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Meeting Date: March 22, 2023  
Staff Contact: Charles W. Kolberg, General Counsel

**TITLE: R-23-3 – Adopting a Utility Franchise Agreement with the Village of Los Ranchos de Albuquerque, New Mexico**

**ACTION: Recommend Approval**

**SUMMARY:**

The Albuquerque Bernalillo County Water Utility Authority (Water Authority) needs permission to use the rights-of-way in each of the jurisdictions we serve. In this proposed franchise agreement, the Village of Los Ranchos de Albuquerque grants the Water Authority permission to locate pipes and facilities in and under the streets of the Village. Franchise agreements include a provision for rent for the use of the streets which is collected in the form of a franchise fee on each ratepayer's bill and then paid to the jurisdiction. The franchise fee under this and other Water Authority franchise agreements is 4% of the gross revenue obtained from serving customers in the subject jurisdiction.

**FISCAL IMPACT:**

None. The franchise fee is collected directly from ratepayers in the jurisdiction and passed on to the government granting the franchise.



**STATE OF NEW MEXICO  
VILLAGE OF LOS RANCHOS DE ALBUQUERQUE  
ORDINANCE NO. 291**

GRANTING A FRANCHISE TO THE ALBUQUERQUE BERNALILLO COUNTY  
WATER UTILITY WATER AUTHORITY TO PROVIDE WATER AND WASTEWATER  
SERVICE IN THE PUBLIC RIGHTS-OF-WAY WITHIN THE VILLAGE OF LOS  
RANCHOS DE ALBUQUERQUE; REPEALING ORDINANCE NO. 204

**WHEREAS**, as a municipal corporation pursuant to state law, the Village of Los Ranchos de Albuquerque (“Village”) is authorized to grant a franchise to the Albuquerque Bernalillo County Water Utility Water Authority (“Water Authority”) for the provision of water and wastewater service and construction, maintenance, and operation of the Water Authority’s facilities and distribution systems within the Village streets and other public rights-of-way; and

**WHEREAS**, the Village's existing franchise with the Water Authority has expired; and

**WHEREAS**, The Water Authority’s franchise with the Village has continued on an implied basis since its expiration.

**BE IT ORDAINED BY THE TRUSTEES, THE GOVERNING BODY OF THE VILLAGE OF LOS RANCHOS DE ALBUQUERQUE:**

**SECTION 1. DEFINITIONS.**

For the purpose of this Franchise, 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 number 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.

**APPLICABLE LAW.** Any statute, ordinance, judicial decision, executive order, or regulation having the force and effect of law that determines the legal standing of a case or issue.

**VILLAGE.** The Village of Los Ranchos de Albuquerque or Los Ranchos.

**BOARD OF TRUSTEES.** The governing body of the Village of Los Ranchos de Albuquerque.

**WATER AUTHORITY.** The Albuquerque Bernalillo County Water Utility Water Authority as established by 72-1-10 NMSA 1978 (2003 Supp.) (as amended Laws 2005, Chapter 345) or successor statute.

**FACILITIES.** Are and include, but are not limited to, the plants, works, systems, improvements, and equipment the Water Authority uses to provide water and wastewater service such as pipes, hydrants, wells, systems, lift stations, manholes, tanks, reservoirs, underground links, meters, pumping equipment and sewer mains.

**FRANCHISE.** The authorization granted herein, i.e., the contractual agreement executed between the Village and the Water Authority authorizing the Water Authority to use Rights-of-Way to construct, operate, and maintain water and wastewater system Facilities in the Village or any portion or portions thereof.

**FRANCHISE AREA.** The area within the jurisdictional boundaries of the Village, including any areas annexed by the Village during the term of this Franchise. However, nothing in this Franchise Agreement obligates the Water Authority to provide Water, Wastewater or other services of any kind outside of its service area.

**GOVERNING BOARD.** The Governing Board of the Water Authority as delineated in 72-1-10 NMSA 1978 (2003 Supp.) (as amended Laws 2005, Chapter 345) or successor statute.

