

YC Contract No. 2021-120  
Recorded at the request of:  
Yavapai County Public Works  
When recorded – RETURN TO:  
Attn: Lisa Brown

THIS IS A CONFORMED COPY OF INSTRUMENT/  
RECEPTION # 2021-0050933  
RECORDED ON 07-15-2021 AT 3:42 pm  
LESLIE M. HOFFMAN, YAVAPAI CO. RECORDER  
James J. Henry DEPUTY

**BEFORE THE BOARD OF SUPERVISORS**

**OF**

**YAVAPAI COUNTY, ARIZONA**

In the Matter of the Application of

**INSCRIPTION CANYON WATER COMPANY**

for a WATER franchise

)  
)

**FRANCHISE**

WHEREAS, **INSCRIPTION CANYON WATER COMPANY** filed its application pursuant to A.R.S. §40-283 and Yavapai County Resolution No. 1855, incorporated herein, for a franchise to construct, maintain, and operate transmission lines (hereinafter the "Transmission Business"), upon, under and across public roads [throughout Yavapai County, Arizona]

within that portion of Yavapai County, described as follows:

**EXHIBIT A**

**LEGAL DESCRIPTION  
INSCRIPTION CANYON WATER COMPANY  
INSCRIPTION CANYON**

The west half of Section 11, Township 16 North, Range 3 West, Gila and Salt River Base and Meridian;

Sections 15, 16, 21, 22 and 27, Township 16 North, Range 3 West, Gila and Salt River Base and Meridian;

The Southwest quarter of Section 26, Township 16 North, Range 3 West, Gila and Salt River Base and Meridian;

The easterly 1,500 feet of Section 17, Township 16 North, Range 3 West, Gila and Salt River Base and Meridian, lying northeasterly of the United States Department of the Interior Bureau of Reclamation's electric transmission right of way;

The Northerly one-half of Section 28, Township 16 North, Range 3 West, Gila and Salt River Base and Meridian;

The Northwestern portion of Section 33, Township 16 North, Range 3 West, Gila and Salt River Base and Meridian, the Southeasterly line of said portion being measured from a point on the east line of said Section 33, lying 1,000 feet southerly of its northeast corner to a point on the south line of said Section 33, lying 1,000 feet easterly of its southwest corner.

**LEGAL DESCRIPTION  
INSCRIPTION CANYON WATER COMPANY  
WHISPERING CANYONS**

A portion of Sections 33 and 34, Township 16 North, Range 3 West, Gila and Salt River Base and Meridian, Yavapai County, Arizona, described as follows:

BEGINNING at the corner common to Sections 27, 28, 33 and 34 of Township 16 North, Range 3 West of the Gila and Salt River Base and Meridian, monumented with a brass cap stamped "W.J. Cheek: P.E. No. 2398";

Thence along the line common to Sections 33 and 34, South 00 degrees 23 minutes 28 seconds West, 382.57 feet;

Thence departing the line common to Sections 33 and 34, South 55 degrees 49 minutes 36 seconds West, 5,326.57 feet;

Thence South 89 degrees 47 minutes 13 seconds West, 1,051.14 feet, to the West line of Section 33;

Thence along the West line of Section 33, South 00 degrees 12 minutes 47 seconds East, 1,992.80 feet, to the Southwest corner of Section 33, monumented with a General Land Office Survey brass cap;

Thence along the South line of Section 33, South 89 degrees 38 minutes 18 seconds East, 2,710.90 feet, to the South quarter corner of Section 33, monumented with a General Land Office Survey brass cap;

Thence continuing along the South line of Section 33, South 89 degrees 43 minutes 13 seconds East, 2,705.54 feet, to the Southeast corner of Section 33 and the Southwest corner of Section 34, monumented with a General Land Office Survey brass cap;

Thence along the South line of Section 34, South 87 degrees 44 minutes 28 seconds East, 2,693.48 feet, to the South quarter corner of Section 34, monumented with a General Land Office Survey brass cap;

