

**FRANCHISE AGREEMENT BETWEEN  
ARIZONA WATER COMPANY  
AND THE CITY OF GLOBE, ARIZONA**

**WHEREAS**, this Franchise Agreement (hereinafter "Agreement") is made and entered into this 18<sup>th</sup> day of November, 2014, by and between the City of Globe, Arizona, a municipal corporation of the State of Arizona (hereinafter referred to as "City"), and Arizona Water Company, an Arizona corporation (hereinafter referred to as "Grantee").

**WHEREAS**, the Parties hereby agree:

**Section 1.** Subject to the provisions of this Agreement and the laws and ordinances of the State of Arizona and the City of Globe, Arizona, there is hereby granted to Arizona Water Company, its successors and assigns, the right, license, privilege and franchise to construct, maintain, and operate upon, over, along, across, and under the present and future public rights-of-way (including but not limited to streets, alleys, highways, and bridges), in the City of Globe, Arizona, in the Grantee's service area as described on Exhibit A (collectively, the "Service Area"), for the purpose of the installation and servicing of pipes and appurtenances in order to provide water services to the City of Globe, Arizona, its successors, the inhabitants thereof and persons and corporations within the limits thereof for all purposes and repealing conflicting ordinances.

**Section 2.** Whenever in this instrument the words or phrases hereinafter in this section defined are used, they shall have the respective meanings assigned to them in the following definitions:

- a. The word "City" shall mean Globe, Arizona.
- b. The word "Grantee" shall mean Arizona Water Company and its lawful successors and assigns with respect to the franchise hereby granted.
- c. The word "Franchise" shall mean the rights, privileges and franchise hereinafter more particularly described.
- d. The phrases "public road" and "public roads" shall mean the public highways, streets, avenues, alleys, highways, bridges, and public ways and places as the same may now or may hereafter exist within and under the jurisdiction of the City.
- e. The phrase "pipes and appurtenances" shall mean water lines, mains, services, traps, vents, vaults, manholes, meters, gauges, regulators, valves, fire hydrants, conduits, appliances, attachments, and other water system facilities and without limitation to the foregoing, any property located or to be located in, upon, along, across, under or over the present or future public roads within City and used or useful in conveying and/or distributing water under and pursuant to this Franchise.

- f. The phrase "installing, maintaining service and using" shall mean to construct, erect, install, operate, maintain, use, repair or replace.

**Section 3.** This Franchise for installing, maintaining, relocating and using pipes and appurtenances in so many and in such parts of the public roads of City within the Service Area as Grantee may from time to time elect to use for the purpose of conveying and distributing water to the public for lawful purposes is hereby granted by City to Grantee. All construction under this grant shall be performed in accordance with established practices, per Grantee's Construction Specifications and Standard Specification Drawings or as adopted by the Maricopa Association of Governments ("MAG Standards") if not specified in Grantee's Construction Specifications and Standard Specification Drawings, with respect to such public roads, and before any installations are made in said public roads of City, a map and global positioning system ("GPS") coordinates showing the location of such installations shall be submitted to such persons as may be designated by the City for approval as to location of pipes and appurtenances.

**Section 4.** The term of the Franchise shall commence on the date approved by the voters of City and continue and remain in full force and effect for a period of twenty-five (25) years from and after said date.

**Section 5.** All pipes and appurtenances which shall be installed and used under and pursuant to the provisions of this Franchise and in the exercise thereof shall be installed, constructed and maintained in accordance with established best industry practices and per Grantee's Construction Specifications and Standard Specification Drawings or MAG Standards, if not specified in Grantee's Construction Specifications and Standard Specification Drawings.

**5.1 Regulation of Rights-of-Way or other City Property:** The Grantee expressly acknowledges the City's right to enforce regulations concerning the Grantee's use of City right-of-way including requirements for permits.

**5.2 Compliance with Laws:** The Grantee shall promptly and fully comply with all lawfully enacted laws, regulations, permits and orders enacted by the City.