**GROSS REVENUE.** Includes any and all revenue received by the Water Authority from the sale of water or wastewater service to its customers within the limits of the Village, as those limits may be extended from time to time including the value of water served and wastewater service consumed by the Water Authority in the Village. Gross Revenue shall not include amounts received by the Water Authority as a tax, fee or assessment of general applicability collected by the Water Authority for pass-through to another governmental agency, reimbursements from third parties for expenses, bad debt, revenue received by the Water Authority upon which the Village already collects a franchise fee from another utility, utility expansion charges or to refunds or credits. The Gross Revenue shall be measured and monitored periodically as set out below.

**LINE EXTENSION.** Any extension of distribution, transmission, or collection facilities into areas within the boundaries of the Village not then served by the Water Authority.

**MAYOR.** The Mayor of the Village or his/her designated representative.

**PUBLIC PLACE.** Any property that is owned or under the control of the Village that is not a Right-of-way but may be dedicated for the public use including but not limited to, Village buildings.

**REASONABLE ATTORNEY FEES.** Charges for legal representation as may be incurred by the Village or the Water Authority.

**RIGHTS-OF-WAY.** The surface of and the space above and below any street, road, avenue, highway, freeway, bridge, lane, path, alley, court, sidewalk, parkway, platted, or other public utility easement, right-of-way or other easement, excluding railroad rights-of-way, and airport property, of the Village now or hereafter existing within or owned by the Village which may be properly used for water and wastewater Facilities. To the

extent the Water Authority occupies an easement granted by the Village to the Water Authority on any Public Place that permits use and occupation of such Public Place, the terms and conditions of that easement shall govern and control the Water Authority's occupation thereof.

**TREASURER.** The Treasurer of the Village of Los Ranchos.

**WATER.** Residential, multi-family, commercial, industrial, and institutional water, systems, and services.

**WASTEWATER.** Residential, multi-family, commercial, industrial, institutional and wholesale-special contracts water, systems and services.

## **SECTION 2. GRANT OF FRANCHISE.**

### **(A) Grant.**

1. The Village hereby grants to the Water Authority nonexclusive permission to rent, use, and occupy and the franchise right, privilege and authority to construct, purchase, acquire, locate, maintain, operate and extend into, within, and through the Village, Facilities for the purpose of distributing water and wastewater service, of any nature, with the right and privilege for the period and upon the terms and conditions hereinafter specified, to sell, furnish, and distribute any or all of said products to the Village and its inhabitants, by means of its Facilities, on, over, under, along and across all Rights-of-way. This Franchise provides the Water Authority a right to provide water and wastewater service as set forth in the provisions of this Franchise and Water Authority ordinances.

2. Nothing in this Franchise shall be deemed to waive the lawful requirements of any generally applicable Village ordinance existing as of the Effective Date, as set forth in this Franchise Agreement. The terms, provisions and conditions herein are subject to the provisions of State law, federal law, and the Village ordinances and regulations enacted pursuant thereto. The Village of Los Ranchos ordinances, as they exist on the Effective Date of this Franchise, are hereby expressly incorporated into this Franchise as if fully set out herein by this reference.

3. The Water Authority retains the right to challenge any Village ordinance or regulation to the full extent allowed by Applicable Law. Notwithstanding the foregoing, the Village may not unilaterally alter the material rights and obligations of Water Authority under this Franchise.

4. This Franchise is intended to convey limited rights and interests only as to those Rights-of-Way in which the Village has an actual interest. It is not a warranty of title or interest in any Right-of-Way; it does not provide Water Authority with any interest in any particular location within the Right-of-Way; and it does not confer rights other than as expressly provided in the grant hereof.

(B) Use of Right-of-Way. Subject to the Village's supervision, approval, and control, Water Authority may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Right-of-Way within the Village, Facilities as defined herein including such vaults, manholes, pipes and other property and equipment as are necessary and appurtenant to the operation of water and wastewater systems within the Village. The Water Authority, through this Franchise, is granted extensive and valuable rights to operate its Facilities using the Village's Right-of-Way in compliance with all Village ordinances. As trustee for the public, the Village is entitled to fair compensation as provided for in Section 4 of this Franchise to be paid for these valuable rights throughout the term of the Franchise.

(C) Term, Effective Date. This Franchise and the rights, privileges and authority granted hereunder, shall continue for a period of ten years from the effective date. The effective date shall be that date upon which both the Water Authority Governing Board and the Village Board of Trustees have passed legislation approving this Franchise.

(D) Police Powers. The Village expressly reserves, and the Water Authority expressly recognizes, the Village's right and duty to adopt, from time to time, in addition to the provisions herein contained, such Charter provisions, ordinances and rules and regulations as the Village may deem necessary in the lawful exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties.

(E) Franchise Not Exclusive. This Franchise shall be nonexclusive and subject to all prior rights, interests, easements or licenses granted by the Village to any Person to use any property, Rights-of-Way, right, interest or license for any purpose whatsoever, including the right of the Village to use same for any purpose it deems fit, including the same or similar purposes allowed the Water Authority hereunder. The Village may at any time grant authorization to use the Right-of-Way for any purpose not incompatible with the Water Authority under this Franchise.

### **SECTION 3. LIABILITY AND INDEMNITY.**

(A) Indemnification. The Water Authority shall indemnify, defend and hold harmless the Village, its elected or appointed officers and employees from and against claims, demands, actions, liens and all liability or damage of whatsoever kind on account of or arising from the grant of this Franchise, the exercise by the Water Authority of the related rights, or from the operations of the Water Authority within the Village, and shall pay the costs of defense plus reasonable attorneys' fees. The Water Authority shall be responsible for damages to any property in the Rights-of-way as a result of Water Authority activities. The Village shall give prompt written notice to the Water Authority of any claim, demand or lien with respect to which the Village seeks indemnification hereunder and unless in the Village's judgement a conflict of interest may exist between the Village and the Water Authority with respect to such claim, demand, or lien, permit the Water Authority to assume the defense of such claim, demand or lien with counsel satisfactory to the Village. Notwithstanding any provision hereof to the contrary, the

Water Authority shall not be obligated to indemnify, defend or hold the Village harmless to the extent any claim, demand or lien arises out of or in connection with any negligent act or failure to act of the Village or any of its officers or employees.

(B) Tort Claims Act. Any liability incurred in connection with this Franchise is subject to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1, et seq., NMSA 1978, (as amended). This Section is intended only to define the liabilities between the Water Authority and the Village, and it is not intended to modify in any way liabilities, limitations or immunities as governed by common law or the New Mexico Tort Claims Act. The Water Authority and the Village and their "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and/or do not waive any limitation of liability pursuant to law. No provision in this Franchise modifies and/or waives any provision of the New Mexico Tort Claims Act.

(C) Third-Party Claims. The provisions of this Franchise are not intended to and shall not create in the public, or any member thereof, a third-party beneficiary or to authorize anyone not a party to the Franchise to maintain a suit for wrongful death, bodily and/or personal injury to person, damage to property, and/or any other claim(s) whatsoever pursuant to the provisions of this Franchise.

#### **SECTION 4. FRANCHISE FEE PAYMENT AND ADDITIONAL CONSIDERATIONS.**

(A) Fee and rental. As consideration for this Franchise, which provides for the rental and use by the Water Authority of the Rights-of-way, the Water Authority shall pay to the Village a Franchise Fee in the amount of four percent (4%) of the annual Gross Revenue within the Village limits, as defined in Section 1 of this Franchise Agreement. The Franchise Fee and fire protection and suppression services provided for herein shall constitute the only consideration by the Water Authority to the Village for the Water Authority's use and occupancy of the Rights-of-way. Said payments shall be in lieu of any and all other fee, license, privilege, occupation, excise, or revenue taxes imposed generally by the Village on any business, revenue, property, service, facilities or other appurtenances or any part thereof within the Village during the term of this Franchise.