Thence continuing along the South line of Section 34, South 87 degrees 50 minutes 49 seconds East, 1,547.40 feet;

Thence departing the South line of Section 34, North 45 degrees 32 minutes 06 seconds East, 249.67 feet;

Thence North 46 degrees 27 minutes 18 seconds East, 227.64 feet;

Thence North 28 degrees 06 minutes 24 seconds West, 95.72 feet;

Thence North 40 degrees 18 minutes 23 seconds West, 149.00 feet;

Thence North 57 degrees 38 minutes 52 seconds West, 261.34 feet;

Thence North 51 degrees 03 minutes 55 seconds West, 98.30 feet;

Thence North 23 degrees 31 minutes 58 seconds West, 107.05 feet;

Thence North 39 degrees 49 minutes 43 seconds West, 576.55 feet;

Thence North 89 degrees 59 minutes 59 seconds West, 332.00 feet;

Thence North 57 degrees 35 minutes 51 seconds West, 111.89 feet;

Thence North 31 degrees 49 minutes 09 seconds West, 253.35 feet;

Thence North 23 degrees 51 minutes 50 seconds East, 96.11 feet;

Thence North 68 degrees 53 minutes 54 seconds East, 385.86 feet;

Thence North 33 degrees 26 minutes 09 seconds East, 493.95 feet to the Southwesterly line of the Western Power authority electrical power transmission line;

Thence along said Southwesterly line, North 31 degrees 52 seconds 34 minutes West, 957.74 feet;

Thence departing said Southwesterly line North 64 degrees 52 minutes 55 seconds East, 453.56 feet;

Thence North 25 degrees 09 minutes 04 seconds East, 559.18 feet;

Thence North 78 degrees 37 minutes 30 seconds East, 520.03 feet;

Thence North 58 degrees 10 minutes 11 seconds East, 813.86 feet;

Thence South 84 degrees 51 minutes 52 seconds East, 90.87 feet to a point on the Westerly right of way of Williamson Valley Road (a.k.a. Prescott-Simmons Highway), per the map filed and recorded in Book 10 of Maps, page 17 in the Office of the Recorder of Yavapai County, said point being a point of curvature;

Thence along the Westerly right of way, along a curve to the right, having a chord bearing North 05 degrees 02 minutes 17 seconds West, a chord length of 642.38 feet, a radius of 1,959.86 feet, a central angle of 18 degrees 51 minutes 53 seconds and an arc length of 645.29 feet (recorded as having a radius of 1,959.86, a central angle of 18 degrees 52 minutes and an arc length of 645.35 feet);

Thence continuing along the West right of way, North 04 degrees 24 minutes 08 seconds East, (recorded as North 04 degrees 21 minutes East) 554.93 feet, to a point on the North line of Section 34;

Thence along the North line of Section 34 North 88 degrees 21 minutes 20 seconds West, 2,488.09 feet, to the North quarter corner of Section 34 monumented with brass cap stamped "W.J. Cheek; P.E. No. 2398";

Thence continuing along the North line of Section 34, North 88 degrees 20 minutes 49 seconds West, 2,738.88 feet to the POINT OF BEGINNING.

Except the Northerly 100 feet of the Westerly 100 feet of the Northwest quarter of said Section 34.

and [that said area described in Exhibit A above is] not within the limits of any incorporated city or town, and,

WHEREAS, the Transmission Business is more fully described as transportation of WATER through pipes and related infrastructure.

