

CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
OCTOBER 19, 2021 AGENDA

Subject:	Type:	Submitted By:
METROPOLITAN UTILITIES DISTRICT FRANCHISE AGREEMENT RENEWAL	◆ RESOLUTION ◆ ORDINANCE RECEIVE/FILE	PAM BUETHE CITY CLERK

SYNOPSIS

The following have been prepared to approve the Water Franchise Agreement with Metropolitan Utilities District (MUD).

- An ordinance to approve a franchise with Metropolitan Utilities District and approve a franchise agreement.
- A resolution to approve the Water Franchise Agreement with MUD.

FISCAL IMPACT

N/A

RECOMMENDATION

Approval.

BACKGROUND

On June 4, 1996, the City Council approved a water franchise agreement with MUD for a period of 25 years. This agreement went into effect on June 5, 1996.

The proposed ordinance provides for a 25 year term and will renew automatically at the end of the term for an additional 25 years unless the City or MUD give notice at least 3 years before the last day of the agreement. This ordinance will also allow for a separate document to be called the “Water Franchise Agreement” so that MUD can have similar agreements on file for all municipalities they service.

The resolution is approving the Water Franchise Agreement document which complies with the ordinance.

ORDINANCE NO. _____

WATER FRANCHISE

AN ORDINANCE GRANTING TO METROPOLITAN UTILITIES DISTRICT OF OMAHA, A MUNICIPAL CORPORATION AND POLITICAL SUBDIVISION OF THE STATE OF NEBRASKA, ITS SUCCESSORS AND ASSIGNS, THE EXCLUSIVE RIGHT AND PRIVILEGE TO CONSTRUCT, OPERATE AND MAINTAIN A SYSTEM OF WATER WORKS AND WATER SUPPLY CONSISTING OF MAINS, PIPES, HYDRANTS AND OTHER APPURTENANCES, IN, UPON, OVER, ACROSS AND ALONG STREETS, AVENUES, ALLEYS, BRIDGES AND PUBLIC PLACES OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA, FOR THE TRANSMISSION, DISTRIBUTION AND SALE OF WATER FOR DOMESTIC, MANUFACTURING, INDUSTRIAL, PUBLIC AND FIRE PROTECTION PURPOSES IN THE CITY AND ELSEWHERE; PRESCRIBING THE TERMS AND CONDITIONS UNDER WHICH SAID METROPOLITAN UTILITIES DISTRICT OF OMAHA IS TO OPERATE; PROVIDE FORSEVERABILITY; PRESCRIBING THE TIME WHEN THIS ORDINANCE SHALL BE IN FULL FORCE AND TAKE EFFECT, AND PROVIDING FOR AN EFFECTIVE DATE AND RENEWAL.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA:

Section 1. FRANCHISE; GRANT: PERIOD: RIGHTS OF GRANTEE: That in consideration of the benefits to be derived from the operation of a water supply and water distribution system in the City of La Vista, Nebraska (hereinafter designated "City"), by said City and its inhabitants, a franchise is hereby granted to Metropolitan Utilities District of Omaha, a municipal corporation and political subdivision of the State of Nebraska (hereinafter referred to as "Grantee"), its successors and assigns, the exclusive right, permission and authority to lay, install, maintain and operate a water distribution system, including all necessary appurtenances and structures therefor, and including the existing water distribution system within the limits of said City as the same now exist or hereafter may be extended, for a period of twenty-five (25) years ("Term") from and after the Effective Date of this Ordinance as defined in Section 11; and for this purpose there is also further granted to Grantee the right, permission and authority, during said period, to lay, install, maintain and operate, in, upon, over, across and along all of the said streets, avenues, alleys, bridges and public places of said City, all mains, pipes, structures and appurtenances necessary or convenient for transmitting, transporting, distributing and supplying water for domestic, manufacturing, industrial, public and fire protection purposes for which water may be used by the inhabitants of said City and platted subdivisions thereto during the term hereof and for the purpose of transmitting, transporting and conveying such water into, through or beyond the immediate limits of said City to other customers, villages or cities ("Grant").

