



**RESOLUTION NO. \_\_\_\_\_**  
**DRAFT FOR 10-25-16 BOS WORK SESSION**

**A RESOLUTION ESTABLISHING REGULATIONS AND PROVIDING PROCEDURES FOR THE ISSUANCE OF FRANCHISES TO CONSTRUCT, INSTALL AND OPERATE TRANSPORTATION OR TRANSMISSION BUSINESSES ALONG, ACROSS AND UPON THE PUBLIC STREETS, WAYS, ALLEYS, AND PLACES WITHIN THE UNINCORPORATED AREAS OF GILA COUNTY ARIZONA.**

**WHEREAS**, pursuant to Arizona Revised Statute (A.R.S.) §40-283, the Board of Supervisors may authorize public service corporations, telecommunications corporations or cable television systems to construct a line, plant, service or system within the right-of-way of any road, highway or easement that is designated for access or public use by plat or survey of record of a subdivision, or of unsubdivided land as defined in section 32-2101, provided that any such authorization or construction pursuant to such authorization does not impose on the county the duty of maintaining the road or highway unless the county accepts the road or highway into the county maintenance system by appropriate resolution; and,

**WHEREAS**, the Board of Supervisors desires to establish regulations and provide procedures in accordance with state law and the rules and regulations of the Arizona Corporation Commission for the issuance of non-exclusive franchises to construct, install, operate and maintain along, over, under and across the streets, alleys, and highways under the jurisdiction of the County, facilities for the purpose of maintaining and operating a transportation or transmission business, and all other facilities and improvements necessary for the transportation or transmission business;

**NOW, THEREFORE**, the Board of Supervisors of the County of Gila, Arizona, does hereby adopt the following regulations and procedures for the issuance of franchises to construct, install, operate and maintain a transportation or transmission businesses along, across and upon the public streets, ways, alleys, and places within the unincorporated areas of Gila County, Arizona.

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**SECTION 2:           DEFINITIONS**

For the purpose of this Resolution, the following terms shall have the meaning given herein.

- A. “County” means Gila County.
- B. “Franchising Authority” means the Board of Supervisors of Gila County.
- C. “Board of Supervisors” means the Gila County Board of Supervisors or its designee as expressed by resolution, except that all hearings, notices, and franchise approvals required by the Board of Supervisors under this Resolution must be done by the Board of Supervisors as a whole.
- D. “Franchise” means the non-exclusive right and authority to construct, install, operate and maintain a transportation or transmission business through use of the public streets, other public rights-of-way or public places in the unincorporated part of Gila County designated as the service area granted by the franchising authority.

- E. "Person" means any natural person, all corporations, partnerships, joint ventures, and any other legal entity.
- F. "Applicant" means any person who applies for a franchise.
- G. "Application" is the process used to issue franchises (new and renewal), which is outlined in Section 4-APPLICATION FOR FRANCHISE (A) of this Resolution.
- H. "Grantee" means the person granted a franchise by the Board of Supervisors and the lawful successor, transferee, or assignee of said person.
- I. "Street" means the surface, the air space above the surface and the area below the surface of any public street, other public right-of-way or public place.
- I. "Property of Grantee" means all property owned, installed or used within the County by grantee in the conduct of the proposed franchised transportation or transmission business.
- J. "Service Area" means the designated area for which the Board of Supervisors has granted a franchise to a particular grantee.
- K. "Customer" means any person receiving for any purpose service of the grantee's transportation or transmission business.
- L. "Transportation or Transmission Business" means a provider of electric, gas, telephone or water, or wastewater removal to its customers.
- M. "ACC" means the Arizona Corporation Commission, or a designated representative.
- N. In the event the meaning of any word or phrase not defined herein is uncertain, the definitions contained in the ACC's rules and regulations shall apply.

**SECTION 3: AUTHORITY TO GRANT FRANCHISE**

- A. By A.R.S. §40-283, the Board of Supervisors of Gila County is empowered to authorize the issuance of non-exclusive franchises to install, construct, operate and maintain a transportation or transmission business on streets, other public rights-of-way, or public places within the unincorporated areas of Gila County as well as to regulate these activities.
- B. No provisions of this Resolution shall be deemed or construed to require the granting of a franchise.