WHEREAS, a hearing on said application was held and due and regular notice thereof was given by publication of notice once a week for three consecutive weeks prior to the time of the hearing and proof of publication has been presented, and

WHEREAS, all protests to granting such application have been considered, the Board of Supervisors of Yavapai County, Arizona, (hereinafter "County") hereby finds that issuance of a Franchise is appropriate and hereby grants to **INSCRIPTION CANYON WATER COMPANY** (hereinafter referred to as "Licensee") the right, privilege, license and franchise to construct, maintain, and operate the Transmission Business for a period of five (5) years from the date hereof, along, upon, under and across the public roads within the above described area of Yavapai County, Arizona, upon the following terms and conditions:

## **TERMS AND CONDITIONS**

### **I. Definitions.**

1. The term "public roads" shall mean all public streets, county rights of way, alleys, roads, highways or other thoroughfares of any kind that are either used by or open to use by the public; except state highways.

2. The term "road" includes the surface, the airspace above the surface, the area below the surface, and the area along or adjacent to the surface of the road extending to and including the outer boundary of the road, right of way, or public place.

3. "Franchise" or "License" means the non-exclusive right and authority to construct, maintain and operate a transportation and transmission business through the use of the public roads, or other public rights of way or public places in the unincorporated parts of Yavapai County designated in this document and its exhibits and has the same meaning as "franchise" as used in in A.R.S. § 40-283.

### **II. Scope.**

1. All rights and privileges hereunder are granted under the express condition that the County shall have the power at any time to impose such additional restrictions, limitations and requirements, and to make regulations related to such public roads as may be deemed best for the public safety, welfare or convenience.

2. This Franchise shall not be deemed to be exclusive and the Board of Supervisors of County hereby expressly reserves the right and power to grant from time to time similar franchises and privileges over the same territory, highways, public roads, thoroughfares, alleys, and public ways.

3. This Franchise is granted upon the express condition subsequent that a Certificate of Convenience and Necessity shall be procured from the Arizona Corporation Commission within six months from the date of granting of this Franchise; and if such Certificate is not granted within six months from said date, then this Franchise shall be void; otherwise to be in full force and effect for the time herein specified.

4. Licensee certifies that all transportation or transmission business shall be supervised by a duly authorized local operator, whose name, address, and phone number shall be kept in the records of the County Public Works Director. Licensee shall notify the County Public Works Director of any operator changes. Licensee shall further notify the County Public Works Director of any proposed change of ownership of this Franchise. All proposed ownership changes (whether by sale, assignment or other transfer) shall be subject to approval by the Yavapai County Board of Supervisors, and compliance with the provisions of Yavapai County Resolution Number 1855, including

Section 4 pertaining to Applications for Licenses. Failure to obtain County Board of Supervisors approval for a proposed change of ownership of this Franchise shall make the proposed transfer of the Franchise void, and of no force and effect.

### **III. Construction, Use of Public Roads and Relocation of Facilities.**

1. Prior to commencing any construction, improvements, repairs, or maintenance to its utility along, upon, under or across a public road or adjacent public area, Licensee shall obtain a permit authorizing said activity from the Yavapai County Engineer and shall comply with all applicable federal and state laws, industry codes and Yavapai County Ordinances.

2. County will notify Licensee if County determines that any transmission lines, facilities or equipment are located at a depth which interferes with an existing public road or adjacent public area, or interferes with contemplated construction, improvements, repairs or maintenance related to a public road or adjacent public area. Hereinafter ("Project")

3. Upon receipt of such Project notice as set out in paragraph 2 above, Licensee take the following action:

- a. When 60% Project design plans are distributed to the Licensee, the Licensee will start preliminary design for the relocation plan of the affected Transmission Business infrastructure. Licensee shall notify County of any concerns with the Relocation Project at this time and shall provide a preliminary relocation plan to County.
- b. When 90% Project design plans are distributed to the Licensee, the Licensee shall revise Licensee's relocation plan to adjust to any changes the County has made to the Project design plans and shall immediately notify County of any concerns with the 90% Project design plans.
- c. When 100% design plans are distributed to the Licensee, the Licensee shall, within (30) calendar days, complete Licensee's final relocation plan which shall immediately be submitted to County for approval. Upon notice to the Licensee of the County's approval, the Licensee shall have sixty (60) calendar days, to complete or show substantial progress in the completion of the relocation of the Transmission Business infrastructure as set out in the approved relocation plan.
- d. Upon written request for an extension of time under this subsection from the Licensee which specifies the reason for such a request, the County Engineer, at the County Engineer's sole discretion, may grant such reasonable extensions as the County Engineer deems appropriate.

