

INFRASTRUCTURE AND COST SHARING AGREEMENT REGARDING RIGGS
ROAD LOW WATER CROSSING

This Infrastructure Cost Sharing Agreement Regarding Riggs Road Low Water Crossing ("Agreement") is dated for reference purposes as of _____ and shall become effective as of the date of its full execution by the parties hereto (the "Effective Date"). This Agreement is by and between the City of Goodyear, a municipal corporation of the State of Arizona (the "City"), and Arizona Public Service Company, an Arizona corporation (the "Company"). The City and Company together may be referred to as the "Parties."

RECITALS

- A. WHEREAS, the Parties have previously entered into the Emission Reduction Credit Option Agreement (the "Emission Agreement") which was effective in March 3, 2000; and such agreement provided for the Company to pave up to 16 miles of public roadways within the City, and
- B. WHEREAS, the Company as a result of the Emission Agreement would receive PM-10 Emission Reduction Credits from Maricopa County, Arizona for its participation in the Emission Agreement; and
- C. WHEREAS, following execution of Emission Agreement, the Company provided funds to pave sections of property within the Riggs Road alignment from 187th Avenue to Bullard Avenue, within the Bullard Avenue alignment south of Riggs Road, making such property public roadways that are part of the local transportation network; and
- D. WHEREAS, following the paving of the above mentioned roadways, the City was to assume maintenance obligations for a certain period of time, which expired on March 3, 2015, such that the roadways paved pursuant to the original Emission Agreement continued to be public roads forming a part of the local transportation network; and
- E. WHEREAS, in late 2014, the Parties recognized that in a storm event occurring sometime in September 2014, a box culvert was destroyed that made the above mentioned roadway generally not accessible to the public; and
- F. WHEREAS, the Company has an obligation to ensure that the improved roadways are usable by the general public in order to continue to receive its PM-10 Emissions Reduction Credits from Maricopa County, Arizona; and
- G. WHEREAS, the City and Company have mutually agreed to equally fund improvements to replace the box culvert and washed out roadway area in the general vicinity of the intersection of Riggs Road and Bullard Avenue, with a low water road crossing pursuant to this Agreement; and

- H. WHEREAS, in order to comply with Maricopa County requirements, documentation of the construction for the low water road crossing needs to be submitted by November 25, 2015; and
- I. WHEREAS, in accordance with the original Emission Agreement, the Parties recognize that ownership of any PM-10 Emission Reduction Credits maintained or arising out of construction of such low water road crossing shall remain with the Company.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants and agreements set forth herein, the Parties agree as follows.

AGREEMENT

1. **ACCURACY OF RECITALS.** The parties acknowledge the accuracy of the foregoing recitals and incorporate same into this Agreement.
2. **LOW WATER ROAD CROSSING** Subject to appropriation, the City will design, publicly procure, and construct a low water crossing (the "Crossing") generally located at near the intersection of Riggs Road and Bullard Avenue. (See Exhibit 1). The City shall maintain responsibility for all entitlements, permitting, easements, and other legal rights or governmental authorizations necessary for construction of the Crossing. In consultation with the Company, as described below, the City shall make all decisions as to the selection of the contractor and in the design of the Crossing. The Parties agree to each pay fifty (50%) percent of the cost of the Crossing. The Parties estimate that the project will cost approximately \$120,000, including design, plan review and permitting and construction costs. Prior to issuing a notice to proceed to the contractor, the City shall provide the Company with the final cost estimates (including any and all documents or materials relied on by the City in its selection of a final design and cost-estimate for the Crossing) and the Company shall have five (5) days to review and, either, (a) disapprove with comments, (b) disapprove, or (c) approve the final estimated cost of the Crossing. With respect to these three options, the Parties shall undertake evaluation of the final cost estimates as follows:

(a) Should the Company disapprove with comments regarding the final cost estimate for the Crossing, the Parties shall have five (5) days to resolve any comments raised by the Company, and thereafter the Company shall, either, approve or disapprove any clarified, revised, or adjusted final cost estimate for the Crossing.

(b) Should the Company disapprove the final cost (after revisions or otherwise), the City shall have no obligation to proceed with the construction of the Crossing.

(c) Should the Company approve the final cost estimate (after revisions or otherwise), then the Company will be invoiced for its share of the cost of the Crossing as the City receives its invoices from the contractor for design, construction and plan review and

permitting costs, and the Company shall pay such invoices to the City within thirty (30) days of receipt.

In any event if no decision regarding approval or disapproval of the final cost estimate is reached after ten (10) days following the City's delivery of the initial final cost estimate for the Crossing, the City shall have no obligation to proceed with the construction of the Crossing. Subject to force majeure, the City shall take all reasonable, necessary, and appropriate steps to ensure that the Crossing is functionally complete by November 21, 2015. During the period of time following the Effective Date of this Agreement, and until documentation as to the completion of construction for the Crossing has been submitted to Maricopa County, the Parties shall conduct weekly status conferences (to be arranged at a time and place mutually suitable to the Parties) regarding progress on all matters related to the City's construction of the Crossing (including, without limitation, delivery and review of the cost-estimates and construction specifications for the Crossing).

3. DEFAULT. In the event either Party defaults under any provision of this Agreement, each Party shall have all remedies available to it at law or in equity. In any action for breach of this Agreement, the prevailing party shall be entitled to reimbursement from the non-prevailing party for its attorneys' fees incurred in pursuing said action.

4. MISCELLANEOUS.

4.1 General. Except to the extent inconsistent with the express language of the foregoing provisions of this Agreement, the following provisions shall govern the interpretation, application, construction and enforcement of this Agreement.

4.2 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto and shall run with the land, but the Company shall not transfer or assign any of its rights or obligations under this Agreement without the consent of the City, which consent shall not be unreasonably withheld or delayed.

4.3 Notices. Any notice (including an application for payment) to any party under this Agreement shall be in writing and may be delivered in person or sent by certified or registered United States mail, postage prepaid, or by delivery service to the address of such party set forth in this section, or to such other address as shall have been specified in writing by such party in the manner set forth herein. Notices shall become effective upon the earliest of the following: (i) actual receipt by that party; (ii) personal delivery by delivery service to the designated address of that party; or (iii) forty-eight (48) hours after deposit in the United States mail, addressed as set forth above.

The City:

City of Goodyear
ATTN: City Manager
190 N. Litchfield Road
P.O. Box 5100
Goodyear, Arizona 85358
Facsimile: 623-932-1177

With a copy to:

City of Goodyear
ATTN: City Attorney
190 Litchfield Road
P.O. Box 5100
Goodyear, Arizona 85338
Facsimile: 623-932-7230

If to the Company:

Charles Spell
Arizona Public Service Company
Director, Corporate Environmental
Mail Station: 9303
P.O. Box 53999
Phoenix, AZ 85072
Charles.Spell@aps.com

With a copy to:

Jeffrey Allmon
Pinnacle West Capital Corporation
Senior Attorney
Mail Station: 8695
P.O. Box 53999
Phoenix, AZ 85072
Jeffrey.Allmon@pinnaclewest.com

4.4 Additional Acts and Documents. Each party hereto agrees to do all such things and take all such actions, and to make, execute and deliver such other documents and instruments as shall be reasonably requested to carry out the provisions, intent and purpose of this Agreement.

4.5 Counterparts. This Agreement may be executed in any number of counterparts, and all such counterparts shall be deemed to constitute one and the same instrument.

4.6 Time is of the Essence. Time is of the essence of this Agreement and each and every provision hereof. Any extension of time granted for the performance of any duty

under this Agreement shall not be considered an extension of time for the performance of any other duty under this Agreement.

4.7 Waiver. Failure of any party to exercise any right or option arising out of a breach of this Agreement shall not be deemed a waiver of any right or option with respect to any subsequent or different breach, or the continuance of any existing breach.

4.8 Amendment. This Agreement may not be changed, modified or rescinded except in writing, as agreed to and signed by all parties hereto. The Parties shall meet as necessary at the request of either party to consider amendments to this Agreement, and shall reasonably cooperate and approve such amendments as agreed to by the parties.

4.9 Captions and Recitals. Captions and paragraph headings used herein are for convenience only, are not a part of this Agreement, shall not be deemed to limit or alter any provisions hereof, and shall not be deemed relevant in construing this Agreement. The Recitals set forth at the beginning of this Agreement are hereby acknowledged, accepted and incorporated herein.

4.10 Arbitration. Any dispute, controversy, claim or cause of action arising out of or relating to this Agreement shall be governed by Arizona law and may be settled by submission of the matter by both parties to binding arbitration in accordance with the rules of the American Arbitration Association and the Arizona Uniform Arbitration Act, A.R.S. Section 12-1501, et seq., and judgment upon the award rendered by the arbitrator(s) will include reasonable attorneys' fees and costs and may be entered in any court having jurisdiction thereof. Notwithstanding any rule of the American Arbitration Association to the contrary, the arbitrator(s) shall be selected as follows: (i) the parties shall attempt to agree upon one arbitrator with expertise on the subject matter of the dispute; and (ii) if the parties are unable to agree on an arbitrator within twenty (20) days after either party requests, then either party to the arbitration shall promptly request a court of record in Maricopa County to appoint the arbitrator.

4.11 Governing Law. This Agreement shall be deemed to be made under, and shall be construed in accordance with and shall be governed by, the laws of the State of Arizona and the United States of America, and suit to enforce any provision of this Agreement or to obtain any remedy with respect hereto may be brought in Superior Court, Maricopa County, Arizona, or the Federal District Court of the United States situated in Phoenix, Arizona, and for this purpose each party hereby expressly and irrevocably consents to the jurisdiction of such courts. This Agreement is subject to the provisions of Arizona Revised Statutes Section 38-511.

4.12 Third Parties. This Agreement shall not be construed to create any rights or obligations in persons or entities not parties hereto, and there are no third party beneficiaries of this Agreement.

4.13 Exhibits. Any exhibit attached hereto shall be deemed to have been incorporated herein by this reference, with the same force and effect as if fully set forth in the body hereof.

4.14 Term. The term of this Agreement shall commence on the date of execution by both parties hereto and shall automatically terminate on the completion of the respective obligations of the parties hereto.

4.15 Hold Harmless. To the extent allowed by law, each Party (as “Indemnitor”) shall indemnify, defend and hold harmless the other Party (as “Indemnitee”), and its respective governing bodies, officers, officials, agents and employees, for, from and against any and all claims, loss, demands, suits, costs (including reasonable attorneys’ fees and costs of litigation), liabilities, expenses, or damages (herein collectively referred to as “Claims”) arising out of the Party’s performance of, or failure to perform, its obligations under this Agreement. The damages which are subject of this indemnity shall include, but not be limited to, attorney fees, court costs, settlement expenses and litigation expenses related to liability described in this paragraph and/or related to any claim or action asserting liability against the other Party or its governing bodies, officers, officials, agents and employees or volunteers.

4.16 Cancellation. The Parties acknowledge that this Agreement is subject to cancellation provisions pursuant to A.R.S. § 38-511, as amended.

4.17 Force Majeure. The deadlines contemplated in this Agreement shall be extended if the delay is caused by an act of God, prolonged adverse or severe weather conditions, casualty, third party malicious mischief, moratoriums imposed by any governmental entity, unreasonable delays by governmental authorities, civil or military disturbance, war, or other events that are not reasonably foreseeable and not within the reasonable control of either Party. The amount of such extension shall be determined by the City after consultation with the Company.

EXECUTED by the parties as of the dates shown below and effective as of the date fully signed by the last of the parties (which includes, in the case of the City, the City Clerk attestation and City Attorney Approval).

Date: _____

CITY OF GOODYEAR, a municipal
Corporation of the State of Arizona

By _____
Brian Dalke, City Manager

Arizona Public Service Company

By: _____
Name: _____
Title: _____

Attested to:

City Clerk

Date: _____

Approved as to form:

City Attorney

Date: _____