

**FRANCHISE AGREEMENT
BETWEEN
THE MORENCI WATER & ELECTRIC COMPANY
AND
THE TOWN OF CLIFTON, ARIZONA**

RECITALS

A. The Town of Clifton, Arizona (the “Town”) desires to issue, pursuant to its vested authority as an Arizona municipality, a grant of Franchise to the Morenci Water & Electric Company, an Arizona corporation organized and existing under and by virtue of the laws of Arizona, its successors, and assigns (“Grantee”). The Town hereby grants a Franchise, which includes, but is not limited to, reasonable accommodations to conduct operations as a utility, including the right and privilege to construct, maintain, and operate an electric energy transmission and distribution system and a water distribution system to serve certain areas located within the corporate limits of the Town.

B. The purpose of the Franchise is to authorize Grantee the authority, right, privilege, and power to locate, construct, maintain, and operate in, over, along, upon, under, through, and across all present and future public right-of-way held by the Town including, but not limited to, streets, roads, highways, lanes, alleys, throughfares, courts, sidewalks, parkways, drives, ways, avenues, bridges, and other public utility easements within the corporate limits of the Town, the necessary equipment for the operation of the subject electric energy transmission and distribution system and the water distribution system as reasonably necessary to provide electric or water service within the Town, subject to the terms and conditions of this Franchise.

C. Grantee has requested, and the Town agrees, that such a Franchise be granted consistent with the laws of the United States, State of Arizona and their agencies, and the orders and rules of the Arizona Corporation Commission.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Franchise Agreement (the “Franchise” or “Agreement”), the Parties, each intending to be legally bound by this Agreement, hereby agree as follows:

AGREEMENT

I. DEFINITIONS.

For the purposes of this Franchise, the following terms, phrases, words, and their derivation shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

- 1.1. “Town.” The Town of Clifton, Arizona, a municipal corporation of the State of Arizona, in its present incorporated form or in any later reincorporated form and, where consistent with the context, the lands within its corporate limits.
- 1.2. “Council.” The present governing body of the Town or any future body constituting the legislative body of the Town.

- 1.3. "Franchise Property." All property constituting any part of the Electric Energy Transmission and Distribution System or Water Distribution System.
- 1.4. "Grantee." The Morenci Water & Electric Company, or the lawful successors or assignees thereof, provided that with respect to any successors or assignees, the requirements of Section 5 herein have first been satisfied.
- 1.5. "Public Street." The surface of, and the space above and below all public streets, roads, highways, lanes, alleys, thoroughfares, courts, sidewalks, parkways, drives, ways, avenues, bridges, public easements, and other public rights-of-way now or hereafter existing as such within the Town and held by the Town.
- 1.6. "Electric Energy Transmission and Distribution System." A system for the transmission and distribution of electric energy owned by the Grantee for the provision of electric service to the extent such system is located within the corporate limits of the Town, as those corporate limits may change from time to time.
- 1.7. "Water Distribution System." A system for the distribution of water owned by the Grantee for the provision of water service to the extent such system is located within the corporate limits of the Town, as those corporate limits may change from time to time.

II. APPROVAL OF GRANTEE.

That, after due public proceedings and consideration, the Council hereby approves the financial and technical qualifications of the Grantee, it being recognized that the Grantee has, for a number of years, owned and operated an Electric Energy Transmission and Distribution System and a Water Distribution System serving substantially all of the Town.

III. GRANT OF FRANCHISE: TERM

A Franchise is hereby granted to Grantee to locate, construct, maintain and operate the Electric Energy Transmission and Distribution System and a Water Distribution System in the Town, subject to the terms, conditions and limitations hereinafter contained, for a period of twenty-five (25) years; provided, however, the Town, in its sole discretion, may terminate this Franchise, on the tenth, fifteenth or twentieth anniversary of the Effective Date, by giving written notices of its intention to do so not less than one (1) year before the tenth, fifteenth, or twentieth anniversary of the Effective Date. This Franchise shall include the authority, right, privilege and power to locate, construct, maintain and operate in, over, along, upon, under, through and across Public Streets, the necessary equipment for the operation of the Electric Energy Transmission and Distribution System and the Water Distribution System in the Town, subject to the terms, conditions and limitations hereinafter set forth.