**SECTION 4:            APPLICATION FOR FRANCHISE**

A. Each application for a franchise under this Resolution shall be filed with the Board of Supervisors and shall contain, at a minimum, the following:

- (1) The name, address and telephone number of the applicant. If the applicant is a partnership or joint venture, the home and business address of at least two partners shall be set forth. If the applicant is a corporation, the application shall include a copy of the most recent annual report filed with the Arizona Corporation Commission.
- (2) A statement setting forth in its entirety any and all agreements existing or proposed between the applicant and any person who proposes to have an ownership interest with respect to the proposed franchise. If such information is not disclosed in the application, the franchise shall be deemed void and of no force and effect.
- (3) Financial statements, as determined by the Board of Supervisors, prepared by a certified public accountant or person otherwise satisfactory to the Board of Supervisors, showing applicant's financial status and financial ability to complete the construction and installation, and operate the business.
- (4) A map and legal description satisfactory to the Board of Supervisors indicating the proposed service area within the unincorporated area of the County that will be served, unless service will be countywide which shall be noted on the application. Water company applicants shall include the location of existing wells and pipelines, and shall prove a legal right to use said wells. Sewer company applicants shall include the location of existing treatment facilities and pipelines and prove a legal right to use said facilities.
- (5) A proposed line extension policy in accordance with Section 14 hereof, attached and made a part of the licensing resolution, stating the terms and conditions under which services will be provided.
- (6) A proposed construction time schedule (for new applications only), satisfactory to the Board of Supervisors.
- (7) A statement specifying the type and capacity of the business proposed to be constructed, installed, operated and maintained by the applicant.
- (8) A description of all previous experience of the applicant in providing service and in related or similar fields.
- (9) Any other details, statements, information or references pertinent to the subject matter of such application which shall be required or requested by the Board of Supervisors, or by any provision of any other resolution of the County.
- (10) Applicant shall pay to Gila County a non-refundable application fee in the amount of Three Hundred Fifty Dollars (\$350). Such fee shall be submitted with the application.

B. Prior to the issuance of a franchise and pursuant to A.R.S. § 40-283(E), the Board of Supervisors shall give public notice of its intention to make such grant by publishing notice in a newspaper of general circulation, published within the county, at least

once a week for three weeks prior to the day set for consideration of such action. If, on or before such date, more than fifty percent of the qualified electors of the County petition the Board of Supervisors to deny such privilege, it shall do so, and any privilege granted against such petition shall be void. Proposed grantee shall bear all publication costs.

**SECTION 5: FRANCHISE REQUIREMENTS**

- A. In making any determination hereunder as to any application, the Board of Supervisors shall give due consideration to the quality of the service proposed, experience, character, background, and financial responsibility of any applicant and its management and owners, technical and performance quality, quality of equipment, willingness and ability to meet construction and physical requirements, and to abide by policy conditions, franchise limitations and requirements, and any other considerations deemed pertinent to the Board of Supervisors for safeguarding the interest of the County and the public. The Board of Supervisors, in its discretion, shall determine the award of any franchise on the basis of these considerations and without competitive bidding.
- B. Any franchise issued by authority of this Resolution shall contain at a minimum:
  - (1) The findings of the Board of Supervisors.
  - (2) A description and map of the grantee's service area.
  - (3) Minimum insurance policy coverage, as listed in Section 12 of this Resolution.

**SECTION 6: ACCEPTANCE OF THE FRANCHISE**

- A. Within ten (10) days after the Board of Supervisors adopts a resolution granting the franchise (see attached Exhibit A), the grantee shall sign the resolution and return it to the Clerk of the Board of Supervisors or the Clerk's designee, together with the financial assurances and insurance policies required herein, to signify grantee's agreement to be bound by and comply with the provisions of the franchise.
- B. In default of the filing of such written acceptance as herein required, the grantee shall be deemed to have rejected the franchise. Thereafter, the acceptance of the grantee shall not be received nor filed by the Clerk of the Board of Supervisors, and the action taken by the Board of Supervisors to grant the franchise shall be deemed invalid.
- C. Neither the granting of any franchise nor any of the provisions contained herein shall be construed to prevent the County from granting any franchise to any other person embracing the same area.

