

RESOLUTION NO. 2789

**A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF PAYSON, ARIZONA, APPROVING AND AUTHORIZING THE TOWN MANAGER TO SIGN A STREETLIGHT POLE USE LICENSE AGREEMENT, A STREETLIGHT ENERGY AGREEMENT, AND A STREETLIGHT MAINTENANCE AGREEMENT WITH ARIZONA PUBLIC SERVICE COMPANY RELATING TO STREET LIGHTS WITHIN THE TOWN.**

**WHEREAS**, in 1997, the Town entered into four agreements with Arizona Public Service ("APS") relating to the Town's street lights; and

**WHEREAS**, the first of these Agreements (Streetlight Sales Agreement) allowed the Town to purchase from APS the streetlight facilities within its boundaries; and

**WHEREAS**, the other agreements (i) licensed the Town to use APS's power poles for the placement of some of its streetlight facilities, (ii) provided for the sale of energy to power the streetlights, and (iii) provided for the maintenance of the streetlights; and

**WHEREAS**, at APS's suggestion, the Town and APS have negotiated new agreements related to the use of APS's poles, the sale of energy, and the maintenance of the streetlights; and

**NOW, THEREFORE, THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, DO HEREBY RESOLVE AS FOLLOWS:**

Section 1. The Streetlight Pole Use License Agreement between Arizona Public Service Company and the Town of Payson, attached as Exhibit A ("the Use Agreement"), is approved in substantially the form attached.

Section 2. The Streetlight Energy Agreement between Arizona Public Service Company and the Town of Payson, attached as Exhibit B ("the Energy Agreement"), is approved in substantially the form attached.

Section 3. The Streetlight Maintenance Agreement between Arizona Public Service Company and the Town of Payson, attached as Exhibit C ("the Maintenance Agreement"), is approved in substantially the form attached.

Section 4. Debra Galbraith, Town Manager, is authorized to execute the Use Agreement, the Energy Agreement, and the Maintenance Agreement in substantially the form attached.

JUN 19 2014 D. 4\*

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by the following vote:

AYES \_\_\_\_\_ NOES \_\_\_\_\_ ABSTENTIONS \_\_\_\_\_ ABSENT \_\_\_\_\_

\_\_\_\_\_  
Kenny J. Evans, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Silvia Smith, Town Clerk

  
\_\_\_\_\_  
Timothy M. Wright, Town Attorney

**EXHIBIT A  
TO  
RESOLUTION 2789**

STREETLIGHT POLE USE LICENSE AGREEMENT

BETWEEN

ARIZONA PUBLIC SERVICE COMPANY

AND

TOWN OF PAYSON

APS CONTRACT NO. 201407010

TOWN OF PAYSON CONTRACT NO. \_\_\_\_\_

Execution Date 6/30/14

STREETLIGHT POLE USE LICENSE AGREEMENT

BETWEEN

ARIZONA PUBLIC SERVICE COMPANY

AND

TOWN OF PAYSON

TABLE OF CONTENTS

SECTION	PAGE
1. PARTIES .....	1
2. RECITALS .....	1
3. DEFINITIONS.....	2
4. LICENSE FOR ATTACHMENT TO POLES .....	3
5. TERM .....	7
6. TERMINATION.....	7
7. DESIGNATED REPRESENTATIVES AND NOTICES .....	8
8. FISCAL YEAR.....	9
9. UNCONTROLLABLE FORCES.....	10
10. NON-WAIVER.....	11
11. BILLING, PAYMENT AND TAXES.....	11

12.	ANNEXATION AND ACQUISITION OF ADDITIONAL STREETLIGHT FACILITIES .....	13
13.	GOVERNING LAW AND VENUE .....	13
14.	SEVERABILITY .....	13
15.	ASSIGNMENT .....	13
16.	NO THIRD PARTY BENEFICIARIES .....	14
17.	SURVIVABILITY OF OBLIGATIONS AND LIABILITIES .....	14
18.	PRECEDENCE .....	14
19.	ENTIRE AGREEMENT, MODIFICATION .....	15
20.	INDEMNIFICATION .....	15
21.	LEGAL REQUIREMENTS .....	16
22.	EXECUTION AND EFFECTIVE DATE .....	16

**EXHIBIT**

EXHIBIT A – ANNUAL ATTACHMENT FEE .....	A-1
EXHIBIT B – REMOVAL AND INSTALLATION COST .....	B-1

STREETLIGHT POLE USE LICENSE AGREEMENT  
BETWEEN  
ARIZONA PUBLIC SERVICE COMPANY  
AND  
TOWN OF PAYSON

1. PARTIES

The parties to this Streetlight Pole Use License Agreement (“License Agreement”) are TOWN OF PAYSON, an Arizona municipal corporation, (“Town”), 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. 48326 dated October 2, 1997) in which Town has purchased streetlight facilities from APS within the existing Town boundaries.
- 2.2 Additionally, the Parties entered into: i) a Streetlight Energy Agreement (APS Contract No. 4848328 dated October 2, 1997) pursuant to which APS sells energy to Town for the Streetlight Facilities (the “Energy Agreement”); ii) a Streetlight Operation, Maintenance and Facilities Agreement (APS Contract No. 48334 dated October 2, 1997) pursuant to which APS operates and maintains Town’s Streetlight Facilities within APS’ service territory (the “O.M&F Agreement”); and iii) a Master License Agreement (APS Contract No. 48329 dated October 2, 1997) pursuant to which Town’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 License Agreement pursuant to which the Town may attach its streetlights to APS’ electric distribution poles.
- 2.4 The Parties desire that this License Agreement replace and supersede the Former Master License Agreement dated October 2, 1997.

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 License Agreement or amendments thereto, the following words or phrases shall have the meanings specified:

- 3.1 ACC: Arizona Corporation Commission.
- 3.2 Annual Attachment Fee: The fee set forth in Exhibit A assessed annually for attachment of Streetlight Facilities to each APS Pole.
- 3.3 APS Pole(s): Electric distribution poles owned by APS for which APS authorizes the attachment of the Streetlight Facilities.
- 3.4 Due Date: The thirtieth (30th) calendar day after the invoice date.
- 3.5 Effective Date: The date specified in Section 22, Execution and Effective Date.
- 3.6 Interest: The per annum rate of 18% compounded monthly.
- 3.7 Joint Pole Participant: Any entity with whom APS has entered into an agreement or arrangement to reciprocally own and furnish poles for joint use and by which both parties have agreed to a method of pro-rating the fully allocated costs of ownership and maintenance of such joint use facilities, including the safety space and supporting structure.
- 3.8 License: A revocable, nonexclusive authorization to attach Streetlight Facilities to APS Poles, subject to the terms of this License Agreement. Such License(s) shall be issued by APS, in its sole discretion.

