

RESOLUTION NO. 2020-1169

A RESOLUTION OF THE COMMON COUNCIL OF THE TOWN OF CHINO VALLEY, ARIZONA, DECLARING THAT THE COMMON COUNCIL DEEMS THE GRANTING OF A CERTAIN FRANCHISE BENEFICIAL FOR THE TOWN OF CHINO VALLEY; ORDERING AN ELECTION TO BE HELD ON NOVEMBER 3, 2020, FOR THE PURPOSE OF SUBMITTING TO THE QUALIFIED ELECTORS OF THE TOWN OF CHINO VALLEY THE QUESTION AS TO WHETHER OR NOT A FRANCHISE SHALL BE GRANTED TO CHINO MEADOWS II WATER COMPANY.

WHEREAS, Chino Meadows II Water Company is desirous of obtaining a franchise with the Town of Chino Valley in the form attached hereto as Exhibit A; and

WHEREAS, the Town of Chino Valley has determined that the granting of the proposed franchise for Chino Meadows II Water Company is beneficial to the Town; and

WHEREAS, the Town of Chino Valley, at the request of Chino Meadows II Water Company, desires to conduct an election for the purpose of submitting to the qualified electors of the Town of Chino Valley the question of whether the proposed franchise shall be granted.

NOW, THEREFORE, BE IT RESOLVED, by the Common Council of the Town of Chino Valley, Arizona, as follows:

SECTION 1. That the Common Council of the Town of Chino Valley determines that the granting of the franchise proposed by Chino Meadows II Water Company in the form attached hereto as Exhibit A is beneficial to the Town of Chino Valley and the Town residents.

SECTION 2. That an election is hereby called and ordered to be held in the Town of Chino Valley on November 3, 2020, for the purpose of submitting to the qualified electors of the Town of Chino Valley the question as to whether the franchise under the terms and conditions of the above-referenced agreement shall be granted to Chino Meadows II Water Company

SECTION 3. That this franchise election be held pursuant to the provisions of the Arizona Constitution and laws of the State of Arizona and Town Code of the Town of Chino Valley.

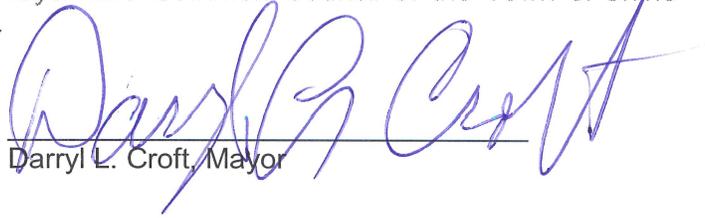
SECTION 4. That the ballots used at said election shall be substantially in the following form:

SHALL THE PROPOSED FRANCHISE FOR A PERIOD OF UP TO TWENTY-FIVE (25) YEARS BE GRANTED TO CHINO MEADOWS II WATER COMPANY FOR THE USE OF TOWN RIGHTS-OF-WAY FOR WATER UTILITY PURPOSES?

SECTION 5. That the Town Clerk and Town Manager are hereby authorized and directed to publish the proposed franchise and take such other actions required by law to conduct the election.

SECTION 6. That this Resolution supersedes Resolution No. 231 adopted on February 9, 1989.

PASSED AND ADOPTED by the Mayor and Common Council of the Town of Chino Valley, Arizona this 23rd day of June, 2020.


Darryl L. Croft, Mayor

ATTEST:


Jami C. Lewis, Town Clerk

APPROVED AS TO FORM:


Gust Rosenfeld, PLC, Town Attorneys
By: Andrew J. McGuire

I hereby certify the above foregoing Resolution No. 2020-1169 was duly passed by the Council of the Town of Chino Valley, Arizona, at a regular meeting held on June 23, 2020, and that quorum was present thereat and that the vote thereon was 6 ayes and 0 nays and 0 abstentions. 1 Council members were absent or excused.


Jami C. Lewis, Town Clerk

**EXHIBIT A
TO
RESOLUTION NO. 2020-1169**

[Franchise Agreement]

See following page.