**5.3 Notification:** The Grantee shall provide to the City, daytime and nighttime telephone numbers of a designated Grantee representative from whom the City may obtain status information from the Grantee on a 24-hour basis concerning interruptions of utility service in any part of the City.

**5.4 Franchise Fee Payment:** Payment of the Franchise fee as required by this Agreement exempts the Grantee from Right-of-Way Permit fees for excavation or pavement cuts. Payment of the Franchise fee as required by this Agreement does not exempt the Grantee from any other lawful tax or fee imposed generally upon similar classes of businesses operating within the City.

**5.5 Restoration:** In the event the Grantee's system or any part thereof is partially or wholly destroyed or incapacitated in a manner that damages any City property, the Grantee shall restore such property within the shortest practicable time.

**Section 6.** Grantee shall promptly, but in no case later than thirty (30) days after installing, maintaining or using said pipes and appurtenances or any part thereof at its own cost and expense, place said public roads or so much thereof as may have been damaged thereby, in as good order and condition as that in which they were before being disturbed or excavated for the purposes of installing, maintaining and using said pipes and appurtenances or any part thereof.

**Section 7.** Notwithstanding any provision contained herein to the contrary, Grantee shall, in addition to the payment provided in Section 8, pay any license or occupation tax established by City, provided such fee does not exceed the amount of similar fees paid by any other utility operated with City.

**Section 8.** Grantee shall pay to City in consideration of the grant of this Franchise a sum equal to three percent (3%) of Grantee's gross receipts from the sale of water for residential and commercial purposes, including connect or reconnect charges, service establishment or reestablishment charges, or other similar charges, but excluding transaction privilege taxes and similar governmental impositions, from the sales and/or delivery by it of water and other charges for services attendant to the sale and/or delivery of water delivered through Grantee's water distribution system as shown by Grantee's billing records within the present and any future corporate limits of City, as Grantee is notified from time to time by City of the extent of such corporate limits. Grantee shall have no obligation to collect Franchise fees for any such extension of City's corporate limits if City fails to notify Grantee, and Grantee shall only be responsible for such collections after proper notice by City is provided.

For the purpose of verifying amounts payable hereunder, the books and records of Grantee shall be subject to inspection by duly authorized officers or representatives of City at reasonable times.

Beginning with the effective date of this Franchise, payment as described in the preceding paragraphs shall be payable in quarterly amounts within thirty (30) days after the end of each calendar quarter. Said payment shall be a Franchise fee. The amount of such Franchise fees may be specifically added to customer bills, to the extent allowed by applicable law.

In addition, Grantee shall pay any general ad valorem taxes, assessments for special improvements, general sales or transaction privilege license taxes or any similar general sales or transaction privilege license taxes or any similar general tax or levy assessed or levied by the City or any other governmental unit with jurisdiction.

**Section 9.** Grantee's facilities installed or constructed under and pursuant to this Franchise shall not interfere with any City facilities including water, sanitary, storm water, communications, or any other City uses of the right-of-way. Grantee's facilities shall be installed and maintained in City rights-of-way so as to minimize interference with other property, vegetation, and other improvements and natural features within the right-of-way, including both existing and planned improvements of which the Grantee has been advised.

**9.1 Company Work within the City:** All work within City rights-of-way performed or caused to be performed by the Grantee shall be done:

**9.1.1** in a high quality manner utilizing Grantee's Construction Specifications and Standard Specification Drawings or MAG Standards and specifications for public works construction if not specified in Grantee's Construction Specifications and Standard Specification Drawings; and

**9.1.2** for all construction exceeding \$15,000 in cost, using plans sealed by a Professional Engineer ("PE") licensed in the State of Arizona; and

**9.1.3** in a timely and expeditious manner; and

**9.1.4** in a manner which minimizes inconvenience to the public with traffic control provided per the most recent Manual for Uniform Traffic Control Devices ("MUTCD") or at the City's discretion, the most recent Phoenix Barricade Manual; and

**9.1.5** in a cost effective, professional, and efficient manner which (for construction exceeding \$50,000 in cost) includes the use of contractors (for the trades specified) licensed in the State of Arizona; and

**9.1.6** in accordance with all applicable laws, ordinances, regulations, and permit processes.

**9.1.7** Nothing herein shall prevent the Company from performing work within rights-of-way in accordance with the terms of this Agreement.

