

ORDINANCE NO. 5160

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, GRANTING TO ARIZONA PUBLIC SERVICE COMPANY ITS SUCCESSORS AND PERMITTED ASSIGNS, THE RIGHT AND PRIVILEGE TO CONSTRUCT, MAINTAIN, AND OPERATE ITS ELECTRICAL SYSTEM AND ELECTRICAL SYSTEM FACILITIES UPON, OVER, ACROSS, AND UNDER THE PRESENT AND FUTURE PUBLIC RIGHTS-OF-WAY OF THE CITY OF CHANDLER FOR THE PURPOSE OF SUPPLYING ELECTRIC ENERGY TO THE CITY, ITS SUCCESSORS, INHABITANTS, AND ALL INDIVIDUALS AND ENTITIES, EITHER WITHIN OR BEYOND THE LIMITS THEREOF, FOR ALL PURPOSES, PRESCRIBING CERTAIN RIGHTS, DUTIES, TERMS, AND CONDITIONS IN RESPECT TO THIS FRANCHISE; PROVIDING FOR AN EFFECTIVE DATE; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; AND PROVIDING FOR SEVERABILITY.

WHEREAS, Arizona Public Service Company, an Arizona corporation, has submitted a proposed franchise to be granted to Arizona Public Service Company, its successors and permitted assigns, by the City of Chandler for the purpose to construct, maintain, and operate its electric energy system and electric energy system facilities upon, over, across, and under the present and future public rights-of-way of the City of Chandler for the purpose of supplying electric energy to the City, its successors, inhabitants, and all individuals and entities, either within or beyond the limits thereof, for all purposes; and

WHEREAS, the Constitution and laws of the State of Arizona and the Charter of the City of Chandler provide for and require the submission of the proposed franchise to the qualified electors of the City of Chandler for their approval or disapproval.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Chandler as follows:

Section 1. Grant of Franchise.

That, subject to approval by the qualified electors of the City of Chandler, there is hereby granted to Arizona Public Service Company, an Arizona corporation, its successors and permitted assigns, the right and privilege to construct, maintain, and operate its electric energy system and electric system facilities upon, over, across, and under the present and future public rights-of-way of the City of Chandler for the purpose of supplying 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 as described and prescribed by the terms and conditions of that certain document titled “Franchise Agreement Between Arizona Public Service Company and the City of Chandler, Arizona” attached as Exhibit A.

Section 2. Effective Date.

The provisions of this Ordinance shall be effective January 1, 2027.

Section 3. Providing for Repeal of Conflicting Ordinances.

All ordinances or parts of ordinances in conflict with the provisions of this ordinance, or any parts hereof, are hereby repealed.

Section 4. Providing for Severability.

If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

INTRODUCED AND TENTATIVELY APPROVED by the City Council of the City of Chandler, Arizona, this ____ day of _____, 2026.

ATTEST:

CITY CLERK

MAYOR

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona this ____ day of _____, 2026.

ATTEST:

CITY CLERK

MAYOR

CERTIFICATION

I, HEREBY CERTIFY, that the above and foregoing Ordinance No. 5160 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the ____ day of _____, 2026, and that a quorum was present thereat.

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY



PUBLISHED:



**FRANCHISE AGREEMENT BETWEEN
ARIZONA PUBLIC SERVICE COMPANY AND
THE CITY OF CHANDLER, ARIZONA**

City Clerk Document No. _____
City Council Meeting Date: _____

SECTION 1. GRANT OF FRANCHISE

1.1 The City of Chandler, Arizona, an Arizona municipal corporation ("City"), hereby grants to Arizona Public Service Company, an Arizona corporation ("Grantee"), its successors and permitted assigns, a franchise to construct, maintain, and operate its electrical system, as defined herein, upon, over, along, across, and under existing and future public rights-of-way. These existing and future public rights-of-way include, but are not limited to, streets, alleys, ways, highways, bridges, and other public places located within the City's corporate boundaries (collectively "City public rights-of-way"). Grantee's electrical system includes, but is not limited to, electric power lines together with all necessary or desirable appurtenances, poles, towers, wires, cables, conduits, transmission lines, transformers, switches, and communication lines for its own use (collectively "electrical system"). This Franchise is for Grantee's (including Grantee's officers, employees, agents, affiliates, and contractors) use of City public rights-of-way to supply and deliver electric energy to City, its successors and assigns, residents, and persons and entities located within or beyond City corporate boundaries for all purposes related to the supply and delivery of electric energy.

