

CITY OF RIO COMMUNITIES

ORDINANCE NO. 2016-50

Chapter 16: Franchises

Article 3: New Mexico Water Service Company

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16-3-1 SCOPE OF FRANCHISE

AN ORDINANCE GRANTING A FRANCHISE TO NEW MEXICO WATER SERVICE COMPANY, ITS SUCCESSORS AND ASSIGNS, CERTAIN POWERS, LICENSES AND PRIVILEGES TO CONSTRUCT, OPERATE AND MAINTAIN WATER AND SEWER SYSTEMS FOR CONVEYANCE, SALE, DISTRIBUTION, PUMPING, COLLECTION AND TREATMENT OF WATER AND SEWAGE WITHIN THE CITY OF RIO COMMUNITIES, NEW MEXICO, AND PROVIDING FOR THE PAYMENT TO SAID CITY OF A PERCENTAGE OF REVENUES FROM THE MONTHLY WATER AND SEWER CUSTOMER AND COMMODITY CHARGES OF GRANTEE FROM ITS OPERATIONS.

BE IT ORDAINED by the Governing Body of the City of Rio Communities, New Mexico:

16-3-2 SHORT TITLE

This Ordinance shall be known and may be cited as the New Mexico Water Service Company Franchise Ordinance.

16-3-3 GRANT OF FRANCHISE

16-3-3A Grant of Franchise: Pursuant to NMSA 1978, § 3-42-1 and NMSA 1978, § 62-6-4.5 there is hereby granted by the City of Rio Communities ("City") to New Mexico Water Service Company ("Company") the nonexclusive right and privilege to construct,

erect, operate and maintain, under, in, upon, along and across streets, alleys, public ways and public places now in use or dedicated, and all extensions thereof, and additions thereto, in said City, works, systems, plants, pipes and all related facilities necessary or proper for the maintenance and operation in said City of the Company's water and sewer utility business, provided, however, that facilities shall be placed in such a manner as to cause a minimum interference with the rights or reasonable convenience of property owners who adjoin any of said streets, alleys or public ways and places and of other persons or companies operating in said streets, alleys, public ways and public places pursuant to existing or future franchise agreements with the City.

16-3-3B Use and Repair of Streets: The Company is hereby authorized, licensed and empowered to do any and all things as may be necessary or reasonably convenient to be done and performed in executing the powers and utilizing the rights, powers and privileges herein mentioned and granted by this franchise, provided the same do not unreasonably interfere with other pre-existing authorized installations. In the event of any disturbance of pavement, sidewalk, driveway or other surfacing, the Company shall, at its own cost and expense, within a reasonable time, and in a manner entirely satisfactory to the City and subject to the jurisdiction of said City respecting the subject, replace and restore all paving, sidewalk, driveway or surface of any City streets or alleys disturbed, in as good a condition as before said work was commenced, and shall clean up and remove any debris resulting from said disturbance or line breaks and repair any damage to the right-of-way. In the event of a public project initiated by City that requires a water and/or sewer facility or infrastructure relocation, upon written request by the City, the Company shall relocate such facilities or infrastructure out of the project area at no cost to City. City shall obtain Company's input during the planning phase of any such project, provided, that City shall not be responsible for payment of any consulting fees to Company for said input. Company shall cooperate with City's contractors during construction of the project, but Company shall not be responsible for any added costs of City's contractor resulting from the contractor's delays due to Company's efforts to accommodate the project, provided, that Company shall have made all reasonable and timely efforts to accommodate the project. Company shall obtain all permits required and shall adhere to all standards promulgated by City for said excavations and repairs.

16-3-4 PAYMENTS TO CITY

16-3-4A Franchise Fee: The Company, for and in consideration of this franchise and as rental for the occupation and use over, upon and beneath the streets, avenues, easements, rights-of-way, alleys, highways, sidewalks, paths, bridges, structures and other public places in the City, and except as set forth herein, in lieu of any and all "other municipal taxes" as hereinafter defined, shall, for this franchise, pay to the City each month a total aggregate sum of three percent (3%) of the Company's water and sewer Customer and Commodity charges, exclusive of sales, gross receipts taxes, or regulatory fees collected during the previous month for water and sewer service provided to end users and consumers within the corporate limits of the City, including areas hereafter annexed into the City, under the Company's approved rates, effective from time to time. The Company shall commence the collection of such 3% fee within

the later of sixty (60) days of its acceptance of this Ordinance or the receipt of any necessary approvals regarding such fee from the New Mexico Public Regulation Commission.

