

**ELECTRICAL SYSTEM FRANCHISE AGREEMENT
BETWEEN THE CITY OF SPARKS, NEVADA
AND SIERRA PACIFIC POWER COMPANY**

THIS FRANCHISE is granted this 24th day of APRIL, 2006, by the City of SPARKS, NEVADA, a municipal corporation, to SIERRA PACIFIC POWER COMPANY, a Nevada corporation. In consideration of the premises and the performance by Sierra Pacific Power Company of the conditions hereinafter set forth, the City of Sparks hereby gives and grants to Sierra Pacific Power Company this Franchise for the operation and maintenance of an electrical distribution system and all necessary appurtenances in the incorporated limits of the City of Sparks for the term and upon the conditions hereinafter set forth.

Section 1. Intent

The intent of this Franchise is to: (i) grant to Sierra Pacific Power Company a Franchise to operate and maintain an electrical distribution system and all necessary appurtenances within the incorporated limits of the City of Sparks for the term and upon the conditions set forth in this Franchise and (ii) establish, implement and foster a positive working relationship between the City of Sparks and Sierra Pacific Power Company to maximize the coordination of and minimize the costs associated with the use of public Rights-of-way while at the same time recognizing Sierra Pacific Power Company's statutory duty and obligation to provide electric service to the public.

Section 2. Definitions

For the purpose of this Franchise, the following definitions shall apply:

"Abandoned" means the relinquishing of Facilities owned by a Public Utility that no longer has a Utility or Business License, or Franchise or Rights-of-Way license Agreement, or certificate of public convenience and necessity from the Public Utilities Commission, if required by the laws of the state of Nevada, or of a Facility which the Public Utility has agreed to transfer to the City.

"Agreement" means this franchise agreement and any amendments, exhibits or appendices hereto.

"Application" means all written documentation, statements, representations and warranties provided to the City, in accordance with the Sparks Municipal Code (SMC), by a prospective Franchisee, which are relied upon by the City in making its determination of whether to grant or withhold a Franchise.

"Betterment" means any upgrading of the Electrical System being reconstructed, moved or relocated that is made solely for the benefit of and at the election of the Franchisee, including, but not limited to, an increase in the capacity of existing facilities or an expansion of the existing facilities; provided, however, that the following are not considered Betterments:

- a) replacement devices or materials that are of equivalent standards although not identical;

- b) replacement of devices or materials no longer regularly manufactured with the next highest grade or size;
- c) any upgrading required by applicable laws, regulations or ordinances, including without limitation, the undergrounding of overhead facilities;
- d) replacement devices or materials which are used for reasons of economy (e.g., non-stocked items which may be uneconomical to purchase); or
- e) any upgrading required by Franchisee standards; provided, however, the Franchisee standard was not designed or adopted to avoid any obligation of the Franchisee under this Agreement.

“Business License” means the written authorization required by the City for any Person who commences, carries on, engages in, or conducts a business, occupation, trade, or employment, as delineated in the SMC, within the incorporated area of the City of Sparks, Nevada.

“Certificate” means the certificate of public convenience and necessity issued to Franchisee by the PUCN for the provision of Electric Services.

“City” means the City of Sparks, Nevada.

“City Council” means the governing body of the City of Sparks.

“City Manager” means the City Manager appointed by the City Council to perform such administrative functions of the City government as may be required of him or her by the City Council, or designee.

“Code” or “this Code” means the Sparks Municipal Code.

“Director of Public Works” and “City Clerk” means the City departmental director specifically named, or designee.

“Easement” means the right to use the real property of another.

“Electric Services” or “Services” means, without limitation, the provision of retail electric services that Franchisee is legally able to provide under existing or subsequent law in compliance with its Certificate.

“Electrical System”, “System”, “Facility” or “Facilities” means and includes, but is not limited to, the poles, towers, supports, wires, conductors, cables, guys, platforms, crossarms, braces, transformers, insulators, conduits, ducts, vaults, manholes, meters, cut-offs, switches, generators, communications circuits, attachments, appurtenances and any other equipment used by Franchisee in the provision of Electric Services.

“Fee” means a charge imposed by the City upon the Franchisee for a business license, franchise or right of way over Street or Rights-of-Way.

“Franchise” means the non-exclusive authorization granted by the City Council to a Public Utility to construct, operate, and maintain its system in the rights-of-way within the City for the provision of subscription services to Persons, other than themselves, and to use the rights-of-way for the installation, operation, and maintenance of its Facilities. The conditions and requirements of such authorization will be described within the Franchise Agreement.

“Franchise Agreement” means this agreement.

“Franchise Area” means the area within the jurisdictional boundaries of the City, including any areas annexed by the City during the term of this Franchise, in which case the annexed area shall become subject to the terms of this Franchise.

