

RESOLUTION NO. 2024-01

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SEDONA, ARIZONA, DESIGNATING THE ELECTION DATES AND PURPOSE OF ELECTION; PROPOSAL FOR FRANCHISE AGREEMENT RENEWAL WITH ARIZONA WATER COMPANY FOR A PERIOD OF TWENTY-FIVE (25) YEARS; DESIGNATING THE DEADLINE FOR VOTER REGISTRATION; AND DESIGNATING THE PLACE AND THE LAST DATE FOR CANDIDATES TO FILE NOMINATION PAPERS.

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF SEDONA, ARIZONA as follows:

Section 1. Designation of Election Date; Purpose

That July 30, 2024 has been set as the time for holding the Primary Election in the City of Sedona for the following purposes:

A. Nominating candidates for Mayor for a 2-year term and three City Council seats for a 4-year term, whose names shall appear on the ballot at the General Election to be held on November 5, 2024. Any candidates receiving a majority of all the votes cast at the Primary Election will be declared elected without running at the General Election.

B. Consideration by the qualified electors of the City of Sedona, the proposed question as to whether the renewal of franchise shall be granted to Arizona Water Company for a period of twenty-five (25) years.

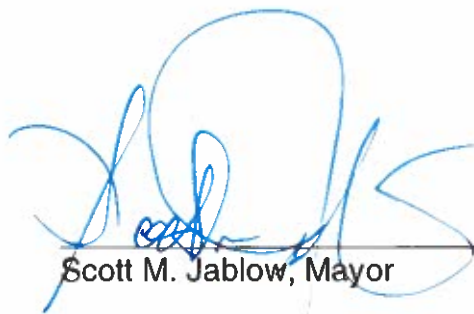
Section 2. Designating Deadline for Voter Registration

Coconino and Yavapai County registration and voting lists will be used for the municipal election. In order to be qualified to vote you must be registered by July 1, 2024.

Section 3. Designating Date and Place to File Candidate Nomination Form

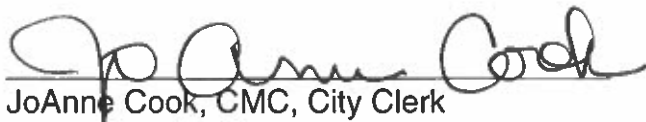
Candidates seeking municipal office may obtain nomination papers and other materials which must be filed by candidates at the Office of the City Clerk, 102 Roadrunner Drive, Sedona, Arizona beginning 7:30 a.m. March 4, 2024. Candidates must file nomination papers and other nomination forms by 5:00 p.m. on April 1, 2024 at the Office of the City Clerk, 102 Roadrunner Drive, Sedona, Arizona in order for their names to appear on the Primary Election ballot.

PASSED AND ADOPTED by the Mayor and Council of the City of Sedona, Arizona this 13th day of February, 2024.



Scott M. Jablow, Mayor

Attest:



JoAnne Cook, CMC, City Clerk

Approved as to Form:



Kurt W. Christianson, City Attorney

ARIZONA WATER COMPANY

3805 N. BLACK CANYON HIGHWAY, PHOENIX, AZ 85015-5351 • P.O. BOX 29006, PHOENIX, AZ 85038-9006
PHONE: (602) 240-6860 • FAX: (602) 240-6874 • TOLL FREE: (800) 533-6023 • www.azwater.com

August 28, 2024

Ms. JoAnne Cook
City Clerk
City of Sedona
102 Roadrunner Drive
Sedona, AZ 86336-3710

RE: Franchise Agreement between the City of Sedona, Arizona and Arizona Water Company

Dear Ms. Cook:

Enclosed please find the Franchise Agreement Between the City of Sedona, Arizona and Arizona Water Company that has been approved and signed by Arizona Water Company President Fredrick K. Schneider.

Please provide us with a copy once it has been fully signed.

