

ORDINANCE NO. 88

**AN ORDINANCE GRANTING TO DEER CREEK WATERWORKS, INC., A FRANCHISE TO CONSTRUCT, MAINTAIN AND OPERATE A WATER SYSTEM AND A SANITARY SEWER SYSTEM IN THE TOWN OF ANNETTA, TEXAS, AND PRESCRIBING THE TERMS, CONDITIONS, OBLIGATIONS AND LIMITATIONS UPON AND UNDER WHICH SUCH FRANCHISE SHALL BE EXERCISED.**

**WHEREAS,** the Town of Annetta, by Ordinance No. 36, heretofore granted to Deer Creek Waterworks, Inc., a franchise to construct, maintain and operator a water system in the Town; and

**WHEREAS,** Deer Creek Waterworks, Inc., has requested a franchise to operate a sanitary sewer system within the Town, and the Council desires to renew such water system franchise and grant a sewer franchise; **NOW, THEREFORE,**

**BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF ANNETTA, TEXAS:**

**Section 1:** THAT there is hereby granted to Deer Creek Waterworks, Inc., a corporation, hereinafter "Grantee," its successors and assigns, the right, privilege and franchise to construct, maintain and operate a water system and sanitary sewer system in the Town of Annetta (hereinafter "Town"), and for that purpose to have, acquire, construct, maintain and operate in, upon and under the present and future streets, alleys and highways, of the Town, a system of water mains, sewer mains, and service lines with all necessary or desirable appurtenances, in order to supply water and sanitary sewer service to the inhabitants thereof, and to persons, firms, corporations and institutions beyond the corporate limits thereof, for the considerations and subject to the conditions, terms, duties, obligations and limitations expressed in this ordinance.

**Section 2:** All construction and other work done by the Grantee, and the operation of its business, under and by virtue of this ordinance, shall be in conformity with the ordinances, rules and regulations now in force and that may hereafter be adopted by the Town of Annetta, relating to the use of its streets, alleys, and highways, and in the interest of the public safety. The location and placing of water and sewer pipes and other equipment by the Grantee shall at all times be under the control and subject to the approval of the Town Council; and where it is necessary, practical or economical to place such pipes in the streets or highways, then such construction shall be placed between the curb line and property line on any such street or highway, unless otherwise authorized and directed by the Town Council. In placing its water pipes, the Grantee shall not interfere with any public utility, or with any public or private drain in any street, highway or alley, except with the consent and under the direction of the Town Council.

If the Town, in constructing or widening its streets or highways, or constructing other public works, should require any pipes manholes or appurtenances of the Grantee in, upon and under the present and future streets, alleys and highways, of the Town to be shifted or relocated, such pipes, manholes and appurtenances shall be shifted or relocated by the Grantee, at its expense, as and when required by the Town.

**Section 3:** Whenever the Town shall conclude to pave, widen or straighten (hereinafter, rebuild) any street, highway or alley in which the facilities of Grantee already exist, or in which Grantee may propose to place facilities, the Grantee may be required, in advance of such rebuilding, to renew such existing facilities, if defective or inadequate, or to place adequate transmission facilities, and to place service facilities, or renew same, if inadequate or defective, to the property lines where buildings are already located without regard to the number of consumers along the line, but in any event, for such prospective consumers as may be obtained by a careful canvass of the locality. The Grantee shall be given reasonable notice of the intention of the Town to rebuild any such street, highway or alley, and if the Grantee shall fail to comply with the requirements of the Town, after such notice, in the particulars above stated, and such street, highway or alley is thereupon rebuilt, the Grantee shall not be allowed thereafter to cut such pavement or excavate in such rebuilt street, highway or alley for any purpose, except by formal permission of the Town Council and under such terms and conditions as the Town Council may prescribe. City permission shall not be unreasonably withheld so as to delay or hinder Grantee's ability to deliver water, sewer or effluent services to the consuming public.

**Section 4:** The Grantee shall, within one year after the granting of this franchise, file with the Town Secretary of the Town of Annetta a map or maps, in convenient book or atlas form, or shall correct and bring up to date any map or maps now so on file, showing in reasonable detail its entire water and sewer system in the Town of Annetta, as same then exists, which shall include the locations, depths or heights and dimensions of all transmission facilities, mains, manholes and lift stations, connection with premises and other apparatus employed by Grantee, and which map shall be corrected and brought to date by Grantee annually, as it may alter, change or extend its said system.

