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Attorneys for Liberty Utilities (Rio Rico Water & Sewer) Corp.

**BEFORE THE ARIZONA CORPORATION COMMISSION**

IN THE MATTER OF THE APPLICATION  
OF RIO RICO UTILITIES, INC. DBA  
LIBERTY WATER FOR AN EXTENSION  
OF ITS EXISTING CERTIFICATE OF  
CONVENIENCE AND NECESSITY TO  
PROVIDE WATER UTILITY SERVICE IN  
SANTA CRUZ COUNTY ARIZONA.

DOCKET NO: WS-02676A-11-0134

**NOTICE OF COMPLIANCE**

Pursuant to Decision No. 72732 (January 6, 2012) and Decision No. 74383 (March 19, 2014), Liberty Utilities (Rio Rico Water & Sewer) Corp. (formerly Rio Rico Utilities, Inc.) hereby submits this Notice of Compliance in the above-captioned matter. Attached as **Exhibit A** is a copy of the amended Santa Cruz County Franchise Agreement.

RESPECTFULLY SUBMITTED this 11th day of January, 2016.

Arizona Corporation Commission

**DOCKETED**

JAN 11 2016

DOCKETED BY

SHAPIRO LAW FIRM, P.C.

By: \_\_\_\_\_

Jay L. Shapiro  
1819 E. Morten Avenue, Suite 280  
Phoenix, AZ 85020  
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Attorneys for Liberty Utilities  
(Rio Rico Water & Sewer) Corp.

1 **ORIGINAL and thirteen (13) copies**  
2 **of the foregoing were delivered**  
3 this 11th day of January, 2016, to:

4 Docket Control  
5 Arizona Corporation Commission  
6 1200 W. Washington Street  
7 Phoenix, AZ 85007

8 **COPY of the foregoing hand-delivered & emailed**  
9 this 11th day of January, 2016, to:

10 Bridget Humphrey  
11 Legal Division  
12 Arizona Corporation Commission  
13 1200 W. Washington Street  
14 Phoenix, AZ 85007  
15 bhumphrey@azcc.gov

16 Carmel Hood, Compliance  
17 Utilities Division  
18 Arizona Corporation Commission  
19 1200 W. Washington Street  
20 Phoenix, AZ 85007  
21 chood@azcc.gov

22 Shannon Kanlan, Compliance  
23 Utilities Division  
24 Arizona Corporation Commission  
25 1200 W. Washington Street  
26 Phoenix, AZ 85007  
skanlan@azcc.gov

By:   
Whitney Birk

# **EXHIBIT A**

## FRANCHISE AGREEMENT

WHEREAS, by Resolution Number 1993-19, duly adopted by the Santa Cruz County Board of Supervisors ("Board") on April 21, 1993, the Board renewed the Water Franchise issued to Citizens Utilities Company ("Citizens") on December 4, 1967, as of December 4, 1992 for the term of twenty-five (25) years;

WHEREAS, by Resolution Number 1993-20, duly adopted by the Board on April 21, 1993, the Board renewed the Waste Water Franchise issued to Citizens on December 4, 1967, as of December 4, 1992 for the term of twenty-five (25) years;

WHEREAS, by Resolution Number 1993-21 duly adopted by the Board on April 21, 1993, the Board authorized the transfer of said Water Franchise to Rio Rico Utilities, Inc., for the duration of the term thereof;

WHEREAS, by Resolution Number 1993-22 duly adopted by the Board on April 21, 1993, the Board authorized the transfer of said Waste Water Franchise to Rio Rico for the duration of the term thereof;

WHEREAS, the Water Franchise provided for the use of all public streets, highways, roads and alleys now established, or hereinafter established, used or dedicated, lying within the Baca Float Land Grant No. Three, the legal description as set forth herein at Exhibit A, and to include such areas as authorized by the Arizona Corporation Commission ("Commission") for the laying of pipes, conduits, mains, meters, connections and fireplugs and the maintenance of the same, and all thereof for the purpose of supplying said area with water for public utility use ("Water Distribution System"), as set forth therein;

