



Town Council Agenda Report

Date: May 26, 2020 Item No. 12

To: Honorable Mayor and Town Council

Subject: GRANT OF A LIMITED EASEMENT TO LIBERTY UTILITIES FOR WATERLINE OVER THE TOWN OWNED GOLF COURSE PROPERTY.

From: Douglas Robertson, Town Manager

Submitted by: Brad Miller, Town Engineer
Engineering Department

Budgeted Item: Yes No N/A

RECOMMENDED ACTION

That the Town Council authorize the Town Manager to execute a Grant of Limited Easement to Liberty Utilities for a Waterline over the Town owned Golf Course property.

BACKGROUND

Liberty Utilities is in the process of replacing the water mains in the housing tract near the roads of Symeron and Yanan. According to Liberty, the purpose of this main replacement project is to install new pipes to reduce the number of leaks, disruption of service and property damage to their customers in the neighborhood. The existing steel pipes have long exceeded their useful life and will be abandoned in place. A section of the existing pipeline is in an existing public utility easement (PUE) that runs between 4 lots as it crosses Symeron Road. These lots have existing obstructions and expensive landscaping on private property that makes it cost prohibitive to install new mains adjacent to the existing one. Liberty Utilities proposes to reroute this pipeline onto the Town owned Golf Course property which is necessary in order to maintain circulation of the water system. Therefore, Liberty Utilities is requesting a 12.5' wide utility easement for water line purposes on a section of the Town owned Golf Course property.

At the regular Town Council meeting on April 14, 2020, the Town Council considered the request and directed staff to negotiate with Liberty Utilities to see if a license might be acceptable rather than an easement. The Town Engineer and Town Attorney have diligently worked with Liberty staff and attorneys on the request. The Town Attorney's Office has prepared a template license agreement for future use where utilities wish to use the Town's property for utility purposes. On this occasion, through the process of

negotiation, Town staff and Liberty were able to agree to a significantly revised easement document which protects the parties' interests. The revised document provides the Town with additional protections related to Liberty's use of its property.

ANALYSIS

After a field visit of the location, Town staff agrees that the proposed solution is the path of least resistance and is the least intrusive to nearby residents. Therefore, staff recommends that the Town Council authorize the Town Manager to execute the attached Grant of a Limited Easement.

FISCAL IMPACT

There is no fiscal impact associated with this matter.

ATTACHMENTS

- A. Liberty Utilities request letter;
- B. Grant of Easement document;
- C. Exhibit "A" (Legal Description) and Exhibit "B" (Map).

Attachment A

Liberty Utilities request letter



April 1, 2020

Attn: Brad Miller
Town of Apple Valley
Engineering Department
14955 Dale Evans Parkway
Apple Valley, CA 92307

Project: Tract 3333 Shasta to Symeron MR (Ph 3)

Subject: Easement Request
Apple Valley Country Club
APN 3112-101-35

Dear Brad:

Liberty Utilities (Apple Valley Ranchos Water) Corp.'s is replacing the water mains in this housing tract near the roads of Symeron and Yanan. The purpose of this main replacement project is to install new pipes to reduce the number of leaks, disruption of service and property damage to our customers in the neighborhood. The existing steel pipes have long exceeded their useful life and will be abandoned in place. A section of the existing pipeline is in an existing public utility easement (PUE) that runs between 4 lots as it crosses Symeron Road. These lots have existing obstructions and expensive landscaping on private property that makes it cost prohibitive to install new main adjacent to the existing one. We are proposing to reroute this pipeline onto the Apple Valley Country Club property. This is necessary in order to maintain circulation of the water system. Therefore, Liberty Utilities is requesting a 12.5' wide utility easement for water line purposes on a section of the golf course property.

As you may recall when we met in the field to look at the site, our first option was to place the proposed pipeline in the existing 12.5' wide PUE on lot 2744. But this location was no good due to an existing wall that the home owner installed to create a nice looking backyard. The next option was to place the pipeline on the opposite side of this property line, in the golf course property. This would require an easement since our pipeline would be on private property that the Town of Apple Valley would convey to Liberty Utilities. This easement would mirror the same width as on lot 2744 and would be 12.5' wide. This area is a dirt trail and is the "out of bounds" area that would not impede the players on the golf course. This option is the best location to install and maintain the proposed pipeline as it is open and away from existing structures in case of a main break. In addition, this benefits the public interests, the residents of this neighborhood and provides for minimal intrusion onto public and private land.