16-3-4B Franchise Fee in Lieu of Other Taxes: The franchise fee and payments made hereunder are and shall be in lieu of any and all other franchise, license, privilege, occupation, excise or revenue taxes upon the business, revenue or property of Company, or any part thereof, situated in the City during the term of this franchise, provided that ad valorem property taxes and special assessments for local Improvements as well as GRT shall remain applicable.

16-3-4C Subject to the term of this franchise ordinance which shall be 25 years, said payments to the City shall continue only so long as the Company is not prohibited from making the same and assessing such cost as a pass-through to its customers by the New Mexico Public Regulation Commission or any lawful authority having jurisdiction in the premises. If any lawful authority having jurisdiction in the premises shall hereafter prohibit such payment or payments and/or pass-through to the Company's customers, either party may terminate this agreement. Company shall identify any pass-through franchise fees as a separate line item in its customer billing.

16-3-4D Company shall make payments as provided herein on a monthly basis, within 30 days of the end of each month.

16-3-4E For the purposes of verifying the Company's basic Customer and Commodity charged to customers, the Company shall provide information and records as necessary to the City, upon written request and reasonable notice, to evidence the Customer and Commodity charges charged to customers.

16-3-5 RIGHT OF TRANSFER

The Company shall have all rights and privileges granted herein, and whenever the word "Company" appears herein, it shall be construed as including its successors, assigns and lessees so long as any successor, assign or lessee continues to serve the City as a public utility. Nothing contained in this section shall be construed to impair the right of the City to appear and object to any such transfer before the New Mexico Public Regulation Commission or any public authority having lawful jurisdiction over the transfer.

16-3-6 POLICE POWER

The Company shall, at all times during the life of this franchise, be subject to all lawful exercise of the police power by the City and to such reasonable regulation as the City may, by resolution or ordinance, hereafter provide.

16-3-7 INSURANCE AND INDEMNITY

16-3-7A Commercial General Liability Insurance: Throughout the term of this Agreement, the Company shall, at its own cost and expense, maintain Commercial

General Liability Insurance and provide the City certificates of insurance designating the city as additional insured and demonstrating that the Company has obtained the insurance required. Such policy or policies shall be in the minimum amount of One Million Dollars (\$1,000,000.00) for bodily injury or death to any one person, and One Million Dollars (\$1,000,000.00) for property damage resulting from any one accident.

16-3-7B Worker's Compensation Insurance: The Company shall maintain Worker's Compensation Insurance in such amounts as required by law.

16-3-7C INDEMNIFICATION: Subject to the limitations of NMSA 1978, §§ 56-7-1 and 56-7-2, it is expressly understood and agreed by and between the Company and the City that the Company shall indemnify and save harmless the City, its governing body, officers, agents and employees, from all loss sustained by the City on account of any suit, judgment, execution, claim or demand whatsoever, resulting from the negligence on the part of said Company or its employees or contractors in the construction or maintenance of its water and sewer system in the City. The City shall promptly notify the Company's representative after the presentation of any claim or demand either by suit or otherwise made against the City.

16-3-8 PAYMENT FOR SERVICES

The City agrees to pay to the Company in accordance with standard tariff schedules the rates and charges for all water services rendered by the Company to the City.

16-3-9 SEVERABILITY

If any section, paragraph, subdivision, clause, phrase or provision of this franchise shall be 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.

16-3-10 BREACH OF AGREEMENT

In the event of breach of this franchise by either party, the prevailing party shall enjoy all rights and remedies allowed in law or equity and may recover reasonable attorney's fees in any suit arising from breach or enforcement of this franchise.

16-3-11 NOTICES

All notices and productions required of either party by this franchise shall be delivered to the other party by certified mail, return receipt requested, or such other means that include adequate means for acknowledging receipt, with the delivery to be acknowledged by a signed and dated receipt, to the following officials at the designated address, unless another official or address has been designated in writing by the part to receive the delivery, to-wit:

City: City Manager
City of Rio Communities
360 Rio Communities Blvd
Rio Communities, NM 87002

Company: General Manager
New Mexico Water Service Company
401 Horner Street
Rio Communities, New Mexico 87002

16-3-12 TERM OF FRANCHISE

Upon acceptance of this ordinance by the Company as provided herein, the franchise and rights herein granted shall continue in force and effect for a term of 25 years after the effective date of the ordinance.