WHEREAS, the Waste Water Franchise provided for the use of all streets, highways, roads and alleys now established, or hereinafter established, used or dedicated, lying within the Baca Float Land Grant No. Three, the legal description as set forth herein at Exhibit A, and to include such areas as authorized by the Commission for laying down and maintaining sewage collection lines, and the construction and maintenance of treatment and disposal facilities and other works and

things necessary and convenient for the operation of a sanitary sewage collection system and treatment and disposal facilities ("Wastewater Collection System");

WHEREAS, Rio Rico Utilities, Inc. is now known as Liberty Utilities (Rio Rico Water & Sewer) Corp. ("Liberty" or "Grantee");

WHEREAS, on January 6, 2012, the Commission issued Decision No. 72732, authorizing the extension of Liberty's Certificate of Convenience and Necessity ("CC&N") to include the Palo Parado Subdivision, including the legal description as set forth herein as Exhibit B;

WHEREAS, Santa Cruz County ("County") and Grantee desire to enter into a new Water and Waste Water Franchise Agreement, to replace and supersede the Water and Waste Water Franchise incorporating Baca Float Land Grant No. Three, as well as enter into a new Water and Waste Water Franchise Agreement to incorporate the Palo Parado Subdivision (collectively referred to herein as "Franchise");

WHEREAS, Grantee seeks the franchise right and privilege to construct, operate and maintain a water and wastewater distribution system in, upon, along, under, over and across the public streets, roads, alleys and public ways or places now or hereafter established (the "Public Rights-of-Way") within the County for the distribution and sale of water and wastewater services to domestic, commercial, industrial and institutional customers and for any and all other lawful purposes;

WHEREAS, notice to the public of this application has been duly given as required by law;

WHEREAS, this application was filed with the County in January 2014, and no petition to the County to deny such Franchise was filed or presented according to law, and the County has considered the application for the Franchise at a duly called public meeting; and

WHEREAS, it being determined by the County that the grant of this Franchise is regular, authorized by law and in the best interests of the County and the inhabitants thereof;

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF SANTA CRUZ COUNTY ARIZONA, as follows:**

## **SECTION 1: FRANCHISE GRANTED.**

That in consideration of the payments hereinafter provided to be paid and the benefits to the County to be derived from the installation, operation and maintenance of the Water Distribution System and Wastewater Collection System in certain portions of Santa Cruz County, Liberty Utilities (Rio Rico Water & Sewer) Corp., its successors and assigns, shall have the right and privilege to construct, maintain, and operate upon, over, along, across, and under the present and future public rights-of-way (including but not limited to streets, alleys, rights of ways, highways and bridges) within the present and any future corporate limits of the County for the areas within Grantee's approved CC&N granted by the Commission (the "Certificated Service Area"), Water Distribution System and Wastewater Collection System, together with all necessary or desirable appurtenances (including but not limited to storage, pumping and treatment facilities, service lines, pipes, manholes, distribution mains and equipment for its own use), for the purpose of supplying Water Distribution and Wastewater Collection services to a portion of the County, its successors, the inhabitants thereof, and all individuals and entities thereof, for all purposes.

## **SECTION 2: COMPLIANCE WITH REQUIREMENTS; PLANS SUBMITTED FOR APPROVAL.**

(a) The quality of water treatment, transmission, and distribution services and wastewater collection, treatment, and disposal provided by Grantee shall comply with all applicable state and federal laws.

(b) All new construction under this Franchise shall be performed in accordance with the adopted specifications (including but not limited to, infrastructure guidelines and Code requirements) of the County for public works projects with respect to such Public Rights-of-Way. Prior to Grantee making any new installations in the Public Rights-of-Way, Grantee shall submit for approval plans prepared by a registered professional engineer showing the location of such proposed new installations to County.

### **SECTION 3: CONSTRUCTION AND RELOCATION OF GRANTEE FACILITIES.**

(a) All work performed by Grantee and/or its agents shall be in accordance with applicable County codes, federal and state laws, policies and procedures of the County and other applicable regulations. Prior to commencing any work in a right-of-way (except in emergency circumstances), Grantee shall submit plans of work to be performed to the County for review and approval, and obtain any permit necessary for such work. Grantee, upon receipt from the County of any notification or plans that would require construction or relocation of Grantee facilities, shall provide a written schedule to the County on the estimated amount of work required and the anticipated necessary timeframe of such work within thirty (30) calendar days of receipt of such plans. Grantee shall evaluate on a case-by-case basis the timeframe needed to relocate its facilities and shall relocate its facilities within six (6) months of written request from the County.

