

ORDINANCE NO. 99A-144

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF CAMP VERDE GRANTING TO LAKE VERDE WATER COMPANY, INC., AN ARIZONA PUBLIC SERVICE CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE AND FRANCHISE TO CONSTRUCT, MAINTAIN AND OPERATE UPON, OVER, ALONG, ACROSS AND UNDER THE PUBLIC RIGHTS-OF-WAY OF THE TOWN OF CAMP VERDE, ARIZONA.

WHEREAS, by Resolution No.99-413, the Town Council of the Town of Camp Verde deemed the Lake Verde Water Company Franchise in the best interest of the Town and referred said Franchise to the electorate of the Town for approval and return, and

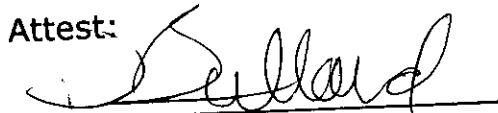
WHEREAS, pursuant to ARS 9-502.C/39-203, the Franchise was published in full twice a week for four (4) consecutive weeks, prior to an election, and

WHEREAS, at a general election duly called and held May 18, 1999, the proposed Franchise was approved by the electorate of the Town of Camp Verde, as canvassed by the Council at the June 2, 1999, regular meeting,

NOW, THEREFORE, be it ordained by the Town Council of the Town of Camp Verde that there is hereby granted to Lake Verde Water Company a Franchise in the form attached as Exhibit A to this Ordinance, subject to all the terms, conditions and stipulations therein set forth, to become effective when accepted in writing by the franchisee.

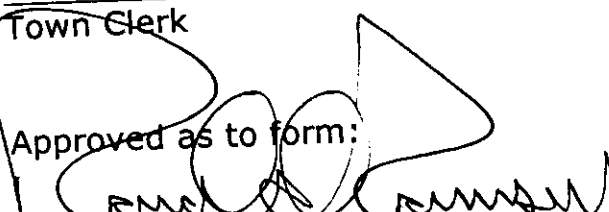
Passed and adopted this 2nd day of JUNE, 1999.

Attest:

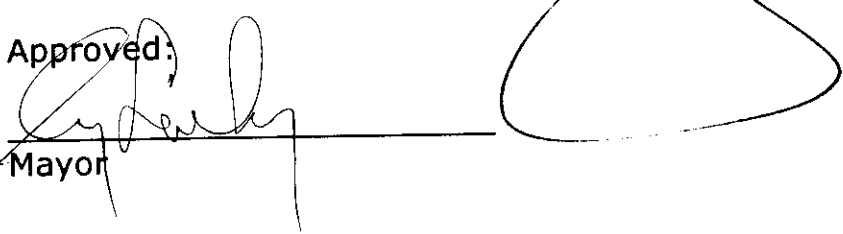


Town Clerk

Approved as to form:


Town Attorney

Approved:


Mayor

STATE OF ARIZONA)
) ss:
Town of Camp Verde)

I, DANE BULLARD, Town Clerk of the Town of Camp Verde, Arizona, do hereby certify that the whole number of members of the Town Council of said Town is FIVE;

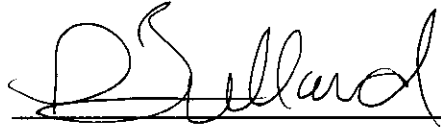
That the foregoing ordinance being Ordinance No. 99-A144, was duly passed and adopted by said Town Council, approved and signed by the Mayor of said Town, and attested by the Town Clerk of said Town, all at a regular meeting of said Town Council on the 2nd day of JUNE, 1999, and that the same was so passed and adopted by the following vote:

AYES: Five (5)

NAYS: 0

ABSENT: NA

Witnessed my hand and official seal of said Town this 3rd day of JUNE, 1999.



Town Clerk of the Town of Camp Verde

PUBLISH:

6/11/99
6/16/99

FRANCHISE AGREEMENT

LAKE VERDE WATER COMPANY, INC.