(B) Additional considerations. As additional consideration for this Franchise, the Water Authority and Village agree to the following:

1. The Water Authority shall maintain all current fire protection waterline connections connected to the Facilities at the main waterline and allow for all required new fire protection connections connected to the Facilities at the main waterline for any Village facilities served by the Water Authority.
2. The Water Authority Facilities shall provide water for fire suppression at no cost to the Village and shall waive the connection fee for any Village facilities served by the Water Authority.

(C) Payments terms. Commencing the month following the month this Franchise becomes effective, the franchise fee shall be paid monthly on the 25th day of each month; such fee shall be for Gross Revenues received by the Water Authority for the preceding month. Nothing herein shall preclude the Water Authority and the Village from agreeing to a revised payment schedule.

(D) Reconciliation. Commencing on or before the first day of the thirteenth month following the effective date of this Franchise, the Water Authority shall submit to the Treasurer, a statement of the franchise fee actually due to the Village based upon the actual Gross Revenue for the year, together with a check for any amount due from the Water Authority or a statement for any amount due from the Village. In the event any sums are owed by the Village or Water Authority, such amount shall include interest from the last day of the franchise year computed at the rate being paid for customers security deposits being held by the Water Authority. Within 30 days from the submission of the statement of franchise fee owing, or within such reasonable additional time as he or she may request, the Treasurer shall investigate the statement and determine the accuracy of the amounts reported. However, neither payment of the franchise fee nor failure to make such investigation shall estop the Village on any way or prevent subsequent investigation or return of any amount properly due.

(E) Claims. In the event it is claimed by the Village that the amount of the franchise fee paid hereunder is insufficient or in the event the Water Authority claims that the amount is excessive, and the parties cannot agree, the Village and the Water Authority shall attempt to informally negotiate a resolution. If negotiations fail, the dispute shall be submitted to non-binding mediation. The party making the demand shall submit the dispute to the American Arbitration Association ("AAA") pursuant to the Commercial Mediation Rules of the AAA in effect at the time or as otherwise agreed to by the parties.

(F) Contract payment. If the franchise fee set forth in this Franchise ordinance is declared illegal, unconstitutional or void for any reason by any court, the Water Authority shall be contractually bound to pay the Village, at the same time and in the same manner as provided for herein, an aggregate amount equal to the amount which would have been paid as a franchise fee.

## **SECTION 5. INSPECTION AND RETENTION OF RECORDS.**

(A) Audit. The Village shall have the right to review or audit all books and records of the Water Authority in accordance with generally accepted accounting and auditing principles regarding any amounts which may be paid under this Franchise ordinance but shall not have the right to change or otherwise redetermine the revenue components comprising the franchise fee base. The Village shall give written notice to the Water Authority of any additional amount claimed to be due to the Village as a result of any review. The additional amount due, if any, shall be paid within 30 days following determination that such amount is due and payable.

(B) Record Keeping. The Water Authority agrees that it shall keep complete and accurate books and records of its business and operations pursuant to this Franchise in accordance with generally accepted accounting principles. The Water Authority and Village agree that Water Authority records shall be kept on a Village-specific basis for purposes of calculating franchise fees. All such books, records and accounts shall be retained for a period of four years. The Water Authority shall make such records as are necessary to complete an audit available for inspection by the Village at its principal place of business upon thirty days' notice.

(C) Access to Maps and Records. Water Authority shall maintain and make available to the Village upon 30 days' written request and subject to Applicable Law: A complete set of maps showing the general location of all Water Delivery System facilities in the Right-of-Way. As-built maps shall be available at Water Authority's offices for inspection by the Village's authorized representative(s) or agent(s) and made available to such during the course of technical inspections as reasonably conducted by the Village. These maps shall be certified as accurate by an appropriate representative of the Water Authority.