“Franchisee” means Sierra Pacific Power Company, its agents, including but not limited to, contractors licensed by the Nevada State Contractors’ Board who provide construction, installation, or maintenance services on Facilities located in rights-of-way on behalf of a Franchisee.

“Gross Revenue” means revenue received by Franchisee from retail customers within the city limits, including revenue derived from of following:

- a) Sales of electric energy to retail customers;
- b) Charges for a temporary meter;
- c) Electric overtime reconnect charges;
- d) Metered retest charges;
- e) Service charges;
- f) Service establishment charges;
- g) Remote meter charges;
- h) Reconnect overtime charge reversal;
- i) Reconnect charges;
- j) Reconnect charge reversal;
- k) Overtime service charges;
- l) Meter test charges;
- m) Late fees (forfeited discounts)

“NRS” means the Nevada Revised Statutes.

“PAC” means pole attachment contracts or joint pole agreements under which Franchisee permits the attachment of facilities used by others to Franchisee’s Facilities.

“Person” means a natural person, any form of business or social organization and any other non-governmental legal entity, including but not limited to the estate of a natural person, a corporation, limited-liability company, partnership, association, trust, or unincorporated organization. The term “Person” does not include a government, governmental agency, or political subdivision of a government.

“Public Improvement” means any improvement for roadways and pavements, sidewalks, curbs and gutters, landscaping, street lights, foundations, poles and traffic signal conduits, water mains, sanitary and storm sewers, tunnels, subways, people movers, viaducts, bridges, underpasses, and overpasses, or other public Facilities across, along, over or under any street or streets, or other such improvements which are to be used by the general public.

“Public Utilities Commission” or “PUCN” means the Public Utilities Commission of the state of Nevada, and its predecessors and successors.

“Public Utility” means any Person that provides electric energy or natural gas, telecommunications services, cable television services, interactive computer services, or sells or resells personal wireless services, regardless of whether that Person is subject to the regulations of, or holds a certificate of public convenience and necessity from, the Public Utilities Commission.

“Public Utility Service” means the provision of electric energy, natural gas, telecommunications, cable television service, interactive computer service, or personal wireless service over or through Facilities located in Rights-of-way.

“Public Utility System” or “System” means any Facilities, in whole or in part, constructed to provide Public Utility Services and using Rights-of-way to provide such service.

“Right-of-way” or “Rights-of-way” means public property, including air space, which is dedicated to, granted to, or held or prescriptively used by the City for public street purposes.

“SMC” means the Sparks Municipal Code.

“Street” means the surface, the air space above the surface and the area below the surface of the full width of the Right-of-way, including sidewalks and thoroughfares, alleys, places or ways of any kind used by the public or open to the public as a matter of right for the purpose of vehicular traffic or vehicular and pedestrian traffic.

“Transfer” or “Assignment” means the merger, consolidation, conveyance, transfer, lease or other disposition (voluntarily or by operation of law) and shall not mean, or include, a mortgage, pledge, or other encumbrance of the assets, stocks, or the Franchise.

“Utility License” means the written authorization required by the City for any Public Utility who commences, carries on, engages in, or conducts a business, occupation, trade, or

employment, as delineated in the SMC, within the incorporated area of the City of Sparks, Nevada: a Business License for a Public Utility.

Section 3. Franchise Granted

The City hereby grants the Franchisee a Franchise for installing, maintaining, and using Facilities in such parts of the Streets and public Rights-of-ways of the City as Franchisee may from time to time elect to use for the purpose of conveying and distributing electricity to the public for any and all purposes.

Section 4. Utility License

The Franchisee shall obtain a Utility License issued by the City, if applicable, after Application and compliance with all applicable requirements of the SMC.

Section 5. Franchise Agreement Conditions

The Franchise Agreement shall incorporate all applicable provisions of the SMC.

- A. The Franchise Agreement granted pursuant to the SMC shall be non-exclusive.
- B. The Franchise Agreement shall be binding upon the Franchisee, its successors, or assignees.
- C. Franchisee agrees to comply with all statutes, ordinances, laws, rules, regulations, and requirements under Federal, State, City and other local authority (collectively, "Laws") applicable to the terms and conditions of this Agreement. All terms and conditions of this Agreement shall be subject to all applicable Laws and to the extent that any term or condition is in violation of any applicable Law, such term or condition shall be void and unenforceable. Any conflict between the provisions of this Agreement and any present or future lawful exercise of the City's police powers shall be resolved in favor of the latter. Subject to the right of the City police powers, in the event of a conflict between this Agreement and any ordinance of general applicability, such conflict shall be resolved in favor of the ordinance.
- D. The granting of the Franchise shall be a privilege and shall not impart to the Franchisee any right of property in any Rights-of-way, except that the Franchisee shall retain a utility Easement, upon approval of the Director of Public Works, in the event that the City vacates or abandons any Rights-of-way in which the Franchisee has Facilities and the Franchisee notifies the City of its desire to obtain a utility Easement in that Right-of-way. The Franchise Agreement shall be construed to have granted the non-exclusive permission and authority to use any Rights-of-way as provided in the SMC for the construction, operation, and maintenance of Facilities underground, on the surface, or above ground. In no event shall the SMC or the Franchise Agreement be construed to have granted permission or authority to use any Facilities outside of Rights-of-way or any public Facilities with Rights-of-way which are not used for pedestrian or vehicular traffic. Use of such Facilities, if permitted, shall be subject to a separate agreement with the City.