TOWN OF CAMP VERDE, ARIZONA

Section 1 — Grant of Franchise:

There is hereby granted to Lake Verde Water Company, Inc., a public service corporation organized and existing under and by virtue of the laws of the State of Arizona being the holder of Yavapai County Franchise, prior to town incorporation, dated June 13, 1983 recorded at Book 1553, Page 965, in the Yavapai County Recorder's Office, and as renewed on August 17, 1998 and recorded at Book 3594, Page 708 in the Yavapai County Records Office, (herein called "Grantee"), its successors and assigns, the right, privilege, and franchise to construct, maintain and operate upon, over, along, across, and under the present and future public rights-of-way, (including, but not limited to streets, alleys, ways, highways, bridges and public easements), in the Town of Camp Verde, Arizona (herein called "Town") water lines, and mains, together with all necessary or desirable appurtenances, (including, but not limited to valves, fittings, valve boxes, fire hydrants, meters, meter boxes, and meter vaults) for its own use (herein called "Franchise"), for the purpose of providing water utility service to certain locations and residents within the Town as authorized by the Arizona Corporation Commission and otherwise under Arizona law.

Any water service furnished by the Grantee within the Town shall be the subject of a separate agreement or consistent with Grantee's approved Tariff of rates and charges as approved by the Arizona Corporation Commission and shall not be governed by the provisions of this Franchise.

The Franchise hereby granted may not be transferred in whole or in part by the Grantee, its successors and assigns, without the prior consent of the Council of the Town, which consent shall not be unreasonably withheld. No consent shall be required in connection with an assignment made as security pursuant to a mortgage or deed of trust in connection with subsequent transfers made pursuant to any such instrument.

Section 2 — Grantee's Compliance with Town Practice; Plans Submitted for Approval; Town Construction Near Grantee's Facilities:

All construction under this Franchise shall be performed in accordance with all applicable federal, state and municipal laws, rules, ordinances and regulations and established practices of the Town with respect to such public rights-of-way and road standard ordinances. Before Grantee makes any installations in the public rights-of-way, Grantee shall submit for approval a map showing the location of such proposed installations to the Town's Director of Public Works or Council.

If the Town undertakes either directly or through a contractor any construction project adjacent to or near the Grantee's facilities operated pursuant to this Franchise, the Town shall include in all such construction specifications, bids, and contracts, a requirement that, as part of the cost of the project, the contractor or his designee shall compensate the Grantee for temporary removal, barricading or draining of Grantee's lines, mains or equipment, the location of which

may create an unsafe condition in view of the equipment to be utilized or the methods of construction to be followed by the contractor. This requirement will not apply to construction by third parties that may affect the Grantee's facilities where Town is not undertaking the construction.

Section 3 — Construction and Relocation of Grantee's Facilities; Payment:

The lines or related facilities installed or constructed pursuant to this Franchise shall be so located or relocated and so erected as to minimize the interference with traffic, or other authorized uses over, under or through the public rights-of-way. Those phases of construction of Grantee's facilities relating to traffic control, backfilling, compaction and paving, as well as the location or relocation of lines and related facilities herein provided for shall be subject to regulation by the Council of the Town. The Grantee shall keep accurate records of the location of all facilities in the public rights-of-way and furnish them to the Town upon request. Upon completion of new or relocation construction of underground facilities in the public rights-of-way, the Grantee shall provide the Town's Director of Public Works or Council with corrected drawings showing the actual location of the underground facilities in those cases where the actual location differs significantly from the proposed location approved in the permit plans.

A. Grantee shall bear the entire cost of relocating its facilities located within public rights-of-way, the relocation of which is necessary for Town's carrying out its governmental functions, except to the extent that they already exist in service as of the date of Council approval of this agreement. Governmental functions are those duties imposed by the State on municipalities, where the duties involve a general public benefit, not in the nature of a corporate

or business undertaking for the corporate benefit and interest of Town. Governmental functions include, but are not limited to, the following:

- (1) Any and all improvement or expansion to Town streets, alleys and avenues;
- (2) Establishing and maintaining sanitary sewers, storm drains and related facilities;
- (3) Establishing and maintaining municipal parks, parkings, parkways, pedestrian malls, or grass, shrubs, trees and other vegetation for the purposes of landscaping any street or public property;
- (4) Providing fire protection;
- (5) Collection and disposal of garbage;

B. Town shall bear the entire cost of relocating Grantee's facilities located within any private rights-of-way, already obtained by the utility, a relocation of which is necessary for Town's carrying out its governmental or proprietary functions. All functions of Town, which are not governmental, are proprietary.

