

CHAPTER 116

WATER SERVICE FRANCHISE

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116.01 FRANCHISE GRANTED. Thorpe Water Development Company, its lessees, successors and assigns, hereinafter referred to as Grantee, are hereby granted the nonexclusive authority for a period of twenty-five (25) years to erect, construct, maintain and operate a water distribution system, and any and all necessary mains, pipes, services and other appurtenances and equipment thereunto appertaining in, upon, over, across and along the streets, alleys, bridges and public places in the city for the transmission, distribution and sale of potable water for domestic, commercial, industrial and all other uses and purposes in the City for the transmission, transportation and conveyance of such water into, through and beyond the corporate limits of said City and to other cities and customers.

116.02 EXCAVATION OF STREETS. Whenever the Grantee, in the construction or maintenance of its system or in the installation of any extension thereto, shall cut into or take up any pavement or shall make any excavation in any limits of the City, they shall be done in a manner so as not to unreasonably interfere with the use of such thoroughfares by the public. The Grantee shall use such safeguards as may be reasonably necessary to prevent injury to persons or property during such construction work; and upon its completion, all pavement shall be replaced in as good condition as it was before taken up. All excavations shall be refilled and all obstructions shall be removed at the expense of the Grantee. In the event that the Grantee shall fail to comply with the provisions of this section after having been given reasonable notice, such notice not to be less than 45 days, the City may do such work as may be needed to properly repair said thoroughfare and the reasonable and necessary cost thereof shall be repaid to the City by the Grantee.

116.03 OTHER IMPROVEMENTS. The Grantee in constructing and maintaining said water distribution system, and in entering and using said streets, highways, avenues, alleys and public places in the City and in laying and installing mains, services, piping and related appurtenances and equipment, shall not in any manner interfere with or injure any improvement which the City now has or may hereafter have upon any of its streets, alleys, highways or public places. The City shall likewise not interfere with or injure any then existing structures of the water distribution system without just compensation. The Grantee shall file and

maintain a current map and legal description of the Grantee's service area in Grimes with the City Clerk. Prior to extending additional service within Grimes, the Grantee will obtain prior approval of the City Council.

116.04 OPERATION STANDARDS. Grantee agrees for and on behalf of itself, its lessees, successors and assigns, that for and during the term and period of this grant, it will maintain adequate, reasonably modern, standard and sufficient water equipment within the City and to maintain and operate the same in a reasonably modern and adequate fashion. Grantee will from time to time during the term of the franchise make such enlargements and extensions of its distribution system as the business of the Grantee justifies in accordance with its rules and regulations relating to customer connections and main and service line extensions currently in effect and on file from time to time with the Grantee or other competent authority having jurisdiction in the premises; provided, however, that no obligation hereunder shall extend to or be binding upon, the Grantee to construct, or extend its mains or furnish water or water service within the City if Grantee is, for any reason, unable to obtain delivery of water at or near the corporate limits of the City or an adequate supply thereof to warrant the construction or extension of its mains for the furnishing of such water or water service; and provided further, that when the amount of water supplied to Grantee at or near the limits of the City is insufficient to meet the additional firm requirements of connected or new customers, Grantee shall have the right to prescribe reasonable rules and regulations for allocating the available supply of water for such additional firm requirements to residential, commercial and industrial customers, in that order of priority.

116.05 POWER AND AUTHORITY OF CITY. Grantee agrees for and on behalf of itself, its lessees, successors and assigns that all authority and rights in this chapter contained shall at all times be subject to all rights, power and authority now or hereafter possessed by the City to regulate the manner in which Grantee shall use the streets, alleys, bridges and public places of the City; provided that the exercise of all such rights, powers and authority shall be reasonable, fair and nondiscriminatory; and provided further that any "taking" of the system or appurtenances by the City shall be subject to just compensation.

116.06 QUALITY AND RATES. The Grantee shall, at all times, maintain an adequate pressure and supply of standard quality water to the customers Grantee has elected to serve; subject to reasonable interruptions in service. Grantee shall charge rates for water that are reasonably competitive with rates for similar quantities of water of similar quality by water suppliers similarly situated.

116.07 INDEMNIFICATION. The Grantee and City shall hold each other harmless from any and all claims and actions, litigation or damage arising out of

the passage of the ordinance codified by this chapter or the negligence of its employees in the operation or performance thereof, including the court costs in making defense against such claims. A copy of the process served upon either shall be served by one upon the other. Either party shall have the right to defend in the name of the other and to employ counsel for such purpose.

116.08 DEFAULT. If the Grantee shall be in default in the performance of any of the terms and conditions of this chapter and shall continue in default for more than forty-five (45) days after receiving notice from the City of such default, the City may, by ordinance duly passed and adopted, terminate all rights granted under this chapter to the Grantee. The said notice of default shall specify the provision or provisions in the performance of which it is claimed the Grantee is in default. Said notice shall be in writing and served in the manner provided by the laws of the State for the service of original notices in civil actions.

116.09 TERM OF FRANCHISE. The right and authority herein granted shall be nonexclusive and shall be and continue for a period of twenty-five (25) years from and after the effective date of the ordinance codified by this chapter or until September 14, 2020.