- E. Any privilege claimed under the SMC or the Franchise Agreement in any Rights-of-way shall be equal to the privilege of any other Franchise under the SMC or NRS Chapters 709 and 711, and shall be subordinate to any other prior lawful occupancy of the Rights-of-way.
- F. Any right or power in, or duty impressed upon any officer or employee of the City by virtue of the Franchise shall be subject to transfer by the City Manager to any other officer or employee of the City.
- G. The Franchisee shall secure encroachment permits in accordance with the SMC.
- H. The Franchisee shall maintain financial records in compliance with NRS 364.210.

Section 6. Term

- A. **Initial Term.** The term of the Franchise begins April 26, 2006 and remains in full force and effect for a period of ten (10) years, from and after such date, unless sooner terminated pursuant to the terms of the Franchise.
- B. **Term Extensions.** Upon written application by the Franchisee at least twenty-four (24) months prior to the end of the Initial Term, the City Council after a duly-noticed public hearing to be convened prior to the expiration of the Franchise, may extend the term of the Franchise for an additional five (5) years at its sole discretion ("First Extension") upon its same terms. The Franchisee may request a second five (5) year extension of time ("Second Extension") in the same manner as the First Extension.

Section 7. Use

The Franchisee shall have the right to install, maintain and use any or all of such Facilities from time to time as it may determine to be necessary and proper for conveying and distributing electricity to the public for any and all purposes.

Nothing contained in this franchise agreement shall be construed as authorizing the Franchisee to use, or permit the use of, any portion of its electrical distribution system for any purpose other than those reasonably necessary for the transmission or distribution of electricity unless prior written approval is obtained from the City. No privilege or exemption is granted by or to be inferred from this franchise agreement except those specifically described herein. Any right, privilege, permission, or authority claimed under this franchise agreement in any public road shall be subordinate to any prior lawful occupancy of the public road.

Section 8. Manner of Installation, Construction, and Maintenance

- A. The Franchisee shall comply with the improvement standards adopted in the SMC, as set forth and as hereafter amended, and the latest versions of the Standard Specifications for Public Works Construction and Standard Details for Public Works Construction, except where retroactive Application of new standards is required by federal or state law.

- B. Prior to any street cuts or lane closures within the Rights-of-way, except when an emergency or in residential areas, the Franchisee shall obtain an encroachment permit pursuant to the SMC. In cases of an emergency, Franchisee shall immediately notify the City and obtain an encroachment permit pursuant to the SMC within two business days.
- C. When the Public Improvement designs prepared by the Franchisee are more detailed than, or are not covered by, the improvement standards adopted in the SMC, plans and specifications for construction, reconstruction, installations, and repairs of Public Improvements shall be sealed by a Nevada registered professional engineer or as exempted by NRS 625.500.
- D. Except in the case of an emergency, the Franchisee, who is the initiator of a project in a Street or Easement upon which residential yards are located and maintained, shall notify residents who are located adjacent to the proposed project at least two (2) days prior to the date that the Franchisee proposes to commence construction.
- E. All Public Improvement work performed by the Franchisee in Rights-of-way shall be inspected, completed and accepted in accordance with the improvement standards adopted in the SMC.
- F. Except as provided in Section 8(J)(8), it is specifically declared that it is not intended by any of the provisions of any part of the Franchise to create for the public, or any member thereof, a third party beneficiary hereunder, or to authorize anyone to maintain a suit for personal injuries or property damage pursuant to the provisions of the Franchise. The duties, obligations, and responsibilities of the City with respect to third parties shall remain as imposed by the Nevada Revised Statutes (NRS).
- G. Any inspections or subsequent approvals undertaken by the City pursuant to the Franchise are undertaken solely to ensure compliance with the Franchise Agreement and are not undertaken for the safety or other benefit of any individual or group of individuals as members of the public. Provisions in the SMC dealing with inspection or approval by the City do not expand the City's general law duties.
- H. In the case of damage caused by the Franchisee to any Rights-of-way, the Franchisee shall, at no cost or expense to the City, repair, replace and restore the damaged area in accordance with current improvement standards adopted in the SMC, the latest versions of the Standard Specifications for Public Works Construction and Standard Details for Public Works Construction, and to the reasonable satisfaction of the Director of Public Works.
- I. The Franchisee shall not acquire as a result of the location of its Facilities in any existing or proposed Rights-of-way, even though such location was approved by the City, any vested right or interest in any particular Right-of-way location. The granting of the Franchise does not affect any prior rights acquired by the Franchisee in such location from any Person or governmental agency or political subdivision other than the City.

