

CITY COUNCIL REPORT



Meeting Date: May 14, 2013
General Plan Element: *Provide for the orderly government and administration of the affairs of the City*
General Plan Goal: *Enact local legislation*

ACTION

Adopt Resolution 9405 authorizing EPCOR Water Franchise Agreement 2013-062-COS.

Adopt Resolution 9405 declaring the proposed EPCOR Water Franchise Agreement 2013-062-COS beneficial to the City, submitting the question to the voters at the November 5, 2013 special election, estimating the cost of the election to be paid by EPCOR Water and approving publication of the proposed EPCOR Water Franchise Agreement.

BACKGROUND

The purpose of this action is to approve and authorize submission of a new franchise agreement to the voters for EPCOR Water Company (EPCOR). A franchise agreement allows a utility company to use the City's rights of way (ROW) for their pipelines and equipment in order to provide service to businesses and citizens, and allows the City to collect a fee for this privilege. State law and the Scottsdale City Charter require a public utility franchise agreement to be approved by the voters. The franchise will be considered by all Scottsdale voters, not just customers of EPCOR.

EPCOR and its predecessors have been providing water service to approximately 2,000 customers in Scottsdale since the 1950's. In that time, EPCOR has not had a formal agreement with the city. This agreement will also cover Chaparral City Water Company which is a subsidiary of EPCOR that serves approximately 200 customers in the Scottsdale area.

ANALYSIS & ASSESSMENT

Recent Staff Action

In October of 2012, Scottsdale provided a letter requesting that EPCOR provide a draft franchise agreement for consideration by the City. In January, a draft agreement was provided to staff and a series of meetings were held with EPCOR representatives to negotiate the terms of the agreement.

Significant Issues to be Addressed

Most of the terms of the proposed franchise agreement are similar to other franchise agreements entered into by the city with utility providers including Southwest Gas, APS and Cox Communications. Key elements of the agreement include:

- EPCOR shall have the right to locate and operate their water transmission and distribution lines and physical plant within city rights of way.
- EPCOR shall conform with all city codes and ordinances in the operation and construction of its system.
- EPCOR shall relocate its facilities in the right of way when requested by the city to accommodate capital improvement projects.
- EPCOR shall pay a franchise fee of 2% of gross revenues resulting from sales of water service within the limits of the city.
- EPCOR shall be required to pay standard permit fees for construction permits within city right of way.
- All required indemnities will be provided and sufficient insurance will be included by EPCOR.
- EPCOR shall pay a share, which is estimated at \$90,000, toward the cost of holding the November special election,
- The term of the agreement shall run 25 years from the effective date.

The estimated annual revenue resulting from this agreement is less than \$50,000 based on a 2% franchise fee. Under Arizona Corporation Commission rules, the cost of the franchise fee may be passed on to its customers by EPCOR.

Community Involvement

This proposed franchise agreement will be submitted to the voters for approval at the November 5, 2013 special election which has previously been called for the General Obligation bond program.

RESOURCE IMPACTS

Available funding

No city funding is required as part of this action.

Staffing, Workload Impact

Contract Administration shall be provided by current staff. Provisions within the agreement allow recovery of staffing costs related to construction inspection and permit fee processing as part of the Capital Expenditures Fee.

Cost Recovery Options

The franchise agreement provides for EPCOR to pay 2% of its revenues to the City from the sale and delivery of water service in Scottsdale. EPCOR will also deposit the amount of \$90,000 with the City Clerk representing 20% of the estimated cost of the election. EPCOR's cost is estimated as a proportionate share based on the number of election items proposed for the ballot. The city will be placing 4 bond questions on the ballot and the franchise item will constitute a fifth, representing 20% of the election cost.

OPTIONS & STAFF RECOMMENDATION

Recommended Approach

Adopt Resolution 9405 declaring the proposed EPCOR Water Franchise Agreement 2013-062-COS beneficial to the City, submitting the question to the voters at the November 5, 2013 special election, estimating the cost of the election to be paid by EPCOR Water and approving publication of the proposed EPCOR Water Franchise Agreement.

Proposed Next Steps:

After Council adoption, staff will take the necessary steps to place the proposed franchise agreement on the ballot for the November 5, 2013 Special Election.

