

FACILITIES RELOCATION AGREEMENT

This Facilities Relocation Agreement (“**Agreement**”) is entered into by and between Sierra Pacific Power Company, a Nevada corporation, d/b/a NV Energy (“**Utility**”) and City of Sparks, a political subdivision of the State of Nevada, (“**Applicant**”) (individually, a “**Party**” and collectively, the “**Parties**”).

RECITALS

- (A) Utility owns and operates electric transmission and distribution facilities and provides electric service within Nevada, in accordance with Tariff Schedules filed with and approved by the Commission.
- (B) Utility holds certain Property Rights for the Facilities for the operation and maintenance of a portion of its Electric System.
- (C) Applicant and Utility are parties to the Design Initiation Agreement dated September 27, 2013 (“**Design Initiation Agreement**”).
- (D) Applicant proposes to develop the real property commonly known as the North Truckee Drain and further described as being within Assessor’s Parcel Number(s) (“**APN(s)**”) 3417142, 3417116, and 3417133 (the “**Property**”). Because the Development conflicts with the Facilities, Applicant has requested that Utility modify a portion of the Facilities currently located along Larkin Circle (“**Original Location**”). The modification might include a relocation of certain Facilities.
- (E) Utility has determined that, in accordance with Rule 9, other applicable provisions in its Tariff Schedules and this Agreement, it can modify its Facilities.
- (F) Applicant agrees with Utility’s proposed solution and agrees to pay the Total Costs associated with this Agreement.
- (G) Applicant acknowledges that it must follow Utility’s procedures for identifying and resolving conflicts between Applicant’s Development and the Electric System and that Utility will only waive or approve a particular conflict through Utility’s standard use agreement signed by the property owner(s) and Utility, duly notarized, and recorded.

In consideration of the above recitals, mutual covenants, terms and conditions contained in this Agreement, the Parties agree as follows:

AGREEMENT

1. DEFINITIONS

- 1.1 Terms Defined in Rule 1. As used in this Agreement, the following capitalized terms have the meanings ascribed to them in Rule 1: Commission; Customer; Person; Service; and Standards.
- 1.2 Terms Defined in Rule 9. As used in this Agreement, the following capitalized terms have the meanings ascribed to them in Rule 9: Affiliate; Alteration of

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Existing Facilities; Commercially Reasonable Efforts; Construction Complete; Project; Property Rights; Refund; Tax Gross-up; Total Cost True-up; Total Costs.

1.3 Additional Definitions. In addition to the terms defined elsewhere in this Agreement, as used in this Agreement, the capitalized terms below will have the following definitions:

- (A) Agreement: This Facilities Relocation Agreement, consisting of the Terms and Conditions, Exhibit A through Exhibit G, and all amendments to the foregoing.
- (B) Betterment: Any deviation or upgrade to the Project made primarily for the benefit of and at a Party's voluntary election that involves:
 - (1) Facilities in excess of the Minimum Requirements necessary to meet Utility's requirements for an Alteration of Existing Facilities; or
 - (2) An alternate route for the facilities as set forth in Rule 9, Section A.5.
- (C) Civil Improvement Plans: Applicant's grading, detail, utility, and traffic drawings for the Development attached as Exhibit D to this Agreement.
- (D) Development: Applicant's project commonly known as the North Truckee Drain and generally located on all or a portion of the Property.
- (E) Effective Date: The date this Agreement is last signed below.
- (F) Electric System: Utility's underground and/or above-ground communication facilities, substation facilities and electric line systems for the distribution and transmission of electricity.
- (G) Facilities: Utility's existing 25 kV electric line systems for the distribution of electricity.
- (H) Force Majeure Event: An event or condition that is beyond the affected Party's control, occurs without the fault or negligence of the affected Party and renders Project performance impossible or impractical. Force Majeure may include, but is not limited to, government agency orders, war, riots, acts of terrorism, civil insurrection, fires, floods, earthquakes, epidemics, weather, strikes, lock-outs, work stoppages and other labor difficulties.
- (I) Hazardous Material: Any product, substance, chemical, material or waste whose presence, nature, quantity or intensity of existence, use, manufacture, disposal, transportation, spill, release or effect, either by itself or in combination with other materials is either: (1) potentially

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injurious to the public health, safety or welfare, or the environment; (2) regulated or monitored by any governmental authority; or (3) a basis for potential liability to any governmental agency or third party under any applicable Permit or Law.

- (J) In-Service Date: The date on which all modified Facilities are operational, having passed all required testing as part of Utility's Electric System, as determined by Utility in its discretion.
- (K) Law: Any federal, state, or local code, ordinance, rule, statute, enactment, regulation, or order. Any specific reference to a Law in this Agreement refers to the Law as amended from time to time unless otherwise specified.
- (L) Permit: Any applicable approval, permit, consent, waiver, exemption, variance, franchise, order, authorization, right, action, or license required from any federal, state, or local governmental authority, agency, court or other governmental body having jurisdiction over the matter in question which is necessary for the Parties to perform their obligations under this Agreement and under the applicable Laws. Any specific reference to a Permit in this Agreement refers to the Permit as amended from time to time unless otherwise specified.
- (M) Plan and Profile: Utility's Project design showing the modifications to the Facilities. The Plan and Profile approved by the Parties is attached to this Agreement as Exhibit E.
- (N) Project Manager: The individual appointed by each Party to serve as the single point of contact for all issues relating to the Agreement.
- (O) Rule 1: Utility's Electric Service Rule No. 1, Definitions. Rule 1 is part of the Tariff Schedules.
- (P) Rule 9: Utility's Electric Service Rule No. 9, Electric Line Extensions. Rule 9 is part of the Tariff Schedules.
- (Q) Tariff Schedules: The entire body of effective rates, charges, and rules, collectively, of Utility as set forth in its rate schedules and rules for electric Customers, as those rates, charges, and rules are amended from time to time.
- (R) Terms and Conditions: Section 1 through Section 16, inclusive, hereof.
- (S) Third-Party Attachments: Those attachments that are attached to or co-located with the Facilities.

