

RESOLUTION 99-410

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF CAMP VERDE, YAVAPAI COUNTY, ARIZONA, APPROVING A FRANCHISE AGREEMENT WITH CITIZENS UTILITIES COMPANY, AND SUBMITTING THE AGREEMENT TO THE VOTERS AT THE PRIMARY ELECTION

WHEREAS, the Town of Camp Verde, an Arizona municipal corporation ("Town"), as the "Governing Body" under ARS 9-502, gave general approval to issuance of a franchise to Citizens Utilities Company for natural gas distribution within the Town limits at its regular session of November 18, 1998, and now a franchise agreement has been prepared in the form of Exhibit A incorporated herein by reference, and

WHEREAS, the Town, pursuant to ARS 502.B, has determined that the franchise will be beneficial to the corporation and citizens of the Town by providing alternate fuel and heating sources, and

WHEREAS, the franchise agreement, as set forth in Exhibit A, shall not become effective by law until approved by a majority of the qualified electors of the Town in an election called for that purpose, and

WHEREAS, the franchise agreement, Exhibit A, must be published in full in a newspaper of general circulation published in the municipal corporation for at least 30 consecutive days prior to the election,

NOW THEREFORE THE MAYOR AND COMMON COUNCIL OF THE TOWN OF CAMP VERDE RESOLVE AS FOLLOWS:

- 1. The franchise agreement with Citizens Utilities Company (Exhibit A) shall be submitted to the qualified electors of the Town at the primary election of March 9, 1998, pursuant to ARS 9-502.B/16-204.*
- 2. The franchise agreement shall be published in full pursuant to ARS 9-502.C/39-203 twice a week for 4 consecutive weeks beginning February 8, 1999.*
- 3. If a majority of the votes cast are in favor of granting the franchise, it shall become effective according to the terms of Exhibit A when the votes have been canvassed by law, and the franchisee files a written acceptance of the franchise with the Town.*

PASSED AND APPROVED by majority vote of the Common Council at the regular meeting of January 16, 1999:

A Carter Rogers, A. Carter Rogers, Mayor

Attest:

D Bullard
Dane Bullard, Town Clerk

Approved as to form:

Ronald C Ramsey
Ronald C. Ramsey, Town Attorney

**FRANCHISE AGREEMENT BETWEEN
CITIZENS UTILITIES COMPANY AND
THE TOWN OF CAMP VERDE**

RECEIVED
7/6/98
TOWN OF CAMP VERDE
LEGAL DEPARTMENT

FRANCHISE AGREEMENT dated as of March 17, 1999, between The Town of Camp Verde ("Camp Verde") and Citizens Utilities Company, ("Citizens").

RECITALS

- A. Citizens wishes to provide natural gas service to the Camp Verde area. Citizens holds a Certificate of Convenience and Necessity from the Arizona Corporation Commission for the Camp Verde area.
- B. Camp Verde wishes to have Citizens provide natural gas services to the Camp Verde area and enters into this Agreement in order to secure those services.
- C. The Arizona Constitution and the Arizona law require that this proposed franchise be submitted to the qualified electorate of Camp Verde for approval or disapproval of this Agreement.

AGREEMENT

Camp Verde and Citizens agree as follows:

1. Definitions. For the purposes of this Agreement, the following terms, phrases, words and their derivations will have the meaning given herein. When consistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined will be given their common and ordinary meaning.

- A. "Agreement" means this Franchise Agreement entered into between Citizens and Camp Verde and all exhibits and attachments.
- B. "Camp Verde area" means that area currently within the municipality of Camp Verde or any area that becomes incorporated in Camp Verde at some later date, where service may be provided under this Agreement.
- C. "Camp Verde official" means an individual authorized by the Town of Camp Verde to take relevant action under the Agreement on behalf of the Town of Camp Verde.
- D. "Camp Verde" means the Town of Camp Verde, Arizona, an Arizona municipal corporation, and its successors and assigns.

E. "Citizens" means Citizens Utilities Company, its successors, transfers and assigns.

F. "Council" means the Town Council of Camp Verde or a subcommittee appointed by the Town Council of Camp Verde.

G. "Franchise fee" means two percent (2%) of Citizens' gross revenues derived from the sale of natural gas in the Camp Verde area.