#### **SECTION 6: FRANCHISE VIOLATIONS.**

(A) Remedies. In the event the Water Authority or the Village fails to fulfill any of their respective obligations under this Franchise, the Village or the Water Authority, whichever the case may be, will have a breach of contract claim and remedy against the other in addition to any other remedy provided by law, provided that no remedy which would have the effect of amending the specific provisions of this Franchise shall become effective without such action which would be necessary to formally amend the Franchise.

(B) Revocation. The Village may revoke this Franchise and rescind all rights and privileges associated with this Franchise in the following circumstances, each of which represents a material breach of this Franchise:

1. If Water Authority fails to perform any material obligation under this Franchise or under any other agreement, ordinance or document regarding the Village and Water Authority; or
2. If Water Authority attempts to evade any material provision of this Franchise or to practice any fraud or deceit upon the Village or its ratepayers; or
3. If Water Authority becomes insolvent, or if there is an assignment for the benefit of Water Authority's creditors.

Prior to forfeiture or termination of the Franchise, the Village shall give written notice to Water Authority of its intent to revoke the Franchise. The notice shall set forth the exact nature of the noncompliance and processes for the proceeding. The Water Authority shall have thirty (30) days to remedy any alleged material breach before the Village may

commence a revocation proceeding.

## **SECTION 7. PERFORMANCE AND MODIFICATION.**

The Water Authority and the Village agree to take all reasonable and necessary actions to assure that the terms of the Franchise are performed, and neither will take any action to secure modification of this Franchise before any court of competent jurisdiction before having attempted to negotiate in good faith any modification either party may deem necessary.

## **SECTION 8. VILLAGE RIGHTS.**

(A) Enforcement. The Mayor, or his or her designee, is the official of the Village having full power and authority to take appropriate action for and on behalf of the Village and its inhabitants to enforce the provisions of this Franchise and to investigate any alleged violations or failures of the Water Authority to comply with the provisions hereof or to adequately and fully discharge its responsibilities and obligations hereunder. The failure or omission of the Mayor or the Village to so act shall not constitute any waiver or estoppel.

(B) Compliance with laws. The Water Authority shall take measures which will result in its Facilities meeting the standards required by applicable federal and state water pollution laws. Upon the Village's request, the Water Authority will provide the Village with copies of any reports submitted to these agencies in compliance with such laws.

(C) Joint use. Upon reasonable request by the Village or the Water Authority and to the extent the Village or Water Authority can do so, each will grant joint use of its property which it now, or in the future, owns or has an interest in to each other for purposes including, but not limited to, parks, drainage facilities, bikeways, traffic conduits, mass transit corridors, storm sewer lines, pedestrian area parking, open spaces and water, waste water, electric, cable, and natural gas distribution, provided that neither the Village nor the Water Authority shall be required to make such an offer in any circumstance where such offer would interfere with the current use of the property. Compensation for such joint use shall be as negotiated by the Village and the Water Authority. If joint use is accepted by the Village or Water Authority, then any improvements deemed appropriate shall be made at the requesting party's sole expense.

## **SECTION 9. GENERAL RIGHTS OF WAY USE AND CONSTRUCTION.**

(A) Construction. Before the Water Authority may conduct underground work involving excavation, renovation, new construction or major relocation work in any Rights-of-way, the Water Authority shall notify the Village not less than five (5) working days prior to commencement of the work unless advance notice prior to commencement of the work is unreasonable in the circumstances. The Water Authority shall comply with any special conditions relating to location, scheduling, coordination and public safety

provided by the Village. The Water Authority shall file maps and drawings with the Village showing the location of any proposed construction or extension of its facilities and services in any Rights-of-way of the Village. Such proposed construction work to be done by the Water Authority shall be performed and coordinated in a safe manner subject to the approval of the Mayor and in accordance with applicable federal and state laws and Village ordinances, regulations and permit requirements now and hereafter existing.