Section 2. MAINS. PIPES, INSTALLATION. RELAYING. RULES AS TO: That all mains, pipes, structures, and appurtenances which shall be laid or installed under this grant shall, when construction is completed, be so located, and laid as not to obstruct or interfere with any other pipes, drains, sewers, paving or other structures already installed, and all such mains, pipes and structures shall be laid in place under practices being followed by Grantee within its own boundaries. Grantee shall, in the doing of any work in connection with its water distribution system, avoid, so far as may be practicable, interfering with the use of any street, alley or other highway, and where the paving or surface of the street is disturbed, Grantee shall, at its own expense, replace such paving or surface of said streets, alleys, or other highways in as reasonably good condition as existed before said work was commenced.

In the event that a change in the grade or location of any street, alley, or bridge within said City or other construction or repair work required by City requires the relocation or alteration of any portion of the water system of Grantee, either temporary or permanent, Grantee shall be reimbursed by City for the cost thereof. Grantee shall obtain from City all required permits for street openings in connection with work on its water distribution system, but City shall waive any permit fees on such permits issued to Grantee. In the event of emergency street openings, Grantee shall

obtain the permit as soon thereafter as practicable.

Section 3. MAINS CONSTRUCTED, EXTENDED, WHEN: That Grantee, its successors or assigns, shall make such reasonable extensions of its mains, from time to time, as may be required to furnish service to parties making application therefor, located within the corporate limits of said City; provided, that Grantee's Rules and Regulations covering the use of water and installation of mains, services, meters and piping, duly adopted by its Board of Directors pursuant to the laws of Nebraska, which shall be filed with the Clerk of said City, shall, to the extent not inconsistent with applicable state law, govern the extension of mains, installation of services, meters and piping, and the use of water, except as may be otherwise agreed herein or by separate agreement. Mains installed in platted subdivisions of City, whether done by Grantee or others, shall comply with Grantee's specifications. Grantee shall not, without first notifying City, extend water service into or for areas within City's zoning jurisdiction prior to City's plat approval and acceptance of dedicated public right-of-way.

Section 4. RATE SCHEDULE: The rates to be charged for water service within the franchise area shall, during the term of this Water Franchise, be the same as those charged by Grantee to customers of similar class of service within Grantee's boundaries.

In each bill for water service to consumers in the franchise area there may be included or added any sum which Grantee is or may be required by City or by law to pay to City on account of sales of water. At the effective date hereof, §14-2139 R.R.S. Neb. 1943 (formerly §14-1042 R.R.S. Neb. 1943) requires payment to City in an amount equal to two percent (2%) of retail sales within the City and precludes City from levying a license, occupation, or excise tax upon or from such district. City reserves the right to levy or increase its levy for license, occupation, or excise tax as it may be allowed by future legislation, provided in the event of such levy, or increase in levy Grantee shall be allowed to add to its customer billings the additional cost thereof.

Section 5. CONNECTION CHARGES: Grantee shall be entitled to make charges for connections to service mains as follows:

(A) Grantee shall not make a connection charge for lots abutting other mains installed within the City of La Vista at the date of this franchise, full cost of which has been paid by developers or has been or will be recovered by special assessment.

(B) For connections to mains and extensions of mains constructed within the City following the date of this franchise, Grantee shall be entitled to make such usual connection charges as are made throughout the remainder of its water system in its own district, not exceeding the full cost of such construction.

Section 6. WATER HYDRANTS: Grantee shall provide to City for fire fighting purposes and other municipal purposes and uses of City, a system of fire hydrants, as follows:

(A) Grantee shall cause all hydrants to have threading compatible with that now on hydrants within City and shall endeavor to keep all fire hydrants within the City in good condition and repair, giving to such hydrants the same degree of care and maintenance it affords hydrants on the water system Grantee operates within its own boundaries. Subject to breakdown, mechanical failure, and other causes beyond its reasonable control, Grantee will at all times maintain an adequate, constant, and uninterrupted water supply to such hydrants.

(B) On any extensions of its water system, whether within the corporate limits of City or outside the City but within the area of the zoning jurisdiction of City, Grantee will install, or require to be installed, hydrants for fire protection at approximately the same intervals as hydrants previously installed on service mains now in existence within the City. In the event City or any other person or entity within the zoning jurisdiction of City shall require hydrants to be placed upon service mains between the hydrants as now installed or at lesser intervals than hereby required, Grantee will, if reasonably possible, install such additional hydrants, at the cost of the City or the person or entity requiring them. In no event shall City be charged for any such hydrant installations unless its City Council shall have, by resolution, first approved the City's payment therefor.