Very Truly Yours,


Mary Cheney
Legal Secretary

Enclosure(s)

**FRANCHISE AGREEMENT BETWEEN
THE CITY OF SEDONA, ARIZONA
AND
ARIZONA WATER COMPANY**

WHEREAS, this Franchise Agreement (hereinafter "Agreement") is made and entered into this 13th day of August, 2024, by and between the City of Sedona, an Arizona municipal corporation (hereinafter referred to as "City"), and Arizona Water Company, an Arizona Corporation (hereinafter referred to as "Grantee").

The Parties hereby agree as follows:

Section 1. Subject to the provisions of this Agreement and the laws and ordinances of the State of Arizona and the Sedona City Code, City hereby grants to Arizona Water Company, its successors and assigns, the right, license, privilege and franchise ("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, highways, and bridges), in the City of Sedona, public water utility infrastructure facilities and appurtenances, including without limitation water mains, service lines, pumps, meters, regulator stations, fire hydrants, and related appurtenances ("Infrastructure Facilities"), to provide water services for all purposes in the City.

Section 2. All construction under this grant shall be performed in accordance with established practices, per Grantee's Construction Specification and Standard Specification Drawings, in accordance with the best industry practices and as adopted by the Maricopa Association of Governments ("MAG Standards") if not specified in Grantee's Construction Specifications and Standard Specification Drawings, with respect to such rights-of-way.

Section 3. The term of Franchise will commence on the date approved by the voters of the City and will continue and remain in full force and effect for a period of twenty-five years from and after said date.

Section 4. Grantee will comply with each of the following terms with respect to all Infrastructure Facilities it constructs, maintains, and operates in the City's rights-of-way.

4.1 Regulation of Rights-of-Way or other City Property: The Grantee expressly acknowledges the City's right to enforce regulations concerning the Grantee's use of City right-of-way including requirements for permits.

4.2 Compliance with Laws: The Grantee shall promptly and fully comply with all lawfully enacted laws, regulations, permits and orders enacted by the City.

4.3 Notification: The Grantee shall provide to the City, daytime and nighttime telephone numbers of a designated Grantee representative from whom the City may obtain status information from the Grantee on a 24-hour basis concerning interruptions of utility service in any part of the City.

4.4 Franchise Fee Payment: Payment of the Franchise fee as required by this Agreement exempts the Grantee from Right-of Way Permit fees for excavation or pavement cuts. Payment of the Franchise fee as required by the Agreement does not exempt the Grantee from any other lawful tax or fee imposed generally upon similar classes of businesses operating within the City.

4.5 Repairs: In the event the Grantee's system or any part thereof is partially or wholly destroyed or incapacitated in a manner that damages any City property, the Grantee shall repair such property within a reasonable period of time.

Section 5. Grantee shall use good faith efforts to promptly, but in no case later than thirty (30) days after installing, maintaining or operating any Infrastructure Facilities, at its own cost and expense, restore the City rights-of-way to as good condition as that in which they were before and in accordance with applicable standards. If inclement weather and other forces outside Grantee's control prevent Grantee from restoring such rights-of-way within thirty (30) days, Grantee shall undertake such reasonable efforts to complete such restoration when conditions permit. Such restoration shall include restoring trees and removing obstacles and repairing damage to the right-of-way caused by Grantee's installing, maintaining, or operating any Infrastructure Facilities. If

weather or other conditions do not permit the complete restoration or repair required by this Section, the Grantee may (with the approval of the City) temporarily restore the affected right-of-way, provided that such temporary restoration is at the Grantee's sole expense and provided further, that the Grantee promptly undertakes and completes the required permanent restoration or repair when the weather or other conditions no longer prevent such permanent restoration or repair. If the Grantee fails to promptly restore or repair the City right-of-way, City landscaping, and City improvements therein as required by this Section 5; the City may upon giving an additional fourteen (14) days' written notice to the Grantee, restore such City right-of-way, City landscaping and City improvements. The Grantee shall be responsible for the actual costs incurred by the City to restore or repair such City right-of-way and landscaping and improvements therein or to remove any obstructions therefrom. The provisions of this Section 5 do not apply to damage to City right-of-way or situations caused by Grantee's activities or Grantee's Infrastructure Facilities that result in a dangerous condition or pose a hazard to the health or safety of the public, all of which are subject to Section 8.5.

