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<b>DOCUMENT NAME</b>	IRS DONATION AGREEMENT	
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<b>REF DOCUMENTS</b>	DVS00010 IRS DESKTOP GUIDANCE FOR ASSET DONATIONS	

**\*\*\*Each Agreement Issued will be a standalone document. The following is published to present the contents of the agreement in their entirety\*\*\***

### **MATERIAL & EQUIPMENT DONATION AGREEMENT TERMS & CONDITIONS**

This donation shall be subject to the AGREEMENT Terms and Conditions contained herein. In addition:

- Any donation of IT Equipment shall require authorization from the Director of IT Security and Director of Environmental Health and Safety.
- Any donation of hazardous materials or equipment containing asbestos (“Hazardous Substance”) shall require the authorization of the Director of Environmental Health and Safety.

All Material/Equipment is donated AS IS / WHERE IS WITH NO WARRANTIES EXPRESSED OR IMPLIED.

**MATERIAL DESCRIPTION: SEE ATTACHMENT “A”**

RECIPIENT ACKNOWLEDGES THAT RECIPIENT HAS READ AND UNDERSTANDS THE AGREEMENT TERMS AND CONDITIONS CONTAINED ON PAGES 2 THROUGH 4, AND AGREES TO BE BOUND BY THE TERMS AND CONDITIONS THEREIN.



THIS SIDE TO BE COMPLETED AND SIGNED BY RECIPIENT.

THIS SIDE TO BE COMPLETED AND SIGNED BY PNW/APS EMPLOYEE (DIRECTOR LEVEL OR HIGHER) AUTHORIZING THE DONATION. I hereby authorize, in accordance with Policies 51 (Delegation of Authority) and 56 (Disposition of Assets), the donation of Material/Equipment listed herein at the value specified:

Recipient Agrees To The Terms And Conditions Herein

Recipient Company Name: <i>City of Bisbee</i>	Donator Company Name:
Name (Printed): <i>Stephen Panken</i>	Name (Printed): Traci Stooks-Dermer
Title: <i>Interim City Manager</i>	Title: Dir Facilities/Transportation
Signature: <i>[Signature]</i>	Employee ID. No. Z02978
Date: <i>4/12/19</i>	Signature: <i>[Signature]</i>
Address: <i>915 S. Tovreaville Rd.</i>	Date: <i>2/14/19</i>
City: <i>Bisbee</i> St. <i>AZ</i> Zip: <i>85603</i>	As Required:
Phone: <i>520-432-6008</i>	Name
Fax: <i>520-432-4025</i>	Director of IT Security
501 (c)(3) number:	Signature
TIN: <i>86-6000235</i>	Name:
	Director of Environmental Health and Safety
	Signature



## AGREEMENT TERMS AND CONDITIONS

APS desires to donate to Recipient and Recipient desires to receive from APS, subject to the terms and conditions set forth in this donation agreement (“**Agreement**”), the Material listed in *Attachment A*.

For good and valuable consideration, the receipt of which is hereby acknowledged, Recipient and APS agree as follows:

### 1. DEFINITIONS:

- 1.1 *Recipient* - The person or entity receiving the Material.
- 1.2 *APS* - Arizona Public Service Company, acting on its own behalf and as agent of other co-owners, if any, of the Material. APS will identify such co-owners at Recipient’s request.
- 1.3 *Hazardous Substance* – Any substance or waste (including petroleum and petroleum products) which is designated, classified or regulated as toxic, hazardous or a pollutant or which becomes so designated, classified or regulated under any local, state or federal statute, regulations, law or ordinance.
- 1.4 *Liability* - All liability (including, without limitation, any liability without fault and liability based on negligence of APS or any other person), damages, costs, losses, claims, demands, actions, causes of action, attorneys’ fees and expenses, fines, penalties or assessments, or any of them, howsoever occasioned, resulting from the death or injury to any person, damage to any tangible property, including the property and/or personnel of Recipient, and/or any actual or alleged environmental liability arising out of, or resulting directly or indirectly from or in connection with, the donation, purchase, sale, use or disposal of the Material.
- 1.5 *Material* - The items listed in *Attachment A*.
- 1.6 *Work* – Recipient or Recipient’s representative disassembling and loading the Material, or in the event disassembly is not required, loading the Material.

