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CITIZENS UTILITIES 2014 015
Arizona Gas Division

ACCEPTANCE OF FRANCHISE

STATE OF LOUISIANA)
)ss.
Parish of Jefferson)

Reference is made to Ordinance No. 1879 of the City of Flagstaff, Arizona, adopted on the 3rd day of October, 1995, by the Mayor and City Council of the city of Flagstaff, a municipal corporation, in Coconino County, State of Arizona, granting to CITIZENS UTILITIES COMPANY, a Delaware corporation, a Franchise for the service of gas in the City and the construction, maintenance and operation of necessary facilities therefor for a period of twenty-five (25) years.

Pursuant to Section 7 of such Franchise, CITIZENS UTILITIES COMPANY, a Delaware corporation, Grantee therein, hereby accepts such Franchise with the intention that this Acceptance shall be filed with the City of Flagstaff, Arizona.

DONE at Harvey, Louisiana, This 20th day of November 1995.

CITIZENS UTILITIES COMPANY
Delaware corporation

By: [Signature]
Vice President



ATTEST:

STATE OF ARIZONA)
) ss.
County of Coconino)

I, Linda Butler, Clerk of the City of Flagstaff, State of Arizona, hereby certify that the above and foregoing Acceptance of Franchise by CITIZENS UTILITIES COMPANY, a Delaware corporation, (contained in Ordinance No. 1879 and the Franchise granted by such Ordinance was received and duly filed in the records of my office as Clerk of the city of Flagstaff, Arizona, on the 27th day of, Nov. 1995.

[Signature]
Clerk of the City of Flagstaff, Arizona

Title _____

A1463A
ITEM NO.: 6C

CITY OF FLAGSTAFF

STAFF SUMMARY REPORT

REPORT TO THE CITY MANAGER

Linda Butler
Prepared by

FROM: CITY CLERK

DATE: 09/25/95

COUNCIL MEETING OF: 10/03/95

[Signature]
Department Head Signature

AGENDA ITEM:

CONSIDERATION OF CANVASS OF RETURNS OF SPECIAL GAS FRANCHISE ELECTION HELD SEPTEMBER 19, 1995:

Council Approved:
Date: 10-3-95

For Action By:
L.B.

STATEMENT OF SUBJECT:

A Special Gas Franchise election was held on September 19, 1995, for the purpose of submitting the proposed Citizens Utilities Gas Franchise to the voters. Arizona Revised Statutes §16-642 requires that the Council canvass the returns of the election no more than 15 days following the election.

The returns of the Special Gas Franchise Election are as follows:

For the Franchise 618
Against the Franchise 111

A copy of the returns by voting district are attached.

RECOMMENDATION:

Declare the returns of the Special Gas Franchise Election official.

REVIEWED BY:	BY DATE		BY DATE
____ CITY MANAGER	____/____	____ FINANCE DIRECTOR	____/____
____ CITY ATTORNEY	____/____	____ PLANNING DIRECTOR	____/____
____ CITY ENGINEER	____/____	____ PUBLIC WORKS DIR.	____/____
____ UTILITIES DIR.	____/____	____ TOURISM DIRECTOR	____/____