16-3-13 ADDRESSES

The Company shall insure that all mailing and service addresses within the shape file boundaries of the City of Rio Communities Resolution 2015-27 (see attached) will reflect Rio Communities in their address.

16-3-14 ACCEPTANCE

16-3-14A The Company shall, within thirty (30) days after the passage and approval of this ordinance, file in the office of the Municipal Clerk a written statement of acceptance duly signed by the proper officer of the company authorized to execute such acceptance.

16-3-14B In the event such acceptance is not filed within said period, this ordinance and the rights, privileges, powers and obligations contained herein shall be terminated and void, provided, that the City may by resolution extend the time herein for the filing of such acceptance for an additional reasonable period.

16-3-14C This ordinance, if accepted by the Company, shall supersede, cancel and be in lieu of any and all other existing or prior grants of rights, permission and authority to the company or any predecessor companies or assigns of the Company to construct, operate and maintain any system for the sale, manufacture, storage, distribution, conveyance and supply of water and the provision of wastewater/sewer services within the city limits of the City.

16-3-15 EFFECTIVE DATE

This Ordinance shall, subject to the provisions of Section 7 and subject to the conditions for acceptance provided in Section 12 herein, this ordinance shall take effect August 19th 2016 in accordance with statute (NMSA 3-42-1 franchises; authorization) and be in full force and effect as provided in Section 3.a. after its passage and approval.

PASSED, APPROVED AND ADOPTED THIS 19th DAY OF JULY 2016.

City of Rio Communities Governing Body

Mark Gwinn,
Mayor

Margaret (Peggy) Gutjahr,
Councilor Mayor Pro-tem

William (Bill) Brown,
Councilor

ATTEST:

Arturo R. Sais,
Councilor

Thomas Scroggins,
Councilor

Elizabeth (Lisa) Adair,
Municipal Clerk

ACCEPTANCE OF FRANCHISE ORDINANCE

KNOW ALL PERSONS BY THESE PRESENTS:

THAT, in compliance with Chapter 16 Article 3 of the City of Rio Communities municipal franchise approved and adopted by the governing body of the City as Ordinance No. 2016-50 on the 19TH day of July 2016, New Mexico Water Service Company, grantee of said franchise, does hereby accept same together with all terms and provisions therein contained.

This acceptance is signed and sealed this _____ day of _____, 2016, with the intent that it be filed with the Municipal Clerk of the City of Rio Communities, New Mexico, as required by the aforesaid franchise.

NEW MEXICO WATER SERVICE CO.

By: _____
Paul Townsley, Vice President

STATE OF NEW MEXICO)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on _____, 2016, by _____
_____.

Notary Public

My Commission Expires:

STATE OF NEW MEXICO
CITY OF RIO COMMUNITIES
RESOLUTION 2015-27

Declaration of Official Boundary Map
Valencia Regional Emergency Communications Center


- WHEREAS,** the Governing Body in and for the City of Rio Communities, State of New Mexico has established municipal boundaries for the City of Rio Communities stated in Resolution Number 2014-18.
- WHEREAS,** the Mid Region Council of Governments created a "shape file boundary map" for the City of Rio Communities dated September 17, 2014
- WHEREAS,** the Official Boundary Map shall be used by Valencia Regional Emergency Communications Center (VRECC) to provide 911 Dispatch Services
- WHEREAS,** it is hereby certified that the contents in this shape file boundary are true and correct to the best of our knowledge

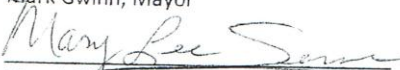
NOW THEREFORE, BE IT HEREBY RESOLVED that the governing body of the City of Rio Communities, State of New Mexico hereby approves the "MRCOG Shape File Boundary Map" dated September 17, 2014 to be the one and true OFFICIAL SHAPE FILE BOUNDARY MAP for the City of Rio Communities, New Mexico

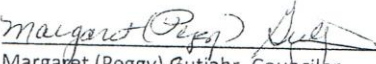
Resolved: In the Regular Board Session this 10th day of February 2015.

