

City Council

200 North Brazil

Special Meeting

Los Fresnos, TX 78566

<http://citylf.cloudaccess.net/en/>

~ Agenda ~

Tuesday, October 18, 2016

6:00 PM

City Hall

NOTICE IS HEREBY GIVEN THAT THE {MeetGroup} OF THE CITY OF LOS FRESNOS PURSUANT TO CHAPTER 551, TITLE 5 OF THE TEXAS GOVERNMENT CODE, THE TEXAS OPEN MEETINGS ACT, WILL MEET ON TUESDAY, OCTOBER 18, 2016 AT 6:00 PM AT CITY HALL, 200 NORTH BRAZIL ST, LOS FRESNOS, TX 78566.

I. CALL TO ORDER

2. Invocation and Pledge of Allegiance

II. VISITOR REMARKS - TO SPEAK YOU MUST SIGN IN WITH CITY SECRETARY PRIOR TO THE MEETING AND YOU HAVE A LIMIT OF 3 MINUTES TO SPEAK.

III. ACTION ITEMS:

1. Consideration and ACTION to award bid on the Nature Park Restrooms.
2. Consideration and ACTION ON CCN Exchange Agreement with East Rio Hondo Water Supply Corporation.

IV. ADJOURNMENT

This is to certify that I, Pam Denny, posted this agenda on the front bulletin board of the City Hall on October 13, 2016 on or before 5:30 p.m. and it shall remain so posted continuously for at least 72 hours preceding the scheduled time of said meeting.

Pam Denny, City Secretary

Persons with any disabilities that would like to attend meetings must notify City Secretary 24 hours in advance so that the City can make arrangements for that disabled person.

City Council
200 North Brazil
Los Fresnos, TX 78566

Meeting: 10/18/16 06:00 PM
Department: City Secretary
Category: Agreement
Prepared By: Pam Denny
Initiator: Pam Denny
Sponsors:

REVIEWED

ACTION ITEM (ID # 1951)

DOC ID: 1951 A

Consideration and ACTION to award bid on the Nature Park Restrooms.

The bids will be open on Friday afternoon. We will present them on Tuesday at the meeting.

City Council
200 North Brazil
Los Fresnos, TX 78566

Meeting: 10/18/16 06:00 PM
Department: City Secretary
Category: Agreement
Prepared By: Pam Denny
Initiator: Pam Denny
Sponsors:

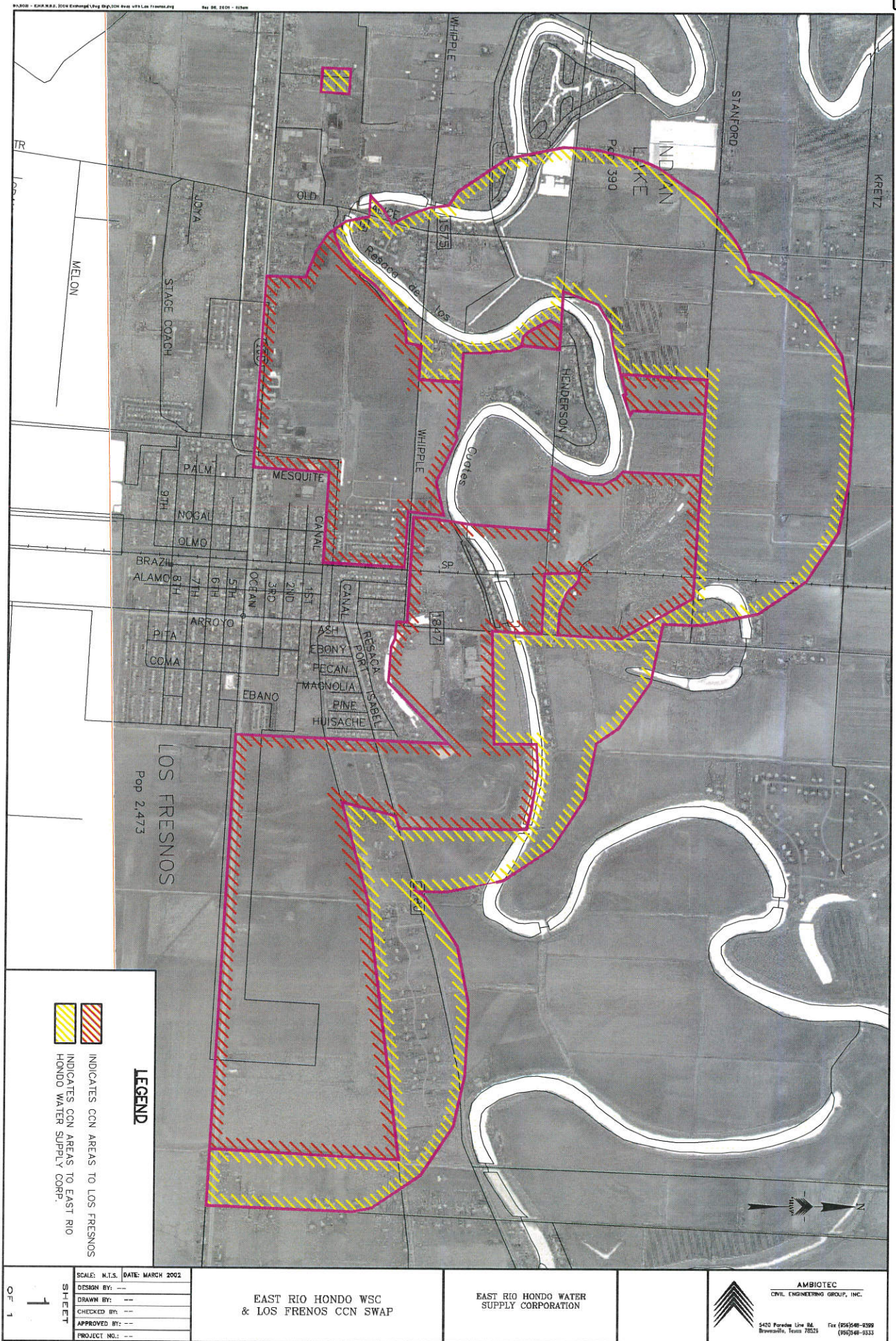
REVIEWED

ACTION ITEM (ID # 1952)

DOC ID: 1952 A

Consideration and ACTION ON CCN Exchange Agreement with East Rio Hondo Water Supply Corporation.

ERHWSC again wants to trade some areas where there is existing overlaps where we both have CCN. For the long run, it would be good so we don't serve some customers and then they serve the neighbor next door. That is a waste of resources. Their big desire is for them to serve the apartment complex going in on FM 1575 and Whipple Road. They are threatening to go the legal route if we continue the process of serving them. We need to discuss our position long term.



EXCHANGE OF SERVICE AREA AGREEMENT

STATE OF TEXAS §
 §
 COUNTY OF CAMERON §

PREAMBLE

This Exchange of Service Area Agreement ("***Exchange Agreement***") made this ____ day of _____, 2009, by and between what are sometimes referred to as the "***Parties***", City of Los Fresnos, Cameron County, Texas (hereinafter referred to as "***Los Fresnos***"), being a body politic and municipal corporation and East Rio Hondo Water Supply Corporation (hereinafter referred to as "***ERHWSC***"), being a non-profit corporation of the State of Texas.

I. RECITALS

1. The Parties each presently hold a certificate of convenience and necessity ("***CCN***") to jointly serve the area that is adjacent to their current singly certified CCN boundary, the joint service area being shown on the map attached hereto as ***Exhibit "A"*** and incorporated herein for all purposes, which said area is all located within Cameron County, Texas (hereinafter referred to as ("***Exchange Area***"), with a potable water supply under the rules and regulations of the Texas Commission on Environmental Quality (hereinafter referred to as "***TCEQ***"). The Parties desire to exchange their right to jointly serve a portion of the Exchange Area for the exclusive right to solely serve a portion of the Exchange Area. ERHWSC is to become singly certified to serve the area cross-hatched in ***Exhibit "B"*** ("***ERHWSC Area***") with a potable water supply. Los Fresnos is to become singly certified to serve the area cross-hatched in ***Exhibit "C"*** ("***Los Fresnos Area***") with a potable water supply.

II. LOS FRESNOS AREA

2. For and in consideration of the assignment by Los Fresnos provided herein, along with Los Fresnos' commitment to serve the potable water demands of the Los Fresnos Area, and other valuable consideration ("*Los Fresnos' Purchase Price*"), the receipt and adequacy of which is hereby acknowledged, ERHWSC agrees to and does hereby assign to Los Fresnos the right to serve customers within said Los Fresnos Area, and Los Fresnos agrees to accept, and hereby accepts, such rights and responsibilities.

3. It is agreed that upon the execution of this Exchange Agreement by the Parties, Los Fresnos shall have provided the Los Fresnos Purchase Price.

4. Subject to the approval of this Exchange Agreement by TCEQ, ERHWSC hereby agrees to relinquish its rights to supply potable water to its customers located within the Los Fresnos Area and Los Fresnos hereby agrees to supply potable water to all existing customers of ERHWSC and to any new customers requesting water service within the Los Fresnos Area. Prior to the closing of the purchase of Los Fresnos Area, Los Fresnos agrees to join and support the application with the TCEQ requesting approval of the transfer of the Los Fresnos Area from the area of ERHWSC'S Certificate of Convenience and Necessity to be singly certified as part of the area of Los Fresnos' Certificate of Convenience and Necessity. Final closing with respect to the purchase and transfer of the Los Fresnos Area shall be not more than forty-five (45) days after all of the following requirements to closing have been completed:

- i. All pipeline installations to be done by Los Fresnos are completed and ERHWSC is given written notice of said completion by Los Fresnos;
- ii. The Los Fresnos Purchase Price is completed and delivered; and
- iii. Approval by the TCEQ has been obtained.

