

RESOLUTION NO. 2024-2432

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 LIBERTY UTILITIES (LITCHFIELD PARK WATER AND SEWER) CORP., 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 LIBERTY UTILITIES (LITCHFIELD PARK WATER AND SEWER) CORP., 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, Liberty Utilities (Litchfield Park Water and Sewer) Corp. ("Liberty") 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 Liberty have not previously entered into a license or franchise agreement to regulate usage of the public right-of-way; and

WHEREAS, the City and Liberty have negotiated a twenty-five (25) year franchise agreement that will regulate Liberty's usage of the public rights-of-way provision of water distribution and wastewater collection services within the City 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 Liberty Utilities (Litchfield Park Water and Sewer) Corp., (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 2024-2432 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
LIBERTY UTILITIES (LITCHFIELD PARK WATER AND SEWER) CORP.
AND
THE CITY OF GOODYEAR, ARIZONA**

(On the following pages)

**FRANCHISE AGREEMENT
BETWEEN
LIBERTY UTILITIES (LITCHFIELD PARK WATER AND SEWER) CORP.
AND
THE CITY OF GOODYEAR, ARIZONA**

This, FRANCHISE AGREEMENT BETWEEN LIBERTY UTILITIES CORP. AND THE CITY OF GOODYEAR, ARIZONA is made by CITY OF GOODYEAR, an Arizona municipal corporation ("**City**"), and LIBERTY UTILITIES (LITCHFIELD PARK WATER AND SEWER) CORP. an Arizona corporation, or its successors and assigns ("**LIBERTY**").

RECITALS:

- A.** WHEREAS, LIBERTY 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 a Certificate of Convenience and Necessity issued by the Arizona Corporation Commission; and
- B.** WHEREAS, LIBERTY will own, operate and maintain a public water and wastewater system within the City limits of Goodyear, Arizona; and
- C.** WHEREAS, LIBERTY, as a public service corporation, is 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, LIBERTY 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, LIBERTY 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, LIBERTY 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. LIBERTY will present the desired Franchise, as defined below, to the City's Mayor and City Council and file it with the Goodyear City Clerk after entry of a final order granting LIBERTY an extension of its Certificates of Convenience and Necessity ("**CC&N**") by the Arizona Corporation Commission ("**Commission**"); that grants LIBERTY the exclusive right to provide Utility Services in an area within 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 LIBERTY. The Franchise election will be called and conducted in accordance with applicable law.
3. LIBERTY 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 LIBERTY.
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. LIBERTY will promptly pay the City the estimated cost within forty-five (45) 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. LIBERTY 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 LIBERTY 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 LIBERTY, a corporation organized and existing under and by virtue of the laws of Arizona, and conveys to LIBERTY the right and privilege to construct, maintain, and operate within the present and future public rights-of-way within the boundaries of any of LIBERTY 's then effective CC&Ns, as granted by the Commission in Goodyear, Arizona, potable 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 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&N ("**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 LIBERTY 's then effective CC&Ns, as granted by the Commission ("**Franchised Area**"). The Franchised Area as of the date of this Franchise provides the ability to construct, maintain and operate its system, 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 Goodyear, Arizona. This Franchise is for LIBERTY'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. LIBERTY shall not construct wells, well sites, storage, or pumping facilities in the public rights-of-way. Nothing herein shall be construed to permit LIBERTY to maintain any portion of its potable water delivery system or wastewater collection system, 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 LIBERTY's repair or maintenance of those facilities. City acknowledges and agrees that all of LIBERTY'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. **LIBERTY's Compliance with Requirements; Plans Submitted for Approval; City Construction near LIBERTY's Facilities.**

2.1. Within ninety (90) days after the approval of this Franchise by the Mayor and City Council, LIBERTY shall submit to the Goodyear City Manager a map showing the true and correct location of all present installations of LIBERTY 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 LIBERTY 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 applicable City Engineering Design Standards & Policies and policies adopted by

the Maricopa Association of Governments. Before LIBERTY makes any major installations in the public rights-of-way, LIBERTY shall submit to City for approval any applicable permit applications and a map showing the location of such proposed installations. City and LIBERTY agree and understand that there may be instances when LIBERTY is required to make repairs that are of an emergency nature. LIBERTY 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.

- (i) Notwithstanding anything else contained in this provision, LIBERTY will make best efforts to address any emergencies within 24 hours of being notified that such emergency exists; with LIBERTY 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 LIBERTY determine, in consultation with City, that such emergency may take more than 24 hours to address, LIBERTY 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 LIBERTY'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 LIBERTY the temporary or permanent removal, relocation and barricading of equipment, and depressurization of LIBERTY'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. LIBERTY shall for all projects constructed after the date of this agreement and upon written request of the City, provide on a project-by-project basis As-Built drawings of LIBERTY facilities installed within the City right-of-way. As-Built drawings refer to facility drawings maintained in LIBERTY's computer aided design, geographical information system, or any equivalent system.

3. **Construction and Relocation of LIBERTY'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 LIBERTY'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 applicable regulation by the City Council. LIBERTY 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, LIBERTY 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, LIBERTY shall review the City's proposed paving plan and, if warranted in LIBERTY'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. LIBERTY will bear the entire cost of relocating any of LIBERTY'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.
- 3.4. If City requires LIBERTY to relocate LIBERTY's facilities that are located in private easements or private rights-of-way from which the facilities must be relocated, or relocate facilities installed by LIBERTY in locations prior to such locations becoming a City of Goodyear road or other City right-of-way then the entire cost of relocating LIBERTY'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.) LIBERTY 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.) LIBERTY did not in fact obtain such easement or right-of-way.
- 3.5. If relocation of any of LIBERTY'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 LIBERTY agree that City is not a party to disputes among permittees or other interested parties using the public rights-of-way.
- 3.7. LIBERTY's operation of a potable water delivery system and a wastewater collection, treatment, and disposal system 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 LIBERTY's obligation to provide safe and reliable water and wastewater service, any privilege claimed under this Franchise by LIBERTY 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, LIBERTY 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 LIBERTY to relocate its facilities in a particular area, and LIBERTY desires to again relocate these facilities, LIBERTY shall bear the entire cost of such relocation.

- 3.9. If City relocates and/or participates in the cost of relocating LIBERTY's facilities for any reason, the cost of relocation to City shall not include any additional cost resulting from any upgrade or improvement of LIBERTY 's facilities as they existed prior to relocation. Notwithstanding the foregoing, if LIBERTY requests, in connection with any such relocation by City, any upgrade or improvement of the affected LIBERTY 's facilities, City will in good faith consider such request, subject in each case to LIBERTY '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 LIBERTY documentation reasonably satisfactory to LIBERTY 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 LIBERTY 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 LIBERTY, unless LIBERTY specifically acknowledges otherwise to the Goodyear City Engineer, and such is accepted by City. LIBERTY shall remove, at LIBERTY '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. LIBERTY may contract with City contractor for such removal. Prior to removal of any abandoned lines, LIBERTY shall notify City of its intent to remove abandoned lines and offer possession of said lines to City. LIBERTY shall identify the location of any known abandoned lines as they exist at the time this Franchise is granted through recognized industry means. LIBERTY 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 LIBERTY's facilities, LIBERTY'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 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.

3.12. 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 LIBERTY'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, LIBERTY 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 LIBERTY 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 LIBERTY 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 LIBERTY 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 LIBERTY is undertaking any operations and maintenance or capital improvement projects on a permanent (i.e., non-emergency) basis, LIBERTY 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. LIBERTY 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 LIBERTY causes damage to pavement, sidewalks, driveways, landscaping, or other property during construction, installation, or repair of its facilities, LIBERTY 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, LIBERTY 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 LIBERTY's expense and shall be conducted in a manner acceptable to the City, in its sole discretion. LIBERTY agrees to restore pavement or sidewalks after any pavement or sidewalk cuts done by LIBERTY.

4.3. In addition to any indemnity obligation under this Franchise, whenever the installation, use, maintenance, removal, or relocation of any of LIBERTY facilities are required or permitted hereunder, and such installation, removal, or relocation damages or disturbs the surface or subsurface of any pavement, sidewalk, driveway, landscaping, or other public improvement or public property during construction, installation, or repair of its facilities, however such damage or disturbance was caused, LIBERTY, its authorized agent shall restore the surface or subsurface of the right-of-way or public property and/or will replace the surface, subsurface and/or public improvement thereon, therein, or thereunder, as nearly as possible to its original condition that existed before the damage occurred and to the reasonable satisfaction of the Goodyear City

Engineer. If the repair, replacement or restoration cannot replicate the site's original condition, LIBERTY 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 LIBERTY's expense and shall be conducted in a manner acceptable to the City, in its sole discretion. LIBERTY agrees to restore pavement or sidewalks after any pavement or sidewalk cuts done by LIBERTY. If LIBERTY does not repair the damage or disturbance as required, then City shall have the option, upon ten (10) business days prior written notice to LIBERTY, to perform or cause to be performed such reasonable and necessary work on behalf of LIBERTY and to charge LIBERTY 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 LIBERTY, such reasonable and necessary work on behalf of LIBERTY 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 LIBERTY of the repairs as soon as practicable after the work has begun. LIBERTY 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 LIBERTY. Upon the receipt of a demand for payment by City, LIBERTY 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 plus a ten percent (10%) administration fee. In the event of a public emergency, neither the City nor any agent, contractor or employee of the City shall be liable to LIBERTY 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 LIBERTY 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 the LIBERTY's facilities involved.
- 4.5. If any of LIBERTY'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 Route, 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 LIBERTY shall immediately remedy the hazard, comply with City's request to secure the route 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, LIBERTY 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) LIBERTY's performance or failure to perform the services required of LIBERTY under the terms of this Franchise; (ii) the negligent or intentional acts, errors, mistakes, or omissions, of LIBERTY, its officers, employees, or others for whose acts that LIBERTY may be legally liable; (iii) any injury or damage to any third-party or third-party property from the performance, work, and/or exercise of this Franchise by LIBERTY; or (iv) the work performed by LIBERTY, its officers, employees, or others for whose acts that LIBERTY may be legally liable under this Franchise, including without limitation, any claims or litigation by third-parties. This indemnity clause shall apply solely to the extent such injury to any person or property is caused by the actions or inactions of LIBERTY. This indemnification clause shall not apply to the extent any such claim and/or injury is caused by the actions or inactions of the City, any contractors, subcontractors, consultants or other parties retained by the City, or any other third party not affiliated with LIBERTY.

- 5.2. During the term of this Franchise, and for such other term that any claims may be brought, LIBERTY shall maintain in full force and effect, at no cost or expense to the City, commercial general liability insurance in the amount of five million U.S. dollars (\$5,000,000) combined single limit for bodily injury and property damage. The City shall be designated as an additional named insured. Such insurance will not be cancelable or materially modified except upon thirty (30) days prior written notice to the City. Annually, LIBERTY shall provide a certificate of insurance showing evidence of the coverage required by this Section. LIBERTY may self-insure the above-described- policy coverages if LIBERTY or its parent is of sufficient financial standing to provide such insurance. Should LIBERTY elect to self-insure, the City in its sole discretion may accept or reject LIBERTY's proposal to self-insure.
- 5.3. LIBERTY shall secure and maintain during the term of this Franchise, insurance coverage which shall include statutory workers' compensation, comprehensive general, and automobile liability, all including contractual liability assumed by the insured. The comprehensive general and automobile limits shall be no less than five million U.S. dollars (\$5,000,000) per occurrence (combined single limit), including bodily injury and property damage, and in an amount not less than five million U.S. dollars (\$5,000,000) annual aggregate for each personal injury liability and products-completed operations. City shall be named as an additional named insured with respect to all operations of the insured and LIBERTY's insurance policy shall contain a waiver of subrogation against City, its departments, agencies, boards, commissions, officers, officials, agents, and employees for losses arising from the service provided by or on behalf of LIBERTY in the event the LIBERTY is found to be negligent. Insurance coverage must be provided by an insurance company allowed to conduct business in Arizona and rated A-VII or better by AM Best's Insurance Rating. Subsequently, a certificate of insurance, signed by an authorized representative of the insurer with thirty (30) days' notice of cancellation, material modification, or non-renewal, and all required endorsements shall be presented a minimum of five (5) days after the date of expiration of the policy term.

- 5.4. LIBERTY shall submit to Goodyear City Clerk's office at 1900 N. Civic Square Goodyear AZ 85395, a certificate of insurance, evidencing the coverage and limits stated in the foregoing paragraph within ten (10) days of award of this Franchise. Insurance evidenced by the certificate shall not expire, be cancelled, nor non-renewed without thirty (30) days prior written notice to the Goodyear City Clerk's Office. A statement to that effect must appear on the face of the certificate, and certificate shall be signed by a person authorized to bind the insurer.

6. **Franchise Fee.**

- 6.1. LIBERTY 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, from the sale by LIBERTY of water within the Franchised Area, and from the collection and/or treatment of wastewater within the Franchised Area as shown by LIBERTY'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 addition to all fees or charges for permits issued for the construction of LIBERTY's facilities hereunder or for the inspection thereof within the same fiscal quarter. LIBERTY shall reduce the Franchise Fee by the amount LIBERTY has paid to the City for any permits issued in the same fiscal quarter for the installation or construction of LIBERTY's facilities, however in no event shall LIBERTY receive a reimbursement of fees paid if that amount is over and above any quarterly Franchise Fee paid. Any reduction in payment of the Franchise Fee for the costs of permits issued by the City are required to be itemized and labeled with the associated permit numbers issued by the City. If at any time City requests LIBERTY to match a greater franchise fee paid to a municipality within the State of Arizona, then LIBERTY may request that all terms and conditions contained within the franchise agreement that is applicable to the other such municipality be fully adopted by City in this Franchise.
- 6.2. "**Gross Receipts**" or "**Gross Revenues**" means all cash, credits, property of any kind or nature, or other consideration that is received directly or indirectly by LIBERTY, with the exception of any Central Arizona Groundwater Replenishment District recharge credits, or any, firm or corporation in which LIBERTY has a financial interest or that has a financial interest in LIBERTY and that is derived in whole or in part from LIBERTY's provision of water 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 LIBERTY shall be subject to inspection by duly authorized officers or representatives of City upon sixty (60) days' prior written notice to LIBERTY following the payment of each quarterly Franchise Fee.
- 6.4. The amount payable under the Franchise Fee shall not be reduced by, 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 level assessed or levied by City or any other governmental unit with jurisdiction.

7. Franchise Fee Audit.

- 7.1. Upon written notice to LIBERTY, City may inspect LIBERTY'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 LIBERTY'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 LIBERTY with written notice including a copy of the audit report and setting forth any additional amounts due to City identified in the audit. LIBERTY shall pay any deficiency within thirty (30) days following such written notice. If a City audit shows overpayments, City shall promptly pay LIBERTY the overpaid amount.
- 7.3. If LIBERTY determines in an internal audit that it overpaid Franchise Fees, LIBERTY 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 (iii) any and all itemized fees paid to City for permits that reduced the Franchise Fee and (iv) 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 LIBERTY be entitled to interest or late fees on overpaid 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. LIBERTY 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. LIBERTY shall negotiate in good faith any request by City 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 LIBERTY.

9. Default and Dispute Resolution.

- 9.1. Failure or unreasonable delay by LIBERTY 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 LIBERTY or City, the non-defaulting party shall only be entitled to the remedies of specific performance or injunction. No monetary damages may be sought from or awarded against either LIBERTY 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 LIBERTY each shall designate and appoint a representative to act as a liaison between City and its various departments and LIBERTY. The initial representative for City (the "**City Representative**") shall be the Goodyear City Manager or their designee, the initial representative for LIBERTY shall be identified by LIBERTY from time to time (the "**LIBERTY 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 LIBERTY, LIBERTY 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 LIBERTY Representative will be a LIBERTY employee at least at the level of LIBERTY'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 LIBERTY's Vice President of Arizona Operations, to which that individual will then serve as the LIBERTY Representative for the limited purposes of addressing such concerns for that particular default only, and where the LIBERTY 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 LIBERTY and City cannot agree upon the selection of a mediator within seven (7) days, either LIBERTY 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 LIBERTY, its successors and assigns, to any public service corporation approved by the Commission to provide public utility water or wastewater 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 plant, equipment, properties, facilities and/or distribution facilities of LIBERTY within the corporate limits or any additions and annexations thereto, as provided by law.
- 12.2. In the event of a purchase of LIBERTY, or under the exercises of eminent domain, this Franchise shall be construed to have no value for purposes of establishing the value of LIBERTY.

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 LIBERTY or its agents or contractors within its service territory shall be and remain property of LIBERTY, its successors, or assigns.
- 13.2. Nothing contained in this Franchise shall be construed as preventing, diminishing, or restricting LIBERTY 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 LIBERTY.

14. Applicable Laws and Regulations.

- 14.1. LIBERTY is responsible to adhere to all applicable Federal and State laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over LIBERTY'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 LIBERTY: LIBERTY UTILITIES (LITCHFIELD PARK WATER AND SEWER) CORP.
14920 West Camelback Road
Litchfield Park, AZ, 85340

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. LIBERTY'S Representations and Warranties.

18.1. LIBERTY 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. LIBERTY 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. LIBERTY 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. LIBERTY, 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. LIBERTY 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. LIBERTY 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 7 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 7 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. LIBERTY and City 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, by a federal, state, and/or local directive, order, or similar requirement, or other circumstances that could not have been avoided through LIBERTY's exercise of reasonable care, prudence and diligence, provided that one party has provided the other party with at least seventy-two (72) hours' written notice of such delay or nonperformance.

20.2. Furthermore, the City and LIBERTY hereby agree that it is not the City's intention to subject LIBERTY 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 LIBERTY 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 LIBERTY that outweigh the benefit to be derived by the City and/or Citizens.

21. Expiration.

21.1. City and LIBERTY 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 LIBERTY shall not have acquired and accepted an extension or renewal hereof, LIBERTY may remove their facilities and systems within the Franchised Area or, at LIBERTY's option, may continue operating LIBERTY's facilities and systems within the Franchised Area under the same terms and conditions contained herein, but LIBERTY shall be required to obtain proper permits each time LIBERTY 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.

22. Confidentiality.

22.1. Protection of Confidential Information. Subject to the Arizona Public Records Law (A.R.S. § 39-121 *et seq.*), to the fullest extent permitted by law, the City agrees to treat on a confidential basis any Confidential Information disclosed by LIBERTY to the City. The City shall not use the Confidential Information for any purpose whatsoever other than in connection with its rights and obligations under this Franchise. The City shall safeguard the Confidential Information using measures that are equal to the measures used to safeguard its own confidential information of comparable value, but in no event, shall the City exercise less than reasonable care.

[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

LIBERTY:

LIBERTY UTILITIES (LITCHFIELD PARK WATER AND
SEWER) CORP.,
an Arizona corporation

By: _____

Title: _____

Date: _____

STATE OF ARIZONA

County of _____

On this _____ day of _____, 20____, before me personally appeared
_____ as the _____ of Liberty Utilities
(Litchfield Park Water and Sewer) Corp., 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