- 3.9 Other Licensee(s): Any entity, other than Town, whom APS has authorized under any agreement or arrangement to attach its facilities to APS' Poles, for any purpose.
- 3.10 Point of Delivery: The point where energy is delivered shall be where APS' electric service wire connects to (i) Town's electric service wire, one foot beyond the end of the mast arm for overhead service to the streetlight or, (ii) at the Town's protection fuse installed in the APS-owned secondary junction box for underground service to the streetlight or, (iii) at the Town's electric service protection fuse or termination point located in the hand-hole of the Town Pole for underground service to the streetlight when no APS-owned secondary junction box exists or, (iv) five (5) feet from the Town Pole for underground service when there is no hand-hole on the Town Pole or an APS-owned secondary junction box.
- 3.11 Streetlight Facilities: The facilities owned by the Town (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. LICENSE FOR ATTACHMENT TO POLES

- 4.1 Grant of License: Subject to the terms and the other provisions of this License Agreement, APS hereby grants to Town a License to maintain the location of those Streetlight Facilities which, on the Effective Date of this License Agreement, are attached to APS Poles, in the location that they are then attached. Further, APS agrees to issue to Town, upon its request, from time to time, subsequent to the Effective Date of this License Agreement, new Licenses

authorizing the attachment of Town owned Streetlight Facilities to various APS Poles as designated by APS in its sole discretion.

4.2 Other Rights Reserved:

4.2.1 Neither the use of APS Poles as authorized herein nor payment of any fees or charges required under this License Agreement shall create or vest in Town any ownership or property rights in such APS Poles. Town's right here in shall be and remain a license. Neither this License Agreement nor any License granted, or which may be granted, hereunder shall constitute an assignment of any of APS' rights to use any public thoroughfare or other public or private property at the location of APS Poles.

4.2.2 Nothing contained in this License Agreement shall be construed to compel APS to construct, retain, extend, place, or maintain APS electric distribution poles or other facilities for the benefit of Town which are not needed for APS' own service requirements. If it becomes necessary or desirable to relocate or remove APS Poles, APS will notify Town of the need to relocate or remove Town's Streetlight Facilities located thereon thirty (30) calendar days prior to such relocation or removal; except that in an emergency, the notice will be provided within thirty (30) calendar days after the relocation or removal. APS will perform the relocation or removal of the Streetlight Facilities located on APS Poles. The relocation or removal will be at Town's expense in accordance with Exhibit B, unless such relocation or removal is made at APS' request or convenience. If APS relocates or removes its APS Poles at the request of Town or a third party, Town or the third party (as the case may be) shall be responsible to pay the costs of relocating or removing the Streetlight

Facilities located thereon. Where the APS Pole has been knocked down, all requests for re-installing Streetlight Facilities on the re-installed APS Pole, or installing new Streetlight Facilities on an APS Pole, shall be requested in writing by Town. At Town's request, APS will provide the Town with a project-specific cost estimate or unit cost estimate of the work to be done. APS shall not commence the work until such estimate has been paid by Town, except that APS, at its sole option, may accept a letter of understanding (prior to any work being performed by APS) in which Town commits to pay APS for such services upon completion of the services.

- 4.2.3 Nothing contained in this License Agreement shall be construed as a limitation, restriction, or prohibition against APS with respect to any agreement and/or arrangement which APS has previously entered into or may in the future enter into with any third parties regarding the APS Poles covered by this License Agreement. The rights of Town shall be subject to an existing agreement and/or arrangement, entered into prior to installation of the Streetlight Facilities, but shall have priority over any such future agreement(s) and/or arrangement(s) entered into after the installation of the Streetlight Facilities.
- 4.2.4 No License granted hereby or in the future under this License Agreement shall extend to any of APS' electric distribution poles where the placement of the Streetlight Facilities would result in terminating the rights of APS, Other Licensees, and/or Joint Pole Participants, to occupy the property on which such electric distribution poles are located. If the existence of the Streetlight Facilities on APS Poles would cause a termination of the right

of APS, Other Licensees, and/or Joint Pole Participants, or any of them, to occupy such property, upon the written consent of Town which shall not be unreasonably withheld, APS shall be authorized to remove the Streetlight Facilities at Town's expense. The removal costs will be in accordance with Exhibit B

4.3 Annual Attachment Fees:

4.3.1 The Annual Attachment Fee shall be as specified in Exhibit A hereto.

4.3.2 The Annual Attachment Fee shall be adjusted effective January 1 of each year. The amount of such adjustments shall be calculated by utilizing the cost index numbers from the most recent edition of the Handy Whitman Index of Public Utility Construction Costs ("H/W Index"), Plateau Region (E-5), Distribution Plant; Poles, Towers and Fixtures (FERC Account No. 364). The percentage of change in the annual average index numbers will be applied to the previous year's Annual Attachment Fee to determine the current year's Annual Attachment Fee, effective January 1st of each year. The initial Annual Attachment Fee for attachments in existence prior to the Effective Date of this License Agreement shall be assessed at the annual rate set forth in Section 4.3.1 above, prorated from the effective date of this License Agreement to the end of the initial calendar year.

4.3.3 The total Annual Attachment Fee assessed as of the beginning of each anniversary of the Effective Date shall be based upon the total number of licensed APS Poles on record, multiplied by the Annual Attachment Fee effective for that year. The total number of pole attachments on record shall be the number of pole attachments for which a License has been

issued, less the number of pole attachments whose License has been terminated, as of the last day of the previous year.

4.3.4 APS shall use good faith efforts to provide written notice to Town of APS' intent to adjust the Annual Attachment Fee and the amount of such adjustment 60 calendar days prior to the adjustment.

