

FRANCHISE AGREEMENT

BETWEEN

ARIZONA PUBLIC SERVICE COMPANY

AND

TOWN OF CAMP VERDE, ARIZONA

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, a franchise (herein called the "Franchise") to construct, maintain and operate its electrical system, as defined herein, upon, over, along, across and under the present and future public rights-of-way. These rights-of-way include but are not limited to streets, alleys, ways and highways in the Town of Camp Verde, Arizona (herein called "Town"). Grantee's system includes electric power lines, together with all necessary or desirable appurtenances, including, but not limited to, poles, towers, wires, cables, conduits, transmission lines, transformers, switches and communication lines for its own use. This Franchise is for Grantee's use of Town's public rights-of-way to supply and deliver electric energy to Town, its successors, the inhabitants thereof, and all individuals and entities either within or beyond the limits thereof, for all purposes. This Franchise includes the right to use public rights of way for telecommunication services incidental to supplying electricity and for Grantee's own use. However, this Franchise does not include the right to use public rights-of-way for interstate telecommunications and/or interstate information services. Grantee agrees that if Grantee uses or leases to others, wires, cables or lines for any purpose other than supplying electric services as

permitted by the preceding sentence, before such use or lease, Grantee or Grantee's lessee must apply to the Town for and obtain a separate license.

Section 2. – Grantee's Compliance with Town Practice; Plans Submitted for Approval; Town Construction near Grantee's Facilities:

All construction under this Franchise shall be performed in accordance with established practices of Town with respect to such public rights-of-way. Such construction shall be completed within a reasonable time. Before Grantee makes any installations in the public rights-of-way, Grantee shall upon request or direction from Town obtain a construction permit and submit for approval a map showing the location of such proposed installations to Town's Public Works Director. Town and Grantee agree and understand that there may be instances when Grantee is required to make repairs that are of an emergency nature. Grantee shall notify Town prior to such repairs, to the extent practicable, and shall obtain the necessary permits in a reasonable time after notification, showing the work performed in the public rights-of-way.

If Town undertakes either directly or through a contractor any construction project adjacent to or near Grantee's facilities operated pursuant to this Franchise, Town shall include in all such construction specifications, bids, and contracts, a requirement that the contractor or his designee must comply with the overhead power line safety laws (A.R.S. § 40-360.41 *et. seq.* as amended).

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

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 uses over, under or through the public right-of-way. Furthermore, Grantee shall not install, construct, maintain or use its facilities in a manner that damages or interferes with any existing facilities of

another utility located in the public right-of-way and agrees to relocate its facilities at Grantee's cost, if necessary, to accommodate another facility relocation that has a prior rights interest in the public rights-of-way.

Grantee shall coordinate the installation, construction, use, operation and relocation of its facilities within Town as appropriate to enable Town to better plan, facilitate and protect public safety and convenience. Without limiting the foregoing, Grantee shall provide reasonable advance notice of work hereunder to Town. For a period of three (3) years following construction, repaving, or widening of any Town street, Grantee shall prior to cutting any Town street:

- A. Meet with the Town Engineer or Public Works Director before Grantee begins work which will disturb the surface of the Town streets, and set forth the proposed method of work and objective for the project to be accomplished by Grantee;
- B. Propose a work method for approval by the Town Engineer or Public Works Director that will not disturb or will minimize the disturbance of the surface of the Town streets; and,
- C. Adopt a construction method by mutual agreement with the Town Engineer or Public Works Director that least disturbs the surface of the Town streets while also considering Grantee's work objectives and cost.

Activities related to the construction of Grantee's facilities within the rights-of-way such as traffic control, backfilling, compaction and paving, and the location or relocation of lines and related facilities shall be subject to regulation by Town. Grantee shall keep accurate records of the location of all facilities in the public rights-of-way and furnish them to Town upon request.

Upon completion of new or relocation construction of underground facilities in the public rights-of-way, Grantee shall, upon request or direction from Town, provide the Town's Public Works Director with corrected drawings showing the location of the underground facilities in those cases where the actual location differs from the proposed location. Grantee shall cooperate with Town, to furnish upon Town's request, the actual location of such new or relocated facilities in the public rights-of-way in an electronic format. Such format shall conform to utility industry best-practice standards. If Grantee needs to change its electronic format to be compatible with Town's format, Grantee shall do so within a reasonable time.