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2. PROJECT SCOPE

- 2.1 Utility's Scope of Work. Utility will, at Applicant's Total Cost, perform (or cause to be performed) the following:
- (A) Perform engineering, survey, design and construction work in connection with the Project in accordance with Exhibit E.
 - (B) Perform any additional research of Property Rights and prepare any additional Property Rights documents that Utility, in its discretion, determines are necessary in connection with the Project.
 - (C) Procure equipment and materials to complete the Project.
 - (D) Remove one (1) pole and riser.
 - (E) Remove 35 circuit feet (+/-) of primary overhead conductor, and 901 circuit feet (+/-) of primary underground conductor.
 - (F) Install 260 circuit feet (+/-) of primary overhead conductor, 530 circuit feet (+/-) of underground primary conductor and one (1) pole and anchor.
 - (G) Perform other work Utility determines is necessary to complete the relocation work.
 - (H) Provide notice to third parties that they must remove their Third-Party Attachments from certain Facilities.
- 2.2 Applicant's Scope of Work. In addition to other obligations identified in this Agreement, Applicant must (at no expense to Utility) coordinate relocation of Third-Party Attachments with the third parties. However, Utility will provide initial notice in accordance with Section 2.1(H).
- 2.3 [INTENTIONALLY OMITTED]

3. PLAN AND PROFILE DEVELOPMENT

- 3.1 Preparing Plan and Profile. Based on information provided by Applicant and in accordance with Utility's Standards, Utility prepared the Plan and Profile attached as Exhibit E. Applicant approved the Plan and Profile attached as Exhibit E.
- 3.2 Modifying Plan and Profile. Notwithstanding Section 16.9, Utility may (in its discretion) modify Exhibit E. This modified Plan and Profile will replace the Plan and Profile attached as Exhibit E on the Effective Date. Utility will provide Applicant with a copy of the modified Plan and Profile for informational purposes only.
- 3.3 Ownership of Design. Applicant acknowledges and agrees that if Utility produces (or causes to be produced) any drawing or design in connection with this Agreement (such as the Plan and Profile or a modified Plan and Profile), Utility is

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and will be the sole and exclusive owner of all right, title and interest to, including all intellectual property rights in and to, that design (including that which may qualify as “works for hire”) under United States copyright law and comparable laws worldwide – whether or not that design was developed by Utility individually or jointly with Applicant. Any design associated with the Project is deemed Utility’s proprietary information and Applicant will protect this information as required by Utility.

- 3.4 Disclaimer of Warranty(ies). With respect to the Plan and Profile (and any modified Plan and Profile) and unless expressly stated otherwise in this Agreement, UTILITY MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AND EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES, including any implied warranty of merchantability or fitness for a particular purpose.

4. CIVIL IMPROVEMENT PLAN DEVELOPMENT

- 4.1 Civil Improvement Plans – General Requirements. Applicant must use a professional engineer, licensed in the State of Nevada, to prepare, sign, and affix stamps to the Civil Improvement Plans. These drawings must show Facilities placement and identify adequate safety measures for the protection of the Facilities and the public in accordance with Utility’s Standards.
- 4.2 Submitting Civil Improvement Plans to Utility. Within thirty (30) days of the date of execution of this Agreement and before continuing with (or beginning) any work, entering or encroaching onto Utility’s Property Rights, or working near the Facilities, Applicant must submit its final Civil Improvement Plans to Utility for review and written comment. Applicant must correct all deficiencies identified by Utility.
- 4.3 Utility Approval Notice. Within five (5) business days after Utility approves the location of the modified Facilities in relation to the improvements identified on the Civil Improvement Plans initially submitted to them by Applicant, Utility will send Applicant written notice that approval (“**Approval Notice**”).
- 4.4 Submitting Civil Improvement Plans to Governmental Entity(ies). After Utility sends Applicant the Approval Notice, Applicant must submit the Civil Improvement Plans to the appropriate governmental entity(ies) for review and approval and must obtain written authorization by the governmental entity(ies) permitting road closures for maintenance and construction and as otherwise required.
- 4.5 Revisions to Civil Improvement Plans; Additional Approvals Required. Before submitting revisions to the Civil Improvement Plans to the appropriate government authority(ies) for approval, Applicant must submit all changes to the Civil Improvement Plans to Utility for review and comment. Applicant must correct all deficiencies identified by Utility. Within five (5) business days after

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Utility approves the location of the modified Facilities in relation to the improvements identified on the revised Civil Improvement Plans, Utility will notify Applicant of that approval or that no comment is required by Utility.

5. PROJECT SCHEDULE

- 5.1 Project Schedule. Utility will use Commercially Reasonable Efforts to complete the Project substantially in accordance with the Project schedule attached to this Agreement as Exhibit C (“Schedule”) but failure to meet any scheduled date is not a Utility event of default. Applicant acknowledges that Project completion and the In-Service Date are subject, without limitation, to the following:
- (A) Scheduling of required electrical outages, which may be limited by Electric System operational and maintenance requirements, including such things as restrictions against scheduled line outages on the electric power system as determined by Utility in its discretion;
 - (B) Utility’s obligations to its other Customers to ensure the reliability and safety of its Electric System and to adhere to applicable reliability criteria;
 - (C) Applicant paying invoices for the Total Costs (and associated Tax Gross-up) in a timely manner;
 - (D) All Permits being obtained;
 - (E) Utility receiving all Property Rights in accordance with Section 6;
 - (F) Applicant completing any remediation obligations in accordance with Section 10.4; and
 - (G) Favorable weather conditions.
- 5.2 Modification of Schedule. Each Party must promptly provide written notice to the other of any change in the Schedule or any factor that is delaying or threatens to delay the Schedule. Utility may, in its discretion, provide a modified Schedule to Applicant. If Utility provides Applicant with a modified Schedule, then (notwithstanding Section 16.9) this modified Schedule will replace all previously issued Schedules.
- 5.3 Expediting Schedule. Applicant, at its Total Cost, may request that Utility use Commercially Reasonable Efforts to expedite the Project In-Service Date.

6. SITE ACCESS, INFORMATION REQUESTED BY UTILITY, PROPERTY RIGHTS, AND APPLICABLE PERMITS

- 6.1 Access on Applicant’s Property. Applicant must permit Utility access to, over, and across any real property owned or controlled by Applicant, as Utility deems necessary for the purposes of carrying out this Agreement.