Therefore, the Town Council's approval of this easement will give permission for the Town of Apple Valley to proceed with signing of the Grant of Easement to Liberty Utilities for the requested waterline easement. Feel free to contact us if you have any questions or need any further information. Thank you.

Sincerely,

Gregory J. Miles, P.E.
Manager, Engineering Projects
Liberty Utilities (Apple Valley Ranchos Water) Corp.

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21760 Ottawa Road, Apple Valley, CA 92308
www.libertyutilities.com

Attachment B

Proposed Grant of Limited Easement

Recording Requested by:

When Recorded Return To:

Liberty Utilities (Apple Valley Ranchos Water) Corp.
P.O. Box 7005
Apple Valley, CA 92307

ABOVE SPACE FOR RECORDER'S USE

GRANT OF EASEMENT

A portion of:

Township 5 North, Range 3 West, Section 7
APN: 3112-101-35

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Town of Apple Valley, a California Municipal Corporation, GRANTOR, hereby grants and conveys to Liberty Utilities (Apple Valley Ranchos Water) Corp., a California corporation, GRANTEE, for the use and benefit of GRANTEE, its successors, assignees or transferees, who may succeed through conveyance or otherwise to all or a portion of the rights and interest herein granted to GRANTEE, a non-exclusive, limited easement, more particularly described in **Exhibit "A"** attached hereto and made a part hereof. This limited easement shall remain in effect for 30 years, afterwhich time it may be terminated by GRANTOR upon 6 months' written notice to GRANTEE stating a reasonable explanation for the termination. Without limitation, reasonable explanation may include GRANTOR requiring the use of the easement area for its own purposes or GRANTOR's transfer of the easement area to a third party.. . The purpose of this easement is to construct, operate, reconstruct, install, replace, remove, repair, alter, maintain, read meters, inspect and use water pipeline(s), and all water-related appurtenances (collectively, the "Facility"), and for vehicular access, ingress and egress in connection with the exercise of any foregoing rights, and all other uses necessary or convenient thereto, in, upon, along, under, over, through and across the following described real property located in the Town of Apple Valley, County of San Bernardino, State of California:

See Exhibit "B" attached hereto and made a part hereof (the "Easement Area").

GRANTOR shall construct, operate, reconstruct, install, replace, remove, repair, alter, maintain, read meters, inspect and use the Facility and Easement Area so that they will not at any time be a source of danger to or interference with the GRANTOR's adjacent property, or any other activities on the GRANTOR's adjacent property. At all times, GRANTOR shall comply with all applicable statutes, ordinances, rules, regulations, orders and decisions issued by any federal, state or local governmental

body or agency established thereby including without limitation, the California Public Utilities Commission, relating to GRANTEE's use of the Easement Area.

GRANTEE accepts the limited easement in its "as is" condition, with all faults. GRANTOR makes no representation or warranty, implied nor express, with regard to the physical condition of the Easement Area or its suitability for the easement purposes.

GRANTEE shall not suffer or permit to be filed or enforced against the Easement Area, GRANTOR's property, or the Facility, or any part thereof, any mechanics', materialmen's, contractors', or subcontractors' liens or stop notices arising from, or any claim for damage growing out of, any testing, investigation, maintenance or work, or out of any other claim or demand of any kind.

GRANTEE shall at all times indemnify and hold GRANTOR, including its subsidiaries, officials, officers, employees, agents, contractors, successors and assigns (collectively "Indemnitees"), harmless against and pay in full all losses, damages, or expenses that the Indemnitees may sustain, incur or become liable for, resulting in any manner from the installation, construction, operation, maintenance, repair, reconstruction, alteration, removal, condition, use or presence of the Facility or related appurtenances or the use and maintenance of the Easement Area by the GRANTEE. It is the intention of the Parties that Indemnitees' right to indemnity hereunder shall be valid and enforceable against GRANTEE regardless of negligence (whether active or passive) on the part of the Indemnitees, unless such injury is a result of the sole negligence of Indemnitees.