**SECTION 7: CONSTRUCTION OF A NEW SYSTEM**

- A. The grantee shall promptly obtain all necessary permits and authorizations and

pay any applicable fees in accordance with Gila County's Right-of-Way Ordinance or any resolutions as are or may be established by the Board of Supervisors.

- B. The grantee shall accomplish significant construction within two years after the date the franchise becomes effective, and shall thereafter equitably and reasonably extend distribution transportation or transmission lines throughout the community. If, after two (2) years, the grantee has failed to comply with this requirement, the Board of Supervisors may, at its discretion, hold a public hearing to determine whether the franchise should be revoked. Notice of such hearing shall be published at least ten (10) days prior to the hearing in a newspaper of general circulation within the service area, or if no such newspaper exists, shall be posted in a conspicuous place. Such revocation shall proceed pursuant to Section 10 of this Resolution.
  
- C. Repair of Streets and Public Ways:
  - (1) Any and all streets and public ways in the service area which are disturbed by the grantee shall be repaired by the grantee at its expense and in accordance with Gila County's Right-of-Way Ordinance or any resolutions as are or may be established by the Board of Supervisors and in accordance with the permit specifications set forth by the Gila County Public Works Division to restore the roadway to its condition before being disturbed. Before any public roadway or place is disturbed, the grantee shall secure from the County a statement of the current condition, composition and construction of the roadway or place, which statement shall be the standard of reconstruction to which the grantee shall conform. The County and the grantee may also agree in writing to the period of time that will be allowed for repair or reconstruction, which period shall be construed to be "reasonable" under (2) hereof. The grantee shall bear the costs of inspections resulting from bona fide complaints.
  - (2) Upon failure of the grantee to cause any work or other act required by law or hereunder to be properly completed within a reasonable time, the Public Works Director may cause this work or other activity to be completed in whole or in part to the satisfaction of the Board of Supervisors, and upon so doing shall submit to grantee an itemized statement of the cost thereof. The grantee shall, within thirty (30) days after mailing of the statement, pay to the County the entire amount.
  - (3) The Public Works Director is authorized to permit underground installation of lines at a minimum depth of thirty-six inches (36"). The Public Works Director or his designee may permit a lesser depth when said installation will not interfere with County road maintenance or construction. As built drawings indicating line locations and depths must be supplied, without cost, to the Public Works Director upon completion of the system and updated to reflect system expansion. Grantee shall hold Gila County harmless for damages to grantee's system which results from County's road maintenance or construction.

- (4) County will notify the grantee if the County determines that any lines or other property are located at a depth or location which interferes with road maintenance. Any such lines or property shall be relocated at a sufficient depth or location upon receipt of notice. In the event that lines or property must be relocated due to road construction or because of inadequate location, the grantee shall bear the cost of such relocation.

