

Recorded Return to:

Christopher Perkins, P.E., Senior Project Manager
City of Scottsdale, Arizona
Capital Project Management
7447 East Indian School Road, Suite 205
Scottsdale, Arizona 85251

Contract No. 2017-049-COS

DEVELOPMENT AGREEMENT AND FINANCING CONTRACT

BETWEEN

**THE CITY OF SCOTTSDALE, ARIZONA,
A POLITICAL SUBDIVISION AND MUNICIPAL CORPORATION**

AND

**ARIZONA PUBLIC SERVICE COMPANY,
AN ARIZONA CORPORATION**

**PERTAINING TO
THE CITY OF SCOTTSDALE, ARIZONA,
UNDERGROUND UTILITY FACILITIES IMPROVEMENT DISTRICT NO. I-6002**

PARTIES:

This Development Agreement and Financing Contract, dated as of March 30, 2017 (this "*Agreement*") is entered into by the City of Scottsdale, Arizona, a political subdivision and municipal corporation organized and existing under the laws of the State of Arizona (the "*City*"), and Arizona Public Service Company, an Arizona corporation (the "*Coordinating Utility*").

RECITALS:

A. Arizona Revised Statutes ("*A.R.S.*") Section 9-500.05 authorizes the City to enter into binding development agreements in order to cause certain Improvements (as defined herein) to be made within public rights-of-way and easements located in the City of Scottsdale, Arizona, Underground Utility Facilities Improvement District No. I-6002 (the "*District*") and to assess the costs of such Improvements against property within the District in the manner permitted by A.R.S. Title 48, Chapter 4, Article 2. A map of the District's boundaries and a legal description of the same are attached hereto as *Exhibit A* and *Exhibit B*, respectively, and are incorporated herein by this reference.

B. A.R.S. Section 48-620 authorizes the City to enter into a contract with the Coordinating Utility in order to facilitate the Coordinating Utility advancing funds for the design, construction, acquisition, installation, equipping and improvement of the Improvements, the City's collection of the Assessments (as defined herein) and payment to the Coordinating Utility over a period not to exceed fifteen (15) years to finance the Improvements.

C. The Coordinating Utility is presently owner and holder of a franchise from the City for the rights to use streets and alleys in the City for utility purposes, and a Certificate of Convenience and Necessity issued by the Arizona Corporation Commission which authorizes the Coordinating Utility, as a public service corporation, to engage in the sale and distribution of electricity for the benefit of the public within the City.

D. Pursuant to A.R.S. Section 48-620, the City desires to enter into this Agreement with the Coordinating Utility to complete the Improvements within the District and provide for the financing thereof.

E. Pursuant to A.R.S. Section 48-620, prior to entering into this Agreement the Coordinating Utility submitted its Final Report (as defined herein) to the City regarding the costs of the Improvements, and the amounts stated in the final report did not exceed the amounts stated in the Preliminary Report (as defined herein) submitted by the Coordinating Utility to the City.

F. This Agreement is consistent with the portions of the City's General Plan applicable to the District property.

AGREEMENT:

NOW, THEREFORE, in consideration of the promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

INTRODUCTION AND GENERAL TERMS

Section 1.1. Purpose. The purpose of this Agreement is (i) to facilitate the design, construction, acquisition, installation, equipping and improvement of electric Transmission Facilities (the "*Improvements*"), underground; (ii) to permit the assessment of the costs of the Improvements against certain property located within the District; and (iii) to obligate present owners and subsequent purchasers of property within the District to make payments to the City of the assessment amount together with any interest accruing thereon, as the assessment becomes due and payable.

As used herein, the term "*facilities*" shall mean any works or improvements used or useful in providing electric service, including but not limited to poles, supports, tunnels, manholes, vaults, conduits, pipes, wires, conductors, guys, stubs, platforms, crossarms, braces, transformers, insulators, cutouts, switches, capacitors, meters, communication circuits, appliances, attachments and appurtenances. For purposes of this Agreement, "*Transmission Facilities*" shall mean those certain 69 kilovolt electric transmission lines and related facilities, as more fully set forth in Exhibit C attached hereto and incorporated herein by reference.

Section 1.2. Cost of Improvements. Prior to execution of this Agreement, the Coordinating Utility provided to the City a final report of the costs of the Improvements (the "*Final Report*"). The amount stated in the Final Report does not exceed the amount stated in the Preliminary Report (as defined herein) and represents the maximum amount which may be assessed against certain property within the District. Such amount is \$3,089,000 and includes incidental costs of \$150,000. The costs of the Improvements shall be borne by the Coordinating Utility and shall be reimbursed through the levy and collection of Assessments (as defined herein), including interest at the rate of 12.27% (or such lower interest rate acceptable to the Coordinating Utility, in its sole and absolute discretion), over a period of not to exceed fifteen (15) years, pursuant to the payment schedule as reflected in Exhibit D attached hereto and incorporated herein by reference.

Section 1.3. Funds to be Advanced by the Coordinating Utility. Pursuant to A.R.S. Section 48-620.J., the Coordinating Utility shall advance or reimburse the City for the costs of forming the District and the cost of printing, advertising and posting incurred or to be incurred by the City. The Coordinating Utility shall bear its own expenses for engineering, design and preparation of reports, plans and specifications related to the Improvements. Upon completion of the Improvements, the Coordinating Utility shall reimburse the City for its reasonable expenses incurred with respect to the District. All

amounts advanced or reimbursed or incurred by the Coordinating Utility shall be included in the costs of the Improvements set forth in Section 1.2 hereof.

Section 1.4. No Assumption of Liability. In no event shall the City assume or become liable for any of the obligations or liabilities of Coordinating Utility incurred pursuant to this Agreement.

ARTICLE II

FORMATION OF DISTRICT

Section 2.1. Formation of the District. The City has caused the District to be formed for the provision of the Improvements in accordance with A.R.S. Section 48-620.

Section 2.2. Preliminary Report. Prior to the City's adoption of Resolution No. 10649 on December 2, 2016, regarding the City's intention to form the District, the Coordinating Utility provided a preliminary report of the costs to place the Transmission Facilities underground (the "*Preliminary Report*"). As applicable, the Preliminary Report included some or all of the following: (a) the amount by which the cost of placing the Improvements underground would exceed the costs of placing comparable facilities overhead; (b) the reconstruction costs and net depreciation costs of any existing facilities to be removed; (c) the actual costs of removing such existing facilities, less the salvage value of the facilities removed; (d) the charge to finance amounts for a period not to exceed fifteen (15) years; and (e) a tax reimbursement amount.

ARTICLE III

ASSESSMENT AND PAYMENT

Section 3.1. Assessment of Costs and Payment. The costs of Improvements as set forth in Section 1.2 hereof shall be assessed upon property within the District following the filing of a notice of completion with the office of the City Clerk as required by law after completion of the Improvements ("*Notice of Completion*"). The amount of each assessment may be determined by any lawful method (individually, an "*Assessment*" and collectively, the "*Assessments*"). Property within the District shall be assessed its proportionate share of such Assessment according to such method. The amount assessed shall include incidental expenses of the City, all fees, charges and costs incurred in order to procure financing of the Assessments over a period not to exceed fifteen (15) years at an interest rate of not to exceed 12.27% per annum and all amounts advanced or reimbursed by the Coordinating Utility pursuant to this Agreement. Payment shall begin after the Assessment is approved by the City and otherwise in accordance with this Section 3.1. Payment of the Assessments shall begin within nine (9) months of the Notice of Completion unless an objection based upon failure by the Coordinating Utility to perform its obligations under this Agreement has been filed with the City Clerk. No interest charges shall be payable on the Assessments until after July 1, 2017, or the cash collection period administered by the City, whichever is later.

Section 3.2. Limit on City Incidental Expenses. The City's incidental expenses (which include District formation, administrative and other incidental expenses) eligible for

reimbursement shall not exceed \$150,000.00. Upon completion of the Improvements, the City shall be reimbursed by the Coordinating Utility for the reasonable expenses of formation of the District as described in Section 3.6 hereof. Thereafter, during the term of this Agreement the City shall retain a portion of each Assessment collection for its administrative and incidental expenses; provided, however, that the aggregate amount of incidental expenses shall not exceed \$150,000.00.

Section 3.3. Prepayment of Assessments. The Coordinating Utility and the City shall permit prepayment of any Assessment without penalty or additional charge of any nature whatsoever at the option of any property owner within the District, provided that the prepayment of any Assessment shall include the amount of interest which has accrued to and through the date of receipt by the City or the Coordinating Utility of the prepaid amount. The Assessments may be prepaid with accrued interest on any January 1 or July 1, from the proceeds received by the City from: (i) the prepayment of any Assessment by the owner of any assessed real property within the District; or (ii) the proceeds of any foreclosure sale of any assessed real property within the District due to a failure to pay an Assessment installment. If the City elects to transfer such funds for prepayment to the Coordinating Utility after receipt by the City but prior to any January 1 or July 1, such transfer shall be in compliance with this Agreement and in no event shall such transfer decrease the amount of accrued interest due and payable with such prepayment.

Section 3.4. Delinquent Assessments. The liability and responsibility for collection and payment of delinquent assessments by City shall be as set forth under A.R.S. Section 48-600, *et seq.*

Section 3.5. Non-Assessable Property. City warrants that there is no property included within the District, the legal owner of which on this date is, the United States of America, the State of Arizona, a county, city, school district or any other political subdivision or institution of the State of Arizona or County (public ownership).

Section 3.6. Coordinating Utility to Reimburse the City for District Formation Expenses; City to Reimburse Property Owners for District Formation Contributions. Certain property owners within the District contributed \$50,000.00 to initiate the formation of the District. Such \$50,000.00 was paid to the City on behalf of the contributing property owners by PCRES Holdings, LLC. In accordance with A.R.S. Section 48-620.J., upon the Coordinating Utility's completion of the Improvements and submittal of the Notice of Completion, the Coordinating Utility shall reimburse the City for its reasonable expenses incurred with respect to formation of the District; provided, however, that such reimbursement shall not exceed \$150,000.00. The City shall then use a portion of that reimbursement to reimburse PCRES Holdings, LLC, which shall disburse such funds to the aforementioned contributing property owners. In no event will any property owner within the District have its Assessment amount modified or reduced as a credit for any formation contribution described in this Section 3.6.

Section 3.7. Transfer of Property within the District. If any parcel within the District is sold, the Assessment shall remain a lien thereon payable pursuant to law unless the Assessment is prepaid in full.

ARTICLE IV

DESIGN, CONSTRUCTION AND OWNERSHIP

Section 4.1. Commencement of Construction. The Coordinating Utility shall, in accordance with the Final Report submitted to the City, begin construction of the Improvements upon approval of the form of this Agreement by the City and as instructed by the City in accordance with the City's Resolution No. 10757 adopted on March 21, 2017, ordering the Improvements.

Section 4.2. Access to Construction Sites. The parties agree to provide one another with reasonable and timely access to construction sites, plans and specifications, a schedule of construction meetings and the results of testing and inspection related to the Improvements. Notice of any proposed changes in the plans and specifications shall be timely given to the City.

Section 4.3. Change Orders. The Coordinating Utility agrees to give notice to the City of change orders which are consistent with the Improvements. Change orders are not valid until approved by the City Representative (as defined in Section 11.2 hereof), which approval shall not be unreasonably withheld. Any change order which increases the cost of the Improvements over the amount specified in the Final Report shall be the sole obligation of the Coordinating Utility and all costs arising out of or relating to such change order shall be borne by the Coordinating Utility; provided however, that if such change order is requested by the City or required due to the acts or omissions of the City, all costs arising out of or relating to such change order shall be borne by the City.

Section 4.4. Schedule of Construction. The City and the Coordinating Utility shall cooperate to determine the schedule of construction to provide the most expeditious construction without unreasonable disruption and allow day time work Monday through Friday such that Improvements can be completed to keep costs below those stated in the Final Report. However, the Coordinating Utility, at its option, could request the opportunity to perform work on weekends and evenings, if it so chooses. Installation of the Improvements shall be completed no later than September 30, 2017.

Section 4.5. Reserved.

Section 4.6. No Obligation for Restoration. The Coordinating Utility shall have no liability, obligation or responsibility whatsoever for moving, restoring or replacing native plants, landscaping or vegetation affected by installation of the Improvements.

Section 4.7. No Liability of the City. Neither the exercise by the City nor the failure of the City to exercise any of its rights under this Article IV relating to the design and construction of the Improvements, including, without limitation, acceptance of the Improvements, approval of changes in plans and specifications, cooperation in determining the schedule of work, inspection of the work, review of results of testing and inspection, attendance at and participation in meetings with the Coordinating Utility and the general contractor performing the work, or any other action of the City in connection therewith, shall subject the City to: (a) any claims of liability whatsoever by the general contractor, any

subcontractor, supplier or professional person who furnishes labor, professional services, materials, machinery, fixtures and/or tools and design and/or construction of the Improvements, or (b) any claims of liability, obligation or expense made by any person (including, without limitation, any present or future owners of all or any portion of the property within the District) arising out of or in connection with any alleged defects in the design and/or construction of the Improvements. The Coordinating Utility hereby indemnifies and holds harmless the City from and against any and all such claims, demands, suits, actions, proceedings, losses, costs, and damages; provided, however, that this indemnification shall not extend to claims arising from the sole negligence of the City.

Section 4.8. Ownership of Improvements. The Coordinating Utility shall have sole ownership of the Improvements.

ARTICLE V

RESTRICTIVE COVENANTS

Section 5.1. Future Construction of Overhead Power Lines within the District Prohibited. The Coordinating Utility agrees for a period of ten (10) years to curtail future construction of 69 kilovolt or greater overhead power lines within the confines of the District as more fully set forth in Exhibit A and Exhibit B attached hereto, with the exception of the following:

- (a) Maintenance, repair, or replacement of the transition (dip) pole and the overhead conductors connected to that pole, at 16425 North Pima Road – this pole is the southern terminus of the underground line;
- (b) Maintenance, repair, or replacement of the transition (dip) pole and the overhead conductors connected to that pole, at the north side of Bell Road just west of the existing transmission line corridor – this pole is the northern terminus of the underground line; and
- (c) Construction, maintenance, repair, or replacement of existing or future power lines within the existing transmission line corridor.

Section 5.2. Future Construction Within the District. If the City or a duly authorized entity (including a property developer) wishes to commence future construction within the District boundaries which could impact the completed Improvements, such future construction must be in accordance with Exhibit E and Exhibit F attached hereto.

Section 5.3. Obligations Upon Completion of the Improvements. Upon completion of the Improvements, the City and the Coordinating Utility agree to execute and record a Road Utility Corridor Agreement and a Memorandum of Agreement in substantially the forms attached hereto as Exhibit E and Exhibit F, respectively, and by this reference incorporated herein. The Mayor, or the City Representative, and an authorized representative of the Coordinating Utility, including the Coordinating Utility Representative (as defined in Section 11.1 hereof), are each hereby authorized and directed to execute the agreements and documents described in this Section 5.3.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES OF THE CITY

The City represents and warrants to the Coordinating Utility as follows:

Section 6.1. Authority. The City is a municipal corporation and political subdivision duly organized, validly existing and in good standing under the laws of the State of Arizona, and has all requisite power to enter into this Agreement and to meet and perform the City's obligations hereunder.

Section 6.2. Valid Agreement. This Agreement constitutes a duly authorized, valid and binding obligation of the City and is, and shall be, enforceable against the City in accordance with its terms. The execution, delivery and performance of this Agreement have been duly authorized by the Mayor and City Council of City according to law and, to the best of the undersigned City representative's knowledge, do not and will not conflict with or result in any breach, default or violation of any term, condition or provision of any applicable law or rule, regulation, order, writ or decree of any court or any governmental department, commission, board, bureau, agency or instrumentality or of the charter or code of the City, or of any bonds, indentures, contracts or agreements to which the City is a party or by which the City is bound.

Section 6.3. Litigation. The City, to the knowledge of the undersigned City Representative, is unaware of any suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, governmental agency, public board or body, pending or, to the best of its knowledge, overtly threatened against or affecting City and to its knowledge there is no basis therefor, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by this Agreement.

Section 6.4. Future Development Agreements. Prior to entry into or approval of any contract, development agreement or other instrument affecting the relocation, removal or replacement of the completed Improvements, City shall require insertion of appropriate provisions placing any cost or expense associated with such relocation, removal or replacement on the party having responsibility for the same.

ARTICLE VII

REPRESENTATIONS AND WARRANTIES OF THE COORDINATING UTILITY

The Coordinating Utility represents and warrants to the City as follows:

Section 7.1. Authority. The Coordinating Utility is an Arizona corporation duly organized, validly existing and in good standing under the laws of the State of Arizona, and is authorized to transact business in the State of Arizona and to meet and perform its obligations hereunder.

Section 7.2. No Conflict or Breach. The performance of this Agreement by the Coordinating Utility and fulfillment of its terms do not, and will not, conflict with or result

in any breach, default or violation of any regulation, order or decree of any court or governmental department, commission, board, bureau or agency, or of any indenture, contract, agreement or other instrument to which the Coordinating Utility is a party or is subject.

Section 7.3. No Violation. The Coordinating Utility has made a reasonable and diligent investigation and, to the knowledge of the undersigned Coordinating Utility representative, is not in material violation of or in material default with respect to any applicable law or any applicable rules, regulation or order of any court or any governmental department, commission, board, bureau, agency or instrumentality which would prevent or limit the Coordinating Utility from entering into or carrying out its obligations hereunder.

Section 7.4. Litigation. The Coordinating Utility, after reasonable and diligent investigation and, to the knowledge of the undersigned Coordinating Utility Representative, is unaware of any action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, governmental agency, public board or body, pending or, to the best of its knowledge, overtly threatened against or affecting the Coordinating Utility and to its knowledge there is no basis therefor, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by this Agreement.

ARTICLE VIII

RESERVED

ARTICLE IX

TERMINATION, AMENDMENTS, WAIVER AND ASSIGNMENT

Section 9.1. Termination. This Agreement may only be terminated by mutual agreement of the parties hereto and only if all Assessments paid to finance the Improvements have been repaid or the repayment therefor has otherwise been provided for as required herein or by law. If the Coordinating Utility and the City agree to terminate this Agreement, the City and the Coordinating Utility shall cooperate in good faith to execute and record an appropriate document terminating this Agreement as a matter of record. Pursuant to this Section 9.1, this Agreement shall not automatically terminate upon repayment in full of the Assessments, but shall require an affirmative action of the parties hereto to effectuate the termination.

Section 9.2. Effect of Termination. In the event of termination of this Agreement pursuant to Section 9.1 hereof, there shall be no liability on the part of any party to the other; provided, however, that this Section 9.2 shall not preclude liability attaching to a party who has caused the termination hereof by willful act or willful failure to act in violation of the terms and provisions of this Agreement.

Section 9.3. Amendment. This Agreement incorporates the full and complete understanding by and between the parties, and supersedes all prior understandings, representations, conditions, warranties and covenants between them. This Agreement may

not be amended, released, discharged, changed or modified except by an instrument in writing signed by an authorized representative of each party hereto.

Section 9.4. No Waiver. The failure of any party at any time or times to require performance of any provision hereof shall in no manner affect such party's right at a later time to enforce the same. No waiver by any party of a condition or of the breach of any item, covenant, representation or warranty contained in this Agreement, whether by conduct or otherwise, in any one or more instances shall be deemed to be or construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition or of the breach of any other term, covenant, representation or warranty of this Agreement.

Section 9.5. Assignment. The benefits or obligations set forth in this Agreement may only be assigned by the City or the Coordinating Utility with the written consent of the other party, and any attempted assignment without such written consent shall be null, void and without legal effect.

ARTICLE X

REMEDIES

Section 10.1. Enforcement of Obligations. The obligations and covenants herein of the Coordinating Utility and its assigns may be enforced by the City through any remedy available at law or in equity, including, but not limited to, recovery of damages, specific performance and injunction. The obligations and covenants of the City herein may be enforced by the Coordinating Utility by a suit or suits in equity or at law, either for the specific performance of any covenant or agreement contained herein (including by issuance of a writ of mandamus), or in aid of the execution of any power granted herein for the enforcement of any other appropriate legal or equitable remedy.

ARTICLE XI

MISCELLANEOUS

Section 11.1. Coordinating Utility Representative. Mr. D. Brad Larsen, P.E., Senior Siting Consultant, Transmissions & Facility Siting, and any designee, shall serve as "*Coordinating Utility Representative*", to provide all consents, approvals, make protests and objections, receive all notices and act for the Coordinating Utility in carrying out the purposes of this Agreement.

Section 11.2. City Representative. Mr. Christopher Perkins, P.E., Senior Project Manager for the City's Capital Project Management Department, and any designee, shall serve as "*City Representative*", to provide all consents, approvals, make protests and objections, receive all notices and act for the City in carrying out the purposes of this Agreement.

Section 11.3. Notices. Any notices and other communications provided for or inferred herein shall be validly given, made or served, in writing and delivered personally, by facsimile or sent by registered or certified mail, postage prepaid, to:

City: Capital Project Management
City of Scottsdale
7447 East Indian School Road
Suite 205
Scottsdale, Arizona 85251
Telephone: (480) 312-7250
Facsimile: (480) 312-7971
Attn: Christopher Perkins, P.E., Superintendent
of Streets

Copy to: Gust Rosenfeld P.L.C.
One East Washington Street
Suite 1600
Phoenix, Arizona 85004
Telephone: (602) 257-7422
Facsimile: (602) 254-4878

Coordinating Utility: D. Brad Larsen, P.E.
Arizona Public Service Company
P. O. Box 53999, Station 3293
Phoenix, Arizona 85072-3999
Telephone: (602) 493-4338
Facsimile: (602) 371-7084

Copy to: Bruce A. Gardner, Esq.
Arizona Public Service Company
Law Department
P. O. Box 53999, Station 8695
Phoenix, Arizona 85072-3999
Telephone: (602) 250-3630
Facsimile: (602) 250-3393

or to such other addresses as the parties may designate in writing. Notice given by mail, as set out above, shall be deemed delivered at the time and on the date the same as postmarked.

Section 11.4. Entire Agreement. This Agreement (a) constitutes the entire agreement between the parties and supersedes all other prior agreements and undertakings, both written and oral, between the parties, with respect to the subject matter hereof and (b) is not intended to confer upon any other person or entity any rights or remedies hereunder.

Section 11.5. Governing Law and Forum. If legal action is brought relative to the rights and obligations under this Agreement, such action shall only be brought in a court of competent jurisdiction within, and shall be governed in all respects, including validity, interpretation and effect, exclusively under the laws of the State of Arizona as applied without regard to conflict of laws principles.

Section 11.6. Binding Effect. The provisions of this Agreement shall inure to the benefit of and shall be binding upon the respective designees, trustees, heirs, personal representatives, successors and assigns of the parties.

Section 11.7. Additional Documents. Each party agrees to execute such further or additional documents as may be reasonably necessary or appropriate in good faith to fully implement and carry out the intent and purpose of this Agreement.

Section 11.8. Headings. Article headings and section headings as contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 11.9. Counterparts. This Agreement may be executed in counterparts which together shall constitute a single agreement.

Section 11.10. Illegality. If any one or more sections, clauses, sentences and/or parts of this Agreement shall be judged unconstitutional or invalid by a court of competent jurisdiction, such judgment shall not affect, impair or invalidate the remaining provisions hereof, but shall be confined to the specific sections, clauses, sentences and parts so determined.

Section 11.11. Cancellation. Notice is hereby given that this Agreement is subject to cancellation by the City in accordance with the provisions of A.R.S. Section 38-511, as amended.

Section 11.12. Recordation. This Agreement and any amendment or cancellation hereof shall be recorded in the official records of Maricopa County by the City within the period required by A.R.S. Section 9-500.05.

Section 11.13 No Boycott of Israel. Pursuant to A.R.S. Section 35-393 et seq., the Coordinating Utility hereby certifies it is not currently engaged in, and for the duration of this Agreement will not engage in, a boycott of Israel. The term "boycott" has the meaning set forth in A.R.S. Section 35-393.


IN WITNESS WHEREOF, the undersigned have duly affixed their signatures, all as of the 30th day of March, 2017.

CITY OF SCOTTSDALE, ARIZONA, a political subdivision and municipal corporation



W.J. "Jim" Lane
Mayor

ATTEST:



Carolyn Jagger
City Clerk


Approved as to form:

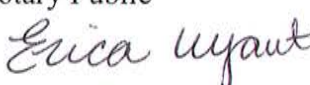


Gust Rosenfeld P.L.C.

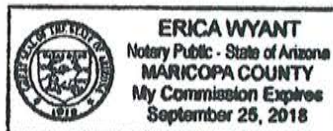
STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 11th day of April, 2017, by W.J. "Jim" Lane, Mayor of the City of Scottsdale, an Arizona political subdivision and municipal corporation, on behalf of the City of Scottsdale.



Notary Public


(Seal and Expiration Date)
Commission expires:
September 25, 2018



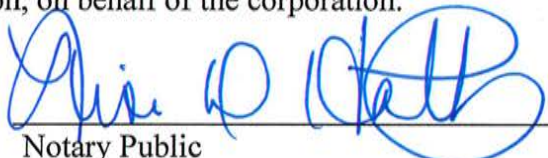
ARIZONA PUBLIC SERVICE COMPANY, an
Arizona corporation

By 
Daniel T. Froetscher
Senior Vice President, T, D & C

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 30th day of March, 2017, by Daniel T. Froetscher the Senior Vice President, T, D, & C, of Arizona Public Service Company, an Arizona corporation, on behalf of the corporation.

(Seal and Expiration Date)


Notary Public



PLOT DATE: 4/12/2017 2:55:28 PM

Contract No. 2017-049-COS
Exhibit A
Page 1 of 1



EAST BELL ROAD

SR LOOP 101

NORTH 94TH STREET

DISTRICT BOUNDARY

CAP CANAL

FRANK LLOYD WRIGHT BOULEVARD

DESIGN FILE: ... \20170412_APS Underground Bell Road.dgn

ATTACHMENT 2

PROJECT TITLE APS UNDERGROUNDING
IMPROVEMENT DISTRICT

DEPT. CPM	DRAWN PJM	DATE 11/16	SCALE NTS	SHT. 1 OF 1
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EXHIBIT B

LEGAL DESCRIPTION OF THE DISTRICT

DISTRICT LEGAL DESCRIPTION

A PORTION OF THE NORTH HALF OF SECTION 6, TOWNSHIP 3 NORTH, RANGE 5 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA; FURTHER DESCRIBED AS A PORTION OF GENERAL LAND OFFICE (GLO) LOT 5; A PORTION OF THE WEST HALF OF GLO LOT 2; AND ALL OF GLO LOTS 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 20, 21, 22, 23 AND 24 AS FILED BY THE UNITED STATES DEPARTMENT OF THE INTERIOR BUREAU OF LAND MANAGEMENT, MARCH 14, 1952.

EXCEPT ANY PORTION THEREOF LYING WITHIN THE DEDICATED PUBLIC RIGHT-OF-WAY OF BELL ROAD, BAHIA DRIVE, 90TH STREET, 91ST STREET AND 92ND STREET.

NOTE: THE PARCELS SHOWN ABOVE ARE A COMPILATION OF THE EXISTING RECORD INFORMATION FOR THE PROPERTIES AND DOES NOT REPRESENT A FIELD BOUNDARY SURVEY.



EXHIBIT C

DESCRIPTION OF TRANSMISSION FACILITIES

Transmission Facilities are 69kV (69 kilovolt) power lines and appurtenances to be constructed underground, instead of overhead, as described below and will include a “dip” pole on each end where the power line changes from an overhead to an underground configuration.

The Transmission Facilities will be installed overhead to a transition (dip) pole where it will then be installed underground on private property adjacent to the Commercial Office Building, 16425 North Pima Road, Scottsdale, Arizona, just north of WestWorld. The underground line will proceed north along the east side of the SR 101 frontage road within private easements to Bahia Road. At Bahia Road the underground line will go east within road right-of-way to 91st Street, then turn north staying within the 91st Street Road right-of-way to just south of Bell Road. Just south of Bell Road the line will angle to the northeast crossing a corner of private land within an already acquired private easement, then continue east within the Bell Road right-of-way where it will angle to the north side of Bell Road adjacent to the existing transmission line corridor where the underground power line will then transition on a dip pole and proceed overhead from there, all as more particularly described in the Preliminary Plans in the December 2, 2016, Council Action Report on file with the City Clerk.

EXHIBIT D**SCHEDULE OF PAYMENTS DUE FROM THE CITY TO THE COORDINATING UTILITY**

Once the Improvements have been constructed, the exact amount to be reimbursed to the Coordinating Utility has been established, and the demand cash process has been completed, the City will start the billing process. That process will incorporate semi-annual billing of the property owners with semi-annual interest payments and one annual principal payment. The mid-year billing for interest will be mailed to the property owners in the first week of April with a payment date to the City of May 15 and with payment to the Coordinating Utility due on July 1. The end-of-year billing for remaining interest and total principal for the year will be mailed to property owners in the first week of October with a payment date to the City of November 15 and with a payment to the Coordinating Utility due on January 1 of the following year. Payments will be made based on the above schedule for a period of fifteen (15) years or prior prepayment of all Assessments outstanding. The City, in its sole and absolute discretion, may transfer moneys derived from Assessment collections or Assessment lien foreclosure proceeds to the Coordinating Utility prior to any January 1 or July 1 payment due date, but such transfer completed prior to the payment due date shall not decrease the accrued interest due and payable on such payment due date.

The following table provides greater detail on the aggregate amount of Assessments to be collected by the City and paid to the Coordinating Utility. Such table shall be recalculated by the City and confirmed by the Coordinating Utility upon the prepayment of Assessments. Such table shall be recalculated by the Coordinating Utility and confirmed by the City upon the Coordinating Utility's decision to accept a lower rate of interest.

<u>Payment From</u> <u>City to APS Date</u>	<u>Principal Component</u>	<u>Interest Component</u>	<u>Total Payment</u>
07/01/2018	\$ -	\$ 13,399.69	\$ 13,399.69
01/01/2019	\$ 61,111.39	\$ 26,216.79	\$ 87,328.18
07/01/2019	\$ -	\$ 24,469.00	\$ 24,469.00
01/01/2020	\$ 61,111.39	\$ 24,469.00	\$ 85,580.39
07/01/2020	\$ -	\$ 22,721.21	\$ 22,721.21
01/01/2021	\$ 61,111.39	\$ 22,721.21	\$ 83,832.60
07/01/2021	\$ -	\$ 20,973.43	\$ 20,973.43
01/01/2022	\$ 61,111.39	\$ 20,973.43	\$ 82,084.82
07/01/2022	\$ -	\$ 19,225.64	\$ 19,225.64
01/01/2023	\$ 61,111.39	\$ 19,225.64	\$ 80,337.03
07/01/2023	\$ -	\$ 17,477.86	\$ 17,477.86
01/01/2024	\$ 61,111.39	\$ 17,477.86	\$ 78,589.25
07/01/2024	\$ -	\$ 15,730.07	\$ 15,730.07
01/01/2025	\$ 61,111.39	\$ 15,730.07	\$ 76,841.46
07/01/2025	\$ -	\$ 13,982.29	\$ 13,982.29
01/01/2026	\$ 61,111.39	\$ 13,982.29	\$ 75,093.68
07/01/2026	\$ -	\$ 12,234.50	\$ 12,234.50

<u>Payment From City to APS Date</u>	<u>Principal Component</u>	<u>Interest Component</u>	<u>Total Payment</u>
01/01/2027	\$ 61,111.39	\$ 12,234.50	\$ 73,345.89
07/01/2027	\$ -	\$ 10,486.71	\$ 10,486.71
01/01/2028	\$ 61,111.39	\$ 10,486.71	\$ 71,598.10
07/01/2028	\$ -	\$ 8,738.93	\$ 8,738.93
01/01/2029	\$ 61,111.39	\$ 8,738.93	\$ 69,850.32
07/01/2029	\$ -	\$ 6,991.14	\$ 6,991.14
01/01/2030	\$ 61,111.39	\$ 6,991.14	\$ 68,102.53
07/01/2030	\$ -	\$ 5,243.36	\$ 5,243.36
01/01/2031	\$ 61,111.39	\$ 5,243.36	\$ 66,354.75
07/01/2031	\$ -	\$ 3,495.57	\$ 3,495.57
01/01/2032	\$ 61,111.39	\$ 3,495.57	\$ 64,606.96
07/01/2032	\$ -	\$ 1,747.79	\$ 1,747.79
01/01/2033	\$ <u>61,111.38</u>	\$ <u>1,747.79</u>	\$ <u>62,859.17</u>
Total	\$ 916,670.84	\$ 406,651.48	\$ 1,323,322.32

EXHIBIT E

When recorded, return to:
Arizona Public Service Company
Land Services Department
PO Box 53933, M.S. 3286
Phoenix, AZ 85072-3933

City of Scottsdale Agreement No. _____

ROAD UTILITY CORRIDOR AGREEMENT

This *Road Utility Corridor Agreement* (Agreement) is entered into this _____ day of _____, 2017, by and between Arizona Public Service Company, an Arizona corporation (APS), and City of Scottsdale, a municipal corporation organized and existing under the laws of the State of Arizona, acting by and through its Engineering Department (City).

Recitals

1. City has established an Underground Utility Facilities Improvement District No. I-6002 (the "*District*"), wherein APS has agreed to install a new 69kV transmission line underground instead of overhead ("Underground Line"). APS will be reimbursed by the District for the additional costs of installing the line underground as opposed to overhead.
2. For efficiency purposes and as a cost savings measure, APS has agreed to install a large portion of the Underground Line in the road right-of-way rather than in private easements.

Utility Corridor

3. In consideration of APS agreeing to utilize the public right-of-way rather than requiring the acquisition of private easements, City has agreed to establish a protected electric utility corridor (Electric Utility Corridor) that extends 10 feet on each side of the centerline of the conduit carrying the Underground Line within the road right-of-way. The Electric Utility Corridor is located within the existing public right-of-way, as depicted in "Schedule A" to this Agreement incorporated herein by this reference.
4. APS agrees to maintain the Underground Line within the Electric Utility Corridor after the initial installation, and will repair and/or replace it as needed.
5. City agrees that APS's right to the use of the Electric Utility Corridor shall continue for a period of not less than twenty-five (25) years from the date of this

Agreement and shall automatically continue from year-to-year thereafter as long as APS maintains the Underground Line in a functioning condition.

6. City does not guarantee that the Electric Utility Corridor is free of (and shall not pay for the relocation of) any utility lines existing as of the date of this Agreement that conflict with the Electric Utility Corridor. If any of these conflicting lines require future maintenance, City agrees to notify APS in advance of any proposed excavation within the Electric Utility Corridor. APS agrees that maintenance of these existing lines will not necessarily cause them to be relocated to eliminate a conflict with the Electric Utility Corridor.
7. City will use its best efforts to ensure that all future utility lines or facilities constructed in the vicinity of the Electric Utility Corridor shall not encroach upon the Electric Utility Corridor and shall notify APS of any requests for construction of utility lines or facilities within the Electric Utility Corridor by City or by other public utility companies.
8. APS may reasonably refuse to permit such utility lines or facilities to be constructed parallel to the Underground Line within the Electric Utility Corridor if APS believes that such lines or facilities would be detrimental to, or interfere with, the operation or maintenance of the Underground Line.
9. If APS and City cannot agree as to whether any future utility lines or facilities within the Electric Utility Corridor are likely to be detrimental to, or interfere with, the Underground Line, City shall have final authority to decide whether such future utility lines or facilities shall be permitted. However, if future lines or facilities are permitted without APS' agreement, City agrees to require the owner of the utility lines or facilities that were allowed to be placed within the Electric Utility Corridor to immediately remove or relocate said utility lines or facilities (at the expense of the owner of the utility lines or facilities to be relocated) if and when, in APS's opinion, an actual conflict or interference with APS's operation or maintenance of the Underground Line arises.
10. APS and City agree that perpendicular utility line crossings over or under the Underground Line shall be allowed within the Electric Utility Corridor provided such crossings maintain a minimum of 18 inches vertical clearance between the new lines and the Underground Line. In addition, City agrees to use its best efforts to provide APS with advance notification of any excavation within the Electric Utility Corridor associated with such installations.
11. APS reserves the right to review any plans for planting vegetation within ten feet of the conduit location to ensure the reliability of the Underground Line.
12. The parties recognize and agree that a substantial benefit is afforded to the City by APS's commitment to underground its electric power lines as provided for in this Agreement; that in recognition and consideration of such benefit, the City shall in good faith and utilizing its best efforts refrain from implementing public

works projects within the Electric Utility Corridor that would cause APS to relocate its electric power lines once they are undergrounded if there exist reasonable and feasible alternatives available to the City in lieu of relocation; and that the parties shall endeavor to work with one another in good faith to facilitate the implementation of the City's public works projects in such a manner as to mitigate, as much as is reasonably possible, the impact thereof upon the location and operation of APSs electric power lines in the Electric Utility Corridor designated by this Agreement. If, however, the City has no reasonable and feasible alternative but to cause APS to adjust or relocate any segment of its undergrounded electric power lines, the City shall use good faith best efforts to mitigate the economic and operational effects of such adjustment or relocation.

13. If at any time City decides to have any portion of the Underground Line replaced with an overhead 69kV line, City agrees to permit the installation and operation of an equivalent line within City right-of-way located adjacent to the Electric Utility Corridor upon submission of appropriate plans from APS.

14. Prior to entry into, or approval of, any contract, development agreement, or other instrument with any third party that would require the relocation, removal, extension, or replacement of all, or any portion, of the Underground Line, City shall require insertion of appropriate provisions in any such contract, agreement, or other instrument, requiring any expense associated with such relocation to be borne by the third party.

15. This Agreement is subject to cancellation pursuant to A.R.S. §38-511.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

ARIZONA PUBLIC SERVICE COMPANY, an Arizona corporation:

By _____
Daniel T. Froetscher, Senior Vice President, T, D & C

CITY OF SCOTTSDALE, an Arizona municipal corporation

By _____
W.J. "Jim" Lane, Mayor

ATTEST:

Carolyn Jagger, City Clerk

APPROVED AS TO FORM:

GUST ROSENFELD P.L.C.

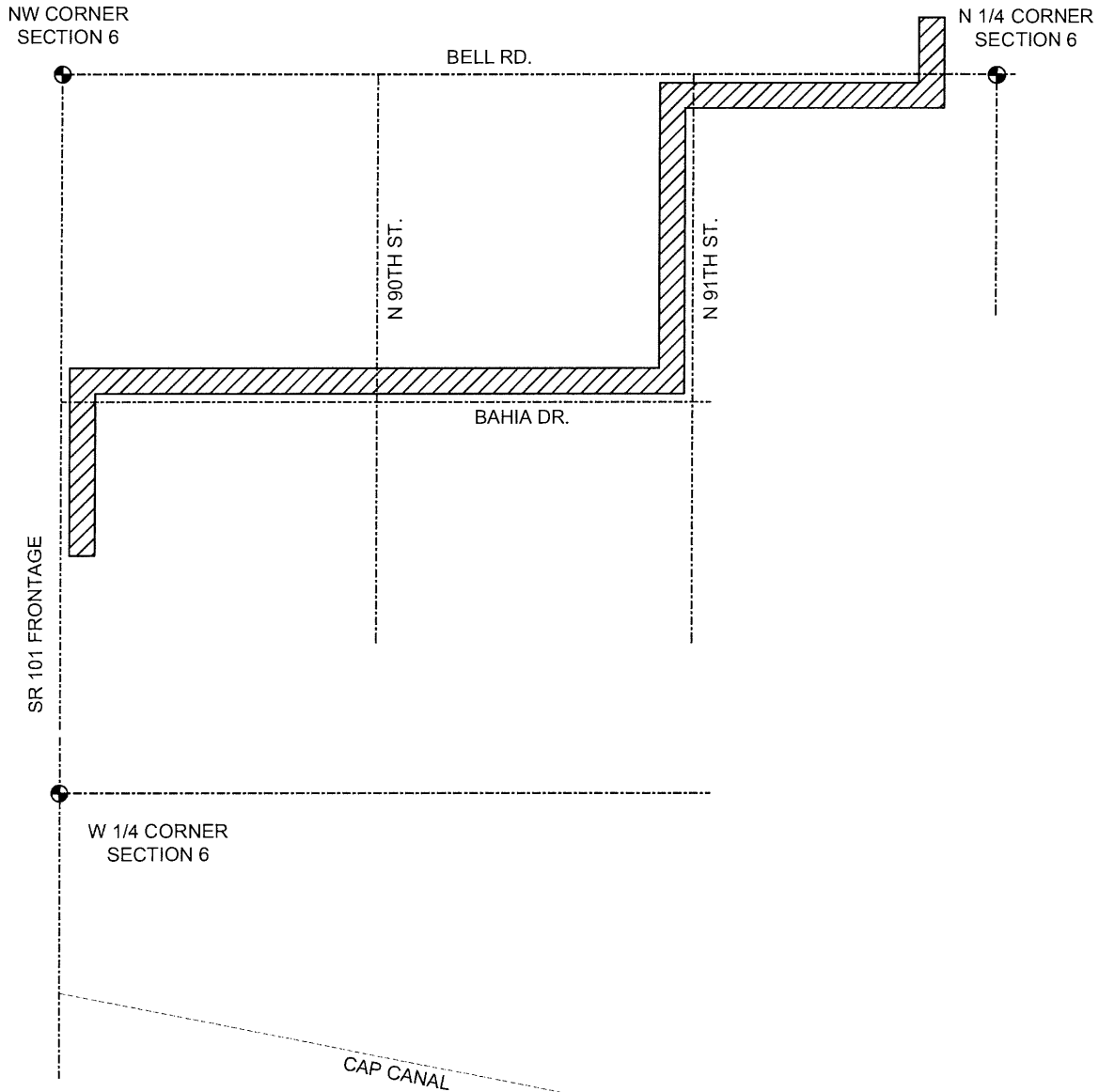
SCHEDULE A
To Exhibit E
To DEVELOPMENT AGREEMENT AND FINANCING CONTRACT
(CONTRACT NO. 2017-049-COS)
BETWEEN
THE CITY OF SCOTTSDALE, ARIZONA
AND
ARIZONA PUBLIC SERVICE COMPANY

Location of Electric Utility Corridor in the Existing Public Right-of-Way
and
Legal Description of the Improvements

RAINTREE SUB TO EAST END SUB
UG 69KV

SCHEDULE 'A'
TO EXHIBIT 'E' & 'F'
DEVELOPMENT AGREEMENT BETWEEN
THE CITY OF SCOTTSDALE, ARIZONA 69KV
IMPROVEMENT DISTRICT, ARIZONA PUBLIC
SERVICE COMPANY, AN ARIZONA
CORPORATION

PROJECT WITHIN THE NW QUARTER OF SECTION 6
TOWNSHIP 3 NORTH, RANGE 5 EAST, G. & S.R.B. & M.



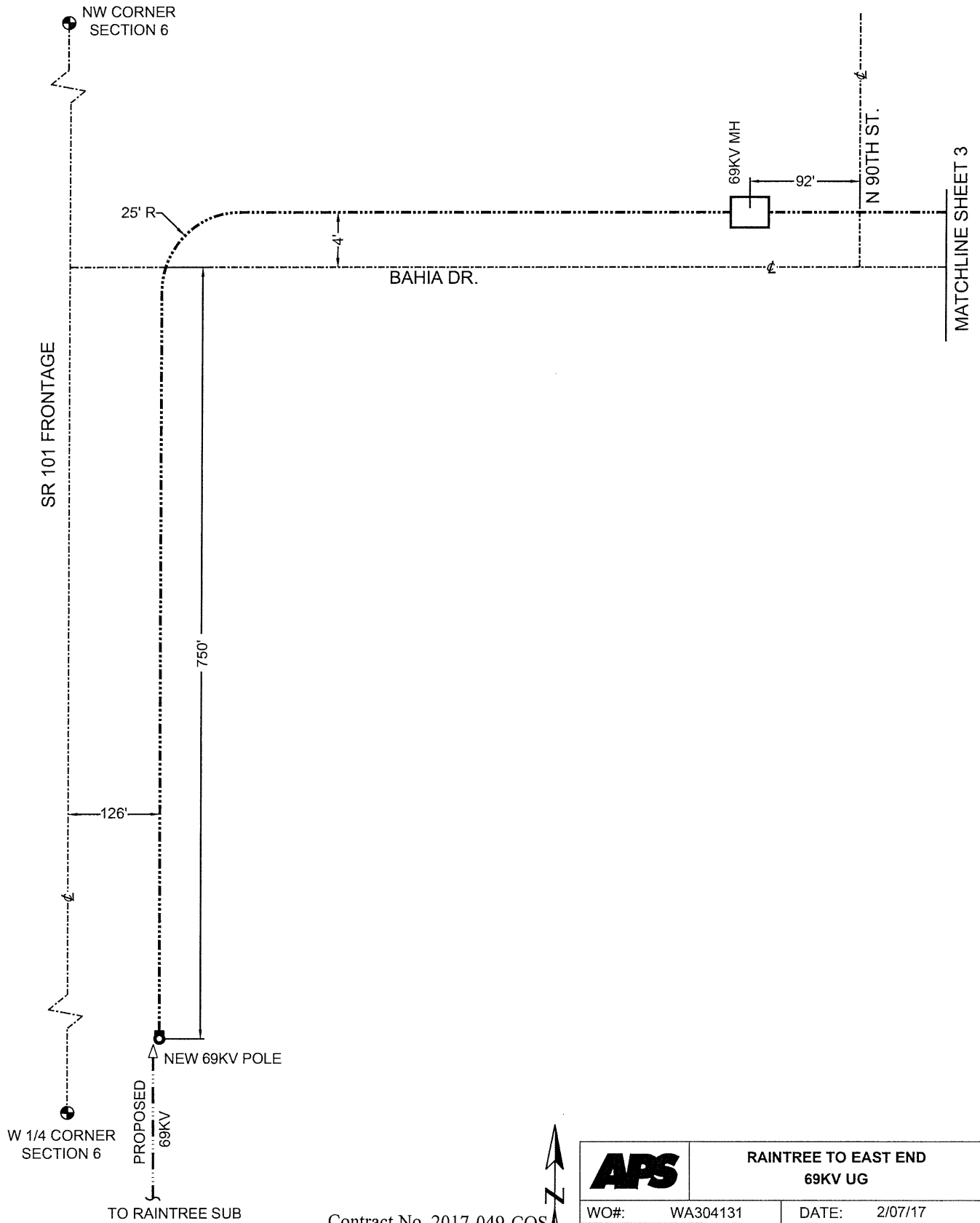
NOTE:
ALL DISTANCES ARE APPROXIMATE.
CONTACT BLUE STAKE TO CONFIRM
EXACT LOCATION OF UNDERGROUND
POWER LINES IN THE FIELD

Contract No. 2017-049-COS
Schedule A to Exhibit E
Page 2 of 4



APS	RAINTREE TO EAST END	
	69KV UG	
	WO#: WA304131	DATE: 2/07/17
	BY: R. ROBERTS	SCALE: NTS
FILENAME: WA304131EXHIBIT.DWG	SHEET	1 OF 3

RAINTREE SUB TO EAST END SUB
UG 69KV

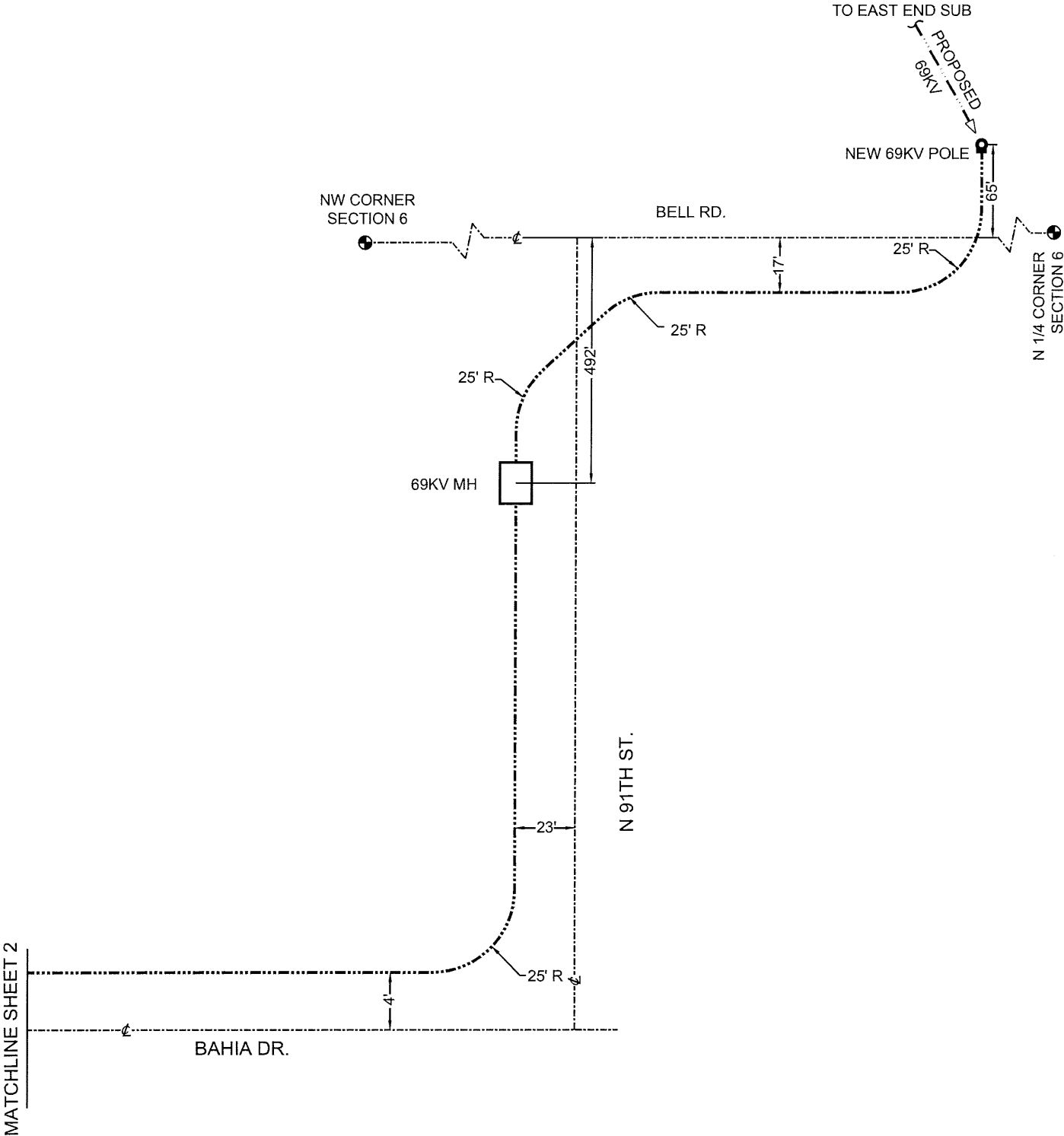


Contract No. 2017-049-COS
Schedule A to Exhibit E
Page 3 of 4



APS	RAINTREE TO EAST END 69KV UG	
	WO#: WA304131	DATE: 2/07/17
	BY: R. ROBERTS	SCALE: NTS
FILENAME: WA304131EXHIBIT.DWG	SHEET 1 OF 3	

RAINTREE SUB TO EAST END SUB
UG 69KV



MATCHLINE SHEET 2

Contract No. 2017-049-COS
Schedule A to Exhibit E
Page 4 of 4



APS	RAINTREE TO EAST END 69KV UG	
	WO#: WA304131	DATE: 2/07/17
	BY: R. ROBERTS	SCALE: NTS
FILENAME: WA304131EXHIBIT.DWG	SHEET 1 OF 3	

EXHIBIT F

When recorded, return to:
Arizona Public Service Company
Land Services Department
P. O. Box 53999, Station 3286
Phoenix, AZ 85072-3933

MEMORANDUM OF AGREEMENT

Notice is hereby given that Arizona Public Service Company, an Arizona corporation ("*APS*"), and the City of Scottsdale, a municipal corporation and political subdivision organized and existing under the laws of the State of Arizona (the "*City*"), have entered into that certain Development Agreement and Financing Contract (Contract No. 2017-049-COS), dated as of March 30, 2017 (the "*Agreement*"). Pursuant to Section 5.2 of the Agreement, the City agreed that if the City or any other authorized entity commences construction within the boundaries of the subject City of Scottsdale, Arizona, Underground Utility Facilities Improvement District No. I-6002 requiring that APS relocate the Improvements (as defined in the Agreement), the cost of any relocation, removal, extension or replacement of those Improvements would be borne by the City or authorized entity. A legal description of the location of the Improvements is attached hereto as Schedule A and incorporated herein by this reference.

Dated this _____ day of _____, 20__.

ARIZONA PUBLIC SERVICE COMPANY,
an Arizona corporation

CITY OF SCOTTSDALE,
an Arizona municipal corporation and
political subdivision

By _____

By _____

Its _____

Its _____

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____ the _____ of Arizona Public Service Company, an Arizona corporation, on behalf of the corporation.

(Seal and Expiration Date)

Notary Public

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, the _____ of the City of Scottsdale, an Arizona political subdivision and municipal corporation, on behalf of the City of Scottsdale.

(Seal and Expiration Date)

Notary Public

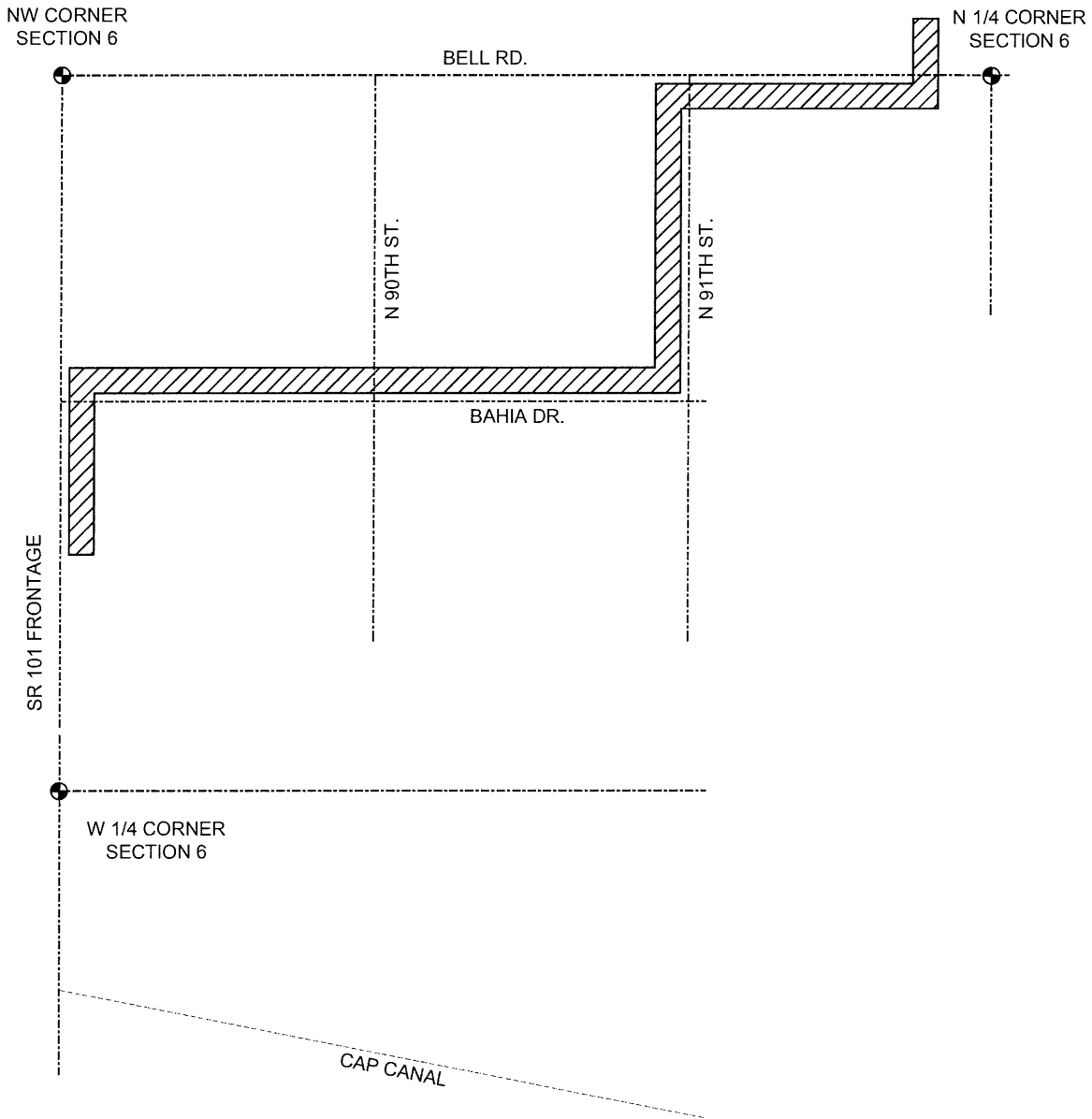
SCHEDULE A
To Exhibit F
To DEVELOPMENT AGREEMENT AND FINANCING CONTRACT
(CONTRACT NO. 2017-049-COS)
BETWEEN
THE CITY OF SCOTTSDALE, ARIZONA
AND
ARIZONA PUBLIC SERVICE COMPANY

Location of Electric Utility Corridor in the Existing Public Right-of-Way
and
Legal Description of the Improvements

RAINTREE SUB TO EAST END SUB
UG 69KV

SCHEDULE 'A'
TO EXHIBIT 'E' & 'F'
DEVELOPMENT AGREEMENT BETWEEN
THE CITY OF SCOTTSDALE, ARIZONA 69KV
IMPROVEMENT DISTRICT, ARIZONA PUBLIC
SERVICE COMPANY, AN ARIZONA
CORPORATION

PROJECT WITHIN THE NW QUARTER OF SECTION 6
TOWNSHIP 3 NORTH, RANGE 5 EAST, G. & S.R.B. & M.



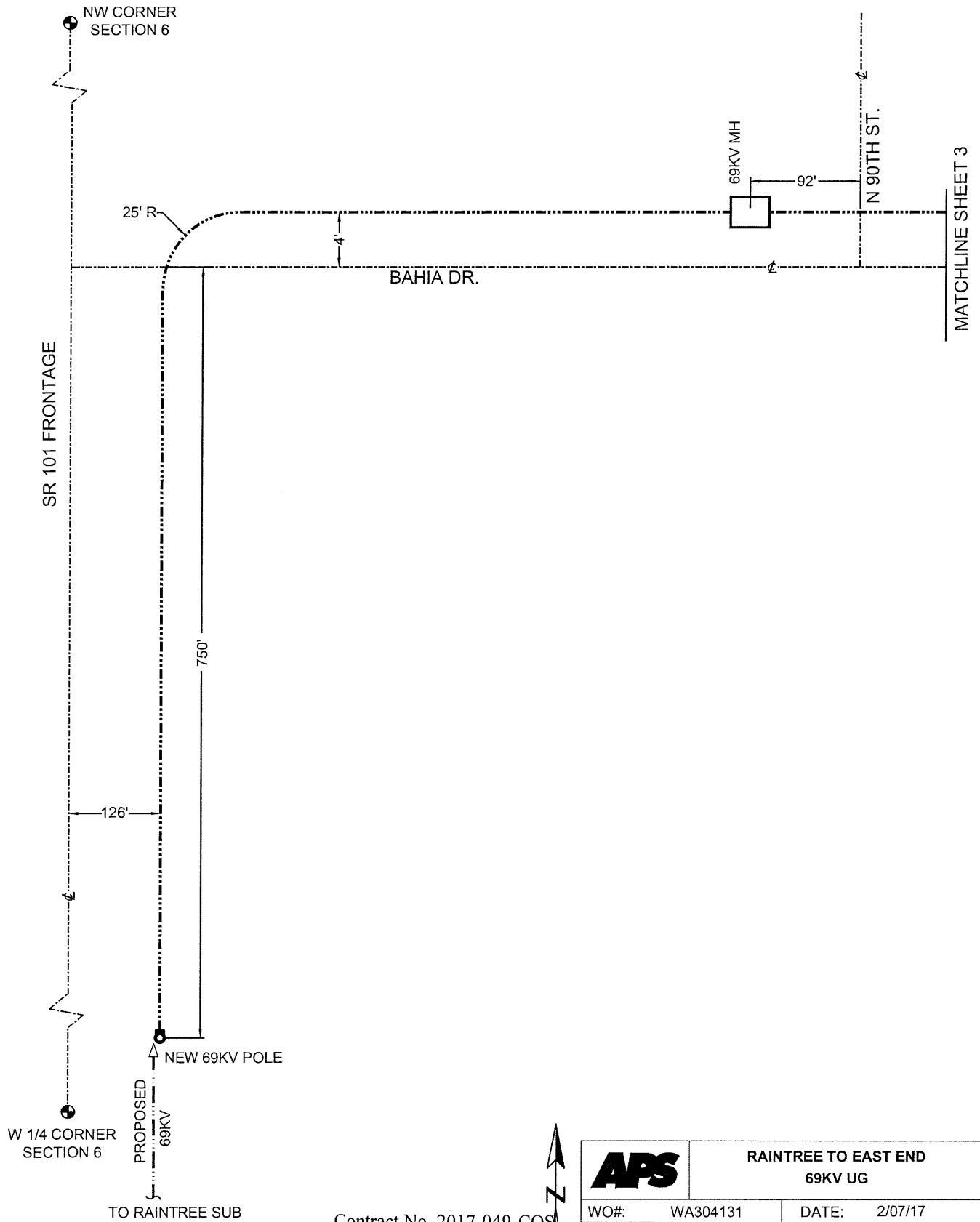
NOTE:
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Contract No. 2017-049-COS
Schedule A to Exhibit F
Page 2 of 4



APS	RAINTREE TO EAST END 69KV UG	
	WO#: WA304131	DATE: 2/07/17
	BY: R. ROBERTS	SCALE: NTS
FILENAME: WA304131EXHIBIT.DWG	SHEET	1 OF 3

RAINTREE SUB TO EAST END SUB
UG 69KV

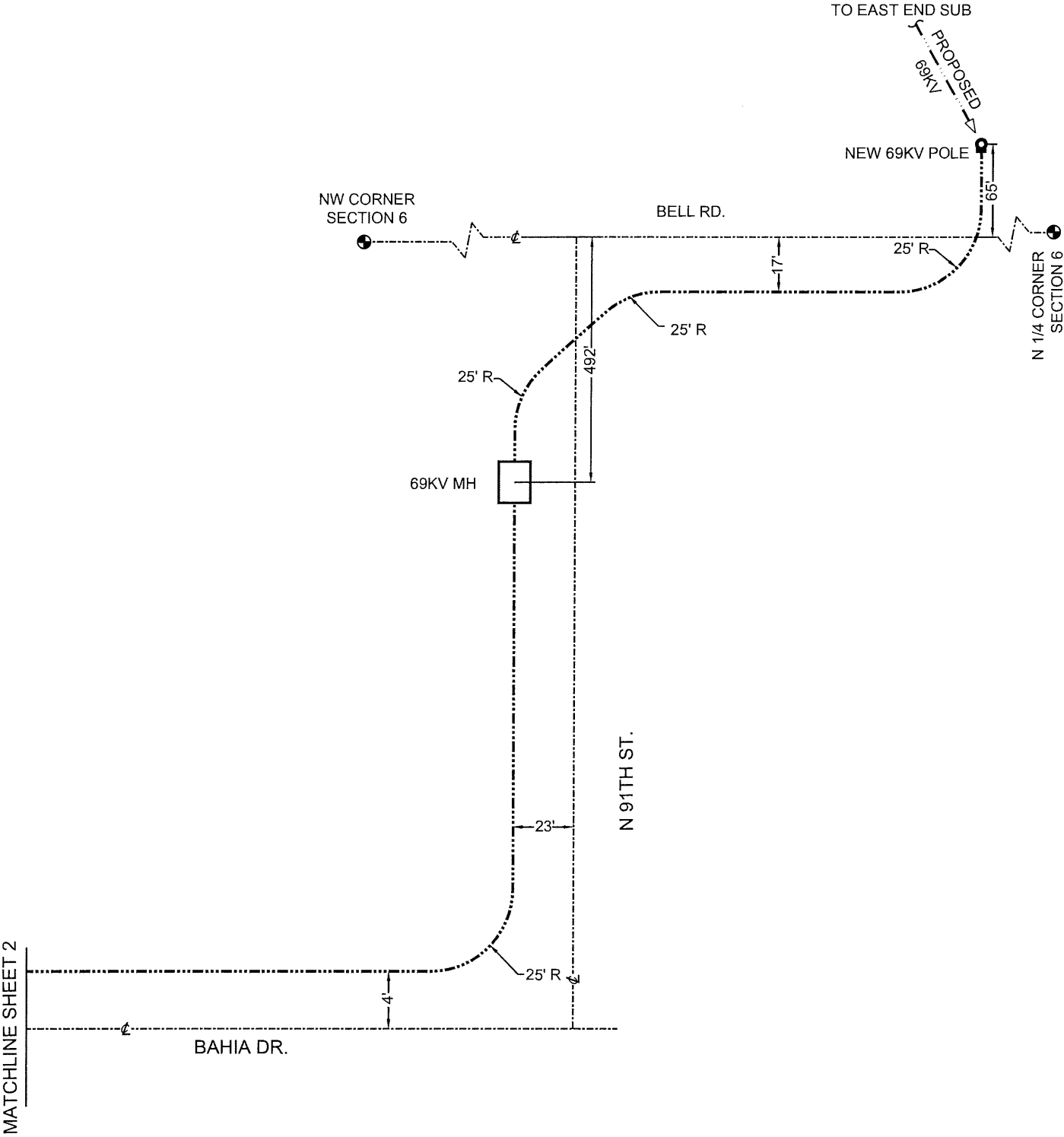


Contract No. 2017-049-COS
Schedule A to Exhibit F
Page 3 of 4



APS	RAINTREE TO EAST END 69KV UG	
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RAINTREE SUB TO EAST END SUB
UG 69KV



MATCHLINE SHEET 2

Contract No. 2017-049-COS
Schedule A to Exhibit F
Page 4 of 4



APS	RAINTREE TO EAST END 69KV UG	
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	BY: R. ROBERTS	SCALE: NTS
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