

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

This FRANCHISE AGREEMENT (“Agreement”), is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 2020 (Effective Date), between EPCOR Water Arizona Inc. an Arizona corporation, or its successors and assigns (“EPCOR”) and City of Glendale, an Arizona municipal corporation (“City”).

**RECITALS**

- A. 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 potable water within portions of Maricopa County, Arizona, in accordance with a Certificate of Convenience and Necessity (“CC&N”) issued by the Arizona Corporation Commission (“Commission”).
- B. EPCOR will own, operate and maintain a public water and wastewater system within the City limits of Glendale.
- C. EPCOR and City have entered into a separate agreement for the construction of the Sarival Avenue waterline extension. The terms and conditions of the approved Main Extension Agreement (“Sarival MXA”) dated October 23, 2012 for the Sarival Avenue waterline extension will remain in effect and in force, and if conflicts exist between this Agreement and the Sarival MXA, the Sarival MXA provisions will govern.
- D. EPCOR and City are developing a separate agreement for the construction of the Loop 303 waterline extension. The terms and conditions of the completed and approved Main Extension Agreement for the Loop 303 waterline extension (“Loop 303 MXA”) will remain in effect and in force, and if conflicts exist between this Agreement and the Loop 303 MXA, the Loop 303 MXA provisions will govern.
- E. EPCOR and City agree and acknowledge that the Recitals set forth above are true and correct and are by this reference incorporated herein.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants contained in this agreement, the parties, each intending to be legally bound by this agreement, hereby agree as follows:

### Grant of Franchise

- A. Utility will present the desired franchise ("Franchise") to the City's governing body and file it with City Clerk after entry of a final order granting Utility an extension of its Certificates of Convenience and Necessity ("CC&Ns") by the Arizona Corporation Commission that grants Utility the exclusive right to provide Utility Services in an area within the Subject Territory.
- B. If the City's governing body 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.
- C. EPCOR will be responsible for all costs incurred by the City for holding a general election to approve the Franchise, provided that such costs will not be 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.
- D. The City will invoice the estimated cost of the general election for the Franchise ("Estimated Cost") within 60 days after the filing of the Franchise with the Glendale City Clerk. EPCOR will promptly pay the City the estimated cost within 30 days after receiving the invoice. The City will reconcile the actual general election cost attributable to the Franchise ("Actual Cost") Within 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.

E. The Franchise filed by Utility, at a minimum, must contain the following provisions:

1. Franchise Agreement.

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 (including – but not limited to – streets, alleyways, highways, and bridges) in the Franchised Area (as defined below) in Glendale, Arizona, a potable water delivery system and a wastewater collection system, together with certain appurtenances (including – but not limited to – transmission mains, distribution and collection mains, service lines, fire hydrants, meters, and equipment for its own use) for the purpose of supplying potable 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”), and for collecting wastewater from the Served Population, in each case for all purposes for which it is duly authorized by its CC&Ns (“Franchise”). For purposes of this Franchise, the “Franchised Area” shall consist of those portions of the area within the then effective borders of City that are also within the boundaries of any of EPCOR’s then effective CC&Ns, as granted by the Commission. 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 Glendale, Arizona (herein called "City"). 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.

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 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 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.

- A. 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.
- B. All construction under this Franchise shall be performed in accordance with established practices for City with respect to such public rights-of-way. Before EPCOR makes any major installations in the public rights-of-way, EPCOR shall submit for approval any applicable permit applications and a map showing the location of such proposed installations to City. When time does not permit prior application for a permit and repairs to EPCOR's facilities are reasonably required, EPCOR first may institute and complete the repairs and then complete and file the applicable permit application. In this case, telephone notification of the repair will be given as soon as practicable to the contact person designated by City. Within ninety (90) days after the approval of this Franchise by the Mayor and Council of City, EPCOR shall submit to City's City Manager a map showing the true and correct location of all present installations of EPCOR within City's rights-of-way. 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.
- C. Mapping Requirement. EPCOR shall maintain As-Built Drawings of its facilities located within the ROW and furnish a copy both electronically in a mapping format compatible with the current City electronic mapping format as specified by the City and in hard copy form.

3. Construction and Relocation of EPCOR's Facilities: Payment.

- A. All facilities installed or constructed pursuant to this Franchise shall be so located or relocated and so 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 herein provided for – 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 or relocation construction 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.
- B. 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 under this paragraph B 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.
- C. Except as covered in Paragraphs B or D of this section, EPCOR shall bear the entire cost of relocating its facilities located on public rights-of-way.
- D. If the City, at its expense, has previously required EPCOR to relocate its facilities in a particular area, and EPORC desires to again relocate these facilities, EPCOR shall bear the entire cost of such relocation. 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.
- E. Prior Occupancy. 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 Street or other public property is subordinate to any: (a) prior or subsequent lawful occupancy or use thereof by the City or any other governmental entity; (b) prior lawful occupancy or use thereof by any other Person; and (c) prior easements therein. Notwithstanding the foregoing

subordination provision, nothing herein extinguishes or otherwise interferes with property rights established independently of this Franchise.

F. If City 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 reimburse City for the actual, additional costs incurred by City 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.

G. Subject to the provisions of the foregoing paragraphs 3 (B), (C), and (D) 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, which shall include, but shall in no way be limited to, the following functions of City:

- 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;
- v. Collection and disposal of garbage;
- vi. structures for public purposes deemed appropriate by the Mayor and Council of City;
- vii. Any structure for any purpose, whether governmental or proprietary, which City is authorized to construct and/or maintain.

#### 4. Restoration of Rights of Way.

Subject to the provisions of the foregoing paragraphs 3 (B), (C), and (D) regarding the cost of relocation of EPCOR's facilities, (i) 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 as

good condition as it was in prior to such openings or alteration, and (ii) 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.

- A. Street Repair. 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 unreviewable discretion. For any pavement or sidewalk cuts by EPCOR, EPCOR agrees to restore the pavement or sidewalks.
- B. Damage to Public Property. 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 ROW or 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 ROW or public property and/or repair or replace the surface, subsurface and/or public improvement therein, or thereunder, in as good a condition as before in accordance with applicable laws, normal wear and tear excepted, reasonably satisfactory to the City Engineer. If EPCOR does not repair the damage or disturbance as just described, 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 Franchise for the proposed costs to be incurred or the actual costs incurred by the City at City's standard rates.
- C. Public Safety / Public Emergency. Notwithstanding the notice provision above, 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 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, within thirty (30) days, reimburse City for such costs. 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 the EPCOR's facilities involved.

- i. EPCOR Facilities / Cooperation with City. 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 Route, or to City's ability to safely and conveniently operate the ROW 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 route area, and otherwise cooperate with City at no expense to City to remove any such hazard or impediment.

5. Indemnification/Insurance.

- A. Indemnification. EPCOR agrees to indemnify and hold harmless City and any of its departments, agencies, officers, employees, elected officials, and representatives from all damages, claims, or liabilities and expenses (including attorney's fees) to the extent arising out of, or resulting in any way from EPCOR's performance or failure to perform the services required of EPCOR under the terms of this Agreement and caused by negligent or intentional acts, errors, mistakes or omissions of EPCOR, its officers, employees, or other for whose acts that EPCOR may be legally liable.
- B. Insurance. During the term of this Franchise, and for such other term that any claims may be brought, EPCOR 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 dollars 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 except upon thirty (30) days prior written notice to the City. Upon written request, EPCOR shall provide a certificate of insurance showing evidence of the coverage



required by this Section. EPCOR may self-insure the above-described policy coverages if EPCOR or its parent is of sufficient financial standing to provide such insurance.

- C. Coverage. EPCOR 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 Insured with respect to all operations of the insured and EPCOR'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 EPCOR in the event the EPCOR is found to be solely negligent. Insurance coverage must be provided by an insurance company admitted to do 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 30 days' notice of cancellation or non-renewal, shall be presented a minimum of five (5) days after the date of expiration of the policy term. In the event EPCOR fails to provide such certificate of coverage, City may – but shall not be required to – purchase insurance if available, to protect itself against any losses. If City elects to purchase the insurance under the provision, City shall provide EPCOR with at least five business days' prior written notice and EPCOR shall be liable to City for all costs insured by City for purchasing such insurance.
- D. Certificate of Insurance. EPCOR shall submit to City – Engineering Division, Glendale, AZ - 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 City - Engineering Division, Glendale, AZ. 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.