4.4 Limitation of Liability and Reservation of Rights:

APS shall not be liable to Town for any special, incidental, indirect, or consequential loss or damage arising out of Town's use of APS Poles and/or Streetlight Facilities being located thereon. APS reserves to itself, its successors and assigns, the right to locate and maintain its poles, including the APS Poles, and to operate its facilities in such a manner as will best enable APS to fulfill its electric service requirements.

5. TERM

This License 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 Town or APS fails to comply with any of the terms and conditions of this License Agreement or defaults in any of its obligations under this License Agreement, and fails within thirty (30) days after the date of written notice from Town or APS to correct such noncompliance or default, Town or APS may, at its option and in addition to any other rights or remedies it may

have, immediately terminate this License Agreement issued pursuant hereto, under which such noncompliance or default has occurred.

6.3 Removal of Streetlight Facilities Following Termination:

6.3.1 In the event of termination of this License Agreement and/or any License(s), APS may remove Town's Streetlight Facilities from APS Poles affected by such termination; provided, however, that Town shall be liable for and pay all applicable attachment fees to APS until the Streetlight Facilities are actually removed from APS Poles. Town shall pay APS for the removal of Town's Streetlight Facilities from APS Poles as specified in Exhibit B.

6.4 Cancellation By Town: The Parties hereto acknowledge that this License Agreement is subject to cancellation by the Town 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 License 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.

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

**Town:**  
Town of Payson  
Attention: Town Manager  
303 N. Beeline Highway  
Payson, AZ 85541  
Telephone: 928474-5242 x262  
FAX: 928-474-4610  
E mail: dgalbraith@paysonaz.gov

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 Town:**

Town of Payson  
Town Manager  
303 N. Beeline Highway  
Payson, AZ 85541

With a copy to:

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

Town of Payson  
Public Works Director  
303 N. Beeline Highway  
Payson, AZ 85541

7.3 Invoices and Payments: Invoices and payments pursuant to this License

Agreement shall be sent to:

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

Town of Payson  
Public Works Director  
303 N. Beeline Highway  
Payson, AZ 85541

8. FISCAL YEAR

The obligation of Town to make any payments hereunder is subject to the provisions of the Arizona State Budget Law and Town Code provisions which require that the Town Council make necessary appropriations for such payments in each fiscal year. Town shall take all steps reasonably available to it to cause such payments to be included in its budget presented to Town Council each fiscal year in the form of an appropriation for monies that will be due under this License Agreement during the subsequent year.

However, the foregoing does not alter Town's obligation to pay for services actually

received, nor does it change APS' right to terminate this License 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 License 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 License 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 License 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 of law and equity, including but not limited to, the right to terminate this Agreement.

10. NON-WAIVER

The failure of either Party to insist upon strict performance of any of the provisions of this License Agreement, or to exercise any of the rights or remedies provided by this License 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 License Agreement, and shall not be deemed a waiver of any right of either Party to insist upon strict performance of this License Agreement.

11. BILLING, PAYMENT AND TAXES

- 11.1 Annual Attachment Fee: The initial total Annual Attachment Fee shall be payable within thirty (30) calendar days of the Effective Date of the License. Thereafter, the total Annual Attachment Fee shall be payable in advance, as of the first day of January of the applicable year.

- 11.2 Payment: APS shall receive payment from Town 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.

11.3 Disputed Bill: If any portion of any bill is disputed, the undisputed amount shall be paid when due.

11.3.1 The Party discovering the error shall notify the other Party in writing of the disputed amount and the reasons the charges are believed to be in error. Within 60 days, the Parties shall meet to resolve the dispute. If the dispute cannot be resolved within 180 days, either Party may request mediation, or the dispute may be referred to a mutually agreed upon mediator by the Parties to resolve the dispute.

11.4 Delinquent Bill: If Town's bill becomes delinquent, due to non-payment for a period of thirty (30) days after the invoice date, APS shall have the right at its option:

11.4.1 To exercise any remedy provided by law, including immediate termination of this License Agreement. Suspension and/or termination shall not relieve Town of its obligation to pay any amounts previously due nor shall such suspension or cancellation invalidate any other agreement with Town.

11.4.2 To charge interest at the rate of 18% per annum for all charges unpaid after the thirty (30) 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.

11.5 Taxes: Town 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 Town annexes additional property or additional Streetlight Facilities, the terms and conditions of this License Agreement will apply upon the effective date of said annexation or purchase.

13. GOVERNING LAW AND VENUE

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

14. SEVERABILITY

If any provision of this License 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 License 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 License 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, without the need for consent from the other Party, (a) transfer, pledge, or assign this License Agreement as security for any financing; (b) transfer, assign or delegate this License 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 License 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 notice within thirty (30) calendar days to the other Party of the 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 License Agreement entitled, "ASSIGNMENT," is not intended to and does not create any claims, rights, remedies, or benefits exercisable by any third party.

Town acknowledges and represents that this License 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 Town undertakes any responsibility or obligation to any third party by virtue of this License 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 License 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 License Agreement.

18. PRECEDENCE

18.1 Order of Precedence: In the event of conflict between this License Agreement and any referenced document, the order of precedence shall be this License 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 License 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 License Agreement, whether written or oral, including the Original License 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 License Agreement and this License 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 Town to pay amounts due under the Original License Agreement; provided that the payments are for use of APS Poles rendered before the Original License Agreement was superseded by this License Agreement. This License Agreement includes all documents attached hereto and incorporated herein by reference. Specifically included as exhibit to this License Agreement and attached hereto are the following:

Exhibit A – Annual Attachment Fee

Exhibit B – Removal and Installation Cost

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 License Agreement shall 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 License 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, which in any manner relate to any rights and obligations under this License Agreement.

21.2 Safety Statute: Nothing contained in this License 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 License Agreement hereby represents and warrants that (i) it has full authority to enter this License Agreement and to perform all responsibilities and obligations thereunder and that all necessary actions, if any, to authorize the execution, delivery and performance of this License Agreement have been taken, (ii) the person executing this License Agreement on its behalf has been duly authorized to execute this

License Agreement, and (iii) this License Agreement constitutes legally binding and enforceable obligations of such Party. This License Agreement shall be effective as of the 30<sup>th</sup> day of June 2014.

