

FRANCHISE AGREEMENT

Proposed By

ARIZONA PUBLIC SERVICE COMPANY

To The

CAMP VERDE, ARIZONA, COMMON COUNCIL

Section 1. - Grant of Franchise:

There is hereby granted to Arizona Public Service Company, a corporation organized and existing under and by virtue of the laws of the State of Arizona (herein called "Grantee"), its successors and assigns, the right, privilege, and franchise to construct, maintain, and operate upon, over, along, across, and under the present and future public rights-of-way, (including bridges), in the Town of Camp Verde, Arizona (herein called "Municipality"), electric power lines, together with all necessary or desirable appurtenances (including but not limited to electric substations, poles, towers, wires, cables, transmission lines, transformers, switches and signals and telephone and telegraph wires for its own use) (herein called the "Franchise"), for the purpose of supplying electric energy to the Municipality, its successors, the inhabitants thereof, and all individuals and entities either within or beyond the limits thereof, for all purposes.

Any street lighting service furnished by the Grantee to the Municipality or to any street lighting improvement district within the Municipality shall be the subject of a separate agreement and shall not be governed by the provisions of this Franchise.

Section 2. - Grantee's Compliance With Municipality Practice; Plans Submitted for Approval; Municipality Construction Near Grantee's Facilities:

All construction under this Franchise shall be performed in accordance with established practices of the Municipality with respect to such public rights-of-way. Before Grantee makes any installations in the public rights-of-way, Grantee shall submit for approval a map showing the location of such proposed installations to the Municipality's Director of Public Works or Council.

If the Municipality undertakes either directly or through a contractor any construction project adjacent to or near the Grantee's facilities operated pursuant to this Franchise, the Municipality shall include in all such construction specifications, bids, and contracts, a requirement that, as part of the cost of the project, the contractor or his designee obtain from the Grantee the temporary removal, barricading or de-energization of the Grantee's lines or equipment, the location of which may create an unsafe condition in view of the equipment to be utilized or the methods of construction to be followed by the contractor.

Section 3. - Construction and Relocation of Grantee's Facilities; Payment:

The lines or related 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 uses over, under or through the public rights-of-way. Those phases of

construction of Grantee's facilities relating to traffic control, backfilling, compaction and paving, as well as the location or relocation of lines and related facilities herein provided for shall be subject to regulation by the Council of the Municipality. The Grantee shall keep accurate records of the location of all facilities in the public right-of-way and furnish them to the Municipality upon request. Upon completion of new or relocation construction of underground facilities in the public right-of-way, the Grantee shall provide the Director of Public Works or Council 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.

A. If the Municipality requires Grantee to relocate Grantee's facilities which are located in private easements or rights-of-way obtained by Grantee prior to Municipality's acquisition of the public right-of-way from which the facilities must be relocated, the entire cost of relocating Grantee's facilities (including the cost of purchasing a new private easement or right-of-way, if necessary) shall be borne by the Municipality. The Municipality shall also bear the entire cost of all subsequent relocations of the relocated facilities required by the Municipality, until such time as the Municipality condemns or otherwise purchases Grantee's private easement or right-of-way.

B. Except as covered in Paragraph A of this Section, Grantee shall bear the entire cost of relocating its facilities located with public rights-of-way, the relocation of which is necessary for Municipality's

carrying out its Governmental functions. Governmental functions are those duties imposed by the State on Municipality's, where the duties involved a general public benefit, not in the nature of a corporate or business undertaking for the corporate benefit and interest of Municipality. Government functions include, but are not limited to the following:

- (1) Any and all improvement to Municipality streets, alleys and avenues;
- (2) Establishing and maintaining sanitary sewers, storm drains and related facilities;
- (3) Establishing and maintaining Municipality parks, parkings, parkways, pedestrian malls, or grass, shrubs, trees and other vegetation for the purposes of landscaping any street or public property;
- (4) Providing fire protection;
- (5) Collection and disposal of garbage.

C. Municipality shall bear the entire cost of relocating Grantee's facilities located within public rights-of-way, a relocation of which is necessary for Municipality's carrying out its proprietary functions. All functions of Municipality, which are not governmental, are proprietary.

If the water utility company is owned by Municipality, the installation of pipe and other facilities to serve domestic water shall be considered both a governmental and proprietary function. In this case, the actual cost of relocating Grantee's facilities shall be

equally shared by Grantee and Municipality. However, if the water utility company is privately owned, neither Grantee nor Municipality shall bear the cost of relocating Grantee's facilities.

D. Where the Municipality's facilities or other facilities occupying a right-of-way under authority of a Municipality permit or license are already located in the right-of-way and a conflict between the Grantee's potential facilities and the existing facilities can only be resolved expeditiously as determined by the Director of Public Works by relocating the existing Municipality or permittee facilities, the Grantee shall bear the entire cost of relocating the existing facilities, irrespective of the function they served.

E. If the Municipality participates in the cost of relocating the Grantee's facilities for any reason, the cost of relocation to the Municipality shall not include any upgrade or improvement of Grantee's facilities as they existed prior to relocation.

F. The Municipality will not exercise its right to require Grantee's facilities to be relocated in an unreasonable or arbitrary manner, or to avoid its obligation under Section 2. The Municipality will consult with the Grantee in the planting of trees in the public rights-of-way where there are existing overhead power lines. The Grantee and the Municipality may agree to cooperate on the location and the relocation of other facilities in the public right-of-way.

G. The Grantee shall have the authority to trim trees hanging upon and over public rights-of-way of the Municipality so as to prevent the branches of such trees coming into contact with the wires and cables of the Grantee, all trimming is to be done at Grantee's expense.

