

RESOLUTION NO. 770

REPEALING RESOLUTION NO. 503 AND ESTABLISHING REGULATIONS AND PROVIDING PROCEDURES FOR THE ISSUANCE OF FRANCHISES AND LICENSES TO CONSTRUCT, INSTALL AND OPERATE TRANSPORTATION AND TRANSMISSION BUSINESSES ALONG, ACROSS AND UPON THE PUBLIC STREETS, WAYS, ALLEYS, AND PLACES WITHIN THE UNINCORPORATED AREAS OF YAVAPAI COUNTY, ARIZONA.

NOW, THEREFORE, THE BOARD OF SUPERVISORS OF THE COUNTY OF YAVAPAI, ARIZONA, DOES ORDER AS FOLLOWS:

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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 Yavapai County.
- B. "Licensing Authority" means the Board of Supervisors of Yavapai County.
- C. "Board of Supervisors" means the Yavapai County Board of Supervisors or its designee as expressed by resolution, except that all hearings, notices, and license approvals required of the Board of Supervisors under this resolution must be done by the Board of Supervisors as a whole.

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- D. "License" means the non-exclusive right and authority to construct, maintain and operate a transportation and transmission business through use of the public streets, other public rights of way or public places in the unincorporated part of Yavapai County designated as the Service Area granted by resolution by the Licensing 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 License.
- G. "Licensee" means the Person granted a License by the Board of Supervisors and the lawful successor, transferee, or assignee of said Person.
- H. "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 Licensee" means all property owned, installed or used within the County by Licensee in the conduct of the proposed license business.
- J. "Service Area" means the designated area for which the Board of Supervisors has granted a license to a particular Licensee.
- K. License as used herein has the same meaning as "franchise" under A.R.S. §40-283.

SECTION 3: AUTHORITY TO GRANT LICENSE

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

SECTION 4: APPLICATION FOR LICENSE

- A. Each application for a License 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 Licensee. If such information is not disclosed in the application, the License 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 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 county-wide 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 statement describing and specifying the type and capacity of the business.
 - (6) A description of all previous experience of the applicant in providing service in related or similar fields.
 - (7) 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. The Board may in its discretion waive any requirement in this section.
- B. Applicant shall pay to Yavapai County a non-refundable application fee of Two Hundred and Fifty Dollars (\$250.00). Such fee shall be submitted with the application.
- C. Prior to the issuance of a License, the Board of Supervisors shall give public notice of the proposal in a newspaper of general circulation, published within the County, for 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 in Yavapai County petition the Board of Supervisors to deny such privilege, it shall do so. Proposed Licensee shall bear all publication costs.

SECTION 5: LICENSE 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, License 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 License on the basis of these considerations and without competitive bidding.
- B. Any License 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 Licensee's service area.
 - (3) Minimum insurance policy coverage.

SECTION 6. ACCEPTANCE OF THE LICENSE

- A. No License shall become effective unless written acceptance is received by the Board of Supervisors from the Licensee.
- B. The written acceptance shall be received by the Board of Supervisors not later than 12:01 p.m. of the thirtieth (30th) day following the date of approval of such License.
- C. Neither the granting of any License nor any of the provisions contained herein shall be construed to prevent the County from granting any License to any other Person embracing the same area.

SECTION 7. CONSTRUCTION OF SYSTEM

A. Permits and Licenses

The Licensee shall promptly obtain all necessary permits and authorizations.

B. Repair of Streets and Public Ways

- (1) Any and all streets and public ways in the Service Area which are disturbed or damaged by any Licensee shall be repaired by the Licensee at his expense to restore the roadway to its condition before being disturbed. Before any public roadway or place is disturbed the Licensee may 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 Licensee shall

conform. The County and Licensee 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 (3) hereof. The Licensee shall bear the costs of inspections resulting from bona fide complaints.

- (2) County will notify Licensee if County determines that any lines or other property of Licensee 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 Licensee shall bear the cost of such relocation.
- (3) Upon the failure of the Licensee to cause any work or other act required by law or hereunder to be properly completed within a reasonable time, the Board of Supervisors 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 Licensee an itemized statement of cost thereof. The Licensee shall, within thirty (30) days after mailing of the statement, pay to the County the entire amount. Said failure may cause termination under Section 10.

SECTION 8: DURATION OF LICENSE

The term of any license shall not exceed fifteen (15) years commencing on the effective date of any license issued and shall be so stated in the license. A license may be renewed for an additional period in accordance with Section 10.