1.2 Services and electric energy for streetlights furnished by Grantee to City, or to any streetlight improvement district located within City, are governed by a separate agreement and are not governed by this Franchise.

1.3 This Franchise includes the right by Grantee to use City public rights-of-way to install, operate, and maintain telecommunication service lines and appurtenances owned and operated by Grantee for Grantee's own purposes incidental to supply electric energy (collectively "Grantee's telecommunication infrastructure"). This Franchise does not grant Grantee the right to use City public rights-of-way to directly or indirectly provide telecommunication services, as defined in Arizona Revised Statutes ("A.R.S.") §§ 9-581 et. seq., as amended, or wireless services as defined in A.R.S. §§ 9-591 et. seq., as amended, or video services, as defined in A.R.S. §§ 9-1401 et. seq., as amended, to Chandler residents, persons, or entities. Grantee agrees that Grantee and Grantee's lessee or assignee must apply for and obtain separate lawful authorization and licenses from City if Grantee uses, leases, or assigns Grantee's telecommunication infrastructure, in whole or in part, for any purpose other than incidental to supply electric energy.

SECTION 2. CONSTRUCTION

Grantee will perform all construction under this Franchise in accordance with established industry standards, permit requirements, and City ordinances including, but not limited to, the Chandler City Code, as amended. This construction must be completed within a reasonable time. Except for an emergency, before Grantee makes any installations in City public rights-of-way, Grantee must apply for and obtain the permit or permits as are required by City for other similar construction or work in City public rights-of-way. For any construction under this Franchise, Grantee must comply with the public notice requirements set forth in City Policy DSP-201 (2025), as amended.

SECTION 3. RESTORATION OF PUBLIC RIGHTS-OF-WAY

3.1 If Grantee damages or disturbs the surface, subsurface, or public improvements located in, on, or adjacent to City public rights-of-way, Grantee must restore, repair, or replace the damage or disturbance within a reasonable amount of time and at Grantee's own cost. Unless otherwise agreed

to by City and Grantee or as provided in this Franchise, Grantee's responsibility under this Section will be deemed satisfied if the damage or disturbance is restored, repaired, or replaced: (i) with comparable materials in the same or as good condition and quality as those that existed prior to the damage or disturbance; and (ii) as required by City codes, regulations, and standards in effect at the time.

3.2 If Grantee's restoration, repair, or replacement is not completed within a reasonable time or fails to satisfy City's codes, regulations, or standards, as amended, City may, after prior written notice and reasonable time for Grantee to cure, perform the necessary restoration, repair, or replacement either through City's own forces or through a City hired contractor. In this event, Grantee agrees to reimburse the City for the City's reasonable costs within 30 days after Grantee's receipt of the City's invoice. As used in this Section 3.2, "reasonable costs" include, but are not limited to, identifiable administrative costs and employee wages and benefits costs incurred by the City to perform such restoration, repair, or replacement. City may amend City's construction standards from time to time, but such amendments will not retroactively apply to Grantee's restoration, repair, replacement, or Grantee's other construction activities approved by the City before the amendment.