H. "Franchise" means the rights granted under this Franchise Agreement.

I. "Gas distribution facilities" means all facilities used by Citizens for the distribution of natural gas to Camp Verde, including but not limited to pipes, pipelines, mains, laterals, service lines, manholes, pumps, meters, gauges, valves, traps, fences, vaults, regulators, regulator stations, conduits, appliances, attachments, wires, cables, pedestals, appurtenances thereto and all other property and equipment as is necessary and appurtenant to the operation of a natural gas system under this Agreement.

J. "Gross revenues" means all amounts obtained by Citizens from the sale of natural gas within the Camp Verde area. Gross revenues will equal the amount shown by Citizens' billing records. Gross revenues will not include bad debt, sales taxes, or other taxes that are collected by Citizens on behalf of, and for payment to, the local, state or federal government. Gross revenues excludes all sales taxes, gross revenue taxes, impact fees, development fees, connection fees, late fees, insufficient funds charges, forfeited deposits, gas sold to industrial consumers under special contracts or to Camp Verde for its own use, and other special taxes, charges or fees collected by Citizens from its customers or other entities or persons in connection with the provision of natural gas services to the Camp Verde area.

K. "Natural gas" means natural gas, artificial gas and manufactured gas, including liquefied petroleum, and any mixture thereof.

L. "Person" means any individual, natural person, sole proprietorship, partnership, association, or corporation or any other form of entity or organization.

M. "Public rights-of-way" means all present and future public rights of way, including, but not limited to, streets, alleys, ways, highways, bridges, public utility easements, public easements, and all other areas which are now or in the future considered public rights-of-way.

N. "Town Clerk" means the Clerk of the Town of Camp Verde.

2. Grant of Franchise. Camp Verde grants to Citizens, the right, privilege and franchise to construct, repair, maintain, and operate within the present and future public rights-of-way in Camp Verde, a natural gas distribution system, together with all necessary or desirable appurtenances for the purpose of supplying natural gas to Camp Verde, the inhabitants of the Camp Verde area, and all individuals and entities within or beyond the Camp Verde area, for all purposes.

3. Use of Public Rights-Of-Way. Citizens may erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across, and along the public rights-of-way of Camp Verde. Citizens will comply with all applicable construction codes, laws, ordinances, regulations and procedures, now in effect or later enacted, and will obtain all necessary permits before commencing any construction activities.

4. Compliance with the Established Practices of Camp Verde.

a. All construction under this Agreement will be performed in accordance with the established practices of Camp Verde with respect to the public rights-of-way.

b. If Camp Verde undertakes (either directly or through a contractor) a construction project adjacent to or near the gas distribution facilities, Camp Verde will include in those construction specifications, bids and contracts, a requirement that, as part of the cost of the project, the contractor must make arrangements and pay Citizens to temporarily remove, relocate, barricade or depressurize Citizens' facilities or equipment. The above requirement will only be necessary if the location of the facilities or equipment may create an unsafe condition in view of the methods and equipment to be used by the contractor. Camp Verde agrees to indemnify and hold Citizens harmless for any and all claims, lawsuits or expenses incurred by Citizens as a result of Camp Verde's failure to comply with this subsection.

5. Construction and Relocation of Citizens' Facilities; Payment.

a. All gas distribution facilities will be located or relocated and erected to minimize the interference with traffic or other authorized uses over, under or through public rights-of-way. All construction will be subject to the issuance of a gas distribution facilities permit. Citizens will be required to obtain and pay all required fees and charges for construction permits and inspections of all non-gas related facilities, including but not limited to, office buildings and storage buildings. Permits for and inspections of gas distribution facilities will be provided at no cost under this Agreement.

b. If Camp Verde requires Citizens to relocate Citizens' facilities which are located in private easements or rights-of-way obtained by Citizens prior to Camp Verde's acquisition of the public right-of-way from which the facilities must be relocated, the entire cost of relocating Citizens' facilities (including the cost of purchasing a new private easement or right-of-way, if necessary) will be borne by Camp Verde. Camp Verde will also bear the entire cost of all subsequent relocations of the relocated facilities required by Camp Verde, until and unless Camp Verde condemns or otherwise purchases Citizens' private easement or right-of-way.