**SECTION 8:                    MAINTENANCE, COMPLAINT PROCEDURE**

A. The grantee shall:

- (1) Put, keep and maintain all parts of the transportation or transmission business in good condition throughout the entire period of the franchise.
- (2) Render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Interruptions, insofar as possible, shall be preceded by notice given to customer twenty-four (24) hours in advance and shall occur during periods of minimum use of the system.
- (3) Investigate and resolve all complaints regarding quality of service, equipment and other similar matters within forty-eight (48) hours, and shall maintain a local business office, agent or local toll-free phone number for these purposes.
- (4) Maintain a written record or “log” listing date of customer complaints, identifying the customer and describing the nature of the complaint, and when and what action was taken by the grantee in response thereto. These records shall be kept at grantee’s local office and shall be available for inspection during regular business hours, without further notice or demand by the Board of Supervisors.
- (5) Provide each customer with a statement that delineates the process for submitting a complaint that specifies:
  - (a) The telephone number and the address of the grantee that the customer can utilize to make a complaint.
  - (b) A statement indicating that a dissatisfied customer should exhaust his remedy with the grantee before submitting a complaint to the County.
  - (c) The address of the County office that the customer can utilize to make a written complaint.
- (6) Upon written request of the Board of Supervisors, file a written report as to any complaint designated in the request, giving a detailed description of the complaint, the manner in which it has been met, and the time required to make the necessary repairs or adjustments. Grantee shall return the report not more than five (5) business days after receipt of the request.
- (7) Upon request by the Board of Supervisors, the grantee shall make a demonstration satisfactory to it that service is being delivered to any designated area which is of sufficient to meet the standards set forth in the regulations of the ACC.

**SECTION 9:            DURATION OF FRANCHISE**

The term of any franchise shall not exceed twenty-five (25) years, commencing on the effective date of any franchise issued and shall be so stated in the franchise. A franchise may be renewed for an additional period in accordance with Section 11 herein.

**SECTION 10:        TERMINATIONS**

- A. Any franchise granted may be terminated prior to its date of expiration by the Board of Supervisors in the event that it shall have determined any of the following:
- (1) The grantee has failed to comply with any material provision of this Resolution.
  - (2) The grantee has, by act or omission, violated any material term or condition of any franchise issued.
  - (3) The grantee has failed to comply with any material rule or regulation of the Board of Supervisors validly adopted pursuant to this Resolution.
  - (4) The grantee has failed to comply with any material rule, regulation, or order of the ACC.
- B. The Board of Supervisors shall make written demand that the grantee do or comply with any of these requirements, limitations, terms, conditions, rules, or regulations. The demand shall be accompanied by an explanation of the standards that are alleged to be violated and the facts alleged to create the violation.
- C. If the alleged failure, neglect or refusal of the grantee continues for a period of thirty (30) days following written demand, the Board of Supervisors shall set a date for a hearing on the proposed revocation. The Board of Supervisors shall cause to be served by certified mail upon the grantee, at least twenty (20) days prior to the date of the Board of Supervisors' meeting, a written notice of its intent to request termination, together with a complete and definite explanation of the grounds for the proposed action and the time and place of the meeting, notice of which shall be published at least ten (10) days before the meeting in a newspaper of general circulation within the service area. If no newspaper of general circulation is published within the service area, notice may be given by posting in a conspicuous place within the service area. In any revocation hearing, the grantee shall be afforded fair opportunity for full participation including the right to introduce evidence and to question witnesses. A manual transcription or mechanical recording shall be made of all hearings.
- D. If a failure, refusal or neglect by the grantee was with just cause, the Board of Supervisors may by resolution order the grantee to comply (if compliance is necessary) within a reasonable time and in a reasonable manner. The resolution shall contain the findings and conclusions upon which it was based. These conclusions shall contain a conclusion of whether compliance is necessary.

- E. If a failure, refusal or neglect by the grantee was without just cause, the Board of Supervisors may, by resolution, declare that the franchise of the grantee shall be terminated and forfeited unless there is compliance by the grantee within such period as the Board of Supervisors may fix. The resolution shall contain the findings and conclusions upon which it is based.
- F. If the Board of Supervisors finds that there was no failure, refusal or neglect by the grantee, it shall so resolve. The resolution shall contain the findings and conclusions upon which it is based.

**SECTION 11: RENEWAL**

- A. Renewal. A grantee may submit a proposal for renewal not less than ninety (90) days prior to its expiration date, which shall contain the items required in Section 4 (A)(1-10), and the Board of Supervisors may, after public notice and opportunity for public comment, grant or deny such proposal for renewal for a term not to exceed twenty-five (25) years.
- B. The new franchise shall conform with all franchise application fees, indemnity of County requirements, insurance policy coverage and compliance, and other terms in effect at the time of renewal. Renewal considerations shall include, but not be limited to, the reports prepared throughout the life of the franchise, technical performance, the development of services, the ability of the grantee to service the entire service area designated by the Board of Supervisors, and cooperation exhibited by the grantee with the County and its residents throughout the franchise period. Nothing herein shall be construed to require renewal.