- A. If Town requires Grantee to relocate Grantee's facilities which are located in private easements obtained by Grantee prior to Town's acquisition of said property from which the facilities must be relocated, the entire cost of relocating Grantee's facilities (including the cost of purchasing a new private easement if necessary) shall be borne by Town. Town shall also bear the entire cost of all subsequent relocations of the relocated facilities required by Town, until such time as Town condemns or purchases Grantee's private easement.
- B. Except as covered in Paragraph A above, Grantee shall bear the entire cost of relocating its facilities located on public rights-of-way, the relocation of which is necessary for Town's carrying out of its governmental functions. Notwithstanding the foregoing, if Grantee is requested by the Town to perform work of a temporary nature on a governmental project to relieve construction problems which could be relieved by other means, the cost of said temporary work will be borne by Town or Town's contractor working on the governmental project. Governmental functions are those duties imposed on Town, where the duties involve a general

public benefit, not in the nature of a business undertaking for the proprietary benefit and interest of Town. By way of example only, governmental functions include, but are not limited to, the following:

1. Any and all improvements to Town's public rights-of-way;
2. Establishing and maintaining domestic and municipal water systems, sanitary sewers, pipes, storm drains, and related facilities;
3. Establishing and maintaining municipal parks, parking spaces, parkways, pedestrian malls, or grass, shrubs, trees and other vegetation for the purpose of landscaping any street or public property;
4. Providing fire protection and other public safety functions; and
5. Collection and disposal of garbage and recyclables.
6. The relocation of Grantee's facilities necessary to carry out the exercise of the Town's police power for urban renewal.

C. Town will bear the entire cost of relocating any of Grantee's facilities, the relocation of which is necessitated by the construction of improvements by or on behalf of Town in furtherance of a proprietary function. All functions of Town which are not governmental are proprietary.

D. If during the course of construction of a governmental function project within the rights-of-way, Town determines that Grantee's facilities are in conflict with the proposed improvement, Town shall notify Grantee of the conflict and provide Grantee with the construction plans. If Town becomes aware of a potential delay of a governmental function project caused by the failure of Grantee to timely relocate its facilities, Town shall promptly notify Grantee of the potential delay.

- E. Grantee, shall bear the entire cost of relocating any facilities regardless of the function served, where Town has a prior superior right to use the public right-of-way, or where Town facilities or other facilities occupying public right-of-way under authority of a Town permit, license or franchise, which must be relocated are already located in the public right-of-way and the conflict between the Grantee's potential facilities and the existing facilities can only be resolved expeditiously as determined by Town, by the movement of the existing Town or permittee facilities.
- F. If Town participates in the cost of relocating Grantee's facilities for any reason, the cost of relocation to Town shall not include any upgrade or improvement of Grantee's facilities as they existed prior to relocation.
- G. Town 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 the Franchise. Town agrees to notify Grantee during the planning and design of Town's projects in rights-of-way that may require relocation of Grantee's facilities and to coordinate its construction plans and schedules with Grantee to determine the most cost-effective design to mitigate Grantee's cost to relocate its facilities.
- H. Town agrees it will not require Grantee to relocate its facilities located within the public rights-of-way without providing Grantee adequate space within the rights-of-way to relocate the facilities that must be moved.
- I. Notwithstanding any other provision in this Franchise (except Section 3A above which shall supersede this Section I,) from the effective date of this Franchise during the term of this Franchise, if Town requires a relocation for a governmental

function and said relocation is required within five (5) years of when the facilities are originally constructed or relocated, Town shall pay the total cost of relocating the facilities; if said relocation is required within six (6) to ten (10) years of when the facilities are constructed or relocated, Town will pay 50% of the cost of relocating said facilities.

- J. Town will not plant any tree that can normally grow to a height of more than 25 feet under or adjacent to Grantee's overhead power lines in the public rights-of-way. Grantee shall have the authority to prune or remove any trees or shrubs located within or hanging over the limits of the public rights-of-way of Town that in the judgment of Grantee may interfere with the construction, or endanger the operation, of the lines and/or facilities of Grantee. Grantee shall provide reasonable advance notice to Town prior to performing routine line clearance pruning or tree removal. All said vegetation management work is to be done at Grantee's expense and pursuant to A.N.S.I. Standard A300.

Section 4. – Indemnification:

Grantee shall, to the fullest extent permitted by law, defend, indemnify, and hold Town harmless from and against any and all claims, costs, suits, damages, judgments, expenses and losses including, but not limited to attorney fees and court costs relating to, arising out of, or alleged to have resulted from the exercise of this Franchise by Grantee; provided, however, that Grantee's duty to indemnify shall not extend to claims to the extent such claims are caused by the willful misconduct or negligent acts or omissions of Town. Grantee, so long as it maintains, operates or owns facilities, within rights-of-way of Town, at its own cost and expense, shall keep, or cause to be kept, in force insurance against claims and liability for personal injury, death

and property damage arising from the construction, operation or maintenance by Grantee of its facilities in a reasonable amount sufficient to insure Grantee's obligations under this Section, with Town named as an additional insured. Grantee shall provide Town with 30 days written notice of material change, cancellation or nonrenewal by the insurer. The policy shall be primary and noncontributing with any policy of Town. Grantee shall file with the Town documentation of such insurance within sixty (60) days following the Effective Date of this Franchise.