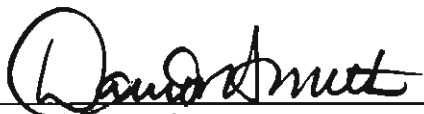
RESPONSIBLE DEPARTMENT(S)

Public Works Division, Capital Project Management

STAFF CONTACTS (S)

Derek Earle, Acting Executive Director, Public Works, dearle@scottsdaleaz.gov

APPROVED BY



David N. Smith, City Treasurer

(480)312-2364, dasmith@scottsdaleaz.gov

4/30/13
Date



Derek Earle, Acting Executive Director, Public Works

(480) 312-2776, dearle@scottsdaleaz.gov

4.30.13
Date

ATTACHMENTS

1. Resolution 9405

RESOLUTION NO 9405

A RESOLUTION OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, DEEMING THE PROPOSED EPCOR AND CHAPARRAL CITY WATER COMPANY FRANCHISE AGREEMENT 2013-062-COS BENEFICIAL TO THE CITY; SUBMITTING THE QUESTION AS TO WHETHER OR NOT THE FRANCHISE SHALL BE GRANTED TO A VOTE OF THE QUALIFIED ELECTORS OF THE CITY AT THE SPECIAL ELECTION TO BE HELD ON NOVEMBER 5, 2013; AND ESTIMATING RELATED ELECTION COSTS TO BE PAID BY EPCOR AND CHAPARRAL CITY WATER COMPANY.

WHEREAS:

EPCOR Water Arizona, Inc. and Chaparral City Water Company have jointly presented to the Mayor and City Council a proposed potable water delivery Franchise Agreement in accordance with ARS § 9-502(A), and said proposed Franchise Agreement has been filed among City's records;

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Scottsdale, Arizona, as follows:

Section 1. Deeming proposed Franchise Agreement beneficial.

The proposed Franchise Agreement with EPCOR Water Arizona Inc. and Chaparral City Water Company, attached hereto as "Exhibit A", is deemed and found to be beneficial to the City.

Section 2. Submittal to qualified electors and ballot language.

The Mayor and City Council have previously called a special election to be held on the 5th of November, 2013, which shall be used for the purpose of submitting to a vote of the qualified electors the question of whether the proposed Franchise Agreement with EPCOR Water Arizona Inc. and Chaparral City Water Company should be granted. Ballot language to be used for said election is attached hereto as "Exhibit B".

Section 3. Estimated Cost of Election, Publication.

Necessary costs and expenses for the election, including publication of the Franchise, have been estimated to be approximately \$90,000.00. EPCOR Water Arizona Inc. / Chaparral City Water Company have deposited that amount with the City Clerk.

PASSED AND ADOPTED by the Council of the City of Scottsdale this ____ day of _____, 2013.

ATTEST:

City of Scottsdale, an
Arizona Municipal Corporation

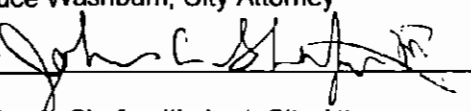
Carolyn Jagger, City Clerk

W. J. "Jim" Lane,
Mayor

APPROVED AS TO FORM:

Bruce Washburn, City Attorney

By



John C. Shafer, III, Asst. City Attorney

EXHIBIT “A”

Contract No. 2013-062-COS

**FRANCHISE AGREEMENT
BETWEEN
EPCOR WATER ARIZONA INC.,
CHAPARRAL CITY WATER COMPANY
AND
THE CITY OF SCOTTSDALE, ARIZONA**

