

STREETLIGHT MAINTENANCE AGREEMENT

BETWEEN

ARIZONA PUBLIC SERVICE COMPANY

AND

CITY OF BISBEE

APS CONTRACT NO. 201407049

CITY OF BISBEE CONTRACT NO, \_\_\_\_\_

Effective Date 01/30/2015

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STREETLIGHT MAINTENANCE AGREEMENT  
BETWEEN  
ARIZONA PUBLIC SERVICE COMPANY  
AND  
CITY OF BISBEE

1. PARTIES

The parties to this Streetlight Maintenance Agreement (the "Maintenance Agreement") are CITY OF BISBEE, an Arizona municipal corporation, ("City"), and ARIZONA PUBLIC SERVICE COMPANY, an Arizona corporation ("APS"), hereinafter referred to individually as "Party" and collectively as the "Parties."

2. RECITALS

- 2.1. The Parties have entered into a streetlight sales agreement (APS Contract No.19637 dated December 20, 1990) in which City has purchased streetlight facilities from APS within the existing City boundaries.
- 2.2. Additionally, the Parties entered into: i) a Streetlight Energy Agreement (APS Contract No.19638 dated December 20, 1990) pursuant to which APS sells energy to City for the Streetlight Facilities (the "Energy Agreement"); ii) a Streetlight Operation, Maintenance and Facilities Agreement (APS Contract No.19639 dated December 20, 1990) pursuant to which APS operates and maintains City's Streetlight Facilities within APS' service territory (the "OM&F Agreement"); and iii) a Streetlight Master License Agreement (APS Contract No.19640 dated December 20, 1990) pursuant to which City's Streetlight Facilities are allowed to be attached to APS' electric distribution poles (the "License Agreement").
- 2.3. The Parties now desire to enter into this Maintenance Agreement pursuant to

which APS will construct and maintain the streetlights for City.

- 2.4. The Parties desire that this Maintenance Agreement replace and supersede the Former Streetlight Operation, Maintenance and Facilities Agreement dated December 20, 1990.

NOW, THEREFORE, in consideration of the foregoing recitals, the promises, covenants, and provisions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby covenant, promise and agree as follows:

### 3. DEFINITIONS

When initially capitalized in this Maintenance Agreement or amendments thereto, the following words or phrases shall have the meanings specified:

- 3.1. APS Pole(s): Electric distribution poles owned by APS for which APS authorizes the attachment of City owned Streetlight Facilities.
- 3.2. City Pole(s): Streetlight poles owned by City.
- 3.3. Dawn: The time between full dark and sunrise when a photo control senses sufficient sunlight to turn off streetlights.
- 3.4. Due Date: The forty-fifth (45th) calendar day after the invoice date.
- 3.5. Dusk: The time between sunset and full dark when a photo control senses the lack of sufficient sunlight and turns on streetlights.
- 3.6. Effective Date: The date specified in Section 22, Execution and Effective Date.
- 3.7. Emergency Work: Replacement of poles and fixtures associated with damage caused by vehicle collisions, storms, or other events.

- 3.8. Interest: The per annum rate of 18% compounded monthly.
- 3.9. Photo Control: A photoelectric cell which is designed to turn streetlights on at Dusk and to turn streetlights off at Dawn that meets the standards specified in American National Standards Institute (ANSI) C136.10 –1988 “Locking-Type Photo control Devices and Mating Receptacles – Physical and Electrical Interchangeability and Testing.”
- 3.10. Point of Delivery: The point where energy is delivered shall be where APS’ electric service wire connects to (i) City’s electric service wire, one foot beyond the end of the mast arm for overhead service to the streetlight or, (ii) at the City’s protection fuse installed in the APS-owned secondary junction box for underground service to the streetlight or, (iii) at the City’s electric service protection fuse or termination point located in the hand-hole of the City Pole for underground service to the streetlight when no APS-owned secondary junction box exists or, (iv) five (5) feet from the City Pole for underground service when there is no hand-hole on the City Pole or an APS-owned secondary junction box.
- 3.11. Special Facilities: All facilities which are not Standard Facilities.
- 3.12. Standard Facilities: Streetlight Facilities for which APS has established standard specifications for installations to supply service throughout APS’ service area, as may be amended by APS from time to time (currently set forth in APS Transmission & Distribution Construction Standards copies of which are available upon request).