SECTION 4. INDEMNIFICATION; INSURANCE

4.1. Solely related to Claims (as defined herein) arising from Grantee's exercise of this Franchise, Grantee must indemnify, defend, save, and hold harmless the City, its officials, officers, agents, employees, contractors, and representatives (collectively "Indemnitee") from any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation, and litigation) (collectively "Claims") to the extent caused or alleged to be caused, in whole or in part, by the negligent, reckless, or willful act, error, or omission of Grantee, or its officers, employees, agents, or representatives, or any of its contractors while acting within the scope of their agency ("Grantee Parties"), or arising out of the failure by Grantee Parties to comply with any federal, state, or local law, statute, ordinance, regulation, or court decree in connection with Grantee's exercise of this Franchise. Grantee's must comply with the obligations under this Section except to the extent a Claim is the result of any negligent, reckless, or willful act, error, or omission of any Indemnitee. For the avoidance of doubt, the Parties agree this Section 4.1 must be interpreted in accordance with A.R.S. §§ 12-2501 et. seq. (2025) (Arizona Uniform Contribution Among Tortfeasors Act) as amended. City must provide full, complete, and prompt notice to Grantee of any and all Claims as indemnified hereunder. Grantee's obligations under this provision survive the termination or expiration of this Franchise with respect to any Claim accruing prior to such termination or expiration for a period not to exceed 1 year.

4.2 The provisions of this Section do not impose any liabilities on the City not imposed by other law, nor waive any immunity the City may have under federal or state law. Grantee may not settle any Claim identified above that contains an admission of liability or imposes a monetary obligation on the City without the City's prior written consent, which consent will not be unreasonably withheld or delayed. Grantee's failure to inform the City of any such settlement constitutes a breach of this Franchise and the City may seek any redress available to it against Grantee under this Franchise or any municipal, state, or federal law. The City's exercise of or failure to exercise all rights under any provision of this Franchise does not affect in any way the right of the City to subsequently exercise any such rights or any other right of the City under this Franchise or any other rule, regulation, or law. Further, nothing in this Franchise may impede or otherwise limit a party's statutory rights under A.R.S. §40-423 or A.R.S. §§ 12-820 et. seq.

4.3 All rights of the City, pursuant to indemnification or insurance as provided for by this Franchise, are in addition to all other rights the City may have under this Franchise or any other rule, regulation, or law.

4.4 Grantee must procure and maintain as provided in Subsection 4.4.1 below, insurance or self-insurance against claims for injury to persons or damage to property which may arise from or in connection with Grantee's obligations under this Franchise and Grantee's activities, including but not limited to the installation, construction, relocation, removal, repair, operation, and maintenance of the electrical system by Grantee, its agents, representatives, employees, or contractors. The insurance requirements herein are minimum requirements for this Franchise and in no way limit the indemnity covenants contained in this Franchise. The City in no way warrants that the minimum limits contained

herein are sufficient to protect Grantee from liabilities that might arise out of this Franchise by Grantee, its agents, representatives, employees, or contractors, and Grantee is free to purchase such additional insurance as may be determined necessary.

4.4.1 Grantee must provide coverage in the form of insurance, self-insurance, or combination thereof, with limits of liability not less than those stated below. An excess liability or umbrella liability policy may be used to meet the minimum liability requirements provided that such excess liability or umbrella liability policy provides coverage at least as broad as the primary policy.

4.4.1.1 Commercial General Liability – Claims Made Form
 Policy must include bodily injury, property damage, and broad form contractual liability coverage. Policy must provide a retroactive date as of the date of this Franchise.

Products – Completed Operations Aggregate	\$10,000,000
Each Occurrence	\$5,000,000

The policy may not exclude the explosion/collapse/underground (“cu”) hazard.

4.4.1.2 Automobile Liability – bodily injury and property damage for any owned, hired, and non-owned vehicles operated by Grantee or its authorized agents and used in the performance of work under this Franchise.

Combined Single Limit (CSL)	\$2,000,000
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The policy must contain an “MCS-90” endorsement providing for clean-up of pollution conditions arising from transported product, if the work performed under the Franchise requires the transportation of any hazardous substances by motor vehicle.

4.4.1.3 Worker's Compensation and Employers' Liability
 Workers' Compensation Statutory
 Employers' Liability
 Each Accident \$1,000,000
 Disease – Each Employee \$1,000,000
 Disease – Policy Limit \$1,000,000

4.4.1.4 Pollution Liability:
 Per Occurrence \$5,000,000
 Annual Aggregate \$10,000,000

(i) Coverage may be provided under Grantee’s commercial general liability or other policy.

(ii) The policy must include coverage for: Cleanup of sudden or accidental pollution conditions arising from the electrical system, as defined in the Franchise; cleanup of new conditions arising from Grantee’s operations and use of the public rights-of-way under this Franchise; and third-party claims for on and off-site bodily injury and property damage.