**ARIZONA PUBLIC SERVICE COMPANY**

SIGNATURE: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

**TOWN OF PAYSON,**

SIGNATURE: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

Debra A. Galbraith, Town Manager

ATTEST:

\_\_\_\_\_  
Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Town Attorney

EXHIBIT A

STREETLIGHT POLE USE LICENSE AGREEMENT  
BETWEEN  
ARIZONA PUBLIC SERVICE COMPANY  
AND  
TOWN OF PAYSON

ANNUAL ATTACHMENT FEE

Commencing January 1, 2014, the Annual Attachment Fee for calendar year 2014 shall be \$6.72 per APS Pole.

EXHIBIT B

STREETLIGHT POLE USE LICENSE AGREEMENT  
BETWEEN  
ARIZONA PUBLIC SERVICE COMPANY  
AND  
TOWN OF PAYSON

REMOVAL AND INSTALLATION COST

A project-specific cost estimate or unit cost estimate shall be provided by APS. APS shall supply Town at Town'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 Town, except that APS, at its sole option, may accept a letter of understanding (prior to any work being performed by APS) in which Town commits to pay APS for such services upon completion of the services.

**EXHIBIT B  
TO  
RESOLUTION 2789**

STREETLIGHT ENERGY AGREEMENT  
BETWEEN  
ARIZONA PUBLIC SERVICE COMPANY  
AND  
TOWN OF PAYSON

APS CONTRACT NO. 201407009  
TOWN OF PAYSON CONTRACT NO. \_\_\_\_\_

Execution Date 6/30/14

STREETLIGHT ENERGY AGREEMENT  
BETWEEN  
ARIZONA PUBLIC SERVICE COMPANY  
AND  
TOWN OF PAYSON

TABLE OF CONTENTS

SECTION	PAGE
1. PARTIES .....	1
2. RECITALS .....	1
3. DEFINITIONS.....	2
4. ELECTRIC SERVICE.....	4
5. STREETLIGHT LEVELS AND LOCATIONS.....	6
6. EXTENSION OF STREETLIGHT FACILITIES .....	7
7. TERM .....	8
8. TERMINATION.....	8
9. DESIGNATED REPRESENTATIVES AND NOTICES .....	8
10. FISCAL YEAR.....	9
11. UNCONTROLLABLE FORCES.....	10
12. NON-WAIVER.....	11
13. BILLING, PAYMENT AND TAXES.....	12
14. ANNEXATION AND ACQUISITION OF ADDITIONAL STREETLIGHT	

FACILITIES .....	13
15. GOVERNING LAW AND VENUE .....	13
16. SEVERABILITY .....	13
17. ASSIGNMENT .....	13
18. NO THIRD PARTY BENEFICIARIES .....	14
19. SURVIVABILITY OF OBLIGATIONS AND LIABILITIES .....	14
20. PRECEDENCE .....	15
21. ENTIRE AGREEMENT, MODIFICATION .....	15
22. INDEMNIFICATION .....	16
23. LEGAL REQUIREMENTS .....	16
24. EXECUTION AND EFFECTIVE DATE .....	17

**EXHIBIT**

EXHIBIT A – E-59 TARIFF .....	A-1
EXHIBIT B – AVERAGE CONSUMPTIONS FOR VARIOUS LUMINAIRES... ..	B-1
EXHIBIT C – SCHEDULE 1 – TERMS AND CONDITIONS FOR STANDARD OFFER AND DIRECT ACCESS SERVICES .....	C-1
EXHIBIT D – SCHEDULE 5 – GUIDELINES FOR ELECTRIC CURTAILMENT... ..	D-1

STREETLIGHT ENERGY AGREEMENT  
BETWEEN  
ARIZONA PUBLIC SERVICE COMPANY  
AND  
TOWN OF PAYSON

1. PARTIES

The parties to this Streetlight Energy Agreement (the “Energy Agreement”) are TOWN OF PAYSON, an Arizona municipal corporation (“Town”), 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. 48326 dated October 2, 1997) in which Town has purchased streetlight facilities from APS within the existing Town boundaries.
- 2.2 Additionally, the Parties entered into: i) a Streetlight Energy Agreement (APS Contract No.48328 dated October 2, 1997) pursuant to which APS sells energy to Town for the Streetlight Facilities (the “Former Energy Agreement”); ii) a Streetlight Operation, Maintenance and Facilities Agreement (APS Contract No.48334 dated October 2, 1997) pursuant to which APS operates and maintains Town’s Streetlight Facilities within APS’ service territory (the “O.M&F Agreement”); and iii) a Master License Agreement (APS Contract No.48329 dated October 2, 1997) pursuant to which Town’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 Energy Agreement pursuant to which APS will supply energy for the Town-owned streetlights.

2.4 The Parties desire that this Energy Agreement replace and supersede the Former Energy Agreement dated October 2, 1997.

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 Energy Agreement or amendments thereto, the following words or phrases shall have the meanings specified:

3.1 ACC: Arizona Corporation Commission.

3.2 Dawn: The time between full dark and sunrise when a Photocontrol senses sufficient sunlight to turn off streetlights.

3.3 Due Date: The fifteenth (15<sup>th</sup>) day after the invoice date.

3.4 Dusk: The time between sunset and full dark when a Photocontrol senses the lack of sufficient sunlight and turns on streetlights.

3.5 E-59 Tariff: The APS E-59 rate tariff on file with the ACC governing the rate charged for energy to government-owned streetlight facilities, as may be amended from time to time (attached hereto as Exhibit A.).

