

ORDINANCE O-22-13

**AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF
BISBEE, COUNTY OF COCHISE, STATE OF ARIZONA, AUTHORIZING A
UTILITY EASEMENT TO ARIZONA PUBLIC SERVICE COMPANY
LOCATED NEAR 118 WALSH AVENUE**

WHEREAS, the Mayor and Council of the City of Bisbee have determined that it is in the best interest of the city to grant a permanent easement for the installation and maintenance of power poles and lights to Arizona Public Service Company; and

WHEREAS, section 7.05 (a) (8) of the City Charter provides that matters related to real property shall be done by Ordinance; and

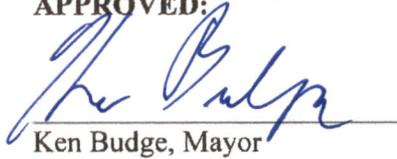
NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the City of Bisbee, County of Cochise, State of Arizona, as follows:

Section 1: The City of Bisbee grants the easement unto Arizona Public Service Corporation under the terms and conditions set forth in the Utility Easement attached hereto as Exhibit A.

Section 2: The executed Utility Easement shall be recorded at the Cochise County Records Office.

PASSED, APPROVED AND ADOPTED by the Mayor and Council of the City of Bisbee on this 4th day of October 2022.

APPROVED:


Ken Budge, Mayor

ATTEST:


Ashlee Coronado, City Clerk

APPROVED AS TO FORM:


Joseph D. Estes, City Attorney
Gust Rosenfeld, P.L.C.

NW¼-9-23S-24E
APN 103-63-120
SE-21-03
WA550872
JEF-DJO

BISBEE-APS UTILITY EASEMENT

THE CITY OF BISBEE, a municipal corporation of the State of Arizona, (hereinafter called "Grantor"), is the owner of the following described real property located in Cochise County, Arizona (hereinafter called "Grantor's Property"):

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

Grantor, for and in consideration of One Dollar (\$1.00) and other valuable consideration, receipt of which is hereby acknowledged, does hereby grant and convey to **ARIZONA PUBLIC SERVICE COMPANY**, an Arizona corporation, (hereinafter called "Grantee"), and to its successors and assigns, a non-exclusive right, privilege, and easement, 8 feet in width or as further described in attached exhibits at locations and elevations, in, upon, over, under, through and across, a portion of Grantor's Property described as follows (herein called the "Easement Premises"):

SEE EXHIBIT "B" ATTACHED HERETO AND MADE A PART HEREOF

Grantee is hereby granted the right to: construct, reconstruct, replace, repair, operate and maintain electrical lines, together with appurtenant facilities and fixtures for use in connection therewith, for the transmission and distribution of electricity to, through, across, and beyond Grantor's Property; and install, operate and maintain telecommunication wires, cables, conduits, fixtures and facilities solely for Grantee's own use incidental to supplying electricity (said electrical and telecommunication lines, facilities and fixtures collectively herein called "Grantee Facilities"). Grantee Facilities shall consist of underground electric lines and appurtenant facilities including pad mounted equipment, the locations of which are set forth in. In no event may any overhead electric lines and associated overhead equipment be installed unless in an emergency to restore power. Grantee shall at all times have the right of full and free ingress and egress to and along the Easement Premises for the purposes herein specified.

Grantee is hereby granted the right, but not the obligation, to trim, prune, cut, and clear away trees, brush, shrubs, or other vegetation on, or adjacent to, the Easement Premises whenever in Grantee's judgment the same shall be necessary for the convenient and safe exercise of the rights herein granted.

Grantor shall not locate, erect or construct, or permit to be located, erected or constructed, any building or other structure or drill any well within the limits of the Easement Premises; nor shall Grantor plant or permit to be planted any trees within the limits of the Easement Premises without the prior written consent of Grantee. However, Grantor reserves all other rights, interests and uses of the Easement Premises that are not inconsistent with Grantee's easement rights herein conveyed and which do not interfere with or endanger any of the Grantee Facilities, including, without limitation, granting others the right to use all or portions of the Easement Premises for utility or roadway purposes and constructing improvements within the Easement Premises such as paving, sidewalks, landscaping, driveways, and curbing. Notwithstanding the foregoing, Grantor shall not have the right to lower by more than one foot or raise by more than two feet the surface grade of the Easement Premises without the prior written consent of Grantee, and in no event shall a change in the grade compromise Grantee's minimum cover requirements or interfere with Grantee's operation, maintenance or repair.