2. **TAXES:** Recipient shall pay any applicable taxes for the Material.

### 3. REMOVAL AND/OR RECEIPT OF THE MATERIAL:

- 3.1 Recipient shall be solely responsible for, and shall bear all costs and expenses associated with, the removal and /or receipt of the Material and all debris caused by such removal from APS’s premises. Recipient shall remove all the Material within ten (10) business days after the Effective Date.
- 3.2 If Recipient does not remove all of the Material within ten (10) business days after the Effective Date, APS may, at its option, either (i) extend the time period for Recipient’s removal and /or receipt of the Material by such number of additional days as APS deems reasonable, in which case APS may charge Recipient storage fees in such amounts as APS deems reasonable and Recipient shall pay such storage fees before Recipient removes the Material from APS’s premises or (ii) consider the Material to have been abandoned by Recipient, in which case Recipient shall forfeit and lose all



right, title and interest in the Material. Title to such Material shall revert to APS without further action.

**4. DELAY IN REMOVAL AND / OR RECEIPT OF MATERIAL:**

4.1 APS may delay Recipient's removal of the Material from APS's premises. In such event, APS shall notify Recipient in writing.

4.2 If APS delays Recipient's removal and /or receipt of the Material more than thirty (30) business days after the Effective Date, Recipient may terminate this Agreement, provided that Recipient submits written notice to APS. This *Section* shall be Recipient's sole remedy in the event APS delays Recipient's removal of the Material and Recipient hereby waives all other remedies otherwise available to it for APS' failure or delay.

**5. GENERAL REQUIREMENTS:**

5.1 Recipient shall notify APS in writing, within 15 days of any of the following:

- A federal, state, or local environmental agency issues a notice of violation, assesses a civil penalty, or issues an administrative order associated with a Recipient's Facility.
- Recipient enters into a consent order with any federal, state, or local environmental agency for a Recipient's Facility.
- Any Recipient Facility becomes subject to a CERCLA or state superfund investigation and/or is listed on the NPL or state superfund list

5.2 Recipient shall not release or discharge Hazardous Substances onto, into, or otherwise pollute any soils, surface water, groundwater, or ambient air in violation of the laws, rules, and regulations of the governmental entities having jurisdiction. Recipient shall not take any action or fail to take any action which would result in the spread, migration or exacerbation of any existing Hazardous Substances. If such release, discharge, spread, migration or exacerbation occurs, Recipient shall immediately notify APS and upon approval from APS, Recipient shall abate, remove, or remediate such release, discharge, spread, migration or exacerbation as required by law including, but not limited to, decontamination, removal, and disposal of the Hazardous Substances and any contaminated soil, replacement of contaminated soil with clean soil, and repair damage, all at Recipient's sole expense.

5.3 Recipient shall maintain the APS work area in a neat, clean, and safe condition and shall, at a minimum, comply with APS's Safety Program, including the Contractor Safety Manual, in effect at the time it performs under this Agreement.

5.4 APS shall be responsible for being fully aware of and shall take all special precautions necessary or appropriate for the protection of the health and safety of all individuals, including Recipient personnel, while in the area of any asbestos material encountered in performance of the Agreement.

5.5 APS shall be responsible for establishing and enforcing appropriate procedures for the use of proper personal protective equipment and special clothing, monitoring personnel and the work environment, posting proper warning signs and labels, conducting proper medical examinations, and maintaining appropriate health and medical records for all personnel



involved in the handling of any materials containing asbestos or any other Hazardous Substance. Recipient shall make its own determination of the actual precautions to be taken.

