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Arizona Corporation Commission

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JAN 27 2003

RESOLUTION NO. 2002- 342
A RESOLUTION OF THE BOARD OF
SUPERVISORS OF PIMA COUNTY, ARIZONA;
AUTHORIZING A FRANCHISE FOR
FRANCESCA WATER COMPANY, INC.

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WHEREAS, pursuant to Arizona Revised Statutes Title 40, Section 283, (A.R.S. § 40-283) Francesca Water Company, Inc., (hereinafter "Franchisee") has applied to the Board of Supervisors of Pima County, Arizona, (hereinafter "County") for the franchise right 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 water distribution system; and

WHEREAS, notice of this meeting on the application was given as required by law; and

WHEREAS, the application came before the Board of Supervisors on the 3rd day of December, 2002, and no petition to the Board to deny the franchise was filed according to law, and the Board considered the application for the franchise; and

WHEREAS, the Board of Supervisors determined that the grant of this franchise is regular, authorized by law and in the best interests of the County and its inhabitants, FRANCHISEE'S APPLICATION IS HEREBY GRANTED, subject to the following:

Section 1. Franchise; right-of-way. Franchisee is hereby enfranchised and empowered to use public right-of-way within the area described 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 a water distribution system. "Right-of-way" shall include highways, streets, roads, alleys, ways, drainageways and places dedicated to the 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 Franchisee 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 Franchisee.

Section 4. Facilities; definition; removal. Nothing in this franchise 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 Franchisee at its own expense to remove, relocate or abandon in place Franchisee's facilities to accommodate the activities of County. "Facilities of Franchisee" shall mean any physical object or improvement or alteration of a right-of-way owned, possessed, made, installed or constructed by Franchisee or made, installed, or constructed by County or others at the request of Franchisee. "Facilities of Franchisee" 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 franchise 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 Franchisee for (a) any costs of relocation, replacement, repair or abandonment of Franchisee's facilities in the public right-of-way, or (b) lost revenues, sustained by Franchisee 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 franchise shall be construed to grant Franchisee an exclusive right to erect and maintain its facilities in the public right-of-way. Facilities of Franchisee shall be erected so as not to interfere with the reasonable use of the public right-of-way. The location of facilities of Franchisee shall not be a vested interest, and its facilities shall be removed, relocated or abandoned in place by Franchisee 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. Franchisee shall relocate at its expense all facilities of Franchisee 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 Chapter 10.44, as amended. If the facilities are not relocated in accordance with Pima County Code Chapter 10.44, County may, at its discretion, relocate the facilities utilizing a qualified contractor and Franchisee shall be liable for all costs to County of relocation including overhead and maintenance costs.

Section 8. Care and restoration of County roadway or facilities. In the construction, maintenance, repair and operation of its facilities, Franchisee shall not alter, in any way, a County highway, roadway, or street. Franchisee shall use all necessary care to avoid causing or permitting any damage, disturbance, alteration or modification to the facilities of County. If Franchisee causes or permits any damage, disturbance, alteration or modification, Franchisee, 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 Franchisee to give the restoration, repair or replacement of County roadway or facilities priority over proceeding with non-emergency activities of Franchisee.

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

Section 10. Access to adjoining property. Franchisee shall provide prior written or actual notice to the owners or residents of adjoining property of any activity of Franchisee which may temporarily interfere with access to or use of said adjoining property. If an emergency precludes the provision of prior notice, Franchisee 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 Franchisee 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 Franchisee, 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 Franchise does not constitute a County permit for right-of-way use. Nothing in this Franchise relieves Franchisee 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 review or approval of plans or specifications or issuance of a permit for an activity or an installation, construction or location of a facility of Franchisee, or the failure of County to direct Franchisee to take any precautions or make any changes or to refrain from doing anything, shall not be construed to be an authorization for or approval of any violation of an industry standard pertaining to the location or construction of a utility facility in a public right-of-way. No review, approval or permit presuming to give such authority shall relieve Franchisee of its obligations under this franchise regarding the location and construction of facilities. The failure of County to direct Franchisee to take any precautions or make any changes or to refrain from doing anything, shall not excuse Franchisee from its responsibilities hereunder 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 at all times to take part in any suit, action or proceeding instituted by or against Franchisee (a) in which any judgement or decree can be rendered foreclosing any lien on any of Franchisee's property situated within the public right-of-way, (b) seeking to enjoin, restrain, or in any manner interfere with Franchisee in the performance or observance by it of any of the terms or conditions of this franchise, or any regulation, notice or direction of County in such connection, (c) affecting the rights, powers or duties of Franchisee to do or not to do anything which by this franchise it may be required to do or not to do, or (d) which involves or might involve the constitutionality, validity or enforcement of this

franchise. 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 applicable industry standards then in effect and as may be directed by County in order not to interfere with a planned future use of the public right-of-way by the County. All facilities of Franchisee shall 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. Any opening or obstruction in the public right-of-way made by Franchisee in the course of the construction, maintenance, operation, repair, replacement or removal of facilities shall be guarded and protected at all times by the placement of adequate barriers, the bounds of which during periods of dusk and darkness shall be clearly designated by warning lights. Any work performed by Franchisee along a public highway open for travel shall be properly signed and marked with warning and directional devices in accordance with A.R.S. § 28-650 and the "Traffic Control Manual for Highway Construction and Maintenance", Arizona Department of Transportation, August, 1981, as amended now and in the future.

Section 16. Drainage. During construction or excavation in the public right-of-way, Franchisee 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.

Section 17. Inspection; charge. County may inspect any of Franchisee's activity and/or facilities in the public right-of-way to ensure proper performance of this franchise and conformance with applicable federal, state and County laws, ordinances and regulations, and 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 Franchisee.

Section 18. Compliance; assent to legality. Franchisee shall conform to and abide by and perform all the conditions, provisions, requirements and limitations in this franchise. Franchisee shall be subject to all 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. Franchisee shall not set up as against County any claim that the provisions of this franchise or any applicable County ordinance or regulation now lawfully in force are unreasonable, arbitrary or void.

Section 19. Term. This franchise is granted for a term of twenty-five years from the date of the granting.

Section 20. Non-exclusivity. This franchise and the privileges granted herein shall not be exclusive, and the Board of Supervisors expressly reserves the right to grant, from time to time, similar franchises and privileges over the same right-of-way to any other person, firm or corporation.

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

Section 22. Approval for sale, assignment or transfer. Franchisee hereby agrees that this franchise 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 franchise 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 herein contained.

Section 25. Conflict of Interest. This Agreement is subject to A.R.S. 38-511 which provides for cancellation of contracts by Pima County for certain conflicts of interest.

Granted this 17th day of December, 2002.

Francesca Water Company, Inc
Franchisee

By: David A. Thomson Jr
Title: President

EXHIBIT "A"

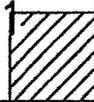
The Southeast quarter of Section 1, Township 16 South, Range 10 East

And,

The West half of the Southeast quarter of Section 13, Township 16 South, Range 10 East

All of the above legal descriptions are based on the Gila and Salt River Base and Meridian, Pima County, Arizona

EXHIBIT "A" DEPICTED
 TOWNSHIP 16 SOUTH, RANGE 10 EAST
 G&SRB&M PIMA COUNTY, ARIZONA

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FRANCHISE AREAS



PIMA COUNTY DEPARTMENT OF TRANSPORTATION
 TECHNICAL SERVICES DIVISION