Grantee shall not have the right to use the Easement Premises to store gasoline or petroleum products, hazardous or toxic substances, or flammable materials; provided however, that this prohibition shall not apply to any material, equipment or substance contained in, or a part of, the Grantee Facilities, provided that Grantee must comply with all applicable federal, state and local laws and regulations in connection therewith. Additionally, the Easement Premises may not be used for the storage of construction-related materials or to park or store construction-related vehicles or equipment except on a temporary basis to construct, reconstruct, replace, repair, operate, or maintain the Grantee Facilities.

Grantor shall maintain clear areas that extend: 1) 3 feet from and around all edges of all switching cabinet pads and 2 feet from and around all edges of all transformer pads and other equipment pads, and 2) a clear operational area that extends 10 feet immediately in front of all transformer, switching cabinet and other equipment openings, and 3) a 6 feet by 6 feet hot-stick operating area off the front left corner of all transformers. No obstructions, trees, shrubs, large landscape rocks, fences, fixtures, or permanent structures shall be placed by Grantor within said clear areas; nor shall Grantor install landscape irrigation or sprinkler systems within said clear areas. Landscape irrigation or sprinkler systems installed adjacent to the clear areas shall be installed and maintained so that the transformers, switching cabinets or any other equipment do not get wet by spray or irrigation.

Grantee shall exercise reasonable care to avoid damage to the Easement Premises and all improvements thereon and agrees that following any installation, excavation, maintenance, repair, or other work by Grantee within the Easement Premises, the affected area, including without limitation, all pavement, landscaping, cement, and other improvements permitted within the Easement Premises pursuant to this easement will be restored by Grantee to as close to original condition as is reasonably possible, at the expense of Grantee.

Grantor reserves the right to require the relocation of Grantee Facilities to a new location within Grantor's Property; provided however, that: (1) Grantor pays the entire cost of redesigning and relocating Grantee Facilities; and (2) Grantor provides Grantee with a new easement in a form and location acceptable to Grantee and at no cost to Grantee. Upon the acceptance by Grantee of a new easement and after the relocation of Grantee Facilities to the new easement area, Grantee shall abandon its rights to use the Easement Premises granted in this easement. The easement granted herein shall not be deemed abandoned except upon Grantee's execution and recording of a formal instrument abandoning the easement.

If any of Grantee's electric facilities in this easement are not being used or are determined not to be useful, Grantor may request that the facilities that are no longer needed be removed and that portion of the easement be abandoned. Grantee will execute and record a formal instrument abandoning the easement, or a portion thereof. Any facilities that are determined to still be needed for Grantee's electrical system can be relocated pursuant to the above relocation requirements.

Grantee shall not have the right to transfer, convey or assign its interests in this easement to any individual, corporation, or other entity (other than to an affiliated entity of Grantee or an entity that acquires from Grantee substantially all of Grantee's electric distribution facilities within the area of Grantor's Property) without the prior written consent of Grantor, which consent shall not be unreasonably withheld. Grantee shall notify Grantor of the transfer, conveyance or assignment of any rights granted herein.

The covenants and provisions herein set forth shall extend and inure in favor and to the benefit of, and shall be binding on the heirs, administrators, executors, successors in ownership and estate, assigns and lessees of Grantor and Grantee.

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EXHIBIT "A"

(LEGAL DESCRIPTION OF GRANTOR'S PROPERTY) AS RECORDED IN INSTRUMENT NUMBER 1995-02680 C.C.R.

PARCEL I

Those portions of Block 14, of BISBEE TOWNSITE, in Cochise County, State of Arizona, as shown upon the official map thereof, made by H.W. JORGENSEON, January 1905, and on file and of record in the office of the County Recorder of said Cochise County, Arizona, particularly described as follows, to wit:

1. Lot 10 and a portion of Lot 45, all enclosed within that parcel described as beginning at the Southeast corner of said Lot 10;

THENCE North 51 degrees 00 minutes West, a distance of 74.54 feet;

THENCE North 39 degrees 36 minutes East, a distance of 30.60 feet;

THENCE south 53 degrees 57 minutes East, a distance of 70.24 feet;

THENCE South 32 degrees 12 minutes West, a distance of 34.56 feet to beginning.