(iii) Grantee represents and agrees that any retroactive date under the policy must precede the effective date of this Franchise; and that either continuous coverage will be maintained, or an extended discovery period will be exercised for a period of 2 years beginning at the time work under this Franchise is completed.

4.4.2 The policies are to contain, or be endorsed to contain, the following provisions. Grantee’s insurance coverage must be primary insurance and non-contributory with respect to the obligations that Grantee has undertaken under this Franchise. Grantee’s commercial general liability policy must contain a standard severability of interest clause, and Grantee’s workers compensation policy must contain a waiver of subrogation against the City, its officials, officers, agents, and employees. The City, including its officials, officers, agents, representatives, and employees, must be included as an additional insured under Grantee’s commercial general liability, automobile liability, and pollution

liability policy(ies) with right to coverage limited to and not to exceed the extent of Grantee's indemnification obligations set forth in Section 4.1 of this Franchise and further subject to the terms, conditions, and limits of such policies.

4.4.3 Each insurance policy required by the insurance provisions of this Franchise must provide the required coverage and must not be canceled or materially changed except with prior written notice to the City. Such notice must be sent directly to the addresses listed below and must be sent by certified mail, return receipt requested:

City of Chandler
Attention: Development Services Department
P.O. Box 4008, Mail Stop 405
Chandler, Arizona 85244-4008
Phone: (480) 782-3000
Email: tuf@chandleraz.gov

With a copy to: Office of the City Attorney
Attention: Risk Management
P.O. Box 4008, Mail Stop 602
Chandler, Arizona 85244-4008
Phone: (480) 782-4640 Fax: (480) 782-4652
Email: legal.notices@chandleraz.gov

4.4.4 Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the State of Arizona and with an "A.M. Best" rating of not less than A- VII. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect Grantee from potential insurer insolvency.

4.4.5 Grantee must furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) or a letter evidencing self-insurance as required by this Franchise. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the City on or before the effective date of this Franchise. Each insurance policy or self-insurance coverage required by this Franchise must be in effect at or prior to commencement of work under this Franchise and remain in effect for the duration of the Franchise. Grantee's failure to maintain the insurance policies or self-insurance as required by this Franchise or to provide evidence of renewal is a material breach of this Franchise. All certificates required by this Franchise must be sent directly to the City of Chandler Development Services Department with a copy to Risk Management as the addresses listed above. The Franchise number and description are to be noted on the certificate of insurance. At the City's request, Grantee must make certified copies of all insurance policies required by this Franchise available for the City's review through a representative and at a time and location within Maricopa County, Arizona designated by Grantee upon the City's execution of a commercially reasonable non-disclosure and confidentiality agreement.

4.4.6 Grantee must require all contractors to maintain separate insurance as determined by Grantee; however, contractor's limits of liability must not be less than \$1,000,000 per occurrence, \$2,000,000 aggregate.

4.4.7 Any material modification or variation from the insurance requirements in this Franchise must have prior approval from the Office of the City Attorney, whose decision will be final. Such action will not require a formal contract amendment but may be made by administrative action.

4.4.8 Prior to each 5-year anniversary date, City reserves the right, interest, and privilege to review and modify the insurance policies and amounts required under this Franchise in the City's sole discretion. City will notify Grantee of any changes under this Section 4 no less than 90 days prior to each 5-year anniversary date. Grantee must comply and provide City with any new policies or amounts by each 5-year anniversary date.

SECTION 5. FRANCHISE FEE

5.1 In consideration of the grant of this Franchise, Grantee must pay to City a sum equal to 2% of the gross revenues from Grantee's sale or delivery of electric energy for all purposes to Grantee's customers within the corporate limits of City as shown by Grantee's most current billing records ("Franchise Fee"). Grantee's gross revenues are defined as those revenues derived from Grantee's Commodity Charge and Basic Service Charge, as provided in the Grantee's Arizona Electric Services Tariff on file with the Arizona Corporation Commission, as amended, from Grantee's customers described in this Section ("Gross Revenues"). Grantee's payments are due and payable to the City 30 days after the end of the calendar quarter and deemed late if payment is not received by the City within 30 days of the due date.

