

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

ORDINANCE NO. \* 36

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

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ANNETTA, TEXAS:

Sec. 1. There is hereby granted to Deer Creek Waterworks, Inc., a corporation, hereinafter called Grantee, its successors and assigns, the right, privilege and franchise to construct, maintain and operate a water system in the City of Annetta, hereinafter called the City, and for that purpose to have, acquire, construct, maintain and operate in, upon and under the present and future streets, alleys, highways, parkways and other public places of the City, a system of water mains and service lines with all necessary or desirable appurtenances, in order to supply water to the City, 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.

Sec. 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 City of Annetta, relating to the use of its streets, alleys, highways, parkways and public places, and in the interest of the public safety. The location and placing of water pipes and other equipment by the Grantee shall at all times be under the control and subject to the approval of the City Council; and where it is necessary, practical or economical to place such water 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 City 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 City Council.

If the City, in constructing its sewers, underground facilities, streets, highways or other public works, should require any water pipes of the Grantee to be

1  
2  
3 shifted or relocated, such water pipes shall be shifted  
or relocated by the Grantee, at its expense, as and when  
4 required by the City.

5 Sec. 3. The Grantee shall, at its own cost and without expense  
to any of its consumers or prospective consumers,  
6 wherever water mains are located adjacent to the  
premises of such consumer or prospective consumer,  
7 construct and maintain service of proper size and  
capacity from its existing main to the property line of  
8 each such consumer or prospective consumer, upon demand  
of such consumer or prospective consumer; but the  
9 Grantee shall be entitled to charge and collect from  
such consumer or prospective consumer, if such consumer  
or prospective consumer may desire Grantee to do such  
10 work, only the actual cost of installing service  
connection from such property line to its meter, such  
11 actual cost being understood to mean the actual cost of  
labor and material plus ten per cent (10%) and no other  
12 installation charge shall be made by the Grantee. It is  
provided, however, that should Grantee desire at any  
13 time thereafter to change the point of service to any  
consumer, such change in the service from the property  
line to the house necessitated by such change of service  
connection shall be borne by Grantee.

14 Sec. 4. Whenever the City shall conclude to pave any street,  
highway or alley in which the facilities of Grantee  
15 already exist, or in which Grantee may propose to place  
facilities, the Grantee may be required, in advance of  
16 such paving, to renew such existing facilities, if  
defective or inadequate, or to place adequate  
17 transmission facilities, and to place service  
facilities, or renew same, if inadequate or defective,  
18 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  
19 consumers as maybe obtained by a careful canvass of the  
locality. The Grantee shall be given reasonable notice  
20 of the intention of the City to pave any such street,  
highway or alley, and if the Grantee shall fail to  
21 comply with the requirements of the City, after such  
notice, in the particulars above stated, and such  
street, highway or alley is thereupon paved, the Grantee  
22 shall not be allowed thereafter to cut such pavement or  
excavate in such paved street, highway or alley for any  
23 purpose, except by formal permission of the City Council  
and under such terms and conditions as the City Council  
24 may prescribe.

25 Sec. 5. If any person or persons may desire extension of the  
existing water transmission facilities of Grantee, then

1  
2  
3 the Grantee shall make such extension upon demand  
4 therefor in writing by such person or persons, and upon  
5 the payment or tender of payment by him or them to the  
6 Grantee for the actual cost of such extension so made.  
7 Whenever the Grantee shall allow or have connections  
8 made with such extensions paid for by such person or  
9 persons and shall begin the sale of water through such  
10 extensions to other customers located along such  
11 extensions, the person or persons who have made the  
12 payment aforementioned shall be refunded by Grantee the  
13 proportional cost of serving each new customer served by  
14 such transmission facility as each new customer is  
15 allowed to make connection with and take water from such  
16 extension (based on frontage served) until the entire  
17 amount so paid out by such person and persons shall be  
18 refunded; provided, no customer or person shall be  
19 entitled to any refund after five (5) years from the  
20 making of any such payment; and provided, further, that  
21 any extensions of transmission facilities that may be  
22 paid for by the customers of Grantee, as hereinabove  
23 provided, shall not be added to the capital account of  
24 Grantee until such refunds are made, or until said  
25 period of five (5) years has expired.

13 Sec. 6. The Grantee shall within one year after the granting of  
14 this franchise file with the City Secretary of the City  
15 of Annetta a map or maps, in convenient book or atlas  
16 form, or shall correct and bring up to date any map or  
17 maps now so on file, showing in reasonable detail its  
18 entire water system in the City of Annetta, as same then  
19 exists, which shall include the locations, depths or  
20 heights and dimensions of all transmission facilities,  
21 connection with premises and other apparatus employed by  
22 Grantee, and which map shall be corrected and brought to  
23 date by Grantee annually, as it may alter, change or  
24 extend its said system.

