

**AGREEMENT TO TERMINATE WATER SERVICE AND
PROVIDEWATER CONSUMPTION
INFORMATION OF SHARED CUSTOMERS**

This AGREEMENT is made this 23 day of October, 2015, by and between EPCOR Water Arizona Inc., an Arizona corporation ("EWAZ"), and City of Surprise, an Arizona municipal corporation duly organized and existing under the laws of the State of Arizona ("the City").

RECITALS:

- A. EWAZ provides water utility service under a Certificate of Convenience and Necessity ("CC&N") issued by the Arizona Corporation Commission (the "Commission"), and the City provides wastewater utility service to certain of those EWAZ's customers ("Shared Customers");
- B. The City has requested that EWAZ provide information to the City regarding customer water consumption in order to assist the City in billing for wastewater utility services to its customers described above; and
- C. EWAZ and the City desire to enter into a written agreement specifically setting forth the duties, obligations, responsibilities, and liabilities of each party to the other.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, EWAZ and the City, in each case intending to be legally bound by this Agreement, do hereby agree as follows:

1. Customer Information. EWAZ agrees to provide water consumption information and listing of new and closed accounts for the Shared Customers to the City for the City's use in billing for wastewater services. In order for EWAZ to provide this service, the City will submit to EWAZ a map or legal description of its wastewater service area, and addresses of the Shared Customers. The City agrees that it is only authorized to use such water consumption information for purposes of wastewater services billing and is not authorized to

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disclose such information to any other party except as may be required by law. Such information will be provided by EWAZ to the City on a monthly basis by the fifth business day of each calendar month, or other mutually agreed upon time interval, as such information becomes available to EWAZ in the ordinary course of its business. The format of the data shall be as mutually agreed to between the City and EWAZ, but should include, at least, EWAZ account number, customer name, account, service address, account mailing address, city, state, postal code, monthly water consumption, premise type, and phone number.

2. Fees. The City will pay EWAZ an administrative fee of \$0.50 per customer per report for information provided to the City under the terms outlined in Paragraph 1 above. EWAZ will account for its out-of-pocket costs to obtain Commission approval of this Agreement, including the costs for the required notice and tariff and any outside counsel expenses incurred, and EWAZ will invoice the City for the total of such out-of-pocket costs, and the City shall pay such billed amount within 30 days after its receipt of EWAZ's invoice.

3. Water Service Termination. The City, by electronic or written notice to EWAZ (a "Termination Request"), may request that EWAZ terminate water service to a Shared Customer who is then liable to the City for overdue sewer charges ("Delinquent Shared Customer").

3.1 Each Termination Request will constitute the City's representation and warranty to EWAZ that the applicable Shared Customer is then a Delinquent Shared Customer and has been provided the notice contemplated in subparagraph 3.2.A, below. Upon EWAZ's receipt of a Termination Request, EWAZ will promptly commence its service termination process with respect to that Shared Customer in compliance with the terms of this Agreement and in compliance with any requirements imposed upon EWAZ by the Commission. The City will perform its own collection process for overdue sewer utility service charges, and will not request termination of water utility service by EWAZ unless and until the City could have terminated water service to that Delinquent Shared Customer if that Delinquent Shared Customer was a water service customer of the City. Termination Requests from the City will be processed by EWAZ each week, and the City

may cancel any Termination Request without charge by providing electronic or written notice to that effect to EWAZ prior to noon on the date EWAZ's water utility service is scheduled to be shut off. For each request made after that time, the City will be charged a Disconnect/Reconnect Cancellation Fee (as defined in Exhibit A).

3.2 In order for EWAZ to shut off water service to a Delinquent Shared Customer, the City will:

A. notify the applicable Delinquent Shared Customer, in writing ~~or~~ and by posting notice in the form set forth in Exhibit B at the premise where the applicable Delinquent Shared Customer receives water service from EWAZ and sewer utility service from the City (the "Shut-off Premises"), that water service by EWAZ will be terminated ten (10) days after the date of the delinquent notice as a result of that Delinquent Shared Customer's delinquent sewer bill with the City; and

B. notify EWAZ by Termination Request, which shall be delivered by e-mail, to terminate the water service of the applicable Delinquent Shared Customer in accordance with procedures in paragraph 3.1.

