

EXHIBIT B

WHEREAS, EPCOR Water Arizona, Inc. (the “**Utility**”) represents and warrants to the City of Peoria, Arizona (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 services within portions of Maricopa County, Arizona, under one or more Certificates of Convenience and Necessity (“**CC&Ns**”) issued by the Arizona Corporation Commission (“**Commission**”);

WHEREAS, the City granted a franchise to Arizona American Water Company (“**AAWC**”) in 2010 by way of Ordinance 2010-26 to operate and maintain a public water and wastewater system within the City of Peoria;

WHEREAS, Utility’s parent obtained all of the outstanding shares of AAWC through an equity purchase agreement and subsequently consolidated AAWC with other water and wastewater systems to form EPCOR Water Arizona, Inc.; and,

WHEREAS, EPCOR Water Arizona, Inc. has requested that the City grant a new Franchise to Utility to operate and maintain public water and wastewater systems within the City of Peoria according to the terms herein.

NOW, THEREFORE, the Parties agree as follows:

Sec. 1. Franchise Granted.

That in consideration of the payments hereinafter provided to be paid and the benefits to the City to be derived from the installation, operation and maintenance of water distribution and wastewater collection systems (the “**Facilities**”) in certain portions of City, EPCOR Water Arizona Inc., its successors and assigns, shall have the right and privilege to construct, maintain, and operate upon, over, along, across, and under the present and future public property interests of the City including without limitation: public streets, public alleys, public rights-of-way, public highways, public utility easements, and public bridges within the present and any future corporate limits of City (the “**Public Right of Way**”) for the areas within Utility’s Certificates of Convenience and Necessity as depicted in Exhibit A attached hereto, as currently granted by the Commission or which the Commission may grant in the future, located within the City (the “**Certificated Service Area**”), water distribution and wastewater collection systems, together with all necessary or desirable appurtenances (including without limitation transmission mains, distribution mains, collection mains, storage, pumping, and treatment facilities, lift stations, service lines, pipes, manholes, and related equipment for its own use), for the purpose of supplying water and wastewater services to the portions of the Certificated Service Area, its successors, the inhabitants thereof, and all individuals and entities thereof within or beyond the limits therefore (collectively, the “**Service Population**”), and for collecting wastewater from the Service Population, in each case for all purposes to the extent Utility is duly authorized by the Commission (such rights and privileges as collectively the “**Franchise**”).

Sec. 2. Compliance with Requirements; Plans Submitted for Approval; City Construction near Facilities.

(a) The quality of water treatment, transmission, and distribution services and wastewater collection, treatment, and disposal provided by Utility 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) This Franchise will not be effective unless and until Utility has submitted to the City Engineer a detailed map accurately depicting the Certificated Service Area. Throughout the Term (defined below), Utility shall keep and maintain accurate records of the location of all Facilities in the Public Right of Way and shall provide an updated map within thirty (30) days of: (i) any change in the Certificated Service Area, or; (ii) a written request from the City Engineer.

(c) Before beginning any construction work performed pursuant to the rights granted under this Franchise Utility must apply for and obtain all approvals required by the City Engineer. Such approvals shall not to be unreasonably withheld and the City will make best efforts to complete the plan review process within three (3) weeks per plan review. The Utility must comply with the City's financial assurances requirements pertaining to permit bonds and performance bonds, as set forth in Peoria City Code and PESM. However, the Utility will not be required to post permit bonds and/or performance bonds if the Utility can provide sufficient evidence to the City that (1) it is a public service corporation as defined in Arizona State law; and (2) will maintain the adequate financial assurances to provide the services pursuant to this Franchise.

(d) Before a revocable right-of-way permit will be granted, Utility must apply for plan review by the City, and pay all relevant fees as set forth the Peoria City Code. Such application must include without limitation the number of complete construction plans (including without limitation drawings, details, maps, and notes) required by the City Engineer. After reviewing said application and plans, the City may either issue the appropriate permit or deny the application and notify the Utility of all deficiencies. The Utility may resubmit the application after remedying the noted deficiencies.

