

**CONFIDENTIALITY AGREEMENT**  
**For Qualifying Facilities Applicants**

This Confidentiality Agreement (this “Agreement”) is made as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the “Effective Date”) by and between ARIZONA PUBLIC SERVICE COMPANY (“APS”) and \_\_\_\_\_ (the “QF Applicant”) (each of the foregoing referred to individually as a “Party” or collectively as the “Parties”).

WHEREAS, the QF Applicant desires to commence APS’s power purchase process for Qualifying Facilities, as that term is defined by the Federal Energy Regulatory Commission (“FERC”), for one or more Qualifying Facilities that the QF Applicant is planning to develop. APS’s power purchase process involves the evaluation and negotiation of certain financial and commercial matters relating to potential power purchase agreements for those Qualifying Facilities (the “Permitted Purpose”).

WHEREAS, during the course of the Permitted Purpose, either Party (the “Providing Party”) may provide to the other Party (the “Receiving Party”) certain non-public, confidential or proprietary information that may have unique value to the Providing Party (as further defined herein, “Confidential Information”).

WHEREAS, the Parties desire to enter into this Agreement for the purpose of establishing the terms and conditions under which Confidential Information may be disclosed and must be protected.

THEREFORE, in consideration of the foregoing recitals, the terms and conditions of this Agreement, and other good and valuable consideration, the Parties agree as follows:

1. Confidential Information. From time to time during the Term of this Agreement, the Providing Party may provide to the Receiving Party certain non-public, confidential or proprietary information relating to the Providing Party’s business, including, without limitation, technical, operational, marketing, financial, personnel, planning and other information (“Confidential Information”). With respect to Confidential Information disclosed verbally, the Providing Party will describe the Confidential Information as such at the time of disclosure.
2. Exclusions. Confidential Information does not include any information that:
  - (a) was lawfully known to the Receiving Party prior to the time of the Providing Party’s disclosure;
  - (b) was or has been disclosed by the Providing Party to a third party (from whom the Receiving Party obtained it) without obligation of confidentiality;
  - (c) was or becomes known to the general public without breach of this Agreement or any other confidentiality obligation;
  - (d) is independently developed by the Receiving Party without access to, or use of, Confidential Information;

- (e) is approved in writing by the Providing Party for disclosure by the Receiving Party, provided such approval is given prior to disclosure;
- (f) is required to be disclosed before any judicial, administrative or similar body (subject to any restrictions agreed to by the Parties, or any restrictions sought by the Providing Party and imposed by the relevant authority).

In the case of (f), the Receiving Party will notify the Providing Party of any such required disclosure in advance and in writing. The Providing Party, at the Providing Party's expense, may challenge such disclosure, including the obtaining of a protective order with respect thereto, and the Receiving Party shall reasonably cooperate therewith. If the Providing Party does not obtain a protective order with respect to such disclosure, the Providing Party waives the Receiving Party's compliance with the terms hereof with respect to such Confidential Information; provided, however, that if disclosure is required under (f), the Receiving Party will provide only that portion of Confidential Information that it is advised by legal counsel is legally required to be disclosed and will exercise reasonable efforts to obtain assurance that such Confidential Information will be treated as confidential by any recipient.

Additionally, the Parties acknowledge that either Party may need to disclose Confidential Information in connection with regulatory matters or to otherwise satisfy regulatory requirements. In the event that the Receiving Party intends to disclose any Confidential Information to regulatory authorities including, but not limited to, the Arizona Corporation Commission, the Residential Utility Consumer Office, the Federal Energy Regulatory Commission, or any employee, staff member, consultant, and/or agent of the foregoing, it shall give the Providing Party prompt prior written notice of its intention so that the Providing Party shall have a reasonable opportunity to seek a protective order or other appropriate remedy. If a protective order or other remedy is not obtained, the Providing Party waives the Receiving Party's compliance with the terms hereof with respect to such Confidential Information; provided, however, that nothing herein shall be deemed to otherwise permit the Receiving Party to disclose Confidential Information to the foregoing regulatory agencies, or any other party.

3. Protection. The Receiving Party will safeguard Confidential Information, regardless of the manner furnished, against disclosure by employing the same means to protect the Confidential Information as the Receiving Party uses to protect its own non-public, confidential or proprietary information, but in no event less than commercially reasonable means. The Receiving Party will not itself, nor will it permit its affiliates, directors, officers, employees, legal counsel, lenders, financing partners, and/or tax and accounting consultants to disclose Confidential Information to any person, corporation or other entity without the prior written consent of the Providing Party, except that the Receiving Party may distribute Confidential Information to its affiliates, directors, officers, employees, legal counsel, lenders, financing partners, and/or tax and accounting consultants who have a need for such Confidential Information for the Permitted Purpose and who are obligated to maintain confidentiality. The Receiving Party will be fully liable

for any breach of this Agreement by any person, corporation, or other entity as though such breach was committed by the Receiving Party itself.

4. Copies. The Receiving Party will not make any copies, reproductions, or abstracts of Confidential Information except as required for the Permitted Purpose. All such copies, reproductions and abstracts are Confidential Information of the Providing Party to the same extent as any originals.
5. Relationship of the Parties. This Agreement does not obligate either Party to: (a) disclose any specific Confidential Information; (b) spend any funds; or (c) enter into any subsequent business arrangements regarding the Permitted Purpose or any other matter. This Agreement does not create any exclusivity between the Parties; each Party remains free to negotiate and enter into any agreement with any third party covering all or any part of the Permitted Purpose without any liability to the other Party under this Agreement. Any future arrangement between the Parties is conditioned upon: (x) negotiation of mutually acceptable definitive agreements; (y) any and all internal approvals that a Party deems necessary or appropriate; and (z) any and all necessary government and regulatory approvals. No joint venture, partnership or other fiduciary relationship exists or arises between the Parties with respect to the Permitted Purpose, nor does this Agreement grant any license or other right under or with respect to any patent, copyright, trademark, trade secret or other proprietary right.
6. Term. Destruction of Confidential Information. The term of this Agreement begins on the Effective Date and governs all disclosures of Confidential Information thereafter until two (2) years from the Effective Date, at which time this Agreement will terminate; provided, however, that upon the Parties' earlier execution of any power purchase agreement(s), if the same shall occur, the Confidential Information pertaining to each such executed power purchase agreement shall thereafter be governed solely by the confidentiality obligations of that power purchase agreement. To the extent Confidential Information does not so pertain to any executed power purchase agreement(s) between the Parties, then, upon termination of this Agreement in accordance with the first sentence of this section, the obligations of this Agreement shall survive for a period of one (1) year thereafter as to such remaining Confidential Information. Upon written request by the Providing Party at any time, the Receiving Party will destroy all Confidential Information in tangible form in its possession; provided, that the Receiving Party may retain one copy of all Confidential Information for regulatory compliance or legal purposes.
7. Export Control. The Receiving Party agrees that no technical data or information received hereunder will be exported or disclosed to any individual who is a foreign national, including foreign nationals employed by or associated with the Receiving Party, or any foreign firm or country, without first complying with the United States Export Administration Regulations and/or United States International Traffic in Arms Regulations, including obtaining an export license, if applicable. Irrespective

of any other provisions in this Agreement, the obligations set forth in this section shall be binding so long as relevant United States Government regulations remain in effect.

8. Remedies. The unauthorized disclosure of Confidential Information may cause irreparable harm and significant injury that may be difficult to ascertain. The Parties therefore agree that specific performance or injunctive relief, in addition to other legal and equitable relief, are appropriate remedies for any actual or threatened violation or breach of this Agreement, although neither Party will be entitled to any special, consequential, indirect or punitive damages as a result of a breach of this Agreement, whether a claim is based in contract, tort or otherwise. The Receiving Party will not allege or assert that an adequate remedy exists at law with respect to relief sought by the Providing Party in any proceeding, nor will the Receiving Party seek the posting of a bond by the Providing Party. Under no circumstances will the Receiving Party's directors, officers, employees, legal counsel, or tax or accounting consultants be individually liable for any damages resulting from the disclosure of the Providing Party's Confidential Information.
9. Property of the Providing Party. All Confidential Information remains the property of the Providing Party and the Receiving Party obtains no right of any kind to any Confidential Information.
10. No Warranties. The Providing Party provides Confidential Information on an "as is" basis, without any warranty whatsoever. The Providing Party hereby disclaims all express and implied warranties, whether statutory or arising from course of dealing, including without limitation, any warranties of merchantability, profitability, suitability, title, non-infringement, or fitness for a particular purpose.
11. Costs. Each Party will be responsible for its own costs incurred in connection with this Agreement and the Permitted Purpose.
12. No Waiver. A Party's failure or delay in exercising any right under this Agreement does not operate as a waiver thereof, and any single or partial exercise of any right does not preclude any other or further exercise thereof.
13. Governing Law. This Agreement shall be interpreted, governed, and construed under the laws of the State of Arizona as if it was executed and to be performed wholly within the State of Arizona, without regard to its conflict of laws principles.
14. Counterparts. This Agreement may be executed in counterparts, and each counterpart shall for all purposes be an original, and all such counterparts shall together constitute one and the same Agreement.
15. Assignment. This Agreement shall be binding upon the Parties' respective successors and assigns. This Agreement may not be assigned by either Party without the prior written consent of the other Party; provided, however, that Company may assign this Agreement, in whole or in part, without the QF

Applicant's consent, to its parent, Pinnacle West Capital Corporation or to any affiliate or subsidiary thereof. No permitted assignment shall relieve the Receiving Party of its obligations hereunder with respect to Confidential Information disclosed to it prior to such assignment. Any assignment in violation of this provision shall be void.

16. Severability. If any provision hereof is unenforceable or invalid, it shall be given effect to the extent it may be enforceable or valid, and such unenforceability or invalidity shall not affect the enforceability or validity of any other provision of this Agreement.

17. Entire Agreement. This Agreement: (i) may only be amended by both Parties in writing; and (ii) represents the entire understanding of the Parties with respect to the matters that are the subject hereof.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the date first written above.

ARIZONA PUBLIC SERVICE COMPANY

“APS”

Signature: \_\_\_\_\_  
By: Derek Seaman  
Title: Director, Resource Acquisition

\_\_\_\_\_  
“QF Applicant”

Signature: \_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_