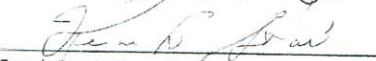
02-17-15

City of Rio Communities Governing Body



Mark Gwinn, Mayor

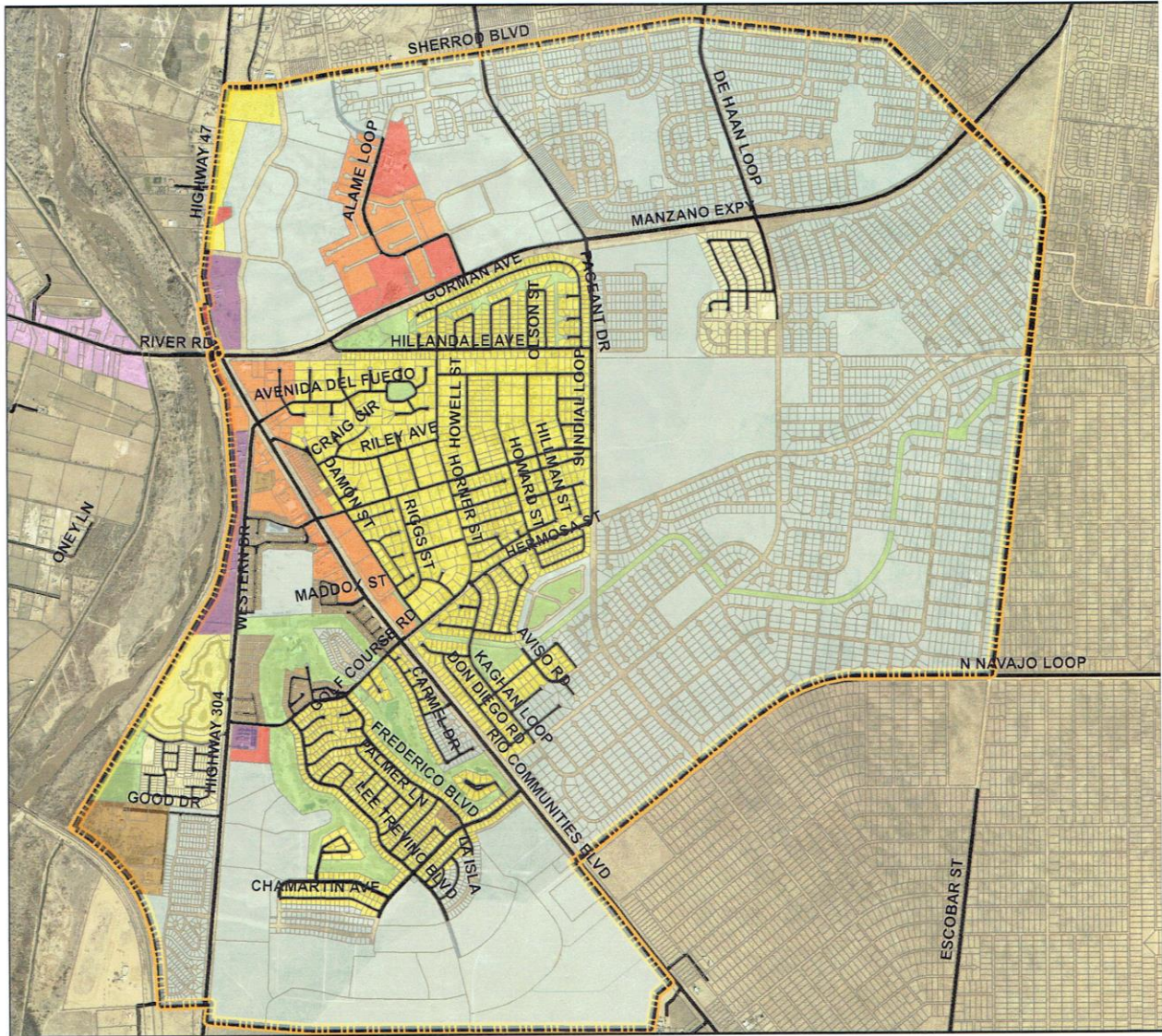

Mary Lee Serna, Councilor Mayor Pro-temp


Margaret (Peggy) Gutjahr, Councilor


Frank Stasi, Councilor

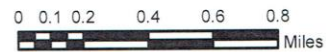

Robert Chavez, Councilor

ATTEST:

LaShae Latasa, City Clerk



City of Rio Communities Zoning Map

printed: 9.17.2014



Disclaimer: This map was created by MRCOG based solely on information provided by the City of Rio Communities. Any discrepancies with this map and the content provided should be taken up with City of Rio Communities staff.