4. In the event that the County requires the removal or relocation of transmission lines or other facilities or equipment under the terms of this Franchise, Licensee shall be solely responsible for all associated costs of removal and relocation unless Licensee can establish that its infrastructure existed on private property before the public road was dedicated to or acquired by the County.

5. All equipment and facilities constructed, installed, erected, relocated, used and maintained under this franchise shall in all respects be adequate, sufficient and substantial in design and workmanship and shall be so located, erected, relocated and maintained so as not to interfere with the public's full use and enjoyment of the public roads, and so as not to endanger life or property. All work by Licensee shall be done with the utmost diligence and the least practicable inconvenience to the public or individuals and the Licensee shall within a reasonable time, restore the public roads excavated by it to its original condition as nearly as practicable, subject to the approval of County.

6. All rights and privileges hereunder shall be exercised so as to not interfere or conflict with any easements or rights-of-way, either public or private, of whatsoever nature, other interests heretofore granted by the County and now in force, or which has been acquired in or to the proper use of said public roads, or any portion thereof.

7. Licensee shall bear all expenses, including but not limited to, damages and compensation, incurred or expended by County and all third parties for any alteration of the course, direction, surface, grade or alignment of any public road made by or for Licensee pursuant to this Franchise.

8. Licensee shall properly maintain its equipment and facilities at its own cost and expense and will make all necessary repairs to the same as may be needed without the necessity of notice from County.

9. Upon the failure of Licensee to cause any work or other act required by law or hereunder to be properly completed within a reasonable time, the Yavapai County Public Works Director may cause this work or other activity to be completed in whole or in part to the satisfaction of the County, and upon so doing shall submit to Licensee an itemized statement of the cost thereof. The Licensee shall, within thirty (30) days after mailing of the statement, pay the County the entire amount.

#### **IV. Insurance.**

1. Licensee shall be required to secure and maintain in force for the duration of the franchise commercial general liability insurance (occurrence form) insuring against all damages charged to County resulting from the installation, development, maintenance or expansion of the Licensee's transportation or transmission business, as follows:

A minimum of one million dollars (\$1,000,000) for bodily injury or death to any one person or property damage to any one person with an aggregate limit for any one occurrence of Two million dollars (\$2,000,000) for bodily injury or death or property damage.

Licensee shall endorse County in such policy as an Additional Insured. A certificate of insurance for said policy shall be filed with the County Public Works Director. "Yavapai County" must be named as an Additional Insured on the certificate. 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, thirty (30) days written notice prior to the effective date of such cancellation shall be given to the County Public Works Director.

## **V. Indemnification.**

1. Licensee agrees to defend, indemnify and hold harmless the County, its appointed and elected officials, agents, and employees against all third party claims, losses, suits, actions, costs, counsel fees, litigation costs, expenses, damages, judgments or decrees on account of any injury or damage to the person or property of another, to the extent that such injury or damage is caused by the negligence, willful misconduct, or from any breach of any common law, statutory or other duty pursuant to the Franchise of Licensee, Licensee's employees, agents, or subcontractors in exercising the rights granted to Licensee in this Franchise.