5.2 If Grantee or City determine that Grantee over collected or under collected the required amount of Franchise Fees from its customers, Grantee will immediately adjust its Franchise Fee collections to ensure that no more or no less is collected from its customers as is required to be remitted to the City.

5.3 Grantee will pay Franchise Fees under the terms of the former franchise between Grantee and City through December 31, 2026. Beginning January 1, 2027, payment as described in the preceding paragraphs will be payable in quarterly amounts within 30 days after the end of each calendar quarter.

5.4 In addition to the foregoing Franchise Fees, Grantee must pay the charges, taxes, and fees as described in Section 6 of this Franchise.

SECTION 6. ADDITIONAL FEES AND TAXES

Notwithstanding any provision to the contrary and in addition to the payment provided in Section 5, Grantee agrees to pay the following charges, taxes, and fees as established in a code or ordinance properly adopted by the City: (i) general ad valorem property taxes; (ii) transaction privilege and use tax authorized by City ordinance and billed by Grantee from users and consumers of electric energy within the corporate limits of the City, without reduction or offset; and (iii) other charges, taxes, or fees levied upon businesses generally through the 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 business operated within City.

SECTION 7. RELOCATION OF FACILITIES

7.1 Representatives of the City and Grantee may, during the entire term of this Franchise, meet at least once in each calendar year, or more often, if necessary, to review any projects that involve the construction or modification of City public rights-of-way. The City will annually provide the Grantee with City's 5-year capital improvement plan to permit 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 may finalize the design of any facility without providing the other party notice as set forth in Section 11 below, and a reasonable opportunity to comment. If either party identifies a potential conflict between the party's existing facilities and the other party's proposed facilities, the party will immediately notify the other party of such conflict, and the parties will use their best efforts to resolve such conflict.

7.2 The City reserves its prior superior right to use the City public rights-of-way and City property, including the surface areas, for all City projects constituting a governmental function. Except as provided in Section 7.3, by the City's written request, Grantee must relocate at Grantee's sole cost any of Grantee's electrical system that directly and physically conflicts with City facilities that will be installed as part of a City project constituting a governmental function. Grantee's electrical system will be considered to directly and physically conflict with City facilities to be installed as part of a City governmental function project if they are located within 1 foot vertically or 1 foot horizontally from the location of the City facilities to be installed as part of the City governmental project as identified in final approved design plans. A governmental function is defined as one that primarily benefits and promotes the public health, safety, and welfare of the general public and is not proprietary in nature, and includes, but is not limited to, the following activities: (i) Any and all improvement to right-of-way,

streets, alleys, roadways, avenues, or other public infrastructure, or any and all City-owned property; (ii) Establish, install, operate, repair, or maintain City-owned storm drains, sewer lines, effluent lines, water wells, water or wastewater treatment facilities or any other related City-owned facilities or infrastructure; (iii) Establish, install, operate, repair, or maintain City parks, parking, parkways, pedestrian malls, or grass, shrubs, trees, or other vegetation for the purpose of landscaping City-managed or City-owned property; (iv) Police, fire protection, or other function related to public health, safety, and welfare; (v) public transportation; (vi) City-provided water utility systems; and (vii) the exercise of the City's police power for urban renewal. Grantee must relocate its electrical system to a new location agreeable to both parties.

7.3 If Grantee claims prior rights to a subject location, Grantee must submit information to the City's reasonable satisfaction to support Grantee's claim.

7.4 The City will bear the reasonable cost to relocate Grantee's electrical system when: (i) Grantee's electrical system does not directly and physically conflict with a City project constituting a governmental function; (ii) the relocation of Grantee's electrical system is required by the City for a project or activity where the City exercises a proprietary function; or (iii) Grantee's electrical system enjoy prior rights to the City's interests.

7.5 If City participates in the cost to relocate Grantee's electrical system for any reason, the City's costs are limited to those reasonable costs incurred by Grantee in accordance with City ordinances and applicable industry standards. Costs to the City for relocation of Grantee's facilities must not include any upgrade, betterment, or improvement to Grantee's electrical system when compared to the condition of Grantee's electrical system that existed prior to relocation. Prior to payment by City, Grantee must provide City with an itemization of such costs.