(e) If, any time after a permit has been issued or Facilities have been installed in the Public Right of Way, Utility desires to relocate, change, or upgrade said Facilities, then, before beginning construction, Utility must obtain a new or amended revocable right-of-way permit from the City Engineer, which approval shall not be unreasonably withheld or delayed consistent with the provisions of Subsection 2(c) above.

(f) Utility must follow good practices for the industry and must perform all work pursuant to this Franchise in strict compliance with the Peoria City Code, Uniform Standard Specifications for Public Works Construction sponsored and distributed by the Maricopa Association of Governments as amended (hereinafter referred to as "**MAG**"), the City of Peoria supplements to MAG, Peoria Engineering Standards Manual ("**PESM**")

(including without limitation Chapter 12 Public Utilities – Non-City Utilities), and the City or Peoria Street Cut Policy (the “**Local Standards**”).

(g) The City may approve or deny the placement and location of Facilities in its sole discretion; provided, however, that City’s sole discretion must cede, when necessary, only to the Commission’s authority relevant to the Utility’s CC&N for the Utility to provide safe and reliable service in accordance with Commission regulations. Parties agree that whenever reasonably feasible, Facilities must be installed outside of the paved street areas. Utility may not install any Facilities inside of the paved street areas except as permitted by the City Engineer.

(h) When it is reasonably necessary for Facilities to intersect City streets or be placed under paved areas, Utility shall use directional boring under such streets unless the City Engineer has approved of other methods in writing.

(i) If City undertakes either directly or through a contractor any construction project adjacent to or near Facilities operated pursuant to this Franchise, City shall include in all such construction specifications, bids, and contracts a requirement that, as part of the cost of the project, and at no cost to Utility, the contractor or his designee obtain from Utility the temporary removal, relocation, barricading, or depressurization of Facilities or equipment, the location of which create an unsafe condition in the sole discretion of the City Engineer. Provided that Utility’s engineering standards for its Facilities and equipment do not conflict with MAG or the PESM, City shall require such contractor or his designee to restore or repair Utility’s Facilities and equipment to Utility’s engineering standards. City shall indemnify and hold Utility harmless from any and all claims, costs, losses, or expenses incurred by Utility as a result of the failure of City to comply with the requirements hereof.

(j) Except as provided in Section 5 herein, Utility shall not construct, install, maintain, or perform any work in the Public Right of Way without first complying with the provisions of this Section 2. Failure by Utility to comply with any provision of this Section 2 is a breach of this Franchise.

Sec. 3. Construction and Relocation of Utility Facilities; Payment.

(a) The City’s right to use the Public Right of Way for any governmental purpose is paramount to Utility’s right to occupy the Public Right of Way. All new Facilities installed or constructed pursuant to this Franchise must be located, relocated, and erected to reasonably minimize interference with vehicular and pedestrian traffic and all other authorized uses of the Public Right of Way. All phases of construction carried out by Utility pursuant to this Franchise, including without limitation: location, and relocation of Facilities that affect traffic control, bedding, backfilling, compaction, or paving, are subject to regulation by the City in accordance with MAG and the PESM and may be subject to additional requirements consistent therewith in the reasonable discretion of the City Engineer.

(b) Upon completion of any construction involving underground Facilities in the Public

Right of Way Utility shall promptly furnish to the City Engineer documentation accurately showing the location of said underground Facilities in a format compatible with the City's computer-aided drafting and geographic information system software. If the City Engineer determines that Utility's electronic format is not compatible with the City's system, then Utility must provide said documentation in hard copy format satisfactory to the City Engineer, and reimburse the City for the cost to convert the documentation to a compatible format.

