

ORDINANCE NO. 13

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA, GRANTING TO APPLE VALLEY RANCHOS WATER COMPANY, A CALIFORNIA CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE AND FRANCHISE TO USE AND TO CONSTRUCT AND USE, FOR TRANSMITTING AND DISTRIBUTING WATER FOR ANY AND ALL PURPOSES, PIPELINES, SERVICES, FIRE SERVICES, FIRE HYDRANTS, WELLS, RESERVOIRS, AND APPURTENANCES, INCLUDING COMMUNICATION CIRCUITS NECESSARY OR PROPER THEREFOR, IN, ALONG, ACROSS, UPON, OVER AND UNDER THE PUBLIC STREETS, WAYS, ALLEYS AND PLACES WITH THE TOWN OF APPLE VALLEY.

The Town Council of the Town of Apple Valley does ordain as follows:

SECTION 1.

(a) On March 7, 1989, the Town Council of the Town of Apple Valley adopted its Resolution No. 89-4 setting forth said Council's intention to grant a franchise under and pursuant to the provisions of Article 2 of Chapter 2 of Division 3 of the California Public Utilities Code, commencing at Section 6231, and set the date of Tuesday, April 4, 1989, at the hour of 7:00 p.m., as the time for a public hearing wherein any and all persons having an objection to the granting of such franchise could be heard.

(b) On Tuesday, April 4, 1989, the Town Council of the Town of Apple Valley conducted a duly noticed public hearing with regard to the granting of such franchise and concluded such hearing prior to the adoption of this Ordinance.

(c) All legal prerequisites to the enactment of this Ordinance have occurred.

SECTION 2.

Whenever in this Ordinance the following words or phrases in this section are used, they shall have the respective meanings ascribed to them in the following definitions, unless, in the given instance, the context clearly imports a different meaning:

(a) The word "Grantee" shall mean APPLE VALLEY RANCHOS WATER COMPANY, a California corporation, and its lawful successors and assigns;

(b) The word "Town" shall mean the TOWN OF APPLE VALLEY, a municipal corporation of the State of California, in its

present incorporated form or in any later reorganized, consolidated or reincorporated form;

(c) The word "Streets" shall mean the public streets, highways, roads, alleys and places as the same may now or hereafter exist within the Town;

(d) The word "Engineer" shall mean the Town Engineer of the Town;

(e) The word "Franchise" shall mean and include any authorization granted hereunder in terms of a franchise, privilege, permit, license or otherwise to use and to construct and use, for transmitting and distributing water for any and all purposes, pipelines, services, fire services, fire hydrants, wells, reservoirs, and appurtenances, including communication circuits necessary or proper therefor, in, along, across, upon, over and under the public streets, ways, alleys and places within the Town.

Any authorization, in whatever terms granted, shall mean and include any license or permit required for the privilege of transacting and carrying on a business within the Town.

(f) The phrase "pipes and appurtenances" shall mean pipes, pipelines, mains, services, traps, vents, vaults, manholes, meters, gauges, regulators, valves, conduits, appliances, attachments, appurtenances and any other property located or to be located in or under the streets of the Town, used or useful in the transmission and distribution of water;

(g) The phrase "construct and use" shall mean to lay, construct, erect, install, operate, maintain, use, repair or remove.

### SECTION 3.

The right, privilege and franchise, subject to each and all of the terms and conditions contained in this Ordinance, and pursuant to the provisions of Article 2 of Chapter 2 of Division 3, of the Public Utilities Code of the State of California, be and the same hereby is granted to Grantee, its successors and assigns, to construct and use pipes and appurtenances for transmitting and distributing water for any and all purposes under and in the streets of the Town.

### SECTION 4.

The term or period of this franchise shall be indeterminate from and after the effective date hereof and shall endure in full force and effect until the same, with the consent of the Public Utilities Commission of the State of California, is voluntarily surrendered or abandoned by its possessor, or until the State of California or some municipal

or public corporation authorized by law shall purchase by voluntary agreement or condemn under the power of eminent domain, all property actually used and useful in the exercise of this franchise, or until this franchise shall be forfeited for non-compliance with its terms by the possessor thereof.

#### SECTION 5.

The Grantee shall pay to the Town, at the times hereinafter specified, in lawful money of the United States, a sum annually which shall be equivalent to two percent (2%) of the gross annual receipts of Grantee arising from the use, operation or possession of said franchise; provided that such payment shall not be less than one percent (1%) of the gross annual receipts derived from the sale of water within the Town of Apple Valley.

