

## RESOLUTION NO. 2019-23

### **RESOLUTION OF THE TOWN OF APPLE VALLEY AUTHORIZING THE TOWN MANAGER TO EMPLOY CERTAIN LIBERTY UTILITIES (APPLE VALLEY RANCHOS WATER) CORP. EMPLOYEES UPON THE COMPLETION OF THE TOWN'S ACQUISITION OF THE APPLE VALLEY WATER SYSTEM; DIRECTING THE TOWN MANAGER TO RETAIN SUCH CONSULTANTS AS MAY BE NECESSARY FOR THE ADMINISTRATION AND OPERATION OF THE SYSTEM; AND FINDING THAT NO FURTHER ENVIRONMENTAL REVIEW IS REQUIRED UNDER CEQA**

**WHEREAS**, the water system currently owned and operated by Liberty Utilities (Apple Valley Ranchos Water) Corp. (the "Apple Valley Water System") is an integrated and independent water system that provides water service primarily in the Town of Apple Valley; and

**WHEREAS**, pursuant to the Resolutions of Necessity adopted by the Town Council on November 17, 2015, the Town is pursuing the acquisition by eminent domain of the Apple Valley Water System for multiple reasons, including, but not limited to, the following: longstanding public concern about escalating water rates; the significantly higher water rates paid by customers of the Apple Valley Water System as compared to neighboring jurisdictions; lack of local control over water rates, service, expenditures, and policy; lack of responsiveness and accountability of the corporate owners to concerns of ratepayers within the service area; lack of transparency in the operation of the Apple Valley Water System; and lack of long term water planning coordinated with Town planning objectives and community input; and

**WHEREAS**, the owner of the Apple Valley Water System previously sued the Town to challenge the adequacy of Environmental Impact Report ("EIR") certified by the Town and analyzing the acquisition of the Apple Valley Water System under the California Environmental Quality Act ("CEQA") (Pub. Res. Code, § 21000 et seq.), but the Superior Court of California, County of San Bernardino, entered judgment in favor of the Town on March 23, 2018; and

**WHEREAS**, the EIR certified by the Town described and analyzed Liberty Utilities (Apple Valley Rancho Water) Corp.'s vendor, service, and "Employee Makeup" – including the approximate number of employees, their roles and responsibilities, and the primary locations from which employee tasks were undertaken – and confirmed that the Town anticipated that it could operate the system using approximately the same number of employees; and

**WHEREAS**, the actions described within this Resolution involve personnel, staffing, and employment decisions that will not result in any physical changes to the System that may cause direct, indirect, or cumulative environmental impacts, such that these actions are not a "project" requiring environmental review within the meaning of CEQA; and

**WHEREAS**, even were these actions arguably a CEQA "project," the retention of Liberty Utilities (Apple Valley Ranchos Water) Corp.'s employees is exempt from CEQA pursuant to 14 Cal. Code Regs. § 15301 (the Class 1 "Existing Facilities" exemption) because these actions merely authorize the continued operation of an existing system by existing employees; and

**WHEREAS**, even were these actions arguably a CEQA "project" and not exempt, the retention of Liberty Utilities (Apple Valley Ranchos Water) Corp.'s employees is consistent the Town

Council's previous analysis of the acquisition of the Apple Valley Water System and no new information of substantial importance showing any new significant environmental impacts (such as changes in the nature of the acquisition, changes in the circumstances under which the acquisition is undertaken, or new information) has become available, such that no further CEQA review is required pursuant to Public Resources Code § 21166 and 14 Cal. Code Regs. § 15162; and

**WHEREAS**, the Town's eminent domain suit against the current owner is currently proceeding through the Superior Court of California, County of San Bernardino; and

**WHEREAS**, the Town recognizes that the owner currently employs a number of individuals with experience in operating the Apple Valley Water System; and

**WHEREAS**, the Town will need qualified operators for the Apple Valley Water System once the Town's acquisition by eminent domain thereof is complete.