(b) All new facilities installed or constructed pursuant to this Franchise shall be so located or relocated and so erected as to reasonably minimize interference with vehicular and pedestrian traffic and other authorized uses over, under or through the public rights-of-way. Those phases of construction of Grantee facilities relating to traffic control, backfilling, compaction and paving, as well as the location or relocation of facilities herein provided for shall be subject to regulation by the County. Grantee shall keep accurate records of the location of all facilities in the public right-of-way and furnish them to County upon request.

(c) Grantee shall remove or relocate its facilities as and when required by the County to accommodate improvements within the County for the public benefit; said removal or relocation shall be made at the sole cost and expense of Grantee, unless mutually agreed upon otherwise, or unless Grantee can demonstrate that its facilities were lawfully installed prior to the dedication to or acquisition by the County of the property in question.

### **SECTION 4: RESTORATION OF RIGHTS-OF-WAY.**

(a) Grantee shall restore all property excavated by it to its original condition as nearly as practicable, subject to the reasonable approval of the County. Grantee shall complete all work with due diligence within a reasonably prompt time, and Grantee shall, upon completion of such work,

restore the property disturbed back to as good condition as it was prior to such openings or alteration in accordance with the specifications for public works adopted by the County and/or Commission rules. Grantee shall bear the full cost of any barricades, signing, rerouting of traffic, or other action or expense that the County shall consider reasonably necessary or desirable in the interest of public safety during any such opening or alteration within the public right-of-way and shall bear the full cost of removal of barricades and traffic control devices upon completion of construction, including but not limited to any storage cost incurred by the County in holding barricades removed to prevent obstruction to traffic. Nothing herein shall prevent the County from restricting construction to certain designated hours and days based on traffic control and impact on surrounding areas.

(b) In the event that Grantee fails to repair the public right-of-way to a safe and satisfactory condition, normal wear and tear excepted and reasonably satisfactory to the County, the County shall have the option upon fifteen (15) days prior written notice to Grantee to perform or cause to be performed such reasonable and necessary work on behalf of Grantee and to charge Grantee for the proposed costs to be incurred or the actual costs incurred by the County at the County's standard rates, plus an administrative fee of fifteen percent. Upon the receipt of such a demand for payment by the County, Grantee shall within thirty (30) days reimburse the County for such costs. Unpaid amounts after thirty (30) days shall bear interest at the rate of 1.5% per month.

#### **SECTION 5: INDEMNIFICATION.**

Grantee shall defend the County against all claims for injury to any person or property to the extent caused by the negligence of Grantee in the construction or operation of its property or facilities and in the event of a determination of liability shall indemnify the County. More particularly, Grantee does hereby agree to indemnify and hold harmless the County from any and all liability, claim, demand or judgment arising out of any injury to any person or property to the extent caused by Grantee's negligent construction, repair, extension, maintenance or operation of its equipment in connection with this Franchise. The obligations under this paragraph shall apply only to the extent that such liability, claim, demand and/or judgment are caused by the negligence of

Grantee. This paragraph shall not apply to the extent such liability, claim, demand and/or judgment are caused by the acts and/or omissions of the County, any contractors, subcontractors and/or agents of the County, or any other third party not affiliated with Grantee.

#### **SECTION 6: INSURANCE.**

Grantee agrees that at all times during the existence of this Franchise, that it will maintain in force, at its own expense, a general liability insurance policy to adequately insure and/or protect the legal liability of Grantee with respect to the installation, operation, and maintenance of its facilities, together with all the necessary and desirable appurtenances authorized by this Franchise, to occupy the public rights-of-way. Such insurance program will provide protection for bodily injury and property damage arising from the operation by Grantee of its facilities. Grantee shall file with the County documentation of such liability insurance program within sixty (60) days following a request of the County. The policy limits or any insurance maintained in compliance with this section shall not limit Grantee's indemnification requirements under Section 5 of this Franchise.