#### SECTION 6.

The Grantee shall file with the Town Clerk of the Town, within three (3) months after the expiration of the calendar year, or fractional calendar year, following the date of the grant of this franchise, and within three (3) months after the expiration of each calendar year thereafter, a duly verified statement showing in detail the total gross receipts of the Grantee, its successors or assigns, during the preceding calendar year, or such fractional calendar year, arising from the use, operation or possession of this franchise. It shall be the duty of the Grantee to pay to the Town within fifteen (15) days after the time for filing such statement the specified percentage of its gross receipts for the calendar year, or such fractional calendar year, covered by such statement. Any neglect, omission or refusal by said Grantee to file such verified statement, or to pay said percentage, at the time or in the manner herein provided, shall be grounds for a declaration of a forfeiture of this franchise and of all rights hereunder.

#### SECTION 7.

This franchise is granted in lieu of all other franchises owned by the Grantee, or by any successor or assign of the Grantee, to any rights under this franchise for transmitting and distributing water within the limits of the Town, as said limits now or may hereafter exist, and the acceptance of the franchise hereby granted shall operate as an abandonment of all such franchises within the limits of Town, as such limits now or may hereafter exist, in lieu of which this franchise is granted.

#### SECTION 8.

The franchise granted hereunder shall not become effective until written acceptance thereof shall have been

filed by the Grantee with the Town Clerk of the Town. When so filed, such acceptance shall constitute a continuing agreement of the Grantee that if and when the Town shall thereafter annex or consolidate with additional territory, any and all franchise rights and privileges owned by the Grantee therein shall likewise be deemed to be abandoned within the limits of such territory, and the terms of this franchise shall apply to such territory.

#### SECTION 9.

The franchise granted hereunder shall not in any way or to any extent impair or affect the right of the Town to acquire the property of the Grantee either by purchase or through the exercise of the right of eminent domain, and nothing herein contained shall be construed to contract away or to modify or to abridge, either for a term or in perpetuity, the Town's right of eminent domain with respect to the Grantee or any public utility, nor shall this franchise ever be given any value before any court or other public authority in any proceeding of any character in excess of the cost to the Grantee of the necessary publication and any other sum paid by it to the Town at the time of the acquisition thereof.

#### SECTION 10.

The Grantee shall:

(a) Construct, install and maintain all pipes and appurtenances in accordance and in conformity with all and any of the ordinances, rules and regulations heretofore, or hereafter, adopted by the Town Council of Town in the exercise of its police powers and, as to state highways, subject to the provisions of general laws relating to the location and maintenance of such facilities;

(b) Pay to the Town, on demand, the cost of all repairs to public property made necessary by any operations of the Grantee under this franchise, including, but not limited to, reasonable overhead expenses in the sum of thirty percent (30%);

(c) Indemnify and hold Town and its elected officials, officers, agents and employees free and harmless from all claims for damage or injuries to persons or property by reason of Grantee's negligence or Grantee's acts or omissions or those of Grantee's officers, agents or employees in connection with Grantee's operations under this franchise. Grantee shall be liable to Town for all damages proximately resulting from the failure of Grantee to well and faithfully observe and perform each and every provisions of this franchise and each and every provision of Article 2 of Chapter 2 of Division 3 of the Public Utilities Code of the State of California,



including, but not limited to, any amounts for attorneys' fees and court costs assessed by a court of competent jurisdiction;

(d) Remove or relocate, at the request of the Town and without expense to the Town, any pipes and appurtenances installed, used or maintained under this franchise if and when made necessary by any change of grade, alignment or width of any Streets, including the construction of any subway or viaduct or other improvements or structures by or for the Town; provided, however, that Grantee shall not be required to bear the expense of any removal or relocation made at the request of the Town on behalf or for the benefit of any private developer or other private third party;

(e) File with the Town Council of the Town at least thirty (30) days prior to any sale, transfer, assignment or lease of this franchise, or any part thereof, or of any of the rights or privileges granted thereby, written evidence of the same, certified thereto by the Grantee or its duly authorized officers.

#### SECTION 11.

Grantee shall, at all times during the term of this franchise, maintain on a twenty-four (24) hour-a-day basis adequate emergency equipment and properly trained emergency crew within a radius of twenty-five (25) miles from any of the pipes or appurtenances installed or maintained pursuant to this franchise for the purpose of shutting off the pressure and the flow of the contents of such pipes and appurtenances, in whole or in part, in the event of an emergency resulting from an earthquake, act of war, civil disturbance, flood or other cause.

#### SECTION 12.

The Engineer shall have power to give the Grantee such directions for the location of any pipes and appurtenances as may be reasonably necessary in the opinion of the Engineer to avoid sewers, conduits or other structures in or under the streets. Prior to the commencement of any work to construct any pipes and appurtenances, the Grantee shall file with the Engineer plans showing the location thereof, which shall be subject to the approval of said Engineer and such construction shall be subject to the inspection of said Engineer and done to his satisfaction and in compliance with all and any Town rules, regulations, ordinances, standards and/or specifications. All street coverings or openings of traps, vaults and manholes shall at all times be kept flush with the surface of the streets; provided, however, that vents for underground traps, vaults and manholes may extend above the surface of the streets when said vents are located in parkways, between the curb and the property line subject to the prior approval of the Engineer.