3.13. Streetlight Facilities: The facilities owned by the City (within APS' service territory) and generally described as metal streetlight poles dedicated only to streetlighting that may support APS' secondary conductors serving the streetlights and no other attachment(s); mast arms; luminaires and lamps; protection fuses; photo controls; external ballasts; and electric service wires which extend from the luminaires of the individual streetlight installation to the Point of Delivery.

4. CONSTRUCTION AND MAINTENANCE

4.1. General: APS shall construct and maintain the Streetlight Facilities within APS' service territory for City in accordance with the terms and conditions of this Maintenance Agreement. APS' obligation to perform maintenance of Streetlight Facilities attached to CENTURY LINK owned poles is subject to City acquiring such attachment rights from CENTURY LINK.

4.1.1. Operation Time: Operation of the Streetlight Facilities shall be from Dusk to Dawn. Notwithstanding the foregoing, City agrees that APS cannot guarantee that all of the Streetlight Facilities will always operate as intended. Therefore, it is understood and agreed that APS will be in compliance with this Section 4.1.1 by completing repairs within the following time frames:

4.1.1.1. Repairs after Notification:

4.1.1.1.1. APS shall clear hazards associated with Streetlight Facilities which have been knocked down, that block traffic or present an imminent safety risk to the

public, within four (4) hours after notification by City. Storm or other large scale damage may require a longer hazard clearance time. APS shall notify City when this occurs. If the City Pole has other attachments, such as telephone or cable TV, APS will clear up any hazards that are an imminent safety risk to the public. This may include the removal of facilities that do not belong to APS or the City, such as telephone or cable TV attachments. The City will be responsible to contact any affected utilities regarding any necessary work required due to the knockdown. If City desires to have emergency work done by qualified City personnel or a qualified third party contractor, City will notify APS to coordinate any disconnect or reconnect of electrical power that may be required.

- 4.1.1.1.2. APS shall use reasonable efforts to complete normal maintenance (as specified in Section 4.2.1 herein) within ten (10) work days after notification by City. However, if large volumes of outages are reported, more time may be required to complete the repairs. Additionally, if the maintenance requires pole replacement, underground cable replacement, or



cable repair, APS shall use reasonable efforts to complete said pole replacement, cable replacement, or cable repair within thirty (30) work days after the need for repair or replacement has been identified by APS.

4.2. Work to be Performed by APS:

4.2.1. Standard Facilities – Normal Construction and Maintenance: City agrees that APS is obligated to perform only the following construction and maintenance work for Standard Facilities. APS will haul away and dispose of all removed streetlight material and will be entitled to retain any salvage value.

4.2.1.1. Bulb replacement

4.2.1.2. Streetlight head, mast arms, protection fuses and photo control replacements.

4.2.1.3. Streetlight ballast replacements.

4.2.1.4. Streetlight pole identification number replacement.

4.2.2. Additional Work: The following constitutes additional work which APS is not obligated to perform, unless specifically directed to do so by City, conditioned upon City's agreement to pay the applicable charges.

4.2.2.1. Replacement of poles and all fixtures associated with vehicle, storm related or other damage.

- 4.2.2.2. Removal and/or replacement of City-owned steel or wood poles that, as determined by City, have deteriorated to such a condition that removal and/or replacement is necessary.
- 4.2.2.3. Replacement of non-functional lights with energy efficient lighting i.e. LED or Induction as approved by City and APS.
- 4.2.2.4. Group replacements of non-failed streetlights
- 4.2.2.5. Installation, relocation or upgrade of City owned street light facilities associated with road widening projects.
- 4.2.2.6. All concrete work, black top work and landscape restoration associated with pole replacements.
- 4.2.2.7. Conversion of functional streetlight lamps and luminaires to other Standard or Special Facilities and the replacement of certain associated mast arms in order to complete said conversions. All work specifically asked for by City which requires APS to rearrange existing facilities on a pole or requires APS to replace the existing pole with a more suitable pole.
- 4.2.2.8. Replacement of City owned electric service wire in mast arms and metal poles.