1. Grant of Franchise. There is hereby granted to EPCOR Water Arizona Inc. and Chaparral City Water Company, each a corporation organized and existing under and by virtue of the laws of Arizona, and their respective successors and assigns (collectively, "Grantees" and, individually, a "Grantee"), 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 applicable Grantee's Franchised Area (as defined below) in the City of Scottsdale, Arizona ("City"), a potable water delivery system, together with certain appurtenances (including-but not limited to-transmission mains, distribution mains, service lines, fire hydrants, meters, and equipment for its own use) for the purpose of supplying potable water to City, its successors, the inhabitants thereof, and all individuals and entities within or beyond the limits thereof, for all purposes for which it is duly authorized by its Certificate of Convenience and Necessity ("Franchise"). For purposes of this Franchise, the "Franchised Area" with respect to a Grantee shall consist of those portions of the area within the then effective borders of City that are also within the boundaries of any then effective Certificate of Convenience and Necessity as granted by the Arizona Corporation Commission or its successor to that Grantee. All such transmission mains, distribution mains, and service lines shall be located underground unless otherwise approved by City. A Grantee shall not construct wells, well sites, storage, or pumping facilities in the public rights-of-way. Nothing herein shall be construed to permit a Grantee to maintain any portion of its potable water delivery system or appurtenances thereto in any manner which would 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 the applicable Grantee's repair or maintenance of those facilities. City acknowledges and agrees that all of Grantees' 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. Grantee's Compliance with Requirements; Plans Submitted for Approval; City Construction near Grantee's Facilities.
 - A. The quality of water treatment, transmission, and distribution services provided by each Grantee 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 Environmental Services Department.

- 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 a Grantee makes any installations in the public rights-of-way, that Grantee shall submit for approval any applicable permit applications and a map showing the location of such proposed installations to City. Only when time does not permit prior application for a permit and repairs to a Grantee's facilities are reasonably required, that Grantee 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, each Grantee shall submit to City's City Manager a map showing the true and correct location of all present installations of that Grantee within City's rights-of-way.
- C. If City undertakes, either directly or through a contractor, any construction project adjacent to or near a Grantee'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 that Grantee the temporary or permanent removal, relocation and barricading of equipment, and depressurization of that Grantee'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.

3. Construction and Relocation of Grantee's Facilities; Payments.

- 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 a Grantee'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. Each Grantee 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, each Grantee 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 a Grantee to relocate that Grantee's facilities that are located in private easements, the entire cost of relocating that Grantee'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 3B if, prior to City's acquisition of such right-of-way, either: (i) that Grantee 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) that Grantee did not in fact obtain such easement or right-of-way.

- C. The City reserves its prior superior rights to use the public right-of-way and City property, including the surface areas, for all public purposes. When the City uses its prior superior right to the public rights-of-way, or other City property, the Grantee shall move its property that is located in the public right-of-way or on other City property at its own cost, to such location as the City directs.
- D. City will bear the entire cost of relocating any of a Grantee'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. If City participates in the cost of relocating a Grantee's facilities for any reason, the cost of relocation to City shall not include any additional cost resulting from any upgrade or improvement of that Grantee's facilities as they existed prior to relocation. Notwithstanding the foregoing, if a Grantee requests, in connection with any such relocation by City, any upgrade or improvement of the affected Grantee's facilities, City will in good faith consider such request, subject in each case to that Grantee's agreement to reimburse City for the actual, additional costs incurred by City for the requested upgrade or improvement. City will deliver to the applicable Grantee documentation reasonably satisfactory to that Grantee to evidence the actual, additional cost of such upgrades and improvements.
- F. All underground abandoned lines shall continue to remain the property of the Grantee, unless the Grantee specifically acknowledges otherwise to the City Engineer and such is accepted by the City. Grantee shall remove, at Grantee's sole cost, abandoned lines at the request of City when required to facilitate construction of any municipal project or as City determines is reasonably necessary to protect public health and safety. Grantee may contract with City contractor for such removal. Prior to removal of any abandoned lines, Grantee shall notify City of its intent to remove abandoned lines and offer possession of said lines to City. Grantee shall identify the location of any known abandoned lines as they exist at the time this Franchise is granted through recognized industry means. Grantee shall further identify the location of any lines that become abandoned during the term of this Franchise in a like manner.
- G. Grantee shall pay the City for permit fees/costs and for pavement (cut surcharge) damages fees for the location (or relocation) of Grantee's facilities. Payment for

permit fees/costs (i.e. plan review, inspection, etc.) and pavement (cut surcharge) damage fees is separate and in addition to the Franchise Fees imposed in this Agreement.