(c) If City elects to abandon a Public Right of Way containing Facilities, Utility may elect to abandon such Facilities or may request in writing that City convey such interest to Utility. The City Engineer may agree to convey such interest so long as the City Attorney determines in its sole discretion that such conveyance is legal and advisable. Such conveyance shall be by quit claim with no warranties of title.

(d) If Facilities are required to be relocated, Utility shall relocate its Facilities subject to the following provisions:

- (1) For Facilities located outside of the Public Right of Way, the City shall bear the entire cost of relocating such (including the cost of securing additional private property rights, if necessary).
- (2) For Facilities located within the Public Right of Way: (a) If the City requires such Facilities be relocated as part of a City project, then City shall bear the costs of the relocation; (b) If the Utility requires such Facilities be relocated as part of a Utility project, then Utility shall bear the costs of the relocation.
- (3) For Facilities located within the Public Right of Way, all relocated Facilities must be relocated within the Public Right of Way whenever reasonably possible. Utility and City may agree to cooperate on the location and relocation of Facilities at Utility's expense.
- (4) When a conflict exists between Utility's proposed location of Facilities and existing facilities owned, licensed, or permitted by City, Utility may request in writing that such existing facilities be relocated. The City Engineer shall have complete discretion to determine a resolution. If the City Engineer determines that the existing facilities should be relocated, Utility shall bear the entire cost of relocating the existing facilities, irrespective, of the function they served.
- (5) Should City contribute to or bear the cost of relocating any Facilities for any reason, the City shall not bear any cost related to upgrading, extending, or improving any Facilities unless such upgrade, extension, or improvement is deemed beneficial to the City in proportion to the cost as determined by the City Engineer. In the event the City does not deem an upgrade, extension, or improvement beneficial, Utility shall be entitled to construct and/or install

such upgrade, extension, or improvement, subject to the terms of this Franchise, so long as Utility pays for the cost differential associated therewith.

- (6) City will not unreasonably or arbitrarily exercise its right to require Facilities to be relocated or seek to avoid City's obligations under Section 2.

Sec. 4. Indemnification and Hold Harmless.

(a) To the fullest extent allowed by law, each Party (the "Indemnifying Party") shall indemnify, defend, and protect the other Party (the "Indemnified Party") and hold the Indemnified Party harmless from any loss or costs due to any claim or liability, and all related costs and expenses, including but not limited to actual attorneys' fees, to the extent such claim or liability arises out of or results from an Indemnifying Party's failure to comply with the requirements of this Franchise, or the use, construction, maintenance, or operation of an Indemnifying Party's Facilities. The provisions of this Section 4(a) will survive the termination of this Franchise.

(b) The City shall not be liable to any third party for damages, losses, or liability arising from the issuance of approval by the City of this Franchise. The provisions of this Section 4(b) will survive the termination of this Franchise.

(c) Utility shall obtain, maintain at all times, and provide proof of such to City upon request, the following insurance:

- (1) Commercial General Liability in the amount of FIVE MILLION Dollars (\$5,000,000) per occurrence and in annual aggregate for liability arising from bodily injury (including death), property damage (including loss of use), and personal injury. Such policy shall also include provision for blanket contractual liability and products-completed operations liability subject to a FIVE MILLION Dollars (\$5,000,000) per occurrence and annual aggregate limit. Coverage must be in an occurrence form and in accordance with the limits and provisions specified herein. Claims-made policies are not acceptable. Where an umbrella or excess policy is in effect, terms shall be follow- form to this Commercial General Liability policy. Utility shall provide City with additional insured status for liability arising from its operations, and thirty (30) days' written notice of any policy cancellation or condition that creates a deficiency in the requirements stated herein;
- (2) Automobile Liability applicable to all vehicles owned, leased, licensed, hired, or operated by Utility in the amount of FIVE MILLION Dollars (\$5,000,000) per occurrence applicable to property damage and/or bodily injury liability;