#### **SECTION 7: RATES AND CHARGES.**

The regulated rates and charges to be charged by Grantee for furnishing water or wastewater utility service hereunder and the rules and regulations to be made and enforced by Grantee for the conduct of its business shall be those on file and in effect with the Commission applicable to such service and as subject to applicable laws, rules and/or regulations.

#### **SECTION 8: TERM AND ACCEPTANCE.**

(a) The right, privilege, and franchise hereby granted shall continue and exist for a period of twenty-five (25) years from the date of the granting hereof provided, however, that either party may terminate this Franchise on its tenth (10<sup>th</sup>) anniversary by giving written notice of its intention to do so not less than one (1) year before the date of termination. However, the County may terminate this Franchise only in the event the County formally finds, after notice and hearing, that Grantee failed to reasonably comply with any material provisions of this Franchise or has failed to correct any material failure after thirty (30) days written notice.

(b) The Franchise shall be void and of no effect if written acceptance thereof by the Grantee is not filed in the Office of the County Clerk of Santa Cruz County within sixty (60) days after it is granted.

**SECTION 9: TRANSFER OF FRANCHISE.**

The right, privilege, and franchise hereby granted may not be transferred in whole or in part by Grantee, its successors and assigns, without the prior consent of the Board and payment of an appropriate transfer fee to the County to reimburse County for any reasonable costs it incurs in processing the transfer. The Board's consent shall not be unreasonably withheld. No consent shall be required in connection with an assignment made as security pursuant to a mortgage or deed of trust or in connection with subsequent transfer made pursuant to any such instrument.

**SECTION 10: SEVERABILITY.**

If any section, paragraph, clause, phrase or provision of the Franchise shall be adjudged invalid or unconstitutional, the same shall not affect the validity of the Franchise as a whole or any part of the provisions hereof other than the part so adjudged to be invalid or unconstitutional.

**SECTION 11: TITLE TO FACILITIES; RIGHT TO USE EASEMENTS; RESERVED RIGHT TO PURCHASE OR CONDEMN.**

(a) Title to all water and wastewater utility facilities wherever situated on public grounds or in easements for public utility purposes and/or installed by Grantee or its agents or contractors shall be and remain in Grantee, its successors, or assigns. Upon expiration of this Franchise or any extension or renewal thereof, Grantee is hereby granted the right to enter upon the Public Rights-of-Way for the purpose of removing any and all such plant, system, facilities, works and other property of Grantee, at any time within six (6) months after termination of this Franchise or any such extension or renewal thereof.

(b) Nothing contained in this Franchise shall be construed as preventing, diminishing, or restricting Grantee from using for public utility purposes any easement shown on any plat or plats of any portion of the County before or hereafter platted or recorded that has been or may hereafter be created, granted, or dedicated for public utility purposes by any person, firm, or corporation. The costs associated with such use shall be borne by Grantee.

(c) The County reserves the right and power to purchase and condemn the plant and distribution facilities of Grantee within the corporate limits or any additions thereto, as provided by law. Grantee likewise reserves all of its rights and remedies provided by law in any such circumstance.

(d) In the event of the exercise of eminent domain by County to acquire Company, the granting of this Franchise shall be construed to have no value for purposes of establishing value of Company in such proceeding.

**SECTION 12: NO PREFERENTIAL OR DISCRIMINATORY PRACTICES**

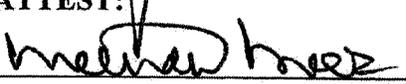
Grantee's service and extension tariffs as authorized by the Commission shall show no preferential or discriminatory practices and shall be filed upon request with the County Clerk.

**SECTION 13: TERMINATION OF EXISTING FRANCHISE**

The existing water and sewer franchises previously issued to Grantee shall terminate upon the Board's approval of this Franchise.

**IN WITNESS WHEREOF**, the Board of Supervisors of Santa Cruz County, Arizona, has caused this Agreement to be executed and signed by the Chairman of the Board and attested by the Clerk this 3<sup>rd</sup> day of December, 2014.