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- 6.2 Applicant's Obligation to Provide Information to Utility. Applicant acknowledges that Utility relies on information provided by Applicant when performing Utility's obligations under this Agreement. Applicant acknowledges that it has a continuing obligation to meet with Utility at its request and provide the most current and accurate information concerning Applicant's Development to Utility. In addition to providing the information required by Rule 9, Subsection A.2.c (if any) and, within ten (10) days of Utility's written request, Applicant must provide information and documentation requested by Utility, such as information and documentation relating to the Development, the Civil Improvement Plans, the amount(s) Applicant paid, if any, for third-party Property Rights and the actual cost of any other Applicant-non-cash contributions to Utility.
- 6.3 Obligation to Acquire and Convey Property Rights. Applicant must, without expense to Utility, grant and convey to Utility (or use Commercially Reasonable Efforts to obtain for Utility) all Property Rights that Utility deems it requires in a manner that is satisfactory to Utility as to type, location and form (including, but not limited to, the dimensions of the Property Rights area and terms and conditions relating to the Property Rights). In Utility's discretion and at Applicant's Total Cost, Utility may obtain an appraisal(s) of the Property Rights. If Applicant cannot obtain one or more Property Rights, Utility (at Applicant's Total Cost) will, if permitted by Law, acquire those Property Rights so that they are satisfactory to Utility as to type, location and form (including, but not limited to, the dimensions of the Property Rights area and terms and conditions relating to the Property Rights).
- 6.4 Condition Precedent to Commence Construction. Utility is not obligated to commence any construction or removal work in connection with the Project until after the Property Rights are granted to Utility in a manner that is satisfactory to Utility as to type, location and form (including, but not limited to, the dimensions of the Property Rights area and terms and conditions relating to the Property Rights) and until after Utility obtains all Permits.
- 6.5 Permits for the Project.
- (A) Obtaining Permits. Utility will obtain all Permits that it deems necessary for, or incidental to, the construction and continued operation and maintenance of the Project.
 - (B) Providing Assistance with Permits. Applicant must provide reasonable assistance, as Utility may request, to obtain these Permits. Applicant's support may include such things as writing letters of support to the applicable governmental authorities, speaking on behalf of Utility at

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hearings at Utility's request and other actions reasonably requested to assist Utility in obtaining necessary governmental authorizations.

7. TOTAL COST RESPONSIBILITY; PURCHASE ORDER; PAYMENT; INVOICING; ACCOUNTING

7.1 Responsibility for Total Costs.

- (A) General Obligation. Applicant is responsible for the Total Costs and the associated Tax Gross up relating to Design preparation and other activities Utility performs in connection with this Agreement.
- (B) Purchase Order. When delivering the signed Agreement to Utility, Applicant must (in Utility's discretion) either pay Utility the Estimated Cost or deliver a purchase order to Utility in the amount of the Estimated Cost
- (C) Increasing Purchase Order. At any time after Utility accepts a purchase order, Utility may send Applicant a written request to increase the purchase order. Within thirty (30) days after the date identified on that request, Applicant must deliver the modified purchase order to Utility.

7.2. Estimated Cost. The estimated Total Costs and associated Tax Gross-up are \$92,021.00 ("**Estimated Cost**"). The actual Total Costs might be more or less than the Estimated Cost and it is possible that not all Total Costs are identified on Exhibit B; however, Applicant is required to pay the actual Total Costs and associated Tax Gross-up in accordance with Rule 9. Utility is not obligated to perform or continue performing any work in connection with this Agreement until after Applicant delivers the signed Agreement to Utility and pays Utility the Estimated Cost or delivers a purchase order to Utility in accordance with Section 4.1(B). If Utility agreed to accept a purchase order from Applicant, Utility will invoice Applicant against that purchase order for the Estimated Cost and then periodically invoice Applicant in connection with this Agreement.

7.3. Performance of Total Cost True-Up. Utility will perform the Total Cost True-up in accordance with Rule 9, Section A.31 and either invoice Applicant in accordance with Rule 9, Section A.33.a or provide a Refund. In accordance with Rule 9, Section A.31, Utility might send Applicant an invoice(s) or Refund for Total Cost items that were finalized or became known after the original Total Cost True-up. For purposes of this Agreement, the Project is Construction Complete on the In-Service Date.

7.4. Payment of Invoices. Applicant must pay Utility's invoices within sixty (60) days of receipt. If mailed, Utility's invoices are deemed received by Applicant three (3) days after the invoice date. When making a payment, Applicant must follow the instructions on the particular invoice.

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- 7.5. Work Stoppage for Non-Payment or Failure to Deliver Increased Purchase Order. If Utility does not receive timely payment of an invoice or if Applicant does not deliver a modified purchase order to Utility before the 30-day period identified in Section 7.1(C) expires, Utility (in its discretion, without liability to Applicant and at Applicant's Total Cost) may stop some or all work on the Project, complete the Project and/or move the Facilities that have been (or are partially) modified back to the Original Location in accordance with Utility's Standards.
- 7.6. Interest. Any amount unpaid and due by Applicant under this Agreement will accrue interest at the then current per annum simple prime rate, as published in the Market Data section of the Wall Street Journal, plus one percent (1%), from the original due date through the date of receipt of payment by Utility. However, Utility will not pay Applicant any interest on the amount of any payment made in connection with this Agreement.
- 7.7. Applicant's Obligation to Pay Tax Gross-Up. If Utility underestimates the Tax Gross-up or does not include an amount for Tax Gross-up and the Internal Revenue Service later determines that Utility – because of the modifications to the Electric System – is subject to such tax liability, Applicant must pay Utility the Tax Gross-up, including interest and penalties. The Tax Gross-up rate is the one in effect in Rule 9 (as amended) on the date the Project is Construction Complete. The estimated Tax Gross-up (as of January 16, 2014) is \$23,270.00.
- 7.8. [INTENTIONALLY OMITTED]

8. DEFAULT, TERM, AND OBLIGATIONS SURVIVING TERMINATION

8.1 Default.

- (A) Procedure. If a Party fails to comply with the terms and conditions of this Agreement (“**Defaulting Party**”), within ten (10) days of receiving written notice of such failure from the other Party (“**Non-Defaulting Party**”), the Defaulting Party and Non-Defaulting Party must meet and cooperate in good faith to expedite a solution of the breach. If no solution is reached and the failure continues for thirty (30) days after the meeting between the Defaulting Party and Non-Defaulting Party (or after this meeting was scheduled to occur), then the Non-Defaulting Party is entitled to declare the Defaulting Party in default and is entitled to all remedies authorized by Law, with the exception that Utility's failure to achieve any scheduled date that is dependent on Applicant's or a third-party's performance is not an event of default.
- (B) Notice to Utility's Legal Department. In addition to sending written notice to Utility's Project Manager, Applicant must also send a copy of any notice required under this Section to Utility's Legal Department at the address specified in the “Notices” Section of this Agreement.