**SECTION 12: INDEMNIFICATION AND INSURANCE REQUIREMENTS**

- A. The grantee shall be required to maintain for the duration of the franchise:
  - Commercial General Liability insurance of \$2,000,000 per occurrence with a \$2,000,000 general aggregate and \$2,000,000 products/completed operations limit. The Commercial General Liability insurance shall include coverage for bodily injury, personal injury, broad form property damage, blanket contractual liability, and products/completed operations liability, and include a waiver of subrogation/recovery against the County, its officials and employees.
  - Workers' Compensation insurance and Employer's Liability insurance of \$1,000,000 each accident, \$1,000,000 each disease and \$1,000,000 disease policy limits. This insurance shall include a waiver of subrogation/recovery against the County, its officials and employees.
  - Grantee shall require any and all of its agents, vendors, contractors or any tier of subcontractor to maintain the above minimum required insurance limits and coverage on the County's behalf.
- B. The grantee shall purchase and maintain these stipulated minimum insurance requirements with companies possessing an AM Best, Inc. rating of A VII, duly

franchised in the State of Arizona. The grantee and its agents, vendors, contractors or any tier of subcontractor's insurance shall be primary and any insurance maintained by the County shall not contribute to, or be excess of, their insurance. The County in no way warrants that the minimum insurance and limits contained herein are adequate or sufficient to protect the grantee. These herein minimum stipulated insurance limits and coverage shall in no way be construed as limiting the scope of the indemnity in Section 12. C. below.

Under the Commercial General Liability insurance, the County and its officials and employees shall be named as an Additional Insured with coverage at least as broad as CG20101185 **as assigned by the Insurance Service Office (ISO)**. Annually, a certificate of insurance for each of the above policies shall be filed with the Clerk of the Board of Supervisors or its designee. A copy of any policy and any endorsement shall be provided the County within 14 calendar days if requested by the County. Each certificate shall provide that if the policy it covers shall be cancelled by the insurance company of the grantee during the term of the policy, ten (10) days written notice prior to the effective date of cancellation shall be given to the Board of Supervisors.

The amounts of insurance required as set forth in this section may be subject to change at sole discretion of the County every three (3) years, commencing from the adoption of this Resolution at the discretion of the Board of Supervisors. Such change shall then apply to the insurance requirements under this Resolution.

- C. To the fullest extent permitted by law, grantee shall defend, indemnify and hold harmless the County and its officials and employees without limitation from and against any and all claims (including, but not limited to, workers' compensation, disability or environmental claims), damages, losses, liabilities, fees, fines or expenses (including but not limited to attorney fees, court costs, and cost of appellate proceedings) relating to, arising from, resulting from or alleged to have arisen or resulted from the installation, development, maintenance or expansion of a transportation or transmission business or matters. Grantee's duty to defend, indemnify and hold harmless the County and its officials and employees shall arise in connection with any and all claims, damages, losses, liabilities, fees, fines or expenses that are attributable to bodily injury, personal injury, sickness, disease, death or damage to, or destruction of, tangible or intangible property including loss or use therefrom, or environmental claims and fines, caused in whole or in part by any act, error, mistake or omission of grantee or its agents, vendors, contractors or any tier of subcontractor. This indemnity on behalf of the County and its officials and employees shall survive and continue past the termination of expiration of this Resolution.

**SECTION 13: COMPLIANCE WITH RULES AND REGULATIONS OF THE ARIZONA CORPORATION COMMISSION**

The provisions of this Resolution shall be construed as consistent with any rule or regulation of the Arizona Corporation Commission (ACC). Any ACC rule inconsistent with the terms herein is deemed to automatically amend the inconsistent term. Any franchise issued pursuant to the Resolution is subject to any ACC rules or regulations.