  
\_\_\_\_\_  
John Maynard, Chairman

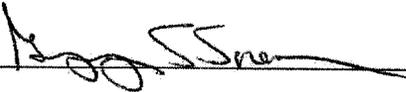
ATTEST:  
  
\_\_\_\_\_  
Melinda Meek, Clerk

APPROVED AS TO FORM:  
  
\_\_\_\_\_  
Charlene Laplante, Chief Civil Deputy

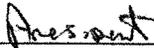
**FRANCHISE ACCEPTANCE**

**ACCEPTED WITHOUT CHANGE:**

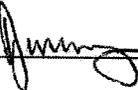
**LIBERTY UTILITIES (RIO RICO WATER & SEWER) CORP.**

  
\_\_\_\_\_

**By**

  
\_\_\_\_\_

**Title**

 27, 2015  
\_\_\_\_\_

**Date**

**EXHIBIT A**

**LEGAL DESCRIPTION**

Those portions of the Baca Float Land Grant No. Three situated in Santa Cruz County, Arizona, described as follows:

1. The South Half of the Baca Float Land Grant No. Three EXCEPT the East 15,000 feet thereof;
2. The West Half of the North Half of the said Baca Float Land Grant No. Three.

## EXHIBIT B

### LEGAL DESCRIPTION

A portion of the north one-half of the Luis Maria Baca Land Grant, Float No. 3, and lying within theoretical Sections 5,6,7 and 8, Township 22 South, Range 13 East, Gila and Salt River Meridian, Santa Cruz County, Arizona, and as monumented in Record of Survey Book 2 at Page 911, records of said Santa Cruz County, described as follows:

BEGINNING at the Seventeen and One-half Mile Marker monument on the west line of said Baca Float No. 3 Land Grant as recorded in said Book 2 at Page 911;

THENCE upon the west line of said Land Grant, N 00°21'45"W a distance of 843.79 feet;

THENCE upon the northwesterly boundary line recorded in said Book 2 at Page 911 of the following 6 courses and distances:

- 1) N 38°50'16" E a distance of 438.80 feet;
- 2) N 37°58'42" E a distance of 382.22 feet;
- 3) N 37°59'04" E a distance of 592.05 feet;
- 4) N 25°00'01" E a distance of 170.13 feet;
- 5) N 25°10'00" E a distance of 655.05 feet;
- 6) N 26°07'00" E a distance of 310.23 feet to the southwesterly right-of-way of

Interstate 19 recorded in A.D.O.T. Plan Drawing No. D-12-T-322 and Docket 206 at Page 571, records of said Santa Cruz County, and lying on the arc of a non-tangent curve concave northeasterly, from which the radius point bears N 52°15'30"E;

THENCE upon said southwesterly right-of-way the following 24 courses and distances;

- 1) Southeasterly upon the arc of said curve, to the left, having a radius of 5924.58 feet and a delta angle of 09°53'19" for an arc length of 1022.52 feet;
- 2) N 42°22'11" E a distance of 40.00 feet to a point on the arc of a non-tangent curve concave northeasterly, from which the radius point bears N 42°29'31" E;