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- 8.2. Term of Agreement. This Agreement is effective on the Effective Date and, unless terminated earlier under this Agreement, terminates five (5) years from the Effective Date.
- 8.3. Termination of Project by Applicant or Mutual Agreement. Applicant may terminate the Project with prior written notice to Utility. If Applicant terminates the Project, this Agreement will terminate thirty (30) days after Utility receives that termination notice unless Applicant identifies a later date in its written notice to Utility. If the Parties mutually agree to terminate the Project, the Parties will document that in writing and specify the date this Agreement terminates.
- 8.4. Duty to Mitigate.
- (A) Taking Reasonable Actions to Mitigate Total Costs. At Applicant's Total Cost, the Parties must take all reasonable actions to minimize the Total Costs associated with Agreement termination. These actions may include, but are not limited to, such things as stopping some or all Project work, completing the Project, moving the Facilities that have been (or are partially) modified back to the Original Location in accordance with Utility's Standards, acquiring Property Rights through condemnation, and dismissing condemnation lawsuits, if any. An action is not reasonable if it inhibits, prevents or otherwise negatively impacts Utility's ability to provide electric service to its Customers – as determined by Utility in its discretion.
- (B) Applicant's Obligation to Resolve Conflicts. If Utility moves the Facilities that have been (or are partially) modified back to the Original Location, Applicant must follow Utility's procedures for identifying and resolving conflicts between its Development and the Electric System. Applicant acknowledges that it might incur additional Total Costs and expenses, such as further revising its Civil Improvement Plans, submitting those plans to Utility for review and comment, obtaining approval of those plans from the governmental entity(ies), relocating improvements on its property, and modifying the Facilities.
- 8.5. Obligations Surviving Default or Termination. Any default or termination of this Agreement or excuse of performance due to a Force Majeure Event or otherwise does not release Applicant from any liability or obligation to Utility for:
- (A) Paying the Total Costs and associated Tax Gross-up, whether incurred before or after excuse of performance or a Party's default or termination, and paying all Total Costs and associated Tax Gross-up that result from excuse of performance, termination or Applicant's default;
- (B) Applicant's obligations under Section 4.6;

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- (C) Applicant's obligations under Section 6;
- (D) Applicant's obligations under Section 7.7;
- (E) Applicant's obligations under Section 10.3;
- (F) Applicant's obligations under Section 11;
- (G) Applicant's obligations under Section 12; and
- (H) Applicant's obligations under Section 13.

The provisions of Section 7.4, Section 7.6, Section 7.7, Section 15, Section 16.1, Section 16.4, Section 16.5, and Section 16.19 continue to apply to this Section.

9. FORCE MAJEURE (EXCUSABLE DELAY)

- 9.1 Notice of Force Majeure Event. If a Force Majeure Event occurs or is anticipated, the affected Party must promptly notify the other Party in writing of the Force Majeure Event. This notice must include a description, cause and estimated duration of the Force Majeure Event. Regardless of the cause, Applicant's failure or inability to pay some or all of the Total Costs is not a Force Majeure Event.
- 9.2 Duty to Mitigate Effects of Delay. The affected Party must exercise Commercially Reasonable Efforts to shorten, avoid, and mitigate the effects of the Force Majeure Event.
- 9.3 Notice of Resumption of Performance. The affected Party must promptly notify the other Party in writing when the Force Majeure Event has ended and when performance will resume.
- 9.4 Liability; Termination Option. Utility is not liable to Applicant for Total Costs incurred as a result of any delay or failure to perform as a result of a Force Majeure Event. In accordance with Rule 9, Section A.27.c.4 and with prior written notice to Applicant, Utility may terminate the Agreement without liability to Applicant provided Utility, in consultation with Applicant, first determines the Force Majeure Event renders Project performance impossible or impractical.
- 9.5 Notice to Utility's Legal Department. In addition to sending notices required under this "Force Majeure" Section to Utility's Project Manager, Applicant must also send a copy of all required notices to Utility's Legal Department at the address specified in the "Notices" Section of this Agreement.

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10. HAZARDOUS MATERIALS

- 10.1 Work Suspension; Notifying Applicant. Upon discovery of a Hazardous Material or otherwise contaminated soil, water or environment at the work site, Utility will stop work and immediately notify Applicant's Project Manager of the unacceptable site condition ("USC").
- 10.2 Notifying Governmental Authority. When required by Law as determined by Utility, Utility will notify the appropriate governmental authority(ies), such as but not limited to the Nevada Division of Environmental Protection, (collectively, "NDEP") of the USC.
- 10.3 Remediation or Termination. At its option, Applicant may either remediate the USC at its Total Cost or terminate the Agreement. Within fifteen (15) business days after the date identified on Utility's Section 10.1 notice, Applicant must provide Utility with written notice of its decision to remediate or terminate ("**Section 10.3 Notice**"). If Applicant does not provide Utility with this notice in a timely manner, then Utility (without liability to Applicant) may terminate the Agreement. Even if Applicant or Utility terminates this Agreement, Applicant is responsible for paying all Total Costs and expenses associated with the discovery of a USC in the course of Utility's scope of work and any required remediation so that Utility does not bear any Total Costs and expenses in connection with the foregoing.
- 10.4 Remediation Requirements. If Applicant decides to remediate the USC, Applicant must remediate the USC in accordance with Subsection (A) or Subsection (B), as applicable.
- (A) Remediation When NDEP Involvement Is Required. Within twenty-one (21) days after providing Utility with Section 10.3 Notice, Applicant must develop a corrective action plan ("**Corrective Action Plan**"), submit the Corrective Action plan to the NDEP, and provide a copy of the Corrective Action Plan to Utility. After receiving written approval of the Corrective Action Plan from the NDEP, Applicant must complete remediation the earlier of (1) the date specified in the Corrective Action Plan or (2) within sixty (60) days of the date specified on that written approval from the NDEP. Promptly after completing remediation of the USC, Applicant must notify Utility in writing that Applicant believes remediation is complete. Applicant's obligation to remediate the USC is not complete until after Applicant obtains a "no further action letter," "closure letter" or similar letter from the NDEP.
- (B) Remediation When NDEP Involvement Is Not Required. With respect to the USC that Utility has identified in its notice to Applicant under Section 10.1 but that does not require notification to NDEP as determined by