FRANCHISE AGREEMENT

Proposed by

CHINO MEADOWS II WATER COMPANY

To The

TOWN COUNCIL OF CHINO VALLEY, ARIZONA

Section I. Grant of Franchise:

The Town of Chino Valley, an Arizona municipal corporation ("Municipality"), grants to Chino Meadows II Water Company, a corporation organized and existing under and by virtue of the laws of the State of Arizona (hereinafter called "Grantee"), its successors and assigns, the right, privilege, and franchise to construct, maintain, and operate upon, over, along, across, and under the present, and future public streets, alleys, ways, highways, bridges, and public utility easements ("Right-of-Way") in that portion of the Town described in the legal description marked Exhibit "A" and attached hereto, water mains, together with all necessary and desirable appurtenances (including but not limited to services, meter, standpipes, valves and boxes) (herein called the "Franchise"), for the purpose of supplying water to Municipality, its successors, the inhabitants thereof and all individuals and entities within the limits of the area described in Exhibit "A".

Municipality shall not be liable to Grantee should Grantee construct facilities pursuant to the Agreement in an area over which Municipality has erroneously exercised jurisdiction.

Section II. Grantee's Compliance with Municipality Practice:

All construction under this Franchise shall be performed in accordance with all applicable federal, state and municipal laws, rules, ordinances and regulations and with established practices of Municipality with respect to the Right-of-Way.

Section III. Non-Exclusive Use:

The right to use and occupy present and future Right-of-Way for the purpose herein set forth shall not be deemed and exclusive franchise, and Municipality reserves the right to grant a similar use in said Right-of-way to any person, firm or corporation.

Section IV. Construction and Relocation of Grantee's Facilities; Payment:

4.1 Prior to commencing any work in a Right-of-Way (except in emergency circumstances), Grantee shall obtain any permit necessary for such work but in consideration of the payments made under Section VIII below, Grantee shall not be required to pay any permit fees to Municipality for any such work. Grantee, upon receipt from Municipality of any one-hundred percent (100%) detailed finalized plans that would require construction or relocation of Grantee facilities, shall advise Municipality on the estimated amount of work required and the anticipated necessary timeframe of such work within ninety (90) days of receipt of such plans. For purposes of budgeting and asset allocation by Grantee, Grantee shall have six (6) months from the receipt of such finalized plans in which to design and to commence construction or relocation of the necessary facilities. In the event of an emergency, Grantee shall notify Municipality prior to such

repairs, to the extent practicable, and shall obtain the necessary permits in a reasonable time after notification, showing the work performed in the Right-of-Way.

4.2 All facilities installed or constructed pursuant to this Franchise shall be so located or relocated and so erected as to minimize the interference with traffic, or other authorized uses over, under or through the Rights-of-Way. Those phases of construction of Grantee's facilities related to traffic control, backfilling, compaction and paving, as well as the location or relocation of water lines and related facilities herein provided shall be subject to regulation by the Council or Municipality.

4.3 Grantee shall keep accurate records of the location of all facilities in the Right-of-Way and furnish them to Municipality upon request. Upon completion of new or relocation construction of underground facilities in the Right-of-Way, Grantee shall provide the designated Municipal Official or Council with corrected drawings showing the actual location of the underground facilities in those cases where the actual location differs significantly from the proposed location approved in the permit plans.

4.4 Representatives of Municipality and Grantee shall, during the entire term of this Franchise, meet at least once in each calendar year to review any projects involving the construction or modification of any Rights-of-Way within the subsequent five-year period in order for both parties to adequately plan and budget for such actions and to determine the extent of work required of Grantee, if any, for such projects.

4.5 If Municipality requires Grantee to relocate Grantee's facilities which are located in private easements or Right-of-Way obtained by Grantee prior to Municipality's acquisition of the Right-of-Way from which the facilities must be relocated, the entire cost of relocating Grantee's facilities (including the cost of purchasing a new private easement or Right-of-Way, if necessary) shall be borne by Municipality. Municipality shall also bear the entire cost of all subsequent relocations of the relocated facilities required by Municipality, until such time as Municipality condemns or otherwise purchases Grantee's private easement or right-of-way. Municipality and Grantee will cooperate to determine which facilities of Grantee are in private easements or Right-of-Way as the need arises.

