

## FINANCIAL INCENTIVE AGREEMENT

This FINANCIAL INCENTIVE AGREEMENT (the "Agreement") is entered into as of the date it is executed by both Parties (the "Effective Date"). This Agreement is by and between the City of Sparks, Nevada, a municipal corporation (the "City") and Syufy Enterprises, a limited partnership ("Syufy"). The City and Syufy are jointly referred to as the "Parties".

### RECITALS

**WHEREAS**, Syufy owns real property which consists of a parcel 61,637± square feet in size with an existing structure 57,936± square feet in size containing fourteen (14) auditoriums and located in Victorian Square with an address of 1250 Victorian Avenue, Sparks, Nevada, 89431 (the "Property");

**WHEREAS**, the company previously leasing the Property from Syufy operated it as a movie theater until September 30, 2016, when it vacated the Property after removing, transferring, or destroying the fixtures, furnishings, and equipment ("Existing FF&E");

**WHEREAS**, Syufy has negotiated a lease (the "Theater Lease") with Galaxy Victorian, LLC ("Galaxy"), an Affiliate of Galaxy Theatres, to renovate, re-open and operate the Property as a state-of-the-art 14 screen movie theater (the "Project");

**WHEREAS**, Syufy has requested financial assistance from the City to fill an anticipated financial gap with respect to acquiring and repairing the Property and certain Existing FF&E, engaging Galaxy as the tenant in the Project, and, with Galaxy, jointly investing in renovating and re-opening the Project (the "Project Scope");

**WHEREAS**, Syufy has informed the City that without such financial assistance Syufy and Galaxy, respectively, reserve any and all rights they may have to terminate the Theater Lease and not renovate and re-open the Project;

**WHEREAS**, the Sparks Tourism Facility and Revitalization Committee (the "Committee") is a political subdivision of the State of Nevada created pursuant to Chapter 432, Statutes of Nevada, as amended by AB 205 of the 2003 Legislative Session of the State of Nevada (the "Project Act");

**WHEREAS**, a tax at the rate of 2.5 percent of the gross receipts from the rental of transient lodging has been imposed in the City of Sparks, pursuant to Section 6.6 of the Project Act (the "Lodging Tax");

**WHEREAS**, pursuant to Section 6.9 of the Project Act, the Committee developed a master plan to guide expenditures of the Lodging Tax in 2004 and amended it in 2008 and again in 2016 (the "2016 Master Plan"), that identifies:

(1) proposed projects or capital improvements that the Committee determines to be advisable to promote tourism in Washoe County; and

(2) the method or methods pursuant to which the proposed projects and capital improvements so identified will be financed;

**WHEREAS**, the 2016 Master Plan identifies incentives for substantial upgrades to private Victorian Square entertainment venues and facilities that increase the regional appeal of such facilities as appropriate for the use of Lodging Tax proceeds provided the incentive is intended to fill an anticipated financial gap and leverages private investment;

**WHEREAS**, the private investment in this Project significantly exceeds the amount of assistance requested and therefore satisfies the minimum private investment required in the 2016 Master Plan;

**WHEREAS**, pursuant to Section 6.7.2 of the Project Act, the City Council of the City, before expending any proceeds of the Lodging Tax, must obtain the advice and recommendations of the Committee concerning such expenditure of the Lodging Tax; and

**WHEREAS**, on January 31, 2017 the Committee adopted, by a two-thirds vote of its members, the 2017 Victorian Square Project Approval Resolution which advises and recommends to the City Council that it expend up to \$1,500,000 of Lodging Tax proceeds beginning in 2017 to incentivize the substantial renovation of the Victorian Square cinema facility, as generally provided for in the 2016 Master Plan.

**NOW, THEREFORE**, in consideration of the mutual commitments by City and Syufy, as contained in this Agreement, the Parties agree as follows:

**I. THE PROJECT**

A. In accordance with the Theater Lease, all 14 auditoriums will be renovated with luxury recliners and state-of-the-art digital sound systems will be installed throughout the Project. The Project's lobby entrance and concession areas will be renovated with finishes comparable to the quality found at Galaxy Theatres' cinema facility located at 1170 Scheels Drive, Sparks, Nevada. These repairs and upgrades are included in the Project Scope.