C. Where the Town's facilities or other facilities occupying a right-of-way under authority of a Town permit or license are already located in the right-of-way and a conflict between the Grantee's potential facilities and the existing facilities can only be resolved expeditiously as determined by the Town's Director of Public Works by relocating the existing Town or Grantee facilities, the Grantee shall bear the entire cost of relocating the existing facilities, irrespective of the function they served.

D. If the Town participates in the cost of relocating the Grantee's facilities for any reason, the cost of relocation to the Town shall not include any upgrade or improvement of Grantee's facilities as they existed prior to relocation.

E. The Town will not exercise its right to require Grantee's facilities to be relocated in an unreasonable or arbitrary manner. The Town will consult with the Grantee in the planting of trees or the construction of structures in the public rights-of-way where there are existing underground water lines. The Grantee and the Town may agree to cooperate on the location and the relocation of other facilities in the public right-of-way.

F. In the event of a proposal to purchase the assets of the Water Company, the Town shall be liable for reimbursement of any expense incurred within the previous twelve (12) months for relocations demanded or directed by the Town, as well as for the interim period prior to the actual conveyance of the assets.

Section 4 — Indemnification:

The Town shall indemnify and hold the Grantee harmless from any and all claims, costs, losses, or expenses incurred by the Grantee as a result of the failure of the Town to comply with the requirements of Section 2. Except as provided in the preceding sentence, the Grantee shall indemnify and save the Town harmless from any expenses and losses incurred as a result of injury or damage to third persons occasioned by the exercise of this Franchise by the Grantee.

Section 5 — Restoration of Rights-of-Way:

Whenever the Grantee shall cause any opening or alteration whatever to be made for any purpose in any public right-of-way, the work shall be completed with due diligence within a

reasonably prompt time, and the Grantee shall, upon completion of such work, restore the property to meet applicable road standard ordinances. Subject to approval of Town, Grantee shall restore public roads and public right-of-way at its own expense and supply copies of all plans, insurance policies, and supplies necessary, including but not limited to, necessary street barricades and signage during construction.

Section 6 — Fees:

Grantee agrees to pay Town in consideration of the grant of this Franchise a sum equal to two percent (2%) of the gross receipts of Grantee from sale by it of water in the area covered by this Franchise at retail for residential and commercial purposes, as determined by Grantee's revenue of the previous month, or as adjusted at various times during the franchise period, within the present and any future corporate limits of Town that are within the Grantee's Certificate of Convenience and Necessity, as shown by Grantee's billing records (the "Franchise Fee"). This Franchise Fee shall be due and payable quarterly and shall be in lieu of all fees or charges for permits or licenses issued for the construction of Grantee's facilities hereunder and for inspections thereof. For the purpose of verifying the amounts payable hereunder, the books and records of Grantee shall be subject to inspection by duly authorized officers or representatives of Town at reasonable times.

Grantee may deduct from the Franchise Fee any tax or license paid by it or levied by Town exclusively upon utilities, up to the amount payable under the terms of this Section, unless Town's tax ordinances authorize the utility tax to be offset by the amount of any Franchise Fees

paid pursuant to a Franchise Agreement, in which event the entire 2% Franchise Fee shall be paid and the utility tax offset thereby.

The amount payable under the Franchise Fee shall not be reduced by reason of the payment of any general ad valorem taxes, assessments for special improvements, general sales or transaction privilege license taxes, or any similar general levy measured by Grantee's receipts of sales within Town, provided the amount of such sales tax or similar levy may be lawfully and specifically added to Grantee's customers' bills.

Notwithstanding any provision contained herein to the contrary, the total amount of taxes, levies, assessments, and Franchise Fees paid by Grantee shall not exceed 5% of the gross receipts of Grantee from sale by it of water at retail for residential and commercial purposes within the corporate limits of Town.