ORDINANCE NO. 1879

AN ORDINANCE GRANTING TO CITIZENS UTILITIES COMPANY, A DELAWARE CORPORATION, ITS LEGAL REPRESENTATIVES, SUCCESSORS, LESSEES AND ASSIGNS, CERTAIN POWERS, LICENSES, RIGHTS-OF-WAY, PRIVILEGES AND FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN IN THE CITY OF FLAGSTAFF, STATE OF ARIZONA, AS NOW OR HEREAFTER CONSTITUTED, WORKS, SYSTEMS AND PLANTS FOR THE HANDLING, PRODUCTION, MANUFACTURING, TRANSPORTING, STORING, SALE AND DISTRIBUTION OF GAS INTO, OUT OF, AND THROUGH SAID MUNICIPALITY, AND FOR THE DISTRIBUTION AND SALE OF SUCH GAS TO SAID MUNICIPALITY, ITS INHABITANTS AND OTHERS, INCLUDING CUSTOMERS INSIDE, BEYOND, AND OUTSIDE OF THE LIMITS OF SAID MUNICIPALITY; AND TO USE THE STREETS, AVENUES, EASEMENTS, RIGHTS-OF-WAY, ALLEYS, HIGHWAYS, SIDEWALKS, BRIDGES AND OTHER STRUCTURES AND PLACES AND PUBLIC GROUNDS IN SAID MUNICIPALITY FOR A PERIOD OF TWENTY-FIVE (25) YEARS; AND PRESCRIBING IN CONNECTION THEREWITH CERTAIN RIGHTS, DUTIES, TERMS AND CONDITIONS HEREIN MENTIONED; AND PROVIDING FOR THE PAYMENT TO SAID MUNICIPALITY OF A PERCENTAGE OF CERTAIN REVENUES OF GRANTEE FROM ITS OPERATIONS THEREIN; AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1: That the City of Flagstaff, a municipal corporation in Coconino County, Arizona, herein called the "Municipality," hereby grants to, and vests in, Citizens Utilities Company, a Delaware corporation, duly authorized to transact within this State a public service business as a gas utility, herein called the "Company," a franchise with the right to operate a gas plant, system, pipelines and works in the Municipality, as now or hereafter constituted, and the authority, license, power and privilege to maintain, construct, build, equip, conduct or otherwise establish and operate in said Municipality, works or systems and plants to manufacture, use, sell, store, distribute, convey or otherwise establish, conduct, serve, supply or furnish the inhabitants of said Municipality and others, and to the Municipality whenever it may desire to contract therefor, gas for light, fuel, power, heat and any and all other useful purposes, and the Company hereby is granted passage, right-of-way and its right to occupy and use in any lawful way during the life of this franchise, every and any and all streets, avenues, alleys, highways, sidewalks, bridges and other

structures of said Municipality, both above and beneath the surface of the same, as said streets, avenues, easements, rights-of-way, alleys, highways, sidewalks, bridges and other structures now exist or may be hereafter extended, for every and any such service, use, effect and lawful purpose as herein mentioned. The Municipality shall not be liable to the Company should the Company construct facilities pursuant to this franchise in any area over which the Municipality has erroneously exercised jurisdiction, except that the Municipality shall reimburse the Company for all fees paid to the Municipality attributable to the sale of gas within the said area.

SECTION 2: The Company is hereby authorized, licensed and empowered to do any and all things necessary and proper to be done and performed in executing the powers and utilizing the privileges herein mentioned and granted by this franchise, provided the same do not unreasonably conflict with water or other pipes, sewers or other pre-existing underground installations, and that all work done in said streets, avenues, easements, rights-of-way, alleys, highways, sidewalks, and bridges of said Municipality by the Company shall be done with the utmost diligence and the least inconvenience to the public or individuals, and the Company shall, within a reasonable time, restore such streets, avenues, easements, rights-of-way, alleys, highways, sidewalks, and bridges excavated by it to their original condition as nearly as practicable, subject to the reasonable approval of the Municipality. The Company will make every effort to coordinate all work with the Municipality. The Company shall remove or relocate its lines and facilities as and when required by the Municipality; such removal or relocation shall be made as follows:

- A. The entire cost of relocation shall be borne by the Municipality if the Company is required by the Municipality to relocate facilities which are located in private easements or rights-of-way obtained by the Company prior to the dedication of the public street, alley or easement from which the facilities must be relocated. These prior rights of the Company would also be unaffected by any subsequent relocation.
- B. Except as covered in Paragraph A above and Paragraph G below, the Company shall bear the entire cost of relocating facilities located on public rights-of-way, the relocation of which is necessary for the Municipality's carrying out a function in the interest of the public health, safety or welfare. The Company's right to maintain its lines and facilities is subject to the paramount right of the Municipality to use its streets for all governmental purposes. Governmental purposes include, but are not limited to, the following functions of the Municipality:
 1. Any and all improvements to Municipality streets, alleys and avenues;