H. Subject to the provisions of the foregoing paragraphs 3B, 3C, and 3D regarding the cost of relocation of a Grantee's facilities, that Grantee'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. Any 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. Indemnification/Insurance:

A. Each Grantee shall 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, that Grantee's performance or failure to perform the services for City required of that Grantee hereunder or in connection therewith and caused by negligent or intentional acts, errors, mistakes or omissions of that Grantee, its officers, employees, or others for whose acts that Grantee may be legally liable.

B. Each Grantee shall secure and maintain at all times during the term of this Franchise, insurance coverage, in the amounts stated below, 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 dollars (\$5,000,000) per occurrence (combined single limit), including bodily injury and property damage, and in an amount not less than five million 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 the applicable Grantee'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 that Grantee in the event that Grantee is found to be 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 a Grantee 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 the applicable Grantee with at least five business days' prior written notice and that Grantee shall be liable to City for all costs incurred by City for purchasing such insurance.

- C. Each Grantee shall submit to City–Attention: Maria Muiser, 7447 E. Indian School Rd., Ste. 205, Scottsdale, Arizona, 85251–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. 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.
- D. Policy Limit Escalation and Purchase of New Insurance Coverage. City may elect, as of each five (5) year anniversary of this Franchise and by 180 days prior written notice to Grantee, to increase the amount of any existing insurance coverage to account for inflation, changes in risk, or any other factor that City reasonably determines to affect the prudent amount of insurance to be provided. Such increases to any category of existing coverage shall not exceed fifty percent (50%) of the then applicable limits at any five (5) year anniversary of this Franchise.

During the term of this Franchise, it may become commercially reasonable for Grantee to proactively increase its coverage levels or purchase new insurance coverage. The five (5) year anniversary is not a limitation on Grantee's rights to determine the level and types of insurance it deems proper to purchase at any time. During the term of this Franchise, City may request Grantee to add new insurance coverage that it views as commercially reasonable. When so requested by City to add new coverage, Grantee shall promptly request its insurance carrier or broker to opine in writing as to the reasonableness of City's request and availability of the requested new insurance coverage. If such carrier or broker opines that City's request is reasonable and the requested new insurance coverage is available, the parties shall mutually determine a timeline for such purchase to occur.

- E. City of Scottsdale, its agents, representatives, officers, directors, officials and employees must be named an Additional Insured under the following policies:
 - i. Commercial General Liability

- ii. Auto Liability
- iii. Excess Liability-Follow Form to underlying insurance as required.

5. Restoration of Rights-of-Way. Subject to the provisions of the foregoing paragraphs 3B, 3C and 3D regarding the cost of relocation of a Grantee's facilities, (i) whenever a Grantee 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 that Grantee 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) that Grantee 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.

6. Franchise Fee.

A. Each Grantee agrees to pay City in consideration of the grant of this Franchise a sum equal to two percent (2%) of the gross receipts of that Grantee from the sale by it of potable drinking water within the Franchised Area, as shown by that Grantee's billing records (the "Franchise Fee"). The Franchise Fee shall be due and payable quarterly. For the purpose of verifying the amounts payable hereunder, the books and records of each Grantee shall be subject to inspection by duly authorized officers or representatives of City at reasonable times, 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, the applicable Grantee shall reimburse City for the costs of such inspection.

B. 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.

7. Term.

A. The Effective Date of this Franchise shall be January 1, 2014 . This Franchise shall continue and exist for a period of twenty-five (25) years from the Effective Date.

B. The rights, privileges, and franchises hereby granted shall continue and exist for a period of twenty-five (25) years following the Effective Date; provided, however, that any party may reopen any or all sections for further review and possible amendment of this Franchise, on its fifth (5th) or twelfth (12th) anniversary, by giving written notice of its intention to do so not less than one (1) year before the fifth (5th) or twelfth (12th) anniversary. Any such amendment will be subject to any applicable requirements for approval by the qualified electors of City.

- C. Unless terminated earlier by written agreement of the parties, this Franchise will expire on the twenty-fifth (25th) anniversary of the Effective Date. Each Grantee shall comply with all federal, state, and local laws and ordinances, including those that may come into being, in its exercise of Franchise rights.

