EPCOR Water Arizona Inc. ("EWAZ" or the "Company") responds to a question about the franchise agreement adopted by the City of Bullhead City ("Bullhead City") to Citizens Utility Company ("Citizens") on May 7, 1997 (attached as Exhibit 1). Pursuant to Section 9 of the Franchise Agreement, the franchise was assigned to Arizona-American Water Company ("Arizona-American") when it acquired the water and wastewater system assets of Citizens, which was approved by the Arizona Corporation Commission in Decision No. 63584 (April 24, 2001). As set forth in Exhibit 2, Bullhead City acknowledged the assignment of the franchise from Citizens to Arizona-American. The franchise and the assignment documents are attached as Exhibits 1 and 2.

EWAZ's parent company acquired the equity of the Arizona-American through a stock purchase agreement, which was approved by the Commission in Decision No.
72668 (November 17, 2011). EWAZ is the same legal entity as Arizona-American, so no assignment was necessary. Thus, the franchise remained valid and lawful with EWAZ. Since that time, there have been multiple proceedings involving EWAZ in Bullhead City, including the acquisition of the water system assets of the North Mohave Valley Corporation, and EWAZ’s extension of its certificate of convenience and necessity (CC&N) to serve Laughlin Ranch, which were both approved in Decision Nos. 74174 (October 15, 2013) and 75930 (January 13, 2017). At no time did any party question the legitimacy of the franchise. In fact, Bullhead City fully supported EWAZ’s efforts to expand its service within Laughlin Ranch in Resolution No. 2016R-50 (October 21, 2016). The Laughlin Ranch resolution is attached herein as Exhibit 3. In short, all provisions of the franchise have been complied with and there is no evidence to support any allegation that the franchise is not legal, valid and in effect. The franchise will remain in effect until May 5, 2022. Thus, any allegations regarding the legitimacy of EWAZ’s franchise with Bullhead City are without merit.

RESPECTFULLY SUBMITTED this 27th day of February, 2019.

EPCOR WATER ARIZONA, INC.

By

Jason D. Gellman
7355 West Pinnacle Peak Road,
Suite 300
Phoenix, AZ 85027
(623) 445-2442

and

LEWIS ROCA ROTHGERBER CHRISTIE, LLP

Michael T. Hallam
201 E. Washington Street
Phoenix, AZ 85004
(602) 262-5340

Attorneys for EPCOR Water Arizona Inc.
ORIGINAL and thirteen (13) copies of the foregoing filed this 27th day of February, 2019 with:

Docket Control
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

Copy of the foregoing mailed or emailed this 27th day of February, 2019, to:

Robin Mitchell
Chief Counsel/Division Director, Legal Division
Arizona Corporation Commission
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Phoenix, Arizona 85007
LegalDiv@azcc.gov utildivservicebymail@azcc.gov
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Consented to Service by Email
DUE DILIGENCE DATA ROOM SUBMISSION
COVER SHEET

Name of Company: Arizona American Water

Corresponding Due Diligence List section and number: B.3.1

Type of Document: Franchise Agreement

Date of Contract/Document: 05/06/1997 – 05/06/2022

Contact: Brad Cole, Production Manager

Costs: 2% of gross receipts

Contract Administrator: Dave Evans, Operations Superintendent

Misc: Right to operate as a potable water system in the City of Bullhead City.
Ordinance No. 97-855

An ordinance of the city of Bullhead City, Arizona, granting to Citizens Utilities Company, its legal representatives, successors, lessees and assigns, certain powers, licenses, rights-of-way, privileges and franchise to construct, operate and maintain in Bullhead City, Mohave County, Arizona, as now or hereafter constituted, a system for the collection and transmission of water for all purposes for which such water may be used, into, out of and through said municipality, and for the distribution and sale of such potable water to said municipality, its inhabitants and others, including customers inside, beyond and outside the limits of said municipality; and to use the streets, avenues, easements, rights-of-way, alleys, highways, sidewalks, bridges and other structures and places and public grounds in said municipality for a period of twenty-five (25) years; and prescribing in connection therewith certain rights, duties, terms and conditions herein mentioned; and providing for the payment of said municipality of a percentage of certain revenues of grantee from its operations therein; and declaring an emergency.

