

APPENDIX A – FRANCHISES

ORDINANCE NO. 05-69  
(Franchise Agreement)

AN ORDINANCE GRANTING ARIZONA PUBLIC SERVICE COMPANY, AN ARIZONA CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE AND FRANCHISE TO CONSTRUCT, MAINTAIN, AND OPERATE UPON, OVER, ALONG, ACROSS AND UNDER THE STREETS, AVENUES, ALLEYS, HIGHWAYS, BRIDGES AND OTHER PUBLIC RIGHTS-OF-WAY IN THE CITY OF PEORIA, ARIZONA, ITS ELECTRICAL TRANSMISSION AND DISTRIBUTION SYSTEM, POWER LINES, AND NECESSARY APPURTENANCES FOR THE PURPOSE OF SUPPLYING ELECTRIC ENERGY TO THE CITY, ITS SUCCESSORS, THE INHABITANTS THEREOF, AND INDIVIDUALS AND ENTITIES WITHIN THE LIMITS THEREOF; PRESCRIBING CERTAIN RIGHTS, DUTIES, TERMS AND CONDITIONS; PROVIDING FOR THE SUBMISSION HEREOF TO THE ELECTORS FOR THEIR APPROVAL; AND DECLARING AN EMERGENCY.

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 and privilege 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 (herein called “Franchise”). These rights-of-way include but are not limited to streets, alleys and highways in the City of Peoria, Arizona (herein called “the 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 Grantee’s own use. This Franchise is for Grantee’s use of the City’s public rights-of-way to supply and deliver electric energy to the City, its successors, the inhabitants thereof, and all individuals and entities either within or beyond the limits thereof, for all purposes.

This Franchise shall extend to and include all streets, avenues, alleys, highways, bridges, and other public rights-of-way within the limits of the City, and any part thereof, either as now located and as may be hereafter or extended within the present or any future limits of the City, provided, however, that the City shall not be liable to Grantee should Grantee construct facilities pursuant to this grant on an area which the City has erroneously exercised dominion and control.

This Franchise does not include cable communication services as defined by Chapter 5 of the Peoria City Code (1992) or telecommunication services as defined by Chapter 23 of the Peoria

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City Code (1992) regardless of whether such telecommunication services are interstate or intrastate. Grantee agrees that if Grantee uses its wires, cables or lines for telecommunication services, Grantee must apply for and obtain a telecommunications license from the City.

### Section 2. – Grantee’s Compliance with the City’s Practice; Plans Submitted for Approval; The City’s Construction near Grantee’s Facilities:

Grantee shall perform all construction under this Franchise in accordance with the City’s established practices, duly adopted standards or as required by permits, which may incorporate special standards when required for the City’s purposes, 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 City Engineer/Engineering Director. Grantee will provide as available its plans for major construction projects and system improvements in the City planning area. Grantee shall cooperate with the City to furnish upon the City’s request the plans and maps required by this section in an electronic format compatible with the City’s current electronic format. If Grantee needs to change its electronic format to be compatible with the City’s format, Grantee shall do so within a reasonable time.

Prior to the installation, construction, erection, enlargement, replacement, extension or relocation of any portion of the electric transmission and distribution system authorized herein, Grantee shall apply for and obtain from the City a permit pursuant to the City Street Code, Chapter 23 of the City Code, as amended. The City shall issue such permit to Grantee on such conditions as are reasonable and necessary to ensure compliance with the terms and conditions of this Franchise.

If the City authorizes any construction project adjacent to or near Grantee’s facilities operated pursuant to this Franchise, the 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 Grantee’s facilities shall be installed, constructed, located or relocated pursuant to this Franchise so as to interfere as little as possible with traffic, or other authorized uses over, under or through the streets, avenues, highways, bridges, and other public rights-of-way. For the purpose of this Franchise, traffic use shall include the City’s traffic signals, traffic control related equipment, as well as the City’s signal interconnect fiber. 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 City. Grantee shall keep accurate records of the location of all facilities in the public rights-of-way and furnish them to the City. Upon completion of new or relocation construction of underground facilities in the public rights-of-way, Grantee shall provide the City Engineer/Engineering Director with corrected drawings showing the actual location of the underground facilities in those cases where the actual location differs significantly from the proposed location. All underground abandoned lines shall

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continue to remain the property of Grantee, unless Grantee specifically acknowledges otherwise to the City Engineer/Engineering Director and such is accepted by the City.