GRANTEE shall operate and maintain the Facility and the Easement Area in compliance with all federal, state or local laws (including, without limitation, environmental, health and/or safety related laws, regulations, standards, decisions of the courts, permits or permit conditions, currently existing or as amended or adopted in the future which are or become applicable to GRANTEE, the Facility or the Easement Area). GRANTEE shall not cause or permit any hazardous materials to be brought upon, stored, used, generated, handled, transported, treated or disposed of on or about the Easement Area. In addition to providing the above indemnification for Indemnitees, in the event of contamination of the Easement Area, GRANTEE at its sole expense shall promptly take all actions necessary to clean up the affected area and to return the affected property to the condition existing prior to such release or contamination, to the satisfaction of GRANTOR and any governmental authorities having jurisdiction thereover.

To the maximum extent allowed by law GRANTEE assumes any and all risk of loss, damage or injury of any kind to any person or property, including without limitation, the Facility or appurtenances, if any, the Easement Area and any other property of, or under the control or custody of, GRANTEE, which is on or near the Facility. GRANTEE, on behalf of itself and its Personnel, as a material part of the consideration for this easement, hereby waives all claims and demands against GRANTOR for any such loss, damage or injury of GRANTEE and/or its Personnel. In that connection, GRANTEE waives, for itself and its personnel, the benefit of California Civil Code Section 1542, which provides as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that,

if known by him or her, would have materiality affected his or her settlement with the debtor or released party.

“Personnel” means the GRANTEE, or its officers, directors, affiliates, or anyone directly or indirectly employed by GRANTEE or for whose acts GRANTEE is liable.

Within said easement, no permanent structures shall be placed, nor trees shall be planted that would interfere with the actual location of the water pipeline and water-related appurtenances or the GRANTEE’s ability to exercise any of the foregoing rights. The easement herein granted shall also include the right to use such areas adjacent to the easement as may be reasonably necessary on a temporary basis, and with notice to GRANTEE, for the performance of work during any and all construction periods, or other periods when persons, equipment, vehicles, supplies and working activities are necessary when exercising rights under this easement.

Upon termination of the Easement, GRANTOR shall have no obligation to permit the Facility to be abandoned in place or relocated to any other locations on GRANTOR’s property. The cost of relocation or removal of the Facility shall be borne exclusively by GRANTEE. Notwithstanding the foregoing, in the event of termination, GRANTOR shall work with GRANTEE in good faith to attempt to identify alternative locations for the Facility.

This Easement shall bind GRANTOR and GRANTEE and each of the successors, legal representatives and assigns of the GRANTOR and GRANTEE.

IN WITNESS WHEREOF, these presents have executed this instrument this ____ day of _____, 20____

By: _____

Signature

Printed Name and Capacity

Notary Acknowledgement

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or

STATE OF CALIFORNIA
COUNTY OF _____:

On _____, before me, _____, notary public

personally appeared _____

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Attachment C

Exhibit "A" (Legal Description) and Exhibit "B" (Map)

EXHIBIT "A"

A portion of that real property described as Parcel 1 in Document No. 2017-0142288, O.R., in the Town of Apple Valley, County of San Bernardino, State of California, more particularly described as:

Beginning at the most Northerly corner of that portion of Parcel 1 of Document No. 2017-0142288, O.R., also being the Southeasterly corner of Lot 2744 and the Southwesterly corner of Lot 2743, Tract No. 3333, Map Book 44, Pages 59-61; thence South 72°50' West along the Southeasterly line of said Lot 2744 and continuing along the Southeasterly line of Lot 2748 said Tract No. 3333 a distance of 710 feet to the angle point in said Southeasterly line of said Lot 2748; thence South 17°10' East at right angles a distance of 12.5 feet; thence North 72°50' East, parallel to, and 12.5 feet Southeasterly from said Southeasterly line of said Lots 2744 and 2748 a distance of 710 feet; thence North 17°10' West at right angles a distance of 12.5 feet to the point of beginning.

Containing 8,875 square feet.