IV. RESTRICTIONS.

This Franchise is granted under such restrictions and limitations and upon such terms as the Council at any time may provide, not inconsistent with the laws, regulations, rules and orders of the United States or State of Arizona or their agencies, or the orders and rules of the Arizona Corporation Commission, specifically providing, however, that:

- 4.1. All rights hereunder are granted under the express condition that the Council shall have the power at any time, upon reasonable notice to Grantee, to impose such restrictions

and limitations and to make such regulations on such Public Streets as it may deem best for the public safety, health, welfare, and convenience.

- 4.2. All rights hereby granted shall be exercised so as to not interfere or conflict with any easements or rights-of-way previously granted by the Council. Council shall not grant easements of rights-of-way that interfere or conflict with Grantee's previously granted and existing easements and rights-of-way.
- 4.3. All rights hereby granted shall be exercised so as to not interfere or conflict with any easement, either public or private, of whatsoever nature, which has been acquired in or to the proper use of Public Streets or any portion thereof.
- 4.4. All rights hereby granted shall be exercised so as to minimize interference with the proper use by the public of the Public Streets, or any portion thereof.
- 4.5. This Franchise is granted upon the express condition that the Grantee shall at all times during the term of this Franchise have in force and effect a valid Certificate of Convenience and Necessity issued by the Arizona Corporation Commission to operate its Electric Energy Transmission and Distribution System and Water Distribution System within the corporate limits of the Town.
- 4.6. All materials and construction methods used with respect to Franchise Property installed on Public Streets shall conform to applicable standards, specifications, and any special provisions in effect in the Town when the Franchise Property is installed or replaced and to any improvement, replacement or maintenance standards, specifications including any special provisions applicable, now or in the future, to the Franchise Property.
- 4.7. The Grantee shall consult with the Town Engineer and secure any applicable construction permit prior to the construction of any Franchise Property on Public Streets.
- 4.8. The Grantee shall promptly complete construction and make repairs to the Public Streets in the time and manner specified by the Town or the Town Engineer. Upon completion of new or relocation of any Franchise Property and request of the Town or the Town Engineer, Grantee shall provide the Town with installation records showing the location of all such Franchise Property.
- 4.9. The Grantee shall not permit the use of any portion of the Franchise Property located within the Public Streets by third parties for any reason (e.g., without limitation, pole attachments or delivering water or electricity) without the written authority of the Town unless (i) the person or entity seeking to use the Franchise Property has secured the Town's consent to use the Public Streets or (ii) the Town is precluded by law, order, rule or regulation from requiring its prior written authority as a condition of the Franchise Property being subjected to such use. Grantee shall provide the Town written notice of the use of the Franchise Property by third parties; such notice to be provided not less than sixty days prior to the commencement of such use, unless such notice period is shortened by mutual agreement of the Grantee and the Town or by operation of law.

V. FRANCHISE IS NONASSIGNABLE.

This Franchise shall be a privilege to be held in trust by the original Grantee. It cannot, in any event, be sold, transferred, leased, assigned, or disposed of, in whole or in part, by voluntary or involuntary sale, merger or consolidation without prior consent of the Council. Any request

for transfer or assignment shall be made only by written instrument, a duly executed copy of which shall be filed in the office of the Town Clerk. Consent for transfer or assignment may not be unreasonably denied, provided that the proposed assignee shows financial responsibility, as determined by the Council. and agrees to comply with all provisions of this Franchise.