Grantee shall cooperate with the City to furnish upon the City's request the actual location of such new or relocated facilities in the public rights-of-way in an electronic format compatible with the City's current electronic format. If Grantee needs to change its electronic format to be compatible with the City's format, Grantee shall do so within a reasonable time.

A. If the City requires Grantee to relocate Grantee's facilities which are located in private easements obtained by Grantee prior to the 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 the City. The City shall also bear the entire cost of all subsequent relocations of the relocated facilities required by the City, until such time as the City condemns or purchases Grantee's private easement.

B. Except as covered in Paragraph A above, Grantee shall bear the entire cost of relocating facilities located on public rights-of-way, the relocation of which is necessary for the City's carrying out a function in the interest of the public health, safety or welfare. Grantee's right to maintain its lines and facilities is subject to the paramount right of the City, to use its streets for all governmental purposes. Governmental purposes include, but are not limited to, the following functions of the City:

- (1) Any and all improvements to the City streets, alleys, and avenues;
- (2) Establishing and maintaining sanitary sewers, storm drains, and related facilities;
- (3) Installation of pipe and other facilities to serve domestic and municipal water;
- (4) Establishing and maintaining municipal parks, parking spaces (or parking lots), parkways, pedestrian malls or grass, shrubs, trees and other vegetation for purposes of landscaping any street or public property;
- (5) Providing fire protection;
- (6) The relocation of Grantee's facilities necessary to carry out the exercise of the City's police power for urban renewal;
- (7) Collection and disposal of garbage and recyclable materials.

C. The City reserves its prior superior right to use the public rights-of-way, including the surface areas, for all public purposes, funded with public funds. When the City uses its prior superior right to the public rights-of-way for a governmental function, Grantee shall move its property that is located in the public rights-of-way at its own cost, to such location as the City directs (with the exception of relocations in private easements, addressed in subsection A above).

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The 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 the City in furtherance of a proprietary function. All functions of the City that are not governmental are proprietary.

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

While the City and Grantee acknowledge that the City has a right to require relocation of Grantee's facilities in public rights-of-way, the 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. In such instances where relocation of Grantee's facilities is required, the City will provide Grantee with sufficient time for such relocation.

The 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.

The City will exercise its best effort to not plant any tree that can normally grow to a height of more than 25 feet in the public rights-of-way under or adjacent to Grantee's overhead power lines. 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 the City that in the judgment of Grantee may interfere with the construction, or endanger the operation, of the lines and/or facilities of Grantee. All said vegetation management work is to be done at Grantee's expense.

### Section 4. – Indemnification:

The City shall in no way be liable to or responsible for any accident or damage that may occur in the construction, operation or maintenance by Grantee of its lines and appurtenances hereunder, and the acceptance of this grant shall be deemed an agreement on the part of Grantee to indemnify the City and hold it harmless from and against any and all liability, loss, costs, legal fees, damage or any other expense which may be imposed on the City by reason of the acts of this Grantee in the construction, operation and maintenance of its lines and appurtenances hereunder, including the maintenance of barricades and traffic control devices in construction and maintenance areas. The City shall 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, or arising out of, or alleged to have resulted from the City's use of Grantee's facilities pursuant to this Franchise, provided, however, that such claims are not the result of willful misconduct, negligent acts or omissions of Grantee.

Grantee shall have and maintain throughout the term of this Franchise liability insurance, a program of self-retention or general assets to adequately insure and/or protect the legal liability of Grantee with reference to the installation, operation and maintenance of its facilities authorized

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herein to occupy the public rights-of-way.

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

Whenever Grantee shall cause any opening or alteration to be made for any purpose in any public rights-of-way, the work shall be completed with due diligence pursuant to the City issued permit in accordance with Chapter 23 of the City Code (as amended) and Grantee shall, without expense to the City and upon completion of such work, restore the disturbed property in a manner consistent with the City's duly adopted standards, or as required by City permit.

Should such restoration, repair or replacement fail to be completed pursuant to the City issued permit or fail to meet the City's duly adopted standards, as may be amended from time to time, the City shall provide notice to Grantee of such failure and provide reasonable time for Grantee to perform restoration, repair or replacement. Except due to circumstances beyond Grantee's control, the City may then perform the necessary restoration, repair or replacement either through its own forces or through a hired contractor and Grantee agrees to reimburse the City for the reasonable expenses it incurred in performing the necessary restoration, repair or replacement, together with the pavement cut surcharges as provided in Chapter 23 of the Peoria City Code (1992) within thirty (30) days after receipt of an invoice from the City.