Be it ordained by the Mayor and City Council of the City of Bullhead City, Arizona, as follows:

Section 1: That the City of Bullhead City, a municipal corporation in Mohave County, Arizona, hereinafter called the "City", hereby grants to and vests in Citizens Utilities Company, a corporation, duly authorized to transact within the State a public service business as a water utility, hereinafter called the "Company", a franchise with the right to operate a system for the collection, transmission, distribution and sale of potable water for all purposes for which such water may be used, in the City, as now or hereafter constituted, and the authority, license, power and privilege to construct, extend, maintain, repair, replace, operate and remove or otherwise establish and operate in said City, works or systems and plants to collect, transmit, distribute, sell, convey or otherwise establish, conduct, serve, supply or furnish the inhabitants of said City and others, and to the City whenever it may desire to contract therefor, potable water for all purposes for which such water may be used, and the Company is hereby granted passage, right-of-way and the right to occupy and use in any lawful way during the life of this franchise each and any and all streets, avenues, easements, rights-of-way, alleys, highways, sidewalks, bridges and other structures and places and public grounds of said
City, on, above and beneath the surface of the same, as said streets, avenues, rights-of-way, alleys, highways, sidewalks, bridges and other structures and places and public grounds now exist or may be hereafter extended, for every and any such service, use, effect and lawful purpose as herein mentioned.

Section 2: The Company is hereby authorized, licensed and empowered to do any and all things necessary and proper to be done and performed in exercising the powers and utilizing the privileges herein mentioned and granted by this franchise, provided the same do not unreasonably conflict with water or other pipes, sewers or other pre-existing underground installations, and that all work done in said streets, avenues, easements, rights-of-way, alleys, highways, sidewalks, bridges or other grounds of said City by the Company shall be done with the utmost diligence and the least inconvenience to the public or individuals, and the Company shall, within a reasonable time; restore such streets, avenues, easements, rights-of-way, alleys, highways, sidewalks, bridges and public grounds excavated by it to their original condition as nearly as practicable, subject to the reasonable approval of the City. The Company shall remove or relocate its lines and facilities as and when required by the City to accommodate right-of-way improvements for the public benefit; said removal or relocation shall be made at the sole expense of the Company, except where entitlement to reimbursement shall be provided by contract or law. In the event of such entitlement, reimbursement shall be made strictly in accordance therewith.

Section 3: Prior to commencing any work in a right-of-way the Company shall submit plans of work to be done to the Public Works Director for approval. Completed or "as built" blueprints will be submitted at project completion as required by the Public Works Director.

Section 4: Company property shall be constructed or installed in a right-of-way only at such locations and in such manner as shall be approved by the City or its agents acting in the exercise of reasonable discretion. Construction or installation of Company property in all other public places shall be subject to approval of a regulation by City or its agents.

Section 5: All installations made by Company shall be made in a safe, substantial condition and maintained in such condition at all times. All of such installation of equipment shall be of a permanent nature, durable and appropriately placed so as not to interfere in any manner with the rights of the public or individual property owners and shall not interfere with the travel and use of public places by the public nor during the construction, repair and removal shall not obstruct nor impede traffic. The City reserves the right of reasonable regulation of the erection and construction of any work by the Company and to reasonably designate where such works and construction shall be placed. The Company agrees when
requested by the City to make minor changes in its equipment to conform to the reasonable necessary requirements within a reasonable time.

Company will be responsible to obtain all state and federal licenses and permits and will additionally be responsible for meeting all state, federal and local installation standards.