B. The Project shall be completed and be open to the public prior to December 31, 2017.

**II. FINANCIAL CONTRIBUTIONS**

A. Syufy and Galaxy will collectively invest at least \$6,100,000 (some or all of which may be secured from internal or third-party sources) in the Project Scope, which includes

the acquisition, repair and/or installation of existing and new fixtures, furnishings, and equipment (“FF&E”).

B. The City will pay \$1,500,000 to Syufy from the Lodging Tax as follows:

1. \$1,000,000 when the Project is open to the general public (the “Initial Payment”). For purposes of this Agreement, “open to the general public” means that movies and related presentations (defined herein as live or delayed broadcasts, private screenings, or group rentals) are exhibited for the general public in all fourteen (14) of the Property’s auditoriums during normal business hours. The City agrees to make the Initial Payment to Syufy within ten (10) business days after the Project is open to the general public. Syufy is not in violation of this Agreement if failure of the Project to open to the general public is as a result of *force majeure*.

2. Provided the Project remains open to the general public, \$100,000 per year for five years payable each year within 10 business days of the anniversary of the 2017 re-opening of the Project to the public (each an “Annual Payment”). For purposes of this Agreement, “remains open to the general public” means that movies and related presentations continue to be exhibited for the general public in at least eight (8) of the Property’s auditoriums during normal business hours. Furthermore, for the purposes of this Agreement, failure to remain open occurs if the Project is not open or does not operate for five (5) consecutive days or more. However, Syufy is not in violation of this Agreement if failure to operate is due to temporary closures as a result of (i) construction, alterations, renovation, or remodeling if Syufy prosecutes such work to completion with reasonable diligence and Syufy exercises its reasonable efforts to minimize the length of time of such closure, or (ii) *force majeure*. In the event that a planned temporary closure for construction, alterations, renovations, or remodeling will exceed thirty (30) days, Syufy must provide the City with notice seven (7) days prior to the temporary closure and obtain the City’s advance approval (such City approval not to be unreasonably withheld, conditioned, or delayed). Such notice and approval may be satisfied with the submission and approval of a permit application to the City’s building department specifying the scope of proposed repairs or remodeling. In such event, Syufy shall endeavor to notify the City Manager of the permit application on or before its approval; provided, however, that its failure to do so shall not give rise to an event of default.

3. The City may pursue all legal options to recapture funds paid to Syufy if the Project closes prior to the 5<sup>th</sup> anniversary of its re-opening (other than temporary closures as set forth in Article II, subsection B.2, above).

4. Force majeure

a. Except as provided elsewhere herein, if a “*force majeure*” makes performance of an obligation or cure of a breach or default impossible, such performance or cure is excused for the duration of the force majeure provided that the obligated party (i) within a reasonable time after the commencement of the

force majeure notifies the other party of the nature of the force majeure, when it commenced, why it makes performance or cure impossible, and the expected duration (if known), and (ii) agrees to and does in fact diligently pursue remediation of the effects of the force majeure, and (iii) agrees to notify the other party immediately when it becomes possible to commence efforts to cure the default.

b. A “force majeure” is defined as (a) without the fault of and beyond the reasonable control of the obligated party, a war; insurrection; riot; flood; earthquake; fire; casualty; act of God; act of a public enemy; quarantine restriction or other effect of epidemic or disease; freight embargo; weather-caused delay; lack of transportation attributable to any of these; (b) regional or national shortages of utilities, labor or materials which severely impair the ability of all similarly situated retailers to operate or contractors to build projects of the type contemplated by this Agreement and cannot be remedied by purchasing at a commercially reasonable increased price; or (c) labor strikes, boycotts or picketing; provided, however, that if the breach or default is the failure to pay money, the force majeure must actually prevent access to or payment from a bank account or payment mechanism, such as during a banking holiday, moratorium, or sabotage of wire or automated transfer systems.

c. A *force majeure* does not include general economic or market conditions, or the financial condition of a party even if they are influenced by any of the foregoing. A *force majeure* is deemed to cease for purposes of this Agreement when it becomes possible for the obligated party to commence to perform the obligation or cure.

### **III. CITY CONDITIONS**

A. The City’s conditions precedent to making the Initial Payment to Syufy are:

1. The Project Scope must be completed and all 14 of the Property’s auditoriums must be open and exhibiting films and/or related presentations to the general public prior to or on December 31, 2017.

2. Syufy provides the City on a confidential basis reasonable documentation of Syufy’s and Galaxy’s respective investments in the Project Scope, up to \$6,100,000.

3. Syufy will provide the City a signed and recorded, in Washoe County, Nevada, Memorandum of Lease between Syufy and Galaxy for the Project. The Memorandum of Lease shall identify the parties to the lease, describe the leased premises including the parties’ respective rights regarding FF&E ownership and removal, set forth the initial term and any options terms for the lease, and identify the term commencement date. The executed lease between Syufy and Galaxy for the Victorian Square cinema facility shall:

a. Contain an initial lease term of at least ten (10) years (the “Minimum Lease Term”).

b. Prohibit Galaxy, during the Minimum Lease Term, from removing FF&E installed in the Project unless such removal is for the immediate replacement of said FF&E, or to enhance the facility, or is the result of changes in business operations that are consistent with industry trends or prudent business practices and do not materially reduce the total value of the FF&E in the Project.

B. During the Term hereof, this Agreement shall be binding upon any successor-in-interest to the current Syufy owners, and shall be disclosed by Syufy to any potential purchaser of the Property.

#### **IV. CITY IMPROVEMENTS**

A. Parking garage lighting. The City agrees to consider written requests from Syufy or Galaxy for upgrades to the lighting in the City parking garage adjacent to the Property (the “Garage”). The City reserves full discretion, once the nature and cost of the upgrades are understood, regarding whether to make the requested improvements and the timing of the improvements. Notwithstanding the foregoing, the City agrees to place on a City Council agenda, if necessary, consideration of lighting and other projects in and around the Garage and the Property as part of its annual Capital Improvements Plan at one or more City Council meetings, and provide Syufy with at least 10 days’ notice thereof, so that Syufy, Galaxy, and members of the public may be present and participate in the hearing.

B. Cosmetic improvements in the public areas in front of the Property. The City agrees to consider written requests from Syufy or Galaxy for cosmetic improvements to the public areas in front of the Property. The City reserves full discretion, once the nature and cost of the upgrades are understood, regarding whether to make such improvements and the timing of the improvements. As the expected source of funding for any such improvements is proceeds of the Lodging Tax, discretionary approvals are required from the Committee and the Sparks City Council.

C. Walkway from Garage to Property. The City will coordinate with Silverwing Development, which is responsible for the residential and retail construction on adjacent parcels, to maintain a well-lit walkway from the Garage to the Property for the duration of construction.

#### **V. DEFAULT AND TERMINATION**

A. Term. This Agreement shall be effective as of the Effective Date but will automatically terminate on January 1, 2018 unless Syufy has satisfied the City condition specified in Article III, Section A.1. Unless terminated in accordance with this Article V, Section A or the other termination provisions in this Article V, this Agreement shall continue for a period of ten (10) years following the commencement date specified in the Memorandum of

Lease, described in Article III, Subsection A.3, above, at which point it shall expire and be of no further force and effect.

B. This Agreement may be terminated by written mutual agreement of the City and Syufy prior to opening of the Project to the general public. Upon such mutual termination, Syufy shall have no claim or right to any portion of the Initial Payment or Annual Payment(s).