- J. Reconstruction, removal or relocation of the Franchisee's Facilities to accommodate a Public Improvement shall be provided for in the following manner:
1. The City shall issue to the Franchisee written notice of a need to reconstruct, remove, or relocate any of the Franchisee's facilities in the City's Rights-of-way which may be in conflict with an existing or proposed Public Improvement in order to accommodate the installation, maintenance, or use of the Public Improvement. Such written notice shall include project information equivalent in detail to fifty percent (50%) or more of final design for the Public Improvement together with a proposed construction schedule. The Franchisee shall, within thirty (30) business days after receiving such written notice from the City, present to the Director of Public Works a detailed plan and utility construction schedule to reconstruct, remove, or relocate said Facilities, within the timelines of the City's proposed construction schedule. Upon request from the Franchisee, the Director of Public Works shall provide an alternate location within the Right-of-way for the Franchisee.
 2. Within thirty (30) business days after receipt of such written notice from the City, the Franchisee may present a written Application and supporting documentation to the Director of Public Works for an extension of time in which to complete reconstruction, removal or relocation of its Facilities. The Director of Public Works will grant additional time beyond the time period provided if the additional time requested is due to service, equipment, or material delivery constraints beyond the control and without the fault or negligence of the Franchisee, or if the project described in the written notice is of such a size that the work to be performed by the Franchisee cannot be completed within the allowable time. If the request for extension of time is denied, the Franchisee may appeal the denial to the City Council within fourteen (14) days from receipt of notice of denial. The decision of the City Council shall be final.
 3. If after the issuance of the initial written notice the City makes a substantial change in the design of the Public Improvement project, including but not limited to changes in elevation, changes affecting Right-of-way alignment and widths of alignment, the City shall notify the Franchisee of the details of the substantial change. If the Franchisee determines that such change would cause a delay in reconstruction, removal or relocation of its Facilities beyond the time period provided, the Franchisee may, within fourteen (14) days from receipt of notice of such change, petition the Director of Public Works for an extension of time in which to complete reconstruction, removal or relocation of Facilities. If the additional time is requested due to service, equipment, or material delivery constraints beyond the control of the Franchisee, or if the Public Improvement design change is of such a scope that the work to be performed by the Franchisee cannot be completed within the time period allowed, the Director of Public Works may grant an extension of time. If the request for extension of time is denied, the Franchisee may appeal the denial to the City Council within fourteen (14) days from receipt of notice of denial. The decision of the City Council shall be final.

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- a. In the event such substantial changes occur at no fault of the Franchisee and they result in the Franchisee's expenditures becoming unusable and unsalvageable, the City will reimburse Franchisee. The City and the Franchisee shall evenly share costs associated with substantial changes which occur at no fault of either the City or the Franchisee which results in the Franchisee's expenditures becoming unusable and unsalvageable.
4. The City shall provide the Franchisee with a final design of the Public Improvement as soon as it becomes available. Likewise, the Franchisee shall provide the City with a final design for the reconstruction, removal or relocation of its Facilities.
5. When reconstruction, removal or relocation of Franchisee Facilities is required for a Public Improvement project, the Franchisee shall be responsible for complying with the City's construction schedule as it relates to businesses or other entities that are using the Franchisee's Facilities in City Rights-of-way. This compliance shall be the responsibility of the Franchisee at no cost to the City.
6. The City and the Franchisee will cooperate on the planning for the relocation and selection of a new location for any Facilities and appurtenances to minimize the cost of such relocation.
7. If the Franchisee fails to reconstruct, remove, or relocate its Facilities as required by this section within the time period agreed upon, the City may reconstruct, remove, or relocate said Facilities and charge the cost of reconstruction, removal, or relocation to the Franchisee. The City will not be held liable for any losses or damages due to reconstruction, removal, or relocation of such Facilities. The City shall utilize Franchisee approved designers and/or approved contractors to reconstruct, remove or relocate said Facilities in accordance with Franchisee's and other applicable standards.
8. Franchisee will be responsible for the cost of removal or relocation of its Facilities in Rights-of-Way in accordance with applicable provisions of the Code.
 - a. Notwithstanding any other provision of this Agreement to the contrary, if the City requires Franchisee to relocate any of its Facilities located in the Rights-of-way in which the Franchisee has demonstrated in accordance with this subsection that it had a valid easement prior to the time such location was dedicated to or otherwise received by the City, the City shall be responsible for Franchisee's actual costs of relocating such Facilities pursuant to this Section 8(J)(8), including the cost of obtaining a new equivalent easement for Franchisee if the City determines that no space is available in the Rights-of-way for Franchisee's Facilities. The City will not be responsible for the relocation costs if the Facilities were not placed in conformance with the applicable statutes, ordinances and codes in effect at the time of the Facilities' original construction. Moreover, it is understood and agreed that City will not pay for or bear the cost of any incremental increase of engineering or construction costs involved in or pertaining to any Betterment, and that no Betterment may be performed in connection with any relocation under Section 8(J)(8)(a). If City determines that a Betterment is performed in connection