2. To the fullest extent permitted by law, Licensee (as "Indemnitor") hereby agrees to immediately defend, indemnify, and hold harmless Yavapai County, and its departments, agencies, officers, officials, agents, employees and volunteers (hereinafter referred to as "Indemnitee") from and against any and all demands, claims, complaints, losses, damages, actions or causes of action, assessments, liabilities, costs or expenses including, without limitation, interest, penalties and reasonable attorney's fees and reasonable expenses of investigation and remedial work (including, but not limited to, investigations and remediation by engineers, environmental consultants and similar technical personnel) asserted against or imposed upon or incurred by Indemnitee arising in connection with, or resulting directly or indirectly from, any Environmental Law, including, but not limited to, any use, generation, storage, spill, release, discharge or disposal of any Hazardous Substance that is now or comes to be located on, at, about or under the property or because of, or in connection with, the violation of any Environmental Law (hereinafter collectively referred to as "Claims") to the extent that such Claims are caused as a direct or indirect result of any acts or omissions or Fault of Licensee, its officers, officials, agents, employees, contractors, volunteers, tenants, subtenants, invitees or licensees, regardless of whether or not such Claims are caused in part by a party indemnified hereunder. Licensee shall not be obligated to defend Indemnitee against any Claims or indemnify Indemnitee for or hold Indemnitee harmless from any Claims incurred by Indemnitee resulting solely from the negligence or willful misconduct



of Indemnitee and not in any way resulting from any act or omission or Fault of Licensee or anyone directly or indirectly employed by Licensee or anyone for whose acts Licensee may be liable. As used in this section: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and include, but are not limited to, the following substances: gasoline, kerosene, or other petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal, state or local laws and regulations, including common law, that relate to health, safety or environmental protection; and (c) "Fault" means those nonculpable acts or omissions giving rise to strict liability under any Environmental Law pertaining to Hazardous Substances, as well as culpable conduct (negligence or willful misconduct). The Licensee agrees to waive all rights of subrogation against the County, its departments, agencies, officers, officials, agents, employees and volunteers for losses caused by or arising from the exercise of this Franchise.

## **VI. Effective Date and Duration.**

1. This Franchise is not effective until written acceptance by Licensee is received by the County. Such acceptance shall be made no later than 12:01 p.m. on the 30<sup>th</sup> day following the approval of this Franchise as determined by the date of the signature of the Chairman of the Yavapai County Board of Supervisors below. This franchise shall continue for a period of five years from the effective date unless terminated or renewed as set in Sections VII and VIII below.

## **VII. Termination.**

1. Any Franchise granted may be terminated prior to its date of expiration by the County in the event that it shall have been determined that:

- a. The Licensee has failed to comply with any material provision of County Resolution No. 1855.
- b. The Licensee has, by an act or omission, violated any term or condition of any License or Franchise issued.
- c. The Licensee has failed to comply with any material rule or regulation that the County validly adopted pursuant to County Resolution No. 1855.
- d. The Licensee has failed to comply with any rule, regulation, or order of the Arizona Corporation Commission.
- e. The Licensee has failed to comply with any applicable Federal, State or local law.

2. The County 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.

3. If the alleged failure, neglect or refusal of the Licensee continues for a period of thirty (30) days following written demand, the County may place its request for termination of the License on its Board of Supervisor's meeting agenda. The County 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 terminate, 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 Franchise service area. If no newspaper of general circulation is published within the Franchise service area, notice may be given by posting in a conspicuous place within the service area.

4. If the alleged failure, refusal or neglect by the Licensee was with just cause, the County shall, by resolution, order the Licensee to comply (if compliance is necessary) by remedying the failure, refusal or neglect within a reasonable time and in a reasonable manner. Said resolution shall contain the findings and conclusions upon which it is based, including a statement as to whether compliance is necessary.

5. If a failure, a refusal or neglect by a Licensee was without just cause, the County may, by resolution, declare that the Franchise of the Licensee terminated and forfeited, unless there is compliance by the Licensee within such period as the County may fix. Said resolution shall contain the findings and conclusions upon which it is based.

6. If the County finds that there is no failure, refusal or neglect by the Licensee, it shall so resolve. Said resolution shall contain the findings and conclusions upon which it is based.

#### **VIII. Renewal.**

1. Licensee, pursuant to the procedures set out in Yavapai County Board of Supervisors Resolution No. 1855 or any subsequent modification thereto, shall apply for renewal of this Franchise not less than sixty (60) days prior to its expiration. In the event that required notice, public hearings or official action cannot be taken prior to expiration of the Franchise due to no fault of Licensee, this Franchise shall continue until final action by County has been taken.

#### **IX. Independent Provisions**

1. If any section, paragraph, subdivision, clause, phrase or provision hereof shall be adjudged invalid or unconstitutional, the same shall not affect the validity hereof as a whole, or any part or provision other than the part so decided to be invalid or unconstitutional.

**X. Ownership of Company Property.**

1. All plant, system, facilities, works, and all other physical property installed or operated by the Licensee in accordance with the terms of this Franchise shall be and remain the property of the Licensee, and upon expiration of this Franchise or any extension or renewal thereof, the Licensee is hereby granted the right to enter upon the Public Roads for the purpose of removing any and all plant, system, facilities, works and other property of the Licensee, at any time within six months after termination of this Franchise or any extension or renewal thereof.

**XI. Coordination with Municipal Franchises.**

1. This Franchise shall cease to confer upon the Licensee any rights or of any city or town when the latter privileges within the limits shall have incorporated and there shall be in effect its municipal franchise in favor of the Licensee for Transmission Business purposes.

**XII. Superseding Former Franchise.**

1. After the passage of this grant and upon its acceptance by the Licensee all rights and privileges heretofore granted by the County by that certain franchise and license to the PRIOR LICENSEE ICR WATER USERS ASSOCIATION passed and effective the 5<sup>TH</sup> DAY OF OCTOBER, 2016 shall be superseded by this grant and shall then be of no further force or effect.

**XIII. Notice.**

1. Whenever notice is required under this Franchise it shall be given in writing and shall be deemed effective either (i) upon hand delivery to the person then holding the office shown on the attention line of the address below, or, if such office is vacant or no longer exist, to a person holding a comparable office, or (ii) on the fifth business day following its deposit with the United States Postal Service, first class and certified mail addressed as follows:

County

Yavapai County Public Works  
Attn: Franchise Authority  
1100 Commerce Drive  
Prescott, AZ 86305

Licensee


**INSCRIPTION CANYON WATER COMPANY  
PO BOX 2344  
PRESCOTT, AZ 86302**

**XIV. Headings.**

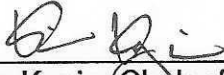
1. Headings are given to sections of this Franchise solely as a convenience to facilitate reference. Such headings shall not be deemed in any way material or relevant to the construction or interpretation of this Franchise.

Dated this 7<sup>th</sup> day of July, 2021.

This franchise agreement shall expire on: July 7, 2026 (5 years)

  
\_\_\_\_\_  
Craig L. Brown, Chairman  
Yavapai County Board of Supervisors

Attest:

  
\_\_\_\_\_  
Kim Kapin, Clerk of the Board  
Yavapai County Board of Supervisors

Date: July 8, 2021

**ACCEPTANCE OF LICENSE**

TO: The Clerk of the Board of Supervisors of Yavapai County

**INSCRIPTION CANYON WATER COMPANY**

hereby accepts the foregoing Franchise to construct and/or operate a franchise for a Transmission Business as herein described within the authorized service area and under the terms specified in the license.

Dated this 19 day of MAY, 2021.

**INSCRIPTION CANYON WATER COMPANY**

By: [Signature] M. ARMSTRONG

Its: RESIDENT

STATE OF ARIZONA     )  
  ) ss.  
COUNTY OF YAVAPAI    )

SUBSCRIBED AND SWORN TO before me by Mark Armstrong this  
19<sup>th</sup> day of May, 2021.

Felicia Robinson  
Notary Public

My Commission Expires:  
March 12, 2025