**9.2 Inspection:** The installation, renovation, repair, and replacement of any Grantee facilities in the City right-of-way by or on behalf of the Grantee shall be subject to permit inspection and approval by the City. Such inspection and approval may include but not be limited to the following matters: location of Grantee facilities, cutting and trimming of trees and shrubs, and disturbance of pavement, sidewalks, and surfaces of City Streets. The Grantee agrees to cooperate with the City in conducting inspections and shall promptly perform any remedial action required by the City pursuant to all applicable laws, ordinances, regulations, and permit processes.

**9.3 Compliance:** The Grantee and all of its contractors shall comply with the requirements of all municipal laws, ordinances, regulations, permits, and standards including but not limited to requirements of all building and zoning codes and requirements regarding curb and pavement cuts, excavation, digging, and other construction activities. The Grantee shall assure that its contractors working in City streets hold the necessary licenses and permits required by law.

**9.4 As-Built Drawings:** For projects constructed after the date of this Agreement and upon written request of the City, the Grantee shall provide within fourteen (14) days, on a project by project basis, as-built drawings of any Grantee facility installed within the City right-of-way or contiguous to the City right-of-way. As-built drawings refer to the facility drawings maintained in the Grantee's computer aided design ("CAD"), geographical information system ("GIS"), or any equivalent system.

**9.5 Obstruction to Use:** When the Grantee performs any work in or affecting the City right-of-way, or any or improvements therein, Grantee shall (at its own expense), promptly remove any obstructions therefrom, repair any damage, and restore such City streets and landscaping and improvements therein to a condition that meets applicable standards. If weather or other conditions do not permit the complete restoration or repair required by this Section the Grantee may with the approval of the City temporarily restore the affected infrastructure, provided that such temporary restoration is at the Grantee's sole expense and provided further, that the Grantee promptly undertakes and completes the required permanent restoration or repair when the weather or other conditions no longer prevent such permanent restoration or repair. If the Grantee fails to promptly restore or repair the City streets, landscaping, and improvements therein as required by this Section 9.5, the City may, upon giving fourteen (14) days' written notice to the Grantee, restore such City streets, remove the obstruction therefrom, or repair the damage, provided the Grantee shall be responsible for the actual cost incurred by the City to restore or repair such City streets, landscaping and improvements therein or to remove any obstructions therefrom.

**9.6 Damage:** The Grantee shall promptly repair any damage to the City streets, landscaping, and improvements included in the right-of-way and remedy any situation within the City right-of-way that is caused by Grantee activities or Grantee facilities that results in a dangerous condition or otherwise poses a hazard to the health or safety of the public. Upon the City becoming aware of any such situation, the City shall provide written notice to the Grantee as soon as practicable under the circumstances and the Grantee shall promptly, upon receipt of such notice, take action to abate said dangerous condition or hazard. If the Grantee fails to repair such damage or eliminate the dangerous condition within a reasonable time after notice, the City may take reasonable action to abate said dangerous condition or hazard and the Grantee shall reimburse the City for the reasonable costs thereof, provided however, that the Grantee shall not be liable for costs incurred by the City for providing emergency police or fire services generally made available to the public.