(B) Emergency Excavation: Except that in the event of emergency circumstances, with respect to any excavations to be performed by the Water Authority on any portion or portions of the 4th Street NW right-of-way within the Village that have been newly constructed, repaved, or resurfaced with street pavers within the last five (5) years immediately prior to such excavation, the Water Authority shall give the Village prior notice and coordinate with the Village to minimize damage to the street pavers, subject to the terms and conditions of this franchise.

(C) Construction forecast. The Village and the Water Authority agree to meet and exchange construction forecasts, together with such additional information as the Village and the Water Authority deem appropriate relating to projects planned within the Village. The Village and Water Authority shall hold such meetings as they deem necessary to exchange additional information with a view toward coordinating their respective activities in these areas where such coordination will prove mutually beneficial to the public by minimizing disruption and costs to the public. The Water Authority will comply with all relevant ordinances to assure that aesthetic and other relevant planning principles have been given due consideration. It is recognized that, notwithstanding the foregoing, the Village retains absolute discretion over the timing and all other aspects of its proposed projects. The Village will make reasonable efforts to allow Water Authority work to be incorporated into its projects.

(D) Interference and permits. All Facilities constructed by the Water Authority within Rights-of-way of the Village shall be located in a manner that causes minimum interference with public use of streets, alleys, and other public ways and shall be maintained in good repair and condition. Facilities located on, upon, over, and under Rights-of-way shall be constructed, installed, maintained, cleared of vegetation, renovated or replaced in accordance with resolutions, ordinances, rules and regulations of general application as may be adopted by the Village to control and monitor such activities. The Village may inspect the manner of such work and require remedies as may be necessary to assure compliance.

(E) Operations and Repair. The Water Authority and Village agree to meet at regular intervals to share and coordinate information relative to the operation and repair of the facilities of the Village or Facilities of the Water Authority located in Rights-of-way.

(F) Repair of Property Damage. Water Authority shall protect public and private property from damage. Whenever Water Authority disturbs or damages any Right-of-

Way, other public property or any private property, Water Authority shall promptly restore the Right-of-Way or property to at least its prior condition, normal wear and tear excepted, at Water Authority's sole expense. At a minimum, Water Authority shall, subject to the terms of any permit issued, remove all surplus material, reseed as necessary, and otherwise restore the public Right-of-Way no more than one day after completion of the work, weather permitting.

(G) Right-of-Way and Other Public Property. Water Authority shall warrant any restoration work performed by Water Authority in the Right-of-Way or on other public property in accordance with Applicable Law. If restoration is not satisfactorily performed by Water Authority within a reasonable time, the Village may, after prior notice to Water Authority or without notice where the disturbance or damage may create a risk to public health or safety, cause the repairs to be made and recover the cost of those repairs from Water Authority. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, restoration fee, materials and equipment, Water Authority shall pay the Village.

(H) Equipment and Graffiti. Water Authority shall be responsible for the maintenance of its own equipment, facilities, and appurtenances placed upon, over, or under the public Right-of-Way, including the removal of all graffiti. If after notice from the Village that such graffiti has not been removed, it will be removed by the Village at Water Authority's sole cost.

(I) ADA. Water Authority shall ensure its facilities in the public Right-of-Way are located and constructed in a manner consistent with any requirements of the Americans with Disabilities Act (ADA) applicable at the time of construction. Following notice by the Village of an ADA construction problem, Water Authority shall have a reasonable time to remedy the problem, subject to Water Authority's right to contest the alleged ADA violation.

(J) Maintenance. The Water Authority shall be responsible for the maintenance of the property within reasonable proximity of and upon which the Water Authority maintains above-ground facilities, including the removal of weed and litter.