### SECTION 13.

Where it is necessary to lay any underground pipes in or under any portion of a paved or macadamized street, the same, where practicable and economically reasonable, shall be done by a tunnel or bore, so as not to disturb the foundation of such paved or macadamized street. In the event that the same cannot be so done, such work shall be done under a permit to be granted by the Engineer upon application therefore and subject to all and any Town rules, regulations, ordinances, standards and/or specifications.

### SECTION 14.

If any portion of any street shall be damaged by reason of breaks, leaks or defects in any of the pipes and appurtenances maintained or constructed under this franchise, or by reason of any other cause arising from the operation or existence of any pipes and appurtenances constructed or maintained under this franchise, Grantee shall, at its own cost and expense, immediately repair any such damage and restore such street, or portion of street, to as good a condition as existed before such defect or other cause of damage occurred, with such work to be done under the direction of the Engineer and in accordance with all and any rules, regulations, ordinances, standards and specifications of the Town.

### SECTION 15.

If the Grantee or its successors or assigns shall fail, neglect or refuse to comply with any of the provisions of conditions hereof, and shall not, within ten (10) days after written demand for compliances, begin the work of compliance, or after such beginning shall not prosecute the same with due diligence to completion, then the Town may declare this franchise forfeit and commence and/or complete any such work. Grantee shall be liable to Town for any and all costs and expenses incurred by Town in connection with any such work including, but not limited to, reasonable overhead expenses in the sum of thirty percent (30%).

### SECTION 16.

Upon expiration, revocation or termination of this franchise, or the permanent discontinuance of use of the pipes and appurtenances or any portion thereof, Grantee shall, within twenty (20) days thereafter, make written application to the Engineer for authority to either (1) abandon all, or a portion, or such pipes and appurtenances in place, or (2) remove all, or a portion, of such pipes and appurtenances. Such application shall describe the location of the pipes and appurtenances desired to be abandoned or removed, and the relative physical condition of such pipes and appurtenances.

The Engineer shall determine whether such abandonment or removal may be effected without detriment to the public interest and under what conditions and terms the proposed abandonment or removal may be safely effected and shall then notify the Grantee of such requirements. Grantee shall, within ninety (90) days thereafter, either remove all or such portion of such pipes and appurtenances or abandon in place all or a portion of such pipes and appurtenances, as directed by the Engineer.

If any pipes and appurtenances to be abandoned in place subject to prescribed conditions are not abandoned in accordance with all such conditions, the Engineer may make additional orders including, if deemed desirable, an order that the Grantee remove all such pipes and appurtenances in accordance with applicable requirements. In the event Grantee fails to remove any pipes and appurtenances in accordance with such applicable requirements within the time prescribed by the Engineer, then Town may remove such pipes and appurtenances and Grantee shall thereafter pay to Town the actual cost thereof, plus thirty percent (30%) as and for Town's reasonable overhead expenses. Any decision of the Engineer with respect to conditions, interpretations of plans, specifications, rules, regulations and/or standards shall be final.

#### SECTION 17.

The Town may sue in its own name for the forfeiture of this franchise in the event of noncompliance by the Grantee, its successors or assigns, with any of the conditions thereof. In the event of any such suit or other legal proceedings, the prevailing party shall be entitled to attorneys' fees.

#### SECTION 18.

Not later than ten (10) days after the posting of this Ordinance, the Grantee shall file with the Town Clerk of the Town a written acceptance of the franchise hereby granted and an agreement to comply with the terms and conditions hereof.

#### SECTION 19.

Grantee shall, at Grantee's sole cost and expense, keep or cause to be kept in full force and effect, for the mutual benefit of Town and Grantee, a comprehensive form of general public liability insurance against claims and liability for personal injury, death, bodily injury or property damage arising from the use, construction, or maintenance of this franchise in a combined single-limit amount of not less than \$1 million for any one incident or occurrence. All such insurance required by the express provisions of this Ordinance shall be carried only with responsible insurance companies and may be in the form of insurance, self-insurance or self-

insured retention. For any insurance, as required herein, maintained by self-insurance or a self-insured retention, Grantee hereby expressly agrees to waive the right of subrogation against the Town and against Town's agents and representatives.

Any insurance policies maintained pursuant to the terms of this Ordinance, other than self-insurance or self-insured retention, shall, to the extent obtainable, contain language to the effect that (1) the insurance waives the right of subrogation against the Town and against Town's agents and representatives, (2) adds the Town as an additional insured, (3) the insurance is primary and noncontributing with any insurance that may be carried by the Town, and (4) it cannot be canceled or materially changed except after thirty (30) days' notice by the insurer to the Town. Grantee shall furnish Town with copies of all such policies, or certificates evidencing the insurance, as set forth in this section. Grantee may effect for its own account any insurance not required under this Ordinance.

Grantee shall deliver to Town, in the manner provided for notices, copies or certificates of all insurance required by this Ordinance, together with evidence satisfactory to Town of payment required for procurement and/or maintenance of the insurance.

If Grantee fails or refuses to procure or maintain insurance as required by this Ordinance, or fails or refuses to furnish Town with required proof that the insurance has been procured and is in force, Town shall have the right at Town's election and on ten (10) days' notice, to declare this franchise as a forfeiture.

#### SECTION 20.

The franchise herein granted is granted under and pursuant to provisions of the laws of the State of California and said franchise shall not be exclusive, but the Town Council of the Town of Apple Valley reserves and shall have the right and power to grant other and additional franchises and rights to persons, firms, corporations and entities as authorized or provided by law.

#### SECTION 21.

Any notice required to be given under the terms of this franchise, may be served as follows:

Upon the Town, by serving the Town Clerk personally, or by addressing a written notice to Town Clerk of the Town of Apple Valley, California, 21809 Highway 18, P. O. Box 429, Apple Valley, California 92307 (or such other address as may from time to time be furnished in writing), and depositing

such notice in the United States mail, postage prepaid by certified mail.

Upon the Grantee by serving the General Manager personally, or by addressing a written notice to Grantee addressed to General Manager, Apple Valley Ranchos Water Company, 21760 Ottawa Road, P. O. Box 2619, Apple Valley, California 92307 (or such other address as may from time to time be furnished in writing) and depositing said notice in the United States mail postage prepaid by certified mail.

#### SECTION 22.

The Grantee of this franchise shall pay to the Town a sum of money sufficient to reimburse it for all publication expenses incurred by it in connection with the granting of this franchise; said payment to be made within thirty (30) days after the Town shall have furnished said Grantee with a written statement of such expenses.

#### SECTION 23.

The Town Council declares that, should any provision, section, paragraph, sentence or word of this Ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction, or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences and words of this Ordinance shall remain in full force and effect.

#### SECTION 24.

This Ordinance shall take effect thirty (30) days after its adoption.

#### SECTION 25.

The Town Clerk of the Town of Apple Valley shall certify to the adoption of this Ordinance and shall post this Ordinance in three (3) public places with the Town of Apple Valley within fifteen (15) days after its adoption in the manner prescribed by Resolution No. 89-2.

ADOPTED by the Town Council and signed by the Mayor and attested by the Town Clerk this 2nd day of May, 1989.

  
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MAYOR


ATTEST:

  
TOWN CLERK

APPROVED AS TO FORM:

  
ASSISTANT TOWN ATTORNEY

APPROVED AS TO CONTENT:

  
TOWN MANAGER

TAVORD3  
04/18/89/NS/ar



STATE OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
TOWN OF APPLE VALLEY

I, E. Wayne Lamoreaux, Town Clerk of the Town of Apple Valley, California, do hereby certify that Ordinance No. 13, being an urgency ordinance, was duly and regularly adopted by a four-fifths vote of the Town Council of the Town of Apple Valley at a meeting of said Town Council, held on the 18th day of April, 19 89 by the following votes:

AYES: Coleman, Larkin, Pearson, DePrisco

NOES: None

ABSENT: Collingsworth

ABSTAIN: None

  
TOWN CLERK

(SEAL)

STATE OF CALIFORNIA

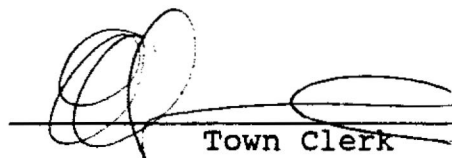
COUNTY OF SAN BERNARDINO

TOWN OF APPLE VALLEY

I, E. Wayne Lamoreaux, Town Clerk of the  
Town of Apple Valley, California, do hereby certify that the  
attached Ordinance No. 13 is a true and correct copy of a  
town ordinance duly adopted by the Town Council of the Town of  
Apple Valley, and it has been published or posted pursuant to  
law, in that it has been posted on the 2nd day of  
May, 19 89, in three public places  
within said Town, namely,

- A. Town Administrative Office  
21809 Highway 18,  
Apple Valley, California
- B. Apple Valley Library  
22051 Highway 18  
Apple Valley, California
- C. Apple Valley Community Center  
13467 Navajo Road  
Apple Valley, California

IN WITNESS WHEREOF, I have hereunto set my hand and  
affixed the official seal of the Town of Apple Valley,  
California, this 2nd day of May,  
19 89.

  
Town Clerk

(SEAL)