- 3) Southeasterly upon the arc of said curve, to the left, having a radius of 5884.58 feet and a delta angle of  $00^{\circ}30'29''$  for an arc length of 52.19 feet;
- 4) S  $48^{\circ}39'39''$  E a distance of 152.75 feet;
- 5) S  $48^{\circ}52'32''$  E a distance of 48.66 feet;
- 6) S  $41^{\circ}05'37''$  W a distance of 84.89 feet;
- 7) S  $48^{\circ}55'03''$  E a distance of 249.93 feet;
- 8) S  $41^{\circ}05'22''$  W a distance of 509.85 feet;
- 9) S  $48^{\circ}52'14''$  E a distance of 324.76 feet;
- 10) S  $89^{\circ}28'19''$  E a distance of 230.32 feet;
- 11) N  $41^{\circ}06'12''$  E a distance of 319.73 feet;
- 12) S  $48^{\circ}54'59''$  E a distance of 100.06 feet;
- 13) S  $48^{\circ}44'24''$  E a distance of 100.57 feet to a point on the arc of a non-tangent curve concave southwesterly, from which the radius point bears S  $41^{\circ}10'55''$  W;
- 14) Southeasterly upon the arc of said curve, to the right, having a radius of 7358.44 feet and a delta angle of  $01^{\circ}29'46''$  for an arc length of 192.14 feet;
- 15) S  $42^{\circ}29'19''$  W a distance of 54.01 feet to a point on the arc of a non-tangent curve concave southwesterly, from which the radius point bears S  $42^{\circ}37'51''$  W;
- 16) Southeasterly upon the arc of said curve, to the right, having a radius of 7304.44 feet and a delta angle of  $01^{\circ}29'54''$  for an arc length of 191.01 feet;
- 17) N  $44^{\circ}08'45''$  E a distance of 64.23 feet to a point on the arc of a non-tangent curve concave southwesterly, from which the radius point bears S  $44^{\circ}04'06''$  W;
- 18) Southeasterly upon the arc of said curve, to the right, having a radius of 7368.44 feet and a delta angle of  $04^{\circ}03'43''$  for an arc length of 522.39 feet;
- 19) S  $41^{\circ}51'37''$  E a distance of 158.26 feet;
- 20) S  $47^{\circ}54'11''$  W a distance of 35.11 feet;
- 21) S  $41^{\circ}47'01''$  E a distance of 500.04 feet;
- 22) N  $48^{\circ}50'33''$  E a distance of 29.28 feet;

23) S 41°56'53" E a distance of 758.95 feet to a point on the arc of a non-tangent curve concave northeasterly, from which the radius point bears N 48°12'00" E;

24) Southeasterly upon the arc of said curve, to the left, having a radius of 11679.16 feet and a delta angle of 00°25'11" for an arc length of 85.56 feet to the most northerly corner of the A.D.O.T. right-of-way parcel recorded in A.D.O.T. Plan Drawing No. D-12-T-342 and Docket 420 at Page 290 and Docket 420 at Page 526, records of said Santa Cruz County;

THENCE, upon said right-of-way parcel, S 08°00'59" W a distance of 200.01 feet;

THENCE continue upon said right-of-way parcel, S 42°43'20" E a distance of 204.84 feet;

THENCE continuing upon said right-of-way parcel, N 08°01'12" E a distance of 200.00 feet to the southwesterly right-of-way of Interstate 19 recorded in A.D.O.T. Plan Drawing No. D-12-T-322 and Docket 215 at Page 603, records of said Santa Cruz County, and lying on the arc of a non-tangent curve concave northeasterly, from which the radius point bears N 46°46'31" E;

THENCE southeasterly upon the arc of said curve, to the left, having a radius of 11679.16 feet and a delta angle of 00°17'07" for an arc length of 58.15 feet;

THENCE upon the southeasterly boundary line recorded in said record of survey, Book 2 at Page 911, S 23°22'36" W a distance of 1130.12 feet;

THENCE continue upon said southeasterly boundary line, S 61°40'27" W a distance of 1631.36 feet;

THENCE continue upon said southeasterly boundary line, S 18°59'12" W a distance of 926.23 feet;

THENCE upon the south boundary line recorded in said record of survey, Book 2 at Page 911, N 88°53'53" W a distance of 1476.26 feet;

THENCE upon the westerly boundary line recorded in said record of survey, Book 2 at Page 911, N 14°17'43" E a distance of 1259.04 feet;

THENCE continue upon said westerly boundary line, N 00°35'28" W a distance of 1610.25 feet;

THENCE continue upon said boundary line, N 89°39'23" W a distance of 1359.78 feet to the west line of said Baca Land Grant, Float No. 3;

THENCE upon said west line, N 00°32'22" W a distance of 1.80 feet;

THENCE continue upon said west line, N 00°18'44" W a distance of 5.14 feet to the closing corner of said Sections 6 and 7 as recorded in said Book 2 at Page 911;

THENCE continuing upon said west line, N 00°22'49" W a distance of 388.41 feet to the POINT OF BEGINNING.

Containing an area of 344.2 Acres, more or less.

See Exhibit B attached hereto and made a part hereof.