19 Sec. 7. Grantee shall install between the traveled portion of  
20 the street and the property line of each customer a  
21 meter of standard type for the purpose of measuring  
22 accurately the water consumed by such customer and  
23 Grantee may charge a fee for the setting, resetting or  
24 relocating of a meter.

22 Before water service is commenced, Grantee shall be  
23 entitled to require from each customer using water a  
24 deposit in such amount as may be submitted to and  
25 approved by the City Council along with other rates,  
26 charges and rules which may be submitted by franchise.

24 The installation, operation and maintenance of meters  
25 for the registration of water and any other devices used

1 by Grantee in the operation of its water distribution  
2 system, and the inspection and regulation thereof, in  
3 order to ascertain and secure accuracy and efficiency  
4 thereof, except as herein fixed and provided, shall at  
5 all times be governed by the ordinances of the City of  
6 Annetta with reference thereto now existing and that may  
7 be adopted hereafter.

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
Sec. 8. The water supplied by Grantee under the terms of this franchise shall have continuously between 30 and 80 pounds per square inch of water pressure as furnished to the point of consumption.

Grantee shall supply water to its customers for domestic purposes which meets Texas Department of Health standards for municipal water supply systems and carries the "Approved" designation.

In case the water pressure or quality to any customer or customers should fall below the minimum prescribed herein for an aggregate period of thirty (30) hours in any month, the bills of such customer or customers of Grantee for such month shall be discounted ten per cent (10%) from the net price as otherwise prescribed, and an additional discount of ten per cent (10%) shall be allowed for every additional ten (10) hours or portion of that time during which such water shall fall below said minimum during any such month.

"THE EFFICIENCY AND SUFFICIENCY OF THE WATER TO BE FURNISHED TO THE CITY 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 CITY."

"THE QUALITY OF THE WATER TO BE FURNISHED TO THE CITY OF ANNETTA AND ITS INHABITANTS UNDER THE TERMS OF THIS FRANCHISE SHALL BE DETERMINED BY THE MINIMUM STANDARDS OF THE TEXAS DEPARTMENT OF PUBLIC HEALTH WITH TESTS AT SUCH INTERVALS AS MAY BE DIRECTED BY THE CITY."

Sec. 9. Grantee shall at all times during the terms of this franchise furnish water service to the City 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.

It is understood and agreed that Grantee shall maintain its facilities in such conditions as to provide, as far as possible, fire suppression and fighting water

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

service.

Sec. 10. The City of Annetta reserves the right, at any time the Grantee shall request an increase in water rates for consumers in Annetta, to reopen and renegotiate with Grantee the amount of gross receipts to be paid by Grantee from the sale of all water as provided under Section 14 of this ordinance.

Sec. 11. It is expressly stipulated and made the obligation of Grantee that if the demand from industrial and special rate consumers shall threaten or impair the general supply of water to be furnished the City of Annetta and its inhabitants under the terms of this franchise, the Grantee shall shut off the supply of water in whole or in part from all of its customers, save and except its domestic customers, in order that such domestic customers may first receive all the water necessary and adequate for their needs.

Sec. 12. Until such time as the City of Annetta shall further exercise its power to fix rates and charges hereunder, the maximum rates and charges for water and other services of Grantee shall be those which are fixed and set forth in Attachment "A" hereto. As a condition precedent to its right to use the streets, alleys, highways, parkways and public places of the City of Annetta under this franchise, Grantee agrees that in no event will it charge more for water and its other services than the rates and charges fixed and set forth in such Attachment "A," or than the rates and charges fixed and set forth in whatever ordinance or ordinances of the City of Annetta shall, pursuant to the powers held and reserved in it, hereinafter enact to supersede or amend and aforementioned Attachment, and such agreement shall be a continuing one throughout the life of this franchise, and is the principal consideration upon which the granting of this franchise is based, said agreement being contractual, and a willful failure by the Grantee to comply therewith shall, at the option of the City, immediately terminate all rights of the Grantee under this franchise and constitute a forfeiture thereof.

Sec. 13. The Grantee shall protect and hold the City 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 City of Annetta harmless

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

from and on account of all 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 City of Annetta relating to or covering any matter wherein Grantee has agreed, as stipulated above, to indemnify and save harmless the City, the City 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.

Sec. 14. 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 City of Annetta in lieu of all other charges by the City, except ad valorem taxes, on or before the thirtieth day following the end of the previous calendar quarter, throughout the full term of this franchise, Three Per Cent (3%) of gross receipts from the sale of all water by Grantee within the limits of the City of Annetta, under this franchise during the previous calendar quarter; provided, that the payment of said percentage of gross receipts shall be charged by Grantee as items of operating expense for rate making purposes, and shall never be considered as a cost of the franchise herein granted in any determination of rates in the future; and provided further, that nothing contained in this section shall be construed to abridge or in anywise affect the power of the City 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 to persons, firms, corporations or institutions located outside of the corporate limits of the City 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 City limits, the receipts from all water sold to such consumers shall be so included from the date when they are so brought within the limits of the City.