3.6 Effective Date: The date specified in Section 24, Execution and Effective Date.

3.7 Interest: The per annum interest rate set forth in Schedule 1.

- 3.8 Monthly Billing Energy: The kilowatt-hours (“kWh”) upon which the monthly billings will be based as set forth in Exhibit A and Exhibit B.
- 3.9 Photocontrol: A photoelectric cell which is designed to turn streetlights on at Dusk and to turn streetlights off at Dawn, which meets the light sensitivity standards specified in American National Standards Institute (ANSI) C136.10 Latest Edition.
- 3.10 Schedule 1: The APS Schedule 1 tariff entitled, “Terms and Conditions for Standard Offer and Direct Access Services,” on file with the ACC, as may be amended from time to time (attached hereto as Exhibit C).
- 3.11 Schedule 5: The APS Schedule 5 tariff entitled, “Guidelines for Electric Curtailment,” on file with the ACC, as may be amended from time to time (attached hereto as Exhibit D).
- 3.12 Streetlight Facilities: The facilities owned by the Town (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.
- 3.13 Point of Delivery: The point where energy is delivered shall be where APS’ electric service wire connects to (i) Town’s electric service wire, one foot beyond the end of the mast arm for overhead service to the streetlight or, (ii) at the Town’s protection fuse installed in the APS-owned secondary junction box for underground service to the streetlight or, (iii) at the Town’s electric service

protection fuse or termination point located in the hand-hole of the Town Pole for underground service to the streetlight when no APS-owned secondary junction box exists or, (iv) five (5) feet from the Town Pole for underground service when there is no hand-hole on the Town Pole or an APS-owned secondary junction box.

4. ELECTRIC SERVICE

4.1 APS' Obligations: APS shall provide electric service for Streetlight Facilities in accordance with the terms and conditions of this Energy Agreement and Schedule 1. In the event of a conflict(s) between any provision of this Energy Agreement and Schedule 1, the provisions of this Energy Agreement shall apply.

4.2 Operation Time: Operation of the Streetlight Facilities shall be from Dusk to Dawn. Notwithstanding the foregoing, Town agrees that APS cannot guarantee uninterrupted electric service. APS shall not be liable to Town for any damages occasioned by fluctuations, interruptions, or curtailment of electric service, except where due to APS' willful misconduct or gross negligence.

Operation of Streetlight Facilities at times other than from Dusk to Dawn shall be subject to additional energy charges at APS' option. Either Party may notify the other Party of any circumstances which may have caused extended streetlight outages or extended streetlight operation times and the Parties will negotiate in good faith to determine whether an adjustment is appropriate to the Town's monthly streetlight bill.

4.3 Point of Delivery: The point where energy is delivered shall be where APS' electric service wire connects to (i) Town's electric service wire, one foot beyond the end of the mast arm for overhead service to the streetlight or, (ii)

at the Town's protection fuse installed in the APS-owned secondary junction box for underground service to the streetlight or, (iii) at the Town's electric service protection fuse or termination point located in the hand-hole of the Town Pole for underground service to the streetlight when no APS-owned secondary junction box exists or, (iv) five (5) feet from the Town Pole for underground service when there is no hand-hole on the Town Pole or an APS-owned secondary junction box.

4.4 Rates for Electric Service:

- 4.4.1 The applicable rate and related provisions for electrical service rendered to Town shall be computed in accordance with Exhibit A, unless and until changed as provided for in Section 4.4.4 hereof. The rate specified in the Exhibit A shall be increased or decreased as provided in Section 4.4.4; provided, however, that the Parties acknowledge the ACC's jurisdiction to alter the energy rate under this Energy Agreement.
- 4.4.2 The Parties agree that the rate set forth herein will remain in effect until changed in accordance with Section 4.4.4 or by the ACC. However, such rate is subject to: a) adjustments monthly to reflect applicable sales taxes and regulatory assessment to the same extent as such adjustments apply to other APS retail rate schedules on file with the ACC; and b) such changes in the rate as may be authorized by the ACC from time to time.
- 4.4.3 Nothing in this Energy Agreement is intended to limit the ACC's power to order recovery of any stranded costs or system benefit charges determined to be attributable to the Town either prior to or after termination of this

Energy Agreement, nor will this Energy Agreement be considered a waiver by APS of any right it may have to recover such costs to the extent authorized or ordered by the ACC.

4.4.4 Nothing contained herein shall be construed as affecting in any way the right of APS to unilaterally make application to the ACC for a change in electric service rates and charges, classification of service, or any provision, term, rule, regulation, condition or contract relating thereto, under the Rules and Regulations of the ACC.

4.5 Curtailment:

The electric service supplied hereunder may be interrupted or curtailed in accordance with Schedule 5. APS shall not be liable to Town for any damages occasioned by fluctuations, interruptions or curtailment of electric service except where due to APS' willful misconduct or gross negligence. APS may, without incurring any liability therefore, suspend Town's electric service for periods reasonably required to permit APS to accomplish repairs to or changes in any of APS' facilities. To the extent practicable, APS will provide reasonable advance notice to Town of any scheduled interruptions of electric service.

5. STREETLIGHT LEVELS AND LOCATIONS

Town acknowledges, represents, warrants, and agrees that by entering into this Energy Agreement, Town 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.

Town 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 Town as satisfying any standard that may be adopted by or imposed upon Town.

6. EXTENSION OF APS ELECTRIC SERVICE LINES

6.1 Extension Less Than 300 Feet: Within APS' service territory, APS shall extend its electric secondary conductor up to a distance of 300 feet for each additional streetlight at no cost to Town when requested by Town. When extension is underground, Town or developer shall provide or pay for the trenching, conduit, backfill, and shading required. When extensions exceed 300 feet per additional streetlight, such extensions shall be made for an additional cost. For such additional cost, APS shall provide Town or developer with the additional cost of the work to be performed and Town or developer shall make full payment in advance if Town desires such work to be performed.

6.2 Underground Extension: If APS' secondary conductors are to be placed underground, APS shall install such conductors underground at no cost to Town within the footage limits specified in Section 6.1 above, except Town shall pay the incremental costs of additional trenching, conduit, shading, and backfill required solely for streetlight conductors. Payments by Town for trenching in accordance with this Section 6 shall be in accordance with Section 13, BILLING, PAYMENT AND TAXES.

7. TERM

This Energy Agreement shall remain in effect until terminated in accordance with the Termination section below, or Schedule 1.

8. TERMINATION

8.1 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.

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

9. DESIGNATED REPRESENTATIVES AND NOTICES

9.1 Designated Representatives: All communications relating to the day-to-day activities under this Energy 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.