2. Lot 2; and Lot 1, except the portion conveyed by Deed recorded May 15, 1933 in Book 114 Deeds, page 271, being a parcel described as beginning at the Southeast corner of said Lot 1;

THENCE Northeasterly along the West side of Brewery Ave, a distance of 25 feet to the corner of the building;

THENCE Westerly 26 feet to a wall on Walsh Ave., a distance of 29 feet to a point on Walsh Ave., and the South line of Lot 21, which is 25 feet 10 inches from the POINT OF BEGINNING;

THENCE Southeasterly along said Walsh Ave., and South line of Lot 1, 25 feet 10 inches to the POINT OF BEGINNING.

Lot 3, except that portion described as:

BEGINNING at the Southwest corner of Lot 3;

THENCE South 78 degrees 42 minutes East, a distance of 4.35 feet to a point on the South line of Lot 3;

THENCE North 28 degrees 08 minutes East, a distance of 54.22 feet to a point on the North line of Lot 3;

THENCE North 46 degrees 13 minutes West, a distance of 4.47 feet to a point on the East line of Lot 4 in said Block;

THENCE South 28 degrees 08 minutes West, a distance of 57.03 feet to the Southwest corner of Lot 3.

3. A portion of said Block 14 lying between Lots 1, 2, and 3, and particularly described as;
BEGINNING at the Southwest corner of Lot 1, Block 14;

THENCE North 25 degrees 22 minutes East, a distance of 36.75 feet to the Northwest corner of Lot 1;

THENCE North 40 degrees 20 minutes West, a distance of 38.41 feet. to the Southwest corner of Lot 2;

THENCE North 12 degrees 02 minutes East, a distance of 8.91 feet: to a point on the West line of Lot 2;

THENCE South 28 degrees 08 minutes West, a distance of 17.10 feet to a point on the North line of Lot 3;

THENCE 46 degrees 13 minutes East, a distance of 32.52 feet to the Northeast corner of Lot 3,