c. Citizens will remove or relocate its lines and facilities as and when required by Camp Verde; such removal or relocation will be made at the sole expense of Camp Verde.

d. When Camp Verde participates in the cost of relocating Citizens' facilities for any reason, the cost of relocation to Camp Verde will not include any upgrade or improvement of Citizens' facilities as they existed before relocation.

e. Camp Verde will not exercise its right to require Citizens' facilities to be relocated in an unreasonable or arbitrary manner. Citizens and Camp Verde may agree to cooperate on the location and relocation of other facilities in public rights-of-way.

f. Camp Verde will consult with Citizens in the planting of trees and other deep rooting plants in or near public rights-of-way where there are existing gas distribution facilities.

6. . Restoration of Rights-of-Way. Whenever Citizens causes an opening or alteration to be made in any public right-of-way, the work will be completed with due diligence. Upon completion of the work, Citizens will restore the disrupted property to its original condition, as practicable. Citizens will bear the full reasonable costs of all barricades, signing, rerouting of traffic, or other actions which Camp Verde considers necessary in the interest of public safety during the opening or alteration within the public right-of-way.

7. Indemnification and Insurance. The Town of Camp Verde will not be liable for any accident or damage caused by Citizens during the construction or operation of the gas distribution facilities. Citizens hereby agrees to indemnify Camp Verde and hold it harmless against any liability, loss, costs, legal fees, damage or other expenses which may be imposed on Camp Verde due solely to the negligence of Citizens. Citizens will maintain throughout the term of this Agreement either liability insurance or general assets in the amount necessary to adequately insure or protect Citizens from any legal liability

common to the industry including Citizens' indemnity obligations under this Agreement.

8. Franchise Fee. As compensation for the benefits and privileges granted under this Agreement and in consideration of permission to use Camp Verde's public rights-of-way, Citizens will pay franchise fee equal to two percent (2%) of Citizens' gross revenues derived from the sale of natural gas within the Camp Verde area. The franchise fee will be due and payable semi-annually, and will be in lieu of all fees or charges for permits or licenses issued for the construction, installation and maintenance (including street cuts and street repairs) of Citizens' gas distribution facilities hereunder or for the inspection of those facilities. Camp Verde may not impose, levy or collect any special or other fee, charge, tax or compensation (including a sales tax, gross revenue tax, impact fee, development fee, connection fee, late fee, insufficient funds charge, or deposit forfeiture) with respect to this Agreement or with respect to the provision of natural gas service.

9. Term. This Agreement will continue and exist for a period of 25 years from the date of passage of the ordinance. This franchise will be accepted by Citizens in writing and filed in the office of the Town Clerk within 60 days of the date of the certification of the election results by the Council. Once accepted, the Agreement will be a contract duly executed by and between Camp Verde and Citizens. Throughout the entire term of this Agreement, any change or alteration of this Agreement will be void unless written acceptance of the change is delivered by Citizens to the Town Clerk within 60 days of the date of any change or alteration.

10. Transfer of Ownership and Assignment. Citizens will have the right and privilege of assigning this franchise and all rights and privileges granted herein.

11. Rates and Charges. The rates and charges to be charged by Citizens for furnishing gas service and the rules and regulations to be made and enforced by Citizens to conduct its business will be those ordered by the Arizona Corporation Commission that are applicable to such service.

12. Independent Provisions. If any section, paragraph, clause, phrase or provision of this Agreement is adjudged to be invalid or unconstitutional, it will not affect the validity of this Agreement or any part of this Agreement, other than that portion adjudged invalid or unconstitutional.