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Utility and within twenty-one (21) days after providing Utility with Section 10.3 Notice, Applicant must develop a remediation plan (“**Remediation Plan**”) and provide a copy of the Remediation Plan to Utility for review and concurrence. Applicant must complete remediation of the USC within sixty (60) days of developing the Remediation Plan. If the remediation work cannot be completed within the 60-day period and Applicant is using Commercially Reasonable Efforts to accomplish the remediation, the period for performing the remediation work will be extended until remediation is completed. But remediation must be completed within six (6) months of the date identified on the Section 10.3 Notice. Promptly after completing remediation, Applicant must notify Utility in writing that Applicant believes remediation is complete. Applicant’s obligation to remediate the USC is not complete until after Applicant obtains a “no further action letter,” “no further requirement letter” or similar correspondence from a State of Nevada Certified Environmental Manager, who is approved by Utility.

11. **IDENTIFICATION AND RESOLUTION OF CONFLICTS; COSTS ASSOCIATED WITH CONFLICTS**

- 11.1 **Identification of Conflicts.** Applicant must identify, in writing and in a manner satisfactory to Utility, all conflicts between (A) the Development and the Electric System located within the Property, (B) the Development and the Electric System located within or adjacent to any off-site improvements required for the Development, (C) the Development and the Electric System located adjacent to the Property, and (D) the Development and Utility’s Property Rights within and adjacent to the Property.
- 11.2 **Resolution of Conflicts with the Electric System and Payment of Costs.** If Applicant, its contractors or its subcontractors damage, have damaged, render unsafe or have rendered unsafe the Electric System located within or adjacent to the Development or to the offsite improvements required for the Development, Applicant must (A) pay all costs to render those facilities safe, to relocate the facilities impacted, and to construct any new facilities needed and (B) provide or obtain Property Rights in Utility’s name for the relocated facilities and/or new facilities, at no cost to Utility and in a location and form satisfactory to Utility (including but not limited to the type of Property Rights, the dimensions of the Property Rights area, and terms and conditions of the Property Rights).
- 11.3 **Resolution of Conflicts with Utility’s Property Rights and Payment of Costs.** If Applicant, its contractors, or its subcontractors interfered with Utility’s Property Rights, Applicant must (A) pay all costs incurred by Utility that are associated with the interference and (B) either remove the interference and return the Property Rights area to a condition that is usable by Utility or provide or obtain

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replacement Property Rights in Utility's name, at no cost to Utility and in a location and form satisfactory to Utility (including but not limited to the type of Property Rights, the dimensions of the Property Rights area, and terms and conditions of the Property Rights).

12. CONFIDENTIALITY

- 12.1 Exchanging Information. Utility might provide Applicant with information to be used in complying with the Agreement. Some or all of this information, including, but not limited to, oral information, documents, supplier information, files, drawings, and data, might be confidential.
- 12.2 Labeling Information Confidential. If Utility wants information to be treated as confidential, Utility must label the written information as "CONFIDENTIAL" or inform Applicant that non-written information requires confidential treatment ("**Confidential Information**").
- 12.3 Procedures for Protection of Confidential Information. To the extent allowed by Law, Applicant must keep all information designated as "Confidential Information" strictly confidential and not disclose any Confidential Information to any Person except as expressly provided in these procedures or as otherwise approved in writing in advance by Utility. Applicant must establish commercially reasonable procedures designed to maintain the confidentiality of Confidential Information, which procedures must include, but are not limited to:
- (A) Not permitting or making any copies of, or otherwise duplicating, any Confidential Information; and
 - (B) Keeping all Confidential Information obtained or possessed by Applicant in a secure location.
- 12.4 Return or Destruction of Confidential Information. Upon Utility's request, Applicant must promptly either return to Utility, or certify the destruction of, all Confidential Information that Applicant received, together with all copies, excerpts, notes and documents derived or generated from the Confidential Information.
- 12.5 Sharing Confidential Information. Applicant may disclose Confidential Information to its Affiliates, attorneys, consultants, contractors and subcontractors (individually, "**Other Party**" and, collectively, "**Other Parties**"); provided, however, Utility approves disclosure to the Other Party in writing in advance. Applicant will ensure that these Other Parties abide by the terms of this "Confidentiality" Section. Utility reserves the right to refuse to approve or agree to the disclosure of Confidential Information to any Person.
- 12.6 Request for Confidential Information Through Legal Process. Notwithstanding anything to the contrary in this "Confidentiality" Section, if Applicant is

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requested by a third party or might be legally compelled to disclose Confidential Information, to disclose excerpts, notes or documents derived or generated from the Confidential Information, or to disclose discussions regarding the Confidential Information, it must provide Utility with immediate written notice, as soon as practicable in the circumstances, after Applicant learns that a disclosure is requested or may be compelled, so that Utility may seek a protective order, injunction, or any other remedy. The written notice must identify with particularity the Confidential Information that is the subject of the request or for which disclosure may be compelled. If a protective order, injunction, or other remedy is not obtained, Applicant will furnish only that portion of the Confidential Information that Applicant is legally required to disclose. Applicant will cooperate with Utility's counsel, at Applicant's Total Cost, if Utility seeks to obtain a protective order, injunction, or other remedy or other reliable assurance that confidential treatment will be accorded the Confidential Information.

- 12.7 Rights and Limitations. Utility does not grant any right or license, by implication or otherwise, to Applicant as a result of Utility's disclosure or discussion of Confidential Information. Utility makes no representation or warranties regarding the accuracy or completeness of this information. Applicant expressly recognizes that this information is provided "AS IS, with all faults" and Utility makes NO WARRANTIES, EXPRESS OR IMPLIED STATUTORY OR OTHERWISE, WITH RESPECT TO THE CONFIDENTIAL INFORMATION AND EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES.

13. INSURANCE AND INDEMNIFICATION

- 13.1 Insurance. Applicant must procure and maintain in effect and provide, and cause its contractors and subcontractors who are performing work in the Work Area (defined below) to procure and maintain in effect, the insurance coverages set forth in Exhibit G until after all conflicts between the Facilities and the Development are resolved to Utility's satisfaction and until after Applicant's contractors and subcontractors have completed their work in the Work Area. The "Work Area" means the Development, all areas within 300 feet of the Facilities and all areas within 300 feet of the future modified Facilities. This insurance requirement does not apply to Applicant if Applicant, its contractors and its subcontractors are not performing any work in the Work Area. The requirements of this "Insurance" Section are not intended to and will not in any manner limit or qualify the liabilities and obligations of Applicant under this Agreement.

- 13.2 [INTENTIONALLY OMITTED]

14. REPRESENTATIONS

- 14.1 Utility's Standing in Nevada. Utility represents that, as of the date of this Agreement, it is duly organized, validly existing and in good standing under the

FACILITIES RELOCATION AGREEMENT

laws of the State of Nevada with the valid corporate power to enter into and perform all of its obligations under this Agreement.

- 14.2 Applicant's Standing in Nevada. Applicant represents that, as of the date of this Agreement, it is duly organized and validly existing under the laws of the State of Nevada and has valid governmental power to enter into and perform all of its obligations under this Agreement.
- 14.3 Authority. Each Party has taken all actions as may be necessary or advisable and proper to authorize this Agreement, the execution and delivery of it, and the performance contemplated in it. The individuals executing this Agreement state and acknowledge that they are authorized and empowered to do so on behalf of the Party so designated.

15. NOTICES

- 15.1 Method of Delivery; Contacts. Each notice, consent, request, or other communication required or permitted under this Agreement must be (A) in writing, (B) delivered personally, sent by facsimile, sent by certified mail (postage prepaid, return receipt requested) or sent by a nationally recognized courier and (C) addressed to the Party's Project Manager as identified in Exhibit A.
- 15.2 Notice to Utility's Legal Department. For any notice given by Applicant to Utility under Section 8.1, Section 8.3, Section 9, Section 12.6 or Rule 9, Section A.28, Applicant must also send a copy to Utility's Legal Department at the following:
- NV Energy
Attn: Legal Department
6226 West Sahara Avenue, M/S 3A
Las Vegas, Nevada 89146
Facsimile No.: (702) 402-2069
- 15.3 Reference to Agreement Number. Applicant must include a reference to Agreement number 14-00004 in any notice to Utility.
- 15.4 Receipt of Notice; Change of Information. Each notice, consent, request, or other communication required or permitted under this Agreement will be deemed to have been received by the Party to whom it was addressed (A) when it is delivered if it is delivered personally; (B) on the first business day after the facsimile transmission is sent if it is delivered by facsimile; (C) on the third business day after it is mailed if it is mailed by certified mail; or (D) on the date the courier officially records it as having been delivered if it is delivered by a courier. Each Party may change its contact information for purposes of the Agreement by giving written notice to the other Party in the manner set forth above.

FACILITIES RELOCATION AGREEMENT

16. MISCELLANEOUS PROVISIONS

- 16.1 Utility's Tariff Schedules; Commission. This Agreement is made by the Parties pursuant to Utility's Tariff Schedules. Those Tariff Schedules apply to this Agreement, are binding on the Parties and supersede any portion of this Agreement should a conflict arise. However, Rule 9 is the version in effect on the Effective Date unless otherwise specified. Notwithstanding Section 16.9, this Agreement is, at all times, subject to such changes or modifications by the Commission as the Commission may from time to time direct in the exercise of its jurisdiction. This Section survives default, expiration, or termination of this Agreement or excuse of performance.
- 16.2 Integration. This Agreement, together with all other written contracts executed with the same formality as this instrument directly in connection with the Project such as the Design Initiation Agreement, represent the entire and integrated agreement between Utility and Applicant and supersede all prior and contemporaneous oral and written communications, representations, and agreements relating to the subject matter of this Agreement.
- 16.3 Assignment. Applicant may not assign this Agreement or any rights under it without Utility's prior written consent, which Utility will not unreasonably withhold, and any attempted assignment without such consent will be void. However, no assignment is effective until after (A) the assignee agrees in a writing acceptable to Utility to assume all obligations and liabilities under this Agreement, whether arising before or after the assignment, and (B) all other requirements in Rule 9, Section A.19 are complied with, including but not limited to Applicant agreeing (in Utility's discretion and in a writing acceptable to Utility) to continuing liability in connection with obligations identified by Utility.
- 16.4 Limitation of Damages. Notwithstanding anything to the contrary, Utility is not liable to Applicant for any consequential, indirect, exemplary or incidental damages, including, but not limited to, damages based upon delay, lost revenues or profits. This Section survives default, expiration, or termination of this Agreement or excuse of performance.
- 16.5 Choice of Law and Venue. This Agreement is governed by and will be construed in accordance with the laws of the State of Nevada, without giving effect to its choice or conflicts of law provisions. All actions that are beyond the scope of the Commission's jurisdiction must be initiated in the courts of Washoe County, Nevada or the federal district court with jurisdiction over Washoe County, Nevada. The Parties agree they will not initiate an action against each other in any other jurisdiction.
- 16.6 No Waiver. The failure of either Party to enforce any of the provisions of this Agreement at any time, or to require performance by the other Party of any of the

FACILITIES RELOCATION AGREEMENT

provisions of this Agreement at any time, will not be a waiver of any provisions, nor in any way affect the validity of this Agreement, or the right of any Party to enforce each and every provision.

- 16.7 Independent Contractor. Neither Applicant nor Utility is, nor will they be deemed to be, for any purpose, the agent, representative, contractor, subcontractor or employee of the other by reason of this Agreement. Nothing in this Agreement or any contract or subcontract by Applicant will create any contractual relationship between Applicant's employee, agent, contractor or subcontractor and Utility.
- 16.8 Interpretation. Each Party to this Agreement acknowledges that it has carefully reviewed this Agreement and that each fully understands and has participated in drafting its provisions, and, accordingly, the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party are not to be employed or used in any interpretation of this Agreement.
- 16.9 Amendments. Any changes, modifications, or amendments to this Agreement are not enforceable unless consented to in writing by the Parties and executed with the same formality as this Agreement.
- 16.10 No Third-Party Beneficiaries. Nothing expressed or implied in this Agreement is intended, or should be construed, to confer upon or give any Person not a party to this Agreement, such as a Party's contractors, any third-party beneficiary rights, interests, or remedies under or by reason of any term, provision, condition, undertaking, warranty, representation, or agreement contained in this Agreement.
- 16.11 Remedies. All rights and remedies of a Party provided for in this Agreement will be cumulative and in addition to, and not in lieu of, any other remedies available to a Party at law, in equity, or otherwise.
- 16.12 Headings; Exhibits; Cross References. The headings or section titles contained in this Agreement are used solely for convenience and do not constitute a part of this Agreement, nor should they be used to aid in any manner in the construction of this Agreement. All exhibits attached to this Agreement are incorporated into this Agreement by reference. All references in this Agreement to Sections, Subsections, and Exhibits are to Sections, Subsections, and Exhibits of or to this Agreement, unless otherwise specified. And, unless the context otherwise requires, the singular includes the plural and the plural includes the singular and the neuter includes feminine and masculine.
- 16.13 Discretion. Reference in this Agreement to the "discretion" of a Party means the Party's sole and absolute discretion. Such discretion is not subject to any external standard, including, but not limited to, any standard of custom or reasonableness.
- 16.14 Severability. If any portion or provision of this Agreement is invalid, illegal, or unenforceable, or any event occurs that renders any portion or provision of this

FACILITIES RELOCATION AGREEMENT

Agreement void, the other portions or provisions of this Agreement will remain valid and enforceable. Any void portion or provision will be deemed severed from this Agreement, and the balance of this Agreement will be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The Parties further agree to amend the Agreement to replace any stricken portion or provision with a valid provision that comes as close as possible to the intent of the stricken portion or provision.

- 16.15 Counterparts. The Parties may execute this Agreement in counterparts. Each of these counterparts, when signed and delivered, is deemed an original and, taken together, constitutes one and the same instrument. A facsimile or email copy of a signature has the same legal effect as an originally-drawn signature.
- 16.16 Performance of Acts on Business Days. Any reference in this Agreement to time of day refers to local time in Nevada. All references to days in this Agreement refer to calendar days, unless stated otherwise. Any reference in this Agreement to a “business day” refers to a day that is not a Saturday, Sunday or legal holiday (or observed as a legal holiday) for Nevada state governmental offices under the Nevada Revised Statutes. If the final date for payment of any amount or performance of any act required by this Agreement falls on a Saturday, Sunday or legal holiday, that payment is required to be made or act is required to be performed on the next business day.
- 16.17 No Obligation to Provide Service to Development. Utility does not have an obligation to provide Service to Applicant’s Development until after (A) Applicant resolves all conflicts between the Development and Utility’s transmission and distribution facilities, at Applicant’s Total Cost and to Utility’s satisfaction, (B) Applicant resolves all conflicts between the Development and Utility’s Property Rights, at Applicant’s Total Cost and to Utility’s satisfaction, (C) pays the Total Cost in accordance with Section 7 and (D) Applicant satisfies all of its other obligations under this Agreement. If Applicant requires Service for its Development and Utility must modify its Electric System in order to provide the requested Service, Applicant must follow Utility’s procedures and enter into a separate contract for that Service.
- 16.18 [INTENTIONALLY OMITTED]
- 16.19 Jury Trial Waiver. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN

FACILITIES RELOCATION AGREEMENT

WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL
CANNOT BE OR HAS NOT BEEN WAIVED.

[signature page follows]

FACILITIES RELOCATION AGREEMENT

UTILITY:

Sierra Pacific Power Company d/b/a NV Energy

By: _____
Mike Ginsburg
Supervisor, Distribution Design Services

Date: _____

APPLICANT:

City of Sparks

By: _____
Geno Martini
City of Sparks Mayor

Date: _____

ATTEST:

By: _____
Teresa Gardner
City Clerk

APPROVED as to form:

By: _____
Chet Adams
City Attorney

Utility Agreement No: 14-00004/20958
FRA_GV
North Truckee Drain
PWP WA-2014-011
(rev. 12/2013)

FACILITIES RELOCATION AGREEMENT

Exhibit A Agreement Contacts

Utility (Sierra Pacific Power Company d/b/a NV Energy)	
Address	1 Ohm Place Reno, NV 89502
Mailing Address	P.O. Box 10100, M/S R77CSE Reno, NV 89520
Project Manager	Toni Powell, P.E.
Telephone	(775) 834-7585
Cellular Telephone	(775) 813-3985
Facsimile No.	(775) 834-7808
Email	tpowell@nvenergy.com

Applicant (City of Sparks)	
Address	431 Prater Way Sparks, NV 89431
Mailing Address	431 Prater Way Sparks, NV 89431
Project Manager	Neil C. Krutz, P.E.
Telephone	(775) 353-2304
Cellular Telephone	(775) 691-1118
Facsimile No.	(775) 353-7800
Email	nkrutz@cityofsparks.us

Utility Agreement No: 14-00004/18047
FRA_GV
North Truckee Drain
PWP WA-2014-01
(rev. 12/2013)

**Exhibit B
Estimated Cost**

[Attached]

Utility Agreement No: 14-00004/18047
FRA_GV
North Truckee Drain
PWP WA-2014-01
(rev. 12/2013)

Cost Worksheet ("Exhibit - B")



Project ID : 3000550134 Project Title : E - North Truckee Drain Phase 2 - S&H - City of Sparks
 Units : kVA : 0
 Contract Type : NVEnergy Contact : Toni Powell
 Estimate Version : 1 Estimate Request Number : 27888

Cost Estimate Summary

	Total Cost Estimate	Applicant Minimum	Applicant Non-Refundable	NVEnergy Responsibility
Labor & Overhead	47,434.00	47,434.00	0.00	0.00
Material & Overhead	17,820.00	17,820.00	0.00	0.00
DCA	0.00	0.00	0.00	0.00
Substructure	0.00	0.00	0.00	0.00
Permit & Voucher	3,759.00	3,759.00	0.00	0.00
Applicant Installed Costs	0.00	0.00	0.00	0.00
Contingency Cost	0.00	0.00	0.00	0.00
Total Amount	69,013.00	69,013.00	0.00	0.00

Advance Calculation

Refundable		Non-Refundable	
		A	
Applicant Cost Subject to Refund	69,013.00	Applicant Non-Refundable Cost	0.00
Proportionate Share	0.00	(Subject to Salvage Credit & Not Subject to Excess Allowance)	
Proportionate Share Waived	0.00	Salvage Credit to be applied	
Refund Subject to Allowance & Excess Salvage	69,013.00	Excess Salvage Credit to be applied from B	262.00
Excess Salvage Credit from A & B to be applied to Refundable	262.00	Applicant Non-Refundable Cost	0.00
Current Allowance	0.00	(Not Subject to Excess Allowance After applying Salvage Credit)	
Total Applicant Refundable Cost After applying salvage	68,751.00	B	
		Applicant Non-Refundable Cost	0.00
		(Subject to Salvage Credit & Excess Allowance)	
		Salvage Credit to be applied	262.00
		Excess Salvage Credit to be applied from A	0.00
		Applicant Non-Refundable Cost	0.00
		(Subject to Excess Allowance After applying Salvage Credit)	
		Excess Allowance	0.00
		Applicant Non-Refundable	0.00
		(After applying Excess Allowance and Salvage Credit)	
		Total Non-Refundable	0.00
		Removal Cost Without Salvage	6,435.00
		Removal of Existing Facilities	0.00

Cost Worksheet ("Exhibit - B")



Total Taxable Non-Refundable Cost	0.00
Total Non-Taxable Non-Refundable Cost	0.00

Advance Summary			
Advance Subject to Refund		Current Tax Rate	32.1000
Non-Taxable Advance	0.00	Total Non-Taxable	0.00
Taxable Advance	68,751.00	Total Taxable (Less Tax)	68,751.00
Tax	22,069.00	Total Tax	23,270.00
Total Advance Subject to Refund	90,820.00	Total Contract Amount	92,021.00
Non-Refundable Advance		(subject to credits)	
Non-Taxable Advance	0.00		
Taxable Advance	0.00		
Tax	0.00		
Substructures Tax	1,201.00	Customer Contributed facilities value	3,740.00
Total Non-Refundable Advance	1,201.00		
Total Contract Amount	92,021.00		
(subject to credits)			
Applicant Installed Conduit Credit	0.00		
Applicant Installed Oversized Facilities Credit	0.00		
Applicant Installed Facilities Credit	0.00		
Applicant Installed Service	0.00		
Reimbursement Credit			
Total Applicant Credits	0.00		
Utility Betterment Expenses			
Retention Percentage	0.00		
Applicant Credit	0.00		
Retention Amount	0.00		
Design Advance	0.00		
Total Applicant Advance/Credit	92,021.00		

**Exhibit C
Project Schedule**

[Attached]

Utility Agreement No: 14-00004/18047
FRA_GV
North Truckee Drain
PWP WA-2014-01
(rev. 12/2013)

Exhibit D
Civil Improvement Plans

[Attached]

Utility Agreement No: 14-00004/18047
FRA_GV
North Truckee Drain
PWP WA-2014-01
(rev. 12/2013)

Exhibit E
Plan and Profile

[Attached]

Utility Agreement No: 14-00004/18047
FRA_GV
North Truckee Drain
PWP WA-2014-01
(rev. 12/2013)

Exhibit F

[INTENTIONALLY OMITTED]

Utility Agreement No: 14-00004/18047
FRA_GV
North Truckee Drain
PWP WA-2014-01
(rev. 12/2013)

Exhibit G
Insurance Coverages

1. Types of Insurance Required. In accordance with the “Insurance” Section of the Agreement, Applicant must procure and maintain in effect and provide, and cause its contractors and subcontractors who are performing work in the Work Area to procure and maintain in effect the following (required limits can be met by use of primary, underlying, and umbrella/excess combinations):
 - (A) Workers’ Compensation and Employer’s Liability Insurance. Workers’ compensation insurance in the form and manner required by the State of Nevada. Employer’s Liability insurance with the following limits: (1) one million dollars (\$1,000,000.00) per each accident; (2) one million dollars (\$1,000,000.00) per each employee disease; and (3) one million dollars (\$1,000,000.00) in the annual aggregate per each occupational disease.
 - (B) Commercial General Liability Insurance. Commercial general liability insurance providing bodily injury, property damage, personal injury/advertising injury, premises/operations, and products/completed operations coverage with a per occurrence limit of not less than two million dollars (\$2,000,000.00) and an aggregate limit of not less than two million dollars (\$2,000,000.00).
 - (C) Automobile Liability Insurance. Commercial automobile liability insurance with a combined single limit of one million dollars (\$1,000,000.00) for each person and one million dollars (\$1,000,000.00) for each occurrence.
 - (D) Excess or Umbrella Liability Insurance. Excess or umbrella liability with a combined single limit of not less than three million dollars (\$3,000,000.00) per occurrence. Except with respect to workers’ compensation insurance, these limits must “follow-form” all terms and conditions excess of each of the above-mentioned underlying policies.

2. Insurer and Policy Requirements. Each contract of insurance must be with an insurer approved to do business in the State of Nevada, is “A” Rated or better by A.M. Best Company and must include the following provisions or endorsements:
 - (A) Additional Insured. Naming Utility, its directors, officers, and employees as additional insureds on the general liability, automobile liability and excess/umbrella liability insurance policies.
 - (B) Primary Insurance. Stating that the insurance is primary insurance with respect to the interest of Utility and that any insurance maintained by Utility is excess and not contributory insurance.

- (C) Subrogation Waivers. Providing Utility with waivers of subrogation on all coverages.
 - (D) Severability and Cross Liability. Providing severability of interest and cross liability coverage for general liability, automobile liability and the excess/umbrella liability insurance policies.
 - (E) Claims-Made Form. If the policy is maintained on a “claims-made” form and is converted to an “occurrence” form, the new policy will be endorsed to provide coverage back to a retroactive date acceptable to Utility.
3. Notice Requirement. Applicant must provide Utility with 30-days prior written notice before the termination, expiration, or alteration of the coverage provided above.
 4. Deductible and Retention Limits. Deductible or retention amounts under the policies described above must not exceed 5% of the per occurrence coverage limits, without the express written consent of Utility.
 5. Certificate of Insurance. Applicant must provide Utility with certificates of insurance, naming Utility as additional insured, evidencing the coverage required above including additional insured endorsement numbers before Applicant, its contractors or subcontractors commence any work in the Work Area. Applicant must provide Utility with a current copy of the certificate of insurance evidencing the coverage set forth above.