Section 4. - Indemnification:

The Municipality shall indemnify and hold the Grantee harmless from any and all claims, costs, losses, or expenses incurred by the Grantee as a result of the failure of the Municipality to comply with the requirements of Section 2. Except as provided in the preceding sentence, the Grantee shall save the Municipality harmless from any expenses and losses incurred as a result of injury or damage to third persons occasioned by the exercise of this Franchise by the grantee.

Section 5. - Restoration of Rights-of-Way:

Whenever the Grantee shall cause any opening or alteration whatever to be made for any purpose in any public right-of-way the work shall be completed with due diligence within a reasonable prompt time, and the Grantee shall, upon completion of such work, restore the property disturbed to as good condition as it was prior to such opening or alteration.

Section 6. - Fees:

Grantee agrees to pay Municipality in consideration of the grant of this Franchise a sum equal to two percent (2%) of the gross receipts of Grantee from sale by it of electric energy at retail for residential and commercial purposes, as determined by Grantee's revenue classifications as most recently revised prior to the date hereof, within the present and any future corporate limits of Municipality, as shown by Grantee's billing records (the "Franchise Fee"). This Franchise Fee shall be due and payable quarterly and shall be in lieu of all fees or charges for permits or licenses issued for the construction of Grantee's facilities hereunder or for inspections thereof. For the purpose

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

Grantee may deduct from the Franchise Fee any tax or license paid by it or levied by Municipality exclusively upon utilities, up to the amount payable under the terms of this section, unless Municipality's tax ordinances authorize the utility tax to be offset by the amount of any franchise fees paid pursuant to a franchise agreement, in which event the entire 2% Franchise Fee shall be paid and the utility tax offset thereby.

The amount payable under the Franchise Fee shall not be reduced by reason of the payment of any general and valorem taxes, assessments for special improvements such as undergrounding overhead electric lines, general sales or transaction privilege license taxes, or any similar general levy measured by Grantee's receipts or sales within Municipality, provided the amount of such sales tax or similar levy may be lawfully and specifically added to Grantee's customer's bills.

Notwithstanding any provision contained herein to the contrary, the total amount of taxes, levies, assessments, and Franchise Fees paid by Grantee shall not exceed 5% of the gross receipts of Grantee from sale by it of electric energy at retail for residential and commercial purposes within the corporate limits of Municipality.

Section 7. - Additional Fees:

Notwithstanding any provision contained herein to the contrary, the Grantee shall, in addition to the payment provided in Section 6, pay any occupation tax established by the Municipality, provided the

tax is a flat fee per year and that the annual amount of such fee does not exceed the amount of similar fees paid by any other business operated within the Municipality.

Section 8. - Term:

This franchise shall continue and exist for a period of twenty-five (25) years from ~~NOVEMBER 25,~~ 1987, provided, however, that either party may terminate this Franchise on its tenth anniversary by giving written notice of its intentions to do so not less than one (1) year before the date of termination. If such notice is given for the purpose of negotiating a new franchise and such negotiation is successful, the party giving the notice of termination shall be responsible for the costs of the resulting franchise election.

This Franchise shall be void and of no effect if written acceptance thereof by the Grantee is not filed in the office of the Clerk of the Municipality within sixty (60) days after the Municipality's verification of the franchise election results.

Section 9. - Franchise; Non-Exclusive:

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

Section 10. - Conflicting Ordinances:

All ordinances and parts of ordinances in conflict with the provisions hereof, to the extent applicable to a franchised electric public service corporation, are hereby repealed.

Section 11. - Independent Provisions:

If any section, paragraph, clause, phrase or provision of this Franchise, other than Section 6, shall be adjudged invalid or unconstitutional, the same shall not affect the validity of this Franchise as a whole or any part of the provisions hereof other than the part so adjudged invalid or unconstitutional. If Section 6 shall be adjudged invalid or unconstitutional in whole or in part by a final judgement, this Franchise shall immediately terminate and shall be of no further force or effect.

Section 12. - Condemnation; Right Reserved by Municipality:

The Municipality reserves the right and power to purchase and condemn the plant and distribution facilities of the Grantee within the corporate limits or any additions thereto, as provided by law.

Section 13. - Municipality Use of Facility:

In consideration of this Franchise and the rights granted hereby, the Municipality shall have the right to place, maintain, and operate on the poles of the Grantee, its successors and assigns, erected and maintained upon and along the public rights-of-way any and all wires, brackets and appurtenances (other than steps or climbing devices) which the Municipality may install and/or own during the term and period of this Franchise, for its municipal fire alarm and police telephone or other municipal communication services utilized for a governmental function, free of any charges for the use of the Grantee's poles; provided however, all such systems, the installation and maintenance

thereof, shall comply with the applicable requirements of the Occupational Safety and Health Act and the National Electric Safety Code, as amended, and only after written notice to the Grantee; provided, however, that the Grantee shall assume no liability nor be put to any additional expense in connection therewith, and provided, further, that the Municipality's use thereof shall be in such manner as not to interfere with the Grantee's use of its facilities.

Section 14. - Expiration:

The Municipality and Grantee hereby expressly agree that the following provision shall survive the termination or expiration of this Franchise:

Upon the termination or expiration of the Franchise, if the Grantee shall not have acquired and accepted an extension or renewal hereof, it may remove its facilities and system within the Municipality or at its option, may continue operating its facilities and system within the Municipality, but it shall be required to obtain proper permits each time it makes additional extensions upon, over, along, across, and under the public right-of-way within the Municipality unless or until such time as a new franchise is obtained or the system and facilities are removed or are acquired by the Municipality through the exercise of its power of eminent domain.