### Section 6. – Franchise Fee:

Grantee shall pay to the 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 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 the City, as shown by Grantee's billing records. Except as otherwise provided in this Franchise, said payments shall be in lieu of any and all fees, charges or exaction of any kind otherwise assessed by the 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.. Said payments are due and payable monthly on or before the thirtieth calendar day of the month next succeeding the end of the month in which the franchise fee accrued (the "Due Date"). Such payment shall be considered delinquent if not received by the last day of the month (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 the City if the failure to pay by the Delinquent Date was the result of an unforeseen event 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, the City may waive the penalty and interest.

Grantee shall not, however, pay said franchise fee on revenues charged to Grantee's retail

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customers by third party electric service providers.

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 the City at reasonable times.

Grantee shall pay franchise fees pursuant to the terms of the previously executed franchise agreement through May 13, 2005. Beginning May 14, 2005, payment as described in the preceding paragraphs shall be payable in monthly amounts within thirty (30) days after the end of each calendar month.

Notwithstanding the provisions of this Franchise, if during the term of this Franchise Grantee enters into any electricity 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 the City of such higher percentage or expanded revenue base. Grantee agrees to henceforth pay to the City a new franchise fee at the higher franchise percentage or 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 the City:

General ad valorem property taxes;

Transaction privilege and use tax as authorized by law and collected by Grantee for its retail sales to its users and consumers of electricity within the present and any future corporate limits of the City;

Pavement cut surcharge fees, as described in City Code 23-54(b) as enacted in Ord. No. 97-38, 7/15/97, which is effective as of November 8, 2005;

Other charges, taxes or fees generally levied upon businesses by the City, provided that the annual amount of such fee does not exceed the amount of similar fees paid by any other businesses operated within the City.

### Section 8. – Term:

This Franchise shall continue and exist for a period of twenty-five (25) years from May 14, 2005; 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:

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

### Section 10. – Conflicting Ordinances:

Grantee agrees, insofar as the applicable provisions of the City Charter and the City Code existing at the time that this Franchise becomes effective are legally enforceable and constitute valid requirements, to comply therewith in all respects. Provided however, 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, 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 to be invalid or unconstitutional. If Section 6 shall be adjudged invalid or unconstitutional in whole or in part by a final judgment, this Franchise shall immediately terminate and shall be of no further force or effect.

### Section 12. – The City Use of Facilities:

In consideration of this Franchise and the rights granted hereby, the 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 the City's corporate limits, any and all wires and appurtenances (other than steps or climbing devices) the City may use for its municipal fire alarm, police telephone or other municipal communications services utilized for governmental functions:

The City must notify Grantee in writing of the City's intended use of Grantee's poles;

The 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 the 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.

The 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 the City does not comply with all applicable laws, ordinances and regulations, or if the City's facilities create an immediate safety hazard, Grantee retains the right to remove or correct the City's facilities at the City's expense;

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The 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 the City does not comply with all applicable laws, ordinances and regulations, or if the City's facilities create an immediate safety hazard, Grantee retains the right to remove or correct the City's facilities at the City's expense;

The City's use of its facilities shall not interfere with Grantee's use of Grantee's facilities, and;

The City shall be responsible for any incremental costs incurred by Grantee as a result of the City's use of Grantee's facilities.

### Section 13. – The City Reserves Certain Powers:

As required by the Peoria City Charter, the City expressly reserves unto itself, subject to the limitations of the Constitution and laws of Arizona, certain powers which may be necessary or convenient for the conduct of its municipal affairs, and for the health, safety, and general welfare of its inhabitants, including, among other things, the right to pass and enforce ordinances to require proper and adequate extensions of the service of the grant hereby made, and to protect the public from danger or inconvenience in the operation of any work or business authorized by the grant of this Franchise, and the further right to make and enforce all such regulations as shall be reasonably necessary to secure adequate, sufficient and proper service, extensions and accommodations for the people and insure their comfort and convenience.

### Section 14. – Condemnation; Right Reserved by the City:

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

### Section 15. – Assignment of Franchise:

The right, privilege or Franchise granted hereunder shall not be leased, assigned or otherwise alienated without the express consent of the City evidenced by an ordinance or resolution duly passed by the City Council; provided, however, that the consent of the City 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 the City if such transfer or assignment should occur.

### Section 16. – Voter Approval Required:

This Franchise Agreement shall be submitted to be voted upon by the qualified electors residing within the corporate limits of the City at a general or special municipal election of the City to be held for that purpose.



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**ATTEST:**

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Mary Jo Kief, Peoria City Clerk

**APPROVED AS TO FORM:**

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Stephen M. Kemp, Peoria City Attorney

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