VI. FRANCHISE FEE.

- 6.1. The Grantee shall pay to the Town an amount equal to two percent (2%) of all gross receipts (without any deductions) derived from the operation and use of the Franchise Property in the Town ("Franchise Fee"). The Franchise Fee will be based upon the Grantee's gross receipts (without any deductions) from (i) the provision of electric and water service to Grantee's customers located within the corporate limits of the Town, and not without and (ii) the operation and use of the Franchise Property for the provision of any service to persons or entities located within the corporate limits of the Town, and not without. In the event the foregoing method of calculating the Franchise Fee generates fees less than two percent (2%) of all gross receipts (without deductions) derived from the operation and use of the Franchise Property in the Town, or if otherwise mutually agreed by the parties, the Town may, upon not less than six months' notice, establish a different method of calculating the Franchise Fee (e.g., based on kilowatt hours or gallons sold or conveyed). The Franchise Fee shall be paid on a monthly basis. It shall be remitted to the Town on or before the 20th day next succeeding the month for which the Franchise Fee is payable (the "Franchise Fee Due Date"); as an example, the Franchise Fee for the month of January will be due and payable to the Town on or before February 20th.
- 6.2. The Franchise Fee shall be computed and reported on the Transaction Privilege Tax form filed with the State of Arizona.
- 6.3. The Franchise Fee is in addition to any other fees, licenses, taxes, or other charges otherwise payable to the Town by the Grantee. It is specifically understood that the Franchise Fee is in addition to any transaction privilege (sales) taxes which are now or hereafter imposed on the Grantee's gross receipts from the business of furnishing or producing and furnishing, to consumers, electricity, and water.
- 6.4. The Town shall have the right to inspect the Grantee's books and records for the purposes of verifying amounts due as Franchise Fees hereunder and to audit and recompute any and all amounts payable under this Franchise as Franchise Fees. Grantee shall pay any deficiency identified in an audit within thirty (30) days following written notice by the Town; provided, however, that Grantee will not be required to pay such deficiency until thirty (30) days after completion of the administrative hearing process if Grantee commences such process pursuant to administrative process. If a Town audit shows overpayments, the Town will properly pay Grantee the overpaid amount.
- 6.5. The Grantee and the Town both agree not to file a lawsuit in the federal or state court which seeks damages or refund of Franchise Fees on the grounds that such Franchise Fees are unconstitutional or illegal.

- 6.6. No acceptance of any payment shall be construed as a release or as an accord and satisfaction of any claim the Town may have for further or additional sums payable under this Franchise or for the performance of any other obligation hereunder.

VII. NO OTHER PRIVILEGES GRANTED.

No privilege or exemption is granted or conferred by this Franchise except those specifically prescribed herein. Any privilege claimed under this Franchise by the Grantee in any Public Street shall be subordinate to any prior lawful occupancy of the Public Streets or other public safety or necessary public improvements as determined by the Council.

VIII. NONEXCLUSIVE FRANCHISE.

This Franchise shall not be deemed to be exclusive, and the Council hereby expressly reserves the right and power to grant from time-to-time similar franchises and privileges over the same Public Streets.

IX. FRANCHISE PROPERTY; MAINTENANCE; RELOCATION.

- 9.1. At the request of the Town by its authorized agents, the Grantee shall, at Grantee's sole cost and expense, protect, support, maintain, temporarily disconnect, relocate in the Public Street or remove from any Public Street any Franchise Property when required by the Town for any governmental purpose, including, without limitation, traffic conditions, public safety, street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines and tracks or any type of structures or improvements by governmental agencies, or any structures or public improvements; provided, however, if the Grantee's facilities were located pursuant to rights predating the Town's rights to the Public Street, the Town shall be responsible for the cost of relocation unless the Town has previously acquired the right, or otherwise assumed the right of the Grantor and the Grantor could have required the relocation at Grantee's cost and provided further that if the cost of relocating can be included in grants or if the relocation is made at the request of a third party, then the Town shall make a good faith effort to secure non-Town funds from the entity providing the grant or requesting the relocation to pay for the relocation.
- 9.2. The Grantee shall in all such cases have the privilege to and be subject to the obligation to abandon Franchise Property in place as provided in Section 12 herein.

X. SEVERABILITY.

- 10.1. The provisions of this Franchise shall be construed to be severable and the holding of any provision to be invalid or unconstitutional shall in no way affect the remaining portions of this Franchise, except that in the event Sections 2, 4, 6, 8, 9, 11, 13, 14, 15, 17, 18 or 22 is construed as invalid, unconstitutional or unenforceable, then the Town, within one year of entry of a final non-appealable order or judgment making such determination, may terminate this Franchise.

- 10.2. The Town reserves the right to separate this Franchise into two separate franchise agreements: one for the Electric Energy Transmission and Distribution System and the provision of electric service, and one for the Water Distribution System and the provision of water service. Each separate franchise shall contain all the provisions set forth herein as it relates to the respective utility system and service.

XI. PROMPT REPAIR OF PUBLIC STREETS AND MAINTENANCE OF FRANCHISE PROPERTY.

- 11.1. The Grantee shall, at its sole expense, promptly repair any and all Public Streets damaged or destroyed by Grantee, its agents, servants, or employees in exercising the privileges granted under this Franchise.
- 11.2. The Grantee will also maintain the Franchise Property from time to time as the same may be needed, without the necessity of notice from the Town.
- 11.3. In the event the Grantee fails to make any repairs within ten (10) days from the time such repairs become necessary, then the Town may cause such repairs to be made, and the Grantee shall pay the Town therefore.

XII. ABANDONMENT OF FRANCHISE PROPERTY.

- 12.1. In the event that: (i) the use of any Franchise Property is discontinued by Grantee as permitted under Section 9 hereof or for a continuous period of twelve (12) months for any other reason; (ii) the Franchise Property has been installed in any Public Street without complying with the requirements of this Franchise; or (iii) the Franchise has been terminated, canceled, or has expired, the Grantee shall promptly remove from the Public Street, at no expense to the Town, all such property other than any which the Town may permit to be abandoned in place. In the event of any such removal, the Grantee shall promptly restore the Public Street or other area from which such property has been removed to a condition satisfactory to the Town. In the event Grantee does not remove the same, the Town may remove the same and the Grantee shall pay all costs and expenses incident thereto.
- 12.2. Franchise Property to be abandoned in place shall be abandoned in such manner as the Town shall prescribe. Upon permanent abandonment of all Franchise Property in place, the Grantee shall submit to the Town an instrument, satisfactory to the Town Attorney, transferring to the Town the ownership of such property.

XIII. FAILURE OF GRANTEE TO COMPLETE REQUIRED WORK.

Upon failure of the Grantee to complete any work required by law or by the provisions of this Franchise to be done in any Public Street, within the time prescribed and to the reasonable

satisfaction of the Town, the Town may cause such work to be done and the Grantee shall pay to the Town the reasonable cost thereof, as itemized and reported by the Town to the Grantee, within thirty (30) days after receipt of such itemized report.

XIV. INDEMNIFICATION.

The Grantee shall indemnify and hold harmless the Town, its departments, officers, employees, agents, successors and assigns from any and all liability, loss, costs, legal fees, damage or other costs and expenses arising from the granting of or operation under this Franchise, except to the extent such accident, damage or cost is proximately caused by the negligent or willful and wanton acts or omissions of the Town, its departments, officers, employees, agents, successors or assigns acting within the scope of their lawful authority. However, all costs and expenses paid by Grantee related to the election to approve this Franchise shall be recognized by the Town as a credit against the Franchise Fee of Grantee in the initial month after the Effective Date of this Franchise without any carry-over.

XV. INSURANCE.

Grantee agrees that at all times during the existence of this Franchise, it will provide evidence of insurance deemed necessary by Town to protect the Town, its Council, Commissions, Officers, Agents, Employees and the public, against liability for losses or damages, for personal injury, death and property damage, occasioned by the operations of Grantee under this Franchise to the extent of liabilities assumed under this Agreement. Grantee shall submit certificates of insurance evidencing coverage and such certificates shall not expire, be cancelled, nor non-renewed without thirty (30) days prior notice from Grantee to the Town. Notwithstanding the foregoing, the parties agree that it is acceptable for Grantee to be self-insured for the purposes of general comprehensive liability under the terms of this Agreement, provided Grantee carry a minimum of \$5,000,000 in excess liability insurance on a combined single limit basis above any permitted self-insurance retention.

XVI. RESPONSIBILITY OF OPERATION OF SYSTEM.

The Grantee shall have full responsibility for the maintenance, ownership and operation of the Electric Energy Transmission and Distribution System and the Water Distribution System.

XVII. TOWN'S RIGHT OF EMINENT DOMAIN.

Nothing herein contained shall be deemed or construed to impair or affect, in any way, to any extent, the right of the Town to acquire the property of the Grantee through the exercise of eminent domain.

XVIII. NO WAIVER.

Neither the granting of this Franchise nor any provision hereof shall constitute a waiver or bar to the exercise of any governmental right or power of the Town.

XIX. EFFECTIVE DATE OF FRANCHISE.

This Franchise shall take effect on the first day of the month following the date this Franchise is passed, approved and adopted by the Council as reflected below after authorization

by a majority vote of the qualified voters of the Town at a regular or special election duly and regularly called by the Council for that purpose, provided that the Grantee provides the Town with its acceptance of this Franchise as specified in Section 20 herein.

XX. ACCEPTANCE OF FRANCHISE.

Grantee shall file its written acceptance of this Franchise with the Town Clerk within ten (10) days from the passage of this Franchise.

XXI. TERMINATION OF FRANCHISE.

The Council may terminate this Franchise in the event the Council shall find, after proper notice and hearing, that Grantee has failed to comply with any material provisions hereof or any material rule or regulation of the Council or Chief Administrative Officer validly adopted pursuant to this Franchise as long as said material rule or regulation is not contrary to the rules, regulations and decisions of the Arizona Corporation Commission or its successors and so long as Grantee has been accorded a reasonable amount of time to correct such failure, said reasonable period of time not to be less than ninety (90) days after receipt of the written notice of the Council's finding.

Furthermore, both Town and Grantee recognize the acts of God, natural disaster, weather, and other unforeseen events automatically extend the time in question for Grantee to respond. However, this Franchise shall not be terminated if Grantee, within such time, begins curative work and thereafter diligently prosecutes it to completion. Notice shall be deemed to have been given from the date of mailing, postage prepaid, by registered or certified mail to Grantee.

XXII. ENTIRE AGREEMENT.

This Franchise represents the entire agreement of the parties with respect to its subject matter and all prior agreements and/or franchises, whether written or oral, and all negotiations and other discussions (including, without limitation, oral promises regarding the terms hereof) related to such subject matter are merged herein. This Franchise may be amended only by writing, executed by Grantee and Town, and to the extent required by law, approved by the electorate of Town.

XXIII. NOTICES.

All notices required to be given to either party shall be mailed or hand-delivered to the following addresses:

To the Town: Town of Clifton
 510 Coronado Boulevard.
 Clifton, Arizona 85533
 Attn: Town Attorney

To the Grantee: The Morenci Water & Electric Company
 Post Office Box 68
 Morenci, Arizona 85540
 Attn: Johnny Key, President

XXIV. ARIZONA LAW GOVERNS; ATTORNEYS' FEES; VENUE.

In any dispute under this Franchise, the successful Party shall be entitled to collect from the other Party its reasonable attorneys' fees, and other costs as determined by a court of competent jurisdiction. The Parties agree that any dispute, controversy, claim or cause of action arising out of or related to this Franchise shall be governed by the laws of the State of Arizona. The Parties further agree that the venue for any dispute, controversy, claim or cause of action arising out of or related to this Franchise shall be Greenlee County and that any action filed shall be heard in a court of competent jurisdiction located in Greenlee County. The Parties expressly waive the right to object, for any reason, to the venue of Greenlee County.

XXV. APPLICABLE LAWS AND REGULATIONS.

Grantee is responsible to adhere to all applicable Federal and State laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over Grantee's activities in the rights-of way, including—but not limited to—storm water regulations (MS4), US Army Corps of Engineers permitting, Americans with Disabilities Act, and appropriate traffic control measures.

XXVI. CONFLICT OF INTEREST.

This Franchise shall be subject to cancellation pursuant to A.R.S. § 38-511.

IN WITNESS WHEREOF, the parties have executed this Franchise as of the _____ day of _____, 2024.

Town of Clifton
an Arizona municipal corporation

By: _____
Laura Dorrell, Mayor

Attest:

Cecilia Jernigan, Town Clerk

Approved as to Form:

Trish Stuhan, Town Attorney
Pierce Coleman PLLC

Morenci Water & Electric Company,
an Arizona corporation

By: _____
Its: _____

STATE OF ARIZONA

County of _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2024 by _____ as the _____ of Morenci Water & Electric Company, an Arizona corporation, on behalf of the corporation.

Notary Public

My Commission Expires:
