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Motion was made by George Parker, seconded by Donald Protorius, that the following Ordinance be passed:

*I'll use number*  
NO. ~~113~~ ~~114~~

AN ORDINANCE GRANTING A FRANCHISE TO PINEHURST-DECKER PRAIRIE WATER SUPPLY CORPORATION, ITS SUCCESSORS AND ASSIGNS, TO CONSTRUCT, OPERATE AND MAINTAIN A WATER DISTRIBUTION SYSTEM IN THE TOWN OF STAGECOACH, AND SETTING FORTH CONDITIONS ACCOMPANYING THE GRANTING OF THIS FRANCHISE; PROVIDING FOR CERTAIN RIGHTS AND OPTIONS ON THE PART OF THE TOWN OF STAGECOACH AND INDIVIDUAL PROPERTY OWNERS REGARDING THE UPGRADING OF THE WATER DISTRIBUTION SYSTEM; REPEALING PREVIOUS ORDINANCE GRANTING FRANCHISE, AND PROVIDING AN EFFECTIVE DATE, AND SAVINGS CLAUSE.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF STAGECOACH, TEXAS:

SECTION 1. SHORT TITLE AND DEFINITIONS.

This Ordinance shall be known and may be cited as the "Pinehurst-Decker Prairie Water Supply Corporation Franchise Ordinance".

For the purpose of this Ordinance, the following terms, phrases, words and other derivations shall have the meaning give herein.

When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number.

(a) Town is the Town of Stagecoach, Montgomery County, Texas. For the purposes of administering this Ordinance, the Town may designate its Town Secretary, Attorney or other employees.

(b) Council is the Town Council of the Town of Stagecoach.

(c) Water Supply System, Water Distribution System or System, whenever used in this Ordinance, shall mean a system for the installation, receipt, sale, and distribution of fresh potable water, for the purpose of servicing customers of the Company within the Town.

(d) Company is the Pinehurst-Decker Prairie Water Supply Corporation or anyone who succeeds in accordance with the provisions of this franchise.

(e) Person is any person, firm, partnership, association, corporation or organization of any kind.

(f) Customer is any person who is the owner, lessor, lessee, occupant or tenant of any house, residence, business, shop, store, apartment in any apartment building or complexes, each hospital, institution, or rest home, each unit in each duplex, triplex or quadrex, trailer, mobile home or other place of abode, located in the Town limits of Town, which is located upon property in said Town adjoining a Town street, alley way or utility easement, and who has signed or hereafter signs an application with the Company for Company's service.

SECTION 2. GRANT OF NON-EXCLUSIVE AUTHORITY.

(a) There is hereby granted by the Town to the Company, the right and privilege to construct, erect, operate and maintain in, along and under the streets, alleys, public ways and public places now laid out or dedicated, and all extensions thereof, and additions thereto, in the Town, underground pipes, conduits and such other fixtures and equipment as is necessary for the maintenance and operation of a fresh water distribution system for the purpose of servicing Customers located within the Town limits of the Town.

(b) The right to use and occupy said streets, alleys, public ways and places for the purposes herein set forth shall not be exclusive and the Town reserves the right to grant the use of alleys, streets, public ways and places to any person at any time during the period of this agreement. The Town hereby retains all of its power and control for the regulation of its streets, highways, alleys, bridges, public ways and other public places granted or which may hereafter be granted to it under the Constitution, Laws and Statutes of the State of Texas and its own Ordinances and Resolutions.

(c) Town reserves the right to, from time to time, approve the placement and location of all installations made by the Company.

SECTION 3. COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS.

The Company shall, at all times during the life of this franchise, be subject to all lawful exercise of the police power by the Town. Company shall maintain and operate the System according

to all pertinent rules and regulations now or hereafter promulgated by any regulatory agency, commission or government authority having jurisdiction with respect to any matters affecting the System and operation authorized pursuant to this franchise.

SECTION 4. DURATION OF FRANCHISE.

(a) This Franchise Ordinance shall remain in full force and effect for a period of forty (40) years, but shall be subject to renewals by the Town for additional ten (10) year periods.

(b) The Company further agrees it will commence construction of its system no later than three (3) months from the date of the award of this franchise, and the System will be completed within twelve (12) months from the date construction begins. Completion as used hereinabove, means that the System will be operative and affording service to one hundred (100%) per cent of the Customers.

(c) If construction of the water system is not commenced within six (6) months from the date of this franchise, the Town shall have the option to terminate this franchise, subject to Sec. 6 (a).

SECTION 5. LIABILITY AND INDEMNIFICATION.