(K) Public Places. The Village and Water Authority agree that no Water Authority Facilities will be placed in Public Places without the express written consent of the Village. The Village and Water Authority further agree that in the event the Village requests service or the placement of new or added Water Authority Facilities in any Public Place, the Village shall bear all costs necessary for such placement. The Village and the Water Authority further agree that in the event the Village requests service or the placement of new or added Water Authority Facilities in any Public Place, such Facilities will require the grant of a permanent easement to the Water Authority and a shared cost agreement shall be developed between the Village and the Water Authority.

## **SECTION 10. WATER AUTHORITY EXCAVATIONS AND RELOCATIONS.**

(A) Placement of facilities. The Water Authority shall have the right to excavate in, occupy and use any and all Rights-of-way subject to the approval of the Village. The Water Authority shall not, pursuant to this Franchise, place any of its facilities, on, over, under or within any Public Place, but nothing herein contained shall preclude the Village from granting a permanent easement therefore in accordance with Section 9(J) above. The Water Authority shall not place any of its facilities, on, over, under or within the median portion of any boulevard or parkway without first having obtained the written permission of the Village.

(B) Location, removal and relocation expense. Any location, removal, or relocation of Water Authority facilities in the Rights-of-way reasonably required, caused or occasioned by any Village project including the installation of storm drainage, landscaping, traffic signal facilities, and road reconstruction shall be guided by this section. The Village and the Water Authority shall meet to coordinate planning and timing for Village projects that will require location, removal or relocation of a vault, water transmission line, major sewer interceptor, or gravity sewer line relying on a fixed slope. To the greatest extent practicable, Village projects shall be planned to include any Water Authority relocation costs in any project funding the Village requests from other governmental entities and/or to allow the Water Authority to include the costs of any location removal, or relocation in the budget and/or bond cycle.

The Water Authority shall reconstruct, replace, or restore any street, alley, or public way or place, in a timely fashion, and any sewer, storm drainage, traffic signalization facilities, or other facility of the Village disturbed by the Water Authority to a condition acceptable to the Village consistent with reasonable standards of safety and appearance. Any facility so disturbed by the Water Authority shall be reconstructed, replaced, or restored only under the supervision of Village personnel. Any such relocation shall be accomplished as expeditiously as possible.

(C) The Water Authority shall not close lanes or impede traffic without first having obtained the written permission of the Village.

(D) Abandoned facilities. From and after the effective date of this Franchise, the Water Authority shall remove or otherwise appropriately decommission obsolete or abandoned Facilities located in Rights-of-way at Water Authority expense as soon as is reasonably practicable following a request by the Village.

## **SECTION 11. WATER AND WASTEWATER SERVICE.**

The Water Authority agrees to furnish water and wastewater service in the Franchise Area in accordance with this Franchise and the Water Authority's ordinances and terms of service including the no-net-expense policy and the requirement of a Water Resources Charge as set forth in the ordinances.

## **SECTION 12. CONSERVATION.**

The Village and the Water Authority recognize and agree that conservation programs offer opportunities for the efficient use of water and reduction of customers' costs. The Water Authority recognizes and shares the Village's strong desire to advance the implementation of cost-effective conservation programs that provide direct opportunities to the Water Authority's customers to manage more efficiently their use of water and thereby create the opportunity to reduce their costs.

## **SECTION 13. EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION.**

The Village and Water Authority are committed to stimulating and strengthening the participation of minorities and women and are also committed to the principle that the success and economic well-being of the Village and Water Authority are related closely to the economic strength and vigor of the communities and people it serves.

## **SECTION 14. FACILITIES TO REMAIN IN PLACE.**

All Water Authority Facilities in the Rights-of way or other location within the Village are and shall remain the property of the Water Authority until and unless such Facilities are transferred under conditions approved by the Water Authority Governing Board. In the event this Franchise is not renewed at the expiration of its term, or the Water Authority terminates any service provided herein for any reason whatsoever, the Water Authority shall not remove its Facilities pending the Village identifying and implementing an adequate alternative source(s) to provide such service to constituents of the Village. The Water Authority agrees it will not withhold any temporary services necessary to protect the public and shall be entitled to monetary compensation for such temporary services as if such services were provided during the term of this Franchise. Only upon receipt of written notice from the Village stating that the Village has adequate alternative sources to provide relevant services in the Village, shall the Water Authority be entitled to terminate service and/or remove any or all Facilities in use under the terms of this Franchise.

