

ORIGINAL



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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN K. MAYES, Chairman  
GARY PIERCE  
PAUL NEWMAN  
SANDRA D. KENNEDY  
BOB STUMP

2009 MAY 26 P 3: 06  
ARIZONA CORPORATION COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission  
DOCKETED

MAY 26 2009

DOCKETED BY

IN THE MATTER OF THE APPLICATION OF  
ARIZONA WATER COMPANY, AN ARIZONA  
CORPORATION, TO EXTEND ITS EXISTING  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY AT CASA GRANDE, PINAL  
COUNTY, ARIZONA

DOCKET NO. W-01445A-07-0291

REQUEST FOR ADDITIONAL TIME TO  
COMPLY WITH FILING REQUIREMENT

On June 13, 2008 the Commission entered Decision No. 70379 (the "Decision"), which approved an application filed by Arizona Water Company (the "Company") for an extension of its certificate of convenience and necessity ("CCN) for its Casa Grande system.

Parcel Three, one of the five parcels for which a CCN extension was approved, was approved on an Order Preliminary basis (see Decision, at pages 8-10). The Decision, at page 9, provided that, under the Order Preliminary, the Company shall file a franchise or other consent to operate within the municipal boundaries of the City of Eloy (the "City"), within one year of the effective date of the Decision. The Decision further provided, at page 10, that if the franchise or other consent to provide water service is not filed within the one-year period, the Order Preliminary shall be deemed null and void.

In response to the foregoing directive, the Company, although it has not yet obtained a franchise or consent to operate from the City, has met with City officials to discuss the feasibility of obtaining a City franchise or other consent or permission to operate within City boundaries, which would include the area where Parcel Three is located. One of the possible bases of such consent or permission to operate may take the form of a Memorandum of Understanding between the Company and the City, a form of which is attached hereto as Attachment A. The City has not formally offered, and the Company has not

1 indicated to the City that it would find acceptable, this form of Memorandum of Understanding, and it is  
2 attached to this Request as an example of one type of arrangement that the City and Company have  
3 discussed and may agree to. Other possibilities, including a City franchise, have also been discussed.  
4 The Company plans to continue these discussions and its efforts to obtain a franchise or consent to  
5 operate from the City, but these efforts and discussions, understandably, the Company submits, will take  
6 additional time, as any of these or other arrangements would be an arrangement reached for the first time  
7 between the Company and the City. The Company is requesting that the Commission allow these efforts  
8 to continue by approval of the extension of time for compliance that it is requesting in this filing.  
9

10 In addition, the Company is including with this filing, as Attachment B hereto, a letter from the  
11 owners of Parcel Three, in which they confirm their continuing desire to obtain water service from the  
12 Company. The Company also notes, even though the Commission is well aware of it, the severe  
13 economic downturn of the real estate market in Pinal County since mid-2008, and submits that approval  
14 of this request will help to lessen the effect of these dramatic economic conditions.  
15

16 In consideration of the foregoing, the Company respectfully requests an additional two (2) years,  
17 until June 13, 2011, to comply with the Decision's Order Preliminary, i.e., to obtain a City franchise or  
18 other consent to operate. This request should not prejudice any other party and, as detailed above, the  
19 lack of an extension of time may result in adverse prejudice to the owners of Parcel Three in their efforts  
20 to develop their property in good faith reliance upon the Decision.  
21

22 ...  
23 ...  
24 ...  
25 ...  
26 ...

1 RESPECTFULLY SUBMITTED this 26<sup>TH</sup> day of May 2009.

2 ARIZONA WATER COMPANY

3  
4 By: 

5 Robert W. Geake  
6 Vice President and General Counsel  
7 ARIZONA WATER COMPANY  
8 Post Office Box 29006  
9 Phoenix, Arizona 85038-9006

10 Original and thirteen (13) copies of the foregoing filed this 26<sup>TH</sup> day of May 2009 with:

11 Docket Control Division  
12 Arizona Corporation Commission  
13 1200 West Washington Street  
14 Phoenix, Arizona 85007

15 A copy of the foregoing was hand-delivered this 26<sup>TH</sup> day of May 2009 to:

16 Honorable Belinda A. Martin  
17 Administrative Law Judge  
18 Hearing Division  
19 Arizona Corporation Commission  
20 1200 West Washington Street  
21 Phoenix, AZ 85007

22 A copy of the foregoing was mailed this 26<sup>TH</sup> day of May 2009 to:

23 Janice Alward, Chief Counsel  
24 Legal Division  
25 Arizona Corporation Commission  
26 1200 West Washington Street  
27 Phoenix, Arizona 85007

28 Ernest G. Johnson  
Director, Utilities Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

By: 

## ATTACHMENT A

### MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is entered into as of \_\_\_\_\_ 2009 between Red Rock Utilities, LLC, a limited liability company ("Red Rock"), and the City of Eloy, a municipal corporation ("City").

#### RECITALS

WHEREAS, Red Rock is engaged in the business of providing water, wastewater and reclaimed water services (collectively "Utility Services") in the general vicinity of the community of Red Rock in Pinal County, Arizona, and surrounding areas, pursuant to Certificates of Convenience and Necessity ("CC&N") granted by the Arizona Corporation Commission ("ACC"); and,

WHEREAS, the City intends to facilitate and manage future growth in accordance with its obligations under the Growing Smarter legislation and the Growing Smarter Plus legislation enacted into law by the Arizona Legislature; and,

WHEREAS, the City and Red Rock have identified certain land areas within which to regionally plan for the provision of Utility Services by Red Rock, as more fully shown on the map depicted in Exhibit A hereto ("Subject Territory"); and,

WHEREAS, the City has identified land areas in its municipal planning area ("MPA") as prospects for future annexation, a portion of which includes the Subject Territory, and, in connection therewith, the City and Red Rock desire to work closely and cooperate with each other to facilitate the orderly assimilation of these areas into the City; and,

WHEREAS, the City and Red Rock acknowledge the universal importance of Utility Services in connection with the City meeting the needs of the development community, and responding to the potential growth facing the City; and,

WHEREAS, the City and Red Rock wish to formalize an agreement in the form of this MOU, which will benefit both parties and significantly enhance the manner in which they may work together; and,

WHEREAS, the City and Red Rock believe this MOU represents a cost-effective and efficient approach for addressing the requirements of anticipated future residents within the Subject Territory for Utility Services; and,

WHEREAS, the City acknowledges Red Rock's commitment to water conservation to date in Red Rock's existing service areas, its expressed intent to be a contributing corporate citizen, and its desire to have a positive working relationship with the City; and,

WHEREAS, the City and Red Rock acknowledge that the following terms are not intended to limit or increase the legal responsibilities of the City nor the statutory requirements and responsibilities of Red Rock;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the City and Red Rock agree as follows:

1. Proposed Rate and/or Fee Adjustments. Red Rock shall submit proposed rate and/or fee adjustments of Red Rock to the Mayor and City Council for review and comment, prior to submission to the ACC for review and approval, in connection with Red Rock's future provision of Utility Services within areas within the Subject Territory which are hereafter annexed into the City.

2. Franchise Agreement and Fee. Upon the City's annexation of one or more areas within the Subject Territory into the City, the City and Red Rock shall negotiate a franchise agreement for such area(s), which shall become effective when (A) Red Rock has received an opinion and order from the ACC extending Red Rock's existing CC&N, and authorizing Red Rock to provide Utility Services to and within such area(s), and (B) the City has conducted a franchise election which results in a vote authorizing the City to grant to Red Rock a franchise to provide Utility Services within the annexed area(s). Upon becoming effective, the Franchise Agreement between the City and Red Rock shall replace and supersede Red Rock's current franchise from Pinal County as to the annexed area(s).

3. Annexation. Subject to applicable laws and regulations, and as appropriate, Red Rock shall (A) support annexation efforts of the City within the Subject Territory, and (B) support the City's efforts to manage and coordinate development in the Subject Territory. Such support will include Red Rock coordinating with the City in planning for the provision of Utility Services by Red Rock within areas in the Subject Territory hereafter annexed into the City.

4. Regulatory Approvals. The City will endeavor to assist and support Red Rock's efforts to obtain CAAG 208, CC&N, ADEQ, ADWR and other regulatory approvals required within or applicable to those areas within the Subject Territory.

5. Effective Date. Except as otherwise set forth herein, the obligation of the parties pursuant to this MOU shall commence thirty (30) days after approval of said MOU by the Eloy City Council.

6. Entire Agreement. This MOU contains the entire agreement between the parties hereto and supersedes all previous communications, representations or agreements, written or verbal, with respect to its subject matter.

7. Construction. This MOU shall be construed in accordance with the laws of the State of Arizona.

8. Modification or Amendment. This MOU may not be modified, amended, rescinded, cancelled or waived, in whole or in part, except by a written instrument signed by both of the parties hereto.