Craig Johnson
Craig Johnson, PLS 7562 3/26/20

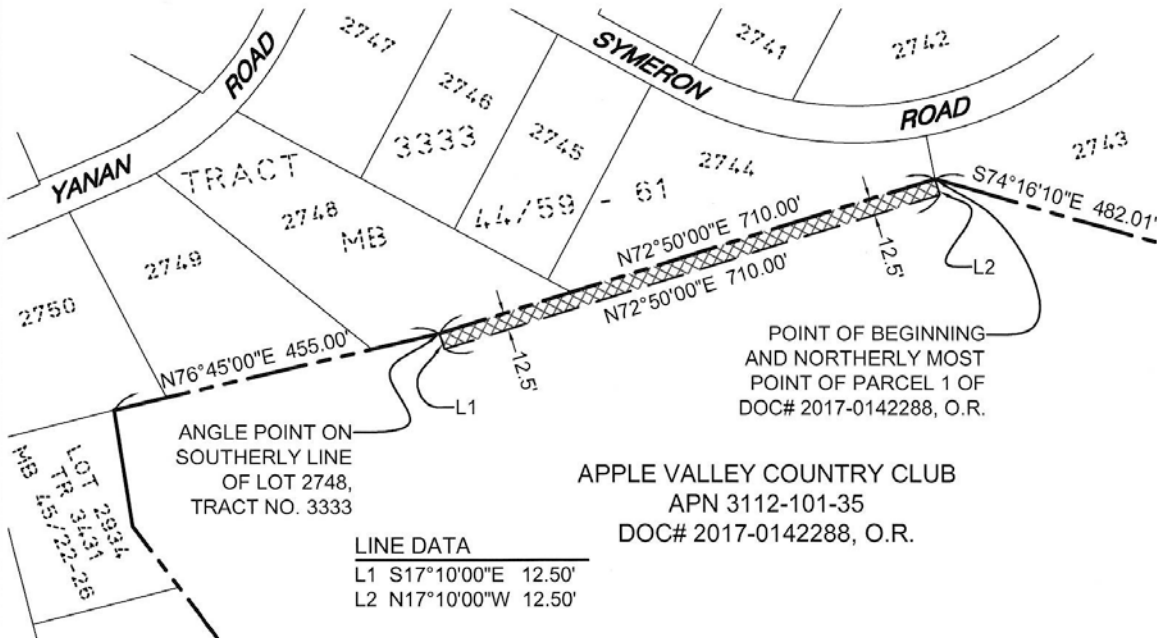
EXHIBIT B WATER LINE EASEMENT

LEGEND



AREA OF WATER LINE EASEMENT

----- PROPERTY LINE



POINT OF BEGINNING
AND NORTHERLY MOST
POINT OF PARCEL 1 OF
DOC# 2017-0142288, O.R.

APPLE VALLEY COUNTRY CLUB
APN 3112-101-35
DOC# 2017-0142288, O.R.

LINE DATA
L1 S17°10'00"E 12.50'
L2 N17°10'00"W 12.50'

SCALE: 1" = 30'

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|--|---|--|---|
| | <p style="font-size: 1.2em; font-weight: bold; margin: 0;">Merrell Johnson</p> <p style="font-size: 0.8em; margin: 0;">COMPANIES</p> <table style="width: 100%; font-size: 0.7em; margin: 0;"> <tr> <td style="width: 50%;">22221 HIGHWAY 18 APPLE VALLEY, CALIFORNIA 92307 (760) 240-8000 (760) 240-1400 FAX</td> <td style="width: 50%;">16091 KAMANA RD APPLE VALLEY, CALIFORNIA 92307 (760) 256-2068 (760) 530-6872 FAX</td> </tr> </table> <p style="text-align: center; font-weight: bold; margin-top: 5px;">CRAIG JOHNSON L.S. 7562</p> | 22221 HIGHWAY 18 APPLE VALLEY, CALIFORNIA 92307 (760) 240-8000 (760) 240-1400 FAX | 16091 KAMANA RD APPLE VALLEY, CALIFORNIA 92307 (760) 256-2068 (760) 530-6872 FAX |
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