6. **WITHDRAWAL OF DONATION OF THE MATERIAL:** Recipient acknowledges and agrees that APS may cancel the donation of the Material at any time prior to Recipient loading and / or receiving the Material listed in *Attachment A*.
7. **TITLE AND RISK OF LOSS:** Title to the Material shall pass to Recipient upon receipt of material as set forth in *Section 3*. If APS loads the Material on Recipient's carrier, the risk of loss to the Material shall pass to Recipient when APS loads the Material on Recipient's carrier. If the Recipient performs the Work, the risk of loss to the Material shall pass to Recipient when Recipient begins the disassembly of the Material or the Recipient begins the loading of the Material, whichever occurs first.
8. **INSURANCE:**
  - 8.1. Without limiting any liabilities or other obligations of Recipient, prior to commencing Work, Recipient shall provide and maintain, with forms and insurers acceptable to APS, until all the obligations under this Agreement are satisfied, at least the insurance coverages as follows:
    - 8.1.1 Workers' Compensation Insurance with statutory limits, and Employer's Liability Insurance with limits of not less than ONE MILLION DOLLARS (\$1,000,000)
    - 8.1.2 Comprehensive General Liability Insurance, with a minimum combined single limit of TWO MILLION FIVE HUNDRED THOUSAND DOLLARS (\$2,500,000) each occurrence. The policy shall include coverage for bodily injury liability, property damage liability, personal injury liability (including coverage for contractual and employee acts), and blanket contractual.
    - 8.1.3 Except for Workers' Compensation insurance, the policies required by this *Section* shall name APS as an additional insured. The policies shall stipulate that the insurance shall be primary insurance and that any insurance or self-insurance carried by APS shall not be contributory insurance. Recipient shall waive any and all recovery rights to which any insurer of Recipient may have against APS by virtue of the payment of any loss under any insurance. In the event Recipient purchases insurance policies required by this *Section* that are not occurrence policies, Recipient shall either (a) maintain claims made policies for at least three (3) years following termination of this Agreement, or (b) obtain extended discovery periods for such policies for at least three (3) years following termination of this Agreement.
    - 8.1.4 Comprehensive Automobile Liability Insurance with a combined single limit for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) each occurrence with respect to Recipient's vehicles whether owned, hired, or nonowned, assigned to or used in performance of the Work.
    - 8.1.5 Prior to receiving the Materials, Recipient shall furnish APS with Certificates of Insurance as evidence that policies providing the required coverages, conditions,



and limits are in full force and effect. Such certificates shall provide that not less than thirty (30) days advance notice of cancellation, termination, or alteration shall be sent directly to APS addressed as follows:

Arizona Public Service Company  
Investment Recovery  
P.O. Box 53933 Station 3791  
Phoenix, Arizona 85072-3933

8.2 If performance of Recipient's obligations under this Agreement involves the disposal, transport, or handling of hazardous materials or chemicals, then Recipient shall purchase Pollution Legal Liability insurance with a combined single limit and annual aggregate of not less than \$5,000,000 each occurrence and/or accident and \$10,000,000 in the aggregate, that shall include coverage for all actions, omissions, active or passive negligence, or claims arising out of the Recipient's performance under this Agreement, for bodily injury, loss of or damage to property including third party claims for loss of use, investigation costs, defense costs, clean up and environmental remediation costs, and costs and expenses incurred in the settlement of claims with respect to occurrences and/or accidents involving Recipient's performance of its obligations under this Agreement.

9. **JOBSITE WORK RULES:** Recipient shall comply with the APS jobsite regulations, if any, including but not limited to fire prevention, safety, and security, as outlined in the APS Contractor Safety Manual.
10. **DISCLAIMER OF WARRANTIES: RECIPIENT ACKNOWLEDGES THAT IT IS RECEIVING THE DONATED MATERIAL ON AN "AS IS - WHERE IS" BASIS WITH ALL FAULTS. RECIPIENT ACKNOWLEDGES THAT IT HAS INSPECTED THE MATERIALS AND ACCEPTS THEM IN THE CONDITION OFFERED BY APS AND THAT THEY ARE ACCEPTABLE AND SUITABLE FOR THE PURPOSES FOR WHICH RECIPIENT INTENDED TO UTILIZE THEM. APS MAKES NO EXPRESS, IMPLIED OR PROSPECTIVE WARRANTIES OR REPRESENTATIONS, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PURPOSE, EXCEPT THAT APS WARRANTS THAT IT HAS TITLE TO THE MATERIAL AND HAS THE RIGHT TO DONATE THE MATERIAL.**
11. **INSPECTION:** Recipient acknowledges that it has either waived inspection or has thoroughly inspected the Material and that it is receiving the Material solely in reliance upon such inspection, and not in reliance upon the description of the Material set forth in *Attachment A* or any representations or statements made by APS.
12. **INDEMNIFICATION:** To the fullest extent of the law, Recipient shall indemnify, defend, and save harmless Pinnacle West Capital Corporation, APS and all other co-owners, if any, of the Material, and all of its officers, directors, employees, agents, advisers, representatives, affiliates, successors, insurers, and assigns, from any and all Liability, regardless of the negligence, act or omission of APS.
13. **UNCONTROLLABLE FORCES:** APS shall not be liable for Recipient's inability to remove the Material or for delays in removing the Material that are due to any cause beyond APS's reasonable control, such as strike, flood, fire, lightning, windstorm, weather, epidemic, quarantine