8. Default; Dispute Resolution

- A. Failure or unreasonable delay by any party to perform any term or 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, each non-defaulting party shall be entitled to all remedies at both law and in equity, including, without limitation, specific performance. For purposes of this paragraph 8A, a default by one Grantee shall not constitute a default by all Grantees.
- B. To further the cooperation of the parties in implementing this Franchise, City and each Grantee shall individually designate and appoint a representative to act as a liason between City and its various departments and the applicable Grantee. The initial representative for City (the "City Representative") shall be the Asset Management Coordinator and the initial representative for each Grantee shall be the Vice President-Operations (the "Grantee Representative"). The representatives shall be available at all reasonable times to discuss and review the performance of the Parties and the development of property.
9. 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.
10. Transfer of Franchise. The right, privilege, and franchise hereby granted may be transferred in whole or in part by a Grantee, its successors and assigns, to any public service corporation approved by the Arizona Corporation Commission to provide public utility water service within that Grantee's Franchise Area and upon payment of an appropriate transfer fee to City, as calculated solely by 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 consent of both the City Council and the Arizona Corporation 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.

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

- A. Title to all water utility facilities wherever situated on public grounds or in easements for public utility purposes and installed by a Grantee or its agents or contractors shall be and remain in that Grantee, its successors, or assigns.
- B. Nothing contained in this Franchise shall be construed as preventing, diminishing, or restricting a Grantee 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 the applicable Grantee. City shall have the right to deny a Grantee the uses of restricted easements limited to sewer or drainage or easements not wide enough to accommodate that Grantee's water line as determined by City
- C. City reserves the right and power to purchase and condemn the plant and distribution facilities of a Grantee within the corporate limits or any additions thereto, as provided by law. Each Grantee likewise reserves all of its rights and remedies provided by law in any such circumstance.
- D. In the event of a purchase of a Grantee or under the exercise of eminent domain, this Franchise shall be construed to have no value for purposes of establishing value of the affected Grantee.

12. Applicable Laws and Regulations. Each Grantee is responsible to adhere to all applicable Federal and State laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over that Grantee'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.

13. Conflict of Interest. This Franchise shall be subject to cancellation pursuant to the provisions of ARIZ. REV. STAT. §38-511 in the event of a conflict of interest.

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

To City: The City of Scottsdale, Arizona
7447 E. Indian School Rd., Ste. 205
Scottsdale , AZ 85251
Attn: Maria Muiser

To Grantee EPCOR Water Arizona Inc.:
EPCOR Water Arizona Inc..

2344 W. Pinnacle Peak Road #300
Phoenix, AZ 85027
Attn: Vice President Operations

To Grantee Chaparral City Water Company:

Chaparral City Water Company
2344 W. Pinnacle Peak Road #300
Phoenix, AZ 85027
Attn: Vice President Operations

15. 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.
16. Voter Approval. This Franchise Agreement is subject to the approval of the qualified electors of City and does not become effective unless so approved.
17. Election Costs. Pursuant to City's Charter, the estimated expense of publication and election as determined by the City Council (\$90,000.00) has been deposited with the City Clerk.
18. 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.

IN WITNESS WHEREOF, the parties hereto have executed this Franchise as of the ____ day of _____, 20__.

EPCOR WATER ARIZONA INC.,
an Arizona corporation

THE CITY OF SCOTTSDALE,
an Arizona municipal corporation

By: _____

By: _____

Title: _____

W. J. "Jim" Lane, Mayor

CHAPARRAL CITY WATER COMPANY,
an Arizona Corporation

By: _____

Title: _____

ATTEST:

Carolyn Jagger, City Clerk

APPROVED AS TO FORM:

Bruce Washburn, City Attorney

EXHIBIT “B”

Resolution No. 9405

EXHIBIT B

OFFICIAL BALLOT
POTABLE WATER FRANCHISE
CITY OF SCOTTSDALE, ARIZONA
ELECTION DATE: NOVEMBER 5, 2013

QUESTION 5 (Full Text)
PROPOSED POTABLE WATER UTILITY DISTRIBUTION FRANCHISE

Shall a Franchise be granted to EPCOR Water Arizona Inc. and Chaparral City Water Company to maintain and operate a potable water distribution system in the City of Scottsdale and future additions thereto, in accordance with the Agreement submitted by the Mayor and City Council of the City of Scottsdale, Arizona, to the qualified electors of said City?