**SECTION 14: ANNEXATION**

Any grantee may annex additional service areas. The annexed area need not be contiguous to the existing service area. A petition requesting annexation shall be filed with the Board of Supervisors and shall contain the information required in Section 4.A. (1), (3), (4), (6), and (9). All requirements of Section 4.B and Sections 5 and 6 apply to annexations. Approval shall be formally granted by the Board of Supervisors in an open public session. The application shall be accompanied by a non-refundable application fee of \$150 if the annexation can be approved administratively or by a non-refundable application fee of \$200 if the annexation cannot be approved administratively. Any new franchise issued as a result of annexation shall terminate the grantee's existing franchise. The new franchise shall incorporate the grantee's existing service area, existing and new schedule for installation, and the minimum insurance policy coverage in effect at the time of annexation. The new franchise shall be treated as any other franchise under this Resolution, and shall be for a term not to exceed twenty-five (25) years.

**SECTION 15: TRANSFER OF FRANCHISE PURSUANT TO A TRANSFER OF OWNERSHIP**

An existing franchise may be transferred subject to the following conditions when the transfer is part of a transfer of ownership between transportation or transmission businesses:

- (1) Notification of intent to transfer by the grantee shall be submitted to the Clerk of the Board of Supervisors or a designate of the Clerk.
- (2) Application by the person to whom the franchise is to be transferred, with said application to be made in accordance Section 4.A. (1) through (9), and which shall be accompanied by a non-refundable transfer application fee of \$200.
- (3) The application shall be reviewed by the Clerk of the Board of Supervisors, County Attorney and the Public Works Director. If the Board of Supervisors determines the application to be satisfactory, it shall be approved by the Board of Supervisors at an open meeting. The Board of Supervisors shall act upon a request for transfer within one hundred-twenty (120) days of its submission.

**SECTION 16: SEVERABILITY**

If any section, subsection, sentence, clause, phrase or portion of this Resolution or any franchise extended hereunder is for any reason held illegal, invalid or unconstitutional by the decision of 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 hereof.

**SECTION 17:           CONFIDENTIALITY**

All information of a financial or personal nature provided to the County or Board of Supervisors for the purposes of this Resolution under Section 4 or otherwise shall be used only for the purposes prescribed by this Resolution and further shall not be published or provided orally or in writing to any person, entity or agency, except the Arizona Corporation Commission.

**SECTION 18:           RIGHTS RESERVED TO THE COUNTY**

Without limitation upon the rights which the County may otherwise have, the County does hereby expressly reserve the right to amend any section or provision of this Resolution for any reason determined to be desirable by the County including, but not limited to:

- A. New developments in the state of technology of transportation or transmission businesses.
- B. Any changes in federal or state laws, rules or regulations.
- C. Any changes in the ACC's rules or regulations.

**SECTION 19:           EFFECT UPON EXISTING FRANCHISES**

It is the intent of this Resolution that all franchises in force at the time of enactment of this Resolution shall remain valid for the full term thereof subject to the following conditions:

- A. Each grantee holding such a franchise shall within a period of eight (8) weeks following the enactment of this Resolution, execute an Addendum to Franchise Agreement binding the grantee to conform to all provisions, requirements, and obligations of this Resolution except that no grantee shall be required to submit a new application, pay any application fee, or submit to any hearing with regard to this section.

**SECTION 20:           REVOCATION**

This Resolution supercedes and revokes any inconsistent provisions in any prior Resolution.

**SECTION 21:           EFFECTIVE DATE**

This Resolution becomes fully effective on \_\_\_\_\_.

**PASSED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_ 2016, at Globe, Gila County, Arizona

Attest:

**GILA COUNTY BOARD OF SUPERVISORS**

\_\_\_\_\_  
Marian Sheppard  
Clerk of the Board

\_\_\_\_\_  
Michael A. Pastor, Chairman

Approved as to form:

\_\_\_\_\_  
Jefferson R. Dalton  
Deputy Gila County Attorney,  
Civil Bureau Chief