Sec. 15. Grantee is required to keep and maintain in the City of Annetta during the life of this franchise a complete inventory of its distribution plant and system situated in the City of Annetta, showing the value thereof and its investments therein, which said inventory shall at all times be open to inspection by the City Council and the proper officials of the City of Annetta. The

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Grantee shall also be required during said time to keep and maintain in the City of Annetta complete books and records of the business carried on by it in the City and showing its entire receipts, expenses and disbursements in connection with such business, which books and records shall be kept by competent accounts in the manner prescribed or approved by the City Council, and shall be open at all times to inspection and verification by the City Council or any authorized official of the City of Annetta; and the City 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 City concerning any change in rates, and the audits and reports submitted by Grantee are not satisfactory to the City, the City Council may have an audit made of the business and property of Grantee.

Grantee shall make a full and complete report to the City of such investments and business at least once a year, and at more frequent intervals whenever the City may require it, and all such reports shall be duly verified by an official of the Grantee. Said annual report shall show the gross receipts during the year from the sale of water within the City of Annetta.

Sec. 16. 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 system of Grantee in the City of Annetta by purchase at judicial sale, or otherwise, and which may maintain and operate said water distribution system or any part of same in the City of Annetta.

Sec. 17. All notices or demands which may be or shall be given or made to Grantee by the City, as provided for in this ordinance, or incident to its terms, or in the exercise of the police power of the City, may be given or served upon the person who is the Manager of or Agent for Grantee in the City of Annetta; and such service shall be deemed and held for all purposes as full and sufficient notice of demand to and upon Grantee.

Sec. 18. The venue of all actions at law 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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

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 State of Texas, same shall be done before recourse may be had to the State courts.

Sec. 19. If the 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 City relating to the conduct of Grantee's business adopted hereunder or under the police powers of the City, 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., 2009; otherwise, the City 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., 2009, all rights, franchises and privileges herein granted, unless they have already at that time ceased or been forfeited, shall at once cease and terminate.

Sec. 20. This ordinance is passed pursuant to the authority of Article 1434, Texas Revised Civil Statutes, and Section 402.015, Texas Local Government Code, and pursuant to the City's authority both to procure a water supply and control its streets. This ordinance is not an exclusive grant.

Sec. 21. The City Secretary is hereby authorized and directed to make appropriate endorsements over her official hand and the seal of the City of Annetta, on a form provided at the conclusion of this ordinance, of the date of final passage of this ordinance.

PASSED AND ADOPTED on this 11<sup>th</sup> day of July, 1989, by a vote of 4 to 0.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

CITY OF ANNETTA

by: *Alan Fisher*  
Mayor

ATTEST:

*Marilyn A. Neal*  
City Secretary

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

CERTIFICATE AND ENDORSEMENT UNDER AUTHORITY  
OF SECTION 21 OF FOREGOING ORDINANCE

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

"GRANTING DEER CREEK WATERWORKS, INC. A FRANCHISE TO  
CONSTRUCT, MAINTAIN AND OPERATE A WATER SYSTEM IN THE  
CITY OF ANNETTA, AND PRESCRIBING THE TERMS, CONDITIONS,  
OBLIGATIONS AND LIMITATIONS UPON AND UNDER WHICH SUCH  
FRANCHISE SHALL BE EXERCISED,"

was introduced, read and passed by the City Council of the City  
of Annetta at a regular meeting of the City Council held pursuant  
to 72 hour posted notice on the 11<sup>th</sup> day of July,  
1989.

In Testimony Whereof, witness my hand and the seal of the  
City of Annetta on this 11<sup>th</sup> day of July, 1989.

Madeline R. McNeal  
City Secretary of the  
City of Annetta, Texas

[seal]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

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

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

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

"GRANTING DEER CREEK WATERWORKS, INC. A FRANCHISE TO  
CONSTRUCT, MAINTAIN AND OPERATE A WATER SYSTEM IN THE  
CITY OF ANNETTA, 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 City Council  
of the City of Annetta on the 11<sup>th</sup> day of April,  
1989, and is recorded at length in the Ordinance Records of the  
City of Annetta.

In Testimony Whereof, Deer Creek Waterworks, Inc. has caused  
these presents to be executed this the 2<sup>nd</sup> day of  
August, 1989.

DEER CREEK WATERWORKS, INC. ,

by: [Signature]  
Name:  
President