SECTION 9: TERMINATIONS

- A. Any License granted may be terminated prior to its date of expiration by the Board of Supervisors in the event that it shall have determined that:
 - (1) The Licensee has failed to comply with any material provision of this resolution.
 - (2) The Licensee has, by an act or omission, violated any term or condition of any License issued.
 - (3) The Licensee has failed to comply with any material rule or regulation of the Board of Supervisors validly adopted pursuant to this resolution.
 - (4) The Licensee has failed to comply with any rule, regulation, or order of the Arizona Corporation Commission.
- B. The Board of Supervisor shall make written demand that the Licensee 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 Licensee continues for a period of thirty (30) days following written demand, the Board of Supervisors may place its request for termination of the License upon its agenda. The Board of Supervisors shall cause to be served upon the Licensee, 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 with the Service Area.
- D. If a failure, refusal or neglect by the Licensee was with just cause, the Board of Supervisors shall by resolution order the Licensee to comply (if compliance is necessary) within a reasonable time and in a reasonable manner. This resolution shall contain the findings and conclusions upon which it is based. These conclusions shall contain a conclusion of whether compliance is necessary.
- E. If a failure a refusal or neglect by the Licensee was without just cause, the Board of Supervisors may, by resolution, declare that the License of the Licensee shall be terminated and forfeited unless there is compliance by the Licensee within such period as the Board of Supervisors may fix. This 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 Licensee, it shall so resolve. This resolution shall contain the findings and conclusions upon which it is based.

SECTION 10: RENEWAL

Licensee shall apply for renewal of the License not less than sixty (60) days prior to its expiration date, and the License shall be renewed by the Board of Supervisors for a term not to exceed fifteen (15) years. The new License shall conform with all application fees, insurance policy coverage and other terms in effect at the time of the renewal. Renewal considerations shall include, but not be limited to, the reports prepared throughout the life of the License, technical performance, the development services, the ability of the Licensee to service the entire Service Area designated by the Board of Supervisors, and cooperation exhibited by the Licensee with the County and its residents throughout the License period. Nothing herein shall be construed to require renewal.

SECTION 11: LIABILITY INSURANCE

The Licensee shall be required to maintain for the duration of the license general comprehensive liability insurance insuring against all damages charged to the County or the Licensee resulting from the installation, development, maintenance or expansion of a Licensee's transportation or transmission business, as follows:

- (1) Five Hundred Thousand Dollars (\$500,000) for bodily injury or death to any one person with an aggregate limit for any one occurrence of One Million Dollars (\$1,000,000) for bodily injury or death.
- (2) Two Hundred Fifty Thousand Dollars (\$250,000) for property damage resulting from any one accident.
- (3) Fifty Thousand Dollars (\$50,000) for all other types of liability.

The County shall be named in such policy as coinsured, or added thereon by endorsement as a named insured. A certificate of insurance for said policy shall be filed with the Clerk of the Board of Supervisors. The certificate shall provide that if the policy it covers shall be cancelled by the insurance company or the Licensee 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.

SECTION 12: 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. Any Arizona Corporation Commission rule inconsistent with the terms herein is deemed to automatically amend the inconsistent term. Any License issued pursuant to this resolution is subject to any Arizona Corporation Commission rules or regulations.

SECTION 13: ANNEXATION

Any Licensee 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), (4), (5) and (B). All requirements of Section 4 B and Sections 5 through 16 apply to annexations. Any new License issued as a result of annexation shall terminate the Licensee's existing License. The new License shall incorporate the Licensee's existing service area, and the minimum insurance policy coverage in effect at the time of the annexation. The new license shall be treated as any other license under this resolution, and shall be for a term not to exceed fifteen (15) years.

SECTION 14: SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this resolution or any license 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.

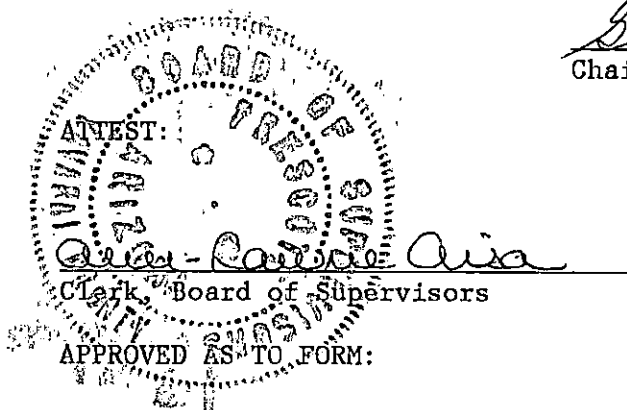
SECTION 15: CONFIDENTIALITY

All information of a financial or personal nature provided to the County or Board of Supervisors for the purposes of this ordinance 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 16: REVOCATION

This resolution supercedes and revokes Resolution No. 503 with the limitation that no existing licenses are altered or amended.

PASSED, ADOPTED AND EFFECTIVE THIS 1ST DAY OF AUGUST, 1988, BY THE BOARD OF SUPERVISORS OF THE COUNTY OF YAVAPAI, ARIZONA.



[Signature]
Chairman, Board of Supervisors