

RESOLUTION NO. 2021 - _____

**A RESOLUTION OF THE BOARD OF
SUPERVISORS OF PIMA COUNTY,
ARIZONA AUTHORIZING A PUBLIC
UTILITY LICENSE GRANTED TO AJO
IMPROVEMENT COMPANY**

The Board of Supervisors of Pima County, Arizona finds:

1. Ajo Improvement Company (hereinafter "AIC") previously had a franchise agreement dated December 5, 1995 and expiring December 5, 2020 ("Expired Franchise").
2. AIC currently has a Pima County Public Utility License Agreement recorded at Docket 13076 Page 1916 at the Pima County Recorder's office, dated May 3, 2007 and expiring May 2, 2022 ("Current License"). The Current License replaced the Expired Franchise, but did not state that explicitly, and an early effort was made to assemble an agreement to provide coverage for AIC's facilities. At this time, the County and AIC desire to renew the Current License early with the new Public Utility License for a 25-year term containing language stating its purpose to replace all previous agreements and licenses.
3. Pursuant to Arizona Revised Statutes § 40-283, AIC, an Arizona corporation, ("Licensee") has applied to the Board of Supervisors of Pima County, Arizona, ("County") for new rights and privilege in the area of the County outside the confines of any incorporated city or town to construct, install, maintain, and operate in the public right-of-way facilities and appurtenances for the purpose of a public water distribution system.
4. Notice of this meeting on the application was given as required by law.
5. The application came before the Board of Supervisors, no petition to the Board to deny the license was filed according to law, and the Board considered the application for the license.
6. The Board of Supervisors determined that the grant of this license is regular, authorized by law, and in the best interests of the County and its inhabitants.

NOW, THEREFORE, BE IT RESOLVED, that the parties agree as follows:

PUBLIC UTILITY LICENSE
Lic-0188

Section 1. License: right-of-way. The Expired Franchise and Current License are hereby terminated and are of no further force or effect. Licensee is hereby empowered to use public right-of-way within the area described and depicted on **Exhibit "A"** below, and only those areas of the County outside the confines of any incorporated city or town, to construct, install, maintain and operate in such public right-of-way facilities for the purpose of furnishing electric, water, and sewage disposal services. "Right-of-way" shall include highways, streets, roads, alleys, ways, and drainage ways designated for access or public use.

Section 2. Future regulation. All rights hereunder are granted under the express condition that the Board of Supervisors shall have the power at any time to impose such restrictions and limitations, and to make such regulations as to the use of said right-of-way by Licensee as may be deemed best for the public safety or welfare.

Section 3. County rights paramount. The rights of County in and to the use of public rights-of-way within County shall be forever paramount and superior to the rights of Licensee.

Section 4. Facilities: definition: removal. Nothing in this license shall be construed to prevent County from abandoning, altering, improving, repairing, or maintaining facilities of County or the public right- of-way and, for that purpose, requiring Licensee at its own expense to remove, relocate or abandon in place Licensee's facilities to accommodate the activities of County. "Facilities of Licensee" shall mean any physical object or improvement or alteration of a right-of-way owned, possessed, made, installed, or constructed by Licensee or made, installed, or constructed by County or others at the request of Licensee. "Facilities of Licensee" shall include, but not be limited to, pipes, pipelines, mains, services, vaults, casings, sleeves, vents, fences, meters, gauges, regulators, valves, conduits, appliances, attachments, appurtenances, poles, wires, cables, and other property or equipment used or useful for the purpose for which this License is granted. "Facilities of County" shall mean any physical object or improvement owned, possessed, maintained, installed, or constructed by County or others at the request of County, including all highway, transportation, flood control, and wastewater facilities of County.

Section 5. County not liable for costs and lost revenues. County shall not be liable to Licensee for (a) any costs of relocation, replacement, repair or abandonment of Licensee's facilities in the public right-of-way, or (b) lost revenues sustained by Licensee because of damage, modification, or alteration to or destruction of its facilities in the public right-of-way.

Section 6. No exclusive right. Nothing in this License shall be construed to grant Licensee an exclusive right to erect and maintain its facilities in the public right-of-way, and the County expressly reserves the right to grant similar Licenses and privileges over the same right-of-way to any other person, firm, or corporation. Facilities of Licensee will be erected so as not to interfere with the reasonable use of the public right-of-way. The location of facilities of Licensee shall not be a vested interest, and its facilities shall be removed, relocated or abandoned

in place by Licensee whenever they restrict or obstruct the use or location or any future use or location of the public right-of-way or Facilities of County or the use thereof by the public.

Section 7. Relocation. Licensee shall relocate at its expense all facilities of Licensee that conflict or interfere with County use, expanded use, improvement or abandonment of the public right-of-way. The facilities shall be relocated in accordance with the procedures and time limitations set forth in Pima County Code 10.50.60. If the facilities are not relocated in accordance with Pima County Code 10.50.60, County may, at its discretion, relocate the facilities utilizing a qualified contractor and Licensee shall be liable for all costs to County of relocation including overhead and maintenance costs. Licensee remains responsible for any delay costs or other damages as provided in Pima County Code Chapters 10.44 and 10.60.

Section 8. Care and restoration of County roadway or facilities. In the construction, maintenance, repair and operation of its facilities, Licensee shall not alter, in any way, a County highway, roadway, or street. Licensee Facilities are to be located in accordance with the latest edition of the Pima County Roadside and Development Street Standards Manual. If practicable, pedestrians and motorist are to be protected from License Facilities in accordance with the latest edition of AASHTO Roadside Design Guide and County policies, standards, and guidelines. Licensee will be responsible for costs to install and maintain protections for as long as necessary and for removal when no longer deemed necessary by the County. Licensee shall use all necessary care to avoid causing or permitting any damage, disturbance, alteration, or modification to the facilities of County. If Licensee causes or permits any damage, disturbance, alteration or modification, Licensee, at its expense and in a manner approved by the County Engineer, shall restore, to the satisfaction of County, the roadway or facilities to the condition in which they were before being damaged, disturbed, altered, or modified and shall also be liable to County or others for any other damages which may accrue because of said damage, disturbance, alteration, or modification. The restoration shall be initiated promptly and completed expeditiously in recognition of the duty of Licensee to give the restoration, repair or replacement of County roadway or facilities priority over proceeding with non-emergency activities of Licensee.

Section 9. Vegetation. In the construction, maintenance, repair, and operation of its facilities, Licensee shall avoid causing any damage to or disturbance of existing vegetation in the public right-of-way. If Licensee causes or permits any such damage or disturbance, Licensee, at its sole expense and in accordance with all County standards for planting and restoration within public right-of-way, including but not limited to the provisions of Pima County Code Section 18.73.030B(12), must re-vegetate the right-of-way to the satisfaction of the County Engineer.

Section 10. Access to adjoining property. Licensee shall provide prior written notice to the owners or residents of adjoining property of any activity of Licensee which may temporarily interfere with access to or use of said adjoining property. Licensee will maintain access to adjoining properties as provided in Pima County Code 10.50.090. If an emergency precludes the provision of prior notice, Licensee shall use its best efforts to provide timely actual notice to the owners or residents of the adjoining property.

Section 11. Indemnification; hold harmless; defend. The Licensee shall indemnify, defend and hold the County, its governing board or body, officers, departments, employees and agents, harmless from and against any and all suits, actions, legal or administrative proceedings, claims, demands, liens, losses, fines or penalties, damages, liability, interest, attorney's, consultant's and accountant's fees or costs and expenses of whatsoever kind and nature, resulting from or arising out of any act or omission of the Licensee, its agents, employees or anyone acting under its direction or control, whether intentional, negligent, grossly negligent, or amounting to a breach of contract, in connection with or incident to the performance of this Agreement. The obligations under this Article shall not extend to the negligence of the County, its agents, or employees.

Section 12. County permits; no authorization of wrongdoing. This License does not constitute a County permit for right-of-way use. Nothing in this License relieves Licensee from its duty to obtain all applicable permits for right-of-way use from the appropriate County departments and the Pima County Flood Control District. County's review, approval, or acceptance of Licensee's plans or specifications, or the County's issuance of a permit for Licensee's installation, construction, or location of its facilities in the public right-of-way is not authorization for or approval of any violation of any federal law, state law, local law, or industry standard pertaining to the location or construction of a utility facility in a public right-of-way. No permit or approval presuming to give such authority shall relieve Licensee of its obligations under this License regarding the location and construction of facilities. The failure of County to direct Licensee to take any precautions or make any changes or to refrain from acting, shall not excuse Licensee from its responsibilities to County or others for injury to persons or damage to property.