(a) Company shall indemnify and hold the Town harmless from any liability, cost damage and expense of every character, arising out of or in any manner, resulting from or contributed to by any wrongful or negligent act or omission of Company, its agents, servants, or employees, in the installations, maintenance and operation of its facilities in the Town or in the exercise of any right or privilege hereunder.

(b) The Company shall, if specifically requested by the Town Council, procure and furnish and file with the Town Secretary a policy of insurance approved by the Town covering liability and property damage, with such minimum amounts of liability thereunder as may be reasonably required by the Town Council.

(c) Worker's Compensation Coverage. The Company, if required by the Town Council, shall also procure sufficient Worker's Compensation Insurance coverage to adequately and fully protect its agents and employees as required by the law.

SECTION 6. TOWN RIGHTS IN FRANCHISE.

(a) At the expiration of the term for which this franchise is granted, or any renewal thereof, or other termination, the Town shall have the right to require Company to remove, at its own expense, all portions of the System from all public ways within the Town. Alternatively, the Town shall have the first option to purchase such portions of the System located in public ways within the Town, at the fair market value of said System. In the event that the parties cannot agree to such a fair market value, both the Town and Company, each at its own expense, shall appoint an appraiser who is well qualified, to make an appraisal of the fair market value of the System. If the two such appraisers elected cannot agree as to what is the fair market value of the system, these two appraisers shall select a third qualified appraiser who shall make a written appraisal of the system and whose appraisal will be binding on the parties with respect to the fair market value of the physical plant assets comprising the System. The expense of the third appraiser shall be split equally between the Town and Company.

(b) Any authority granted by the Town to the Company pursuant to this Franchise Ordinance shall continue for so long as used by the Company for the purposes herein granted; however, the failure of the Company to use the same for said purposes once installed and activated, for a period of six (6) consecutive months shall automatically terminate said authority and the same shall revert to the Town, together with all pipes, conduits, equipment and fixtures located in the public ways within the Town, without any payment by the Town to the Company, and the Company shall execute any instruments required by the Town to effect said reverter. Alternatively, the Town shall have the right, at its option, to require the Company to remove its fixtures at the Company's expense, from such public ways within the Town.

(c) In the event of default by the Company under any of the terms of this Ordinance, and termination of its rights to this franchise, it is agreed that all pipes, conduits, equipment and

fixtures located within the public ways or other easements within the Town, shall become the property of the Town at no cost to said Town, and that the Company will execute in proper and recordable form, any instrument needed to evidence ownership of same by virtue of termination of its rights hereunder. Alternatively, the Town shall have the right to require that Company remove its pipes, conduits, equipment and fixtures, at the Company's expense, from said public ways within the Town.

SECTION 7. CONDITION OF STREET OCCUPANCY.

(a) In case of disturbance of any street, sidewalk, alley, public way, paved way, ditch, drainage facility, bridge or culvert, made by the Company in its installation, operation or removal, the Company shall, at its own cost and expense, and in the manner required by the Town, replace and restore same, in as good a condition as before the work involving such disturbance was done. In all cases, Company will bore under streets, paved areas and sidewalks.

(b) If at any time during the period of this franchise, the Town shall lawfully elect to alter or change the grade of any street, sidewalk, alley, ditch, drainage facility, culvert or bridge, or other public way, the Company, upon reasonable notice by the Town, shall remove or relocate its pipes, conduits, equipment or other fixtures at its own expense.

(c) All pipes, conduits, equipment or other fixtures placed in any public way by the Company shall be placed in such a manner as not to interfere with the usual use of such public way or usual traffic on such public way.

(d) All water lines within the town limits of Town shall be a minimum of four inch (4") lines; PROVIDED HOWEVER, that with respect to the following areas within the Town, six inch (6") lines shall be required, to-wit: entering the Town limits on Stagecoach Road and running along Stagecoach Road to a point at the corner of Stagecoach and Surrey Lane; then branching off Stagecoach Road onto Old Coach Road and running along Old Coach Road to the point of intersection of Old Coach Road and Frontier Road.

(e) The Company hereby agrees to place its underground pipes, conduits, equipment and fixtures a minimum of thirty (30) inches below the surface of the ground. All lines, pipes, conduits, equipment, manholes, and other fixtures installed by the Company shall be of sound material and good quality, and shall be so laid as to not interfere with the natural or artificial drainage of the Town, or its underground fixtures, or the natural drainage of any stream or waterway.

(f) The Company shall file, in quadruplicate, with the Town, true and correct maps or plats of all existing and proposed installations.

(g) The Company shall move, at its own expense, its lines, pipes, conduits, manholes, equipment and other appurtenances, when requested to do so by the Town, for the safety or convenience of the Town or its other franchise holders or citizens affected thereby. It is expressly provided that whenever by reason of the construction, repair or maintenance or relocation, lowering of the grade, widening, lowering of any street, highway, alleyway or public way, utility line, ditch, drainage facility, bridge or culvert by the Town of Stagecoach, or by the location or manner of construction, reconstruction, maintenance or repair of any public structure or facility by the Town, it shall be deemed necessary by the Town to relocate, alter or modify any of the Company's facilities, such change, relocation, or modification shall be promptly made by the Company when ordered, in writing, by the Town, without claim for reimbursement or damages against the Town. Upon notification to Company as herein provided, the Company shall remove, relay and relocate its lines, pipes, conduits, manholes and other appurtenances and fixtures, at its own expense. If there is in the opinion of the Town unreasonable delay by the Company in restoring and maintaining streets, highways, utility lines, ditches, drainage ways, bridges or culverts and alleyways, after excavation, repairs and extensions have been made, the Town shall have the right, without further notice, to restore or repair same and require the Company to pay the reasonable cost of so repairing or restoring the same.

(h) The Company shall not place other fixtures where the same will interfere with any gas, electric, or telephone fixture, water hydrant or main, drainage facility or sanitary sewer, and all such fixtures shall be placed in such manner as not to interfere with the usual travel or use of streets, alleys, public ways or other properties.

(i) All installations made by the Company shall be made in good, substantial and safe conditions and shall be maintained in such condition at all times. The surface of any street, alley or other public place disturbed by the Company in constructing, maintaining, operating or repairing its System shall be restored immediately by Company after completion of the work to as good a condition as before the commencement of the work. Further, Company agrees that should any landscaping, flower beds, garden areas or lawns of any resident of Stagecoach be damaged or disturbed by Company in constructing, maintaining, operating or repairing its System, Company shall restore said premises to as good a condition as before the commencement of the work. No street, alley or public place shall be encumbered for a longer period than shall be necessary to execute the work and location of all facilities of Company.

(j) During the initial construction of the System, the Town and any individual property owner(s) in the Town shall have the right and option to require the placement of fire hydrants at various locations within the Town. The Town or individual property owner(s), as applicable, shall be responsible for the cost of any such fire hydrants, together with the expense of installing same, such cost and expense to be no greater than that for which the Company's contractor charges Company for the purchase and installation of similar hydrants with respect to portions of the System located outside the Town. Any request by Town or individual property owner(s) for fire hydrant(s) shall be made to Company at such time(s) as will allow Company to request such installation by Company's contractor without creating undue delays or burdens with respect to the construction and completion of the System, and such request(s) shall be accompanied

by the funds required for the purchase and installation of the fire hydrant(s), as hereinabove provided. The Town and individual property owners shall have the further right and privilege of requiring the installation of fire hydrants at any time subsequent to the completion of the installation of the System by tendering to the Company the then current purchase price of such hydrant(s) together with the actual cost to the Company for installation of such hydrant(s).

(k) During the initial installation of the System, the Town or individual property owner(s) may require the upgrading of any four inch (4") line to a six inch (6") line by tendering to the Company the difference between the Company's contractor's unit price per linear foot for six inch (6") line and four inch (4") line for that portion of the water line that is to be upgraded. Any such request and tender must be made at such time as to allow the Company to notify its contractor a sufficient period of time prior to the contractor's acquisition and installation of the four inch (4") pipe so as to avoid any undue delay, expense or burden with respect to the completion of the System. The Company's good faith determination that a request for upgrading is untimely according to the above standard shall be binding on all parties concerned. After completion of the System, the Town and/or individual property owner(s) may require upgrading of a particular portion of the System from four inch (4") to six inch (6") lines upon the same conditions required above for the installation of fire hydrants after completion of the System (i.e., by paying to the Company all cost and expense incurred by Company for materials, labor and engineering services), subject however, to engineering and customer service interference considerations.

#### SECTION 8. SAFETY REQUIREMENTS.

(a) The Company shall install and maintain its lines, pipes, conduits and other equipment in accordance with standard utility practice and applicable Town, State or Federal Ordinances, Statutes and Regulations.

(b) The Company shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices to prevent failures and accidents which are likely to cause damage, injuries, or nuisances to the public.



SECTION 9. FORFEITURES OR TRANSFER OF FRANCHISE.

(a) If the Company shall violate any of the terms or provisions of this Franchise, and should the Company continue to violate same for a period of thirty (30) days after the Company shall have been notified in writing by the Town to desist from such violation so specified, then the Town may terminate and cancel this franchise; provided, however, that the Town shall not cancel this franchise if the Company is without fault as to the violation, and further provided that this franchise shall not be terminated and cancelled until after the Company first has been provided with the opportunity to be heard before a regular or called special meeting of the Town Council (after 30 days notice of such meeting) and then only by Ordinance or Resolution duly adopted by the Town Council. In addition, if at any time during the term of this franchise the Company shall fail to render a satisfactory service to the Customers in the Town of Stagecoach, considering the type of service this franchise is granted to accomplish, the Town Council may, after following the procedure hereinabove, cancel and terminate this franchise by Ordinance or Resolution duly adopted by the Town Council. Further, the Company shall not sell, lease, assign, or transfer this franchise without the prior written approval of the Town, which approval will not be unreasonably withheld, providing the Grantee, Lessee, Assignee, or Transferee demonstrates to the Town its ability and continuing ability to perform hereunder. This franchise may be assigned by the Company as security for debt, without approval by the Town; however, in the event of a foreclosure, thereunder, such foreclosure shall be considered as a sale under the terms hereof and subject to approval by the Town.

(b) In the event of a termination of the franchise under any of the provisions of this Section 9, the terms and provisions of Section 6 (c) hereof shall then be applicable.

SECTION 10. RATES.

The initial rates and charges to Customers proposed to be charged by the Company are set out on a schedule filed or to be filed with the Town Secretary, and such rates and charges are hereby

approved. The Town reserves and retains authority to approve changes in such rates and charges to the extent permitted by applicable law.

SECTION 11. OPERATION AND REPAIR.

(a) Technical Standards - The Company shall maintain a standard of excellence in the operation of the System. Regular maintenance activities will be carried out to assure a high quality of operation by industry standards.

(b) Safety and Legal Requirements - The Company assumes responsibility that the System will at all times meet or surpass the requirements of all applicable laws, rules and regulations.

(c) Minimum Interference - All installations made by the Company shall be installed, maintained and operated in a manner to cause minimum interference with other users and uses of the easements.

(d) Responsibility for Disturbances - In the event that there is a disturbance of any pavement, sidewalk, driveway, shrubbery, gardens, landscaping, boundary, fence, or other surface feature by the Company, repair and replacement thereof shall be made promptly by the Company at its expense by restoring the damaged surface feature to a condition comparable to the condition existing prior to the commencement of the work by the Company, to include (but not by way of limitation) a comparable physical appearance so as to maintain the continuity of appearance of the area involved.

(e) Repairing the System - The Company shall repair and maintain the System so as to insure its proper and safe operation. All required repairs shall be performed as soon as reasonably practical after the condition necessitating the repair is brought to the attention of the Company. All repairs and maintenance shall be in such a manner and at such times as will minimize the interruption of service to the Customers.

(f) Company agrees to furnish service to any new Customer, within two (2) months following application therefor by said Customer to the Company and payment by the Customer of any required deposit and fees.

SECTION 12. REPEAL OF FRANCHISE ORDINANCE OF APRIL 16, 1985.

The Company having failed to file its written acceptance of the previous Franchise Ordinance passed by the Town Council on April 16, 1985 within the sixty (60) day period therein provided, such Ordinance is hereby declared null and void and expressly repealed by this Ordinance.

SECTION 13. ACCEPTANCE OF FRANCHISE.

Within thirty (30) days from the effective date of this Ordinance, Company shall file its written acceptance of this Ordinance and Franchise with the Town Secretary, or else this Ordinance shall be null and void. Upon such written acceptance by Company, this Ordinance and Franchise shall constitute a contract between the Town and Company and shall be binding upon both.

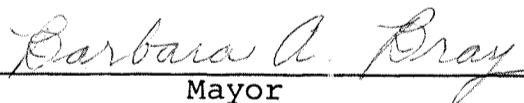
SECTION 14. SEVERABILITY.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid, or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

SECTION 15. EFFECTIVE DATE.

This Ordinance shall take effect and be in full force and effect from and after its passage.


PASSED AND APPROVED this the 19th day of November, A. D. 1985.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
Town Secretary

APPROVED AS TO FORM AND CONTENT:

  
\_\_\_\_\_  
Town Attorney

ACCEPTANCE OF FRANCHISE

The undersigned, Pinehurst-Decker Prairie Water Supply Corporation, pursuant to Section 13 of that certain Franchise Ordinance passed by the Town Council of the Town of Stagecoach on November 19, 1985, hereby accepts said Ordinance and Franchise, and all of the terms and provisions thereof. A copy of such Ordinance, which is hereby acknowledged by the undersigned, is attached hereto as EXHIBIT "A" and made a part hereof.

SIGNED this 23<sup>rd</sup> day of November, 1985.

PINEHURST-DECKER PRAIRIE WATER SUPPLY CORPORATION

By: Dale V. Baysinger  
Dale V. Baysinger, President

ATTEST:

Karlene Weeks  
Secretary

APPROVED:

Geo. B. Darden, Attorney