4.2.3. Assistance with Claims: At no cost to City, APS will provide any and all information, including but not limited to, documents, photographs, and testimony related to the work performed under this Maintenance Agreement to assist City with collecting damages from other parties who have damaged City's Streetlight Facilities.

4.3. Charges to City:

4.3.1. In addition to the charges described below and any other charges set forth in this Maintenance Agreement, City is responsible for all permit, inspection and other fees assessed by state, county or local government associated with streetlight work. Other fees may include, but are not limited to, plan or design review fees and traffic engineering or traffic control plan review fees.

4.3.2. The monthly charge per luminaire for normal maintenance as set forth in Section 4.2.1 will be fixed as follows:

\$2.35 for the initial one (1) year period.

Commencing upon the Effective Date; these fees will be billed monthly to the City. APS reserves the right to review the charge per luminaire annually and shall give the City 180 day's written notice in the event of any increase or decrease to the charge per luminaire for normal maintenance.

4.3.3. Charges for additional work, including but not limited to that set forth in Section 4.2.2 shall be levied in accordance with Exhibit A, which may be updated annually and provided by APS. APS shall supply City at City's

request with a cost estimate of the work to be done, but APS shall not commence work until such estimate has been approved by City in writing. City shall make payment in accordance with Section 11.2.

4.3.4. Charges for work done on an emergency basis, as determined by APS, and work done on Special Facilities, shall be based on actual costs, including applicable loadings incurred by APS plus the rate of return authorized by the ACC. Payment of such emergency and special facility charges shall be made in accordance with Section 11, BILLING, PAYMENT AND TAXES.

4.4. Work to be Performed by City:

4.4.1. City shall be responsible for all work pertaining to wiring at intersections. At intersection locations where APS has meters installed, City responsibility shall begin at the designated point of delivery.

4.4.2. It shall be the sole responsibility of City to investigate and pursue claims against any parties responsible for accidents and incidents involving damage to City-owned Streetlight Facilities and to collect damages from the responsible party. APS shall notify City of damages discovered in the normal course of business or as requested by City.

4.4.3. City shall provide APS reasonable ingress and egress for performance of services under this Maintenance Agreement.

4.4.4. City further acknowledges, represents, warrants, and agrees that by entering into this Maintenance Agreement, City has not delegated or waived any of its rights, duties, responsibilities, or options regarding

streetlight layout or design, but retains sole authority and responsibility for determining the reasonable level or amount of light to be provided along its streets, including the number, type and location of streetlights to be installed.

4.4.5. City further agrees that APS' assistance or recommendations regarding streetlight designs, layouts, or lighting levels, or the amount of streetlight service being provided by APS shall not be relied upon by City as satisfying any standard that may be adopted by or imposed upon City.

4.4.6. City shall provide or cause to be provided to APS a City-approved layout or engineer stamped drawing for all new streetlight installations. APS shall design a power source for the streetlights on City-approved streetlight layout or engineer stamped drawing.

4.5. Extension of Streetlight Facilities:

4.5.1. For new streetlighting installations, all additional facilities required including but not limited to streetlight poles, mast arms, luminaires, bulbs and photo controls shall be installed by APS at City expense in accordance with Exhibit A, which may be updated annually and provided by APS. APS shall supply City at City's request with a cost estimate of the work to be done, but APS shall not commence work until such estimate has been approved by City in writing. City shall make payment in accordance with Section 11.2.

4.5.2. For new streetlighting installations within commercial, industrial projects or residential subdivisions, all facilities required including but not limited

to streetlight poles, mast arms, luminaires, bulbs and photo controls shall be installed by APS or a developer at City or developer expense. If the installation is performed by APS, APS will be reimbursed in accordance with Exhibit A which may be updated annually and provided by APS. . APS shall provide City or developer with the cost of the work to be performed and City or developer shall make payment in accordance with Section 11.2.