Section 6. Notwithstanding any provision contained herein to the contrary, Grantee will, in addition to the payment provided in Section 7, pay any license or occupation tax established by City, provided such fee does not exceed the amount of similar fees paid by any other utility operating within the City's boundaries.

Section 7. Grantee will pay to City in consideration of the grant of this Franchise a sum equal to three percent (3%) of Grantee's gross receipt from the sale of water for residential, commercial, and industrial purposes, including connect or reconnect charges, service establishment or reestablishment charges, or other similar charges, but excluding transaction privilege taxes and similar governmental impositions, from the sales and/or delivery by it of water and other charges for services attendant to the sale and/or delivery of water delivered through Grantee's Infrastructure Facilities as shown by Grantee's billing records within the present and any future corporate limits of City, as Grantee is notified from time to time by City of the extent of such corporate limits. Grantee shall have no obligation to collect Franchise fees for any such extension of City's corporate limits if City fails to notify Grantee, and Grantee will only be responsible for such collections after

proper notice by City is provided.

Beginning with the effective date of this Franchise, payment as described in the preceding paragraphs shall be payable in quarterly amount within thirty (30) days after the end of each calendar quarter. Said payment shall be a Franchise fee. The amount of such Franchise fees may be specifically added to customer bills, to the extent allowed by applicable law or Grantee's approved tariffs.

In addition, Grantee shall pay any general ad valorem taxes, assessments for special improvements, general sales or transaction privilege license tax or any similar general sales or transaction privilege license taxes or any similar general tax or levy assessed or levied by the City or any other governmental unit with jurisdiction.

For the purpose of verifying amounts payable hereunder, the books and records of Grantee shall be subject to inspection by duly authorized officers or representative of City at reasonable times.

Section 8. Grantee's Infrastructure Facilities installed or constructed under and pursuant to this Franchise shall not interfere with any City facilities including stormwater, communications, or any other City uses of the right-of-way. Grantee's Infrastructure Facilities shall also be installed and maintained in City rights-of-way so as to minimize interference with other property, trees, and other improvements permitted or allowed by the City within the right- of-way including both existing and planned improvements permitted or allowed by the City within the right-of-way of which the Grantee has been advised.

8.1 Grantee Work within the City: All work within City rights-of way Grantee performs or causes to be performed shall be done:

8.1.1 in a high-quality manner utilizing Grantee's Construction Specifications and Standard Specification Drawings approved by the City or MAG Standards and specifications for public works construction if such MAG Standard and specifications conflict with Grantee's Construction Specifications and Standard Specification Drawings.

8.1.2 plans must be sealed by a Professional Engineer (PE) licensed in the State of Arizona if required by permits issued by the State, County or the City for work by

the Grantee within City rights-of-way; and

8.1.3 in a timely and expeditious manner; and

8.1.4 in a manner which minimizes inconvenience to the public with traffic control provided per the most recent Manual for Uniform Traffic Control Devices (MUTCD) or at the City's discretion, the most recent Phoenix Barricade Manual; and

8.1.5 in a cost effective, professional, and efficient manner which (for construction exceeding \$50,000 in cost) may include the use of contractors (for the trades specified) licensed in the State of Arizona; and

8.1.6 in a good and workmanlike manner and in accordance with all applicable laws, ordinances, regulations, and permit processes.

8.2 Inspection: The construction, maintenance, operation, repair, and replacement of any Grantee's Infrastructure Facilities in the City right-of-way by or on behalf of the Grantee shall be subject to permit inspection and approval by the City. Such inspection and approval may include but not be limited to the following matters: location of Grantee Infrastructure Facilities, cutting and trimming of trees and shrubs, and disturbance of pavement, sidewalks, and surfaces of City Streets. The Grantee agrees to cooperate with the City in conducting inspections and shall promptly perform any remedial action required by the City pursuant to all applicable laws, ordinances, regulations, and permit processes.

8.3 Compliance: The Grantee and all of its contractors shall comply with the requirements of all municipal laws, ordinances, regulations, permits, and standards including but not limited to requirements of all building and zoning codes and requirements regarding curb and pavement cuts, excavation, digging, and other construction activities. The Grantee shall assure that its contractors working in City streets hold the necessary licenses and permits required by law.

8.4 As-Built Drawings: For projects constructed after the date of this Agreement and upon written request of the City, the Grantee shall provide as-built drawings of any Infrastructure Facility installed within the City right-of-way or contiguous to the City right-of-way. As built drawings refer to the Infrastructure Facility drawings if maintained in the ordinary course of business in the Grantee's Computer Aided Design (CAD), Geographical Information System (GIS), or any equivalent system. City will use the as-built drawings solely for its own infrastructure

management purposes. If City wishes to design, permit, and construct new infrastructure, City will contact Grantee for updated as-built drawings.

8.4.1 Limited Use and Confidentiality: City will not use the as-built drawings for any purpose other than described in this Agreement. City will not disclose the as-built drawings other than as permitted by this Agreement and will safeguard the as-built drawings from unauthorized disclosure. If City deems it necessary to disclose the as-built drawings to any third party, City may do so only after receiving written approval of such disclosure from Grantee and only after the third party signs a separate confidentiality agreement with Grantee in a form acceptable to Grantee. In any event, City will be jointly and severally liable for any breach of such separate confidentiality agreement signed by any such third party. If City becomes legally compelled (such as by deposition, interrogatory, request for documents, subpoena, civil investigative demand, or other similar process) to disclose any of the as-built drawings, the City will provide Grantee with prompt and timely written notice so that Grantee may intervene and oppose disclosure or seek another appropriate remedy. In the event that disclosure of the as-built drawings is ordered, the City will only furnish that portion of the as-built drawings that is legally required.

8.5 Damage: The Grantee shall promptly repair any damage to the City right-of-way and remedy any situation within the City right-of-way that is caused by Grantee's activities or Grantee's Infrastructure Facilities that results in a dangerous condition or otherwise poses a hazard to the health or safety of the public. Upon the City becoming aware of any such situation, the City shall provide written notice to the Grantee as soon as practicable under the circumstances and the Grantee shall promptly, upon receipt of such notice, take action to abate said dangerous condition of hazard. If the Grantee fails to repair such damage or eliminate the dangerous condition within a reasonable time after notice, the City may take reasonable action to abate said dangerous condition or hazard and the Grantee shall reimburse the City for the reasonable costs thereof, provided however, that the Grantee shall not be liable for costs incurred by the City for providing emergency police or fire services generally made available to the public.

8.6 Relocation: Except for Grantee's Infrastructure Facilities installed in locations prior to such locations becoming right-of-way, which City shall pay to relocate, the Grantee shall, at its sole cost and expense, temporarily or permanently remove, relocate, change, or alter the

position or depth of any Grantee Infrastructure Facility in City right-of-way whenever the City determines that such removal, relocation, change, or alteration is necessary for the completion of any project undertaken by the City. City agrees to notify Grantee during the planning and design of City's projects in or outside of public rights-of-way that might require relocation of Grantee's Infrastructure Facilities and to coordinate its construction plans and schedules with Grantee to determine the most cost-effective design to mitigate Grantee's cost to relocate its Infrastructure Facilities. For all relocations, the Grantee and the City agree to cooperate on the location and relocation of the Grantee Infrastructure Facilities in the City's right-of-way in order to achieve relocation in the most efficient and effective manner possible. City and Grantee will take commercially reasonable steps to meet at least quarterly to discuss future relocations of Grantee's Infrastructure Facilities and to begin review of plans for City projects no later than the 30% design phase. Notwithstanding the foregoing, once the Grantee has relocated any Grantee Infrastructure Facility installed under this Agreement at the City's direction, if the City requests that the same Grantee Infrastructure Facility be relocated within one year, the subsequent relocation shall not be at the Grantee's expense unless said subsequent relocation is necessary to remedy public health and safety concerns not reasonably foreseeable by the City at the time of the prior relocation.