3.3 The City will pay a Disconnect/Reconnect Fee in accordance with Exhibit A for each Termination Request delivered to EWAZ, such Disconnect Fee will be consideration for EWAZ taking the necessary steps to terminate its water utility service to the applicable Delinquent Shared Customer, unless the City withdraws its Termination Request prior to actual disconnection in accordance with paragraph 3.1, above. Following EWAZ's receipt of a Termination Notice, EWAZ shall:

A. shut off the water source to the Shut-off Premises in accordance with EWAZ's customer shut-off procedures;

B. notify the City by e-mail of the date water service was shut off to the Shut-off Premises;

C. keep a separate record detailing all of the Termination Requests under this Agreement;

and

D. water utility service to the Shut-off Premises will resume in accordance with EWAZ's turn-on procedures after being notified by the City, in writing delivered by e-mail, that the delinquent sewer bill has been paid or that payment arrangements have been made.

E. The City expressly acknowledges and agrees that EWAZ shall have no other obligations or responsibilities under this Agreement with respect to the shut off of water utility service to Delinquent Shared Customers other than those expressly set forth above in this paragraph 3.3.

3.4 In addition to payment of the applicable Disconnect Fees, the City will pay EWAZ a Monthly Lost Revenue Fee in accordance with Exhibit A for each Delinquent Shared Customer whose water utility service is terminated under this Agreement for all or a portion of the applicable month. The Monthly Lost Revenue Fee is intended to compensate EWAZ for the loss of revenue that EWAZ would have received from that Delinquent Shared Customer if the water utility service had not been terminated. EWAZ may, from time to time by written notice to the City, revise the Monthly Lost Revenue Fee as appropriate to reflect any changes in EWAZ's water rates approved by the Commission. The Monthly Lost Revenue Fee shall be prorated for any period less than 30 days. EWAZ will invoice the City for all Monthly Lost Revenue Fees under this Agreement on a monthly basis, and the City shall process invoices and pay EWAZ promptly in accordance with the City's customary business practices without unreasonable delay. The City will not pay interest on unpaid invoices.

4. Indemnification. The City will indemnify, defend, and hold harmless EWAZ from and against all claims, losses, liability, costs, or expenses, including reasonable attorneys' fees (collectively, "claims"), arising out of the City's use of the customer consumption information provided to the City by EWAZ hereunder, except where the information provided is erroneous.

5. Term. The term of this Agreement will be for one year. Unless and until either party serves upon the other party a written notice of non-renewal not less than ninety days prior to expiration, this Agreement will

automatically renew for successive one year terms. Nevertheless, either party may terminate this Agreement with or without cause upon service of a notice to terminate not less than ninety days prior to termination. This Agreement, with the exception of Section 3 which will be effective immediately upon execution of both parties, will be in full force and effect only upon execution by the parties hereto and the Commission's approval of this Agreement and grant of a variance from the restrictions under A.A.C. R14-2-410.A.2; and will continue until expired or terminated in accordance with the provisions herein set forth.

6. Commission Regulation. The City acknowledges that:

- (i) EWAZ is a public service corporation as such term is defined in the Arizona Constitution and, as such, the terms of this Agreement must be subject to any applicable Commission rules, regulations, and orders, including, but not limited to, A.A.C. R14-2-410.A.2 and Decision No. 65453 (Dec. 12, 2002) (the "Decision");
- (ii) pursuant to A.A.C. R14-2-410.A.2, EWAZ is precluded from disconnecting its water utility service as the result of the failure of the customer to pay for services or equipment which are not regulated by the Commission;
- (iii) the City's sewer utility services are not regulated by the Commission, therefore requiring EWAZ to obtain from the Commission a variance from the restrictions under A.A.C. R14-2-410.A.2 in order to proceed as contemplated in this Agreement;
- (iv) pursuant to the Decision, EWAZ is required to submit notice to the Commission at least 180 days in advance of any sharing of customer information, including billing information, and the Decision further requires EWAZ to file a tariff with the Commission setting forth appropriate customer notification procedures to inform customers of the information sharing arrangements; and

(v) upon the submission by EWAZ pursuant to the Decision, the Commission may stay effectiveness of any such tariff until such time as the Commission issues a written order approving any agreement to share customer information and therefore the parties further acknowledge that any such agreement will not be enforceable until such approval by the Commission is issued.

7. Limitations on Liability. Neither the City nor EWAZ will be liable for any loss or damage due to failure or delay in rendering any service or performing any obligation required under this Agreement resulting from any cause beyond the affected party's reasonable control including, but not limited to: acts of God, acts or omissions of civil or military authority; acts or omissions of contractors or suppliers; fires; floods; epidemics; quarantine restrictions; severe weather; strikes; embargoes; wars; political strife; riots; delays in transportation; or fuel, power, materials or labor shortages.