- 4.5.3. If there is a change to the job resulting in a refund to be paid to City or developer, APS will refund City or developer the associated cost.
- 4.6. Ownership of Facilities: All streetlight facilities installed by APS (in accordance with this Maintenance Agreement) within the City boundaries (as they exist at the time of installation) shall become the property of City.
- 4.7. New Equipment: In the future, it is anticipated that new streetlight facilities will be developed and become available to the industry. APS agrees to acquire and install any such facilities selected by City for subsequent installations, although such facilities will be considered Special Facilities, subject to the provisions of this Maintenance Agreement until such time that the parties mutually agree that such streetlight facilities (or other streetlight facilities) shall constitute Standard Facilities.
- 4.8. Multi-use Poles: At street intersections where City desires to install a traffic signal and streetlight on the same pole, and where APS has distribution conductors other than streetlight conductors passing over such location, APS may install, where feasible, a multi-use steel pole for mounting of traffic

signal, streetlight, and distribution conductors. City shall pay all costs associated with the replacement of an existing pole with a multi-use pole or the installation of a new multi-use pole as warranted.

- 4.9. Inventory Lists and Records: APS shall supply the following records in an electronic format, time and manner to be mutually agreed upon by both parties, to City: (1) inventory lists showing Streetlight Facilities subject to this Maintenance Agreement and indicating location, lamp rating, type of pole and luminaire, (2) copies of inventory lists with new additions to Streetlight Facilities that include locations of new and existing or changed streetlights, lamp rating, type of pole and luminaire and (3) Upon request, APS shall also provide City, at agreed upon intervals, copies of APS' updated Geographic Information Systems maps showing street light locations. APS, at its sole discretion, may require the City to execute APS' Data License Agreement prior to providing such information.
- 4.10. Sale of Poles After Effective Date: If after the Effective Date, APS' distribution facilities are removed from an APS Pole and the APS Pole then only supports APS' secondary conductor and a City owned Streetlight, City has the option of purchasing the streetlight only pole or removing its streetlight and paying APS for said removal in accordance with Exhibit A, which may be updated annually. If City elects to purchase said pole, the purchase price shall be based on the replacement cost of the existing facility. No attachment fee shall be incurred by APS as a result of the secondary attachment.

5. TERM

This Maintenance Agreement shall remain in effect until terminated in accordance with the Termination section below.

6. TERMINATION

6.1. Termination at Will: Either party has the right to terminate this Agreement at any time and for any reason by giving the other Party ninety (90) days advanced written notice for the termination.

6.2. Termination for Default: If City or APS fails to comply with any of the terms and conditions of this Maintenance Agreement or defaults in any of its obligations under this Maintenance Agreement, and fails within thirty (30) days after the date of written notice from City or APS to correct such noncompliance or default, City or APS may, at its option and in addition to any other rights or remedies it may have, immediately terminate this Maintenance Agreement issued pursuant hereto, under which such noncompliance or default has occurred.

6.3. Cancellation By City: The Parties hereto acknowledge that this Maintenance Agreement is subject to cancellation by City for a conflict of interest pursuant to the provisions of Section 38-511, Arizona Revised Statutes.

7. DESIGNATED REPRESENTATIVES AND NOTICES

7.1. Designated Representatives: All communications relating to the day-to-day activities under this Maintenance Agreement shall be exchanged between the following designated representatives who are authorized to act on behalf of



that Party. Either Party may change said designated representatives from time to time by giving advance written notice as provided herein.

**APS:**

Arizona Public Service Company  
Attention: Streetlight Management  
Station 3536  
P.O. Box 53933  
Phoenix, AZ 85072-3933  
Telephone: 602-371-5067  
FAX: 602-371-6733

**City:**

City of Bisbee  
118 Arizona Street  
Bisbee, AZ 85603  
Telephone: 520-432-6012  
FAX: 520-432-6069  
E mail: [acaronado@cityofbisbee.com](mailto:acaronado@cityofbisbee.com)

7.2. Notices: Any legal notices and communications required or provided for hereunder shall be in writing and shall be sent by first class, registered, certified or express mail, return receipt requested, postage prepaid, or by comparable delivery service, or by hand, or by facsimile (with the original sent by first class mail) to the following:

**To APS:**

Arizona Public Service Company  
Office of Corporate Secretary  
400 N. 5<sup>th</sup> Street, Station 8602  
Phoenix, Arizona 85004

**To City:**

City of Bisbee  
118 Arizona Street  
Bisbee, AZ 85603

With a copy to:

Arizona Public Service Company  
Attention: Streetlight Management  
Station 3536  
P.O. Box 53933  
Phoenix, AZ 85072-3933

City of Bisbee  
118 Arizona Street  
Bisbee, AZ 85603

7.3. Invoices and payments pursuant to this Maintenance Agreement shall be sent

to:

Arizona Public Service Company  
P.O. Box 53920, STA 9996  
Phoenix, AZ 85072-3920

City of Bisbee  
118 Arizona Street  
Bisbee, AZ 85603

8. FISCAL YEAR

The obligation of City to make any payments hereunder is subject to the provisions of the Arizona State Budget Law and City Code provisions which require that the City Council make necessary appropriations for such payments in each fiscal year. City shall take all steps reasonably available to it to cause such payments to be included in its budget presented to City Council each fiscal year in the form of an appropriation for monies that will be due under this Maintenance Agreement during the subsequent year. However, the foregoing does not alter City's obligation to pay for services actually received, nor does it change APS' right to terminate this Maintenance Agreement for non-payment in accordance with the Termination section above.

9. UNCONTROLLABLE FORCES

9.1. Definition: An "Uncontrollable Force" shall mean any cause beyond the control of the Party affected, including but not restricted to failure of or threat of failure of facilities, flood, earthquake, geohydrologic subsidence, tornado, storm, fire, lightning, epidemic, war, riot, commotion, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority (whether valid or invalid), and action or

nonaction by or inability to obtain or keep the necessary authorizations or approvals from any governmental agency or authority, which by exercise of due diligence it shall be unable to overcome. It is the intent of the Parties that the foregoing examples shall not be used as a limitation on the term "uncontrollable force" in interpreting or construing this Maintenance Agreement. Rather the Parties intend a liberal interpretation of the term and accordingly intend that in questions of assumption of risk or contingencies, whether foreseen or not, the presumption shall be that risks not explicitly assumed by a Party are not assumed by said Party if, in fact, they are uncontrollable even with foresight.

- 9.2. Effect of Uncontrollable Force: If either Party, by reason of an Uncontrollable Force, is rendered unable, wholly or in part to perform its obligations under this Maintenance Agreement, then upon said Party giving notice and particulars of such Uncontrollable Force in writing to the other Party promptly after learning thereof, the obligations of said Party so far as they are affected by such Uncontrollable Force shall be suspended during the continuance of any inability so caused but for no longer period and the effects of such cause shall, so far as possible, be remedied with all reasonable dispatch. However, nothing contained herein shall be so construed as to require a Party to settle any strike or labor dispute in which it may be involved. The affected Party shall not be responsible for its delay in performance under this Maintenance Agreement during delays caused by an

Uncontrollable Force nor shall such Uncontrollable Force give rise to a claim for damages or constitute default.

- 9.3. Uncontrollable Force Limit: If a Party's obligation to perform is suspended for a period of ninety (90) continuous calendar days due to an Uncontrollable Force, or for any other reason, the other Party shall have all rights and remedies at law and equity, including but not limited to, the right to terminate this Maintenance Agreement.

#### 10. NON-WAIVER

The failure of either Party to insist upon strict performance of any of the provisions of this Maintenance Agreement, or to exercise any of the rights or remedies provided by this Maintenance Agreement, or any delay in the exercise of any of the rights or remedies, shall not release either Party from any of the responsibilities or obligations imposed by law or by this Maintenance Agreement, and shall not be deemed a waiver of any right of either Party to insist upon strict performance of this Maintenance Agreement.

#### 11. BILLING, PAYMENT AND TAXES

- 11.1. Billing: APS shall render bills to City on a monthly basis for services furnished during the preceding billing month.
- 11.2. Payment for services provided in accordance with Sections 4.2.2, 4.5.1 and 4.5.2: City shall make payment to APS prior to any work being performed, in accordance with Sections 4.2.2, 4.5.1 and 4.5.2, except that APS, at its sole option, may accept a letter of understanding (prior to any work being performed by APS) in which City commits to pay APS for such services upon completion of the services.

