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ELECTRONIC RECORDING

RESOLUTION NO. 05-214

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PEORIA, MARICOPA COUNTY, ARIZONA, DECLARING AND ADOPTING THE RESULTS OF THE SPECIAL ELECTION HELD ON NOVEMBER 8, 2005; AND ORDERING THE RECORDING OF SUCH RESOLUTION AND CERTIFICATE AND DECLARING AN EMERGENCY.

WHEREAS, on July 5th, 2005, the Mayor and City Council of the City of Peoria, Maricopa County, Arizona, did take action to direct and authorize the City Attorney and City Clerk to issue a Notice and Call for a Mail Ballot Only election to be held in and for the City of Peoria on the 8th day of November, 2005 for the purpose of submitting to the qualified electors of the City, franchises for Southwest Gas Corporation and Arizona Public Service Company; and

WHEREAS, the City of Peoria, Maricopa County, Arizona, by its duly appointed City Clerk on the 29th day of September 2005 and the 6th day of October, 2005 did issue a call and notice for a special election; and did cause to be submitted to the qualified electors of the City at a Special Election held in and for the City of Peoria on the 8th day of November, 2005 franchises for Southwest Gas Corporation and Arizona Public Service Company; and

WHEREAS, the City Council did cause notice of the Special Election to be given by the City Clerk publishing notice thereof in the Arizona Business Gazette newspaper as provided by law, such newspaper published in and having general circulation within said City, that said notice as so published did specify the place where at such election was to be held, and the issues to be voted upon, copy of said notice with the affidavit of publication attached thereto, being now on file and a part of the official records of the City Council of the City of Peoria; and

WHEREAS, the election returns have been presented to and been canvassed by the City Council.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the City of Peoria, Maricopa County, Arizona, as follows:

SECTION 1: That the total number of ballots cast and the total voter turnout at said Special Election, as shown by the final results as issued by the Maricopa County Recorder, is set forth on Exhibit "A" – Summary Report, attached to and incorporated to this resolution.

SECTION 2: That the total number of votes cast, and the total number of votes for and against each franchise agreement at each polling place at said Special Election, as shown by the final results as issued by the Maricopa County Recorder, is set forth on Exhibit "B" – Precinct Report, attached to and incorporated to this resolution.

SECTION 3: That the total number of provisional ballots, the total number of provisional ballots tabulated, and the total number of provisional ballots found to be invalid and not counted is set forth on Exhibit "C".

SECTION 4: That it is hereby found, determined, and declared of record that the following issue is hereby passed and adopted having received a majority of the ballots cast and shall go into effect as provided by law.

Proposition 300 A proposed franchise between the City of Peoria, Arizona and Southwest Gas Corporation, a public service corporation operating under the laws of the State of Arizona granting Southwest Gas Corporation the right to construct, maintain, and operate upon the Public rights-of-way a transmission system for the delivery of Natural Gas.

Votes Yes:	10,837	81.43%
Votes No:	2,471	18.57%

Proposition 301 A proposed franchise between the City of Peoria, Arizona and Arizona Public Service Corporation, a public service corporation operating under the laws of the State of Arizona granting Arizona Public Service Corporation the right to construct, maintain, and operate upon the Public rights-of-way a distribution system for delivery of Electricity.

Votes Yes:	10,865	82.88 %
Votes No:	2,244	17.12%

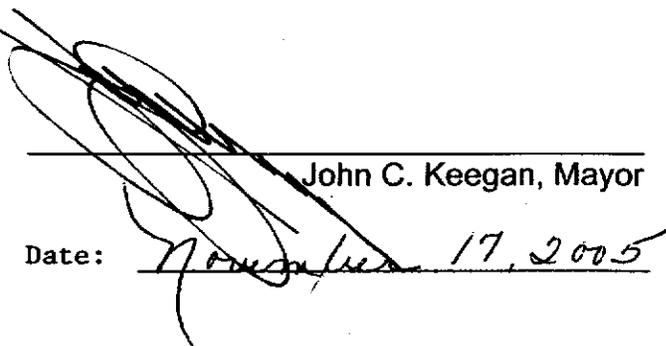
SECTION 5: That the official title, descriptive title and the effect of a yes vote and no vote, along with the vote count thereof is set forth on Exhibit "D" attached to and incorporated to this resolution.

SECTION 6. Granting a franchise for a period of twenty-five years to Southwest Gas Corporation and Arizona Public Service Company as approved by the qualified electors of the City of Peoria, Arizona and hereby designated as:

Ordinance No. 05-68 Southwest Gas Corporation
Ordinance No. 05-69 Arizona Public Service Company

SECTION 7: That all orders or resolutions in conflict be and the same are, to the extent of such conflict, hereby repealed, and that this resolution be in full force and effect immediately upon its adoption.

PASSED AND ADOPTED by the Mayor and Council of the City of Peoria, Arizona, this 15th day of November, 2005.



John C. Keegan, Mayor
Date: November 17, 2005

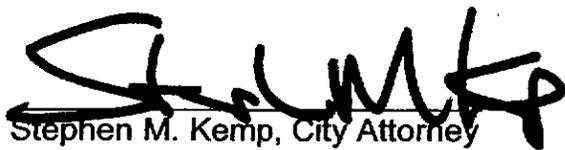
ATTEST:



Mary Jo Kiehl, City Clerk



APPROVED AS TO FORM:



Stephen M. Kemp, City Attorney

Published in the Arizona Business Gazette
Publication Dates: November 24 and December 1, 2005

Effective Date: November 17, 2005

**EXHIBIT A
 SUMMARY REPORT**

SUMMARY REPORT
 FINAL RESULTS

MARICOPA COUNTY

JURISDICTIONAL ELECTION
 NOVEMBER 8, 2005

RUN DATE:11/10/05 03:36 PM

	VOTES	PERCENT
PRECINCTS COUNTED (OF 6)	6	100.00
REGISTERED VOTERS - PEORIA.	64,018	
REGISTERED VOTERS - PEORIA ACACIA	6,559	
REGISTERED VOTERS - PEORIA IRONWOOD.	11,673	
REGISTERED VOTERS - PEORIA MESQUITE.	16,720	
REGISTERED VOTERS - PEORIA PALO VERDE	9,558	
REGISTERED VOTERS - PEORIA PINE	9,184	
REGISTERED VOTERS - PEORIA WILLOW	10,324	
BALLOTS CAST - PEORIA	13,417	
BALLOTS CAST - PEORIA ACACIA	925	
BALLOTS CAST - PEORIA IRONWOOD	3,248	
BALLOTS CAST - PEORIA MESQUITE	3,749	
BALLOTS CAST - PEORIA PALO VERDE.	1,684	
BALLOTS CAST - PEORIA PINE.	1,760	
BALLOTS CAST - PEORIA WILLOW	2,051	
VOTER TURNOUT - PEORIA		20.96
VOTER TURNOUT - PEORIA ACACIA.		14.10
VOTER TURNOUT - PEORIA IRONWOOD		27.82
VOTER TURNOUT - PEORIA MESQUITE		22.42
VOTER TURNOUT - PEORIA PALO VERDE		17.62
VOTER TURNOUT - PEORIA PINE		19.16
VOTER TURNOUT - PEORIA WILLOW.		19.87

CITY OF PEORIA PROPOSITION 300 - SOUTHWEST GAS FRANCHISE
 (VOTE FOR NOT MORE THAN) 1

(WITH 6 OF 6 PRECINCTS COUNTED)

YES	10,837	81.43
NO.	2,471	18.57
Over Votes	2	
Under Votes	107	

CITY OF PEORIA PROPOSITION 301 - APS FRANCHISE
 (VOTE FOR NOT MORE THAN) 1

(WITH 6 OF 6 PRECINCTS COUNTED)

YES	10,865	82.88
NO.	2,244	17.12
Over Votes	2	
Under Votes	306	

EXHIBIT B
PRECINCT REPORT
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PRECINCT REPORT
FINAL RESULTS

MARICOPA COUNTY

JURISDICTIONAL ELECTION
NOVEMBER 8, 2005

RUN DATE:11/10/05 03:37 PM

5190 PEORIA - MESQUITE

	VOTES	PERCENT
REGISTERED VOTERS - PEORIA	16720	
REGISTERED VOTERS - PEORIA MESQUITE	16720	
BALLOTS CAST - PEORIA	3749	
BALLOTS CAST - PEORIA MESQUITE	3749	
VOTER TURNOUT - PEORIA		22.42
VOTER TURNOUT - PEORIA MESQUITE		22.42

CITY OF PEORIA PROPOSITION 300 - SOUTHWEST GAS FRANCHISE

(VOTE FOR NOT MORE THAN) 1

YES	3199	86.06
NO.	518	13.94
Over Votes	1	
Under Votes	31	

CITY OF PEORIA PROPOSITION 301 - APS FRANCHISE

(VOTE FOR NOT MORE THAN) 1

YES	3189	87.13
NO.	471	12.87
Over Votes	0	
Under Votes	89	

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PRECINCT REPORT
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PRECINCT REPORT
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MARICOPA COUNTY

JURISDICTIONAL ELECTION
NOVEMBER 8, 2005

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5191 PEORIA - IRONWOOD

	VOTES	PERCENT
REGISTERED VOTERS - PEORIA	11673	
REGISTERED VOTERS - PEORIA IRONWOOD.	11673	
BALLOTS CAST - PEORIA	3248	
BALLOTS CAST - PEORIA IRONWOOD	3248	
VOTER TURNOUT - PEORIA		27.82
VOTER TURNOUT - PEORIA IRONWOOD		27.82

CITY OF PEORIA PROPOSITION 300 - SOUTHWEST GAS FRANCHISE
(VOTE FOR NOT MORE THAN) 1

YES	2699	83.85
NO.	520	16.15
Over Votes	0	
Under Votes	29	

CITY OF PEORIA PROPOSITION 301 - APS FRANCHISE
(VOTE FOR NOT MORE THAN) 1

YES	2741	86.52
NO.	427	13.48
Over Votes	0	
Under Votes	80	

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PRECINCT REPORT
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MARICOPA COUNTY

JURISDICTIONAL ELECTION
NOVEMBER 8, 2005

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5192 PEORIA - PALO VERDE

	VOTES	PERCENT
REGISTERED VOTERS - PEORIA	9558	
REGISTERED VOTERS - PEORIA PALO VERDE	9558	
BALLOTS CAST - PEORIA	1684	
BALLOTS CAST - PEORIA PALO VERDE	1684	
VOTER TURNOUT - PEORIA		17.62
VOTER TURNOUT - PEORIA PALO VERDE		17.62

CITY OF PEORIA PROPOSITION 300 - SOUTHWEST GAS FRANCHISE

(VOTE FOR NOT MORE THAN) 1

YES	1308	78.18
NO.	365	21.82
Over Votes	0	
Under Votes	11	

CITY OF PEORIA PROPOSITION 301 - APS FRANCHISE

(VOTE FOR NOT MORE THAN) 1

YES	1270	77.11
NO.	377	22.89
Over Votes	0	
Under Votes	37	

EXHIBIT B
PRECINCT REPORT
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PRECINCT REPORT
FINAL RESULTS

MARICOPA COUNTY

JURISDICTIONAL ELECTION
NOVEMBER 8, 2005

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5193 PEORIA - WILLOW

	VOTES	PERCENT
REGISTERED VOTERS - PEORIA	10324	
REGISTERED VOTERS - PEORIA WILLOW	10324	
BALLOTS CAST - PEORIA	2051	
BALLOTS CAST - PEORIA WILLOW	2051	
VOTER TURNOUT - PEORIA		19.87
VOTER TURNOUT - PEORIA WILLOW.		19.87

CITY OF PEORIA PROPOSITION 300 - SOUTHWEST GAS FRANCHISE

(VOTE FOR NOT MORE THAN) 1

YES	1628	79.92
NO.	409	20.08
Over Votes	0	
Under Votes	14	

CITY OF PEORIA PROPOSITION 301 - APS FRANCHISE

(VOTE FOR NOT MORE THAN) 1

YES	1603	79.67
NO.	409	20.33
Over Votes	1	
Under Votes	38	

EXHIBIT B
PRECINCT REPORT
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PRECINCT REPORT
FINAL RESULTS

MARICOPA COUNTY

JURISDICTIONAL ELECTION
NOVEMBER 8, 2005

RUN DATE:11/10/05 03:37 PM

5194 PEORIA - ACACIA

	VOTES	PERCENT
REGISTERED VOTERS - PEORIA	6559	
REGISTERED VOTERS - PEORIA ACACIA	6559	
BALLOTS CAST - PEORIA	925	
BALLOTS CAST - PEORIA ACACIA	925	
VOTER TURNOUT - PEORIA		14.10
VOTER TURNOUT - PEORIA ACACIA.		14.10

CITY OF PEORIA PROPOSITION 300 - SOUTHWEST GAS FRANCHISE
(VOTE FOR NOT MORE THAN) 1

YES	703	76.66
NO.	214	23.34
Over Votes	0	
Under Votes	8	

CITY OF PEORIA PROPOSITION 301 - APS FRANCHISE
(VOTE FOR NOT MORE THAN) 1

YES	719	80.07
NO.	179	19.93
Over Votes	0	
Under Votes	27	

EXHIBIT B
PRECINCT REPORT
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PRECINCT REPORT
FINAL RESULTS

MARICOPA COUNTY

JURISDICTIONAL ELECTION
NOVEMBER 8, 2005

RUN DATE:11/10/05 03:37 PM

5195 PEORIA - PINE

	VOTES	PERCENT
REGISTERED VOTERS - PEORIA	9184	
REGISTERED VOTERS - PEORIA PINE	9184	
BALLOTS CAST - PEORIA	1760	
BALLOTS CAST - PEORIA PINE.	1760	
VOTER TURNOUT - PEORIA		19.16
VOTER TURNOUT - PEORIA PINE		19.16

CITY OF PEORIA PROPOSITION 300 - SOUTHWEST GAS FRANCHISE
(VOTE FOR NOT MORE THAN) 1

YES	1300	74.50
NO.	445	25.50
Over Votes	1	
Under Votes	14	

CITY OF PEORIA PROPOSITION 301 - APS FRANCHISE
(VOTE FOR NOT MORE THAN) 1

YES	1343	77.90
NO.	381	22.10
Over Votes	1	
Under Votes	35	

EXHIBIT C

Total number of Provisional Ballots:	0
Total number of Valid Provisional Ballots – tabulated:	0
Total number of Invalid Provisional Ballots – not tabulated:	0

**EXHIBIT D
PAGE 1**

PROPOSITION 300

OFFICIAL TITLE: AN ORDINANCE GRANTING SOUTHWEST GAS CORPORATION, A CALIFORNIA CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE AND FRANCHISE TO CONSTRUCT, MAINTAIN, AND OPERATE UPON, OVER, ALONG, ACROSS AND UNDER THE STREETS, AVENUES, ALLEYS, HIGHWAYS, BRIDGES AND OTHER PUBLIC RIGHTS-OF-WAY IN THE CITY OF PEORIA, ARIZONA, ITS GAS LINES, TRANSMISSION AND DISTRIBUTION SYSTEM AND NECESSARY APPURTENANCES FOR THE PURPOSE OF SUPPLYING GAS, INCLUDING GAS MANUFACTURED BY ANY METHOD WHATSOEVER, AND/OR GAS CONTAINING A MIXTURE OF NATURAL GAS AND SUCH ARTIFICIAL GAS, AND/OR NATURAL GAS, TO THE CITY, ITS SUCCESSORS, THE INHABITANTS THEREOF, AND INDIVIDUALS AND ENTITIES WITHIN THE LIMITS THEREOF; PRESCRIBING CERTAIN RIGHTS, DUTIES, TERMS AND CONDITIONS; PROVIDING FOR THE SUBMISSION HEREOF TO THE ELECTORS FOR THEIR APPROVAL; AND DECLARING AN EMERGENCY

DESCRIPTIVE TITLE: A proposed franchise between the City of Peoria, Arizona and Southwest Gas Corporation, a public service corporation operating under the laws of the State of Arizona granting Southwest Gas Corporation the right to construct, maintain, and operate upon the Public rights-of-way a transmission system for the delivery of Natural Gas.

A "YES" vote shall have the effect of approving the proposed Franchise within the City of Peoria, Arizona to Southwest Gas Corporation, its successors and assigns.

A "NO" vote shall have the effect of rejecting the proposed Franchise within the City of Peoria, Arizona to Southwest Gas Corporation, its successors and assigns.

Votes Yes:	10,837	81.43%
Votes No:	2,471	18.57%

**EXHIBIT D
PAGE 2**

PROPOSITION 301

OFFICIAL TITLE: AN ORDINANCE GRANTING ARIZONA PUBLIC SERVICE COMPANY, AN ARIZONA CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE AND FRANCHISE TO CONSTRUCT, MAINTAIN, AND OPERATE UPON, OVER, ALONG, ACROSS AND UNDER THE STREETS, AVENUES, ALLEYS, HIGHWAYS, BRIDGES AND OTHER PUBLIC RIGHTS-OF-WAY IN THE CITY OF PEORIA, ARIZONA, ITS ELECTRICAL TRANSMISSION AND DISTRIBUTION SYSTEM, POWER LINES, AND NECESSARY APPURTENANCES FOR THE PURPOSE OF SUPPLYING ELECTRIC ENERGY TO THE CITY, ITS SUCCESSORS, THE INHABITANTS THEREOF, AND INDIVIDUALS AND ENTITIES WITHIN THE LIMITS THEREOF; PRESCRIBING CERTAIN RIGHTS, DUTIES, TERMS AND CONDITIONS; PROVIDING FOR THE SUBMISSION HEREOF TO THE ELECTORS FOR THEIR APPROVAL; AND DECLARING AN EMERGENCY.

DESCRIPTIVE TITLE: A proposed franchise between the City of Peoria, Arizona and Arizona Public Service Corporation, a public service corporation operating under the laws of the State of Arizona granting Arizona Public Service Corporation the right to construct, maintain, and operate upon the Public rights-of-way a distribution system for delivery of Electricity.

A "YES" vote shall have the effect of approving the proposed Franchise within the City of Peoria, Arizona to Arizona Public Service Corporation, its successors and assigns.

A "NO" vote shall have the effect of rejecting the proposed Franchise within the City of Peoria, Arizona to Arizona Public Service Corporation, its successors and assigns.

Votes Yes:	10,865	82.88 %
Votes No:	2,244	17.12%

EXHIBIT E
ORDINANCE NO. 05-68

FRANCHISE AGREEMENT
SOUTHWEST GAS CORPORATION

ORDINANCE NO. 05-68
(Franchise Agreement)

AN ORDINANCE GRANTING SOUTHWEST GAS CORPORATION, A CALIFORNIA CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE AND FRANCHISE TO CONSTRUCT, MAINTAIN, AND OPERATE UPON, OVER, ALONG, ACROSS AND UNDER THE STREETS, AVENUES, ALLEYS, HIGHWAYS, BRIDGES AND OTHER PUBLIC RIGHTS-OF-WAY IN THE CITY OF PEORIA, ARIZONA, ITS GAS LINES, TRANSMISSION AND DISTRIBUTION SYSTEM AND NECESSARY APPURTENANCES FOR THE PURPOSE OF SUPPLYING GAS, INCLUDING GAS MANUFACTURED BY ANY METHOD WHATSOEVER, AND/OR GAS CONTAINING A MIXTURE OF NATURAL GAS AND SUCH ARTIFICIAL GAS, AND/OR NATURAL GAS, TO THE CITY, ITS SUCCESSORS, THE INHABITANTS THEREOF, AND INDIVIDUALS AND ENTITIES WITHIN THE LIMITS THEREOF; PRESCRIBING CERTAIN RIGHTS, DUTIES, TERMS AND CONDITIONS; PROVIDING FOR THE SUBMISSION HEREOF TO THE ELECTORS FOR THEIR APPROVAL; AND DECLARING AN EMERGENCY.

WHEREAS, Southwest Gas Corporation, a California corporation, organized and existing under and by virtue of the laws of the State of California, has submitted a proposed Franchise to be granted to said Corporation, its successors and assigns, by the City of Peoria, Arizona, for the purpose of constructing, maintaining and operating its gas mains, pipelines and transmission and distribution system upon, over, along, across and under the present and future streets, alleys, highways, bridges, and other public rights-of-way in the City of Peoria, Arizona, together with all necessary appurtenances, for the purpose of supplying natural gas, to the City of Peoria, its successors, the inhabitants thereof, and all individuals and entities within the limits thereof; and the Constitution and laws of the State of Arizona and the Charter of the City of Peoria to provide for and require the submission of this proposed Franchise to the qualified electors of the City of Peoria for their approval or disapproval.

THEREFORE, be it ordained by the Mayor and Council of the City of Peoria, Arizona, as follows:

Section 1. – Repealing and Replacing:

This ordinance repeals and replaces the previous Southwest Gas Corporation Franchise and amends Appendix A of the City of Peoria City Code (1992) to read as follows:

Section 2. - Grant of Franchise:

There is hereby granted to Southwest Gas Corporation, a California corporation, organized and existing under and by virtue of the laws of the State of California (herein called "Grantee"), its successors and assigns, the right and privilege to construct, maintain and operate its gas facilities and distribution system, as defined herein, upon, over, along, across and under the present and future public rights-of-way (herein called "Franchise"). These rights-of-way include, but are not limited to, streets, alleys, highways and bridges in the City of Peoria, Arizona (herein called "the City"). Grantee's system includes a natural gas and/or artificial gas transmission and distribution system, together with all necessary appurtenances, including, but not limited to, conduits, supply lines, laterals, and transmission and distribution system, pipes, laterals, service lines, pumps, manholes, meters, gauges, valves, traps, vaults, regulators, regulator stations, appliances, attachments and related equipment, facilities and appurtenances for the purpose of supplying natural gas and/or artificial gas, including gas manufactured by any method whatsoever, and/or gas containing a mixture of natural gas and such artificial gas (herein called the "natural gas"). This Franchise is for Grantee's use of the City's public rights-of-way to supply and deliver natural gas to the City, its successors, the inhabitants thereof, and all individuals and entities either within or beyond the limits thereof, for all purposes.

This Franchise shall extend to and include all streets, avenues, alleys, highways, bridges, and other public rights-of-way within the limits of the City, and any part thereof, either as now located and as may be hereafter or extended within the present or any future limits of the City, provided, however, that the City shall not be liable to Grantee should Grantee construct facilities pursuant to this grant on an area which the City has erroneously exercised dominion and control.

Section 3. – Grantee's Compliance with City Practice; Plans Submitted for Approval; City Construction Near Grantee's Facilities:

Grantee shall perform all construction under this Franchise in accordance with the City's established practices, duly adopted standards or as required by permits, which may incorporate special standards when required for City purposes with respect to such public rights-of-way. Without limitation, Grantee shall comply with ordinances of the City regarding street cuts. Such construction shall be completed within a reasonable time. Before Grantee makes any installations in the public rights-of-way, Grantee shall apply for and obtain from the City such permit or permits as are required

by the City (pursuant to the City Street Code Chapter 23 of the City Code) to be issued for other similar construction or work in the public rights-of-way, pay applicable permit fees, and submit for approval a map showing the location of such proposed installations to the City Engineer/Engineering Director. The City shall issue such permit or permits to the Grantee on such conditions as are reasonable and necessary to ensure compliance with the terms and conditions of this Franchise. Unless necessitated by emergency or exigent circumstances, should Grantee commence work hereunder without obtaining applicable permits, then Grantee shall pay to the City, in addition to applicable permits fees, a stipulated penalty of equal to one hundred percent (100%) of the applicable permit fees. Upon request, Grantee shall also provide the City with, on an annual basis, their known proposed capital plan and reasonably foreseeable future corridor plans for all improvements in the City's planning area.

If the City undertakes, either directly or through a contractor, any construction project adjacent to Grantee's facilities operated pursuant to this Franchise, the City shall notify Grantee of such construction project. Grantee will take steps as are reasonably necessary to maintain safe conditions throughout the construction project, including, but not limited to, the temporary removal or barricading of Grantee's pipelines or equipment, the location of which may create an unsafe condition in view of the equipment to be utilized or the methods of construction to be followed by the Contractor, at Grantee's cost.

Section 4. – Construction and Relocation of Grantee's Facilities; Payment:

All facilities installed or constructed pursuant to this Franchise shall be so located or relocated and so erected as to minimize the interference with traffic and other authorized uses over, under or through the public rights-of-way.

Grantee shall coordinate the installation, construction, use, operation and relocation of its facilities within the City as appropriate to enable the City to better plan, facilitate and protect public safety and convenience. Without limiting the foregoing, Grantee shall provide reasonable advance notice of work hereunder to the City and any persons who may be affected by such work. Grantee shall provide the City with installation records to facilitate such coordination and shall plan, respond, facilitate and design its facilities in coordination with City input as the City may request or require for its purposes. Without limiting the foregoing, upon reasonable notice by the City of the proposed paving of a public right-of-way, Grantee shall extend its facilities hereunder in order to reasonably avoid the need to subsequently cut the paved right-of-way. Unless reasonably necessary due to emergency or exigent circumstances, Grantee shall not cut any City street for a period of three (3) years following construction, repaving, or widening of such street.

Grantee shall not install, construct, maintain or use its facilities in a manner that damages or interferes with any existing facilities of another utility located in the public

right-of-way and agrees to relocate its facilities, if necessary, to accommodate another facility relocation that has a prior rights interest in the public rights-of-way.

Those phases of construction of Grantee's facilities relating to traffic control, backfilling, compaction and paving, as well as the location or relocation of lines and related facilities herein provided for shall be subject to regulation by the City. Grantee shall keep accurate installation records of the location of all facilities in the public rights-of-way and furnish them to the City upon request. Upon completion of new or relocation construction of underground facilities in the public rights-of-way, Grantee shall provide the City Engineer/Engineering Director with corrected drawings showing the actual location of the underground facilities in those cases where the actual location differs significantly from the proposed location. All underground abandoned lines shall continue to remain the property of the Grantee, unless the Grantee specifically acknowledges otherwise to the City Engineer/Engineering Director and such is accepted by the City. Subject to reimbursement under Section 8, Grantee shall remove, at Grantee's sole cost, abandoned lines at the request of the City when required to facilitate construction of any municipal project or as the City determines is reasonably necessary to protect public health and safety. Grantee may contract with the City contractor for such removal. Grantee shall maintain installation records pursuant to A.R.S. § 40-360.30.

A. If the City requires the Grantee to relocate Grantee's facilities, which are located in private easements obtained by Grantee prior to the City's acquisition of said property from which the facilities must be relocated, then: a) the costs and expenditures associated with relocating Grantee's facilities shall be borne by Grantee in accordance with Section 8 of this Franchise Agreement, except that b) the cost of purchasing of a new private easement, if necessary, shall be borne by the City provided, however, such relocation is not essential to the health, welfare and safety of the general public. Notwithstanding the foregoing, should the Grantee obtain an easement during (or prior to) the development stage of a parcel, the Grantee shall abandon the easement, and based on final development plans approved by the City, either (at the City's discretion) leave the facility as is, or relocate its utilities elsewhere within the future rights-of-way corridor. The development process is defined as the stage after a pre-application conference with the City, which has occurred on the subject property.

B. Except as covered in Paragraph A above, Grantee shall bear the entire cost of relocating its facilities located on public rights-of-way, subject to Section 8 of this Franchise Agreement, the relocation of which is necessary for the City's carrying out of its governmental functions. All functions of the City, which are not specifically determined by law to be proprietary are governmental. Governmental functions include, but are not limited to, the following:

- (1) Any and all improvements to the City streets, alleys, avenues and City property;

- (2) Establishing and maintaining domestic water systems, sanitary sewers, storm drains, water, and related facilities;
- (3) Establishing and maintaining municipal parks, parking lots (or parking spaces), parkways, pedestrian malls, or grass, shrubs, trees and other vegetation for the purpose of landscaping any street or public property;
- (4) Providing fire protection and other public safety functions; and
- (5) Collection and/or disposal of garbage and recyclable materials.

C. The City reserves its prior superior right to use the public rights-of-way and City property, including the surface areas, for all public purposes, funded with public funds. When the City uses its prior superior right to the public rights-of-way, or other City property, the Grantee shall move its property that is located in the public rights-of-way, or on other City property, at its own cost, to such location as the City directs.

D. Subject to Section 8, Grantee, shall bear the entire cost of relocating any facilities regardless of the function served, where the City has a prior superior right to use the public rights-of-way, or where the City facilities or other facilities occupying public rights-of-way under authority of a City permit, license or franchise, which must be relocated are already located in the public rights-of-way and the conflict between the Grantee's potential facilities and the existing facilities can only be resolved expeditiously as determined by the City, by the movement of the existing City or permittee facilities. The City and the Grantee agree that the City is not a party to disputes among permittees using the public rights-of-way.

E. If the City participates in the cost of relocating Grantee's facilities for any reason, the cost to the City shall be limited to those costs and expenditures reasonably incurred for relocating such facilities in accordance with the City code and, where not in conflict therewith, industry standards. Costs to the City for relocation of Grantee's facilities shall not include any upgrade or improvement of Grantee's facilities as they existed prior to relocation. Prior to payment by the City, Grantee shall provide an itemization of such costs and expenditures.

F. The City will not exercise its right to require Grantee's facilities to be relocated in an unreasonable or arbitrary manner, or to avoid its obligations under this Franchise.

G. Grantee shall reimburse the City for permit fees/costs and for pavement (cut surcharge) damages fees for the location (or re-location) of Grantee's facilities. Reimbursement for permit fees/costs (i.e., plan review, inspection, location services, design costs, etc.) and pavement (cut surcharge) damage

fees is separate, and in addition to, any other Franchise fees included in this Agreement.

Section 5. – Indemnification:

The City shall in no way be liable to or responsible for any accident or damage that may occur in the exercise of this Franchise by Grantee of its facilities under this Franchise, and the acceptance of this grant shall be deemed an agreement on the part of Grantee to indemnify and hold harmless the City from and against any and all liability, loss, costs, legal fees, damages or any other expenses, which may be imposed on the City by reason of the acts of the Grantee in the exercise of this Franchise, including the maintenance of barricades and traffic control devices in construction and maintenance areas. Grantee shall defend, indemnify, and save the City harmless from any expenses and losses incurred as a result of injury or damage to third persons occasioned by the exercise of this Franchise by Grantee, provided, however, that such claims, expenses and losses are not the result of any willfully or grossly negligent acts of the City.

Grantee shall have and maintain throughout the term of this Franchise liability insurance and/or a program of self-retention or general assets to adequately insure and/or protect the legal liability of the Grantee with reference to the installation, operation and maintenance of the gas lines, together with all the necessary and desirable appurtenances authorized herein to occupy the public rights-of-way. Such insurance, self-retention or general asset program will provide protection for bodily injury and property damage including contractual liability and legal liability for damages arising from explosion, collapse and underground incidents. Such insurance program and/or program of self-retention or general assets shall comply with the Insurance Requirement recommended by the Risk Manager and approved by the City Manager on file with the City Clerk and as updated by the City Manager during the term of this Franchise.

Grantee shall file with the City documentation of such liability insurance, self-retention or general asset program within sixty (60) days following the effective date of this Franchise and thereafter upon request of the City.

Section 6. – Restoration of Rights-of-Way:

If, in the installation, use or maintenance of its natural gas transmission and distribution system Grantee damages or disturbs the surface or subsurface of any public road or adjoining public property or the public improvement located thereon, therein, or thereunder, the Grantee shall promptly, at its own expense (subject to Sections 7 and 8 of this Franchise Agreement), and in a manner acceptable to the City, restore the surface or subsurface of the public road or public property, or repair or replace the public improvement thereon, therein, or thereunder, in as good a condition as before such damage or disturbance, or as may be required by construction standards

established by the City issued permit in accordance with Chapter 23 of the City code (as amended)

Except due to circumstances beyond Grantee's control, should such restoration, repair or replacement not be completed within a reasonable time or pursuant to the City issued permit or fail to meet the City's duly adopted standards, as may be amended from time to time, the City may, after prior notice to Grantee, perform the necessary restoration, repair or replacement either through its own forces or through a hired contractor, and Grantee agrees to reimburse the City for the expense it incurred in performing the necessary restoration, repair or replacement within thirty (30) days after receipt of an invoice from the City.

Section 7. – Franchise Fee:

Grantee shall pay to the City in consideration of the grant of this Franchise a sum equal to two percent (2%) of its gross revenues derived from the sale at retail by it of natural gas (as defined in Section 2, above) for residential, commercial and industrial purposes/customers, within the present or any future corporate limits of the City as shown by Grantee's billing records. Such payments are to be due and payable monthly and postmarked on or before the twentieth (20th) calendar day from the end of the preceding month in which the franchise fee accrues. In the event the payment is received later than the last business day of the month, a five percent (5%) penalty shall be added to payments not made within the required time, and interest of one point five percent (1.5%) monthly shall accrue on the entire amount due. The interest and penalty may be waived by the City if the failure to postmark by the due date was the result of a casualty that renders Grantee unable to compute or estimate the liability from the business records. For the purpose of verifying amounts payable hereunder, the books and records of Grantee shall be subject to inspection or audit by duly authorized officers or representatives of the City at reasonable times.

Grantee shall pay Franchise Fees pursuant to the terms of the previously executed Franchise Agreement between Grantee and the City through May 13, 2005. Beginning May 14, 2005, payment as described in the preceding paragraphs shall be payable in monthly amounts within twenty (20) days after the end of each calendar month.

Notwithstanding the provisions of this Franchise, if at any time Grantee is paying any municipality in the State of Arizona a Franchise Fee greater than two percent (2%) of Grantee's gross receipts in such municipality, then, the percentage set forth in this Section 7 shall be automatically increased to match the greater percentage amount Grantee is paying to such other municipality pursuant under a franchise agreement.

In addition to the foregoing Franchise Fees, Grantee shall pay charges, taxes, and fees as described in Section 8 of this Agreement.

Section 8. – Additional Fees and Taxes:

Notwithstanding any provision contained herein to the contrary, Grantee shall pay, in addition to the payment provided in Sections 4G and 7, the following charges, taxes and fees as established in a code or ordinance properly adopted by the City:

- (a) general ad valorem property taxes;
- (b) transaction privilege and use tax authorized by law and collected by Grantee for its retail sales from users and consumers of natural gas within the present and any future corporate limits of the City, without reduction or offset;
- (c) other charges, taxes (except transaction privilege and use tax mentioned above) or fees levied upon businesses generally through the City, provided said charge, tax or fee is a flat fee per year and that the annual amount of such fee does not exceed the amount of similar fees paid by any other businesses operated within the City; and
- (d) applicable and customary permit and inspection fees (i.e., plan review, inspection, location services, design costs, etc.) and pavement (cut surcharge) damage fees, established by ordinance of the City, necessary for the construction, installation, and other work to be conducted by Grantee hereunder.

In addition to and separate from the Franchise Fee set forth above, the City and the Grantee agree that the City shall assess additional compensation to be paid by Grantee to the City in monthly payments in the amount equal to two percent (2%) of the gross revenues of Grantee as defined in Section 7 of this Agreement. The City shall place all funds collected from Grantee due to such additional compensation in a special fund labeled "Capital Expenditures Fund." Upon presentation to the City of documentation by Grantee of the Grantee's incurring of such capital expenditures and approval by the City, the City shall pay the Grantee within thirty (30) days of such approval, if the amount of money in the Capital Expenditures Fund is sufficient to pay the approved capital expenditures. In the event there is a surplus of the Capital Expenditures Fund after the City pays Grantee, such surplus shall be set aside for the City.

The Grantee shall provide the City assurances that the payments by the City from the Capital Expenditures Fund will not result in Grantee adding such reimbursed capital expenditures to its rate base or seeking a return on investment for such reimbursed capital expenditures.

To the extent that the additional compensation generated by this section is insufficient to cover the anticipated capital expenditures, the City and Grantee shall agree to modify the additional compensation to generate sufficient funds to meet the reasonable capital expenditures in the future years plus any expenditures approved, but

not paid due to lack of funds in the Capital Expenditures Fund. The Grantee assures the City that all taxes and other fees or charges shall remain combined and bundled as "taxes and other fees" or "taxes and other charges" on Grantee's invoices/statements unless mandated otherwise by law.

For purposes of this Franchise Agreement, capital expenditures subject to reimbursement by the City, consist of any cost or expenditure required by this Franchise Agreement or any ordinance adopted by the City related to this Franchise Agreement, including without limitation, fees and costs for permanent and temporary relocations and general construction for natural gas mains, vaults, and laterals; fees and costs associated with backfilling, compaction, pavement cutting, surface restoration repair or replacement: line location, line exposure, traffic control; and permit fees, plan review fees, design fees and inspection fees.

Section 9. – Term:

This Franchise shall continue and exist for a period of twenty-five (25) years from the day of May 14, 2005; provided, however, that if at any time Grantee is paying to any municipality in the State of Arizona a Franchise Fee greater than two percent (2%) of Grantee's gross receipts in such municipality, then the percentage set forth in Section 7 shall be increased to match such greater percentage amount payable to such municipality and provided further that, if at any time Grantee provides other enhancements or benefits to any municipality in the State of Arizona, then such enhancements or benefits shall also be provided to the City.

The right, privilege and franchise hereby granted shall continue and exist for a period of twenty-five (25) years; provided, however, that either party may terminate this Franchise on its tenth (10th) anniversary by giving written notice of its intention to do so not less than one (1) year before the date of termination. If such notice is given for the purpose of negotiating a new franchise and such negotiation is successful, the party giving the notice of termination shall be responsible for the costs of the resulting franchise election.

Section 10. – Franchise; Non-Exclusive:

This Franchise is not exclusive, and nothing contained herein shall be construed to prevent the City from granting other like or similar grants or privileges to any other person, firm or corporation.

Section 11. – Conflicting Ordinances:

Grantee agrees, insofar as the applicable provisions of the City Charter and City code existing at the time that this Franchise becomes effective are legally enforceable and constitute valid requirements, to comply therewith in all respects and to that end

said provisions of the City Charter and City code are hereby made a part of this Franchise as though fully set forth herein.

Section 12. – Independent Provisions:

If any section, paragraph, clause, phrase or provision of this Franchise Agreement, other than Section 7, shall be adjudged invalid or unconstitutional, the same shall not affect the validity of this Franchise Agreement as a whole or any part of the provisions hereof other than the part so adjudged to be invalid or unconstitutional. If Section 7 shall be adjudged invalid or unconstitutional in whole or in part by a final judgment, this Franchise Agreement shall immediately terminate and shall be of no further force or effect.

Section 13. – City Reserves Certain Powers:

As required by the Peoria City Charter, the City expressly reserves unto itself, subject to the limitations of the Constitution and laws of Arizona, certain powers which may be necessary or convenient for the conduct of its municipal affairs, and for the health, safety, and general welfare of its inhabitants, including, among other things, the right to pass and enforce ordinances to require proper and adequate extensions of the service of the grant hereby made, and to protect the public from danger or inconvenience in the operation of any work or business authorized by the grant of this Franchise, and the further right to make and enforce all such regulations as shall be reasonably necessary to secure adequate, sufficient and proper service, extensions and accommodations for the people and insure their comfort and convenience.

Section 14. – No Waiver or Limitation of Condemnation; Right Reserved by the City:

The City reserves the right and power to purchase or condemn the plant and distribution facilities of Grantee within the City's corporate limits or any additions thereto, as provided by law.

Section 15. – Assignment of Franchise:

The right, privilege and franchise hereby granted may not be leased, assigned, transferred or otherwise alienated in whole or in part by the Grantee, its successors and assigns, without the prior consent of either the City or (if applicable) the Arizona Corporation Commission, such prior consent from the City will not be unreasonably withheld. No consent shall be required in connection with an assignment made as security pursuant to a mortgage or deed of trust or in connection with a subsequent transfer made pursuant to any such instrument.

Section 16. – Franchise Agreement/Ordinance:

This Franchise Agreement/Ordinance is subject to the approval of the electors of the City. Grantee shall reimburse the City for all of the costs the City incurs in conducting the franchise election, except that, if one or more additional propositions are presented to the electors at such election, Grantee shall pay only that portion of the expense determined by dividing all of the City's expenses by the number of issues presented on the ballot.

Section 17. – Effective Date:

This Franchise shall be and become in full force and effect from May 14, 2005 until May 14, 2030, and after its approval by the majority of the qualified electors residing within the corporate limits of the City and voting thereon at a special municipal election to be held in the City for that purpose.

Section 18. – Notices:

Any notice required or permitted to be given hereunder shall be in writing, unless otherwise expressly permitted or required, and shall be deemed effective either (i) upon hand delivery to the person then holding the office shown on the attention line of the address below, or, if such office is vacant or no longer exists, to a person holding a comparable office, or (ii) on the third business day following its deposit with the United States Postal Service, first class and certified or registered mail, return receipt requested, postage prepaid, addressed as follows:

- A. To the City (2 copies):
- | | |
|-------------------------|-------------------------|
| City Clerk | City Attorney |
| City of Peoria | City of Peoria |
| 8401 West Monroe Street | 8401 West Monroe Street |
| Peoria, Arizona 85345 | Peoria, Arizona 85345 |
- B. To Southwest Gas:
- Southwest Gas Corporation
Legal Affairs Department
10851 North Black Canyon Highway
Phoenix, Arizona 85029-4755

Section 19. - Execution:

We, the undersigned, have executed this document in accordance with the results of the City of Peoria Special Election on November 8, 2005, on the dates below written.

CITY OF PEORIA, an Arizona
a municipal corporation

SOUTHWEST GAS CORPORATION,
California corporation

By [Signature]
John C. Keegan, Mayor

By _____

Date: Nov. 17, 2005

Date: _____

ATTEST:

[Signature]
Mary Jo Kief, Peoria City Clerk



APPROVED AS TO FORM:

[Signature]
Stephen M. Kemp, Peoria City Attorney

Published in the Arizona Business Gazette
Publication Dates: November 24 and December 1, 2005

Effective Date: November 17, 2005

**EXHIBIT F
ORDINANCE NO. 05-69**

**FRANCHISE AGREEMENT
ARIZONA PUBLIC SERVICE COMPANY**

ORDINANCE NO. 05-69
(Franchise Agreement)

AN ORDINANCE GRANTING ARIZONA PUBLIC SERVICE COMPANY, AN ARIZONA CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE AND FRANCHISE TO CONSTRUCT, MAINTAIN, AND OPERATE UPON, OVER, ALONG, ACROSS AND UNDER THE STREETS, AVENUES, ALLEYS, HIGHWAYS, BRIDGES AND OTHER PUBLIC RIGHTS-OF-WAY IN THE CITY OF PEORIA, ARIZONA, ITS ELECTRICAL TRANSMISSION AND DISTRIBUTION SYSTEM, POWER LINES, AND NECESSARY APPURTENANCES FOR THE PURPOSE OF SUPPLYING ELECTRIC ENERGY TO THE CITY, ITS SUCCESSORS, THE INHABITANTS THEREOF, AND INDIVIDUALS AND ENTITIES WITHIN THE LIMITS THEREOF; PRESCRIBING CERTAIN RIGHTS, DUTIES, TERMS AND CONDITIONS; PROVIDING FOR THE SUBMISSION HEREOF TO THE ELECTORS FOR THEIR APPROVAL; AND DECLARING AN EMERGENCY.

Section 1. -- Grant of Franchise:

There is hereby granted to Arizona Public Service Company, a corporation organized and existing under and by virtue of the laws of the State of Arizona (herein called "Grantee"), its successors and assigns, the right and privilege to construct, maintain and operate its electrical system, as defined herein, upon, over, along, across and under the present and future public rights-of-way (herein called "Franchise"). These rights-of-way include but are not limited to streets, alleys and highways in the City of Peoria, Arizona (herein called "the City"). Grantee's system includes electric power lines, together with all necessary or desirable appurtenances, including, but not limited to, poles, towers, wires, cables, conduits, transmission lines, transformers, switches and communication lines for Grantee's own use. This Franchise is for Grantee's use of the City's public rights-of-way to supply and deliver electric energy to the City, its successors, the inhabitants thereof, and all individuals and entities either within or beyond the limits thereof, for all purposes.

This Franchise shall extend to and include all streets, avenues, alleys, highways, bridges, and other public rights-of-way within the limits of the City, and any part thereof, either as now located and as may be hereafter or extended within the present or any future limits of the City, provided, however, that the City shall not be liable to Grantee should Grantee construct facilities pursuant to this grant on an area which the City has erroneously exercised dominion and control.

This Franchise does not include cable communication services as defined by Chapter 5 of the Peoria City Code (1992) or telecommunication services as defined by Chapter 23 of the Peoria City Code (1992) regardless of whether such telecommunication services are interstate or intrastate. Grantee agrees that if Grantee uses its wires, cables or lines for telecommunication services, Grantee must apply for and obtain a telecommunications license from the City.

Section 2. – Grantee's Compliance with the City's Practice; Plans Submitted for Approval; The City's Construction near Grantee's Facilities:

Grantee shall perform all construction under this Franchise in accordance with the City's established practices, duly adopted standards or as required by permits, which may incorporate special standards when required for the City's purposes, with respect to such public rights-of-way. Before Grantee makes any installations in the public rights-of-way, Grantee shall submit for approval a map showing the location of such proposed installations to the City Engineer/Engineering Director. Grantee will provide as available its plans for major construction projects and system improvements in the City planning area. Grantee shall cooperate with the City to furnish upon the City's request the plans and maps required by this section in an electronic format compatible with the City's current electronic format. If Grantee needs to change its electronic format to be compatible with the City's format, Grantee shall do so within a reasonable time.

Prior to the installation, construction, erection, enlargement, replacement, extension or relocation of any portion of the electric transmission and distribution system authorized herein, Grantee shall apply for and obtain from the City a permit pursuant to the City Street Code, Chapter 23 of the City Code, as amended. The City shall issue such permit to Grantee on such conditions as are reasonable and necessary to ensure compliance with the terms and conditions of this Franchise.

If the City authorizes any construction project adjacent to or near Grantee's facilities operated pursuant to this Franchise, the City shall include in all such construction specifications, bids, and contracts, a requirement that the contractor or his designee must comply with the overhead power line safety laws (A.R.S. § 40-360.41 et. seq. as amended).

Section 3. – Construction and Relocation of Grantee's Facilities; Payment:

All Grantee's facilities shall be installed, constructed, located or relocated pursuant to this Franchise so as to interfere as little as possible with traffic, or other authorized uses over, under or through the streets, avenues, highways, bridges, and other public rights-of-way. For the purpose of this Franchise, traffic use shall include the City's traffic signals, traffic control related equipment, as well as the City's signal interconnect fiber. Those phases of construction of Grantee's facilities relating to traffic control, backfilling, compaction and paving, as well as the location or relocation of lines and related facilities herein provided for shall be subject to regulation by the City.

Grantee shall keep accurate records of the location of all facilities in the public rights-of-way and furnish them to the City. Upon completion of new or relocation construction of underground facilities in the public rights-of-way, Grantee shall provide the City Engineer/Engineering Director with corrected drawings showing the actual location of the underground facilities in those cases where the actual location differs significantly from the proposed location. All underground abandoned lines shall continue to remain the property of Grantee, unless Grantee specifically acknowledges otherwise to the City Engineer/Engineering Director and such is accepted by the City.

Grantee shall cooperate with the City to furnish upon the City's request the actual location of such new or relocated facilities in the public rights-of-way in an electronic format compatible with the City's current electronic format. If Grantee needs to change its electronic format to be compatible with the City's format, Grantee shall do so within a reasonable time.

A. If the City requires Grantee to relocate Grantee's facilities which are located in private easements obtained by Grantee prior to the City's acquisition of said property from which the facilities must be relocated, the entire cost of relocating Grantee's facilities (including the cost of purchasing a new private easement if necessary) shall be borne by the City. The City shall also bear the entire cost of all subsequent relocations of the relocated facilities required by the City, until such time as the City condemns or purchases Grantee's private easement.

B. Except as covered in Paragraph A above, Grantee shall bear the entire cost of relocating facilities located on public rights-of-way, the relocation of which is necessary for the City's carrying out a function in the interest of the public health, safety or welfare. Grantee's right to maintain its lines and facilities is subject to the paramount right of the City, to use its streets for all governmental purposes. Governmental purposes include, but are not limited to, the following functions of the City:

- (1) Any and all improvements to the City streets, alleys, and avenues;
- (2) Establishing and maintaining sanitary sewers, storm drains, and related facilities;
- (3) Installation of pipe and other facilities to serve domestic and municipal water;
- (4) Establishing and maintaining municipal parks, parking spaces (or parking lots), parkways, pedestrian malls or grass, shrubs, trees and other vegetation for purposes of landscaping any street or public property;
- (5) Providing fire protection;
- (6) The relocation of Grantee's facilities necessary to carry out the exercise of the City's police power for urban renewal;
- (7) Collection and disposal of garbage and recyclable materials.

C. The City reserves its prior superior right to use the public rights-of-way, including the surface areas, for all public purposes, funded with public funds. When the City uses its prior superior right to the public rights-of-way for a governmental function, Grantee shall move its property that is located in the public rights-of-way at its own cost, to such location as the City directs (with the exception of relocations in private easements, addressed in subsection A above). The City will bear the entire cost of relocating any of Grantee's facilities, the relocation of which is necessitated by the construction of improvements by or on behalf of the City in furtherance of a proprietary function. All functions of the City that are not governmental are proprietary.

D. If the City participates in the cost of relocating Grantee's facilities for any reason, the cost of relocation to the City shall not include any upgrade or improvement of Grantee's facilities as they existed prior to relocation.

E. While the City and Grantee acknowledge that the City has a right to require relocation of Grantee's facilities in public rights-of-way, the City will not exercise its right to require Grantee's facilities to be relocated in an unreasonable or arbitrary manner, or to avoid its obligation under the Franchise. In such instances where relocation of Grantee's facilities is required, the City will provide Grantee with sufficient time for such relocation.

F. The City agrees it will not require Grantee to relocate its facilities located within the public rights-of-way without providing Grantee adequate space within the rights-of-way to relocate the facilities that must be moved.

G. The City will exercise its best effort to not plant any tree that can normally grow to a height of more than 25 feet in the public rights-of-way under or adjacent to Grantee's overhead power lines. Grantee shall have the authority to trim, prune or remove any trees or shrubs located within or hanging over the limits of the public rights-of-way of the City that in the judgment of Grantee may interfere with the construction, or endanger the operation, of the lines and/or facilities of Grantee. All said vegetation management work is to be done at Grantee's expense.

Section 4. – Indemnification:

The City shall in no way be liable to or responsible for any accident or damage that may occur in the construction, operation or maintenance by Grantee of its lines and appurtenances hereunder, and the acceptance of this grant shall be deemed an agreement on the part of Grantee to indemnify the City and hold it harmless from and against any and all liability, loss, costs, legal fees, damage or any other expense which may be imposed on the City by reason of the acts of this Grantee in the construction, operation and maintenance of its lines and appurtenances hereunder, including the maintenance of barricades and traffic control devices in construction and maintenance

areas. The City shall indemnify and hold Grantee harmless from any and all claims, costs, damages, expenses and losses, including but not limited to attorney fees and court costs relating to, or arising out of, or alleged to have resulted from the City's use of Grantee's facilities pursuant to this Franchise, provided, however, that such claims are not the result of willful misconduct, negligent acts or omissions of Grantee.

Grantee shall have and maintain throughout the term of this Franchise liability insurance, a program of self-retention or general assets to adequately insure and/or protect the legal liability of Grantee with reference to the installation, operation and maintenance of its facilities authorized herein to occupy the public rights-of-way.

Section 5. – Restoration of Rights-of-Way:

Whenever Grantee shall cause any opening or alteration to be made for any purpose in any public rights-of-way, the work shall be completed with due diligence pursuant to the City issued permit in accordance with Chapter 23 of the City Code (as amended) and Grantee shall, without expense to the City and upon completion of such work, restore the disturbed property in a manner consistent with the City's duly adopted standards, or as required by City permit.

Should such restoration, repair or replacement fail to be completed pursuant to the City issued permit or fail to meet the City's duly adopted standards, as may be amended from time to time, the City shall provide notice to Grantee of such failure and provide reasonable time for Grantee to perform restoration, repair or replacement. Except due to circumstances beyond Grantee's control, the City may then perform the necessary restoration, repair or replacement either through its own forces or through a hired contractor and Grantee agrees to reimburse the City for the reasonable expenses it incurred in performing the necessary restoration, repair or replacement, together with the pavement cut surcharges as provided in Chapter 23 of the Peoria City Code (1992) within thirty (30) days after receipt of an invoice from the City.

Section 6. – Franchise Fee:

Grantee shall pay to the City in consideration of the grant of this Franchise a sum equal to two percent (2%) of all revenues of Grantee, including Regulatory Assessments but, excluding governmental impositions, from the retail sales and/or delivery by it of electric energy and other charges for services attendant to the retail sale and/or delivery of electric energy delivered through Grantee's electric distribution system within the present and any future corporate limits of the City, as shown by Grantee's billing records. Except as otherwise provided in this Franchise, said payments shall be in lieu of any and all fees, charges or exaction of any kind otherwise assessed by the City in any way associated with Grantee's use of the rights-of-way, including but not limited to, the construction of Grantee's facilities hereunder or for inspections thereof during the term of this Franchise.. Said payments are due and payable monthly on or before the thirtieth calendar day of the month next succeeding the end of the month in which the

franchise fee accrued (the "Due Date"). Such payment shall be considered delinquent if not received by the last day of the month (the "Delinquent Date"). If the payment is later than the Delinquent Date, a 2% penalty will be added, and interest of 1.5% monthly shall occur on the entire amount due. The penalty and interest may be waived by the City if the failure to pay by the Delinquent Date was the result of an unforeseen event that renders Grantee unable to compute the liability from business records; provided, however, Grantee in such event must file an estimated payment by the Delinquent Date to avoid penalty and interest charges. Based on a history of prior on-time payments, the City may waive the penalty and interest.

Grantee shall not, however, pay said franchise fee on revenues charged to Grantee's retail customers by third party electric service providers.

For the purpose of verifying amounts payable hereunder, the books and records of Grantee shall be subject to inspection by duly authorized officers or representatives of the City at reasonable times.

Grantee shall pay franchise fees pursuant to the terms of the previously executed franchise agreement through May 13, 2005. Beginning May 14, 2005, payment as described in the preceding paragraphs shall be payable in monthly amounts within thirty (30) days after the end of each calendar month.

Notwithstanding the provisions of this Franchise, if during the term of this Franchise Grantee enters into any electricity franchise with any other municipality in Arizona during the term of this Franchise that provides for a higher percentage of Grantee's revenues than two percent (2%) or includes more categories of revenues than set forth in this Franchise, Grantee shall notify the City of such higher percentage or expanded revenue base. Grantee agrees to henceforth pay to the City a new franchise fee at the higher franchise percentage or include the additional revenue categories.

Section 7. – Additional Fees and Taxes:

Notwithstanding any provision contained herein to the contrary, Grantee shall pay, in addition to the payment provided in Section 6, the following charges, taxes and fees as established in a code or ordinance properly adopted by the City:

- (a) General ad valorem property taxes;
- (b) Transaction privilege and use tax as authorized by law and collected by Grantee for its retail sales to its users and consumers of electricity within the present and any future corporate limits of the City;
- (c) Pavement cut surcharge fees, as described in City Code 23-54(b) as enacted in Ord. No. 97-38, 7/15/97, which is effective as of November 8, 2005;
- (d) Other charges, taxes or fees generally levied upon businesses by the City, provided that the annual amount of such fee does not exceed the amount of similar fees paid by any other businesses operated within the City.

Section 8. – Term:

This Franchise shall continue and exist for a period of twenty-five (25) years from May 14, 2005; provided, however, that either party may terminate this Franchise on its tenth anniversary by giving written notice of its intention to do so not less than one (1) year before the date of termination. If such notice is given for the purpose of negotiating a new franchise and such negotiation is successful, the party giving the notice of termination shall be responsible for the costs of the resulting franchise election.

Section 9. – Franchise; Non-Exclusive:

This Franchise is not exclusive, and nothing contained herein shall be construed to prevent the City from granting other like or similar grants or privileges to any other person, firm or corporation.

Section 10. – Conflicting Ordinances:

Grantee agrees, insofar as the applicable provisions of the City Charter and the City Code existing at the time that this Franchise becomes effective are legally enforceable and constitute valid requirements, to comply therewith in all respects. Provided however, notwithstanding any other provisions hereof, all ordinances and parts of ordinances in conflict with the provisions hereof, to the extent applicable to a franchised electric public service corporation, are hereby superseded.

Section 11. – Independent Provisions:

If any section, paragraph, clause, phrase or provision of this Franchise, other than Section 6, shall be adjudged invalid or unconstitutional, the same shall not affect the validity of this Franchise as a whole or any part of the provisions hereof other than the part so adjudged to be invalid or unconstitutional. If Section 6 shall be adjudged invalid or unconstitutional in whole or in part by a final judgment, this Franchise shall immediately terminate and shall be of no further force or effect.

Section 12. – The City Use of Facilities:

In consideration of this Franchise and the rights granted hereby, the City shall, if the following six criteria are met, have the right to place, maintain, and operate on Grantee's poles located on public rights-of-way within the City's corporate limits, any and all wires and appurtenances (other than steps or climbing devices) the City may use for its municipal fire alarm, police telephone or other municipal communications services utilized for governmental functions:

- A. The City must notify Grantee in writing of the City's intended use of Grantee's poles;

- B. The City shall, to the fullest extent permitted by law, defend, indemnify and hold Grantee harmless from any and all claims, costs, damages, expenses and losses, including but not limited to attorney fees and court costs relating to, arising out of, or alleged to have resulted from the City's use of Grantee's facilities pursuant to this Franchise; provided however, that such claims, expenses and losses are not the result of the willful misconduct or negligent acts or omissions of Grantee.
- C. The City's facilities and the installation and maintenance thereof must comply with the applicable requirements of the Occupational Safety and Health Act, the National Electrical Safety Code, and all other applicable rules and regulations as amended. If the City does not comply with all applicable laws, ordinances and regulations, or if the City's facilities create an immediate safety hazard, Grantee retains the right to remove or correct the City's facilities at the City's expense;
- D. The City's facilities and the installation and maintenance thereof must not cause Grantee's facilities and the installation and maintenance thereof to be out of compliance with all applicable requirements of the Occupational Safety and Health Act and the National Electrical Safety Code and all other applicable rules and regulations as amended. If the City does not comply with all applicable laws, ordinances and regulations, or if the City's facilities create an immediate safety hazard, Grantee retains the right to remove or correct the City's facilities at the City's expense;
- E. The City's use of its facilities shall not interfere with Grantee's use of Grantee's facilities, and;
- F. The City shall be responsible for any incremental costs incurred by Grantee as a result of the City's use of Grantee's facilities.

Section 13. – The City Reserves Certain Powers:

As required by the Peoria City Charter, the City expressly reserves unto itself, subject to the limitations of the Constitution and laws of Arizona, certain powers which may be necessary or convenient for the conduct of its municipal affairs, and for the health, safety, and general welfare of its inhabitants, including, among other things, the right to pass and enforce ordinances to require proper and adequate extensions of the service of the grant hereby made, and to protect the public from danger or inconvenience in the operation of any work or business authorized by the grant of this Franchise, and the further right to make and enforce all such regulations as shall be reasonably necessary to secure adequate, sufficient and proper service, extensions and accommodations for the people and insure their comfort and convenience.

Section 14. – Condemnation; Right Reserved by the City:

The City reserves the right and power to purchase or condemn the plant and distribution facilities of Grantee within the City's corporate limits or any additions thereto, as provided by law.

Section 15. – Assignment of Franchise:

The right, privilege or Franchise granted hereunder shall not be leased, assigned or otherwise alienated without the express consent of the City evidenced by an ordinance or resolution duly passed by the City Council; provided, however, that the consent of the City is hereby given to Grantee to transfer or assign this Franchise to Grantee's parent corporation, Pinnacle West Capital Corporation or one of its affiliates. Grantee will notify the City if such transfer or assignment should occur.

Section 16. – Voter Approval Required:

This Franchise Agreement shall be submitted to be voted upon by the qualified electors residing within the corporate limits of the City at a general or special municipal election of the City to be held for that purpose.

Section 17. – Effective Date:

This Franchise shall be and become in full force and effect from May 14, 2005 until May 14, 2030, and after its approval by the majority of the qualified electors residing within the corporate limits of the City and voting thereon at a special municipal election to be held in the City for that purpose.

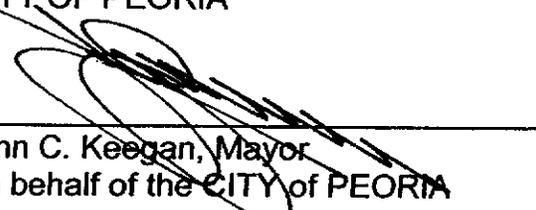
Section 18. – Notices:

Any notice required or permitted to be given hereunder shall be in writing, unless otherwise expressly permitted or required, and shall be deemed effective either (i) upon hand delivery to the person then holding the office shown on the attention line of the address below, or, if such office is vacant or no longer exists, to a person holding a comparable office, or (ii) on the third business day following its deposit with the United States Postal Service, first class and certified or registered mail, return receipt requested, postage prepaid, addressed as follows:

- A. To the City (2 copies):
- | | |
|-------------------------|-----------------------|
| City Clerk | City Attorney |
| City of Peoria | City of Peoria |
| 8401 West Monroe Street | 8401 W. Monroe St. |
| Peoria, Arizona 85345 | Peoria, Arizona 85345 |
- B. To Arizona Public Service: Franchise Department
Arizona Public Service Company
P.O. Box 53999, M.S. 8632
Phoenix, Arizona 85072-3999

Section 19. - Execution:

We, the undersigned, have executed this document in accordance with the results of the City of Peoria Special Election on November 8, 2005 on the dates below written.

~~CITY OF PEORIA~~

By _____
John C. Keegan, Mayor
On behalf of the CITY of PEORIA
Date: Nov. 17, 2005

ARIZONA PUBLIC SERVICE,
An Arizona Corporation

By _____
Jan H. Bennett, Vice President
Customer Service
Date: _____

ATTEST:


Mary Jo Kief, Peoria City Clerk



APPROVED AS TO FORM:


Stephen M. Kemp, Peoria City Attorney

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