A "for the franchise" vote shall have the effect of granting a Franchise to EPCOR Water Arizona Inc. and Chaparral City Water Company.

An "against the franchise" vote shall have the effect of denying the Franchise to EPCOR Water Arizona Inc. and Chaparral City Water Company.

FOR THE FRANCHISE
AGAINST THE FRANCHISE

QUESTION 5 (Tag line)
PROPOSED POTABLE WATER UTILITY DISTRIBUTION FRANCHISE

Shall the Proposed Franchise Agreement be granted to EPCOR Water Arizona Inc. and Chaparral City Water Company to maintain and operate a potable water distribution system in the City of Scottsdale?

FOR THE FRANCHISE
AGAINST THE FRANCHISE



EPCOR Water Franchise Agreement

City Council
May 14, 2013



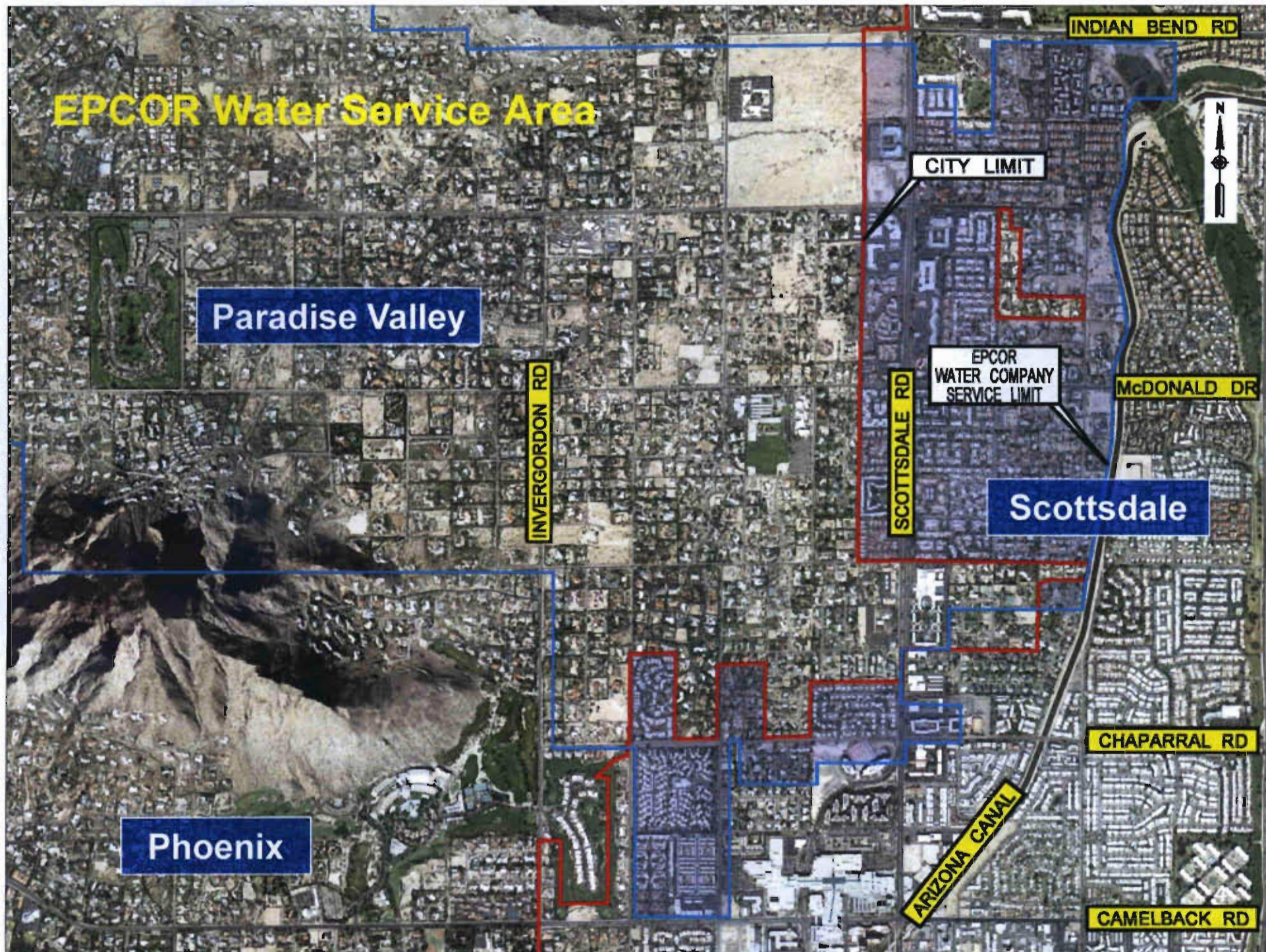
Franchise Requirements

- A franchise agreement allows a utility company to use the city's rights of way for their facilities and equipment in order to provide service to businesses and citizens.
- The agreement specifies the fee that the city may collect for this privilege.
- The agreement specifies the responsibilities of each party in the relocation of the facilities of the company, and who pays.
- State law and the Scottsdale City Charter require a public utility franchise agreement to be approved by the voters.



Franchise History

- EPCOR and its predecessors have been providing water to portions of Scottsdale since the 1950's.
- EPCOR also holds franchise agreements in Buckeye, Peoria, Lake Havasu City, Edmonton (Alberta), among others.
- No franchise agreement has previously been approved with Scottsdale.
- Other utility franchise agreements recently approved:
 - Southwest Gas – March, 2012
 - APS – November, 2004



EPCOR Water Service Area