2. Establishing and maintaining sanitary sewers, storm drains, and related facilities;
 3. Establishing and maintaining municipal parks, parkings, parkways, pedestrian malls, or grass, shrubs, trees and other vegetation for the purposes of landscaping any street or public property. The Municipality will consult with the Company on the placement of landscaping in the public rights-of-way where there are existing Company facilities;
 4. Providing fire protection, which will be limited to construction of fire protection facilities and City installed water lines for fire protection purposes;
 5. Collection and disposal of garbage, which will be limited to the construction of collection and disposal facilities and will not apply to placement of dumpsters.
 6. Construction, maintenance and repair of all governmental buildings and facilities.
- C. The installation of pipe and other facilities to serve domestic water shall be considered both governmental and proprietary and, therefore, the actual cost of relocation shall be shared by the Company paying fifty percent (50%) and the Municipality paying fifty percent (50%).
- D. The Company shall bear the entire cost of relocation of existing facilities, irrespective of the function served, where the Municipality's facilities, or other facilities occupying a right-of-way under authority of a Municipality permit or license, are already located in the public right-of-way and the conflict between the Company's potential facilities and existing facilities can only be resolved expeditiously, as determined by the Director of Public Works, by the movement of the existing Municipality's or permittee's facilities.
- E. If the Municipality participates in the cost of relocation of the Company's facilities for any reason, the cost of relocation to the Municipality shall not include any betterment to the Company's facilities as they existed prior to relocation.
- F. The Municipality will not exercise its right to require utility facilities to be relocated in an unreasonable or arbitrary manner. The Company and the Municipality may agree to cooperate on the location and relocation of other facilities in the public right-of-way. The Company shall save the Municipality, its officers and agents, harmless from any and all liabilities proximately caused by the Company's negligence in the erection, construction, installation or operation hereunder of the Company's facilities. The Company shall obtain all necessary permits (without cost to the Company

pursuant to Section 6 hereof) for work in the public rights-of-way. All work in the public rights-of-way will be in compliance with applicable Municipal Codes, standards and regulations as they exist at that time. The Company will obtain, and pay for, all required building permits and buy-in fees for non-gas distribution facilities such as offices, garages, repair shops and like facilities. The Municipality will provide its normal inspection services for these construction projects. The Municipality will not, nor will it be required by the Company to, inspect, monitor or approve construction of any gas distribution facility.

- G. In the event that the Company relocates any of its facilities at the request of the Municipality for a "governmental purpose," as that phrase is defined in Section 2 B hereof, and the Municipality fails to either (1) exercise the function which constitutes such "governmental purpose" or (2) complete the improvement which constitutes such "governmental purpose" within three (3) years of completion of the relocation of the Company's facilities to accommodate such "governmental purpose," the Municipality shall reimburse the Company the entire and actual cost of such relocation within ninety (90) calendar days of such billing.

SECTION 3: The Municipality shall in no way be liable to or responsible for any accident or damage that may occur in the construction, operation or maintenance by the Company of its lines and appurtenances hereunder, and the acceptance of this grant shall be deemed an agreement on the part of the Company to indemnify said Municipality and hold it harmless from and against any and all claims, costs losses or expenses which may accrue to said Municipality as a result of the Company's activities as enumerated in Section 1.

The Company shall maintain throughout the term of this franchise, liability insurance, a program of self-retention or general assets to adequately insure and/or protect the legal liability of the Company with respect to the installation, operation and maintenance of the gas distribution facility, together with all the necessary and desirable appurtenances authorized herein to occupy the public right-of-way. Such insurance, self-retention or general asset program will provide protection for bodily injury and property damage, including contractual liability and legal liability for damages arising from explosion, collapse and underground incidents.

The Company shall file with the Municipality documentation of such liability insurance, self-retention or general asset program within sixty (60) days following the effective date of this franchise, and thereafter upon request of Municipality.

SECTION 4: The rates and charges to be charged by the Company for furnishing gas service hereunder and the rules and regulations to be

made and enforced by the Company for the conduct of its business shall be those from time to time on file and effective with the Arizona Corporation Commission applicable to such service.

SECTION 5: The Company shall have the right and privilege of assigning this franchise and all rights and privileges granted herein, and whenever the word "Company" appears herein, it shall be construed as applying to its successors, lessees, and assigns.

SECTION 6: The Company, its successors, lessees, and assigns, for and in consideration of the granting of this franchise and as rental for the occupation and use or easement over, upon and beneath the streets, avenues, easements, rights-of-way, highways, alleys, sidewalks, and bridges in said Municipality, shall pay to the Municipality, commencing with the first full billing period after the effective date of this franchise and continuing each year during all the time this provision shall remain in force and effect, a total aggregate sum of two percent (2%) of the gross receipts of the Company, its successors, lessees and assigns, during such year, for gas sold within the corporate limits of the Municipality, subject to the limitations hereinafter stated; such gross receipts to consist of the total amount collected from users and consumers on account of gas sold and consumed within the corporate limits of the Municipality under the Company's rates in existence at the time, excepting therefrom, however, the gross receipts for gas sold to industrial consumers under special contract, and the gross receipts for gas sold to the Municipality for its own use. Notwithstanding the provisions of this Section, should the Company enter into any franchise with any entity of this State which provides for a higher percentage of Company gross receipts payment than two percent (2%) the Municipality shall automatically receive the same higher percentage rate payment. The Company shall make such payments semi-annually on or before the last day of January and July in each such year while this provision shall remain in full force and effect. If the Company fails to deposit said fees with the Municipality's finance department by the twentieth (20th) day of the month immediately succeeding the date the fee became due and payable, the Company shall be assessed (i) a ten percent (10%) late fee, and (ii) interest at the rate of twelve percent (12%) per annum on any unpaid balance (exclusive of late fees), said interest being calculated from the first day the payment became due. For the purpose of determining such revenue, the books of the Company shall at all times be subject to inspection by duly authorized municipal officials. Said payments shall be in lieu of any and all other franchise, license, privilege, instrument, occupation, excise or revenue taxes and all other exactions or charges (except general ad valorem property taxes, special assessments for local improvements, and except municipal privilege, sales or use taxes authorized by law and collected by the Company from users and consumers of gas within the corporate limits of the Municipality) upon the business, revenue, property, gas lines, installations, gas systems, conduits, storage tanks, pipes, fixtures or other appurtenances

of the Company and all other property or equipment of the Company, or any part thereof, relating to the sale and distribution of natural gas in said Municipality during the term of this franchise; provided that, anything to the contrary herein notwithstanding, said payment shall continue only so long as said Company is not prohibited from making the same by any lawful authority having jurisdiction in the premises, and so long as the municipality does not charge, levy or collect, or attempt to charge, levy or collect other franchise, license, privilege, occupation, excise or revenue taxes or other exactions or charges hereinabove mentioned, and if any lawful authority having jurisdiction in the premises hereafter prohibits said payment, or the Municipality does levy, charge or collect or attempt to levy, charge or collect such other franchise, license, privilege, occupation, excise or revenue taxes, or other exactions or charges, the obligation to make such payments hereinabove provided for shall forthwith cease.

SECTION 7: This franchise shall be accepted by the Company in writing, which acceptance shall be filed with the Municipality within sixty (60) days after the passage of this Ordinance, and when so accepted, this Ordinance shall be a contract duly executed by and between the Municipality and the Company.

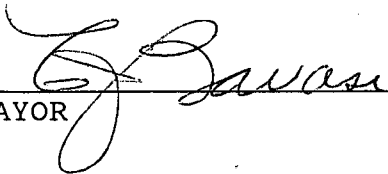
SECTION 8: If any section, paragraph, subdivision, clause, phrase or provision hereof shall be adjudged invalid or unconstitutional, the same shall not affect the validity hereof as a whole, or any part or provision other than the part so decided to be invalid or unconstitutional, except that if Section 6 be adjudged invalid or unconstitutional, in whole or part, this Franchise shall, at the Municipality's option immediately terminate and be of no further force or effect.

SECTION 9: This franchise shall continue in full force and effect for a period of twenty-five (25) years from the date of passage of this Ordinance.


SECTION 10: All plant, system, pipelines, works, and all other physical property installed by the Company in accordance with the terms of this franchise shall be and remain the property of the Company, and upon expiration of this franchise or any extension or renewal thereof, the Company is hereby granted the right to enter upon the streets, avenues, easements, rights-of-way, alleys, highways, sidewalks, bridges and other structures of said Municipality for the purpose of removing any and all such plant, system, pipelines, works and other property of the Company, at any time within six months after termination of this franchise or any such extension or renewal thereof. Upon removal of Company property, the Company shall repair the property of the Municipality per the requirements of Section 2.

SECTION 11: The immediate operation of this Ordinance is necessary for the preservation of the public peace, health and safety of the City of Flagstaff, Arizona, and an emergency is hereby declared to exist and this Ordinance shall be in full force and effect from and after its adoption by the City Council of the City of Flagstaff and its approval by the Mayor thereof.

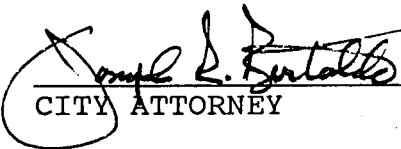
PASSED AND ADOPTED by the Council and approved by the Mayor of the City of Flagstaff, this 3rd day of October, 1995.


MAYOR

ATTEST:


CITY CLERK

APPROVED AS TO FORM:


CITY ATTORNEY