(C) City, without cost to City, will be entitled to water for reasonable municipal needs for fire fighting, street flushing or sewer flushing, and such other purposes which by Grantee's Water Rules are to be provided without cost to municipalities within Grantee's district boundaries.

Section 7. NO WAIVER OF RESPECTIVE POWERS: Neither the grant herein made nor any of the provisions herein contained shall in any event be construed as a waiver or setting aside of City's right to supervise and control Grantee in performance of its Franchise nor a waiver, reduction, or limitation upon the right of powers and duties of Grantee as prescribed by the laws of the State of Nebraska.

Section 8. SEWER USE FEE COLLECTIONS: Grantee shall provide to City sewer use fee billing and collection services on the same basis as it does to municipalities within Grantee's district boundaries.

Section 9. FRANCHISE AGREEMENTS: City and Grantee in accordance with the Grant provided by this Ordinance from time to time may enter one or more agreements containing terms and conditions consistent with the provisions of this Ordinance as approved by the City Council or its designee.

Section 10. SEVERABILITY CLAUSE: If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this Ordinance. The Mayor and City Council of the City of La Vista hereby declare that it would have passed this Ordinance and each section, subsection, sentence clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

Section 11. WHEN OPERATIVE; RENEWAL TERM: This Ordinance shall take effect from and after passage, approval and publication as provided by law, effective as the earlier of September 1, 2021 or expiration of the franchise granted by Ordinance No. 650 ("Effective Date"). The Grant provided by this Ordinance will automatically renew at the end of the Term for an additional twenty-five (25) year term unless either City or Grantee at least three (3) years before the last day of the Term gives the other written notice that the Grant shall not renew.

PASSED AND APPROVED THIS _____ DAY OF _____ 2021

CITY OF LA VISTA, NEBRASKA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

Publication

Published in pamphlet form by order of the Mayor and City Council this _____ day of _____, 2021.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA APPROVING THE EXECUTION OF A WATER FRANCHISE AGREEMENT WITH METROPOLITAN UTILITIES DISTRICT.

WHEREAS, on June 4, 1996, by Ordinance No. 650, the City Council approved a Water Franchise with Metropolitan Utilities District (MUD); and

WHEREAS, The Water Franchise ordinance was for a period of twenty-five (25) years; and

WHEREAS, the City and MUD wish to continue the water franchise for services provided to the City by MUD; and

WHEREAS, the new ordinance will allow for the City and MUD to enter into a Water Franchise Agreement; and

WHEREAS, in accordance with such ordinance adopted by La Vista on or about equal date with this resolution approving the Agreement granting MUD a water supply and distribution franchise within La Vista; and

WHEREAS, this Agreement will automatically renew at the end of the term of twenty-five (25) years unless either party gives notice at least three (3) years before the last day of the term.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and City Council of La Vista, Nebraska, hereby approve the Water Franchise Agreement and authorize the Mayor to execute said agreement.

PASSED AND APPROVED THIS 19TH DAY OF OCTOBER 2021.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

WATER FRANCHISE AGREEMENT

THIS AGREEMENT (“Agreement”), entered into this ____ day of _____, 2021, by and between the Metropolitan Utilities District of Omaha (“District”), a municipal corporation and political subdivision of the State of Nebraska, and the City of La Vista (“La Vista”), a city of the first class and political subdivision of the State of Nebraska, collectively referred to as the (“Parties”).

WHEREAS, the District was established and is governed by the State of Nebraska pursuant to Neb. Rev. Stat. § 14-2101 et seq. to provide gas and water services to a city of the metropolitan class and may contract with adjacent municipalities to provide water services outside of the city of the metropolitan class.

WHEREAS, District and La Vista previously entered into a twenty-five (25) year water franchise agreement on June 5th, 1996 to allow the District to provide water services to those ratepayers of the District located within La Vista’s City boundaries;

WHEREAS, this Agreement is entered pursuant to an Ordinance adopted by La Vista, on or about equal date with its resolution approving this Agreement, granting the District a water supply and distribution franchise within La Vista (“Ordinance”);

WHEREAS, in accordance with such Ordinance the Parties now desire to enter into this Agreement to continue the franchise to allow the District to continue providing water and related services within La Vista City boundaries as defined below for an additional 25 years from the Effective Date of this Agreement.