7.6 The City will pay for the costs to relocate Grantee's electrical system if Grantee is required to relocate any of its electrical system within 1 year from the date of the Certificate of Final Acceptance for a project or activity where Grantee previously paid for the relocation of its electrical system.

7.7 If the City requires Grantee to relocate Grantee's electrical system that are located in an existing private easement owned by Grantee, the City will pay the costs to purchase a new private easement with substantially similar interests and rights for the area where Grantee's electrical system will be relocated and the associated relocation costs. After Grantee's receipt from the City of a new private easement and relocation of Grantee's electrical system, Grantee must, to the extent permissible, transfer to the City Grantee's rights and interests in and to that portion of the existing private easement that encumbers the area in which Grantee's electrical system was previously located.

7.8 If the relocation of any of Grantee's electrical system is required or requested by or for the benefit of a party other than the City, the other party will be responsible for the reasonable costs to relocate Grantee's electrical system. Under these circumstances, Grantee is not required to begin relocation of its electrical system until the other party pays Grantee for the reasonable relocation costs in a form and manner acceptable to Grantee.

7.9 City will not exercise its rights to require Grantee's electrical system to be relocated in an unreasonable or arbitrary manner.

7.10 All underground abandoned lines will continue to remain Grantee's property unless Grantee otherwise agrees in writing and the abandoned lines are accepted by the City. At the City's request, Grantee must remove at Grantee's sole cost any abandoned lines when Grantee's electrical system directly and physically conflicts with a City project or activity constituting a governmental function. Grantee must comply with Arizona Blue Staking laws and identify the location of any known abandoned lines.

SECTION 8. TERM

The Effective Date for this Franchise is January 1, 2027. This Franchise will continue and remain in full force and effect for a period of 25 years from the Effective Date. Unless terminated earlier by written agreement of the parties, this Franchise will expire on December 31, 2051.

SECTION 9. NO TRANSFER WITHOUT CONSENT OF CITY

The right, privilege, and franchise hereby granted may not be transferred in whole or in part by Grantee, its successors and assigns, without the prior written consent of the City and the Arizona Corporation Commission, which will not be unreasonably withheld by City. No prior consent will 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. Notwithstanding the prior sentence, Grantee must provide written notice to City within 30 days of execution when any such security instrument involves the transfer of this Franchise.

SECTION 10. FRANCHISE NON-EXCLUSIVE

This Franchise is non-exclusive, and nothing contained herein will be construed to prevent City from granting similar rights or privileges to any other person, firm, or business organization.

SECTION 11. NOTICES

Any notice required or permitted to be given hereunder must be in writing, unless otherwise expressly permitted or required, and will 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:

To the City: Chandler City Manager's Office
 175 S. Arizona Avenue Mail Stop 605
 P.O. Box 4008
 Chandler, Arizona 85244-4008

With a copy to: Chandler City Attorney's Office
 175 S. Arizona Avenue Mail Stop 602
 P.O. Box 4008
 Chandler, Arizona 85244-4008

To Grantee: Arizona Public Service Company
 Office of the Corporate Secretary
 400 N 5th Street, Mail Station 8602
 Phoenix, Arizona 85004

SECTION 12. VOTER APPROVAL

This Franchise is subject to the approval of the qualified electors of the City. If Grantee's franchise is the sole item in the City's ballot for the election, Grantee must pay all the election costs. If Grantee's franchise is not the sole item on City's ballot for the election, Grantee must pay half of the election costs. Grantee must pay all publication costs associated with the franchise election.

SECTION 13. INDEPENDENT PROVISIONS

If any section, paragraph, clause, phrase, or provision of this Franchise is determined to be invalid or unconstitutional, the subject section, paragraph, clause, phrase, or provision will not affect the validity of this Franchise as a whole or any part of this Franchise other than the part of the Franchise that is adjudged invalid or unconstitutional.