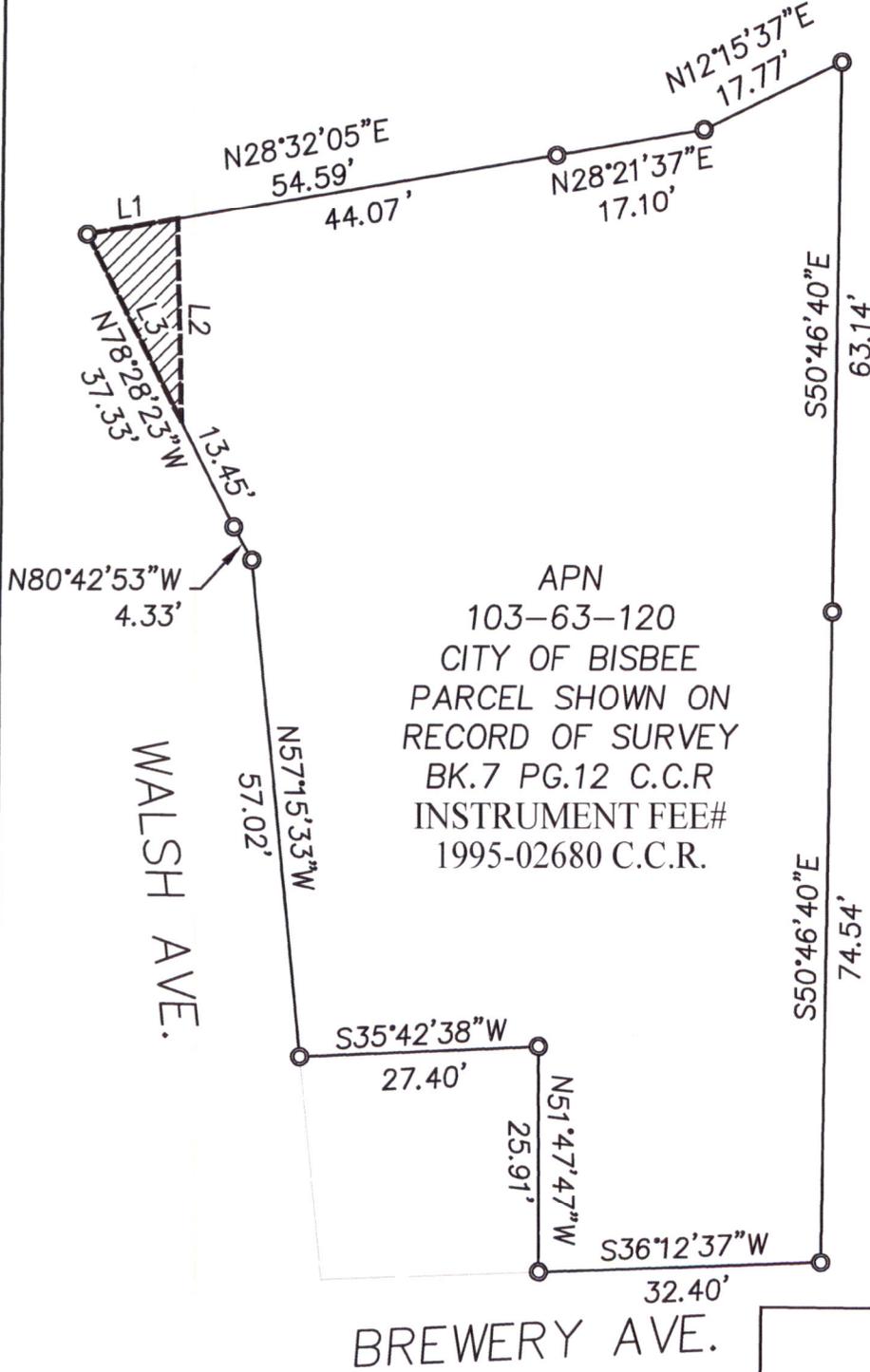
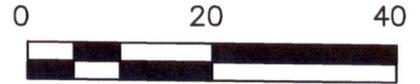
THENCE South 20 degrees 40 minutes West, a distance of 35.21 feet to the Southeast corner of Lot 3;

THENCE South 78 degrees 42 minutes East, a distance of 4.82 feet to the Southwest corner of Lot 1 and the POINT OF BEGINNING.

EXHIBIT "B"

ARIZONA PUBLIC SERVICE COMPANY

SKETCH SHOWING THE LOCATION AND LIMITS OF UTILITY EASEMENT.



APN
 103-63-120
 CITY OF BISBEE
 PARCEL SHOWN ON
 RECORD OF SURVEY
 BK.7 PG.12 C.C.R
 INSTRUMENT FEE#
 1995-02680 C.C.R.

EASEMENT AREA
 120 SQ. FT.
 0.003 ACRES

L#	BEARING	DISTANCE
L1	N28°32'05"E	10.51'
L2	S52°40'51"E	23.11'
L3	N78°28'23"W	23.88'