**APS:**

Arizona Public Service Company  
Attention: Streetlight Management  
P.O. Box 53933, Station 3536  
Phoenix, Arizona 85004  
Telephone: 602-371-5067  
FAX: 602-371-6733

**Town:**

Town of Payson  
Attention: Town Manager  
303 N. Beeline Highway  
Payson, AZ 85541  
Telephone: 928474-5242 x262  
FAX: 928-474-4610  
E mail: dgalbraith@paysonaz.gov

9.2 Notices: Any legal notices and communications required or provided for hereunder shall be in writing and shall be send 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 Town:**

Town of Payson  
Town Manager  
303 N. Beeline Highway  
Payson, AZ 85541

With a copy to:

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

Town of Payson  
Public Works Director  
303 N. Beeline Highway  
Payson, AZ 85541

9.3 Invoices and Payments: Invoices and payments pursuant to this Energy

Agreement shall be sent to:

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

Town of Payson  
Public Works Director  
303 N. Beeline Highway  
Payson, AZ 85541

10. FISCAL YEAR

The obligation of Town to make any payments hereunder is subject to the provisions of the Arizona State Budget Law and Town Code provisions which require that the Town Council make necessary appropriations for such payments in each fiscal year. Town shall take all steps reasonably available to it to cause such payments to be included in its budget presented to Town 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 Town'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.

11. UNCONTROLLABLE FORCES

11.1 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 Energy 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.

11.2 Effect of Uncontrollable Force: If either Party, by reason of an Uncontrollable Force, is rendered unable, wholly or in part to timely perform its obligations under this Energy 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 Energy Agreement during delays caused by an Uncontrollable Force nor shall such Uncontrollable Force give rise to a claim for damages or constitute default.

11.3 Uncontrollable Force Limit. If a Party's obligation to perform is suspended for a period of forty-five (45) continuous calendar days due to an Uncontrollable Force or for any other reason, the other Party shall have all rights and remedies at law or in equity, including the right to terminate this Energy Agreement.

12. NON-WAIVER

The failure of either Party to insist upon strict performance of any of the provisions of this Energy Agreement, or to exercise any of the rights or remedies provided by this Energy 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 Energy Agreement, and shall not be deemed a waiver of any right of either Party to insist upon strict performance of this Energy Agreement.

13. BILLING, PAYMENT AND TAXES

13.1 Billing: APS shall render bills to Town on a monthly basis for services furnished during the preceding billing month.

13.2 Payment: APS shall receive payment from Town on or before the Due Date. Payment shall be mailed to the address specified in Section 9.3. Amounts which are not paid when due shall bear Interest from the Due Date until such time as payment is received by APS.

13.3 Disputed Bill: If any portion of any bill is disputed, the undisputed amount shall be paid when due.

13.4 Delinquent Bill: If Town's bill becomes delinquent, due to non-payment for a period of fifteen (15) days after the invoice date, APS shall have the right at its option:

13.4.1 To immediately suspend energy delivery hereunder until all amounts due have been paid, and/or

13.4.2 To exercise any other remedy provided by law, including immediate termination of this Energy Agreement. Suspension and/or termination shall not relieve Town of its obligation to pay any amounts previously due nor shall such suspension or cancellation invalidate any other agreement with Town.

13.4.3 To charge interest as set forth in Schedule 1.

The failure of APS to exercise such sanction shall not constitute a waiver by APS of any rights hereunder.

13.5 Taxes: Town shall pay any and all applicable sales tax, transaction privilege tax or like tax assessed or assessable as the result of APS providing services hereunder.

14. ANNEXATION AND ACQUISITION OF ADDITIONAL STREETLIGHT FACILITIES

If Town annexes additional territory or purchases additional Streetlight Facilities, the terms and conditions of this Energy Agreement will apply to the additional Streetlight Facilities and be effective as of the date Town provides APS notice of the annexation or purchase.

15. GOVERNING LAW AND VENUE

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

16. SEVERABILITY

If any provision of this Energy 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 Energy Agreement and the remainder shall continue in full force and effect unless otherwise mutually agreed between the Parties.

17. 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 Energy 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, without the need for consent from the other Party, (a) transfer, pledge, or assign this Energy Agreement as security for any financing; (b) transfer, assign or delegate this Energy 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 Energy 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 notice to the other Party within thirty (30) calendar days of the transfer and the effective date thereof. Any transfer in violation of this Section 17 shall be deemed null and void.

18. NO THIRD PARTY BENEFICIARIES

APS acknowledges and represents that Section 17 of this Energy Agreement entitled, "ASSIGNMENT," is not intended to and does not create any claims, rights, remedies or benefits exercisable by any third party. Town acknowledges and represents that this Energy 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 Town undertakes any responsibility or obligation to any third party by virtue of this Energy 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 Energy Agreement or its performance by either Party.

19. 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 Energy Agreement.

20. PRECEDENCE

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

20.2 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 20.1.

21. ENTIRE AGREEMENT, MODIFICATION

This Energy 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 Energy Agreement, whether written or oral, including the Former Energy 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 Energy Agreement and this Energy 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 Town to pay amounts due under the Former Energy Agreement; provided that the payments are for services rendered before the Former Energy Agreement was superseded by this Energy Agreement. This Energy Agreement includes all documents attached hereto or incorporated herein by reference. Specifically included as part of this Energy Agreement and attached hereto as exhibits are the following:

- Exhibit A - the E-59 Tariff
- Exhibit B - the Average Consumptions for Various Luminaires
- Exhibit C - Schedule 1
- Exhibit D - Schedule 5

22. 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 Energy Agreement shall 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 Energy Agreement by the Party to be indemnified. In order for the requirements 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.

23. LEGAL REQUIREMENTS

23.1 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, which in any manner relate to any rights and obligations under this Energy Agreement.

23.2 Safety Statute: Nothing contained in this Energy 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.

24. EXECUTION AND EFFECTIVE DATE

Each Party to this Energy Agreement hereby represents and warrants that (i) it has full authority to enter this Energy Agreement and to perform all responsibilities and obligations thereunder and that all necessary actions, if any, to authorize the execution, delivery and performance of this Energy Agreement have been taken, (ii) the person executing this Energy Agreement on its behalf has been duly authorized to execute this Energy Agreement, and (iii) this Energy Agreement constitutes legally binding and enforceable obligations of such Party. This Energy Agreement shall be effective as of the 30TH day of June 2014.