8. Notice. Any notice, written request, or communication given pursuant to the provisions of this Agreement will be deemed to be delivered on the date of mailing if mailed by certified or overnight mail addressed as follows:

If to the City: Attention: Customer Service Manager
 City of Surprise
 16000 N. Civic Center Plaza
 Surprise, AZ 85374

If to EWAZ: Attn: Manager, Customer Service
 EPCOR Water Arizona Inc,
 2355 W Pinnacle Peak Road
 Phoenix, AZ 85027

or to such other addresses as the parties will have specified by notice in writing in accordance with the terms of this paragraph.

9. No Waiver. The failure of either party to enforce the provisions of this Agreement at any time will not constitute a waiver of such provisions in any way or the right of the City or EWAZ at any time to avail

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themselves of such remedies as either may have for any breach or breaches of such provisions. The waiver of any specific provision or requirement of this Agreement will not constitute a waiver of any other provision or requirement. Any such waiver of any specific provision or requirement of this Agreement will be in writing signed by both parties.

10. Governing Law. This Agreement will be construed and enforced in accordance with the laws of the State of Arizona, including, without limitation, the Commission's rules, regulations, and orders. Venue will be exclusively in the Superior Court of Maricopa County and each party hereby expressly waives any objection or challenge to venue in said Court.

11. Other Miscellaneous Provisions. This Agreement contains the entire agreement between parties hereto with respect to the transactions contemplated herein. This Agreement supersedes all previous written and verbal agreements on the subject of this Agreement, including without limitation that certain Water Service Termination Agreement, dated October 3, 2005, by and between Arizona-American Water Company (n/k/a EPCOR Water Arizona Inc.) and the City. This Agreement will not be amended or modified except in writing signed by all of the parties hereto. This Agreement will be binding upon and inure to the benefit of all parties hereto and their respective successors and assigns. This Agreement shall be subject to cancellation pursuant to the provisions of ARIZ. REV. STAT. §38-511 in the event on a conflict of interest. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition of unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction. This Agreement may be executed to one or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.

ORIGINAL

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto on the date first written above.

"THE CITY"

EWAZ

CITY OF SURPRISE

EPCOR WATER ARIZONA INC.

By: [Signature]
Name: BOB WING
Title: CITY MANAGER

By: [Signature]
Name: Sharon Bradford
Title: VP of Corporate Services

Attest:

[Signature]
City Clerk

Approved as to Form:

[Signature]
City Attorney (Interim)
Robert Wingo

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EXHIBIT A

**Disconnect/Reconnect Fee
Disconnect Cancellation Fee
And
Monthly Lost Revenue Fee**

Disconnect/Reconnect Fee	
Normal Hours, same day service (8 a.m. – 3 p.m.)	\$113.66
After Hours, same day service (3 p.m. – 4 p.m.)	\$154.07
*Next Day Service (after 4 p.m.)	\$113.66
Monthly Lost Revenue Fee	\$46.96
Disconnect Cancellation Fee	\$30.00

*Notification received after 4 p.m. will be handled as "Next Day Service" and will be charged at the "Normal Hours" rate.

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ORIGINAL

EXHIBIT B

SEE FOLLOWING PAGES

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SURPRISE

ARIZONA

(Managed by  AMERICAN WATER)

IMPORTANT NOTICE

**YOUR SERVICE IS SCHEDULED FOR
DISCONNECTION**

DATE: _____

ADDRESS: _____

Your sewer utility bill from the City of Surprise is past due. Unless the delinquent amount due is received by _____, EPCOR Water will be instructed to disconnect your water service without further notice.

DELINQUENT AMOUNT DUE

\$ _____

**Please see reverse side
for further details.**

To make a payment or to report a payment made on your account, please call American Water Customer Service at:

1-888-300-3569



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ATTENTION:

Only an authorized representative is allowed to restore water service.

Please call 1-888-300-3569 to have service restored.

If payment is made after the City of Surprise instructs EPCOR Water to disconnect your water service, you will be required to reimburse the City of Surprise for administrative expenses relating to the disconnection of service order, whether or not your water service is actually disconnected.

In addition, if your water service is disconnected, you will be required to pay reconnect fees to EPCOR Water to re-establish your water service.

Visit us on the Web:
For online account information and self-service, please visit My H2O online at:
www.amwater.com

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