- 11.3. Payment: APS shall receive payment from City on or before the Due Date. Payment shall be mailed to the address specified in Section 7.3. Amounts which are not paid when due shall bear Interest from the Due Date until such time as payment is received by APS.
- 11.4. Disputed Bill: If any portion of any bill is disputed, the undisputed amount shall be paid when due.
- 11.5. Delinquent Bill: If City's bill becomes delinquent, due to non-payment for a period of forty-five (45) calendar days after the invoice date, APS shall have the right at its option:
- 11.5.1. To exercise any remedy provided by law, including immediate termination of this Maintenance Agreement. Suspension and/or termination shall not relieve City of its obligation to pay any amounts previously due nor shall such suspension or cancellation invalidate any other agreement with City.
- 11.5.2. To charge interest at the rate of 18% per annum for all charges unpaid after the forty-five (45) day period until the past due charges, including interest accrued thereon, are paid in full. The failure of APS to exercise such sanction shall not constitute a waiver by APS of any rights hereunder.
- 11.6. Taxes: City shall pay any and all applicable sales tax, transaction privilege tax, use tax or like tax assessed or assessable as the result of APS providing services hereunder.

12. ANNEXATION AND ACQUISITION OF ADDITIONAL STREETLIGHT FACILITIES

If City annexes additional territory or purchases additional Streetlight Facilities, the terms and conditions of this Maintenance Agreement will apply upon the date City provides APS notice of the annexation or purchase.

13. GOVERNING LAW AND VENUE

This Maintenance Agreement shall be governed, construed and enforced in accordance with the substantive laws of the State of Arizona. Any suit to enforce this Maintenance Agreement shall be brought in the Superior Court of Cochise County.

14. SEVERABILITY

If any provision of this Maintenance Agreement is determined by a court of competent jurisdiction to be unenforceable or illegal, then said provision(s) or amendments thereto shall be severed from this Maintenance Agreement and the remainder shall continue in full force and effect unless otherwise mutually agreed between the Parties.

15. ASSIGNMENT

Neither Party shall assign its rights, nor delegate its duties, or otherwise dispose of any right, title, or interest in all or any part of this Maintenance Agreement, or assign any monies due or payable hereunder without the prior written consent of the other Party. Such consent shall not be unreasonably withheld. Notwithstanding the foregoing, either Party may, upon notice to the other party but without the need for consent from the other Party, (a) transfer, pledge, or assign this Maintenance Agreement as security for any financing; (b) transfer, assign or delegate this Maintenance Agreement or its rights hereunder or delegate or subcontract its obligations hereunder to an affiliated entity,

parent entity or subsidiary of such Party, or (c) transfer, assign or delegate this Maintenance Agreement to any person or entity succeeding to all or substantially all of the assets of such Party. To the extent a transfer does not require consent, the transferring Party shall provide prompt notice to the other Party within thirty (30) calendar days of such transfer and the effective date thereof. Any transfer in violation of this Section 15 shall be deemed null and void.

16. NO THIRD PARTY BENEFICIARIES

APS acknowledges and represents that Section 15 of this Maintenance Agreement entitled, "ASSIGNMENT," is not intended to and does not create any claims, rights, remedies, or benefits exercisable by any third party.

City acknowledges and represents that this Maintenance Agreement is not intended to and does not create any claims, rights, remedies, or benefits exercisable by any third party and that neither APS nor City undertakes any responsibility or obligation to any third party by virtue of this Maintenance Agreement, and neither shall be liable to any third party by virtue of the nature, location, quality or quantity of streetlights, or other cause arising directly or indirectly out of this Maintenance Agreement or its performance by either Party.

17. SURVIVABILITY OF OBLIGATIONS AND LIABILITIES

The covenants, representations, indemnifications and warranties of the Parties unless otherwise expressly provided shall survive the expiration or termination of this Maintenance Agreement.

18. PRECEDENCE

18.1. Order of Precedence: In the event of conflict between this Maintenance Agreement and any referenced document, the order of precedence shall be this Maintenance Agreement followed by any other referenced document, in the order in which they are referenced in the Table of Contents.

18.2. Amended Documents: Any amendment shall have priority over the document it amends, and any amended document shall have the same precedence classification as stated in Section 18.1.

19. ENTIRE AGREEMENT, MODIFICATION

This Maintenance Agreement shall constitute the entire agreement between the Parties and shall supersede all prior contracts, proposals, representations, negotiations, or letters pertaining to the subject matter of this Maintenance Agreement, whether written or oral, including the Original Operation, Maintenance and Facilities Agreement. The Parties shall not be bound by or be liable for any statement, representation, promise, inducement, or understanding of any kind not set forth in this Maintenance Agreement and this Maintenance Agreement shall only be modified by an amendment signed by both Parties. The terms of this Section shall in no way effect the obligation of City to pay amounts due under the Original Operations, Maintenance and Facilities Agreement; provided that the payments are for services rendered before the Original Operations, Maintenance and Facilities Agreement was superseded by this Maintenance Agreement. This Maintenance Agreement includes all documents attached hereto and incorporated herein by reference.



20. INDEMNIFICATION

Notwithstanding anything to the contrary contained in that certain Franchise Agreement between the Parties hereto, each Party making a covenant, agreement, representation or warranty in this Maintenance Agreement shall, to the extent allowed by law, indemnify and hold harmless the Party for whose benefit such covenant, agreement, representation or warranty is made, against any and all injury, loss, cost, damage, or expense of any kind (including reasonable attorney's fees) resulting from any breach of any such covenant, agreement, representation or warranty; provided however that such injury, loss, cost, damage or expense is not the result of negligence, willful misconduct or a breach of this Maintenance Agreement by the Party to be indemnified.

In order for the requirement of indemnification to be enforceable, the Party wishing to be indemnified must give the other Party notice of the event which caused the injury, loss, cost, damage or expense, along with notice of the intent to seek indemnification therefore, within 180 days of the date the Party wishing to be indemnified first learns of the event.

21. LEGAL REQUIREMENTS

21.1. Laws and Regulations: The Parties shall at all times observe and comply with all applicable laws, ordinances, statutes, rules or regulations including without limitation those of OSHA and the National Electrical Safety Code, and any City of Bisbee supplements and requirements thereto, which in any manner relate to any rights and obligations under this Maintenance Agreement.

21.2. Safety Statute: Nothing contained in this Maintenance Agreement shall be construed in any way to limit, restrict, substitute, or waive, in whole or in part, any of the parties obligations under Article 6.4, HIGH VOLTAGE POWER LINES AND SAFETY RESTRICTIONS, of Section 1, Title 40, Chapter 2 of the Arizona Revised Statutes, or any other laws, regulations, codes, standards, or industry practices pertaining to activities near overhead electric lines.

22. EXECUTION AND EFFECTIVE DATE

Each Party to this Maintenance Agreement hereby represents and warrants that (i) it has full authority to enter this Maintenance Agreement and to perform all responsibilities and obligations there under and that all necessary actions, if any, to authorize the execution, delivery and performance of this Maintenance Agreement have been taken, (ii) the person executing this Maintenance Agreement on its behalf has been duly authorized to execute this Maintenance Agreement, and (iii) this Maintenance Agreement constitutes legally binding and enforceable obligations of such Party. This Maintenance Agreement shall be effective as of the 30th day of January, 2015.

ARIZONA PUBLIC SERVICE COMPANY

SIGNATURE: Mike Smith

NAME: MIKE SMITH

TITLE: Division Manager - Southeast

CITY OF BISBEE, ARIZONA  
MAYOR, CITY OF BISBEE

SIGNATURE: Ronald Oertle

NAME: Ronald Oertle

TITLE: Mayor

ATTEST:  
Ashley Corriado  
City Clerk

APPROVED AS TO FORM:  
[Signature]  
City Attorney

EXHIBIT A

STREETLIGHT MAINTENANCE AGREEMENT  
BETWEEN  
ARIZONA PUBLIC SERVICE COMPANY  
AND  
CITY OF BISBEE

REMOVAL AND INSTALLATION COSTS

A project-specific cost estimate or unit cost estimate shall be provided by APS. APS shall supply City at City's request with a cost estimate of the work to be done, but APS shall not commence work until such estimate has been paid by City, except that APS, at its sole option, may accept a letter of understanding (prior to any work being performed by APS) in which City commits to pay APS for such services upon completion of the services.