**TOWN OF PAYSON,**

**ARIZONA PUBLIC SERVICE COMPANY**

SIGNATURE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

NAME: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

Debra A. Galbraith, Town Manager

ATTEST:

\_\_\_\_\_  
Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Town Attorney



EXHIBIT A

STREETLIGHT ENERGY AGREEMENT  
BETWEEN  
ARIZONA PUBLIC SERVICE COMPANY  
AND  
TOWN OF PAYSON

E-59 TARIFF

## EXHIBIT B

### STREETLIGHT ENERGY AGREEMENT BETWEEN ARIZONA PUBLIC SERVICE COMPANY AND TOWN OF PAYSON

#### AVERAGE CONSUMPTIONS FOR VARIOUS LUMINAIRES

##### Induction

3,500 lumen	55 watts	19 kWh per month
6,000 lumen	85 watts	29 kWh per month
8,400 lumen	100 watts	34 kWh per month
13,000 lumen	150 watts	52 kWh per month
22,500 lumen	250 watts	86 kWh per month

##### LED

3,300 lumen	43 watts	15 kWh per month
4,350 lumen	86 watts	30 kWh per month
5,300 lumen	67 watts	23 kWh per month
8,300 lumen	106 watts	37 kWh per month
10,500 lumen	130 watts	45 kWh per month
20,000 lumen	258 watts	89 kWh per month

##### Incandescent

1,000 lumen	92 watts	32 kWh per month
2,500 lumen	189 watts	66 kWh per month
4,000 lumen	295 watts	103 kWh per month
6,000 lumen	405 watts	142 kWh per month
10,000 lumen	620 watts	217 kWh per month

##### Mercury Vapor

7,000 lumen	208 watts	73 kWh per month
11,000 lumen	275 watts	96 kWh per month
20,000 lumen	430 watts	150 kWh per month

##### Metal Halide

14,000 lumen	207 watts	72 kWh per month
21,000 lumen	288 watts	101 kWh per month
36,000 lumen	454 watts	159 kWh per month

##### High Pressure Sodium

5,800 lumen	83 watts	29 kWh per month
9,500 lumen	117 watts	41 kWh per month
16,000 lumen	197 watts	69 kWh per month
30,000 lumen	284 watts	99 kWh per month
50,000 lumen	438 watts	153 kWh per month

##### Low Pressure Sodium

8,000 lumen	86 watts	30 kWh per month
13,500 lumen	144 watts	50 kWh per month
22,500 lumen	205 watts	72 kWh per month
33,000 lumen	256 watts	90 kWh per month

ALL KWH ARE BASED ON AN AVERAGE OF 350 HOURS OF OPERATION PER MONTH. Effective Date: 10/19/13

EXHIBIT C

STREETLIGHT ENERGY AGREEMENT  
BETWEEN  
ARIZONA PUBLIC SERVICE COMPANY  
AND  
TOWN OF PAYSON

SCHEDULE 1

TERMS AND CONDITIONS FOR STANDARD OFFER  
AND DIRECT ACCESS SERVICES

EXHIBIT D

STREETLIGHT ENERGY AGREEMENT  
BETWEEN  
ARIZONA PUBLIC SERVICE COMPANY  
AND  
TOWN OF PAYSON

SCHEDULE 5

**EXHIBIT C  
TO  
RESOLUTION 2789**

STREETLIGHT MAINTENANCE AGREEMENT

BETWEEN

ARIZONA PUBLIC SERVICE COMPANY

AND

TOWN OF PAYSON

APS CONTRACT NO. 201407008

TOWN OF PAYSON CONTRACT NO, \_\_\_\_\_

Execution Date 6/30/14

STREETLIGHT MAINTENANCE AGREEMENT

BETWEEN

ARIZONA PUBLIC SERVICE COMPANY

AND

TOWN OF PAYSON

TABLE OF CONTENTS

SECTION	PAGE
1. PARTIES .....	1
2. RECITALS .....	1
3. DEFINITIONS.....	2
4. CONSTRUCTION AND MAINTENANCE.....	4
5. TERM .....	12
6. TERMINATION.....	13
7. DESIGNATED REPRESENTATIVES AND NOTICES .....	13
8. FISCAL YEAR.....	15
9. UNCONTROLLABLE FORCES.....	15
10. NON-WAIVER.....	17
11. BILLING, PAYMENT AND TAXES.....	17
12. ANNEXATION AND ACQUISITION OF ADDITIONAL STREETLIGHT	

FACILITIES .....	18
13. GOVERNING LAW AND VENUE .....	19
14. SEVERABILITY .....	19
15. ASSIGNMENT.....	19
16. NO THIRD PARTY BENEFICIARIES.....	20
17. SURVIVABILITY OF OBLIGATIONS AND LIABILITIES .....	20
18. PRECEDENCE.....	20
19. ENTIRE AGREEMENT, MODIFICATION .....	21
20. INDEMNIFICATION.....	21
21. LEGAL REQUIREMENTS.....	22
22. EXECUTION AND EFFECTIVE DATE .....	23

**EXHIBIT**

EXHIBIT A - REMOVAL AND INSTALLATION COST.....	A-1
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STREETLIGHT MAINTENANCE AGREEMENT  
BETWEEN  
ARIZONA PUBLIC SERVICE COMPANY  
AND  
TOWN OF PAYSON

1. PARTIES

The parties to this Streetlight Maintenance Agreement (the "Maintenance Agreement") are TOWN OF PAYSON, an Arizona municipal corporation, ("Town"), 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.48326 dated October 2, 1997) in which Town has purchased streetlight facilities from APS within the existing Town boundaries.
- 2.2. Additionally, the Parties entered into: i) a Streetlight Energy Agreement (APS Contract No.48328 dated October 2, 1997) pursuant to which APS sells energy to Town for the Streetlight Facilities (the "Energy Agreement"); ii) a Streetlight Operation, Maintenance and Facilities Agreement (APS Contract No.48334 dated October 2, 1997) pursuant to which APS operates and maintains Town's Streetlight Facilities within APS' service territory (the "OM&F Agreement"); and iii) a Streetlight Master License Agreement (APS Contract No.48329 dated October 2, 1997) pursuant to which Town'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 Town.

- 2.4. The Parties desire that this Maintenance Agreement replace and supersede the Former Streetlight Operation, Maintenance and Facilities Agreement dated October 2, 1997.