Section 6: The Company shall defend the City against all claims for injury to any person or property caused by the negligence of the Company in the construction or operation of its property, and in the event of a determination of liability shall indemnify the City. More particularly the Company, its successors and assigns, does hereby agree to indemnify and hold harmless the City, from any and all liability, claim, demand or judgment arising out of any injury to any person or property, as a result of the violation or failure on the part of the Company, its successors and assigns, to observe their proper duty or because of negligence in whole or in part arising out of construction, repair, extension, maintenance or operation of its equipment of any kind or character used in connection with this franchise.

Section 7: Company agrees that at all times during the existence of this franchise it will maintain in force, at its own expense, and file with the City, a general comprehensive liability insurance policy, in protection of City, its boards, commissions, officers, agents, employees and the public. The policy will be with a company authorized to do business in the State of Arizona, and in a form satisfactory to the Risk Manager, protecting the City and all persons against liability for loss or damages for personal injury, death and property damage occasioned by the operations of Company under this franchise, with minimum liability limits of $1,000,000 for personal injury or death of any one occurrence, and $1,000,000 for damages to property resulting from any one occurrence.

The policies mentioned in the foregoing paragraph shall name the City, its officers, boards, commissions, agents and employees as additional insured and shall contain a provision that a written notice of cancellation or reduction in coverage of said policy shall be delivered to the City fifteen (15) days in advance of the effective date thereof. If such insurance is provided in either case by a policy which also covers Company or any other entity or person than those above named, then such policy shall contain the standard cross-liability endorsement.

Section 8: The rates and charges to be charged by the Company for furnishing water service hereunder and the rules and regulations to be made and enforced by the Company for the conduct of its business shall be those from time to time on file and effective with the Arizona Corporation Commission applicable to such service.
Section 2: The Company shall have the right and privilege of assigning this franchise and all rights and privileges granted herein, and whenever the word "Company" appears herein, it shall be construed as applying to its successors, lessees and assigns.

Section 10: The Company, its successors, lessees and assigns, for and in consideration of the granting of this franchise and as rental for the occupation and use or easement over, upon and beneath the streets, avenues, easements, rights-of-way, highways, alleys, sidewalks, bridges and public grounds in said Company shall pay to the City, commencing with the first full billing period after the effective date of this franchise and continuing each year during all the time this provision shall remain in force and effect, a total aggregate sum of two percent (2%) of the gross receipts (excluding from gross receipts all sales taxes, gross revenue taxes or similar charges based upon gross receipts) of the Company, its successors, lessees and assigns, during such year, for water sold within the corporate limits of the City, subject to the limitations hereinafter stated; such gross receipts to consist of the total amount collected from users and consumers on account of water sold and consumed within the corporate limits of the City under the Company's rates in existence at the time, excepting therefrom, however, the gross receipts for water sold to industrial consumers under special contract, and the gross receipts for water sold to the City for its own use. The Company shall make such payments semi-annually on or before the last day of January and July in such year while this provision shall remain in force and effect. For the purpose of determining such revenue, the books of the Company shall at all reasonable times be subject to inspection by duly authorized municipal officials. Said payments shall be in lieu of any and all other franchise, license, privilege, instrument, occupation, excise or revenue taxes and all other exactions or charges (except general ad valorem property taxes, special assessments for local improvements, and except municipal privilege, sales or use taxes authorized by law and collected by the Company from users and consumers of water within the corporate limits of the City) upon the business, revenue, property, water lines, installations, water systems, conduits, storage tanks, pipes, fixtures or other appurtenances of the Company and all other property or equipment of the Company, or any part thereof, in said City during the term of this franchise; provided that anything to the contrary herein notwithstanding said payment shall continue only so long as said company is not prohibited from making the same by any lawful authority having jurisdiction in the premises, and so long as the City does not charge, levy or collect, or attempt to charge, levy or collect other franchise, license, privilege, occupation, excise or revenue taxes or other exactions or charges hereinabove mentioned, and if any lawful authority having jurisdiction in the premises hereinafter prohibits said payment, or the City does levy, charge or collect or attempt to levy, charge or collect such other franchise, license, privilege, occupation, excise or revenue taxes, or other exactions.
or charges, the obligation to make such payments hereinabove provided for shall forthwith cease.