SECTION 14. DEFAULT; DISPUTE RESOLUTION

14.1 Failure or unreasonable delay by either party to perform any term or provision of this Franchise for a period of 10 days after written notice from the other party will constitute a default under this Franchise. If the default is not capable of cure within 10 days, the party must begin the cure within 10 days and diligently pursue the cure until completed. The notice of default must specify the nature of

the alleged default and how the default may be satisfactorily cured. In the event of a default by any party, the non-defaulting party is entitled to all remedies at both law and in equity, including, without limitation, specific performance.

14.2 To promote the parties' cooperation and to help implement this Franchise, the parties will each designate and appoint a representative to serve as liaison between the City and Grantee. The City Manager's designee will serve as the City's initial representative and Grantee's Project Manager will serve as Grantee's initial representative. The parties' representatives will be available at all reasonable times to discuss and review the parties' performance under this Franchise.

SECTION 15. AUDIT RIGHTS

15.1 City has the authority, at City's cost, to conduct an audit of the Grantee at any time during the duration of this Franchise. The City's audit will be conducted in a way to minimize any disruption to Grantee's business operations and will be performed in accordance with generally acceptable auditing standards. All pertinent books and records related to this Franchise are subject to an audit conducted by the City or its representatives. The City may determine the scope of each audit conducted; however, the period that may be audited will not exceed 36 months prior to the date the notice is received by the Grantee. An audit will not be required more than once in a single 12-month period.

15.2 Grantee must pay City within 45 days of written notice any amounts that are due and payable to the City as determined by any audit. Reimbursement for underpayment because of audit findings will be identified as late payments and are subject to late payment interest of 1.5% per month. If Grantee has underpaid the City by 5% or more of amounts due (excluding penalties and interest), Grantee must reimburse the City for reasonable and full costs of the audit. If Grantee has overpaid the City by 5% or more of amounts due (excluding penalties & interest), the City must reimburse the Grantee as mutually agreed to by the parties.

SECTION 16. NO WAIVER OR LIMITATION OF POWERS OF EMINENT DOMAIN/RIGHT TO PURCHASE

City reserves the right and power to condemn and purchase Grantee's plant and distribution facilities that are located within the City's corporate limits, or any additions, as provided by law during the term of the Franchise or upon its expiration.

SECTION 17. LICENSE FOR CITY USE OF GRANTEE'S POLES AND TOWERS

In consideration of this Franchise and the rights granted hereby, Grantee grants City a license and right to place, maintain, and operate on Grantee's poles and towers located in, on, or adjacent to public rights-of-way any and all wires and appurtenances (other than steps or climbing devices) related to streetlights and City's fire alarm, police telephone, or other municipal communication services utilized for or related to governmental functions (collectively "City facilities"). This license is granted subject to the following conditions: (i) City must notify Grantee in writing of City's intended use of Grantee's poles and towers; (ii) City must, to the fullest extent permitted by law, defend, indemnify, and hold Grantee harmless from any reasonable claims, costs, damages, expenses and losses including, but not limited to, reasonable attorney fees and court costs (collectively "Claims") to the extent that such Claims arise out of, or are alleged to have been caused by the City's use of Grantee's poles and towers; provided however, that such Claims are not the result of Grantee's willful misconduct or negligent acts or omissions; (iii) 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; (iv) 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 cost; (v) City's facilities and the installation and maintenance thereof must not cause Grantee's poles and towers 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; (vi) City's facilities must not interfere with Grantee's use of Grantee's poles and towers; and (vii) subject to City's prior review, agreement to, and receipt of written notice 90 days prior to Grantee's assessment of such costs, City will be

responsible for reasonable incremental costs incurred by Grantee directly and solely caused by City's use of Grantee's poles and towers.

PASSED AND ADOPTED by the Council of the City of Chandler, Arizona, this ____ day of _____, 20____.

CITY OF CHANDLER, ARIZONA,
an Arizona municipal corporation

ARIZONA PUBLIC SERVICE COMPANY,
an Arizona corporation

By: _____

By: _____

Its: _____

Its: _____

APPROVED AS TO FORM:

By: _____
City Attorney *TMB*

ATTEST:

By: _____
City Clerk