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

Whenever Grantee shall cause any opening or alteration whatsoever to be made for any purpose in any public right-of-way, the work shall be completed with due diligence within a reasonably prompt time. Grantee will, in a manner acceptable to the Town, restore the disturbed property to substantially its former condition with comparable materials, so that the restoration meets or exceeds industry standards.

Except due to circumstances beyond Grantee's control, should such restoration, repair or replacement not be completed within a reasonable time or fails to be completed in a manner acceptable to Town, Town may, after prior notice to Grantee, perform the necessary restoration, repair or replacement either through its own forces or through a hired contractor, and Grantee agrees to reimburse Town for its expenses in so doing within thirty (30) days after its receipt of Town's invoice.

Section 6. – Franchise Fee:

Grantee shall pay to Town in consideration of the grant of this Franchise a sum equal to two percent (2%) of all revenues of Grantee, including Regulatory Assessments, but excluding transaction privilege taxes and similar governmental impositions, from the retail sales and/or delivery by it of electric energy and other charges for services attendant to the retail sale and/or

delivery of electric energy delivered through Grantee's electric distribution system within the present and any future corporate limits of Town, as shown by Grantee's billing records. Grantee shall not, however, pay said franchise fee on revenues charged to Grantee's retail customers by third party electric service providers. Said payments shall be in lieu of any and all fees, charges or exaction of any kind otherwise assessed by Town in any way associated with Grantee's use of the rights-of-way, including but not limited to, the construction of Grantee's facilities hereunder or for inspections thereof during the term of this Franchise.

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

Beginning November 26, 2012, payment as described in the preceding paragraphs shall be payable in quarterly amounts within 30 days after the end of each calendar quarter ("the Delinquent Date"). If the payment is later than the Delinquent Date, a 2% penalty will be added, and interest of 1.5% monthly shall occur on the entire amount due. The penalty and interest may be waived by Town if the failure to pay by the Delinquent Date was the result of a casualty that renders Grantee unable to compute the liability from business records; provided, however, Grantee in such event must file an estimated payment by the Delinquent Date to avoid penalty and interest charges. Based on a history of prior on-time payments, Town may waive the penalty and interest.

Notwithstanding the provisions of this Franchise, if during the term of this Franchise Grantee enters into any electric franchise with any other municipality in Arizona during the term of this Franchise that provides for a higher percentage of Grantee's revenues than two percent (2%) or includes more categories of revenues than set forth in this Franchise, Grantee shall notify

Town Council of such higher percentage or expanded revenue base. Town Council, at its sole discretion, shall have the option to, as applicable: (i) increase Grantee's franchise fee to the higher percentage rate; and/or (ii) include other revenue categories set forth in the franchise agreement Grantee has with the other entity of this State. Following Town Council's action, Grantee agrees to henceforth pay to Town a new franchise fee at the higher franchise percentage or to include the additional revenue categories.

Section 7. – Additional Fees and Taxes:

Notwithstanding any provision contained herein to the contrary, Grantee shall pay, in addition to the payment provided in Section 6, the following charges, taxes and fees as established in a code or ordinance properly adopted by Town:

- A. General ad valorem property taxes;
- B. Transaction privilege and use tax as authorized by law and collected by Grantee for its retail sales to its electric customers within the present and any future corporate limits of Town;
- C. Other charges, taxes or fees generally levied upon businesses by Town, provided said charge, tax or fee 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 businesses operated within Town.

Section 8. – Term:

This Franchise shall continue and exist for a period of twenty-five (25) years from November 26, 2012 (the "Effective Date"); provided, however, that either party may terminate this Franchise on its tenth anniversary by giving written notice of its intention 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.

Section 9. – Franchise; Non-Exclusive:

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

Section 10. – Conflicting Ordinances:

Notwithstanding any other provisions hereof, 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 superseded.

Section 11. – Independent Provisions:

If any section, paragraph, clause, phrase or provision of this Franchise, 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 to be invalid or unconstitutional. If Section 6 shall be adjudged invalid or unconstitutional in whole or in part by a final judgment, a new Franchise will be negotiated and brought to the public at the next scheduled General Election in the Town of Camp Verde .

Section 12. – Town Use of Facilities:

In consideration of this Franchise and the rights granted hereby, Town shall, if the following six criteria are met, have the right to place, maintain, and operate on Grantee's poles located on public rights-of-way within Town's corporate limits, any and all wires and appurtenances (other than steps or climbing devices) for Town's fire alarm, police telephone or other municipal communications and network services utilized for governmental functions:

- A. Town must notify Grantee in writing of Town's intended use of Grantee's poles;
- B. Town shall, to the fullest extent permitted by law, defend, indemnify and hold Grantee harmless from any and all claims, costs, damages, expenses and losses, including but not limited to reasonable attorney fees and court costs relating to, arising out of, or alleged to have resulted from Town's use of Grantee's facilities pursuant to this Franchise; provided however, that such claims, expenses and losses are not the result of the willful misconduct or negligent acts or omissions of Grantee.
- C. Town's facilities and the installation and maintenance thereof must comply with the applicable requirements of the Occupational Safety and Health Act, the National Electrical Safety Code, and all other applicable rules and regulations as amended. If Town does not comply with all applicable laws, ordinances and regulations, or if Town's facilities create an immediate safety hazard, Grantee retains the right to remove or correct Town's facilities at Town's expense;
- D. Town's facilities and the installation and maintenance thereof must not cause Grantee's facilities and the installation and maintenance thereof to be out of compliance with all applicable requirements of the Occupational Safety and Health Act and the National Electrical Safety Code and all other applicable rules and regulations as amended. If Town does not comply with all applicable laws, ordinances and regulations, or if Town's facilities create an immediate safety hazard, Grantee retains the right to remove or correct Town's facilities at Town's expense;

- E. Town's use of its facilities shall not interfere with Grantee's use of Grantee's facilities, and;
- F. Town shall be responsible for any incremental costs incurred by Grantee as a result of Town's use of Grantee's facilities.

Section 13. – No Third Party Beneficiaries:

There are no third party beneficiaries to this Franchise agreement between Town and Grantee.

Section 14. – Voter Approval Required:

This Franchise is subject to the approval of the electors of Town. Grantee shall pay all of the costs incurred in conducting the franchise election, except that, if one or more additional propositions are presented to the electors at such election, Grantee shall pay only that portion of Town's election expense determined by dividing all of Town's expenses by the number of issues presented on the ballot.

Section 15. – Transfer of Franchise:

The right, privilege and franchise hereby granted may not be transferred in whole or in part by the Grantee, its successors and assigns, without the prior consent of either Town or the Arizona Corporation Commission. The consent of Town is hereby given to Grantee to transfer or assign this Franchise to grantee's parent corporation, Pinnacle West Capital Corporation or one of its affiliates. Grantee will notify Town if such transfer or assignment should occur. 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.

Section 16. – Mediation:

If a dispute arises out of or relates to this Agreement, or breach thereof, including, but not limited to, governmental or proprietary uses, and if the dispute cannot be settled through negotiation, the parties agree first to settle the dispute through mediation before resorting to arbitration, litigation, or some other dispute resolution procedure. In the event that the parties cannot agree upon the selection of a mediator within ten (10) days after settlement negotiations cease without arriving at a mutually acceptable resolution, either party may request the Presiding Judge of the Superior Court of Yavapai County to assign a mediator from a list of real estate experienced mediators maintained by the Arizona Municipal Risk Retention Pool. The mediator selected by the parties or the Presiding Judge shall be qualified by training and experience to mediate disputes of the nature arising under this Agreement and shall be impartial to both parties. The costs of mediation shall be borne equally by the parties. If mediation fails to resolve the dispute within thirty (30) days after the mediation actually commences, either party shall be free to resort to other means then available to it to resolve the dispute. If in the future, both parties agree to waive these provisions and agree to some other dispute resolution procedure, they may do so.

Section 17 – Notices:

Any notice required or permitted to be given hereunder shall be in writing, unless otherwise expressly permitted or required, and shall be deemed effective either (i) upon hand delivery to the person then holding the office shown on the attention line of the address below, or, if such office is vacant or no longer exists, to a person holding a comparable office, or (ii) on the third business day following its deposit with the United States Postal Service, first class and certified or registered mail, return receipt requested, postage prepaid, addressed as follows:

- A. To Town: Town Clerk
Town of Camp Verde
437 S. Main Street, Suite 102
Camp Verde, Arizona 86322

- B. To Arizona Public Service: Franchise Department
Arizona Public Service Company
P.O. Box 53999, M.S. 8679
Phoenix, Arizona 85072-3999

Section 18. – Adoption:

We, the undersigned, have adopted this document on the dates written below in accordance with the results of the Town of Camp Verde General Election on May 17, 2011.

TOWN OF CAMP VERDE

ARIZONA PUBLIC SERVICE COMPANY,
An Arizona Corporation

By _____
Bob Burnside, Mayor
On behalf of the Town of Camp Verde
Date: _____

By _____
Daniel Froetscher, Energy Delivery Vice President
On behalf of Arizona Public Service Company
Date: _____

ATTEST:

_____,
Deborah Barber, Town Clerk

APPROVED AS TO FORM:

_____,
Williams Sims, Town Attorney