C. Default by Syufy.

1. The following events shall constitute a default by Syufy hereunder:

a. Syufy fails to complete the Project in accordance with Article I of this Agreement;

b. Syufy fails to meet the conditions of Article II, Section B(1) of the Agreement;

c. Syufy fails to meet the conditions of Article II, Section B(2) of the Agreement;

d. Syufy fails to meet the conditions of Article III, Section A of the Agreement;

e. Syufy breaches any other material covenant or defaults in the performance of any other material obligation under this Agreement, or any representation or warranty of Syufy set forth herein or in any certifications delivered by Syufy hereunder shall prove to have been false or misleading in any material respect when made or deemed made;

f. Syufy transfers (other than to an Affiliate) any of its rights or obligations under this Agreement without the prior written consent of the City;

g. Syufy voluntarily files for reorganization or other relief under any Federal or state bankruptcy or insolvency law; or

h. Syufy has any involuntary bankruptcy or insolvency action filed against it, or shall suffer a trustee in bankruptcy or insolvency or received to take possession of the assets of Syufy, or shall suffer an attachment or levy of execution to be made against the property it owns unless, in any such cases, such action, possession, attachment or levy shall have been terminated or released within sixty (60) days after the commencement thereof.

## 2. Termination

a. If any event of default listed in subsection C.1., above, occurs, the City may elect to terminate the Agreement. If the City intends to terminate the Agreement, the City shall first notify Syufy in writing of such intention and of the grounds for termination. The City must allow Syufy sixty (60) days to eliminate or mitigate to the reasonable satisfaction of the City the grounds for such termination. If, in the reasonable opinion of the City, such grounds for termination can be eliminated or mitigated, but not within the sixty (60) day period, such period shall be extended in order to provide a reasonably sufficient amount of time to accomplish such elimination or mitigation, but only if Syufy has instituted corrective action within the initial sixty (60) day period and Syufy is thereafter proceeding with diligence to eliminate or mitigate such grounds for termination. If at the end of such period (and any extension thereof), Syufy has not eliminated or completely mitigated such grounds for termination to the reasonable satisfaction of the City, the City may then terminate this Agreement by delivering a written notice of such termination to Syufy. Termination is effective thirty (30) days from receipt by Syufy of the City's notice of termination. Upon termination, the City has no duty to act or obligation hereunder.

### D. Default by City

1. The City is in default of this Agreement if the City breaches any material covenant or defaults in the performance of any material obligation under this Agreement, or any representation or warranty of the City set forth herein shall prove to have been false or misleading in any material respect when made.

2. The City is in default of this Agreement if, prior to the disbursement of the Initial or Annual Payment(s) to Syufy:

a. The City voluntarily files for reorganization or other relief under and Federal or state bankruptcy or insolvency law; or

b. The City has any involuntary bankruptcy or insolvency action filed against it, or shall suffer a trustee in bankruptcy or insolvency or receiver to take possession of the assets of the City, or shall suffer an attachment or levy of execution to be made against the property it owns unless, in any of such cases, such actions, possession, attachment or levy shall have been terminated or released within sixty (60) days after the commencement thereof.

c. If the events described in subsection (a) and (b) occur after the disbursement of the Funds by the City to Syufy, no claim of default under such provisions can be asserted by Syufy.

### 3. Termination.

a. If any event of default listed in subsections D.1 or D.2., above, occurs, Syufy may elect to terminate the Agreement. If Syufy intends to terminate this Agreement, Syufy shall first notify the City in writing of its intention and of the grounds for termination. If the grounds for termination are anything other than the City's failure to pay the Initial Payment or an Annual Payment, Syufy must allow the City sixty (60) days to eliminate or mitigate to the reasonable satisfaction of Syufy the grounds for such termination. If, in the reasonable opinion of Syufy, such grounds for termination can be eliminated or mitigated, but not within the sixty (60) day period, the period shall be extended in order to provide a reasonably sufficient amount of time to accomplish such elimination or mitigation, but only if the City has instituted corrective action within such sixty (60) day period and the City is thereafter proceeding with diligence to eliminate or mitigate such grounds for termination. If at the end of such period (and any extension thereof), the City has not eliminated or completely mitigated such grounds for termination to the reasonable satisfaction of Syufy, Syufy may then terminate this Agreement by delivering a written notice of such termination to the City. Termination is effective thirty (30) days from receipt by the City of Syufy's notice of termination.