Section 11: The Company shall, at no cost or expense to the City, and as a part of the consideration for the granting of the franchise, provide City with written monthly reports stating the volume of water delivered on a monthly basis to each of Company's water customers served by the City's sewer system under City's commercial wastewater rates and previously identified to Company by City in writing as being served under said commercial rate. The written monthly report shall be provided to City not later than the fifth working day of each succeeding month for water delivered to commercial customers of the City during the preceding month. Amounts of water delivered shall be determined and reported from Company's billing and meter records and may on occasion be estimated as a result of customers not permitting access to meters.

Section 12: This franchise shall be accepted by the Company in writing, which acceptance shall be filed with the City within sixty (60) days after the passage of this ordinance, and when so accepted, this ordinance shall be a contract duly executed by and between the City and the Company.

Section 13: If any section, paragraph, subdivision, clause, phrase or provision hereof shall be adjudged invalid or unconstitutional, the same shall not affect the validity hereof as a whole, or any part or provision other than the part so decided to be invalid or unconstitutional.

Section 14: This franchise shall continue in full force and effect for a period of twenty-five (25) years from the date of passage of this ordinance, however, the City may terminate this franchise in the event the City shall have found, after notice and hearing, that the Company has failed to comply with any material provisions of this ordinance or has failed to correct any failure after thirty (30) days written notice.

Section 15: All plant, system, pipelines, works, and all other physical property installed by the Company in accordance with the terms of this franchise shall be and remain the property of the Company, and upon expiration of this franchise or any extension or renewal thereof, the Company is hereby granted the right to enter upon the streets, avenues, easements, rights-of-way, alleys, highways, sidewalks, bridges or other structures and places and public grounds of said City for the purpose of removing any and all such plant, system, pipelines, works and other property of the Company, at any time within six (6) months after termination of this franchise or any such extension or renewal thereof.

Section 16: The Company's service and extension policies shall show no preferential or discriminatory practices and shall be on
file with the City Clerk.

Section 17: No person in the existing service area of Company shall be arbitrarily refused service provided, that Company shall not be required to provide service to any subscriber who does not pay the applicable connection fee or monthly service charge.

Section 18: This ordinance shall only become effective after its approval by a majority vote of the qualified electors of the city at a regular election or at a special election duly and regularly called by the City Council of the City of Bullhead City for that purpose.

WHEREAS, it is necessary for the preservation of the peace, health and safety of the City of Bullhead City, Arizona, an emergency is declared to exist, and this ordinance shall become immediately operative and in force from and after the date of posting hereof.

PASSED AND ADOPTED by the Mayor and City Council of the City of Bullhead City, Arizona, this 5th day of May, 1997.

APPROVED this 5th day of May, 1997 by the affirmative vote of three-fourths of the members of the City Council of the City of Bullhead City, Arizona

NORM HICKS, Mayor

DATE: 5/07/97

ATTEST:

PAT NICHOLS, City Clerk

APPROVED AS TO FORM:

PAUL LENKOWSKY, City Attorney

Ordinance No. 97-855
ATTACHMENT A

ACCEPTED WITHOUT CHANGE:

AN AUTHORIZED REPRESENTATIVE OF CITIZENS UTILITIES COMPANY

Ordinance No. 97-855
City of Bullhead City
1255 Marina Boulevard
Bullhead City, Arizona 85429-5733
Attn: City Clerk

Re: Assignment of Rights by Citizens Communications Company, a Delaware corporation formerly known as Citizens Utilities Company (“Citizens”), to Arizona-American Water Company, an Arizona corporation (“Arizona-American”)

Sir or Madam:

Citizens currently provides water service under a franchise granted by the City of Bullhead City (the “City”) pursuant to Ordinance No. 97-855 granted on May 7, 1997 (the “Franchise”). Citizens is also a party to a separate subcontract entitled Subcontract Between the City of Bullhead City and Citizens Utilities Company for Use of Colorado River Water, dated July 18, 1995, (“Subcontract”) under which the City granted certain rights to Citizens to divert Colorado river water for delivery to Citizens customers within Citizens’ CC&N areas located within the City’s permitted service area under its agreement with the United States. Copies of the Franchise and the Subcontract are enclosed for your convenience.