Furthermore, ERHWSC shall have the TCEQ application filed, and all administrative costs and all attorney's fees relating thereto shall be paid jointly and equally by the Parties. The Parties shall bear their own respective attorney's fees relating to this Exchange Agreement.

5. This Exchange Agreement is subject to obtaining a release of any Security Agreement in favor of RD-USDA covering the Los Fresnos Area. Upon delivery of the release of the Los Fresnos Area by RD-USDA to ERHWSC, ERHWSC will give notice to Los Fresnos and send Los Fresnos a copy of said Release.

6. Los Fresnos agrees not to supply potable water to any former customers of ERHWSC within the Los Fresnos Area if that customer has an unpaid balance on his account with ERHWSC, until the account is fully paid. Los Fresnos agrees to use its best efforts, in the exercise of the discretion granted under this Exchange Agreement, to collect amounts due to ERHWSC from customers for potable water service.

7. In the event water service is disconnected for nonpayment of potable water service charges, except as otherwise required by law or as agreed to by ERHWSC, Los Fresnos agrees not to provide water services to that customer until ERHWSC's receipt of payment of all delinquent charges, plus any applicable charges which are then collectible in accordance with ERHWSC's tariff or applicable law. Upon receipt of payment by ERHWSC of a past due account which is the subject of discontinued service under the above paragraphs, ERHWSC shall promptly so notify Los Fresnos in writing.

8. To the extent applicable, ERHWSC will provide Los Fresnos with the names and addresses of all ERHWSC's customers being served within the Los Fresnos Area. Los Fresnos agrees to provide written notice of the change in service provider to any and all customers within the

Los Fresnos Area within thirty (30) days prior to the date Los Fresnos commences service to the Los Fresnos Area.

9. Any lines owned by ERHWSC which run through the Los Fresnos Area shall not become the property of Los Fresnos, but shall remain the property of ERHWSC.

10. Los Fresnos hereby agrees and obligates itself to supply potable water to all existing customers or members possessing existing water meters on property within the Los Fresnos Area without an additional fee, meter fee, hook-up fee or other additional charge or deposit as a condition for initial or continued service.

III. ERHWSC AREA

11. For and in consideration of the assignment by ERHWSC provided herein, along with ERHWSC's commitment to serve the potable water demands of the ERHWSC Area, and other valuable consideration ("***ERHWSC Purchase Price***"), the receipt and adequacy of which is hereby acknowledged, Los Fresnos agrees to and does hereby assign to ERHWSC the right to serve customers within said ERHWSC Area, and ERHWSC agrees to accept, and hereby accepts, such rights and responsibilities.

12. It is agreed that upon the execution of this Exchange Agreement by the Parties, ERHWSC shall have provided the ERHWSC Purchase Price.

13. Subject to the approval of this Exchange Agreement by TCEQ, Los Fresnos hereby agrees to relinquish its rights to supply potable water to its customers located within the ERHWSC Area and ERHWSC hereby agrees to supply potable water to all existing customers of Los Fresnos and to any new customers requesting water service within the ERHWSC Area. Prior to the closing of the purchase of ERHWSC Area, ERHWSC agrees to join and support the application with the

TCEQ requesting approval of the transfer of the ERHWSC Area from the area of Los Fresnos' Certificate of Convenience and Necessity to be singly certified as part of the area of ERHWSC's Certificate of Convenience and Necessity. Final closing with respect to the purchase and transfer of the ERHWSC Area shall be not more than forty-five (45) days after all of the following requirements to closing have been completed:

- i. All pipeline installations to be done by ERHWSC are completed and Los Fresnos is given written notice of said completion by ERHWSC;
- ii. The ERHWSC Purchase Price is completed and delivered; a
- iii. Approval by the TCEQ has been obtained.

14. ERHWSC agrees not to supply potable water to any former customers of Los Fresnos within the ERHWSC Area if that customer has an unpaid balance on his account with Los Fresnos, until the account is fully paid. ERHWSC agrees to use its best efforts, in the exercise of the discretion granted under this Exchange Agreement, to collect amounts due to Los Fresnos for customers from potable water service. Los Fresnos shall notify ERHWSC of all customers accounts which are delinquent and either are to be disconnected or have been disconnected upon commencement of service by ERHWSC.