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 Town owned Streetlight Facilities.
- 3.2. Town Pole(s): Streetlight poles owned by Town.
- 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, which meets the light sensitivity standards specified in American National Standards Institute (ANSI) C136.10 Latest Edition.
- 3.10. Point of Delivery: The point where energy is delivered shall be where APS' electric service wire connects to (i) Town's electric service wire, one foot beyond the end of the mast arm for overhead service to the streetlight or, (ii) at the Town's protection fuse installed in the APS-owned secondary junction box for underground service to the streetlight or, (iii) at the Town's electric service protection fuse or termination point located in the hand-hole of the Town Pole for underground service to the streetlight when no APS-owned secondary junction box exists or, (iv) five (5) feet from the Town Pole for underground service when there is no hand-hole on the Town 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 Town (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 Town 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 Town 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, Town 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 Town. Storm or other large scale damage may

require a longer hazard clearance time. APS shall notify Town when this occurs. If the Town 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 Town, such as telephone or cable TV attachments. The Town will be responsible to contact any affected utilities regarding any necessary work required due to the knockdown. If Town desires to have emergency work done by qualified Town personnel or a qualified third party contractor, Town 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 Town. 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: Town 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 Town, conditioned upon Town'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 Town-owned steel or wood poles that, as determined by Town, 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 Town and APS.

4.2.2.4. Group replacements of non-failed streetlights

4.2.2.5. Installation, relocation or upgrade of Town 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 Town 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 Town owned electric service wire in mast arms and metal poles.

4.2.3. Assistance with Claims: At no cost to Town, 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 Town with collecting damages from other parties who have damaged Town's Streetlight Facilities.

4.3. Charges to Town:

4.3.1. In addition to the charges described below and any other charges set forth in this Maintenance Agreement, Town 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 Town. APS reserves the right to review the charge per luminaire annually and shall give the Town 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 Town at Town'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 Town in writing. Town 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 Town:

- 4.4.1. Town shall be responsible for all work pertaining to wiring at intersections. At intersection locations where APS has meters installed, Town responsibility shall begin at the designated point of delivery.
- 4.4.2. It shall be the sole responsibility of Town to investigate and pursue claims against any parties responsible for accidents and incidents involving damage to Town-owned Streetlight Facilities and to collect damages from the responsible party. APS shall notify Town of damages discovered in the normal course of business or as requested by Town.
- 4.4.3. Town shall provide APS reasonable ingress and egress for performance of services under this Maintenance Agreement.
- 4.4.4. Town further acknowledges, represents, warrants, and agrees that by entering into this Maintenance Agreement, Town 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. Town 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 Town as satisfying any standard that may be adopted by or imposed upon Town.
- 4.4.6. Town shall provide or cause to be provided to APS a Town-approved layout or engineer stamped drawing for all new streetlight installations. APS shall design a power source for the streetlights on Town-approved streetlight layout or engineer stamped drawing.
- 4.5. Construction of New Infill Streetlight Facilities:
  - 4.5.1. New infill streetlighting installations shall be in accordance with Exhibit A, which may be updated annually and provided by APS. APS shall supply Town at Town'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 Town in writing. Town 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 Town 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 Town or developer with the cost of the work to be performed and Town 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 Town or developer, APS will refund Town or developer the associated cost.
- 4.6. Ownership of Facilities: All streetlight facilities installed by APS (in accordance with this Maintenance Agreement) within the Town boundaries (as they exist at the time of installation) shall become the property of Town.
- 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 Town 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 Town 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. Town 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 Town: (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 Town, at agreed upon intervals, copies of APS' updated Geographic Information Systems maps showing street light locations. APS, at its sole discretion, may require the Town 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 Town owned Streetlight, Town 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 Town 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 Town 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 Town or APS to correct such noncompliance or default, Town 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 Town: The Parties hereto acknowledge that this Maintenance Agreement is subject to cancellation by Town 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  
P.O. Box 53933, Station, 3536  
Phoenix, Arizona 85072-3933  
Telephone: 602-371-5067  
FAX: 602-371-6733

**Town:**

Town of Payson  
Attention: Town Manager  
303 N. Beeline Highway  
Payson, AZ 85541  
Telephone: 928474-5242 x262  
FAX: 928-474-4610  
E mail: dgalbraith@paysonaz.gov

7.2. Notices: Any legal notices and communications required or provided for hereunder shall be in writing and shall be send 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 Town:**

Town of Payson  
Town Manager  
303 N. Beeline Highway  
Payson, AZ 85541

With a copy to:

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

Town of Payson  
Public Works Director  
303 N. Beeline Highway  
Payson, AZ 85541

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

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

Town of Payson  
Public Works Director  
303 N. Beeline Highway  
Payson, AZ 85541

8. FISCAL YEAR

The obligation of Town to make any payments hereunder is subject to the provisions of the Arizona State Budget Law and Town Code provisions which require that the Town Council make necessary appropriations for such payments in each fiscal year. Town shall take all steps reasonably available to it to cause such payments to be included in its budget presented to Town 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 Town'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 Town 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: Town 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 Town commits to pay APS for such services upon completion of the services.
- 11.3. Payment: APS shall receive payment from Town 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 Town'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 Town of its obligation to pay any amounts previously due nor shall such suspension or cancellation invalidate any other agreement with Town.

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: Town 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 Town annexes additional territory or purchases additional Streetlight Facilities, the terms and conditions of this Maintenance Agreement will apply upon the date Town 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 Maricopa 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.

Town 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 Town 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 Town 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 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 requirements 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 Town of Payson 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 I, 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 30<sup>th</sup> day of June, 2014.

**ARIZONA PUBLIC SERVICE COMPANY**

SIGNATURE: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

**TOWN OF PAYSON, ARIZONA**

SIGNATURE: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

Debra A. Galbraith, Town Manager

ATTEST:

\_\_\_\_\_  
Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Town Attorney

EXHIBIT A  
STREETLIGHT MAINTENANCE AGREEMENT  
BETWEEN  
ARIZONA PUBLIC SERVICE COMPANY  
AND  
TOWN OF PAYSON  
REMOVAL AND INSTALLATION COST

A project-specific cost estimate or unit cost estimate shall be provided by APS. APS shall supply Town at Town'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 Town, except that APS, at its sole option, may accept a letter of understanding (prior to any work being performed by APS) in which Town commits to pay APS for such services upon completion of the services.