with such a relocation, the actual cost of such Betterment shall appear as a credit in any invoice submitted by Franchisee to City for reimbursement of actual costs pursuant to this Section 8(J)(8). Franchisee shall provide to City documentation supporting its calculation of the actual cost of such Betterment. All other provisions of this Section 8(J)(8) shall apply to Franchisee's work in performing the relocation of any Facilities covered by this Section.

- b. In instances where no Public Improvements or Facilities have been installed as of the Effective Date of this Agreement and a patent exists for roadway and utility purposes and is not patented or reserved specifically in the name of the City or Franchisee, the party which is first to install a Public Improvement or Facility in such patent will be considered to have the prior right so long as in the case of the Franchisee the Facility was in place in accordance with applicable statutes, ordinances and codes.
- c. A claim from Franchisee for reimbursement for relocation of Facilities under a prior right must include a copy of the Easement instrument/document. If no such instrument/document can be produced, the claim must include a statement clarifying the prior land right, and must be signed by an officer, director or manager of the Franchisee who avers that the information set forth in the claim is accurate and complete. The claim must be accurate and include supporting proof that a prior land right exists for the Franchisee's Facilities. If the Franchisee fails to provide the City with sufficient proof of a prior right, the Franchisee will be responsible for the actual cost of the relocation.
- d. In instances where the Franchisee has demonstrated a prior right in accordance with this subsection and the City requires the Franchisee to relocate its Facilities outside of its original prior right location, the Franchisee will relinquish all of its original prior right to the City and the City will recognize the Franchisee's prior right in the new location by issuing an instrument/document recognizing the prior right.
- e. Without limiting or abrogating the rights of the Franchisee to seek and receive reimbursement under any applicable federal, state or local law or regulation, and consistent with applicable provisions of the Code and this Section [8(J)(8)], the City shall request, and Franchisee hereby agrees, to remove and/or relocate its Facilities to accommodate the construction or repair of public facilities or Public Improvements in City Rights-of-way. The City will provide an alternate location (public Right-of-way) for the installation of facilities relocated pursuant to this section.

In case of an emergency, as determined by the City in its sole discretion, no charge shall be made by the Franchisee against the City for loss, damage, restoration, and repair whenever it becomes necessary to remove any of the Franchisee's Facilities.

The Franchisee's emergency plans and procedures shall designate the Franchisee's responsible local emergency response officials and a direct 24-hour emergency contact number for the control center operator. The Franchisee shall, after being notified of an emergency, cooperate with the City and make every effort to respond as soon as possible to protect the public's health, safety, and welfare.

- M. Upon request, Franchisee shall provide the City with a set of "as-built" drawings of a specific project, or any requested portion thereof.
- N. Notwithstanding the other provisions of this Section 8, the Franchisee is granted the right to undertake such emergency activities necessary to provide and maintain reliability and safety of its Facilities. If such action is required, the Franchisee shall, within two (2) working days after the action, advise the Director of Public Works of the work performed.
- O. In the event the Franchisee installs new electrical conduit or opens a trench or replaces existing conduits, the Franchisee shall provide advance notice to a designated City representative to permit additional installation for the City of similar conduit and pull-wire. If the City wants additional similar conduit and pull-wire installed, it will so notify the Franchisee and in a timely manner provide similar conduit and pull-wire at City's expense to the Franchisee which will install it without further cost to the City, provided that such action by the City will not unreasonably interfere with the Franchisee's facilities or delay the accomplishment of the project.
- P. The City and the Franchisee shall cooperate to minimize installation costs of underground conduit and pull-wire and to minimize cutting the public streets and public easements.
- Q. The Franchisee shall generally introduce and install, as soon as practicable, technological advances in its equipment and service within the City when such advances are technically and economically feasible and are safe and beneficial to the City and its residents. Upon request, the Franchisee shall review and promptly report advances which have occurred in the electric utility industry that have been incorporated into the Franchisee's operations in the City in the previous year or will be so incorporated in the six months following the City's request.
- R. The Franchisee shall report in advance to the City any plans to include technological advances relating to communications systems such as fiber optics which may utilize electric facilities already in place for the transmission of communication signals, which facilities may be installed by the Franchisee for its use, the use of the City, or for use of others as the Franchisee may license. The City may use said facilities for its own use without cost, except such additional expense which may be incurred by the Franchisee as a result of the City's use. The City shall not use said facilities for commercial purposes unless it reaches prior agreement with the Franchisee regarding consideration for the use of said facilities. In no event shall the City's use impair the Franchisee's ability to use its own facilities. Upon request of the City, the Franchisee will provide a detailed report for the use of such communications systems subject to protecting confidential information. Nothing contained herein shall be construed to authorize the Franchisee to engage in communications activities for sale or lease, nor shall this franchise be construed as a franchise for said telecommunications activities within the City.
- S. Trees that conflict with Franchisee's electrical system shall be trimmed by the Franchisee using methods established by the ANSI-A300 standards.

- T. The City reserves the right to lay and permit to be laid, sewer, gas, water, electrical, telecommunications, cable television and other pipe lines or cables and conduits, and to do and permit to be done any underground and overhead work, and any attachment, restructuring or changes in aerial facilities that the City requires in, across, along, over or under any Rights-of-Way or other City property occupied by Franchisee, and to change any curb or sidewalk or the grade of any street. In permitting work to be done, the City shall not be liable to Franchisee for any damages not caused by the negligence of the City; provided, however, nothing herein shall relieve any other person or entity, including any contractor, subcontractor, or agent, from liability for damage to Franchisee's Facilities.

Section 9. Construction and Technical Standards

The Franchisee's Construction practices and improvement standards shall be in accordance with the SMC, and the latest versions of the Standard Specifications for Public Works Construction and Standard Details for Public Works Construction, and its Facilities shall be installed, maintained, and operated in accordance with applicable standards defined by a state or federal governmental agency charged with the regulation of such technology.

Section 10. Franchise Reporting

Each year during the term of the Franchise Agreement, within thirty (30) business days preceding or following the anniversary of the Franchise Agreement, the Franchisee shall develop a written report that shall be made available to City officers and employees in the performance of their duties. To assist in the coordination of construction projects, the written report shall include a general description, location and schedule of the Facilities anticipated to be installed in Rights-of-way during the next five years of the Franchise Agreement of which the Franchisee is aware at time of reporting. The City shall also provide Franchisee a general description, location and schedule of anticipated Public Improvement projects during the next five years of the Franchise Agreement of which the City is aware at the time of reporting.

Each year during the term of the Franchise Agreement, within thirty (30) business days preceding or following the anniversary of the Franchise Agreement, the Franchisee shall submit a written report to the City Manager that lists businesses or other entities that are using the Franchisee's Facilities in Rights-of-way and those expected to be added during the next year of the Franchise Agreement, of which the Franchisee is aware at time of reporting. Franchisee shall, upon request, within a reasonable time period not to exceed sixty (60) days provide the City with copies of any pole attachment agreements or similar agreements allowing the use of Franchisee's Facilities in the Rights-of-Way.

The City shall notify Franchisee of any City approved annexation, including service addresses of annexed property(s), if any. Franchisee shall have thirty (30) days from the date notice is received to change the billing of the annexed property.

Section 11. Location and Marking of Subsurface Installations

The City and the Franchisee agree to comply with the provisions of Nevada Revised Statutes Chapter 455 regarding the location and marking of subsurface installations as such term is defined in Nevada Revised Statutes §455.101.

Section 12. Franchise Revocation and Penalties

- A. After providing notice and an opportunity for the Franchisee to be heard, and a reasonable opportunity to cure, the Franchise may be revoked by the City Council if it finds that the Franchisee:
1. Has not obtained or maintained the insurance required by the Franchise;
 2. Has not obtained or maintained the bonds or security obligation required by the Franchise;
 3. Failed to make payment of fees due the City under the SMC or this Agreement;
 4. Substantially failed to comply with terms or conditions of the Franchise;
 5. No longer holds a Utility License;
 6. No longer holds a Public Utilities Commission certificate of public convenience and necessity, if required;
 7. Has failed to use contractors licensed by the Nevada State Contractors' Board in performing any of its construction, installation, or maintenance services on Facilities located in Rights-of-way; or
 8. Has failed to comply with the timelines of reconstruction, removal or relocation of the Franchisee's Facilities as required by the Director of Public Works or pay for the related costs, if applicable.
- B. If the City Council finds that the Franchisee has failed to comply with any provision of the SMC or this Agreement, it may direct that further encroachment permits be denied until such time as the Franchisee comes into compliance.
- C. The City Council, after providing notice and an opportunity for the Franchisee to be heard and to cure, and if the Franchisee fails to cure, may impose fines and other penalties upon Franchisee for violations of any provisions of their Agreement, or any provisions of the SMC.

Section 13. Joint and Third-Party use of Franchisee's Facilities; Excavation; Pole Ownership

- A. The City shall upon notice to the Franchisee have, for any reasonable municipal purpose (which does not include a third party business such as a cable or

telecommunications business), the right to and make use of the poles and conduits of the Franchisee, and any Rights-of-Way granted to the Franchisee, to the same extent telecommunication companies are authorized to use Franchisees facilities provided such use complies with good and safe electrical operating practices, applicable legislation, and does not unreasonably interfere with the Franchisee's use thereof, at no charge to the City. The City is responsible for its own costs and any necessary and reasonable costs incurred by the Franchisee including the costs of any alterations that may be required in using the poles and conduits of the Franchisee.

- B. The grant of Franchise herein does not permit use by third parties of Franchisee's Facilities located in Rights-of-Way. However, City acknowledges that state or federal law may require that Franchisee allow third parties to make attachments to Franchisee's Facilities. Franchisee shall notify City of the names and addresses of third parties who currently have attached their facilities to Franchisee's Facilities in Rights-of-Way, and of any future third parties upon their initial request to enter into an agreement for such attachment. Thereafter, upon verification by City that said third party is duly licensed, franchised or otherwise permitted to occupy the Rights-of-Way, or if no such verification is provided by the City within forty-five (45) days after Franchisee's notification to City, Franchisee may permit such third party to attach its facilities to Franchisee's Facilities within Rights-of-Way.
- C. Franchisee shall not transfer ownership of any of its Facilities in the Rights-of-Way to any third party without the express written consent of the City, which consent may not be unreasonably withheld.
- D. Whenever Franchisee plans to relocate to the underground any of its overhead Facilities within the Rights-of-Way, Franchisee shall apply and obtain all permits as may be required under applicable Code prior to commencing such excavation and shall provide written notice to all third parties located in the specific Rights-of-Way who have attached their own facilities to Franchisee's overhead Facilities that are to be placed underground, of the anticipated date of undergrounding of the overhead Facilities or of excavation, pursuant to any applicable provisions of the Code, as amended from time to time. Undergrounding notices shall specify:
1. that all third-party attachments must be removed or placed underground prior to scheduled removal of Franchisee's overhead Facilities, provided that the contract between Franchisee and the third party requires the third party to remove its attachments when Franchisee undergrounds its overhead facilities; and
 2. an estimated timetable for when Franchisee will complete its undergrounding.

Franchisee shall cooperate with the City and other persons occupying the Rights-of-Way in sharing use of its excavations. Franchisee will review with the City, in the fourth quarter of the year, those overhead facilities that the Franchisee may underground in the next upcoming year. City recognizes that these projects are tentative and can change due to occasional Franchisee budget constraints. The purpose of this review is to assist the City in the coordination of the undergrounding of third party facilities.

- E. In the event that any facilities have been installed in any Rights-of-way without complying with the requirements of the SMC or the Franchise Agreement, or in the event the Franchisee and the City agree that the Facility has been Abandoned, the Franchisee shall, within thirty (30) business days after receipt of notice by the City, commence and thereafter diligently pursue and complete the removal of said Facilities from the Rights-of-way within a reasonable time. Franchisee shall remain responsible for all claims and liabilities of whatever nature related to its Facilities until such time as such Facilities have been:
1. completely removed and the Right-of-way repaired and restored to its existing or better condition in accordance with the Standard Specifications for Public Works Construction, Standard Details for Public Works Construction and the City of Sparks Design Standards Manual, or their successor publications, as amended from time to time, to the reasonable satisfaction of the Director of Public Works;
 2. abandoned in place as approved by the Director of Public Works in accordance with any applicable provisions of the Code; or
 3. transferred to a third party with the consent of the City Council.

Upon abandonment, the Facilities shall become the property of the City and the Franchisee shall submit to the Director of Public Works an instrument in writing, transferring to the City the ownership of such Facilities.

This Agreement is not authorization for use by third parties of Rights-of-way, which authorization must be independently obtained from the City. Such third parties are liable to the City in accordance with applicable Code and the terms of any City authorization, and are liable to Franchisee in accordance with the PAC. In the event Franchisee is removing or required to remove any of its Facilities from Rights-of-way, the City and Franchisee shall each agree to require and diligently pursue, under the terms of their respective authority, removal of any third-party facilities attached to Franchisee's Facilities.

Section 14. Transfers and Assignments

In addition to the requirements conditional to the holding of a valid Utility or Business License pursuant to the SMC, the following conditions for Transfer and Assignment of the Franchises shall apply:

- A. The Franchisee must give written notice to the Director of Public Works of its intent to Transfer and assign the Franchise and must name the intended transferee and assignee. The intended transferee and assignee must hold a valid City Utility or Business License pursuant to the SMC and submit the same information to the Director of Public Works as is required for any applicant for a Franchise in the SMC. Consent to a Transfer and Assignment by the City Council shall not be unreasonably withheld.
- B. If the Franchisee holds a certificate of convenience and necessity issued by the Public Utilities Commission, and the Transfer and Assignment of its certificate of public convenience and necessity has been approved by the Public Utilities Commission, the

Franchise may be transferred and assigned to the same Person to whom the Certificate of public convenience and necessity was transferred and assigned, or to such other Person as approved by the Public Utilities Commission, without the prior approval of the City Council, except that the transferee and assignee must obtain a valid city Utility or Business License pursuant to the SMC within thirty (30) days of Transfer or Assignment, and the Franchisee and its transferee or assignee must provide a notarized document to the City Manager acknowledging the Transfer and Assignment and that the transferee and assignee agree to abide by all terms and conditions of the Franchise, signed by the Franchisee's and its transferee's and assignee's respective officers duly authorized to do so, on a form approved by the City Manager.