4.6 If Municipality undertakes, either directly or through a contractor, any construction project adjacent to Grantee's facilities operated pursuant to this Franchise, but which does not require relocation of Grantee's facilities, Municipality shall notify Grantee of such construction project. Grantee will take steps as are reasonably necessary to maintain safe conditions throughout the construction project, including but not limited to the temporary barricading of Grantee's pipelines or equipment, the location of which may create an unsafe condition in view of the equipment to be utilized or the methods of construction to be followed by the contractor, at Municipality's cost.

A. Except as covered in Paragraph 4.6 above, Grantee shall bear the entire cost of relocating its facilities located on the Right-of-Way when required by Municipality in carrying out its functions which include, but are not limited to:

- (1) Any and all improvements to Municipality streets, alleys and avenues;
- (2) Establishing and maintaining sanitary sewer, storm drains and related facilities;
- (3) Establishing and maintaining municipal parks, parking, parkways, pedestrian malls, or grass, shrubs, trees, and other vegetation for the purpose of landscaping and street or public property;
- (4) Providing fire protection;
- (5) Collection and disposal of garbage;
- (6) Installation of pipe and other facilities owned by the Grantor to serve domestic and municipal water, if any.

B. Where Municipality's facilities or other facilities occupying a Right-of-Way under authority of a Municipality permit or license are already located in the Right-of-Way and a conflict between Grantee's potential facilities and the existing facilities can only be resolved expeditiously as determined by the Director of Public Work of Municipality by relocating the existing Municipality or Grantee's facilities, Grantee shall bear the entire cost (including the cost of purchasing new easements or Right-of-Way, in necessary) of relocating the existing facilities, irrespective of the function they served.

C. If Municipality participates in the cost of relocating Grantee's facilities for any reason, the cost of relocation to Municipality shall not include any upgrade or improvement of Grantee's facilities as they existed prior to the relocation. The cost to Municipality shall be limited to those costs and expenditures reasonably incurred for relocating such facilities in accordance with federal, state and municipal laws, rules, ordinances and regulations and with established practices of Municipality and, where not in conflict therewith, applicable industry standards. Prior to payment by Municipality, Grantee shall provide an itemization of such costs and expenditures subject to Municipality's review and approval. Such itemization shall be submitted to Town within ninety (90) days of completion of the relocation.

Section V. Indemnification:

Municipality shall not be liable to or responsible for any accident, injury or damage that may occur in the construction, operation or maintenance by Grantee of its facilities wherever located and for any purpose, except where such accident, injury or damage is the result of gross negligence or willful misconduct of Grantor. Grantee shall defend and indemnify Municipality and hold it harmless from and against any and all liability, loss, cost, attorneys and other legal fees, damage or any other expense which may accrue to or be incurred by Municipality as a result of injury or damage to any person or property occasioned by the exercise of this Franchise by Grantee not caused by gross negligence or willful misconduct of Municipality, and agrees to pay on behalf of Municipality any claims, settlements or judgments, including legal fees, made or entered against Municipality as a result of injury or damage to any person or property occasioned by the exercise of this Franchise by Grantee. Throughout the term of this Franchise, at its own cost and expense, Grantee shall keep or cause to be kept in force insurance against claims and liability for personal injury, death and property damage arising from the construction, operation or maintenance by Grantee of its facilities, in an amount not less than \$1,000,000.00. The Policy(s) shall provide for a thirty (30) day prior written notice of cancellation or non-renewal by the insurer to Municipality. The policy or policies required hereunder shall be non-assessable and shall contain language (a) the insurer waives the right of subrogation against Municipality; (b) the policies are primary and non-contributing with any insurance that may be carrier by Municipality; (c) the policies cannot be cancelled or materially changed except after thirty (30) days notice by the insurer to Municipality; (d) that the coverage of the policies applies to Grantee's obligation to indemnify the Municipality as provided herein. All policies of insurance of Grantee shall name Municipality as an additional Insured.

Section VI. Grantee to Maintain Service:

Grantee agrees to maintain the capacity of its system from time to time to meet the requirements and demands of Municipality and its inhabitants within the area specified and described in Exhibit "A" attached hereto, and to maintain its property and equipment in good order and condition in due compliance with Arizona laws and the Rules and Regulations of the Arizona Corporation Commission in effect from time to time.

Section VII. Restoration on Right-of-Way:

Whenever Grantee shall cause any opening or alteration whatever to be made for any purpose in any Right-of-Way the work shall be completed with due diligence within a reasonable, prompt time, and Grantee shall, upon completion of such work, restore the property disturbed to as good condition as it was prior to such opening or alteration. Municipality agrees that this requirement shall be deemed met if the disturbed property is restored with comparable materials, so that the restoration meets or exceeds industry and Town standards.

Section VIII. Fees:

Grantee agrees to pay Municipality in consideration of the grant of Franchise a sum equal to two percent (2%) of gross receipts of Grantee from the sale by it of the water at retail for residential, commercial and industrial purposes, within the area described in Exhibit "A" attached, as shown by Grantee's billing records. Such payment to be due and payable quarterly. Except as otherwise provided in Section IX, such payment shall be in lieu of all fees or charges for permits or licenses issued for construction of Grantee's facilities hereunder or for inspections thereof.

Section IX. Additional Fees and Taxes:

9.1 Notwithstanding any provision contained herein to the contrary, Grantee shall pay, in addition to the payment provided herein, the following charges, taxes and fees as may be established in a code or ordinance properly adopted by the Town: (a) general ad valorem property taxes; (b) transaction privilege and use tax as authorized by law and collected by Grantee for its retail sales to its customers within the present and any future corporate limits of the Town; (c) pavement cut fees; and (d) other charges, taxes or fees generally levied upon businesses by Municipality, provided said charge, tax or fee is a flat fee per year and that the annual amount of such fee does not exceed the amount of similar fees paid by any other businesses operated within Municipality.

9.2 If during the term of this Franchise Grantee enters into any water utility franchise with any other municipality in Arizona during the term of this Franchise that provides for a higher percentage of Grantee's revenues than two percent (2%) or includes more categories of revenues than set forth in this Franchise, Grantee shall notify Town Council of such higher percentage or expanded revenue base. Town Council, at its sole discretion, shall have the option to, as applicable: (i) increase Grantee's Franchise fee to the higher percentage rate; or (ii) include other revenue categories set forth in the franchise agreement Grantee has with the other entity of this State. Following Town Council's action, Grantee agrees to henceforth pay to Town a new Franchise fee at the higher Franchise percentage or to include the additional revenue categories.

9.3 Municipality has the authority, at Municipality's expense, to conduct an audit of Grantee at any time during the term of this Franchise to determine compliance of Grantee under this Franchise. The audit shall be conducted in such a way as not to disrupt Grantee's business operations. All relevant records of Grantee are subject to an audit conducted by Municipality. Municipality may determine the scope of audit in each audit conducted. This audit shall not be required more than once in a single 12 month period.

9.4 Grantee shall pay to Municipality within 45 days written notice any amounts that are due to Municipality as determined by any audit of Grantee. Reimbursement for underpayment as a result of audit findings shall be identified as late payments and are subject to late payment interest of 18% per year.

Section X. Ownership. All plant, system, pipelines, works, and all other physical property installed or operated by Grantee in accordance with the terms of this Franchise shall be and remain the property of Grantee, and upon expiration of this Franchise or any extension or renewal thereof, Grantee is hereby granted the right to enter upon the public property or other public premises of said Municipality for the purpose of removing any and all such plant, system, pipeline, works and other property of Grantee, at any time within six (6) months after termination of this Franchise or any such extension or renewal thereof. All underground abandoned lines shall continue to remain the property of the Grantee, unless Grantee specifically acknowledges otherwise to the Town Manager of Municipality and such is accepted by Municipality. Grantee shall remove, at Grantee's sole cost, abandoned lines at the request of Municipality when the lines are in physical conflict with Municipality's facilities, in the opinion of the Town Engineer.Section XI. Term:

This Franchise shall continue and exist for a period of twenty-five (25) years from the effective date of the franchise as determined by law. However, Municipality shall have the right during each 180 day period immediately prior to the tenth (10th) and seventeenth (17th) anniversaries of the acceptance date of this Franchise to request from Grantee a modified form of this Franchise. If Grantee fails to comply with the request, Municipality may terminate this Franchise. If Municipality terminates this Franchise or the electors reject the modified Franchise, this Franchise terminates on the anniversary date immediately subsequent to the termination or rejection.

Section XII. Independent Provisions:

If any section, paragraph, clause, phrase or provision of this Franchise, other than Section VIII shall be adjudged invalid or unconstitutional, the same shall not affect the validity of this Franchise as a whole or any part of the provisions hereof other than the part so adjudged invalid or unconstitutional. If Section VIII shall be adjudged invalid or unconstitutional in whole or in part by a final judgment, this Franchise shall immediately terminate and shall be of no further force or effect.

Section XIII. Condemnation; Right Reserved by Municipality:

Municipality reserves the right and power to acquire, in any manner permitted by law, all or any portion of the plant and distribution facilities of Grantee to the extent permitted by law.

Section XIV. Assignment:

This Franchise, and the rights, privileges and franchise hereby granted may not be transferred in whole or in part by Grantee, its successors and assigns, unless a resolution consenting to such assignment has been adopted by the Mayor and Common Council of Municipality; provided, however, that the foregoing shall not be deemed to require consent in the case of an assignment made as security pursuant to a mortgage and deed of trust, or any transfer made in enforcement of rights thereunder or by action of law, or in the case of a transfer pursuant to a merger or consolidation with or another corporation which assumes the obligation of Grantee hereunder.

Section XV. Expiration:

Municipality and Grantee hereby expressly agree that the following provisions shall survive the termination or expiration of this Franchise:

Upon the termination or expiration of the Franchise, if Grantee shall not have acquired or accepted an extension or renewal hereof, it may remove its facilities and system within Municipality or at its option, may continue operating its

facilities and system within Municipality for no longer than 180 days from the expiration date of the franchise but during said 180 day-period, it shall be required to obtain proper permits each time it make additional extensions upon, over, along, across, and under the Right-of-Way within Municipality unless or until such time as a new franchise is obtained or the system and facilities are removed or are acquired by Municipality through the exercise of its power of eminent domain or the 180 day period expires.

Section XV1. Failure of Grantee to Perform:

16.1 It is agreed that in case of the failure of Grantee to perform and carry out any of the stipulations and agreements herein set forth within Grantee's control, and with respect to redress is not otherwise herein provided, Municipality may, after hearing, determine such failure is of a substantial nature thereon and, thereupon, after giving Grantee such termination, Grantee shall have 60 days in which to remedy the conditions respecting which such determination shall have been made. After the expiration of such 60 day period, and failure to correct such conditions, Municipality may declare this Franchise forfeited, and thereupon Grantee shall have no further right or authority hereunder.

16.2 Nothing herein contained shall limit or restrict any other legal and equitable rights that Municipality may possess arising from such violations.

Section XVII. Acceptance and Effective Date:

If a majority of the qualified electors of the Town of Chino Valley authorize the granting of the Franchise to Chino Meadows II Water Company, its successors and assigns, and upon Grantee filing its acceptance of the franchise by signing and accepting the franchise documents, said franchise will thereafter be in full force and effect on the effective date as prescribed by law. Company shall reimburse all of Town's expenses incurred in conducting the Franchise election (including Town's legal fees related to this Franchise; cost for publication of the proposed Franchise Agreement in the Prescott Courier per A.R.S. 9-502(C) and 39-203; and any expenses charged to Town for conducting the election through the County of Yavapai, pursuant to Section ____). If more than one item is on the same ballot, Company shall pay only that prorated portion of Town's election expenses determined by dividing all of Town's expenses for the election by the total number of measures presented on the ballot plus one if there is a general election for Town mayor and/or councilmembers.

Section XVIII. Notices: Any notice required or permitted to be given hereunder shall be in writing, unless otherwise expressly permitted or required, and shall be deemed effective either (i) upon hand delivery to the person below, or (ii) on the third business day following its deposit with the United States Postal Service, first class and certified or register mail, return receipt requested, postage prepaid, addressed as follows:

To Municipality:

Town Manager
Town of Chino Valley
202 N. State Route 89
Chino Valley, Arizona 86323

To Grantee:

PASSED AND ADOPTED by the Mayor and Common Council of the Town of Chino Valley, Arizona, this ____ day of _____, 2019.

Darryl Croft, Mayor

ATTEST:

Jami Lewis, Town Clerk

APPROVED AS TO FORM:

Andrew McGuire, Town Attorney

All terms of this franchise are hereby accepted and approved:

Chino Meadows II Water Company,
An Arizona Public Service Corporation

By _____
Paul D, Levie, President

ATTEST:

Rae Levie, Corporate Secretary