sewer System. These costs shall include, but are not limited to, all required flagman, traffic control and other requirements for the health and safety of the public during construction and maintenance of Sewer System. Such construction and maintenance shall be completed in a good and workmanlike manner, replacing and restoring any County street, road, easement, and public right-of-way to as good a condition as before the work involving such disturbance was done. Franchisee shall promptly perform the maintenance to Sewer System and repair, or pay for cost of repair at County's sole discretion and option, any damage to the County right-of-way.

B. If at any time the County shall lawfully elect to alter or change the grade, alignment, or location of any road, easement or other public right-of-way, Franchisee shall upon sixty (60) days written notice by the County, remove, reinstall and relocate its structures, facilities and any of its other fixtures at its own expense.

4. Condition of Premises. Upon completion of construction and maintenance of Sewer System on County right-of-way, Franchisee shall require its contractor(s) to remove from the County's right-of-way all equipment, surplus material and debris left by the contractor(s) thereon, leaving such premises in a good and workmanlike condition, restoring it to as good a condition as before the work involving such disturbance was done.

5. Ownership and Maintenance. Upon completion of Sewer System, the facilities constructed by Franchisee shall be owned and maintenance by the Franchisee at its sole cost and expense.

6. Fees. Franchisee shall pay a utility franchise fee in the amount of three percent (3%) of the annual gross income of Franchisee's sewer utility. Said payment shall be made to the County of Santa Fe at the end of each calendar year and shall be in addition to any other tax or payment owed to the County. The County may, at any time during the term of this Ordinance, after a public hearing, increase the franchise fee in an amount deemed reasonable by the County.

7. Late Payment Penalty. In the event Franchisee fails to make payment of the required fee under Paragraph 6 on or before the due date, the Franchisee shall pay a penalty in the amount of ten percent (10%) of the amount due. Failure to pay the required fee shall be sufficient grounds for the County, its successors and assigns, to end this Franchise Ordinance. Upon such an event, Franchisee shall immediately discontinue use of right-of-way and, at the option of the County, return the right-of-way to its original condition.

8. Records. Franchisee shall keep and preserve for a period of five (5) years after the date of each payment due to the County all records necessary to determine the amounts of such fees or other payments due to the County. Upon demand of the County, Franchisee shall make such records available for inspection by the County or its authorized representative. At the time that payment is made to the County of the fees required under Paragraph 6, Franchisee shall provide a statement showing the number of subscribers and revenue generated from those subscribers upon which the fee paid to the County is based in order to enable the County to verify the accuracy of the fee paid to the County.

9. Indemnification. Franchisee shall indemnify, hold harmless and defend the County from and against any and all loss, damages, claims, liability, suits, costs and expenses, including attorney's fees suffered by the County as a consequence of or related to the Franchisee's use of County's right-of-way in the construction, adjustment, operation and maintenance of Franchisee's Sewer System, including any negligent or intentional act or omission of Franchisee, its officers, employees, agents or subcontractors.

10. Liability. As between the parties hereto, County shall be responsible for liability arising from personal injury or damage to person or property occasioned by its own agents' or employees' negligence in relation to the Sewer System, subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1, et seq.

11. New Mexico Tort Claims Act. By granting this Franchise Ordinance, the County

and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense (s) and/or do not waive any limitations pursuant to law. No provision in this Franchise Ordinance modifies and/or waives any provision of the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1, et seq.

12. Insurance. On or before commencement of construction of Sewer System in County right-of-way, Franchisee shall obtain and provide satisfactory evidence of a policy of liability insurance issued to Franchisee naming the County, its officers, agents and employees as additionally named insured. Said liability insurance policy coverage for Santa Fe County, its officers, agents and employees shall provide liability insurance in an amount equal to the maximum exposure to Santa Fe County provided for under the New Mexico Tort Claims Act, and as it may be hereafter amended. Said policy of insurance shall remain and be in effect during the full term of this Ordinance.

13. Notification of Construction.

A. Except in an emergency situation, Franchisee shall give written notice to the County of its intent to install or repair its Sewer System within the County's right-of-way and easements. Such notification shall specify the date work shall commence and the anticipated end date, as well as the locations of the same. Such notice shall be given to the County's Public Works Director not less than ten days prior to the anticipated commencement of the work.

B. The notification requirements of the above paragraph shall not apply in emergency situations where such notice cannot be given to the County without endangering the health or safety of the public. In such an emergency, Franchisee shall notify the Public Works Director as soon as practicable of the need to undertake work within the County's right-of-way and work that has been completed.

C. Any and all work undertaken by Franchisee within the County right-of-way shall be conducted in accordance with all County, State of New Mexico and federal laws, rules and regulations applicable to the type of work to be done. All such work shall be undertaken at Franchisee's sole expense in a good and workmanlike manner, and the right-of-way shall be restored to a like condition prior to the work undertaken.

14. Term. The term of this Franchise Ordinance shall be for a period of twenty-five (25) years. Costs for any required publications related to this Ordinance shall be borne by

Franchisee. It is further agreed that upon expiration of the Franchise Ordinance, or in case Franchisee shall in any manner fail to comply with the terms and conditions hereof, then County, its successors and assigns, may declare this Franchise Ordinance at an end and Franchisee shall immediately discontinue use of the right-of-way, leaving it in a good, clean workmanlike condition, or, at the option of the County, return the right-of-way to its original condition.

15. Changes in Certificate of Convenience & Necessity. If the Certificate of Convenience of Necessity issued to Franchisee by the Public Utility Commission is abandoned, revoked, rescinded, suspended, expires or is otherwise rendered ineffective or terminated by the Public Utility Commission or other agency having the authority to take such action, Franchisee shall notify the County in writing of the action not later than thirty (30) days after the action is taken. Upon receipt of such notice, the County shall have the right to repeal this Franchise Ordinance.

16. Use of County Property. Franchisee shall use County right-of-way without interference or damage to existing roads, pipe lines, electric transmission lines, telephone lines, telegraph lines and other facilities of like character that are upon, under or across said right-of-way. Any structure or facility placed in any public right-of-way by Franchisee shall be placed in such a manner so as not to interfere with travel on such public right-of-way.

17. No Transfer of Title. This Franchise Ordinance constitutes a right only to use said right-of-way for constructing and maintaining Sewer System and shall not be construed as granting to Franchisee any right of possession, estate, title or interest whatsoever in or to said right-of-way or easement(s) or any part thereof. In case of eviction of Franchisee by anyone owning or claiming title to or any interest in said right-of-way County shall not be liable to Franchisee for any damage of any nature whatsoever.

18. Binding. This Franchise Ordinance shall be binding upon Franchisee, its heirs, legal representations, successors and assigns, and shall inure to the benefit of the successors and assigns of County.

19. Insolvency. The County shall have the right to end this Franchise Ordinance one hundred twenty (120) days after the appointment of a receiver, trustee, or other assignee to take over and conduct the business of the Franchisee, unless within the specified one hundred twenty (120) days the receiver, trustee, or other assignee shall have obtained the approval for the

continued operation of the Sewer System under this Ordinance from the County.

20. Conflicting Provisions. Where there exists a conflict between any limitation or requirement in this Franchise Ordinance and any applicable limitation or requirement contained elsewhere in this Franchise Ordinance or in the Santa Fe County Land Use Code or in any other ordinance, regulation or law, the more restrictive limitation or requirement shall prevail.

21. Governing Law. This Franchise Ordinance and agreements constituted hereby shall be governed by and subject to the laws of the State of New Mexico.

22. Integration. This Franchise Ordinance contains the entire franchise terms granted.

23. Modification. The conditions of this franchise may only be modified by written amendment to this Ordinance except as otherwise provided herein.

Santa Fe County Commission

By: Joe S. Grine
~~Marcos P. Trujillo, Chairman~~
Joe S. Grine - Vice Chairman

Attested to:

Santa Fe County Clerk

By: Rebecca Bustamante
Rebecca Bustamante



COUNTY OF SANTA FE)
STATE OF NEW MEXICO 10481190)SS
I hereby certify that this instrument was filed
for record on the 6 day of Nov A.D.
19 98 at 12:10 o'clock P m
and was duly recorded in book 1562
page 591 - 596 of the records of
Santa Fe County.

Witness my Hand and Seal of Office
Rebecca Bustamante
County Clerk, Santa Fe County, N.M.

Ukemonia Clayton
Deputy



Approved as to form:

Santa Fe County Attorney

By: Cheryl O'Connor
Deputy Assistant County Attorney

Santa Fe County Finance Director

By: Donna Gary
Donna Gary