Paradise Valley

INVERGORDON RD

CITY LIMIT

**EPCOR
WATER COMPANY
SERVICE LIMIT**

INDIAN BEND RD

McDONALD DR

Scottsdale

Phoenix

SCOTTSDALE RD

CHAPARRAL RD

ARIZONA CANAL

CAMELBACK RD

Chaparral City Service Area

CHAPARRAL CITY
WATER COMPANY
SERVICE LIMIT

CITY LIMIT

N 136TH ST

Scottsdale

E VIA LINDA

E SHEA BL

PALISADES BL

Fountain Hills





Elements of Agreement

- EPCOR shall have the right to locate and operate their potable water transmission and distribution lines and physical plant within city rights of way.
- EPCOR shall relocate its facilities in the right of way when requested by the city to accommodate capital improvement projects.
- EPCOR shall pay a franchise fee of 2% of gross revenues resulting from sales of water service within the limits of the city.
- Risk and insurance issues are addressed by agreement.
- The term of the agreement shall be 25 years from the effective date.



Election Information

- Resolution to call November election approved by Council on April 9th
- EPCOR will share the cost of the election based on the number of items to be placed on the ballot – amount of \$90,000 to be deposited with the city.
- Special Election to be held Tuesday, November 5, 2013, if agreement approved by Council.
- New agreement effective January 1, 2014 if approved by voters.



Requested Action

Adopt Resolution 9405:

- Declaring the proposed EPCOR Water Franchise Agreement 2013-062-COS beneficial to the City
- Submitting the question to the voters at the November 5, 2013 special election and approving the ballot language
- Estimating the cost of the election to be paid by Southwest Gas Corporation at \$90,000 and authorizing publication of agreement.