restriction, war, sabotage, act of a public enemy, earthquake, insurrection, riot, civil disturbance, labor, transportation, materials or equipment shortages or interruptions, restraint by a court order or public authority, or action or non-action by a governmental body or similar or dissimilar causes that are beyond APS' control.

14. **IN NO EVENT WILL APS, PINNACLE WEST CAPITAL CORPORATION, NOR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, ADVISERS, REPRESENTATIVES, AFFILIATES, OR SUCCESSOR OR ASSIGNS, BE LIABLE TO RECIPIENT OR ANY THIRD PARTY FOR ANY COSTS OR DAMAGES, INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS, LOST SAVINGS, OR OTHER INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES FOR ANY ACTIONS RESULTING FROM OR ARISING OUT OF THIS AGREEMENT, WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PROFESSIONAL LIABILITY, CONTRIBUTION, OR OTHERWISE EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH COSTS OR DAMAGES. ANY PARTY WHOSE LIABILITY IS LIMITED PURSUANT TO THIS SECTION IS INTENDED TO BE A THIRD PARTY BENEFICIARY UNDER THIS AGREEMENT WITH RESPECT TO THE ENFORCEMENT OF SUCH LIABILITY LIMITATION.**

**UNDER NO CIRCUMSTANCES SHALL THE TOTAL AGGREGATE LIABILITY OF APS UNDER ANY THEORY OF RECOVERY, WHETHER BASED IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, WARRANTY OR OTHERWISE, EXCEED AN AMOUNT EQUAL TO ONE HUNDRED DOLLARS (\$100.00).**

15. **SUBCONTRACTORS:** Recipient shall at all times be responsible for the acts and omissions of its subcontractors and persons employed, hired or retained by them. Nothing in this Agreement shall create any contract between Recipient's subcontractor(s) and APS or any obligation on the part of APS to pay, or to be responsible for the payment of, any sums to Recipient's subcontractor(s).
16. **STATUTES AND CODES:** Recipient shall conduct the Work and perform its obligations in compliance with all applicable statutes, acts, ordinances, regulations, codes and standards of legally constituted authorities having jurisdiction over this Agreement and the activities contemplated hereby.
17. **GOVERNING LAW:** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona without giving effect to the doctrine of conflict of laws.
18. **SURVIVAL:** Any provision of this Agreement that imposes or contemplates continuing obligations on a party will survive the expiration or termination of this Agreement.
19. **ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof, superseding any previous agreements or understandings, and no other terms or conditions shall apply to the subject matter of this Agreement.



**ATTACHMENT "A"**  
**DESCRIPTION OF MATERIAL / EQUIPMENT BEING DONATED**

**Bisbee Donation List:**

- 34 Used Task Chairs
- 1 Used 15'X4' Conference Table
- 2 round Tables and 18 chairs for Breakroom
- 6 Wood framed guest chairs
- 1 48" round office table (non-standard)

[Empty rectangular box for form content]

Estimated value of donation \$ 6,000.00

Please route completed form to:

Sean Byro	MS 3791	Investment Recovery Services
Larry Schad	MS 3791	Investment Recovery Services
Tom Mitchell	MS 9505	Asset Accounting
Rose Majewski	MS 9505	Asset Accounting
Jason Symchak	MS 9657	Tax Services
Julie Coleman	MS 8010	Corporate Giving