Section 13. County participation in suit, action or proceeding. County shall have the right to take part in any suit, action, or proceeding instituted by or against Licensee (a) in which any judgment or decree can be rendered foreclosing any lien on any of Licensee's property situated within the public right-of-way, (b) seeking to enjoin, restrain, or in any manner interfere with Licensee in the performance or observance by it of any of the terms or conditions of this License, or any regulation, notice or direction of County, (c) affecting the rights, powers, or duties of Licensee to comply with the terms of this License agreement, or (d) that involves or might involve the constitutionality, validity, or enforcement of this License agreement. County may take such steps relating to the suit, action, or proceeding as County may deem necessary or advisable to protect the interest of County or the public interest.

Section 14. Location and construction standards. The location and construction of facilities in public right-of-way shall conform to: County policies, standards, and regulations; applicable industry standards then in effect; and as may be directed by County to avoid interference with a planned future use of the public right-of-way. All facilities of Licensee must be located so as to cause minimum interference with the proper use of the public right-of-way, and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin the public right-of-way.

Section 15. Barriers and signs. Licensee must guard and protect any opening, obstruction, or other hazardous condition it causes during the course of its activities in the public right-of-

way by erecting safety barriers that clearly designate the hazardous area with warning lights during periods of dusk and darkness. Licensee must properly sign and mark any work performed by Licensee in or adjacent to a public right-of-way open for travel with warning and directional devices in accordance with all applicable state and local traffic regulations, including A.R.S. § 28-650, and in accordance with the Traffic Control Manual for Highway Construction and Maintenance, Arizona Department of Transportation. Before starting any activity that modifies vehicular, bicycle, or pedestrian traffic patterns, Licensee must submit to the County a traffic control plan for approval.

Section 16. Drainage. During construction or excavation in the public right-of-way, Licensee shall provide proper drainage so that the public right-of-way shall be free from standing surface water, and properly and adequately drained so as not to cause flood or erosion damage to the facilities of the County or surrounding property. Licensee may be required at County's request to submit drainage engineering data and design plans for review and approval. Licensee is subject to all local laws, including Pima County Code 10.44.030(N), regarding work performed in a drainageway, drainage easement, or designated floodplain area.

Section 17. Inspection: charge. County may inspect any of Licensee's activities or facilities in the public right-of-way to ensure proper performance of this License agreement and conformance with applicable federal, state, and local laws, ordinances, and regulations. County may make a reasonable charge for such inspection, provided such charge is lawfully adopted and uniformly imposed and collected for such inspections from other utilities or persons similarly situated to Licensee.

Section 18. Compliance: assent to legality. Licensee is subject to all federal laws, state laws, and County ordinances and regulations now in force or that hereafter may be lawfully adopted, including all ordinances and regulations relating to the use of public right-of-way by utilities. Licensee shall not claim that the provisions of this License or any applicable County ordinance or regulation now lawfully in force are unreasonable, arbitrary, or void.

Section 19. Term. This License is granted for a term of twenty-five years from the date it is executed by the Pima County Board of Supervisors.

Section 21. Signature of Licensee: no obligation after sale, assignment or transfer. This License agreement shall not be effective for any purpose until the acceptance of Licensee is endorsed herein in writing. After any sale, assignment, or transfer of Licensee's rights hereunder, Licensee shall not be obligated under the terms hereof.

Section 22. Approval for sale, assignment, or transfer. Licensee hereby agrees that this License shall not be sold, assigned, or transferred without the prior written approval of the Board of Supervisors of County, such approval not to be unreasonably withheld.

Section 23. Headings. Headings used in this License are for convenience only and shall not be used in construing its terms.

Section 24. Waiver. Waiver by County of any breach of any term, covenant, or condition herein contained shall not be deemed a waiver of any other term, covenant, or condition, or any subsequent breach of the same or any other term, covenant, or condition in this Agreement.

Section 25. Conflict of Interest. This Agreement is subject to cancellation under A.R.S. § 38-511, the relevant provisions of which are incorporated here by reference.

In witness whereof, the parties have executed this Agreement.

Passed and adopted, this ____ day of _____, 2021.

Chair, Pima County Board of Supervisors

ATTEST:

APPROVED AS TO FORM:

Clerk of the Board

Deputy County Attorney

AIC
Licensee

By: _____

Title: _____

State of Arizona)
) ss
County of Pima)

This instrument was acknowledged before me this ___ day of _____, 2021,
by _____ as _____ of
Ajo Improvement Company.

Notary Public

My Commission Expires:

(Seal)

EXHIBIT "A"