- (3) Workers' Compensation covering all employees of the Utility per Arizona statutory requirements; and
 - (4) Employer's Liability in the amount of ONE MILLION Dollars (\$1,000,000) per accident, per disease, each employee.
- (d) General conditions applicable to all required policies of insurance:
- (1) Utility shall file with City the required certificates of insurance, with endorsements (if applicable), which clearly state the policy number; insurer; licensed agent; insured; policy expiration date; specific coverage amounts; and that no policy of required insurance will be canceled without providing thirty (30) days prior notice of cancellation to City;
 - (2) The insurance carried by Utility shall be primary and non-contributory to any other valid or collectible insurance that City may possess, including any self-insured retention City may have; and any other insurance City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance;
 - (3) All policies of insurance required by Utility hereunder shall be with insurers who are licensed and authorized to do business in the State of Arizona with a financial rating of at least A- in A.M. Best & Company's Insurance Guide;
 - (4) To the fullest extent permitted by law, all such insurance policies, except Workers' Compensation, for claims arising out of the performance of this Franchise shall name City, its agents, representatives, officers, directors, officials, and employees as additional insureds; and
 - (5) The insurers of policies required by Utility hereunder shall waive all rights of subrogation against City, its agents, representatives, officers, directors, officials, and employees for any claims arising out of the Utility's acts, errors, mistakes, omissions, work, or service.

Sec. 5. Restoration of Rights-of-Way.

- (a) Except as hereinafter provided concerning repairs of Facilities, whenever Utility shall cause any opening or alteration whatsoever to be made for any purpose in any Public Right of Way, Utility must apply for and obtain a right-of-way permit (separate and distinct from any other permit described in this Franchise) from City and must provide for City inspection of the Public Right of Way before the work may be considered complete.
- (b) Utility shall complete all construction in accordance with all laws and the Local Standards.
- (c) Utility shall diligently pursue completion of all construction within a reasonable amount of time. Such work will not be deemed complete until, Utility has restored the

Public Right of Way to as good a condition as it existed before such work.

(d) During any opening or alteration of the Public Right of Way, when required by the City Engineer, Utility must apply for and obtain an approved Traffic Control Plan from the City, comply with the Manual of Uniform Traffic Control Devices and the City of Phoenix Barricade Manual, and bear the full cost of any barricades, signage, traffic control devices, rerouting of traffic, or other action or expense that the City Engineer shall reasonably require in the interest of public safety. Upon completion of such work, Utility shall bear the full cost of removal of barricades, signage, and traffic control devices, including without limitation any cost incurred by City to remove or store barricades not otherwise removed by Utility or its contractors. The City Engineer is authorized to restrict or limit construction activities to certain designated hours and days to minimize impact on traffic.

(e) Utility must obtain and maintain for the duration of this Franchise an annual emergency encroachment permit and an annual maintenance encroachment permit (separate and distinct from any other permit described in this Franchise). Whenever reasonably necessary and notwithstanding any provision contained in this Franchise to the contrary, Utility may initiate emergency repairs before obtaining any additional permits, however, Utility must notify the City Engineer or designee, before initiating the repairs if such notice is practicable in the circumstance. If after initiating emergency repairs, additional permits are required by the City Engineer, Utility must apply for those permits as soon thereafter as is reasonable and practicable. In all cases, such application must be submitted to the City within three (3) business days after the initiation of the emergency repair. Utility must maintain any annual permits required by the City Engineer.

(f) If Utility fails to repair the Public Right of Way to a safe and satisfactory condition (normal wear and tear excepted) reasonably satisfactory to the City Engineer, the City shall have the option, upon fifteen (15) days written notice to Utility, to perform or cause to be performed such work deemed reasonable and necessary by the City Engineer. In such event, the City may demand, and Utility shall be responsible for the proposed costs to be incurred or the actual costs incurred by the City. Such costs shall be calculated at City's standard rates, plus an administrative fee of fifteen percent. Utility must reimburse the City for such costs within thirty (30) days after receipt of such a demand for payment by the City. After thirty (30) days, unpaid amounts shall bear interest at the rate of 1.5% per month.