Pursuant to Section 40-285 of the Arizona Revised Statutes, Citizens has obtained approval from the Arizona Corporation Commission (the “Commission”) for the following:

(a) the acquisition of Citizens’ and its affiliates’ water and wastewater operations by Arizona-American, a wholly-owned subsidiary of American Water Works Company, Inc., a Delaware corporation; and

(b) pursuant to that transaction the assignment of all water and wastewater assets of Citizens and its affiliates, including the assignment of all related franchise rights and other similar or related rights held by Citizens and its affiliates.

Decision No. 63584 granting such approval from the Commission was filed on April 24, 2001.

Under Section 9 of the Franchise, which gives Citizens the right to assign the Franchise to its successors, lessees and assigns, we hereby notify you of Citizens’ intent to assign its rights under the Franchise to Arizona-American. Pursuant to the request of the City Attorney, Paul Lenkovsky, by a letter dated January 3, 2001 to Mark Clark of Citizens, we have exploded the proposed Assignment and Assumption Agreement. We will forward a copy of the fully executed Assignment and Assumption Agreement for your records, after execution by the parties.
Also, pursuant to Section Z of the July 18, 1995 Subcontract, the parties hereby request the City's consent to the assignment of all of Citizens’ rights under the Subcontract to Arizona-American.

Please indicate your consent to the assignment of the Subcontract from Citizens to Arizona-American by signing in the space indicated below, and returning the same to Citizens in the enclosed self-addressed, stamped envelope. Of course, if you should have any questions or comments with regard to the above, please feel free to contact Mark Clark of Citizens at (602) 763-0477.

Sincerely,

CITIZENS COMMUNICATIONS COMPANY

By: ___________________________
Name: ________
Its: VP - CFO

ARIZONA-AMERICAN WATER COMPANY

By: ___________________________
Name: ________
Its: VP - CFO

THE UNDERSIGNED HEREBY CONSENTS TO THE FOREGOING:

City of Bullhead City, an Arizona municipal corporation

By: ___________________________
Name: ________
Its: Mayor

Date: September 6, 2001
ASSIGNMENT AND ASSUMPTION AGREEMENT

ASSIGNMENT AND ASSUMPTION AGREEMENT (the “Agreement”) dated and on this ___ day of ________, 2001, among ARIZONA-AMERICAN WATER ANY, an Arizona corporation (“Arizona-American”), CITIZENS COMMUNICATIONS ANY a Delaware corporation (“Citizens”).

RECATALS:

WHEREAS, Citizens and Arizona-American have entered into an Asset Purchase Agreement dated as of October 15, 1999 (the “Asset Purchase Agreement”), wherein, among things, Citizens agreed to sell, transfer and assign to Arizona-American substantially all of its affiliates’ water and wastewater operations and assets, including the assignment of all franchise and other similar rights held by Citizens and its affiliates;

WHEREAS, under the Asset Purchase Agreement, Arizona-American acquired the right became obligated to assume certain obligations and contracts of Citizens.

AGREEMENT:

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, subject to the terms of the Asset Purchase Agreement, the parties hereto hereby agree as follows:

1. The parties hereby acknowledge and agree that this Agreement is entered into pursuant to, and is subject to, the terms of the Asset Purchase Agreement.