Section 9. Grantee will render efficient service, make repairs promptly, and will use commercially reasonable efforts to minimize the duration of service interruptions. Trained Grantee representatives will be available either live or by telephone to respond to customer inquiries and to assist customers during normal business hours. Grantee will also maintain a 24-hour emergency telephone number for customers. Grantee's business operations are regulated by the Arizona Corporation Commission and Grantee will comply with the Commission's rules and regulations. Grantee will make its Commission approved tariffs, including those which govern its terms and conditions of service and rates for service, available to customers on its website.

Section 10. City will in no way be liable or responsible for any acts or damage that may occur in the construction, maintenance, or operation by the Grantee of its Infrastructure Facilities hereunder, which could have been avoided by exercise of reasonable care, and the acceptance of this Franchise will be deemed an agreement on the part of Grantee, its successors and assigns, to indemnify City and hold it harmless against any and all liability, loss, cost, damage, or expense

which may accrue to City by reason of the negligence, default, or misconduct of Grantee in installing, maintaining, removing, relocating, and using its pipes and appurtenances hereunder.

Section 11. The right, privilege, and Franchise hereby granted may not be transferred in whole or in part by Grantee, its successors and assigns, unless a resolution consenting to such assignment has been adopted by the Mayor and City Council; City shall not unreasonably withhold consent to any transfer Grantee may request pursuant to this Section.

Section 12. This grant is not exclusive and nothing herein contained shall be construed to prevent City from granting other like or similar grants or privileges to any other person, firm or corporation or to deny to or lessen the power and privileges granted to City by Sections 9-501 and 9-502, Arizona Revised Statutes and revisions thereto.

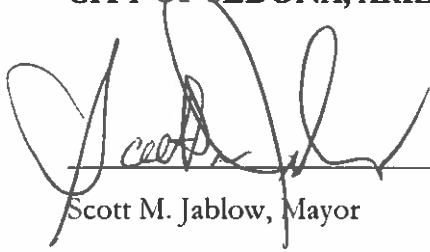
Section 13. All ordinance and parts of ordinance in conflict with the provisions hereof are hereby repealed.

Section 14. If any section, paragraph, subdivision, clause, phrase or provision of this Agreement will be adjudged invalid or unconstitutional, the same shall not affect the validity of this Agreement as a whole or any part of the provisions hereof other than the part so adjudged to be invalid and unconstitutional.

Section 15. To preserve the public health, peace, and safety, it is necessary that this Agreement become immediately operative. It is, therefore, declared to be an emergency measure and shall take effect and become operative from and after its passage by the City Council, approved by the Mayor, and publication as required, following its submission to the qualified electors of City as required by law, and its approval by said election.

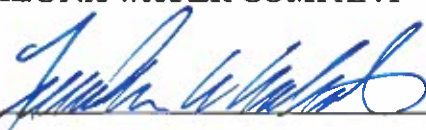
IN WITNESS WHEREOF, the Parties have executed this Franchise Agreement on this _____ day of _____, 2024.

CITY OF SEDONA, ARIZONA



Scott M. Jablow, Mayor

ARIZONA WATER COMPANY

By: 

Title: President
DA001059

ATTEST:



JoAnne Cook, City Clerk

APPROVED AS TO LEGAL FORM:



Kurt W. Christianson, City Attorney