NOW THEREFORE, in consideration of the covenants and agreements set forth herein and within the prior agreements cited above, the Parties mutually agree as follows:

I. FRANCHISE

- A. La Vista in accordance with the Ordinance grants to the District a franchise to provide water services to those existing and future ratepayers of the District within La Vista's corporate boundaries and extra territorial jurisdiction ("ETJ") as defined by Neb. Rev. Stat. § 16-901 as it may be modified from time to time by La Vista.
- B. The District shall provide water services to its existing ratepayers and any new ratepayers within La Vista's corporate boundaries and ETJ in the same manner with which it provides water services to all of its other ratepayers.
- C. To provide this service, the District shall maintain all necessary water main pipelines, valves and other necessary appurtenances and shall, when deemed necessary by it, repair and construct such appurtenances to provide adequate water services.
- D. This franchise allows the District to use all existing and future publicly dedicated streets, avenues, alleys, bridges and public rights of way to lay, construct and operate the District's existing water distribution system.
- E. This franchise further allows the District to use all existing and future publicly dedicated streets, avenues, alleys, bridges and public rights of way to repair, maintain, replace, modify, extend and relocate its water distribution system as it deems necessary.
- F. The District will continue to keep all public fire hydrants within La Vista corporate boundaries and ETJ in good and working condition pursuant to all relevant District Water Rules and Regulations.

G. In the event the District is required to initiate water use restrictions, those ratepayers within La Vista's corporate boundaries and ETJ shall be treated in the same manner as all other customers of the District.

H. No provision within this Agreement shall be construed to create any property right or interest of any nature in, over, along, under or across any public right of way within La Vista nor shall it preclude La Vista from making any change or modification to its public rights of way as it deems necessary.

I. All ratepayers within La Vista's corporate boundaries and ETJ as they exist as of the Effective Date of this Agreement and as they may change from time to time as determined by La Vista, will be subject to all applicable rules and regulations established by the District.

J. The District will charge all ratepayers within La Vista's corporate boundaries and ETJ the appropriate rate schedule mandated by those ratepayers' respective agreements with the District as established by and modified by the District, being the same rate schedules charged by the District to its other ratepayers within the District's water service boundary.

K. The Parties agree that all of the District's Water Rules and Regulations applicable to all similarly situated customers of District, including those rates and services set forth in its Billing Price Book as they exist on the Effective Date of this Agreement and as they may be amended from time to time by the District shall apply to the area subject to this franchise in the same manner as they apply throughout the remainder of the District's water service boundary.

L. The Parties agree that this franchise will be in full force and effect for a period of twenty-five (25) years (“Term”) from the Effective Date of this Agreement. The effective date of this Agreement shall be the earlier of September 1, 2021 or expiration of the franchise granted by Ordinance No. 650 (“Effective Date”).

M. The Parties agree that this Agreement will automatically renew at the end of the Term as defined in Paragraph L for an additional twenty-five (25) year term unless either Party at least three (3) years before the last day of the Term gives the other written notice that the Agreement shall not renew.

II. MISCELLANEOUS

A. The Parties agree and acknowledge that La Vista and the District are municipal corporations and political subdivisions organized pursuant to, and that this Agreement shall be subject by, applicable laws, rules and regulations as adopted or amended from time to time, including without limitation Nebraska State Laws and in particular with respect to District all sections of state law under Section 14, Article 21 applicable to it.

B. This Agreement shall be governed in all respects by the laws of the State of Nebraska and the jurisdiction and venue for any litigation with respect hereto shall be in the courts of Sarpy County, Nebraska.

C. For purposes of determining the enforceability of this Agreement, electronic, digital and facsimile signatures shall be deemed originals, and this Agreement may be executed in any number of counterparts, each and all of which shall constitute an original and one and the same document.

IN WITNESS WHEREOF, Metropolitan Utilities District of Omaha and the City of La Vista execute this Agreement through their duly authorized officers.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

By: _____

METROPOLITAN UTILITIES
DISTRICT OF OMAHA

Mark Doyle, President

APPROVED AS TO FORM:

CITY OF LA VISTA

METROPOLITAN UTILITIES DISTRICT OF OMAHA
Senior Vice President, General Counsel