

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

THE STATE OF ARIZONA,

Plaintiff,

v.

TWIN CITY WATER WORKS, INC.,

Defendant.

Case No: CR 201⁵~~4~~-04812 - 001 DT

WAIVER OF PRELIMINARY HEARING;
PLEA AGREEMENT
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ARRAIGNMENT DATE: June 10th, 2015 TIME: 9:30 AM, COURTROOM# 6A, in the Superior Court, South Court Tower, 175 W Madison Street, Phoenix.

Declaration by the Defendant TWIN CITY WATER WORKS, INC., an Arizona Corporation Commission licensed foreign corporation, represented by its attorney BARRY MITCHELL, as follows:

JB The company voluntarily waives its right to a preliminary hearing, understanding that it will be held to answer and an information will be filed, charging it with having committed Count 1: Attempted Knowing Failure to Pay a Tax, a class 6 undesignated felony, in violation of A.R.S. § 42-1127(B)(1), 13-1001. This is a non-dangerous, non-repetitive offenses under the criminal code.

JB The company understands and acknowledges that:

- A. The company has the right to a preliminary hearing.
- B. The company is represented by an attorney. At this and any subsequent proceedings, the company must appear with an attorney. *Ramada Inns, Inc., v. Lane and Bird Advertising, Inc.*, 102 Ariz. 127 (1967). Should the company fail to appear with counsel at any subsequent hearing, the Court may, but is not obligated to, appoint counsel for the company if "the interests of justice so require." Ariz. R. Crim. P. 6.1 (b). Should the company elect to terminate representation or have counsel voluntarily absent himself/herself from the proceedings, the Court may proceed in the absence of counsel.
- C. The company is giving up the right to confront and cross examine witnesses.
- D. The company is giving up the right to present evidence on its behalf and that it is giving up the right to have the magistrate determine if there is sufficient evidence against it to establish probable cause to hold it to answer in Superior Court on the above stated charges, as well as the right to a dismissal of the

charges against it if the evidence is insufficient.

The State of Arizona and the Defendant hereby agree to the following disposition of this case:

Plea: The Defendant agrees to plead GUILTY to:

Count 1: Attempted Knowing Failure to Pay a Tax, a class 6 undesignated felony, in violation of A.R.S. §§ 42-1127(B)(1), 42-1101, 42-1101.01, 13-1001, 13-701, 13-702, 13-801, 13-802, 13-803, 13-811, 13-301, 13-302, 13-303, and 13-305, committed on or between April 2010, and April 2011.

This is a non-dangerous, non-repetitive offense under the criminal code.

Terms: On the following understandings, terms and conditions:

SB 1. Restitution of economic loss to the victim is required. Pursuant to A.R.S. 13-803, if designated a felony, the maximum fine that can be imposed is \$1,000,000.00 plus an 83% surcharge (plus a \$20.00 probation surcharge and a \$13.00 assessment pursuant to A.R.S. § 12-116.04). The presumptive fine is \$500,000.00 which may be increased or reduced if the Court finds factors set forth in A.R.S. § 13-803 (F). If designated a misdemeanor, the maximum fine that can be imposed is \$20,000.00 plus an 83% surcharge and plus a \$20.00 probation surcharge and a \$13.00 assessment pursuant to A.R.S. § 12-116.04). The presumptive fine is \$10,000.00 which may be increased or reduced if the Court finds factors set forth in A.R.S. § 13-803 (F). Any fine imposed shall constitute a lien in a manner as a judgment for money rendered in a civil action. Special conditions regarding sentence imposed by statute (if any) are:

None.

SB 2. The parties stipulate to the following additional terms:

- The Defendant agrees to pay a fine in the amount of \$20,000.00 pursuant to A.R.S. §13-803 and payable to Attorney General's Anti-Racketeering Fund as set forth in A.R.S. §13-811(B).
- The parties agree that a deviation from the presumptive fine can be based upon "[t]he income and assets of the enterprise and the economic impact of the penalty on the enterprise," as defined in A.R.S. §13-803(F)(1). This factor shall support the stipulated fine pursuant to A.R.S. §§13-803(B) & (C).
- Defendant will pay restitution in the amount of \$370,683.16 ("Restitution Amount") to the Arizona Department of Revenue (the "Department"), which amount constitutes an estimate based on information and documents that

are currently known and available to the Arizona Attorney General's Office of the defendant's Arizona corporate income tax liability and interest for the period from the tax year ending 1996 to the tax year ending in 2013 and as set forth in the attached Exhibit A (the "Restitution Period"). This plea agreement does not prevent the Department from auditing and assessing Arizona corporate income, tax, interest and penalties for the Restitution Period set forth above. If the Department issues an assessment of corporate income tax liability for the Restitution Period, the Restitution Amount paid under this agreement will be applied as a payment toward the assessed liability, and the Defendant shall be liable for the difference, if any, between the amount set for the in such assessment and the Restitution Amount. This plea agreement does not affect the Department's ability to audit, assess, or collect any obligations relating to the defendant's Arizona corporate income tax liabilities for any period before, after or during the Restitution Period.

- As a down payment toward the Restitution Amount, \$10,000.00 will be paid to the Department upon the date of entry of this plea agreement; an additional \$5,000.00 will be paid 45 days from the date of entry.
- Nothing in this plea agreement is intended to prevent the Department from auditing, assessing, or collecting other tax obligations owed by Defendant for any period as permitted by law.
- Defendant will be placed on supervised probation and the offense will be designated a misdemeanor only on successful completion of probation.
- Defendant will file all required Federal and Arizona State Income Tax Returns and reporting documents for tax years 2014, 2015, and 2016, and provide a copy of those Returns and reporting documents with proof of filing to the Probation Department and the Arizona Attorney General's Office.
- Defendant will file all future required Arizona tax returns.

SB 3. The following charges are dismissed, or if not yet filed, shall not be brought against the Defendant:

Any other criminal charges arising from A.R.S. Title 42, A.R.S. § §13-2310, 13-2311, 13,2312, 13-2317, 13-2002 and 10-11632 from conduct described in Arizona Attorney General's Report P-2010-1882. The Arizona Attorney General's office further agrees not to bring charges arising from A.R.S. Title 42, A.R.S. §§13-2310, 13-2311, 13-2312, 13-2317, 13-2002 and 10-11632 against individual officers, directors and high managerial officials (including Alvin Barlow, Vance Barlow, Scott Jessop, Joseph Allred, Richard Allred, Terrance Barlow, Rich Barlow, Nathan Barlow, James Zitting, Nap Jessop, Sylmar Barlow, and Lucas Barlow) of Twin City Water Works, Inc. for the conduct described in Arizona Attorney General's Report P-2010-1882 occurring through 2013.

SB 4. This agreement serves to amend the complaint or information, to charge the offense to which the defendant pleads, without the filing of any additional pleading. However, if the plea is rejected by the Court or withdrawn by either party, or if the conviction is subsequently reversed, the original charges and any charges that are dismissed by reason of this plea agreement are automatically reinstated.

SB 5. If the Defendant is charged with a felony, it hereby waives its rights to a preliminary hearing or other probable cause determination on the charges to which it pleads. The Defendant agrees that this agreement shall not be binding on the State should the Defendant be charged with or commit a crime between the time of this agreement and the time for sentencing in this cause; nor shall this agreement be binding on the State until the State confirms all representations made by the Defendant and its attorney, to-wit:

The Defendant avows that it has no prior misdemeanor or felony convictions.

If a lawful representative of the Defendant fails to appear for sentencing, the Court may disregard the stipulated sentence and impose any lawful sentence which is the same as or exceeds the stipulated sentence in the plea agreement. In the event the Court rejects the plea, or either the State or the Defendant withdraws the plea, the Defendant hereby waives and gives up its right to a preliminary hearing or other probable cause determination on the original charges.

SB 6. Unless this plea is rejected by the Court or withdrawn by either party, the Defendant hereby waives and gives up any and all motions, defenses, objections, or requests which it has made or raised, or could assert hereafter, to the court's entry of judgment against it and imposition of a sentence upon it consistent with this agreement. By entering this agreement, the Defendant further waives and gives up the right to appeal (A.R.S. §13-4033) and agrees that the only available review is pursuant to Rule 32, Rules of Criminal Procedure.

SB 7. If after accepting this plea the Court concludes that any of the plea agreement's provisions regarding the sentence or the terms and conditions of probation are inappropriate, it can reject the plea. If the Court decides to reject the plea agreement provisions regarding the sentencing, it must give both the State and the Defendant an opportunity to withdraw from the plea agreement. In case this plea agreement is withdrawn, all original charges will automatically be reinstated. The Defendant in such case waives and gives up its right to a probable cause determination on the original charges.

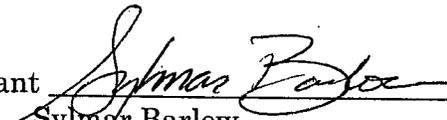
SB 8. If the Court decides to reject the plea agreement provisions regarding sentencing and neither the State nor the Defendant elects to withdraw the plea agreement, then any sentence either stipulated to or recommended herein in paragraph 2 is not binding upon the Court, and the Court is bound only by the sentencing limits set forth in paragraph 1 and the applicable statutes.

SB 9. The parties hereto fully and completely understand and agree that by entering into a plea agreement, the Defendant consents to judicial fact-finding by preponderance of the evidence as to any aspect or enhancement of sentence, and that any sentence either stipulated to or recommended herein in paragraph 2 is not binding on the Court. In making the sentencing determination, the Court is not bound by the rules of evidence.

SB 10. This plea agreement does not in any way compromise, or provide any protection or defense with regard to, any civil action, whether by or on behalf of a victim or any government entity, and whether previously or later filed, including but not limited to an action pursuant to A.R.S. Title 13, Chapter 23 or §§ 13-4301-4315; nor does it abrogate or limit the provisions of A.R.S. § 13-2314(H) or A.R.S. § 13-4310(C), or in any other way adversely affect the State in any current or future forfeiture proceeding or other civil action pursuant to A.R.S. § 13-2314, §§ 13-4301-4315, or § 32-1993, if applicable.

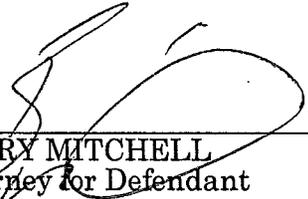
SB 11. The undersigned is a lawful representative with high managerial authority over the Defendant company, and makes the following avowal: I have read and understand all of the provisions, on all of the pages, of this agreement, and I have discussed the case and the company's constitutional rights with the company's lawyer. I understand that, by pleading guilty, I will be waiving and giving up my company's right to a determination of probable cause, to a trial by jury, to confront, cross-examine, and compel the attendance of witnesses, to present evidence on my company's behalf, my company's presumption of innocence, my company's right to a determination by a jury of any fact used to impose a sentence within the sentencing range, and my company's right to appeal. I agree to enter the company's plea as indicated above on the terms and conditions set forth herein. I have personally and voluntarily placed my initials in each of the above boxes and signed the signature line below to indicate that I am a high managerial agent in this corporation and am acting with the authority to legally bind this corporation. Further, I have read and approved all of the previous paragraphs in this agreement, both individually and as a total binding agreement. This plea is voluntary and is not the result of force, or threat, or promises other than those contained in this plea agreement.

Date May 29, 2015

Defendant 
Sylmar Barlow
TWIN CITY WATER WORKS, INC.

I have discussed this case with my client in detail and advised the legal representative of the entity's constitutional rights and all possible defenses. I believe that the defendant's plea is knowing, intelligent, and voluntary and that the plea and disposition are consistent with law.

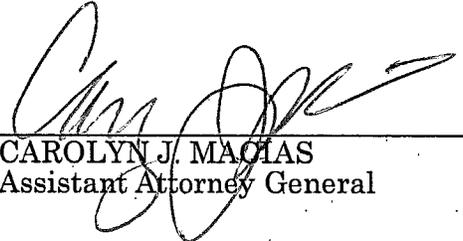
Date 6/10/15



BARRY MITCHELL
Attorney for Defendant

I have reviewed this matter and concur that the plea and disposition set forth herein are appropriate and are in the interests of justice.

Date 6/10/15



CAROLYN J. MACIAS
Assistant Attorney General

Attachment A

Year	Taxable Income	Tax Rate	Tax due	Interest	Penalties	Total
1996	112,634.00	0.09	9,300.06	\$15,991.07	7,905.05	33,196.17
1997	112,634.00	0.09	9,300.06	\$13,907.78	7,905.05	31,112.88
1998	112,634.00	0.08	9,010.72	\$11,856.97	7,659.11	28,526.80
1999	112,634.00	0.08	9,010.72	\$10,303.69	7,659.11	26,973.52
2000	112,634.00	0.07968	8,974.68	\$8,678.87	7,628.48	25,282.02
2001	112,634.00	0.06968	7,848.34	\$6,588.23	6,671.09	21,107.65
2002	112,634.00	0.06968	7,848.34	\$5,806.35	6,671.09	20,325.77
2003	112,634.00	0.06968	7,848.34	\$5,217.12	6,671.09	19,736.54
2004	112,634.00	0.06968	7,848.34	\$4,623.17	6,671.09	19,142.59
2005	112,634.00	0.06968	7,848.34	\$3,859.55	6,671.09	18,378.97
2006	112,634.00	0.06968	7,848.34	\$3,013.63	6,671.09	17,533.05
2007	112,634.00	0.06968	7,848.34	\$2,235.34	6,671.09	16,754.76
2008	112,634.00	0.06968	7,848.34	\$1,716.62	6,671.09	16,236.04
2009	112,634.00	0.06968	7,848.34	\$1,348.70	6,671.09	15,868.12
2010	112,634.00	0.06968	7,848.34	\$1,015.75	6,671.09	15,535.17
2011	112,634.00	0.06968	7,848.34	\$718.44	6,671.09	15,237.86
2012	112,634.00	0.06968	7,848.34	\$469.32	6,671.09	14,988.74
2013	112,634.00	0.06968	7,848.34	\$227.03	6,671.09	14,746.45
			147,624.61	97,577.63	125,480.92	370,683.16