### E. Remedies

1. Remedies Available to Both Parties. If an event of a default is caused by any party and not cured within the period of time specified, the non-defaulting party may, subject to any specific provision regarding remedies herein, (i) suspend any counter-performance due hereunder until the default is cured; (ii) terminate this Agreement; (iii) pursue any other remedy specifically provided in this Agreement; and/or (iv) bring an action for damages or equitable relief.

2. In general, each of the parties hereto may pursue any remedy at law or equity available for the breach of any provision of this Agreement, provided, however, that the City shall not be liable for damages to Syufy in excess of \$1,500,000. Syufy may seek strict enforcement of the Agreement by the City to make the Initial Payment and Annual Payments to Syufy but may not recover any consequential damages related thereto other than its costs incurred (e.g., attorneys' fees and costs) to enforce the terms of this Agreement. In light of the foregoing, Syufy covenants not to sue for or claim any damages for any alleged breach or dispute which arises out of this Agreement other than the failure to pay Syufy the Initial Payment and Annual Payments in accordance with this Agreement. All remedies (including the right to terminate) are cumulative with all other remedies available under this Agreement or as provided by law, and the election of one remedy does not preclude the exercise of any other remedy.



## **VI. EMPLOYMENT PRACTICES**

Prevailing wages. The Project is not subject to prevailing wage as: (i) The Washoe County Taxes on Transient Lodging Act of 1999 does not include a requirement of prevailing wages; (ii) NRS 338 Capital Improvements only applies to public funds used for capital improvement expenditures on public property over a certain dollar threshold. Therefore, NRS 338 is not applicable to these funds used for this purpose; and (iii) The payment of prevailing wages is not required by NRS 279 as this is not a Redevelopment Project (NRS 279.386) nor is it a project being undertaken by the Redevelopment Agency (NRS 279.412).

## **VII. INSURANCE AND INDEMNIFICATIONS**

### **A. Industrial Insurance**

1. It is understood and agreed that there shall be no worker's compensation or industrial insurance coverage provided by City for Syufy, Galaxy or any employee, contractor or subcontractor of Syufy or Galaxy. Syufy warrants, represents and agrees that all its officers, employees, contractors and subcontractors who perform any duties or activities in furtherance of this agreement (including traveling to Nevada and performing any duties in Nevada) are covered by workman's compensation or industrial insurance in at least the minimum amount and coverage required by Nevada law, and Syufy further agrees to hold City harmless and indemnify them against all liability in the event that an employee, contractor, and subcontractor is injured or becomes ill on the job for which insurance is unavailable.

2. If Syufy is self-funded for Industrial Insurance, Syufy shall so notify City in writing prior to the signing of this Agreement, and shall provide a certificate of self-insurance from the State of Nevada Insurance Division together with proof of financial strength satisfactory to City.

### **B. General Liability Insurance**

1. During the Term of this Agreement and for so long as Syufy owns an interest in the Property, Syufy agrees to obtain or require its tenant to obtain Commercial General Liability insurance covering the Property in the amount of at least \$2,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, the general aggregate limit shall be increased to equal twice the required occurrence limit or revised to apply separately to each project or location.

2. The insurance coverage shall be in Insurance Services Office Commercial General Liability Coverage "occurrence" form CG0001 01/96 or Insurance Service Office Comprehensive General Liability form GL0002 Ed 01/73 with the Broad Form Comprehensive General Liability Endorsement GL0404.

3. The City, its officers, agents, employees, and volunteers are to be included as additional insureds until such time as Certificates of Occupancy are issued by the City's Building Official for the Project with regard to damages and defense arising from (i) activities performed by or on behalf of Syufy or its tenant including the additional insured's general supervision of Syufy or its tenant; (ii) premises owned, occupied, or used by Syufy or its tenant, or automobiles owned, leased, hired, or borrowed by Syufy or its tenant. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, employees, or volunteers.

4. Syufy's insurance coverage or the coverage required of its tenant shall be primary insurance as respects City, its officers, agents, employees, and volunteers. Any insurance or self-insurance maintained by City, or its officers, employees, or volunteers shall be excess of Syufy's insurance, or the insurance required of its tenant, and shall not contribute with it in any way.

5. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officers, agents, employees, or volunteers.

6. Syufy's insurance or the insurance required of its tenant shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

### C. Indemnifications

1. By Syufy. To the fullest extent permitted by law, Syufy shall indemnify, hold harmless and defend (or cause its tenant to indemnify, hold harmless and defend) the indemnified parties from and against all liability to the extent caused by the negligent act or omission or willful misconduct of Syufy or its tenant, or a related party, in the performance of its obligations hereunder. "Indemnified parties" includes, without limitation, the other parties to this Agreement.

2. By City. To the fullest extent provided by law, and subject to the conditions, limitations and immunities contained in NRS 41.0305 through NRS 41.039, as amended from time to time, City shall indemnify, hold harmless and defend the indemnified parties from and against all liability to the extent caused by the negligent act or omission or willful misconduct of the City or a related party in the performance of its obligations hereunder. "Indemnified parties" includes Syufy, its tenant, and their related parties. This indemnification by the City does not apply to any legislative or administrative discretionary acts or decisions in connection with the exercise of police powers or regulatory powers over land use planning and public works projects.

3. Definitions. "Liability" means all third party claims, actions, damages, losses, judgments, injuries, costs and expenses, including but not limited to attorneys' fees and costs, including those related to bodily injury, sickness, disease or death or to injury to or destruction of tangible property (including the loss of use resulting therefrom)

and other economic damages. A “related party” includes all officers, employees, agents, contractors and subcontractors of the party who are acting within the scope of their assigned and lawful duties, as well as anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

4. Limitations and Conditions. The current laws of Nevada limiting liability due to comparative or contributory negligence shall apply. The obligations of each indemnifying party hereunder shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this section. The indemnification shall not be diminished or limited in any way to the total limits of insurance required in this contract or otherwise available to the indemnifying party. If the liability is asserted by an employee of an indemnifying party, the indemnification herein is not limited to damages, compensation or benefits payable by or for the indemnifying party under worker’s compensation acts, disability benefit acts or other employee benefit acts. Each indemnifying party shall be permitted to participate, if it chooses, in the defense of any action claiming liability, even if the indemnified party is indemnified hereunder. Either party may set off any of its rights under this subsection against any consideration it provides under this agreement. The obligations to indemnify and save harmless herein survive the expiration or termination of this Agreement with respect to any act or omission which occurred before expiration or early termination.

## VIII. MISCELLANEOUS

### A. General Conditions

1. Representations and Warranties. Each party represents and warrants to each of the other:

a. That corporate parties are duly organized and validly existing, and are qualified to do business in the State of Nevada.

b. That corporate parties have the power and authority under their enabling legislation or documents and to enter into and carry out the provisions of this Agreement.

c. That entering into this Agreement does not violate any contract, court order, administrative order or other undertaking, or any law, ordinance, rule or regulation to which a party is subject or bound.

d. That each entity has complete authority to enter into this Agreement without obtaining any court order or permission or agreement of another party.

e. That to their actual knowledge, there are no suits, other proceedings or investigations pending or threatened against them that they reasonably believe would prevent them from performing their duties and obligations hereunder or would have a material adverse effect on the execution of this Agreement.

f. That any information that has been delivered to any other party, either directly or through their agents, is materially accurate and complete.

g. That all contracts and documents delivered to any party have been duly authorized, and executed and are binding obligations of the executing party, and the undertakings therein would not violate any contract, court order, administrative order or other undertaking by the executing party, or any law, ordinance, rule or regulation to which the executing party is subject or bound.

B. General Covenants of Both Parties. Each party covenants to each other party as follows:

1. Ongoing Disclosures.

a. To promptly notify the other party of any facts that would cause any of the representations contained in the Agreement to be materially untrue during the term of this Agreement.

b. To promptly notify the other party of any facts or circumstances that would impair the obligated party's ability to perform its obligations hereunder.

c. To comply with all applicable ordinances, statutes, regulations, and other laws with respect to their general operations and the performance of all obligations and duties under this Agreement.

C. No Conflicts of Interest. Each party who deals with the City represents and agrees that as of the date hereof, and continuously throughout the term of this Agreement, that except as specifically disclosed to and approved in writing by the City, no elected official, employee, officer, member of the City, no consultant who is providing consulting to the City with respect to the Project, and no person related (within the second degree of consanguinity) to any such person: (i) now is or will be permitted to become a member, or partner of Syufy; (ii) now has or will be permitted to have any contractual relationship with Syufy; (iii) now has or ever will have any direct or indirect interest in this Agreement; and (iv) now has or will be permitted to own or have any interest, direct or indirect, in the property acquired by the representing party hereunder.

D. Assignment and Delegation. Except as otherwise specifically provided elsewhere in this Agreement, no party may assign any right or delegate any obligation under this

Agreement without the written consent of all the other parties obtained in advance of the assignment or delegation. Consent is subject to the sole and absolute discretion of the consenting party. Notwithstanding the foregoing, Syufy may assign all rights and delegate all duties under this Agreement to an Affiliate. For purposes hereof, "Affiliate" shall be defined as any entity which controls, is controlled by, or which is under common control with Syufy.

E. No Third Party Beneficiaries. None of the provisions of this Agreement are intended to make any person who is not a party to this Agreement a third party beneficiary hereunder or to authorize anyone who is not a party to this Agreement to maintain any suit pursuant to this Agreement for any reason, including, without limitation, any suit for personal injuries or property damage.

F. Standards for Approvals.

1. Unless otherwise specified (such as with the words "sole discretion") wherever this Agreement requires the approval of a party, or any of a party's officers, agents, or employees, such approval shall not be unreasonably withheld, delayed, or conditioned.

2. The City Council for the City of Sparks is the public body whose decisions are legislative functions subject to public hearings and input, and except as otherwise provided herein, they shall have sole and absolute discretion to approve or disapprove any matter submitted to them provided, however, that their decisions are not procured by fraud or bribery, or are arbitrary, capricious, or an abuse of discretion. Whether or not a decision is arbitrary or capricious or an abuse of discretion shall be determined using the standards in Nevada for judicial review of such decisions.

G. Notices; When Deemed Sufficiently Given.

1. Unless otherwise provided herein, formal notices, communications, and demands between the parties must be in writing and must be sent to the addresses stated in Section 3 below or to any address or number subsequently communicated to the sending party in writing. Formal notices must be sent by registered or certified mail, or sent by courier or other hand-delivery, or overnight delivery service (e.g., Federal Express, UPS Overnight, U.S. Postal Priority Mail).

2. Communications other than formal notices may be sent by e-mail, regular mail, or facsimile to the addresses stated below.

3. Notice is effective upon actual receipt by the party or its agent.

To City: Office of City Clerk  
City of Sparks  
431 Prater Way  
Sparks, NV 89431

To Syufy: Syufy Enterprises LP  
150 Pelican Way  
San Rafael, CA 94901  
Attn: CEO

With A Copy To: Syufy Enterprises LP  
150 Pelican Way  
San Rafael, CA 94901  
Attn: General Counsel

H. Further Acts and Assurances; Estoppel Certificates.

1. Each party agrees to do such further acts and things and to execute and deliver to the other such additional certificates, documents, and instruments as the other may reasonably require or deem advisable to carry into effect the purposes of this Agreement or to better assure and confirm unto the other party its rights, powers, and remedies hereunder.

2. Upon request, each party agrees to provide estoppel certificates or other documents indicating the status of this Agreement and whether or not the other party is in default.

I. Attorneys' Fees and Costs. If any party hereto institutes any action or proceeding (including arbitration, if authorized) against the other or others arising out of or relating to this Agreement, attorney's fees and costs shall be awarded to the prevailing party, as determined by the Court (or arbitrator).

J. Timing Provisions. Time is of the essence in the performance of this Agreement. Unless otherwise specified, the term "days" means calendar days. If a deadline falls on a weekend, holiday, or day when the City is not open for business, then performance is due on the first business day of the City thereafter. Unless otherwise specified, performance is due by the later of 5 p.m. local time or close of business of the City on the day it is due.