2. Effective as of, and subject to, the closing of the Asset Purchase Agreement (the “Closing Date”), Citizens hereby assigns to Arizona-American, and Arizona-American hereby assumes, all existing and future rights of every nature of Citizens under Ordinance No. 97-855 and the separate subcontract entitled Subcontract Between City of Bullhead City and Citizens Utilities Company For Use of Colorado River Water, dated July 18, 1995, (collectively, the “Assumed Obligations”), and the obligations of Citizens to perform and carry out the terms and conditions of the Assumed Obligations from and after the Closing Date, provided that Arizona-American does not assume any obligations accruing or arising and becoming due and payable prior to the Closing Date or any liability for any breach or failure to perform under any Assumed Obligation that results from any act, event, circumstance or omission occurring prior to the Closing Date. Except for the Assumed Obligations, Arizona-American is not assuming and is liable for any other liabilities, debts or obligations of Citizens whatsoever.

3. No provisions set forth in this Agreement will be deemed to enlarge, alter or amend the terms and provisions of the Asset Purchase Agreement. In the event of any conflict between the provisions of this Agreement and the Asset Purchase Agreement, the Asset Purchase Agreement will control.
4. In the event that the Asset Purchase Agreement is terminated or is otherwise longer in full force and effect, this Agreement automatically shall terminate be of no further force and effect.

5. This Agreement is made solely for the benefit of Citizens and Arizona-American and no third party will have any right to enforce its terms or rely on it.

6. Capitalized terms used in this Agreement and not otherwise defined are used herein with the meanings given them in the Asset Purchase Agreement. This Agreement is binding upon and will inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement will be construed in accordance with and governed by the laws of the State of Arizona.

IN WITNESS WHEREOF, the parties have executed this Agreement as of date first written above.

CITIZENS COMMUNICATIONS COMPANY,
Delaware corporation

By: [Signature]
Its: [Title]

"Citizens"

ARIZONA-AMERICAN WATER COMPANY,
Arizona corporation

By: [Signature]
Its: [Title]

"Arizona-American"

APPROVED AS TO FORM

Paul Lentzowsky, City Attorney
RESOLUTION NO. 2016R-50

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF BULLHEAD CITY, ARIZONA, SUPPORTING EPCOR WATER’S EFFORTS TO EXPAND ITS SERVICE AREA WITHIN BULLHEAD CITY.

WHEREAS, the project known as Laughlin Ranch was first presented to the City in 1992 and several subdivisions have since been recorded for areas within Laughlin Ranch; and

WHEREAS, Laughlin Ranch, Tract 5134, Unit 3, contains 222.5 acres that were subdivided into 253 single family residences; and

WHEREAS, Laughlin Ranch, Tract 5134, Unit 3 did not lie within any water utility companies’ certificated area so Laughlin Ranch, LLC proposed a new water system that would ultimately be owned and operated by the City; and

WHEREAS, the City was in negotiations with representatives of Laughlin Ranch, LLC and Avion Holdings for approximately two years regarding the water system developed to serve Laughlin Ranch, Tract 5134, Unit 3; and

WHEREAS, on September 6, 2007, the City advised Avion Holdings of water system deficiencies and advised that the City would not take over the system until the deficiencies were corrected; and

WHEREAS, Avion Holdings, and later IMH, have operated and maintained the water system developed to serve Laughlin Ranch, Tract 5134, Unit 3, pending the acquisition and operation of the system by an authorized provider; and

WHEREAS, EPCOR is working to expand its service area so it can obtain and improve the quality of the system and water to better serve local residents and Laughlin Ranch, Tract 5134, Unit 3, with which IMH agrees.

THEREFORE BE IT RESOLVED THAT, the Mayor and members of the Bullhead City Council hereby fully support EPCOR Water’s efforts to expand its service area within Laughlin Ranch, Tract 5134, Unit 3, Bullhead City, Arizona.

PASSED AND ADOPTED by the Mayor and City Council of the City of Bullhead City, Arizona, this 18th day of October, 2016.

Tom Brady, Mayor

Date: 10/21/16

ATTEST:

Susan Stein, City Clerk (SEAL)

APPROVED AS TO FORM:

Garret K. Enery, City Attorney