Sec. 6. Franchise Fee.

(a) In consideration of the granting of the rights under this Franchise, Utility agrees to pay to the City each of the following when due (collectively the "**Fees**"):

- (1) A sum equal to two percent (2%) of the Gross Receipts, as defined below, of Utility (excluding from Gross Receipts all sales taxes, gross revenue taxes, or similar charges based upon Gross Receipts), from the sale of

water and wastewater services by Utility within the then existing corporate limits of City. This fee shall be due and payable monthly. This fee is in lieu of any initial permit fees typically required by the City;

- (2) Any other fees required by the City Engineer including without limitation fees for plan review, inspections, or repair of pavement damage in accordance with Chapter 23 of the Peoria City Code (1992); and,
- (3) All relevant local taxes including transaction privilege tax at the then current rate for the utilities classification.

(b) “Gross Receipts” 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 Utility, its affiliates, subsidiaries or parent or any person, firm, or corporation in which Utility has a financial interest or that has a financial interest in Utility and that is derived in whole or in part from Utility’s provision of water or wastewater services to its end-use customers within the Certificated Service Area.

(c) If any of Utility’s water customers receive wastewater service from the City (rather than from Utility), then Utility must furnish monthly to City all information required to be supplied pursuant to the Agreement for Water Service Termination and Sharing of Information Regarding Water Consumption dated September 20, 2011 and approved by the Commission through Decision No. 73562 (October 17, 2012) or any successor agreement thereto. If no such agreement is in effect, then Utility must furnish monthly to City only that information necessary for the City to accurately calculate the cost of City services, and the disclosure of which does not violate Arizona law, including any applicable Commission rules or regulations.

(d) To verify any amount payable according to this Franchise, Utility shall make available all pertinent books and records for inspection by duly authorized officers or representatives of City during regular business hours and upon thirty (30) days’ prior written notice to Utility.

(e) Within thirty (30) days of a City request, Utility must provide data, in a spreadsheet format acceptable to the City Engineer, reflecting all project numbers, associated city permit numbers, and the respective amounts paid by Utility for any associated fees.

Sec. 7. Occupation Tax.

Notwithstanding any provision contained herein to the contrary, Utility shall, in addition to any other payments, pay any business or occupation tax established by City, provided the tax is a flat fee per year, not levied exclusively upon utilities, and the annual amount

of such tax does not exceed the amount of similar fees paid by the other businesses with comparable gross revenue from sales within City.

Sec. 8. Election, Term, and Acceptance.

(a) The right, privilege, and Franchise hereby granted shall continue and exist for twenty- five (25) years from the date of the granting hereof (the “**Term**”).

(b) The Franchise shall be void and of no effect if written acceptance thereof by the Utility is not filed in the Office of the City Clerk of City within sixty (60) days after the Franchise is approved by the Peoria City Council.

Sec. 9. Transfer of Franchise.

The right, privilege, and Franchise hereby granted may not be transferred in whole or in part by Utility, its successors, or assigns, without the prior consent of both the Peoria City Council and the Commission and payment of an appropriate transfer fee to the City to reimburse City for any reasonable costs it incurs in processing the transfer. The Peoria City Council’s consent shall not be unreasonably withheld. 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.

Sec. 10. Franchise Not Exclusive.

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

Sec. 11. Repealer.

All ordinances and parts of ordinances previously granting this Utility a franchise and which conflict with the provisions hereof, are hereby repealed.

Sec. 12. Compliance with Laws.

(a) Utility agrees to comply with all applicable laws and policies, including, but not limited to, the Local Standards in the exercise and performance of its rights and obligations under this Franchise.