9. Jurisdiction, Venue and Attorneys' Fees and Costs. Subject to the provisions of this MOU, the prevailing party in any arbitration, proceeding, lawsuit, appeal or other proceeding brought to enforce or otherwise implement the terms and conditions of this MOU shall be entitled to an award of attorneys' fees and costs from the losing party. Jurisdiction and venue shall be in Pinal Count, Arizona, and the parties waive any right to a trial by jury.

10. Mediation/Arbitration. In the event that any dispute arises between the parties to this MOU, the parties first shall attempt to find a neutral person, who is mutually acceptable to both parties, and who has experience in matters such as those provided for in this MOU, and request that person to mediate the dispute. In the event that such mediation is not undertaken or successfully concluded within 45 days after the dispute arises, the parties to any such dispute shall submit the dispute to binding arbitration in accordance with the Rules of Commercial Arbitration ("Rules") for the American Arbitration Association ("AAA"). If the claim in the dispute involves a non-monetary default or breach or does not exceed One Hundred Thousand Dollars (\$100,000), there shall be a single arbitrator selected by mutual agreement of the parties, or, in the absence of agreement, appointed according to the Rules. If the claim in the dispute, exceeds One Hundred Thousand Dollars (\$100,000), the arbitration panel shall consist of three (3) arbitrators, one of whom shall be selected by each party and the third, who shall serve as chairman, shall be selected by the AAA. The arbitrator or arbitrators must be knowledgeable in the subject matter of the dispute. The costs and fees of the arbitrator(s) shall be divided equally among the parties. Any decision of the arbitrator(s) shall be supported by written findings of fact and conclusions of law. The decision of the arbitrator(s) shall be final, subject to the exceptions outlined in the Arizona Uniform Arbitration Act, A.R.S. § 12-1502, et seq., and judgment may be entered upon the same. The arbitrator(s) shall control discovery in the proceedings and may award the prevailing party its reasonable attorneys' fees and costs. Any arbitration arising from this MOU shall occur within Pinal County, or at any other location mutually agreed to by the parties.

11. Assignment. The terms and conditions of this MOU shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns and legal representatives.

12. Waiver. Any waiver of any provision of this MOU shall not constitute a waiver of any other provision, whether or not similar, nor shall any waiver be a continuing waiver. A party may waive any portion of this MOU intended for its benefit; provided, however, that such waiver shall in no way excuse the other party from the performance of any of its other obligations under this MOU.

13. Section Headings. The section headings used herein are for reference only and shall not enter into the interpretation hereof.

14. Relationship of Parties. Nothing contained in this MOU shall be deemed or construed to create the relationship of principal and agent or of limited or general partnership or of joint venture or of any other association between the City and Red Rock.

15. Notices. Any notices given pursuant to this MOU shall be in writing and shall be personally delivered or deposited in the United States mail, certified mail, postage prepaid, return receipt requested, to a party hereunder. Notices shall be deemed given and received when personally delivered or three (3) days after deposit in the United States mail to the address set forth for the party to whom such notice is directed.

16. Time of Essence. Time is of the essence for all purposes of this MOU.

17. Conflict of Interest. This MOU is subject to the conflict of interest provisions set forth in A.R.S. § 38-511.

28. Limitation of Damages on Taxpayer Initiatives. Red Rock waives its rights (as well as its successors' rights, if any, to the extent permitted by law) to any claim for diminution of value pursuant to A.R.S. § 12-1134 (Proposition 207).

19. Exercise of Authority. It is understood and agreed that neither Red Rock nor its affiliates or related entities shall in any way exercise any portion of the authority or sovereign powers of the City and shall not make or contract or commit or in any way represent itself as an agent for the City. Nothing in this MOU be construed to create a principal agency relationship between the parties.

IN WITNESS WHEREOF, each of the parties has executed this MOU as of the date first above written.

**CITY OF ELOY**

**RED ROCK UTILITIES, LLC**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

Eloy City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Eloy City Attorney

**ATTACHMENT B**  
Dr. Charles Levison  
5319 E. Mitchell Drive  
Phoenix, Arizona 85018

May 21, 2009

Arizona Water Company  
Attn: Robert W. Geake  
3805 N. Black Canyon Highway  
Phoenix, AZ 85015

Dear Mr. Geake:

I am following up with you regarding Pinal County Assessor's Parcel No. 408-23-054 which my family owns. The Levisons still need and desire to receive water service from Arizona Water Company to serve this parcel. Our current plans include development within the earliest possible time, considering current market conditions, perhaps within twenty-four months. If market conditions improve, however, we hope to shorten this timeframe. If you have any questions, please feel free to contact me.

Sincerely,



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Dr. Charles Levison  
For Dr. Charles Levison,  
Helen Levison, and  
Jeffrey Levison