**9.7 Relocation:** Except for Grantee's facilities installed in locations prior to such locations becoming a City road or other City right-of-way, the Grantee shall, at its sole cost and expense, temporarily or permanently remove, relocate, change, or alter the position or depth of any Grantee facility in City right-of-way whenever the City shall determine that such removal, relocation, change, or alteration is necessary for the completion of any project undertaken by the City. City agrees to notify Grantee during the planning and design of City's projects in or outside of public rights-of-way that may require relocation of Grantee's water facilities and to coordinate its construction plans and schedules with Grantee to determine the most cost-effective design to mitigate Grantee's cost to relocate its water facilities. For all relocations, the Grantee and the City agree to cooperate on the location and relocation of the Grantee facilities in the City's right-of-way in order to achieve relocation in the most efficient and effective manner possible. Notwithstanding the foregoing, once the Grantee has relocated any Grantee facility at the City's direction if the City requests that the same Grantee facility be relocated within one year, the subsequent relocation shall not be at the Grantee's expense unless said subsequent relocation is necessary to remedy public health and safety concerns not reasonably foreseeable by the City at the time of the prior relocation.

**Section 10.** City shall in no way be liable or responsible for any acts or damage that may occur in the construction, operation or maintenance by Grantee of its pipes and appurtenances hereunder, which could have been avoided by exercise of reasonable care, and the acceptance of this Franchise shall be deemed an agreement on the part of Grantee, its successors and assigns, to indemnify City and hold it harmless against any and all liability, loss, cost, damage or expense which may accrue to City by reason of the negligence, default or misconduct of Grantee in installing, maintaining, removing, relocating, and using its pipes and appurtenances hereunder.

**Section 11.** The right, privilege and Franchise hereby granted may not be transferred in whole or in part by Grantee, its successors and assigns, unless a resolution consenting to such assignment has been adopted by the Mayor and City Council; City shall not unreasonably withhold consent to any transfer Grantee may request pursuant to this Section.

**Section 12.** This grant 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 or to deny to or lessen the power and privileges granted to City by Sections 9-501 and 9-502, Arizona Revised Statutes and revisions thereto.

**Section 13.** All Ordinances and parts of Ordinances in conflict with the provisions hereof are hereby repealed.

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**Section 14.** If any section, paragraph, subdivision, clause, phrase or provision of this Ordinance shall be adjudged invalid or unconstitutional, the same shall not affect the validity of this Ordinance as a whole or any part of the provisions hereof other than the part so adjudged to be invalid and unconstitutional.

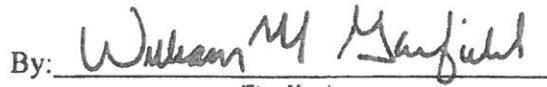
**Section 15.** To preserve the public health, peace and safety, it is necessary that this Ordinance become immediately operative. It is, therefore, declared to be an emergency measure and shall take effect and become operative from and after its passage by the City Council, approved by the Mayor, and publication as required, following its submission to the qualified electors of City as required by law, and its approval by said election.

IN WITNESS WHEREOF, the Parties have executed this Franchise Agreement on this 18<sup>th</sup> day of November, 2014.

**CITY OF GLOBE**

**ARIZONA WATER COMPANY**

By:   
(Sign Here)

By:   
(Sign Here)

Name: Terence O. Wheeler  
(Print Name)

Name: William M. Garfield

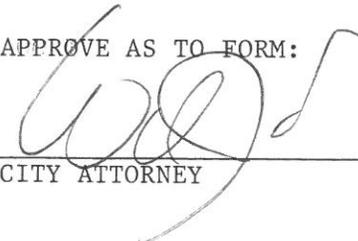
Its: Mayor  
(Print Title)

Its: President

ATTEST:

APPROVE AS TO FORM:

  
Globe City Clerk

  
CITY ATTORNEY

**Exhibit A**

**All present and future public rights-of-way (including but not limited to streets, alleys, highways and bridges) in the City of Globe, Arizona in the Grantee's service area for which an undisputed CC&N has been issued to Arizona Water Company by the Arizona Corporation Commission.**