**Section 5:** Grantee shall install between the traveled portion of the street and the property line of each customer a meter of standard type for the purpose of measuring accurately the water consumed by such customer.

**Section 6:** The water and sewer utility systems and services supplied by Grantee within the Town under the terms of this franchise shall comply with all applicable rules and regulations of the Texas Natural Resource Conservation Commission and the United States Environmental Protection Agency.

THE EFFICIENCY, SUFFICIENCY AND QUALITY OF THE WATER TO BE FURNISHED TO THE TOWN OF ANNETTA AND ITS INHABITANTS UNDER THE TERMS OF THIS FRANCHISE SHALL BE DETERMINED BY TESTS AT SUCH STATIONS AND AT SUCH INTERVALS AND BY SUCH METHODS AND IN SUCH MANNER AS MAY BE DESIGNATED BY THE TOWN, WHICH SHALL NOT BE INCONSISTENT WITH THE RULES OF THE TEXAS NATURAL RESOURCE CONSERVATION COMMISSION.

THE QUALITY OF THE SEWER UTILITY SERVICE TO BE FURNISHED TO THE TOWN OF ANNETTA AND ITS INHABITANTS UNDER THE TERMS OF THIS FRANCHISE SHALL BE DETERMINED BY THE MINIMUM STANDARDS OF THE STATE OF TEXAS WITH TESTS AT SUCH INTERVALS AS MAY BE DIRECTED BY THE TOWN, WHICH SHALL NOT BE INCONSISTENT WITH THE RULES OF THE TEXAS NATURAL RESOURCE CONSERVATION COMMISSION.

- Section 7:** Grantee shall, at all times during the terms of this franchise, furnish water service and sewer service to the Town of Annetta, and to the inhabitants thereof demanding same, which shall be at all times wholesome and sufficient to meet all reasonable demands, and so far as commercially practicable, without undue interruptions or fluctuations; provided, however, that Grantee shall not be liable for interruptions or fluctuations in service caused by conflagrations, acts of God, or other unavoidable contingencies, which could not, in the ordinary course of commercially prudent management, have been foreseen and prevented by Grantee.
- Section 8:** The Town of Annetta reserves the right, at any time the Grantee shall request an increase in water and/or sewer rates for consumers in Annetta, to reopen and renegotiate with Grantee the amount of gross receipts, or the amount per linear foot, to be paid by Grantee from the sale of all water, effluent, or sewer services as provided under Sections 10 and 11 of this ordinance.
- Section 9:** The Grantee shall protect and hold the Town of Annetta harmless against all claims for damages to any person or property by reason of the construction and maintenance of its water system, or in any manner growing out of the granting of this franchise, directly or indirectly, or by reason of any act, negligence or nonfeasance of the contractors, agents or employees of Grantee, and Grantee shall indemnify and hold the Town of Annetta harmless from and on account of all the damages, costs, expenses, actions and causes of action, that may accrue to or be brought by any person at any time hereafter by reason of the exercise of the rights and privileges hereby granted, or of the abuse thereof.

Upon the commencement of any suit or proceeding at law against the Town of Annetta relating to or covering any matter wherein Grantee has agreed, as stipulated above, to indemnify and save harmless the Town, the Town shall tender the defense of said suit or proceeding at law to the Grantee, and the Grantee shall

thereupon at its own cost and expense defend, compromise, or settle the same, as it may elect.

**Section 10:** As a part of the consideration for the use of public ways and the rights and privileges herein granted, the Grantee will pay to the Town of Annetta in lieu of all other charges by the Town, except ad valorem taxes, on or before the thirtieth (30th) day following the end of the previous calendar quarter, throughout the full term of this franchise, two percent (2%) of gross receipts from the sale of all potable water service by Grantee within the limits of the Town of Annetta, and three percent (3%) of gross receipts from the sale of all sewer service by Grantee within the limits of the Town of Annetta; provided that nothing contained in this section shall be construed to abridge or in any way affect the power of the Town of Annetta to impose all ad valorem taxes upon any and all property of the Grantee which may be lawful subject of taxation.

Receipts from the sale of water or sewer service to persons, firms, corporations or institutions located outside of the corporate limits of the Town of Annetta shall not be included among the gross receipts upon which the payments provided for herein are to be based; provided, however, that when any such consumers are taken into the Town limits, the receipts from all water and sewer sold to such consumers shall be so included from the date of Grantee's nearest billing cycle after the date such consumers are taken into the Town limits.

**Section 11:** As a part of the consideration for the use of public ways and the rights and privileges herein granted, the Grantee will pay to the Town of Annetta in lieu of all other charges by the Town, except as provided under Section 10 of this ordinance, and except ad valorem taxes, on or before the thirtieth (30th) day following the end of the previous calendar quarter, throughout the full term of this franchise, fifteen cents (\$0.15) per linear foot of all lines installed by Grantee within the limits of the Town and utilized for the delivery of treated effluent, non-potable water, or otherwise untreated water for irrigation purposes; provided that nothing contained in this section shall be construed to abridge or in any way affect the power of the Town of Annetta to impose all ad valorem taxes upon any and all property of the Grantee which may be lawful subject of taxation.

**Section 12:** Grantee is required to keep and maintain in the Town of Annetta during the life of this franchise a complete inventory of its water and sewer system situation in the Town of Annetta, showing the location and capacities of all utility system plant, including water, sewer and effluent mains, which said inventory shall at all times be open to inspection by the Town Council and the proper officials of the Town of Annetta. The Grantee shall also be required during said time to keep and maintain in the Town of Annetta books and records of the business carried on by it in the Town and showing its entire receipts in connection with such business within the Town limits, which books and records shall be kept by competent accounts in the manner prescribed or approved by the Town Council, and shall be open at all times

to inspection and verification by the Town Council or any authorized official of the Town of Annetta; and the Town Council shall have the right to make either partial or complete audits of said books and records; provided, that in the event of a controversy between Grantee and the Town concerning any change in rates, and the audits and reports submitted by Grantee are not satisfactory to the Town, the Town Council may have an audit made of the business and property of Grantee.

Grantee shall make a full and complete report to the Town of such utility plant locations and capacities and business at least once a year, and at more frequent intervals whenever the Town may require it, and all such reports shall be duly verified by an official of the Grantee. Said reports shall show the gross receipts during the year from the sale of water and sewer service within the Town of Annetta, and locations and lengths of effluent lines located within the Town.

**Section 13:** The terms, conditions, provisions, requirements, agreements and limitations contained in this ordinance, and each of them, shall be equally binding upon the successors and assigns of Grantee, and upon any person or company which may acquire the properties and water distribution and/or sewer system of Grantee in the Town of Annetta by purchase at judicial sale, or otherwise, and which may maintain and operate said water distribution and/or sewer system or any part of same in the Town of Annetta.

**Section 14:** All notices or demands which may be or shall be given or made to Grantee by the Town, as provided for in this ordinance, or incident to its terms, or in the exercise of the police power of the Town, may be given or served upon the person who is the Manager of or Agent for Grantee in the Town of Annetta; and such service shall be deemed and held for all purposes as full and sufficient notice of demand to and upon Grantee.

**Section 15:** The venue of all actions at and in equity, concerning any matter or controversy growing out of or incident to any exercise or abuse of the privileges and powers granted hereunder, or any default of the duties or obligations imposed hereunder or any controversy concerning rates, shall be laid in the State Courts of competent jurisdiction of Parker County, Texas; and Grantee, by the exercise of the privileges and the enjoyment of the benefits of this franchise, expressly agrees in all such matters to submit to the jurisdiction of the courts of the State of Texas, and hereby expressly waives whatever rights it may have to be sued or proceeded against in any other tribunal; provided, however, that if the laws of the State of Texas require such matters to be first submitted to a regulatory body of the Town or of the State of Texas, same shall be done before recourse may be had to the State Courts.

**Section 16:** If Grantee, its successors and assigns, shall faithfully comply with all the terms, and faithfully perform all the duties and obligations, and faithfully observe and recognize all the limitations and regulations contained in this ordinance and in the valid ordinances of the Town relating to the conduct of Grantee's business adopted

hereunder or under the police powers of the Town, then the rights, franchises and privileges herein granted shall extend from the date of the acceptance of this ordinance by Grantee through the 30th day of May, A.D., 2012; otherwise, the Town of Annetta, after any such failure or default has occurred, may declare all rights granted hereunder to be abated and forfeited.

At midnight on said 30th day of May, A.D., 2012, all rights, franchises and privileges herein granted, unless they have already at that time ceased or been forfeited, shall at once cease and terminate.


**Section 17:** This ordinance is passed pursuant to the authority of the Town and pursuant to the Town's authority to procure a water supply, to regulate health and sanitary sewer service, and to control its streets. This ordinance is not an exclusive grant of authority to provide water or sewer service or to use public streets.

**Section 18:** The Town Secretary is hereby authorized and directed to make appropriate endorsements over her official hand and the seal of the Town of Annetta, on a form provided at the conclusion of this ordinance, of the date of final passage of this ordinance.

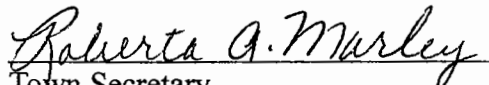
**AND IT IS SO ORDAINED.**

Passed on the 18 day of April, 2002, by a vote of 5 to 0.

**TOWN OF ANNETTA**

By:   
Olan Usher, Mayor

ATTEST:

  
Town Secretary

**WRITTEN ACCEPTANCE BY DEER CREEK WATERWORKS, INC.,  
OF THE ABOVE AND FOREGOING FRANCHISE**

To the Town Council of the Town of Annetta, Parker County, Texas:

Deer Creek Waterworks, Inc., hereby accepts and agrees to abide by the terms and provisions of that certain franchise granted to Deer Creek Waterworks, Inc., by the Town of Annetta, acting by and through its Town Council, by that certain ordinance entitled:

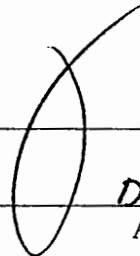
**“AN ORDINANCE GRANTING TO DEER CREEK WATERWORKS, INC.,  
A FRANCHISE TO CONSTRUCT, MAINTAIN AND OPERATE A WATER  
SYSTEM AND A SANITARY SEWER SYSTEM IN THE TOWN OF  
ANNETTA, TEXAS, AND PRESCRIBING THE TERMS, CONDITIONS,  
OBLIGATIONS AND LIMITATIONS UPON AND UNDER WHICH SUCH  
FRANCHISE SHALL BE EXERCISED.”**

which ordinance was duly and finally passed by the Town Council of the Town of Annetta on the 18 day of APRIL, 2002, and is recorded at length in the Ordinance Records of the Town of Annetta, Texas.

IN TESTIMONY WHEREOF, Deer Creek Waterworks, Inc., has caused these presents to be executed this 24<sup>th</sup> day of April, 2002.

**DEER CREEK WATERWORKS, INC.**

By:

  
\_\_\_\_\_  
Doyle Hawley  
Authorized Representative

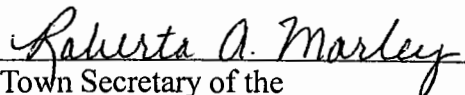
**CERTIFICATE AND ENDORSEMENT UNDER AUTHORITY OF  
SECTION 18 OF THE ABOVE AND FOREGOING ORDINANCE**

This is to certify that the above and foregoing ordinance entitled:

**“AN ORDINANCE GRANTING TO DEER CREEK WATERWORKS, INC.,  
A FRANCHISE TO CONSTRUCT, MAINTAIN AND OPERATE A WATER  
SYSTEM AND A SANITARY SEWER SYSTEM IN THE TOWN OF  
ANNETTA, TEXAS, AND PRESCRIBING THE TERMS, CONDITIONS,  
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FRANCHISE SHALL BE EXERCISED.”**

was introduced, read and passed by the Town Council of the Town of Annetta at a regular meeting of the Town Council held pursuant to 72-hour posted notice on the 18 day of April, 2002.

IN TESTIMONY WHEREOF, witness my hand and seal of the Town of Annetta on this 23 day of April, 2002.

  
Town Secretary of the  
Town of Annetta, Texas