(b) If it is necessary for Utility to comply with any law or regulation of the Commission

to engage in the business activities anticipated by this Franchise, Utility must comply with such laws or regulations as a condition precedent to exercising any rights granted by this Franchise. Provided, however, no such law or regulation of the Commission may enlarge or modify any of the rights or duties granted by this Franchise without a written modification to this Franchise.

(c) Upon thirty (30) days' prior written notice, Utility must provide to the City copies of any communications and reports submitted by Utility to the Commission or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters directly affecting enforcement of this Franchise, except any communications or reports that are: (i) publicly available; or (ii) protected from disclosure by other applicable law.

(d) Upon sixty (60) days' prior written notice, Utility must provide the City with regular reports, as reasonably needed, to establish Utility's compliance with the various requirements and other provisions of this Franchise.

Sec. 13. Severability.

If any section, paragraph, clause, phrase, or provision of the Franchise, other than Section 6 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. If Section 6 shall be adjudged invalid or unconstitutional in whole or in part by a final judgment, the Franchise shall immediately terminate and shall be of no further force or effect.

Sec. 14. Title to Facilities; Right to Use Easements; Reserved Right to Purchase or Condemn.

(a) Title to all Facilities wherever situated on the Public Right of Way and acquired or installed by Utility or its agents or contractors shall be and remain in Utility, its successors, or assigns.

(b) Nothing contained in this Franchise shall be construed as preventing, diminishing, or restricting Utility from using for public utility purposes any easement shown on any plat or plats of any portion of the 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 Utility. The City shall have the right to deny Utility the uses of restricted easements limited to sewer or drainage or easements not wide enough to accommodate a city water line and utility water line.

(c) The City reserves the right and power to purchase and condemn the plant and distribution Facilities of the Utility within the corporate limits or any additions thereto, as provided by law. Utility likewise reserves all of its rights and remedies provided by law in

any such circumstance.

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

Sec. 15. Designation of Representatives and Notices.

(a) To further the cooperation of the parties in implementing this Franchise, City and Utility each shall designate and appoint a representative to act as a liaison between City and Utility and the various departments of each. The initial representative for City shall be _____ or their designee, as identified by the City from time to time. The initial representative for Utility shall be its _____ or their designee, as identified by Utility from time to time. The representatives shall be available upon reasonable notice and at reasonable times to discuss and review the performance of the parties under this Franchise and shall plan to meet no less than semiannually.

(b) All notices required to be given to either party shall be sent or given as follows to the following addresses:

To City: City of Peoria
8401 West Monroe Street
Peoria, Arizona 85345
Attn: City Manager
Email: Citymanager@peoriaaz.gov

With a copy to: Office of the Peoria City Attorney
8401 West Monroe Street
Peoria, Arizona 85345
Attn: City Attorney
Email: cityattorney@peoriaaz.gov

To Utility: EPCOR Water Arizona Inc.
2355 West Pinnacle Peak Road, Suite 300
Phoenix, Arizona 85027
Attn: _____
Email: _____

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

Sec. 16. Submission to Qualified Electors.

Upon adoption of this Ordinance by the Mayor and Council, the question of whether to issue a Franchise to Utility under the terms of this Ordinance shall be submitted to the qualified electors of City at an election to be held on November 5, 2024, and the City Clerk and City Attorney upon approval are authorized to take all steps necessary to accomplish submission of this item to the qualified electors of City.

Sec. 17. Effective Date.

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 electors of City.

PASSED AND ADOPTED by the Mayor and Council of the City of Peoria, Arizona, this 11th day of June 2024.

Jason Beck, Mayor
City of Peoria, Arizona

ATTEST:

Agnes Goodwine, City Clerk

APPROVED AS TO FORM:

Emily Jurmu, City Attorney

EPCOR Water Arizona, Inc.

By: _____

Its:

Published in _____

Publication Dates: _____

Effective Date: _____

EXHIBIT A TO FRANCHISE AGREEMENT

EPCOR SERVICE AREAS