

Sample Franchise Agreement

THIS AGREEMENT made and executed as of this _____ day of _____, (year), between the City of _____, a municipal corporation located in _____ County, Iowa (referred to herein as the “City”) and _____ Regional Water Association, Inc., a non-profit corporation organized and existing under the laws of the State of Iowa (hereinafter referred to as the “RWA”)

W I T N E S S E T H :

WHEREAS, the RWA is organized and established under the provisions of Chapter 504A, Code of Iowa, and pursuant to Section 357A.23, Code of Iowa, is authorized to erect, maintain, and operate water distribution systems upon the granting of a franchise by the City;

WHEREAS, governmental rules and regulations have made it economically unfeasible for the City to continue to provide for the distribution of water to its residents and other customers, and RWA has agreed to accept responsibility therefore under the terms and conditions set forth herein; and

WHEREAS, the Resolutions adopted by the parties hereto, the provisions of this agreement have been approved by the City Council of the City and the Board of Directors of RWA, and the execution of this agreement duly authorized,

NOW, THEREFORE IT IS AGREED:

1. **Conditions Precedent:** The terms and conditions of this agreement and the duties and obligations of the parties to fulfill the same shall not take effect until the following conditions precedent have been satisfied:
 - a. The City granting a non-exclusive franchise for a term of twenty-five (25) years for the purpose of constructing, maintaining and operating a water distribution system as provided under Section 357A.23 and Section 364.2(4)(a), Code of Iowa;
 - b. Obtaining the approval as to the disposition of the City’s water distribution system as required by Section 388.2, Code of Iowa;
 - c. Adoption of all necessary resolutions relating to the conveyance of interests in real estate in accordance with Section 364.7, Code of Iowa.

If, for any reason, any of the foregoing conditions are not met without fault of either party, this agreement shall be rendered null and void and of no further force and effect, and neither party

shall have any claim against the other for any expenses incurred or damages sustained as a result of the negotiations and efforts attempted in order to complete the objectives of this agreement.

2. **Effective Date.** The effective date of this agreement shall be the first day of the month after the City has been notified by RWA that it is ready to provide water service to the citizens of the City and other customers.
3. **Assets and Liabilities.** In consideration of the assumption of the responsibility relating to the operation of the water distribution system by RWA from and after the effective date, the City agrees to transfer to RWA the sum of \$XX,000 and all assets owned by the City relating to its water distribution system, including but not limited to any and all water mains, pipes, pumps, elevated storage tanks, meters, valves, hydrants and other appurtenances, user agreements and interests in real estate (including easements, right-of-way agreements and permits and merchantable title to its tower site property); provided, however, it is expressly agreed that the City shall retain any additional cash on hand and in banks and all accounts receivable. Except as set forth in paragraph 4 hereof, RWA assumes no responsibility for the payment of any City liabilities relating to the operation of the water distribution system.
4. **Water Revenue Bonds and Notes.** As of the date of the execution of this agreement, the City warrants and covenants that the only water revenue bonds and notes outstanding are those held by_____. The City has furnished RWA with a schedule that sets the amount of principal and interest due on each payment date. RWA shall assume complete responsibility for all payments due and owing under the terms and conditions of said bonds and notes and future compliance with the terms and conditions with the terms and conditions of any loan agreement relating thereto from and after the effective date of this agreement. RWA further agrees to give the City evidence of each payment upon request.
5. **Covenants by the City.** The City represents and warrants to RWA that these representations are being made as of the date hereof and as of the effective date of this agreement:
 - a. **Conduct of business.** The City shall cease its water distribution operation as of the effective date; and between the date of execution of this agreement and the effective date, the City shall conduct its business in the usual and customary manner
 - b. **Access to Records.** RWA shall have full access during normal business hours to all assets being transferred hereunder and to all books, records, contracts, and documents of the City that relate to such assets or to any representation and warranties made by the City to RWA hereunder, and the City shall furnish to RWA all such other information as RWA may reasonably request.

- c. **Risk of Loss.** All risk of loss shall remain with the City until the assets have been transferred to RWA.
 - d. **Existing agreements.** Neither the execution and delivery of this agreement, nor the compliance with the terms hereof on the part of the City will conflict with our result in a breach or default under the terms, conditions or provisions of any agreement or instrument to which the City is a party, and that the City is not in default in the performance of any such agreements.
 - e. **Litigation.** There is no suit, action or legal, administrative, arbitration or other proceeding or governmental investigation pending or threatened, which might prevent or cause a material adverse change to the transactions contemplated by this agreement.
 - f. **Assistance.** At the request of the RWA, the City shall provide assistance and guidance with regard to questions that might arise as to its water distribution system and any agreements to which the City is a party.
 - g. **Employees.** It is understood and agreed that RWA shall not be required to hire or retain any employee of the City.
 - h. **Indemnification.** The City agrees to indemnify and hold RWA harmless of and from any and all losses, claims, liabilities, demands, charges, suites, penalties, costs or expenses (including court costs and attorney fees) resulting from any liability which is not specifically assumed by RWA under terms of this agreement.
6. **Covenants by RWA.** Commencing as of the date of the execution of this agreement and subsequent to the effective date, RWA covenants and agrees as follows:
- a. RWA agrees not to change the current water rates and charges as to users located within the City limits until such time as an overall increase is established by RWA as to the remaining service area. In such an event, RWA shall have the right to establish its own rates and charges, but agrees not to discriminate in the establishment of water rates or in any other way as to the citizens of the City or any of their former customers when compared with similar groups of water users that are served by RWA.
 - b. Every user shall become a member of RWA upon signing the required application and agreement for the purchase of water and the payment of any required fees.

- c. From and after the effective date, RWA shall be solely responsible for the maintenance, repair, and replacement of the water distribution system transferred hereunder.
- 7. **Documents.** The parties agree to execute and deliver any and all documents that may be necessary in order to carry out the transactions contemplated by this agreement. As of the effective date, this agreement shall be deemed to constitute an assignment and transfer from the City to RWA of all the assets that are the subject of this agreement.
- 8. **Default.** In the event RWA defaults in the performance of this agreement, the City shall have the right to change the water franchise and render any transfers made hereunder null and void. In addition, both parties shall be entitled to utilize any and all other remedies or actions at law or in equity available to them in the event of default of the terms and provisions this agreement by the other.
- 9. **Notices.** All notices, requests, demands, and other communications required or permitted to be given hereunder shall be in writing and shall be in writing and shall be deemed to have been duly given if delivered personally or sent by registered or certified mail to the last known address of the other party.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

City

Regional Water Association