EPCOR Water Franchise Agreement

City Council
May 14, 2013

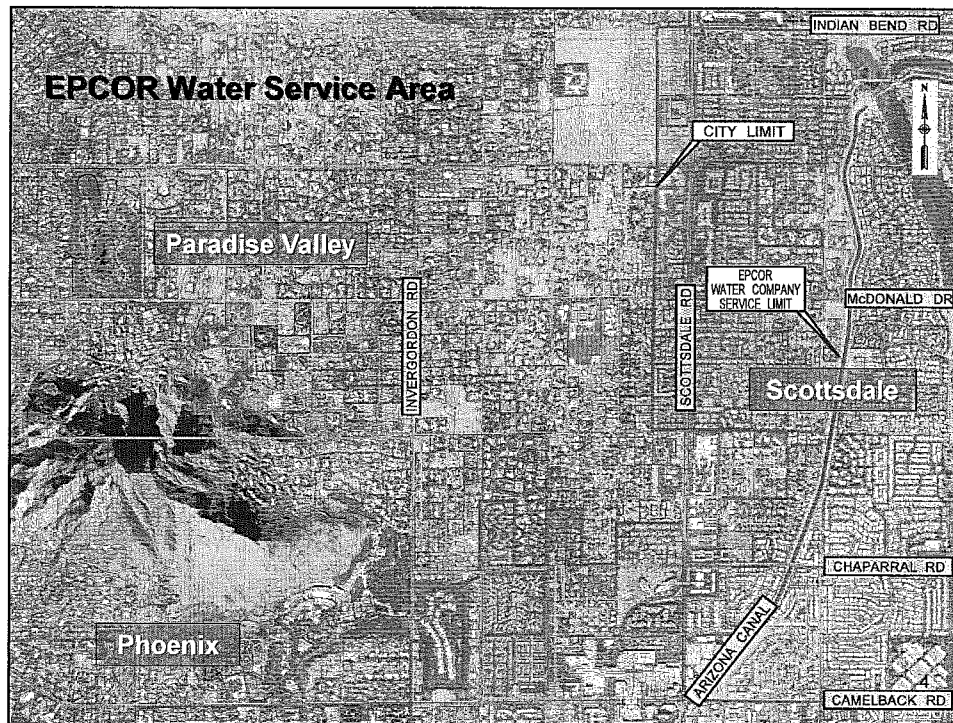
Franchise Requirements

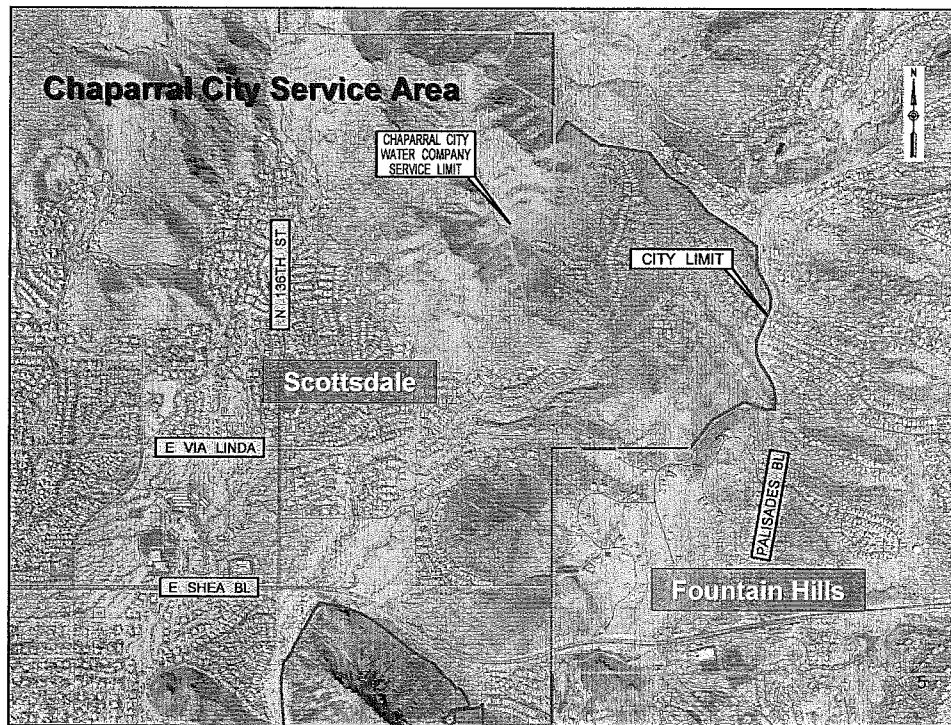
- A franchise agreement allows a utility company to use the city's rights of way for their facilities and equipment in order to provide service to businesses and citizens.
- The agreement specifies the fee that the city may collect for this privilege.
- The agreement specifies the responsibilities of each party in the relocation of the facilities of the company, and who pays.
- State law and the Scottsdale City Charter require a public utility franchise agreement to be approved by the voters.

Franchise History

- EPCOR and its predecessors have been providing water to portions of Scottsdale since the 1950's.
- EPCOR also holds franchise agreements in Buckeye, Peoria, Lake Havasu City, Edmonton (Alberta), among others.
- No franchise agreement has previously been approved with Scottsdale.
- Other utility franchise agreements recently approved:
 - Southwest Gas – March, 2012
 - APS – November, 2004

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