K. Applicable Law; Jurisdiction and Venue. The laws of the State of Nevada, without regard to conflicts of law principles, shall govern the interpretation and enforcement of this Agreement. All actions brought to enforce this Agreement shall be brought in the Second Judicial District Court for the State of Nevada.

L. Non-liability of Individual Officers or Employees of Parties.

1. No official or employee of City shall be personally liable to Syufy or any successor in interest, in the event of any default or breach by the City, or for any amount which may become due to Syufy or its successor, or as a result of any representation (except any representation regarding the authority to execute this Agreement), warranty or obligation under the terms of this Agreement.

2. No member, official or employee of Syufy shall be personally liable to the City, or any successor in interest, in the event of any default or breach by Syufy, or for any amount which may become due to City or its successors, or as a result of any representation (except any representation regarding the authority to execute this Agreement), warranty or obligation under the terms of this Agreement.

M. Severability.

1. Each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law, taking into account permissible waivers or provisions which may be entered into upon agreement of the parties. If any term or provision of this Agreement or the application thereof shall be deemed by a court of competent jurisdiction to be in violation of law or public policy, then it shall be deemed modified, ipso facto, to bring it within the limits of validity or enforceability, but if it cannot be so modified, then it shall be excised from this Agreement. In any event, the remainder of this Agreement, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected.

2. To prevent windfall or unintended consideration, if any term or provision of this Agreement is deemed invalid or unenforceable or enforceable only to a limited extent, the parties agree to negotiate in good faith to adjust any counter-performance, condition, or corresponding consideration.

N. Construction of Agreement. Titles and headlines of this Agreement are intended for editorial convenience and are not to be construed as a part of this Agreement. The word "include" or "including" is not intended as a limitation and shall be construed to include the words "but not limited to". Any reference to the masculine genders includes, where appropriate in the context, the feminine gender. Any term in the singular includes, where appropriate in the context, the plural. Any reference to any law, document, or contract includes all amendments and changes thereto. If a reference to a numbered provision in this Agreement is incorrect due to typographical or other error, it shall be deemed to be a reference to the correct numbered provision. The parties hereto were each advised by counsel in drafting and negotiating this Agreement, and both parties contributed to its contents. No presumptions against or in favor of either party are appropriate based on who drafted this Agreement or any provision herein.

O. Modifications and Amendments. The parties contemplate that the Project may change as circumstances evolve. Therefore, it is expected that this Agreement may be amended from time to time. However, this Agreement may be modified or amended only in writing and signed by an authorized agent of the party to be bound by the modification or amendment.

P. Authority to Execute and Implement

1. Each party warrants and represents that the person who signs this Agreement on its behalf has the legal capacity to bind such respective party to this Agreement and if signing in a representative capacity, has the actual authority to bind the principal for which he signs and that his signature has the effect of binding the principal.

2. The City Manager for the City or his designee shall have the authority to negotiate and execute all approvals or disapprovals of performance, all schedules and extensions, all waivers, all modifications and amendments to this Agreement, and take all remedial actions authorized by this Agreement, EXCEPT: any contract or expense not otherwise provided in this agreement that binds the City to pay more than \$50,000.

Q. Entire Agreement; Attachments; Counterparts

1. This Agreement (together with attachments and documents incorporated by reference) integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

2. All attachments hereto and/or referred to in this Agreement are incorporated herein as though set forth in full.

3. This Agreement may be executed in counterparts and is deemed duly executed when original signature pages of all parties are executed and delivered.

REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK



IN WITNESS WHEREOF the parties have caused this Agreement to be executed on the dates indicated below.

EXECUTED on the dates indicated:

**City of Sparks**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Geno R. Martini, Mayor

Attest:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
City Clerk

Approved as to form:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
City Attorney

**Syufy Enterprises, LP**

By:  \_\_\_\_\_ Date: 2/14/17

Print Name: Joe Syufy

Its: CEO