13. Expiration. Camp Verde and Citizens expressly agree that the following provisions will survive the termination or expiration of this Agreement. Upon the termination or expiration of the franchise, if Citizens has not acquired and accepted an extension or renewal of the franchise, Citizens may remove its facilities and system within the Camp Verde Area or, with Camp Verde's express

written consent, or as permitted by law, Citizens may continue operating its facilities and system within the Camp Verde Area until a new agreement is reached between Citizens and Camp Verde. All plant, system, pipelines, and all physical property installed by Citizens in accordance with the terms of this Agreement remains the property of Citizens. Upon expiration of this franchise or any extension or renewal thereof, Citizens is granted the right to enter Camp Verde's public grounds for the purpose of removing all Citizens' plant, system, pipelines, and other property.

14. Entire Agreement. This Agreement represents the entire agreement of the parties with respect to its subject matter. This Agreement may not be amended without the written consent of Citizens and Camp Verde.

15. Governing Law. The provisions of this Agreement are to be governed and construed in accordance with the laws of the State of Arizona.

16. Notices. All notices required to be given to either party are to be mailed or given at the following addresses:

To Camp Verde: Town of Camp Verde

P.O. Box 710

Camp Verde AZ 86322

To Citizens:

Citizens Utilities Company

Phoenix Administrative Office

2901 North Central Avenue, Suite 1660

Phoenix, Arizona 85012-2736

Attn: Deborah R. Scott, Esq.

17. Headings. The section headings of this Agreement are intended only to assist the reader in locating provisions and are not to be used to interpret the language or meaning of any section.

18. Binding Effect. This Agreement shall be binding upon the parties, their successors, transfers and assigns.

Passed and adopted this 17 day of March, 1999.

TOWN OF CAMP VERDE, ARIZONA

CITIZENS UTILITIES COMPANY

Mayor

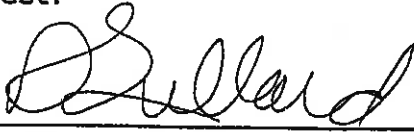
Carter Rogers
Dillard

By: [Signature]

Its: NICB PRESIDENT

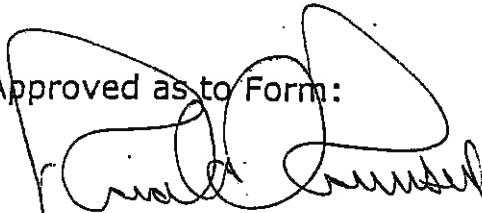
City Manager

Attest:

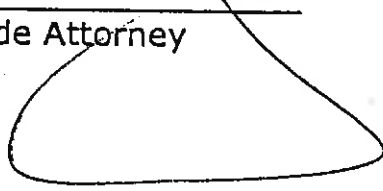


City Clerk

Approved as to Form:



City of Camp Verde Attorney
669462/1-8407



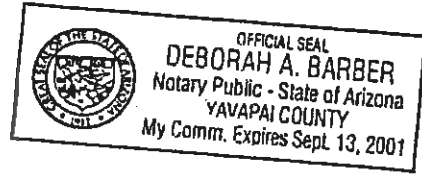
STATE OF ARIZONA)
) SS.
COUNTY OF ~~MARICOPA~~) YAVAPAI

The foregoing instrument was acknowledged before me this 18 day of March, 1998¹⁹⁹⁹, by CARTER ROGERS, as Mayor of the Town of Camp Verde, Arizona, an Arizona municipal corporation, on behalf of the corporation.

Deborah A. Barber
Notary Public

My Commission Expires:

9-13-2001



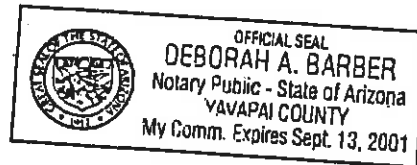
STATE OF ARIZONA)
) SS.
COUNTY OF ~~MARICOPA~~) YAVAPAI

The foregoing instrument was acknowledged before me this 18 day of March, 1998¹⁹⁹⁹, by DANE BULLARD, as City Manager of the Town of Camp Verde, Arizona, an Arizona municipal corporation, on behalf of the corporation.

Deborah A. Barber
Notary Public

My Commission Expires:

9-13-2001



STATE OF ARIZONA)
) SS.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this _____ day of _____, 1998, by _____, as _____ of Citizens Utilities Company, on behalf of the corporation.

Notary Public

My Commission Expires:
