

RESOLUTION NO. 2024-2431

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA, APPROVING A FRANCHISE AGREEMENT BETWEEN THE CITY OF GOODYEAR AND EPCOR WATER ARIZONA INC., ITS SUCCESSORS AND ASSIGNS, AND PLACING THE APPROVAL OF THE FRANCHISE AGREEMENT ON THE BALLOT OF A SPECIAL ELECTION TO BE HELD ON MAY 20, 2025, THAT GRANTS EPCOR WATER ARIZONA INC., ITS SUCCESSORS AND ASSIGNS THE RIGHT, PRIVILEGE AND FRANCHISE TO CONSTRUCT, MAINTAIN AND OPERATE UPON, OVER, AND/OR ALONG THE PUBLIC RIGHTS-OF-WAY IN THE CITY OF GOODYEAR, ARIZONA, AND FUTURE ADDITIONS THERETO, WATER DELIVERY AND WASTEWATER COLLECTION SYSTEMS WITH ALL NECESSARY APPURTENANCES, FOR THE PURPOSE OF SUPPLYING WATER AND COLLECTING WASTEWATER TO THE CITY, ITS SUCCESSORS, THE INHABITANTS THEREOF, AND PERSONS AND CORPORATIONS EITHER WITHIN OR BEYOND THE LIMITS THEREOF, FOR ALL PURPOSES, PRESCRIBING CERTAIN RIGHTS, DUTIES, TERMS AND CONDITIONS IN RESPECT THERETO.

WHEREAS, EPCOR Water Arizona Inc. (EPCOR) has a certificate of convenience and necessity issued by the Arizona Corporation Commission to provide utility services within the boundaries of the City of Goodyear; and

WHEREAS, the City and EPCOR are party to a License Agreement that regulates EPCOR's usage of the public right-of-way to provide utility services within Goodyear's boundaries; and

WHEREAS, the license agreement between the City and EPCOR will expire in 2025 and the City and EPCOR intended the license to be temporary and to enter into a Franchise Agreement; and

WHEREAS, the City and EPCOR have negotiated a twenty-five (25) year franchise agreement that will regulate EPCOR's usage of the public right-of-way to provide utility services within Goodyear's boundaries; and

WHEREAS, the City's electors will consider the proposed Franchise Agreement in the May 20, 2025 Special Election; and

WHEREAS, the City Council has determined it is in the public's interest to enter into the proposed franchise agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA, AS FOLLOWS:

SECTION 1. In compliance with the City of Goodyear Charter, Article XII, Section I, and Arizona Revised Statute §9-502(B), the City Council finds that entering into the proposed Franchise Agreement with EPCOR Water Arizona, Inc. (attached as Exhibit A), is beneficial to the community and the proposed Franchise Agreement is approved for submission to the electors of the community for approval at the Special Election scheduled for May 20, 2025; and

SECTION 2. The City Clerk and City Attorney are directed to comply with all applicable legal requirements in the publication and referral of the proposed Franchise Agreement to the electors of the community; and

SECTION 3. The Council authorizes the Mayor to execute all documents, under the terms detailed in the attached Franchise Agreement upon approval of the Franchise by the electors of the community; and

SECTION 3. The Legal Department is authorized to add necessary exhibits and to make necessary language changes that do not alter the substantive or essential terms of the agreement in compliance with the City Charter or Arizona statutory law; and

SECTION 4. Resolution 2024-2431 shall be effective upon the date of its adoption.

PASSED AND ADOPTED by the Mayor and Council of the City of Goodyear, Maricopa County, Arizona, by a _____ vote, this _____ day of _____, 2024.

Joe Pizzillo, Mayor

Date: _____

ATTEST:

APPROVED AS TO FORM:

Darcie McCracken, City Clerk

Roric Massey, City Attorney

EXHIBIT "A"

**FRANCHISE AGREEMENT
BETWEEN
EPCOR WATER ARIZONA INC.
AND
THE CITY OF GOODYEAR, ARIZONA**

(On the following pages)

**FRANCHISE AGREEMENT
BETWEEN
EPCOR WATER ARIZONA INC.
AND
THE CITY OF GOODYEAR, ARIZONA**

This, FRANCHISE AGREEMENT BETWEEN EPCOR WATER ARIZONA INC. AND THE CITY OF GOODYEAR, ARIZONA is made by CITY OF GOODYEAR, an Arizona municipal corporation ("**City**"), and EPCOR Water Arizona Inc. an Arizona corporation, or its successors and assigns ("**EPCOR**").

RECITALS:

- A.** WHEREAS, EPCOR represents and warrants to the City that it is a public service corporation within the meaning of Article 15, Section 2, of the Arizona Constitution and is authorized to provide water and wastewater collection services within portions of Maricopa County, Arizona, in accordance with one or more Certificates of Convenience and Necessity issued by the Arizona Corporation Commission; and
- B.** WHEREAS, EPCOR will own, operate and maintain public water and wastewater systems within the City limits of Goodyear, Arizona; and
- C.** WHEREAS, EPCOR, as a public service corporation dedicated to providing safe and reliable service to all its customers including those within the City of Goodyear, commits to providing a highest level of utility service to its water and wastewater customers at level on par or exceeding that provided by the City; and
- D.** WHEREAS, EPCOR commits to designing, constructing and completing any capital improvement and operations and maintenance projects, including emergency projects, in a timely fashion and in partnership with the City; and
- E.** WHEREAS, EPCOR and City desire to enter into a franchise agreement that requires the approval of the City Council and a majority of the voters within the City of Goodyear; and
- F.** WHEREAS, EPCOR and City agree and acknowledge that the Recitals set forth above are true and correct and are by this reference incorporated into the agreement herein.

AGREEMENT:

NOW, THEREFORE, in consideration of the covenants herein and of the benefits to be provided hereunder, the Parties agree as follows:

Granting of Franchise Prerequisites.

1. EPCOR will present the desired Franchise, as defined below, to the City's Mayor and City Council and file it with City Clerk after entry of a final order granting EPCOR an extension of its Certificates of Convenience and Necessity ("**CC&Ns**") by the Arizona Corporation Commission ("**Commission**"); that grants EPCOR the exclusive right to provide Utility Services within an area as described in the CC&Ns.
2. If the City's Mayor and City Council deems the granting of the Franchise beneficial to the City, it will pass a resolution and thereafter submit the Franchise to the qualified electors as to whether the Franchise should be granted at the next regular election held in the City or at a special election called for approving the Franchise. The City will not call a special election for approving the Franchise without the consent of EPCOR. The Franchise election will be called and conducted in accordance with applicable law.
3. EPCOR will be responsible for all costs incurred by the City for holding a general election to approve the Franchise, provided that such costs are not unreasonably incurred by the City. If other items, measures, initiatives or candidates are placed on the same ballot as the Franchise, the City will equitably apportion only those costs attributable to the election of the Franchise to EPCOR.
4. The City will invoice the estimated cost of the general election for the Franchise ("**Estimated Cost**") within sixty (60) days after the filing of the Franchise with the Goodyear City Clerk. EPCOR will promptly pay the City the estimated cost within thirty (30) days after receiving the invoice. The City will reconcile the actual general election cost attributable to the Franchise ("**Actual Cost**") within sixty (60) days after the Franchise vote in a general election. EPCOR will promptly pay the City the difference between the Estimated Cost and the Actual Cost if the Actual Cost exceeds the Estimated Cost. The City will promptly refund EPCOR the difference between the Actual Cost and the Estimated Cost if the Actual Cost is less than the Estimated Cost.

Franchise Agreement.

1. Grant of Franchise

- 1.1. This Franchise is hereby granted by City to EPCOR, a corporation organized and existing under and by virtue of the laws of Arizona, and conveys to EPCOR the right and privilege to construct, maintain, and operate within the present and future public rights-of-way within the boundaries of any of EPCOR 's CC&Ns in Goodyear, Arizona, as currently granted by the Commission or which the Commission may grant in the future, water delivery and wastewater collection systems, together with certain appurtenances including but not limited to; transmission mains,

distribution and collection mains, service lines, fire hydrants, meters, lift stations, and equipment for its own use, for the purpose of supplying water and wastewater collection services to City, its successors, the inhabitants thereof, and all individuals and entities within or beyond the limits thereof (collectively, the "**Served Population**"), in each case for all purposes for which it is duly authorized by its CC&Ns ("**Franchise**").

- 1.2. The area of this Franchise shall consist of those portions within the borders of the City that are also within the boundaries of any of EPCOR 's CC&Ns, as currently granted by the Commission or which the Commission may grant in the future ("**Franchised Area**"). The Franchised Area as of the date of this Franchise provides the ability to construct, maintain and operate its system, as defined herein, upon, over, along, across and under the present and future public rights-of-way. These rights-of-way include but are not limited to streets, alleys, ways and highways in the City of Goodyear, Arizona. This Franchise is for EPCOR's use of City's public rights-of-way to supply and deliver safe, adequate, and reliable water treatment, transmission, and distribution services, and to provide safe and reliable wastewater collection, transmission, and treatment services to City, its successors, the inhabitants thereof, and all individuals and entities either within or beyond the limits thereof, for all purposes.
- 1.3. All such transmission mains, distribution and collection mains, and service lines shall be located underground unless otherwise approved by City. EPCOR shall not construct wells, well sites, storage, or pumping facilities in the public rights-of-way. Nothing herein shall be construed to permit EPCOR to maintain any portion of its water delivery or wastewater collection systems, or appurtenances thereto, in any manner which would adversely affect or interfere in any way, as determined by City in its sole discretion, with City's use of the public rights-of-way for its intended use; provided, however, that the foregoing shall not preclude reasonable temporary interference necessitated by EPCOR's repair or maintenance of those facilities. City acknowledges and agrees that all of EPCOR's infrastructure located within the Franchised Area as of the date of this Franchise complies with the foregoing or is otherwise acceptable in its current location to City.

2. **EPCOR's Compliance with Requirements; Plans Submitted for Approval; City Construction near EPCOR's Facilities.**

- 2.1. Within ninety (90) days after the approval of this Franchise by the Mayor and City Council, EPCOR shall submit to the Goodyear City Manager a map showing the true and correct location of all present installations of EPCOR within City's rights-of-way.
- 2.2. The quality of water treatment, transmission, and distribution services, and of the wastewater collection, transmission and treatment services provided by EPCOR shall comply with the requirements of the United States Environmental Protection Agency, Arizona Department of Environmental Quality, Arizona Corporation Commission, Arizona Department of Health Services, and the Maricopa County Department of Environmental Health Services.

2.3. All construction in such public rights-of-way under this Franchise shall be performed in accordance with established City practices. Before EPCOR makes any major installations in the public rights-of-way, EPCOR shall submit to City for approval any applicable permit applications and a map showing the location of such proposed installations. City and EPCOR agree and understand that there may be instances when EPCOR is required to make repairs that are of an emergency nature. EPCOR shall notify City 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 public rights-of-way. In this case, telephone notification of the repair will be given as soon as practicable to the contact person designated by City.

(1) Notwithstanding anything else contained in this provision, EPCOR will make best efforts to address any emergencies within 24 hours of being notified that such emergency exists; with EPCOR permitted to address such emergencies with the use of temporary patches with metal plates so that any street closures will be released as soon as practicable. Should EPCOR determine, in consultation with City, that such emergency may take more than 24 hours to address, EPCOR will notify City of such, and provide a mutually agreeable timeframe by which the emergency will be addressed to City's satisfaction.

2.4. If City undertakes, either directly or through a contractor, any construction project adjacent to or near EPCOR's facilities operated pursuant to this Franchise and for the relocation of which City is required hereunder to pay, City shall include in all such construction specifications, bids, and contracts a requirement that as part of the cost of the project, the contractor or contractor's designee obtain from EPCOR the temporary or permanent removal, relocation and barricading of equipment, and depressurization of EPCOR's facilities or equipment, all as necessary to avoid the creation of an unsafe condition in view of the equipment to be utilized or the methods of construction to be followed by the contractor.

2.5. EPCOR shall continuously maintain As-Built Drawings of its facilities located within the right-of-way and furnish a copy electronically in a mapping format compatible with the current City electronic mapping format as specified by the City and if requested by City in hard copy form.

3. Construction and Relocation of EPCOR's Facilities.

3.1. All facilities installed or constructed pursuant to this Franchise shall be located or relocated and erected as to minimize the interference with traffic or other authorized use, over, under, or through the public right-of-way. Those phases of construction of EPCOR's facilities relating to traffic control, backfilling, compaction, and paving, as well as location or relocation of facilities provided for herein, shall be subject to regulation by the City Council. EPCOR shall keep accurate records of the location of all facilities in the public right-of-way and furnish them to City upon request. Upon completion of new construction or relocation of underground facilities in the public right-of-way, EPCOR shall provide City 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.

- 3.2. Upon reasonable notice by City of the proposed paving or expansion of a Public Right-of-Way, EPCOR shall review the City's proposed paving plan and, if warranted in EPCOR's judgment, extend or replace its facilities in order to reasonably avoid the need to subsequently cut the paved public right-of-way.
- 3.3. EPCOR will bear the entire cost of relocating any of EPCOR's facilities, the relocation of which is necessitated by the construction of improvements by, or on behalf of, City in furtherance of a governmental function. City will bear the entire cost of relocating any of EPCOR's facilities, the relocation of which is necessitated by the construction of improvements by, or on behalf of, City in furtherance of a proprietary function.
- 3.4. If City requires EPCOR to relocate EPCOR's facilities that are located in private easements or private rights-of-way from which the facilities must be relocated, the entire cost of relocating EPCOR's facilities, including the cost of purchasing a new private easement or right-of-way, if necessary, shall be borne by City. City shall not be obligated to bear such costs if, prior to City's acquisition of such right-of-way, either, (i.) EPCOR subordinated its easement or right-of-way in such a manner that the person from whom City acquired the right-of-way would not have been obligated to bear any costs of such relocation, or (ii.) EPCOR did not in fact obtain such easement or right-of-way.
- 3.5. If relocation of any of EPCOR's facilities is required or requested due to the actions or inactions of any party other than the City, the third party shall be responsible for the cost of such relocation.
- 3.6. City and EPCOR agree that City is not a party to disputes among permittees or other interested parties using the public rights-of-way.
- 3.7. EPCOR's operation of water delivery and wastewater collection systems is subject to Arizona law regarding prior rights. City reserves its prior superior rights to use the public right-of-way and City property, including the surface areas, for all public purposes. Provided that anything contained herein does not interfere with EPCOR's obligation to provide safe and reliable water and wastewater service, any privilege claimed under this Franchise by EPCOR in any public right-of-way or other public property is subordinate to any: (a) prior or subsequent lawful occupancy or use thereof by City or any other governmental entity; (b) prior lawful occupancy or use thereof by any other person or entity; and (c) prior easements therein. Notwithstanding the foregoing subordination provision, nothing herein extinguishes or otherwise interferes with property rights established independently of this Franchise. When the City uses its prior superior right to the public rights-of-way, or other City property, EPCOR shall move its property that is located in the public right-of-way or on other City property at its own cost, to such location as City directs.
- 3.8. If the City, at its expense, has previously required EPCOR to relocate its facilities in a particular area, and EPCOR desires to again relocate these facilities, EPCOR shall bear the entire cost of such relocation.

- 3.9. If City relocates and/or participates in the cost of relocating EPCOR's facilities for any reason, the cost of relocation to City shall not include any additional cost resulting from any upgrade or improvement of EPCOR's facilities as they existed prior to relocation. Notwithstanding the foregoing, if EPCOR requests, in connection with any such relocation by City, any upgrade or improvement of the affected EPCOR's facilities, City will in good faith consider such request, subject in each case to EPCOR's agreement to pay for the actual, additional costs up front prior to any upgrade or improvement for the requested upgrade or improvement. City will deliver to EPCOR documentation reasonably satisfactory to EPCOR to evidence the actual, additional cost of such upgrades and improvements. In no event shall City be responsible for considering or undertaking an upgrade or improvement to any of EPCOR facilities being relocated by City if doing so would adversely affect City's schedules for completion.
- 3.10. All underground abandoned lines shall continue to remain the property of EPCOR, unless EPCOR specifically acknowledges otherwise to the City Engineer and such is accepted by City. EPCOR shall remove, at EPCOR's sole cost, abandoned lines at the request of City when required to facilitate construction of any municipal project or as City determines is reasonably necessary to protect public health and safety. EPCOR may contract with City contractor for such removal. Prior to removal of any abandoned lines, EPCOR shall notify City of its intent to remove abandoned lines and offer possession of said lines to City. EPCOR shall identify the location of any known abandoned lines as they exist at the time this Franchise is granted through recognized industry means. EPCOR shall further identify the location of any lines that become abandoned during the term of this Franchise in a like manner.
- 3.11. Subject to the provisions of this section regarding the cost of relocation of EPCOR's facilities, EPCOR's right to retain its facilities in their original location is subject to the paramount right of City to use its public rights-of-way for all permitted purposes, including without limitation, to carry out its governmental functions. All functions of City, which are not specifically determined by law to be proprietary, are governmental. City's permitted purposes shall include, but in no way shall be limited to the following:
- i. Any and all improvement to City streets, alleys, and avenues;
 - ii. Establishing and maintaining sanitary sewers, storm drains, drainage structures, and related facilities;
 - iii. Establishing and maintaining parks, parkways, pedestrian malls, or grass, shrubs, trees, and other vegetation for the purpose of landscaping any street or public property;
 - iv. Providing fire protection and public safety functions;
 - v. Collection and disposal of garbage, solid waste, bulk trash and recyclables;
 - vi. Providing public transportation;
 - vii. Operating City utilities;
 - viii. Any structures for public purposes deemed appropriate by the Mayor and Council of City;
 - ix. Any structure for any purpose, whether governmental or proprietary, which City is authorized to construct and/or maintain;

- x. Where City's facilities or other facilities occupying a right-of-way under authority of a City permit or license are already located in the right-of-way and a conflict between, EPCOR's potential facilities and the existing facilities can only be resolved expeditiously as determined by the Goodyear City Engineer by relocating the existing City or permittee facilities, EPCOR shall bear the entire cost of relocating the existing facilities, irrespective of the function they served.

4. **Restoration of Rights of Way.**

4.1. Whenever EPCOR shall cause any work, opening, or alteration whatsoever to be made for any purpose in any City public right-of-way, the work shall be completed with due diligence within a reasonably prompt time; and EPCOR shall, upon completion of such work, restore the disturbed property to the same or a substantially similar condition as it was prior to such openings or alteration, and EPCOR shall provide any barricades, signing, rerouting of traffic, or other actions which City shall consider necessary or desirable in the interest of public safety during any such opening or alteration within the public right-of-way.

- (1) To the extent EPCOR is undertaking any operations and maintenance or capital improvement projects on a permanent (i.e., non-emergency) basis, EPCOR will consult and coordinate with City on a regular basis to best ensure that any rights-of-way that have been disturbed as the result of such work have been completely restored to the City's satisfaction, and pursuant to a mutually-agreeable schedule for restoration of such rights-of-way. EPCOR will comply with all applicable traffic control regulations in effect, including placement of updated barricade permits where required or as requested by City.

4.2. If EPCOR causes damage to pavement, sidewalks, driveways, landscaping, or other property during construction, installation, or repair of its facilities, EPCOR or its authorized agent shall replace and restore such places as nearly as possible to its original condition that existed before the damage occurred. If the repair, replacement or restoration cannot replicate the site's original condition, EPCOR shall return the site to a condition that approximates the original condition and compensate the City for any difference. All repair and restoration necessary to meet the requirements set forth in this Section shall be at EPCOR's expense and shall be conducted in a manner acceptable to the City, in its sole discretion. EPCOR agrees to restore pavement or sidewalks after any pavement or sidewalk cuts done by EPCOR.

4.3. In addition to any indemnity obligation under this Franchise, whenever the installation, use, maintenance, removal, or relocation of any of EPCOR facilities are required or permitted hereunder, and such installation, removal, or relocation damages or disturbs the surface or subsurface of any right-of-way, public property or any public improvement that may be located thereon, therein, or thereunder, however such damage or disturbance was caused, EPCOR, at its sole cost and expense, shall promptly restore the surface or subsurface of the right-of-way or public property and/or will repair or replace the surface, subsurface and/or public improvement thereon, therein, or thereunder, in as good a condition as before in accordance with applicable laws, normal wear and tear excepted, to the reasonable satisfaction of the Goodyear City

Engineer. If EPCOR does not repair the damage or disturbance as required, then City shall have the option, upon ten (10) business days prior written notice to EPCOR, to perform or cause to be performed such reasonable and necessary work on behalf of EPCOR and to charge EPCOR for the proposed costs to be incurred or the actual costs incurred by City at City's standard rates plus a ten percent (10%) administration fee.

4.4. In the event of a public emergency, the City shall have the right to immediately perform, without prior written notice to EPCOR, such reasonable and necessary work on behalf of EPCOR to repair and return public property to a safe and satisfactory condition in accordance with applicable laws, normal wear and tear excepted, reasonably satisfactory to the Goodyear City Engineer. The City shall provide written notice to EPCOR of the repairs as soon as practicable after the work has begun. EPCOR agrees that any damaged City-owned conduit or fiber must be replaced or repaired and restored with new or like-new materials. If the City needs to perform any part of the necessary repairs, relocation and/or removal work, it shall be entitled to seek payment for such repairs and/or relocation and/or removal costs from EPCOR. Upon the receipt of a demand for payment by City, EPCOR shall reimburse City within thirty (30) days for such costs in accordance with the City's fee schedule in place at the time the work is performed. In the event of a public emergency, neither the City nor any agent, contractor or employee of the City shall be liable to EPCOR or its contractors or its customers or other third parties for any harm so caused to them by the reasonable actions of the City or its agents, contractors or employees in reasonably responding to such public emergency. When practical and if possible, City will consult with EPCOR in advance to assess the necessity of such actions and to minimize, to the extent practical under the circumstances, damage to and disruption of either the public property involved or EPCOR's facilities involved.

4.5. If any of EPCOR's facilities or activities present any immediate hazard or impediment to the public, to the City, to other City improvements or activities within or outside of the right-of-way, or to City's ability to safely and conveniently operate the right-of-way or perform City's utility, public safety and/or other public health, safety and welfare functions, then EPCOR shall immediately remedy the hazard, comply with City's request to secure the right-of-way area, and otherwise cooperate with City at no expense to City to remove any such hazard or impediment.

5. Indemnification and Insurance.

5.1. To the fullest extent permitted by law, EPCOR agrees to indemnify, defend, and hold harmless City and any of its departments, agencies, officers, employees, elected officials, and representatives from all damages, claims, or liabilities (including without limitation: personal injury, death, and property damage) and expenses (including attorney's fees) only to the extent arising out of, or resulting from: (i) EPCOR's performance or failure to perform the services required of EPCOR under the terms of this Franchise; (ii) the negligent or intentional acts, errors, mistakes, or omissions, of EPCOR, its officers, employees, or others for whose acts that EPCOR may be legally liable; or (iii) any injury or damage to any third-party or third-party property from the performance, work, and/or exercise of this Franchise by EPCOR, including without limitation, third-party consequential damages.

5.2. EPCOR shall obtain, maintain at all times, and provide proof of such to City upon request, the following insurance:

(1) Commercial General Liability in the amount of FIVE MILLION Dollars (\$5,000,000) per occurrence and in annual aggregate for liability arising from bodily injury (including death), property damage (including loss of use), and personal injury. Such policy shall also include provision for blanket contractual liability and products-completed operations liability subject to a \$5,000,000 per occurrence and annual aggregate limit. Where an umbrella or excess policy is in effect, terms shall be follow-form to this Commercial General Liability policy. EPCOR shall provide City with additional insured status for liability arising from its operations, and thirty (30) days' written notice of any policy cancellation or condition that creates a deficiency in the requirements stated herein;

(2) Automobile Liability applicable to all vehicles owned, leased, licensed, hired, or operated by EPCOR in the amount of FIVE MILLION Dollars (\$5,000,000) per occurrence applicable to property damage and/or bodily injury liability;

(3) Workers' Compensation covering all employees of EPCOR per Arizona statutory requirements; and

(4) Employer's Liability in the amount of ONE MILLION Dollars (\$1,000,000) per accident, per disease, each employee.

5.3. General conditions applicable to all required policies of insurance:

(1) EPCOR shall file with City the required certificates of insurance, which clearly state the policy number; insurer; licensed agent; insured; policy expiration date; specific coverage amounts; and that no policy of required insurance will be canceled without providing thirty (30) days prior notice of cancellation to City;

(2) The insurance carried by EPCOR shall be primary and non-contributory to any other valid or collectible insurance that City may possess, including any self-insured retention City may have; and any other insurance City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance;

(3) All policies of insurance required by EPCOR hereunder shall be with insurers who are licensed and authorized to do business in the State of Arizona with a financial rating of at least A- in A.M. Best & Company's Insurance Guide;

(4) To the fullest extent permitted by law, all such insurance policies, except Workers' Compensation, for claims arising out of the performance of this Franchise shall insure the City, its agents, representatives, officers, directors, officials, and employees as additional insureds; and

(5) The insurers of policies required by EPCOR hereunder shall waive all rights of subrogation against City, its agents, representatives, officers, directors, officials, and employees for any claims arising out of the EPCOR's acts, errors, mistakes, omissions, work, or service.

6. **Franchise Fee.**

- 6.1. EPCOR agrees to pay City as consideration of the grant of this Franchise a sum equal to three percent (3%) of the Gross Receipts, as defined below, of EPCOR from the sale of water or the collection of wastewater by EPCOR within the Franchised Area, as shown by EPCOR's billing records (the "**Franchise Fee**"). The Franchise Fee shall be due and payable within thirty (30) days after the end of each of the City's fiscal quarters and shall be in lieu of all fees or charges for permits issued for the construction of EPCOR's facilities hereunder or for the inspection thereof.
- 6.2. "**Gross Receipts**" or "**Gross Revenues**" means all cash, credits, property of any kind or nature, or other consideration, less related bad debt not to exceed one and one-half percent (1.5%) annually, that is received directly or indirectly by EPCOR, its affiliates, subsidiaries or parent or any person, firm or corporation in which EPCOR has a financial interest or that has a financial interest in EPCOR and that is derived in whole or in part from EPCOR's provision of water or wastewater services to its end-use customers within the franchise boundaries in the City.
- 6.3. For the purpose of verifying the quarterly amount payable hereunder, the books and records of EPCOR shall be subject to inspection by duly authorized officers or representatives of City upon sixty (60) days' prior written notice to EPCOR. In the event that such inspection evidences that the Franchise Fee actually paid for the current quarter is more than ten percent (10%) below the amount that should have been paid for such quarter, EPCOR shall reimburse City for the costs of such inspection.
- 6.4. The amount payable under the Franchise Fee shall not be reduced and is in addition to the payment of any general ad valorem taxes, assessments for special improvements, general sales or transaction privilege license taxes or any similar general sales or transaction privilege license taxes or any similar general tax or levy assessed or levied by City or any other governmental unit with jurisdiction.

7. **Franchise Fee Audit.**

- 7.1. Upon sixty (60) days' prior written notice to EPCOR, City may inspect EPCOR's records of previous annual or quarterly gross revenues, and City shall have the right to audit any amounts determined to be payable under this Franchise; provided, however, that such audit must take place within thirty-six (36) months following the close of EPCOR's fiscal year for which the audit is desired. All audit costs shall be borne by City.
- 7.2. Upon completion of an audit, City shall provide EPCOR with written notice including a copy of the audit report and setting forth any additional amounts due to City identified in the audit.

EPCOR shall pay any deficiency within thirty (30) days following such written notice. If a City audit shows overpayments, City shall promptly pay EPCOR the overpaid amount.

7.3. If EPCOR determines in an internal audit that it overpaid Franchise Fees, EPCOR may request a reduction in the following quarterly Franchise Fee payment(s) by submitting a written claim for reduction for the overpaid Franchise Fees along with the audit report and calculations detailing the overpayment. A written claim for reduction must identify; (i) the specific Franchise Fee period(s) involved, including the period of overpayment and any period for which a reduction in payment is sought, (ii) the itemized Franchise Fee made to City for the associated period and (iii) the dollar amount of the reduction requested. No reduction shall be allowed for those Franchise Fees paid more than thirty-six (36) months following the close of the City's fiscal year for which a reduction is sought.

7.4. In no event shall interest accrue or EPCOR be entitled to interest or late fees on over paid amounts.

8. Term.

8.1. The Effective Date of this Franchise shall be the first day of the calendar month immediately following the calendar month in which this Franchise is approved by a majority vote of the qualified voters of the City of Goodyear. This Franchise shall continue and exist for a period of twenty- five (25) years from the Effective Date.

8.2. Unless terminated earlier by written agreement of the parties this Franchise will expire on the twenty-fifth (25th) anniversary of the Effective Date. EPCOR shall comply with all federal, state, and local laws and ordinances, including those that may come into being, in its exercise of Franchise rights during the term of this Franchise.

8.3. Both the City and EPCOR shall negotiate in good faith any request by either party to amend this Franchise. This Franchise may only be modified by a written amendment signed by persons duly authorized to enter into contracts on behalf of City and EPCOR.

9. Default and Dispute Resolution.

9.1. Failure or unreasonable delay by EPCOR or City to perform any term or provision of this Franchise for a period of ten (10) City business days after written notice thereof from the other party shall constitute a default under this Franchise. If the default is of a nature, which is not capable of being cured within ten (10) City business days, the cure shall be commenced within such period, and diligently pursued to completion. The notice shall specify the nature of the alleged default and the manner in which the default may be satisfactorily cured. In the event of a default hereunder by EPCOR or City, the non-defaulting party may resort to all remedies available at both law and in equity including, without limitation, specific performance and injunction. However, no indirect, special, consequential, incidental, punitive, or exemplary

damages may be sought from or awarded against either EPCOR or City, except as may otherwise be expressly permitted in this Franchise.

9.2. To further the cooperation of the parties in implementing this Franchise, City and EPCOR each shall designate and appoint a representative to act as a liaison between City and its various departments and EPCOR. The initial representative for City (the "**City Representative**") shall be the City Manager or their designee, the initial representative for EPCOR shall be identified by EPCOR from time to time (the "**EPCOR Representative**"). The representatives shall be available at all reasonable times to discuss and review the performance of the Parties and the development of property.

(1) In case of a default, as that term is defined in Section 9.1, by EPCOR, EPCOR will maintain an open line of communication and dialogue with City as to its attempts to cure the default and an estimated timeframe by which City can expect such default to be cured. The EPCOR Representative will be an EPCOR employee at least at the level of EPCOR's Director of Operations for the district that covers all systems and facilities within the incorporated boundaries of City. To the extent the City believes that it is not receiving satisfactory responses or commitment to a particular default, City is authorized to contact EPCOR's Vice President of Arizona Operations, to which that individual will then serve as the EPCOR Representative for the limited purposes of addressing such concerns for that particular default only, and where the EPCOR Representative will revert back to the current designee once that particular default is addressed to the satisfaction of both Parties.

9.3. Any and all controversies, claims, or disputes that arise out of or relate to this Franchise, or the breach thereof, and if the controversy, claim, or dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the controversy, claim, or dispute by mediation, formal or informal, before resorting to binding arbitration or litigation filed in a court of competent jurisdiction applying Arizona law located in Maricopa County, Arizona.

9.4. In the event that EPCOR and City cannot agree upon the selection of a mediator within seven (7) days, either EPCOR or City may request a presiding judge of the Superior Court to assign a mediator from a list of mediators maintained by the Arizona Municipal Risk Retention Pool.

10. **Non-Exclusive.**

10.1. This Franchise is not exclusive, and nothing herein contained shall be construed to prevent City from granting other like or similar grants or privileges to any other person, firm, or corporation.

11. **Transfer of Franchise.**

11.1. The right, privilege, and franchise hereby granted may be transferred in whole or in part by EPCOR, its successors and assigns, to any public service corporation approved by the Commission to provide public utility water or wastewater collection services within the Franchised Area and upon payment of an appropriate transfer fee to City to reimburse City for

any reasonable costs it incurs in processing the transfer. No other assignment of any rights, privileges or franchise hereby granted may be made without the prior written consent of both the City Council and the Commission and payment of an appropriate transfer fee to City to reimburse City for any reasonable costs it incurs in processing the transfer. The City Council's consent shall not be unreasonably withheld, conditioned or delayed. No consent shall be required in connection with an assignment made as security pursuant to a mortgage or deed of trust or in connection with subsequent transfer made pursuant to any such instrument.

12. Condemnation Rights Reserved by City.

12.1. City reserves the right and power to purchase and condemn any water or wastewater plant, equipment, properties, facilities and/or distribution facilities of EPCOR within the corporate limits or any additions and annexations thereto, as provided by law. EPCOR likewise reserves all of its rights and remedies provided by law in any such circumstance.

12.2. In the event of a purchase of EPCOR, or under the exercises of eminent domain, this Franchise shall be construed to have no value for purposes of establishing the value of EPCOR.

13. Title to Facilities, Use of Easements.

13.1. Title to all water and wastewater utility facilities wherever situated on public grounds or in easements for the provision of water and wastewater public utility services acquired or installed by EPCOR or its agents or contractors within its service territory shall be and remain property of EPCOR, its successors, or assigns.

13.2. Nothing contained in this Franchise shall be construed as preventing, diminishing, or restricting EPCOR from using for public utility purposes any easement shown on any plat or plats of any portion of City before or hereafter platted or recorded that has been or may hereafter be created, granted, or dedicated for public utility purposes by any person, firm, or corporation. The costs associated with such use shall be borne by EPCOR.

14. Applicable Laws and Regulations.

14.1. EPCOR is responsible to adhere to all applicable Federal and State laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over EPCOR's activities in the rights-of-way, including but not limited to, storm water regulations (MS4), US Army Corps of Engineers permitting, Americans with Disabilities Act, and appropriate traffic control measures.

15. Conflict of Interest.

15.1. This Franchise shall be subject to cancellation pursuant to the provisions of A.R.S. §38- 511 in the event of a conflict of interest.

16. Notices.

16.1. All notices required to be given to either party shall be sent or given as follows to the following addresses:

To City: City of Goodyear, Arizona
Goodyear, AZ 85395
1900 North Civic Square
Attn: City Manager

With a copy to: City of Goodyear City Attorney
1900 North Civic Square
Goodyear, AZ 85395

To EPCOR: EPCOR Water Arizona Inc.,
2355 West Pinnacle Peak Road, Suite 300
Phoenix, AZ 85027

With a copy to: Thomas Loquvam, Esq.
General Counsel and Vice President
2355 West Pinnacle Peak Road, Suite 300
Phoenix, AZ 85027
Email: tloquvam@epcor.com

17. Arizona State Law to Govern.

17.1. The provisions of this Franchise shall be governed and construed in accordance with the laws of the State of Arizona.

18. EPCOR's Representations and Warranties.

18.1. EPCOR represents and warrants that it has the power and authority to enter into this Franchise by and through the representative who has signed this Franchise on its behalf, and that it has the power and ability to do all the acts required of it by this Franchise.

18.2. EPCOR has not misrepresented or omitted material facts, has not accepted this Franchise with intent to act contrary to the provisions herein, and represents and warrants that, as long as it operates its utility system, it will be bound by the terms and conditions of this Franchise or any subsequently issued license.

18.3. EPCOR further acknowledges that it was represented throughout the negotiations of this Franchise by its own attorneys and had opportunity to consult with its own attorneys about its rights and obligations regarding this Franchise Agreement.

18.4. EPCOR, as a public service corporation regulated by the Arizona Corporation Commission, is obligated to provide safe and reliable water and wastewater service to all its customers in accordance with Arizona law, including those customers residing or doing business within the incorporated boundaries of City. EPCOR commits to providing at least the same level of water and wastewater service to its customers located within City as City provides to its water and wastewater customers. EPCOR understands and acknowledges that, as a regulated entity, City, its residents or businesses may file a complaint with the Arizona Corporation Commission alleging inadequate service, in accordance with Commission rules and regulations and Arizona law, including under A.R.S. § 40-246; provide however, that City understands and agrees that this provision does not give rise to any independent cause of action not otherwise authorized under Arizona law.

19. **Severability.**

19.1. If any section, paragraph, clause, phrase or provision of the franchise shall be adjudged invalid or unconstitutional, other than Section 6 or any portion thereof, the same shall not affect the validity of the Franchise as a whole or any part of the provisions hereof other than the part so adjudged to be invalid or unconstitutional. If Section 6 shall be adjudged invalid or unconstitutional in whole or in part by a final judgment, the Franchise shall immediately terminate and shall be of no further force or effect.

20. **Force Majeure.**

20.1. EPCOR shall not be held in default under, or in noncompliance with, the provisions of this Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation, or revocation of this Franchise) where such alleged noncompliance or default occurred or was caused by an act of God, an act or omission of governmental, military or civilian authority, strike or lockout, riot, epidemic or quarantine, war, earthquake, fire, flood, tidal wave, unusually severe rain, wind, or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, terrorist acts, governmental, administrative or judicial order or regulation or other circumstances that could not have been avoided through EPCOR's exercise of reasonable care, prudence and diligence.

20.2. Furthermore, the City and EPCOR hereby agree that it is not the City's intention to subject EPCOR to penalties, fines, forfeitures, or revocation of the Franchise for immaterial breaches or violations of this Franchise Agreement. "Immaterial" breaches or violations of this Agreement may include, but are not limited to instances or for matters: (i) where a violation or a breach by EPCOR of the Franchise was a good faith error that resulted in minimal or no negative impact on the Citizens (i.e., a resident or inhabitant) within the Franchised Area; (ii) where strict

performance with the terms of the Franchise would result in practical difficulties and hardship to EPCOR that outweigh the benefit to be derived by the City and/or Citizens.

21. **Expiration.**

21.1. City and EPCOR hereby expressly agree that the following provision shall survive the termination or expiration of this Franchise; upon the termination or expiration of the Franchise, if EPCOR shall not have acquired and accepted an extension or renewal hereof, EPCOR may remove their facilities and systems within the Franchised Area or, at EPCOR's option, may continue operating EPCOR's facilities and systems within the Franchised Area under the same terms and conditions contained herein, but EPCOR shall be required to obtain proper permits each time EPCOR makes additional extensions upon, over, along, across, and under the public right-of-way within the City of Goodyear unless or until such time as a new franchise is obtained or the systems and facilities are removed or are acquired by City through the exercise of its powers of eminent domain.

[SIGNATURES ON FOLLOWING PAGES]

CITY:

CITY OF GOODYEAR, an Arizona municipal corporation

By: _____

Wynette Reed

City Manager

Date: _____

ATTEST:

Darcie McCracken, City Clerk

APPROVED AS TO FORM:

City Attorney

STATE OF ARIZONA
County of Maricopa

On this _____ day of _____, 20__, before me personally appeared Wynette Reed, the City Manager for the City of Goodyear, an Arizona municipal corporation, for and on behalf thereof, whose identity was proven to me on the basis of satisfactory evidence to be the person who he or she claims to be, and acknowledged that he or she signed the above/attached document.

[Affix notary seal here]

Notary Public

EPCOR:

EPCOR WATER ARIZONA INC.,
an Arizona corporation

By: _____

Title: _____

Date: _____

STATE OF ARIZONA

County of _____

On this _____ day of _____, 20____, before me personally appeared
_____ as the _____ of EPCOR Water Arizona
Inc., an Arizona corporation, for and on behalf thereof, whose identity was proven to me on the
basis of satisfactory evidence to be the person who he or she claims to be, and acknowledged
that he or she signed the above/attached document.

[Affix notary seal here]

Notary Public