Section 7 — Business License:

Notwithstanding any provision contained herein to the contrary, the Grantee shall, in addition to the payment provided in Section 6, pay any occupation tax established by the Town, provided the tax is a flat fee per year and that the annual amount of such fee does not exceed the amount of similar fees paid by any other business operated within the Town.

Section 8 — Term:

This Franchise shall continue and exist for a period of twenty-five (25) years from the effective date hereof; provided, however, that either party may terminate this Franchise on its tenth anniversary by giving written notice of its intentions to do so not less than one (1) year before the date of termination. If such notice is given for the purpose of negotiating a new

franchise and such negotiation is successful, the party giving the notice of termination shall be responsible for the costs of the resulting franchise election.

This Franchise shall be void and of no effect if written acceptance thereof by the Grantee is not filed in the office of the Clerk of the Town within sixty (60) days after the Town's verification of the franchise election results.

Section 9 — Non-Exclusive — Franchise:

This franchise is not exclusive, and nothing herein contained shall be construed to prevent the Town from granting other like or similar grants or privileges to any other person, firm or corporation.

Section 10 — Conflicting Ordinances:

All ordinances and parts of ordinances in conflict with the provisions hereof, to the extent applicable to a franchised water service corporation, are hereby superseded.

Section 11 — Independent Provisions:

If any section, paragraph, clause, phrase or provision of this Franchise other than Section 6, shall be adjudged invalid or unconstitutional, the same shall not affect the validity of this Franchise as a whole or any part of the provisions hereof other than the part so adjudged invalid or unconstitutional. If Section 6 shall be adjudged invalid or unconstitutional in whole or in part by a final judgment, this Franchise shall immediately terminate and shall be of no further force or effect.

Section 12 — Condemnation; Right Reserved by Town:

The Town reserves the right and power to purchase and condemn the plant and distribution facilities of the Grantee within the corporate limits or any additions thereto, as provided by law.

Section 13 — Town Use of Facility:

In consideration of this Franchise and the rights granted hereby, the Town shall have the right to place, maintain, and operate on the lines of the Grantee, its successors and assigns, erected and maintained upon and along the public rights-of-way any and all pipes, brackets and appurtenances (other than steps or climbing devices) which the Town may install and/or own during the term and period of this Franchise, for its municipal fire alarm and police telephone or other municipal communication services utilized for a governmental function, free of any charges for the use of the Grantee's lines; provided, however, all such systems, the installation and maintenance thereof, shall comply with the applicable requirements of the Occupational Safety and Health Act and the National Water Safety Code, as amended, and only after written notice to the Grantee; provided, however, that the Grantee shall assume no liability nor be put to any additional expense in connection therewith, and provided, further, that the Town's use thereof shall be in such manner as or to interfere with the Grantee's use of its facilities.

Section 14 — Expiration:

The Town and Grantee hereby expressly agree that the following provision shall survive the termination or expiration of this Franchise:

Upon the termination or expiration of the Franchise, if the Grantee shall not have acquired and accepted an extension or renewal hereof, it may remove its facilities and system within the Town or at its option may continue operating its facilities and system within the Town, but it shall be required to obtain proper permits each time it makes additional extensions upon, over, along, across and under the public rights-of-way within the Town unless or until such time as a new franchise is obtained or the system and facilities are removed or acquired by the Town through the exercise of its power of eminent domain.

Section 15 — Election:

Grantee shall pay all costs associated with any election required under A.R.S. 39-501 et. seq. by way of reimbursement to the Town.

PASSED AND ADOPTED this 3rd day of MARCH, ~~1998~~ 1999.

TOWN OF CAMP VERDE, ARIZONA

By: Canter Rogers

Mayor

ATTEST:

Dillard

Town Clerk

APPROVED AS TO FORM:

Ronald Jensen

Town Attorney

The foregoing Franchise and Franchise Agreement are hereby agreed to and accepted.

LAKE VERDE WATER COMPANY, INC.

By: Cash E. Hane

Its: President

Dated: 3-12-99

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