## **SECTION 15. AMENDMENT.**

At any time during the term of the Franchise, the Village through its Village Board of Trustees, or the Water Authority through its Governing Board, may propose amendments to the Franchise by giving thirty (30) days written notice to the other of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s). No amendment or amendments to this Franchise shall be effective until mutually agreed upon by the Village and the Water Authority and thereafter submitted to and approved by the Village Board of Trustees and Water Authority Governing Board.

## **SECTION 16. PUBLIC PURPOSE.**

All of the regulations provided in this ordinance are hereby declared to be for a public purpose and the health, safety, and welfare of the general public. Any member of the governing body or Village official or employee charged with enforcement of this ordinance, acting for the Village in the discharge of his duties, shall not thereby render him/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties. Neither the Village nor the Water Authority by accepting this Franchise waives its right to seek all appropriate legal and equitable remedies as allowed by law upon violation of the terms of this Franchise, including seeking injunctive relief in a court of competent jurisdiction. Such right to injunctive relief is expressly reserved and all terms and provisions hereof shall be enforceable through injunctive relief.

## **SECTION 17. NOTICES.**

For the purpose of this ordinance, notice to the Village will be to:

Mayor

Village of Los Ranchos de Albuquerque

6718 Rio Grande Blvd., NW

Los Ranchos, NM 87107

Notice to the Water Authority will be to:

Albuquerque Bernalillo County Water Utility Water Authority

Executive Director

1 Civic Plaza, 5th floor

Albuquerque, New Mexico 87114

Notice will be effective upon delivery at the above addresses until the Village or Water Authority notifies the other, in writing, of a change in the address.

## **SECTION 18. VENUE.**

This Franchise shall be construed under and in accordance with the laws of the State of New Mexico, and all obligations of the parties hereunder are performable in Bernalillo County, New Mexico. In the event that any legal proceeding is brought to enforce the terms of this Franchise, the same shall be brought in Bernalillo County, New Mexico.

## **SECTION 19. NO WAIVER.**

Neither the Village nor the Water Authority shall be excused from complying with any of the terms and conditions of this Franchise by any 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 19. REPEALER.**

Ordinance No. 204 is hereby repealed.

**SECTION 20. EFFECTIVE DATE.**

This Franchise shall become effective from and after passage and publication of corresponding ordinance as provided by NMSA 1978, § 3-42-1, or successor statute; provided that the Water Authority, either before or within 60 days shall have passed legislation also approving this Franchise.

The parties have read and understood this Franchise Agreement and agree to be bound by its terms.

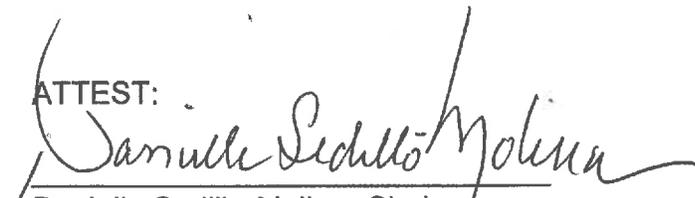
**PASSED, APPROVED AND ADOPTED** by the Governing Body of the Village of Los Ranchos de Albuquerque this 9<sup>th</sup> day of November 2022.



APPROVED:

  
Donald T. Lopez, Mayor

ATTEST:

  
Danielle Sedillo-Molina, Clerk

**PASSED, APPROVED AND ADOPTED** by the Board of the Albuquerque Bernalillo County Water Utility Water Authority this \_\_\_\_ day of \_\_\_\_\_ 2022.

By: \_\_\_\_\_  
Albuquerque Bernalillo County Water Utility Water Authority

ATTEST:

\_\_\_\_\_