

FRANCHISE AGREEMENT

BETWEEN

ARIZONA PUBLIC SERVICE COMPANY

AND

ELOY, 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 Eloy, 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.

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

This Franchise includes the right to use public rights-of-way for the location of communication lines and appurtenances owned and operated by Grantee incidental to

supplying electric energy under this Franchise. This Franchise does not include the right to use public rights-of-way for one-way transmissions directly to customers, users or subscribers of telecommunication or , video programming, if any, which is required for the selection of or response to video programming. For purposes of the foregoing, the term “video programming” means programming provided by or generally considered comparable to programming provided by a television broadcast station. Grantee agrees that if Grantee uses or leases to others, the wires, towers, cables or lines for any purpose other than supplying electric services, before such use or lease, Grantee or Grantee’s lessee shall apply for and obtain a separate license from City.

City shall not be liable to Grantee should Grantee construct facilities pursuant to this Franchise in an area over which City has erroneously exercised jurisdiction.

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

City expressly reserves unto itself, subject to the limitations of the Constitution and laws of Arizona, the right to ensure the safety and welfare of the public, including without limitation to, pass and enforce ordinances to protect the public from danger or inconvenience in the operation of any work performed in the public rights-of-way, including without limitation enforcement of this Franchise.

All construction under this Franchise shall be performed in accordance with applicable codes and ordinances of City with respect to such public rights-of-way. Such construction shall be completed within a reasonable time. To the extent feasible, APS will coordinate with the City to develop a mutually acceptable construction timeline.

Except in emergency circumstances, prior to commencing any work in a Right-of-Way, Grantee and/or any contractors of Grantee shall obtain all necessary permits for such work in accordance with City Code in effect at the time of permitting. City 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 City 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 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:

Representatives of the City and Grantee shall, during the entire term of this Franchise, meet at least once in each calendar year, or more often if necessary, to review any projects involving the construction or modification of City Right-of-Way. The City shall provide the Grantee annually with its 5-year capital improvement plan, in order for both parties to adequately plan and budget for such actions and to determine the extent of work required of Grantee, if any, for such projects. Neither party shall finalize the design of any facility without providing the other party notice as set forth in Section 15 below, and a reasonable opportunity to comment. If either party identifies a potential conflict between their existing facilities and the other party's proposed facilities, said party shall

immediately notify the other party of such conflict and the parties shall use their best efforts to resolve such conflict.

When Grantee intends to replace, upgrade, or install new lines overhead, the City may request estimates for the undergrounding of such replacement lines, upgrades or new lines, including lines to be adjusted for road improvements or for specific projects addressed at the annual planning meeting, as referenced in this section. When requested, the Grantee will provide to the City two estimates: 1) an estimate for the cost of the project with overhead construction and 2) an estimate for the cost of the project with underground construction. The City will have no more than 60 days from the estimate date to determine if it wants the line built overhead or placed underground. If the City chooses underground construction for the project, the City will be responsible for the incremental cost of undergrounding, defined as the differential between the estimate for underground construction and the estimate for overhead construction. Within a reasonable period of time after receipt of the payment for the incremental cost of undergrounding, the Grantee will install the underground facilities. The Grantee reserves the right to bill for the amount that the incremental cost associated with installation exceeds its estimate. The City reserves the right to a refund of overpayment if the incremental costs are less than the amount billed in the estimate. If the City wishes to have a line not scheduled for replacement or upgrade placed underground, the City shall contact the Grantee to make such a request. The City shall be responsible for the entire costs related to this work.

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 rights-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 rights-of-way and agrees to relocate its facilities, if necessary, to accommodate another facility relocation that has a prior rights interest in 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. Grantee shall provide to City 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. Grantee shall be required to obtain and pay all required fees and charges for construction permits and inspections of all non-electrical transmission or distribution facilities constructed within City, including but not limited to, office buildings, storage buildings, or repair shops. Permits for electrical transmission or distribution facilities will be issued at no cost under this Franchise.

- 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 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 or a contractor of City carrying out of City's 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 benefit, 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, 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;
5. Collection and disposal of garbage and recyclables; and
6. The relocation of Grantee's facilities necessary to carry out the exercise of the City's police power for urban renewal.

- 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. Prior to commencement of project and payment by the City, Grantee shall provide an itemization of the estimated costs and expenditures subject to the City's review and approval. Final costs of relocation shall be submitted to the City upon completion of the removal, relocation or alteration.
- 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. Grantee will provide City an approved list of tree species for planting in the public rights-of-way where there are existing overhead power lines. City will consider the list in establishing landscaping in the public rights-of-way. 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. 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 City that in the judgment of Grantee may interfere with the construction, or endanger the operation, of the lines and/or facilities of Grantee. Grantee may remove trees that interfere with construction or endanger operation if approved by City or the private owner of the tree or shrub in question. City's approval will not be unreasonably withheld. 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:

City, its departments, officers, employees, agents, successors and assigns, shall in no way be liable or responsible for any accident or damage that may occur in the construction, operation or maintenance by Grantee of its appurtenances hereunder, except to the extent such accident or damage may be proximately caused by the negligent or willful and wanton acts or omissions of City, its departments, officers, employees, agents,

successors and assigns. The acceptance of this Franchise shall be deemed an agreement on the part of Grantee that Grantee shall, to the fullest extent permitted by law, defend, indemnify, and hold City 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 such claims, expenses and losses are not the result of the willful misconduct or negligent acts or omissions of City.

Grantee, so long as it maintains, operates or owns facilities, within rights-of-way of City, 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 City named as an additional insured. Grantee shall provide City 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 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 in full compliance with all applicable local, regional, state, and federal laws, orders, rules, codes, and construction standards in effect at time of restoration. Grantee will restore the disturbed property to a condition as good as it was prior to such opening or alteration. City agrees that this requirement shall be deemed met if the disturbed property is restored

with comparable materials, so that the restoration meets or exceeds industry and City standards as adopted by the City Council.

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 January 2, 2027 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 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 and special district assessments;
- 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 charges, taxes or fees generally levied upon businesses by City, 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 City.

Section 8. – Term:

This Franchise shall continue and exist for a period of twenty-five (25) years from January 2, 2027; 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. – Revocation of Grantee's Certificate of Convenience and Necessity (CC&N)

Revocation of Grantee's Certificate of Convenience and Necessity (CC& N): In the event that the Arizona Corporation Commission revokes Grantee's CC& N to provide utility service within the City of Eloy, and Grantee discontinues providing utility service, either party may terminate this Franchise Agreement by providing at least 30-days' written notice of its intention to exercise that option.

Section 11. – 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 12. – 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 13. – 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 14. – No Third Party Beneficiaries:

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

Section 15. – 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 16. – 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 of Eloy
Attn: City Clerk
595 C St., Suite 101
Eloy, AZ 85131
- B. To Arizona Public Service: Arizona Public Service Company
Office of the Corporate Secretary
400 N 5th Street, Mail Station 8602
Phoenix, Arizona 85004

Section 17. – Adoption:

We, the undersigned, have adopted this document on the dates written below in accordance with the results of the City of ELOY election on MONTH ##, YEAR.

CITY OF ELOY ARIZONA PUBLIC SERVICE COMPANY,
An Arizona Corporation

By _____
Andrew Sutton, Mayor

On behalf of the City of ELOY
Date: _____

By _____
Tony J. Tewelis, APS Sr. Vice President
Transmission & Distribution Operations
On behalf of Arizona Public Service Co.
Date: _____

ATTEST:

Celine Kidwell, City Clerk

APPROVED AS TO FORM:

Stephen Cooper, City Attorney