- A. EPCOR agrees to pay City in consideration of the grant of this Franchise a sum equal to three percent (3%) of the gross receipts<sup>1</sup> of EPCOR from the sale by it of potable drinking water within the Franchised Area, and from the collection and treatment by it of wastewater within the Franchised Area as shown by EPCOR's billing records (the "Franchise Fee"). The Franchise Fee shall be due and payable quarterly and shall be in lieu of all fees or charges for permits or Franchises issued for the construction of EPCOR's facilities hereunder or for the inspection thereof. For the purpose of verifying the amounts payable hereunder, the books and records of EPCOR shall be subject to inspection by duly authorized officers or representatives of City at reasonable times and places, and in the event that such inspection evidences that the Franchise Fee actually paid for any 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. If at any time Franchisee is paying any municipality in the State of Arizona a Franchise Fee greater than three percent (3%) of Franchisee's gross receipt in such municipality, then the percentage set forth in this Section shall be increased to match the greater percentage amount Franchisee is paying to such other municipality pursuant a franchise agreement. If municipality request Franchisee to match such greater Franchise Fee, all terms and conditions which are applicable to the greater Franchise Fee must be fully adopted by municipality herein. In addition to the foregoing Franchise Fee, Franchisee shall pay charges, taxes and fees as described in the Franchise.
- B. Subject to the provisions of this Agreement, the amount payable under the Franchise Fee shall not be reduced by reason of the payment of any general *ad valorem* taxes, assessments for special improvements such as general sales or transaction privilege Franchise taxes, or any similar general tax or levy.
- C. The amount payable under either the Sarival MXA or the Loop 303 MXA shall not be reduced by reason of payment of the Franchise Fee.

7. Franchise Fee Audit.

- A. Upon written notice to EPCOR, City may inspect Franchise's records of Gross Revenues, and City shall have the right to audit any amounts determined to be payable

---

<sup>1</sup> "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 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 operation of its potable water, sewer, and wastewater to its customers within the franchise boundaries in the City.

under this Franchise; provided, however, that such audit must take place within thirty-six (36) months following the close of Franchise's fiscal year for which the audit is desired.

- B. 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; provided, however, that EPCOR will not be required to pay such deficiency until thirty (30) days after completion of the administrative hearing process if EPCOR commences such process pursuant to administrative process. If a City audit shows overpayments, City shall promptly pay EPCOR the overpaid amount.
- C. If EPCOR determines in an internal audit that it overpaid Franchise Fees, EPCOR may request a credit or refund by submitting a written claim for credit or refund of the overpaid Franchise Fees. A credit or refund claim must identify (i) the dollar amount of the credit or refund requested, (ii) the specific Franchise Fee period(s) involved, and (iii) the specific grounds upon which the claim is based. No credit shall be allowed or refund paid except for those Franchise Fees paid in excess of the amount due within the limitation period. The credit or refund limitation period shall be calculated from the date the City receives EPCOR's written claim meeting the requirements of this Paragraph C.
  - i. The following additional requirements apply to the City and EPCOR for claims for credit or refund submitted pursuant to this Paragraph C. The City may request, in writing, additional information or documentation from EPCOR to support the requested credit or refund. Such information or documentation must be reasonably related to the claim and required to be maintained in the normal course of business.
  - ii. Upon denial of all or part of a claim or, if the City fails to issue a determination within three (3) months after the later of receiving the claim and receiving any requested additional information or documentation, the EPCOR may consider the claim for credit or refund denied and may commence a process under Section B. Interest shall be allowed on the overpayment of Franchise Fees claimed by EPCOR under this procedure at the rate and in the manner set forth in Paragraph B. and shall be calculated from the date the City receives the EPCOR's written claim meeting the requirements of this Paragraph C.

8. Term.

- A. This 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 the qualified electors of City. This Franchise shall continue and exist for a period of twenty-five (25) years from the Effective Date.
- B. The right, privilege, and franchise hereby granted shall continue and exist for a period of twenty-five (25) years following the Effective Date; provided, however, that either party may reopen any or all sections for further review and possible amendment of this Franchise, on its fifth (5<sup>th</sup>) or twelfth (12<sup>th</sup>) anniversary, by giving written notice of its intention to do so not less than one (1) year before the fifth (5<sup>th</sup>) or twelfth (12<sup>th</sup>) anniversary. Any such amendment will be subject to any applicable requirements for approval by the qualified electors of City. Neither party is bound to enter into any amendment to this Agreement unless it, in its sole discretion, elects to do so. No refusal to enter into an amendment to this Agreement will effect the on-going validity or effectiveness of this Agreement.
- C. Unless terminated earlier by written agreement of the parties, this Franchise will expire on the twenty-fifth (25<sup>th</sup>) 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.

9. Default; Dispute Resolution.

- A. Failure or unreasonable delay<sup>2</sup> by any Party to perform any term of provision of this Franchise for a period of ten (10) days after written notice thereof from another 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) 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 any Party, the non-defaulting Party shall be entitled to all remedies at both law and in equity, including, without limitation, specific performance.
- B. 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 his designee the initial

---

<sup>2</sup> "Unreasonable delay" defined as delay of action of more than 90 days.

representative for EPCOR shall be its Director of Operations, as 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.

- C. If a dispute arises out of or related to this Franchise or breach thereof, Utility and City agree first to try to settle the dispute through mediation before resorting to arbitration, litigation, or some other dispute resolution. In the event that the Parties cannot agree upon the selection of a mediator within seven (7) days, either Party 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. If a dispute arises out of or relates to this License, or the breach thereon, and if the dispute cannot be settled through negotiation, Licensee and City agree first to try to settle the dispute through mediation before resorting to litigation, arbitration, or some other dispute resolution procedure.

10. Non-Exclusive.

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.

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 service 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. Title to Facilities; Right to Use Easements; Reserved Right to Purchase or Condemn.

- A. Title to all water and wastewater utility facilities wherever situated on public grounds or in easements for public utility purposes and installed by EPCOR or its agents or contractors shall be and remain in EPCOR, its successors, or assigns.
- B. 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.
- C. City reserves the right and power to purchase and condemn the plant and distribution facilities of EPCOR within the corporate limits or any additions thereto, as provided by law. EPCOR likewise reserves all of its rights and remedies provided by law in any such circumstance.
- D. 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 value of EPCOR.

13. Applicable Laws and Regulations.

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.

14. Conflict of Interest.

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.

15. Notices.

All notices required to be given to either party shall be mailed or given at the following addresses:

To City: 5850 W. Glendale Avenue  
Glendale Arizona, 85301  
Attn: City Manager

With a copy to: City of Glendale, City Attorneys Office  
5850 W. Glendale Avenue, Ste. 450  
Glendale, Arizona 85301

To EPCOR: EPCOR Water Arizona Inc.,  
2355 West Pinnacle Peak Road, Suite 300  
  
Phoenix, AZ 85027  
Attn: Vice President – Arizona Operations

16. Arizona State Law to Govern.

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

17. EPCOR's Representations and Warranties.

- A. Authority. 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.
- B. Misrepresentation. 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.
- C. Attorneys. 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. Confidentiality.

- A. 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 EPCOR 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.

19. Severability.

If any section, paragraph, clause, phrase or provision of the franchise shall be adjudged invalid or unconstitutional, 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.

20. Miscellaneous.

A. Filings. When not otherwise prescribed herein, all matters herein required to be filed with the City shall be filed with the office of the City Clerk.

B. Force Majeure.

- i. 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.
- ii. Furthermore, the parties 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 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.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Franchise as of the \_\_\_\_ day of \_\_\_\_\_, 2020.

City of Glendale  
an Arizona municipal corporation

By: \_\_\_\_\_  
Jerry P. Weiers, Mayor

Attest:

\_\_\_\_\_  
Julie K. Bower, City Clerk

Approved as to Form:

\_\_\_\_\_  
Michael D. Bailey, City Attorney

EPCOR Water Arizona Inc.  
an Arizona Corporation

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

STATE OF ARIZONA

County of \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2020,  
by \_\_\_\_\_ as the \_\_\_\_\_ of the EPCOR Water  
Arizona Inc., an Arizona corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_