15. In the event water service is disconnected for nonpayment of potable water service charges, except as otherwise required by law or as agreed to by Los Fresnos, ERHWSC agrees not to provide water services to that customer until Los Fresnos' receipt of payment of all delinquent charges, plus any applicable charges which are then collectible in accordance with Los Fresnos' ordinance or applicable law. Upon receipt of payment by Los Fresnos of a past due account which is the subject of discontinued service under the above paragraphs, Los Fresnos shall promptly so notify ERHWSC in writing.

16. To the extent applicable, Los Fresnos will provide ERHWSC with the names and addresses of all Los Fresnos customer's being served within the ERHWSC area. ERHWSC agrees to provide written notice of the change in service provider to any and all customers within the ERHWSC Area within thirty (30) days prior to the date ERHWSC commences service to the ERHWSC Area.

17. Any lines owned by Los Fresnos which run through the ERHWSC Area shall not become the property of ERHWSC, but shall remain the property of Los Fresnos.

IV. GENERAL PROVISIONS

18. This Exchange Agreement has been approved by the appropriate bodies of Los Fresnos and ERHWSC as evidenced by appropriate minutes of the governing bodies, copies of which are attached hereto as *Exhibits "D" and "E"*, respectively, and are executed by the appropriate officers of same.

19. Failure to perform any covenant and agreement herein shall entitle the non-breaching party to enforce the provisions hereof by specific performance or injunctive relief in addition to any remedy in damages that either party may be entitled to.

20. It is the intent of Los Fresnos and ERHWSC, and they do hereby specifically agree, that this Exchange Agreement creates no third-party beneficiary rights or interest in or to the supply of any treated water or facility relating thereto, nor to any existing or potential retail customer of Los Fresnos or ERHWSC.

21. No amendment, modification, or alteration of the terms hereof shall be binding unless the same be in writing, dated and subsequent to the date hereof and duly executed by the Parties.

22. No waiver by the Parties of any default or breach of any term, condition, or covenant

of this Exchange Agreement shall be deemed to be a waiver of any other breach of the same or other term, condition, or covenant contained herein.

23. Each party represents and warrants that (i) it has carefully reviewed this Exchange Agreement, (ii) it has at all times been represented by and consulted with legal counsel concerning this Exchange Agreement, (iii) any questions that it has pertaining to this Exchange Agreement have been answered and fully explained to it by its counsel, (iv) its decision to execute this Exchange Agreement was not based on any statement or representation, either oral or written, made by any person on behalf of the other party, (v) this Exchange Agreement constitutes the entire agreement and understanding of the Parties (vi) neither party has assigned, conveyed, hypothecated or transferred any interest in any cause of action relating to the above described claims, (vii) each party understands that the other party is relying upon these representations and warranties in entering into this Exchange Agreement, and (viii) this Exchange Agreement may not be amended, modified, or changed orally.

24. The conveyance made in this Exchange Agreement is made without warranty, express or implied, and is conveyed "AS IS" and "WHERE IS."

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Exchange Agreement as of the date above stated.

ATTEST:

CITY OF LOS FRESNOS, TEXAS

By: _____

_____, City Secretary

_____, City Manager

EAST RIO HONDO WATER SUPPLY

CORPORATION

By: _____
Brian Macmanus, Director of
Water & Wastewater

Attachments: Exhibit "A" (Exchange Area Map and Description)
 Exhibit "B"(ERHWSC Area Map and Description)
 Exhibit "C" (Los Fresnos Area Map and Description)
 Exhibit "D"(Los Fresnos Minute Excerpt)
 Exhibit "E" (ERHWSC Minute Excerpt)

Attachment: CCN areas (1952 : CCN Exchange)

CORPORATE ACKNOWLEDGMENTS

STATE OF TEXAS §
§
COUNTY OF CAMERON §

I hereby certify that on this day before me, an officer duly authorized in the State of Texas and in the County of Cameron to take acknowledgments, personally appeared _____, known to me to be the person described in and who executed the foregoing instrument as _____ of City of Los Fresnos, Cameron County, Texas, body politic and municipal corporation therein, and acknowledged that he executed the same as such an officer, in the name and for on behalf of the said city.

IN WITNESS WHEREOF I hereunto set my hand and affixed my official seal this _____ day of _____, 2009.

Notary Public and for the State of Texas

STATE OF TEXAS §
§
COUNTY OF CAMERON §

I hereby certify that on this day before me, an officer duly authorized in the State of Texas and in the County of Cameron to take acknowledgments, personally appeared Brian Macmanus, known to me to be the person described in and who executed the foregoing instrument as Director of Water and Wastewater of East Rio Hondo Water Supply Corporation, the corporation therein, and acknowledged that he executed the same as such an officer, in the name and for on behalf of the said corporation.

IN WITNESS WHEREOF I hereunto set my hand and affixed my official seal this _____ day of _____, 2009.

Notary Public and for the State of Texas

Attachment: CCN areas (1952 : CCN Exchange)