LEGEND

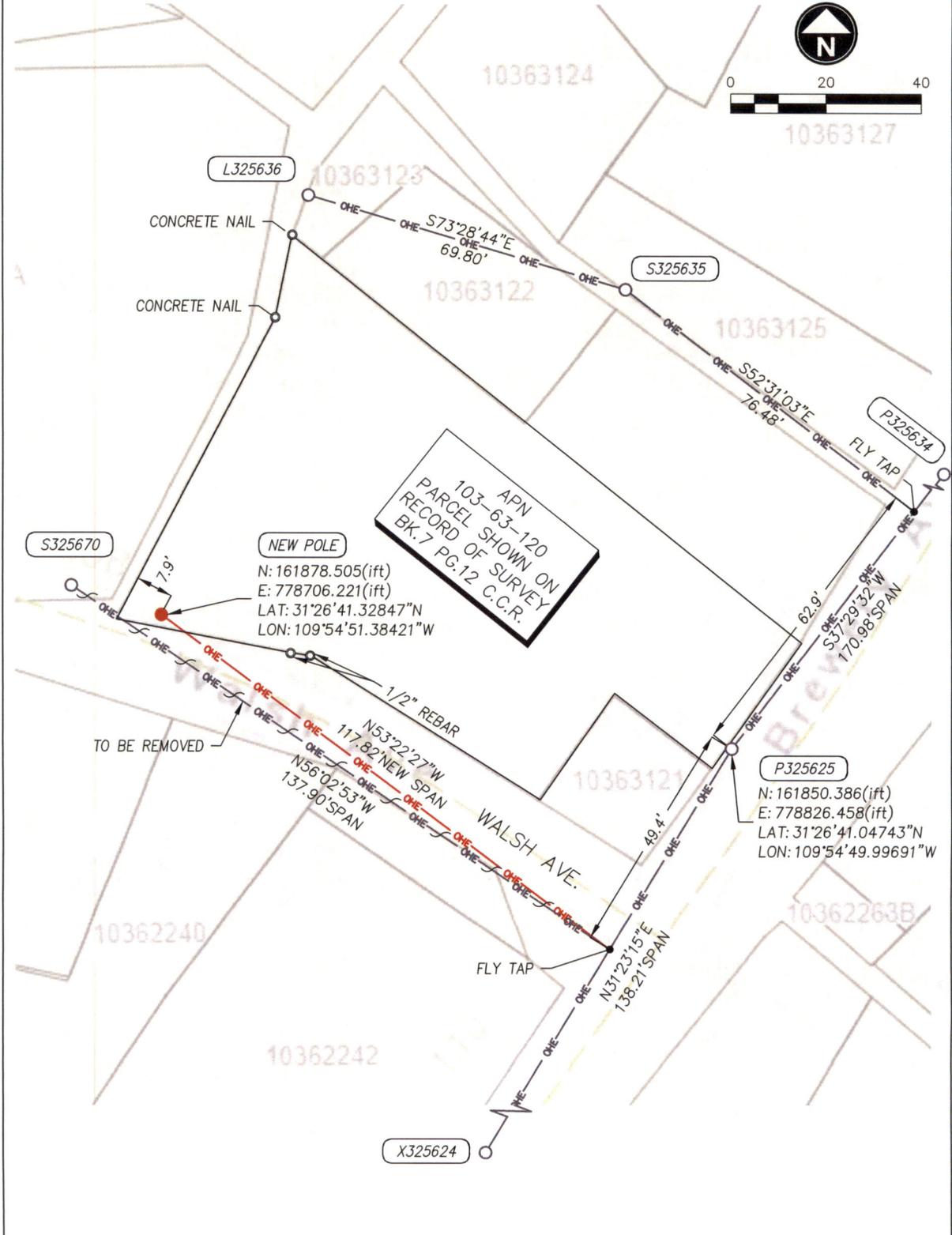
- PARCEL CORNER
- PARCEL BOUNDARY
- ▨ PROPOSED EASEMENT AREA



NW 1/4 SEC. 09 T 23S R 24E
 SURVEY FERGUSON LAND SERVICES
 DRAWN: JWS VERSION: 1
 DATE: 06-15-22 JOB NO. WA550872
 SCALE: 1"=20' SHEET: 1 OF 1



ARIZONA PUBLIC SERVICE COMPANY
SURVEY NOTES



COORDINATE SYSTEM / DATUM
NAD-83 ARIZONA STATE PLANE
EAST ZONE, INTERNATIONAL FEET.
BEARINGS SHOWN ARE BASED ON S.P.C. GRID
ELEVATIONS SHOWN ARE BASED ON THE NORTH
AMERICAN VERTICAL DATUM OF 1988 (NAVD-88)

SCALE FACTORS
0.99965562 GROUND TO GRID
1.00034449 GRID TO GROUND
DISTANCES SHOWN HAVE BEEN SCALED
TO GROUND USING THE FACTOR ABOVE.
ALL COORDINATES SHOWN ARE GRID.

NW 1/4 SEC. 09 T23S R24E
SURVEY: FERGUSON LAND SERVICES
DRAWN: JWS VERSION: 1
DATE: 06-15-21 JOB NO. WA550872
SCALE: 1"=20' SHEET: 1 OF 1