**NOW, THEREFORE, BE IT RESOLVED** by the Town Council of the Town of Apple Valley as follows:

Section 1. Incorporation of Recitals and Staff Report. The Town Council finds that all of the foregoing recitals and the staff report presented herewith are true and correct and are hereby incorporated and adopted as findings of the Town Council as if fully set forth herein.

Section 2. Support for Employing Certain Liberty Utilities (Apple Valley Ranchos Water) Corp. Employees. The Town Council supports employing all of the current employees of Liberty Utilities (Apple Valley Ranchos Water) Corp. responsible for the administration and operation of the Apple Valley Water System, with the exception of executive and contract employees. The Town Manager shall also have the authority and discretion to determine which positions are executive.

Section 3. Authorization to the Town Manager. If and when the Town's acquisition of the Apple Valley Water System is complete, the Town Manager is hereby authorized to employ all current non-executive and non-contract employees of Liberty Utilities (Apple Valley Ranchos Water) Corp. responsible for the administration and operation of the Apple Valley Water System and meet all of the conditions specified in Section 4 of this Resolution. Such employment shall begin on or about the date that the Town assumes administration and operation of the Apple Valley Water System. The starting base salary/wage rate for each employee hired by the Town shall be no less than the base salary/wage rate he or she enjoyed on July 23, 2019. All other benefits and terms and conditions of employment shall be the same as applicable to other similarly situated Town employees, with each employee hired under this Resolution retaining his or her date of hire by Liberty Utilities (Apple Valley Ranchos Water) Corp. for purposes of calculating the appropriate level of benefits. However, this shall not apply to any statutorily defined benefits such as retirement benefits through CalPERS. Notwithstanding the fact that employees hired under this Resolution will retain their date of hire for most benefit purposes, all employees hired under this Resolution shall serve a probationary period as a new hire in accordance with Town personnel rules, policies, and regulations. The Town Manager shall also have the authority to restore any paid leave balances that were accrued during an individual's employment with Liberty Utilities (Apple Valley Ranchos Water) Corp. that were not cashed out upon separation. Executive and/or contract employees will be evaluated by the Town Manager on a case-by-case basis for employment with the Town based on qualifications and needs of the Town upon acquisition. The Town Manager shall have the authority to offer, subject to Council approval, benefits and compensation to preserve benefits accrued as an employee of Liberty Utilities (Apple Valley Ranchos Water) Corp.

Section 4. Eligibility Conditions. Before the Town Manager may employ any individual pursuant to this Resolution, the Town Manager must ascertain that said individual meets the following eligibility conditions:

- (a) the individual was an employee of Liberty Utilities (Apple Valley Ranchos Water) Corp. on the Effective Date of this Resolution and continued that employment through the date that the Town assumes administration and operation of the Apple Valley Water System;
- (b) the individual served in an eligible position as described in Section 3 above and directly related to the administration and operation of the Apple Valley Water System for the duration of the period specified in Section 4(a) above;
- (c) the individual meets the minimum qualifications for the relevant position as delineated by the job description therefor;
- (d) the individual meets the minimum requirements for employment with the Town, including, but not limited to, successfully completing and passing any and every background check required under federal, state, or local law; and
- (e) the individual satisfies any and every other standard requirement that any other prospective Town employee must satisfy for employment with the Town.

Section 5. Retention of Consultants As Needed. The Town Manager is hereby directed to retain such consultants and vendors as he considers necessary for the successful administration and operation of the Apple Valley Water System in accordance with his powers and duties under Section 2.08.060 of the Apple Valley Municipal Code and in compliance with the Town's purchasing system set forth in Chapter 3.12 of the Apple Valley Municipal Code.

Section 6. Custodian of Records. The documents and materials that constitute the record of proceedings on which this Resolution and the above findings are based are located at the Town's offices at 14955 Dale Evans Parkway, Apple Valley, CA 92307, and the custodian of records for these documents is the Town Clerk.

Section 7. Effective Date. This Resolution shall take effect immediately upon adoption. The Mayor shall sign this Resolution and the Town Clerk shall attest and certify to the passage and adoption thereof.

**PASSED AND ADOPTED** this 23rd day of July, 2019.

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Larry Cusack, Mayor

ATTEST:

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La Vonda M. Pearson, Town Clerk