

FRANCHISE AGREEMENT

BETWEEN

ARIZONA PUBLIC SERVICE COMPANY

AND

SHOW LOW, 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 City of Show Low, Arizona (herein called "City"). 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 City's public rights-of-way to supply and deliver electric energy to City, its successors, the inhabitants thereof, and all individuals and entities either within or beyond the limits thereof, for all purposes.

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

All construction under this Franchise shall be performed in accordance with established practices and applicable codes of City with respect to such public rights-of-way. Before Grantee

makes any installations in the public rights-of-way, Grantee shall obtain a right of way construction permit and submit for approval a map showing the location of such proposed installations to City's Engineer.

If City authorizes either directly or through a contractor any construction project adjacent to or near Grantee's facilities operated pursuant to this Franchise, City 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 new 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. 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 City. Grantee shall keep accurate records of the location of all facilities in the public rights-of-way and furnish them to City upon request. Upon completion of new or relocation construction of underground facilities in the public rights-of-way, Grantee shall provide City's Engineer with corrected drawings showing the location of the underground facilities in those cases where the actual location differs significantly from the proposed location.

- A. If City requires Grantee to relocate Grantee's facilities which are located in private easements obtained by Grantee prior to City'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 City. City shall also bear the entire cost of all subsequent

relocations of the relocated facilities required by City, until such time as City 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 City's carrying out of its governmental functions. Notwithstanding the foregoing, if Grantee is requested 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 City or City's contractor working on the governmental project. Governmental functions are those duties imposed on City, where the duties involve a general public use, benefit or purpose not in the nature of a corporate or business undertaking for the corporate benefit and interest of City. Governmental functions include, but are not limited to, the following:

1. Any and all improvements to City's public rights-of-way;
2. Establishing and maintaining domestic water systems, sanitary sewers, storm drains, and related facilities;
3. Establishing and maintaining municipal parks, parking spaces, parkways, streets, airports, 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.

C. City 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 City in furtherance of a proprietary function. All functions of City which are not governmental are proprietary.

- D. If City participates in the cost of relocating Grantee's facilities for any reason, the cost of relocation to City shall not include any upgrade or improvement of Grantee's facilities as they existed prior to relocation.
- E. City 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. City agrees to notify Grantee during the planning and design of City'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.
- F. City 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.
- G. City 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. Upon providing twenty-four (24) hours notice to Show Low, Grantee shall have the authority to trim, prune or remove any trees or shrubs located within or hanging over the limits of the public rights-of-way of Show Low that in the judgment of Grantee may interfere with the construction, or endanger the operation, of the lines and/or facilities of Grantee. In an emergency situation Grantee has the authority to immediately trim, prune or remove any trees or shrubs located within or hanging over the limits of the public rights-of-way. 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 City harmless from and against any and all claims, costs, damages, 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 such claims, expenses and losses are not the result of the willful misconduct or negligent acts or omissions of City.

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 restore the disturbed property to substantially its former condition with comparable materials, so that the restoration meets or exceeds industry standards.

Section 6. – Franchise Fee:

Grantee shall pay to City 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 City, 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 City 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 City at reasonable times.

Beginning November 26, 2006, payment as described in the preceding paragraphs shall be payable in quarterly amounts within 30 days after the end of each calendar quarter.

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 City Council of such higher percentage or expanded revenue base. City Council, at its sole discretion, shall have the option to, as applicable: (i) increase Grantee's franchise fee to the higher percentage rate; or (ii) include other revenue categories set forth in the franchise agreement Grantee has with the other entity of this State. Following City Council's action, Grantee agrees to henceforth pay to City 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 and exemptions provided in Section 6, the following charges, taxes and fees as established in a code or ordinance properly adopted by City:

- 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 City;
- C. Other generally applicable taxes or fees levied upon businesses by City.

Section 8. – Term:

This Franchise shall continue and exist for a period of twenty-five (25) years from November 26, 2006; 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 City from granting other like or similar grants or privileges to any other person, firm or corporation.

Section 10. – 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.

Section 11. – City Use of Facilities:

In consideration of this Franchise and the rights granted hereby, City 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 City's corporate limits, any and all wires and

appurtenances (other than steps or climbing devices) for City's fire alarm, police telephone or other municipal communications services utilized for governmental functions:

- A. City must notify Grantee in writing of City's intended use of Grantee's poles;
- B. City 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 attorney fees and court costs relating to, arising out of, or alleged to have resulted from City'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. City'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 City does not comply with all applicable laws, ordinances and regulations, or if City's facilities create an immediate safety hazard, Grantee retains the right to remove or correct City's facilities at City's expense;
- D. City'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 City does not comply with all applicable laws, ordinances and regulations, or if City's facilities create an immediate safety hazard, Grantee retains the right to remove or correct City's facilities at City's expense;

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

Section 12. – No Third Party Beneficiaries:

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

Section 13. – Voter Approval Required:

This Franchise is subject to the approval of the electors of City. 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 City's election expense determined by dividing all of City's expenses by the number of issues presented on the ballot.

Section 14. – 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 City: City Clerk  
550 N. 9<sup>th</sup> Place  
Show Low, Arizona 85901

B. To Arizona Public Service: Franchise Department  
Arizona Public Service Company  
P.O. Box 53999, M.S. 8632  
Phoenix, Arizona 85072-3999

Section 15. – Adoption:

We, the undersigned, have adopted this document on the dates written below in accordance with the results of the City of Show Low Election on May 16, 2006.

CITY OF SHOW LOW

ARIZONA PUBLIC SERVICE COMPANY,  
An Arizona Corporation

By \_\_\_\_\_  
Rick Fernau, Mayor  
On behalf of the CITY of SHOW LOW  
Date: \_\_\_\_\_

By \_\_\_\_\_  
Jan H. Bennett, Vice President  
Customer Service  
Date: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_,  
Ann Kurasaki, City Clerk

**APPROVED AS TO CONTENT:**

\_\_\_\_\_,  
Michael D. Maag, City Manager

**APPROVED AS TO FORM:**

\_\_\_\_\_,  
K. Kane Graves, City Attorney