Section 15. Indemnification and Hold Harmless

- A. To the maximum extent permitted by Nevada law, the Franchisee shall indemnify, save harmless, and defend the City, its officers and employees, individually and collectively, from all damages, fines, liens, suits, claims, demands, actions, reasonable costs of investigation and litigation, reasonable attorneys' fees and expenses, reasonable consultants' fees and expenses, and reasonable expert witnesses' fees and expenses, judgments or liability of any kind arising out of or in any way connected with its installation, construction, operations, maintenance, or condition of its Facilities. The Franchisee is not required to indemnify or hold harmless the City, its officers and employees as provided herein, to the extent caused by, resulting from or arising out of the negligence or intentional actions of one or more officers or employees of the City.
- B. The Franchisee shall assume all risks in its operation of its Facilities and shall be solely responsible and answerable for any and all injuries to persons or property arising out of the existence or performance of the Franchise Agreement. The amounts and types of required insurance coverage, as set forth in the SMC, shall in no way be construed as limiting the scope of indemnity set forth in this section.
- C. The Franchisee shall have no recourse whatsoever against the City for any loss, cost, expense, or damage arising out of the enforcement or lack of enforcement of any provision or requirement of the SMC or the Franchise Agreement.
- D. The Franchisee shall indemnify, save harmless, and defend the City, its officers and employees, individually and collectively, from damages which are incurred by or attributed to the City, including but not limited to costs, expenses, fees, and the actual amount of damage, arising from delays of such reconstruction, removal, or relocation work of the Franchisee or Rights-of-way licensee, beyond the time period provided for completion of such work, except to the extent that this provision is addressed otherwise in the Franchise Agreement.

Section 16. Insurance

- A. Securing and maintaining all insurance coverages, or demonstrating the ability to self-insure, for the minimum limits required herein is a condition of the Franchise

Agreement, and the Franchisee shall not commence work in City Rights-of-way until all insurance requirements have been met.

- B. All primary and excess insurance obtained for meeting the requirements of this section must be provided in compliance with the NRS, Title 57, and any commercial insurance carrier providing any required coverage must have an A.M. Best rating of A-VII or higher; and
1. The Franchisee shall provide a certificate of insurance naming the City as an additional insured, and stating that the policy will not be canceled, terminated or altered by the insurer, nor will the insurer state an intention not to renew until thirty (30) days after providing written notification of such to the City Manager, with a copy to the City Clerk, and
 2. The Franchisee shall be solely responsible for payment of all premiums for insurance policies required herein.
- C. Within ten (10) days after approval of the Franchise Agreement by the City Council and before expiration of any policy of insurance, the Franchisee shall provide proof of insurance to the City Clerk, and maintain in full force and effect through the term of the Franchise Agreement the following insurance coverages, insuring against all damages arising out of or resulting from the installation, construction, operation, and maintenance of the system:
1. General liability insurance, with minimum limits of two million dollars (\$2,000,000) per occurrence, which includes coverage for products, completed operations, blanket contractual liability, property damage, including but not limited to coverage for explosion, collapse and underground hazard.
 2. Automobile liability insurance, with a minimum combined single limit per occurrence of two million dollars (\$2,000,000) and which includes coverage for non-owned and hired automobile liability. Automobile liability insurance may be included as part of the general liability insurance.
 3. Workers' compensation insurance in accordance with the NRS, Chapters 616A, 616B, 616C, 616D and 617.
 4. Because of the duration of this agreement, minimum limits for all insurance coverages shall be reviewed at five-year intervals and may be increased to account for inflation in order to provide adequate protection to the City.
- D. The minimum limits may be provided for through a single primary insurance policy providing such coverage or through addition of an umbrella liability policy written in excess of the general liability, and automobile liability policies.
- E. If insurance coverage is obtained on a claims-made form, the Franchisee shall provide proof of coverage for "prior acts" and proof of coverage for claims reported within two years of any occurrence.

- E. The required insurance may be provided in the form of conventional insurance, self-insurance, or a combination of conventional insurance and self-insurance retention.
- F. A plan of self-insurance may meet the requirements of this section, subject to the approval of the City's Risk Manager. The Franchisee may apply for such approval by written request to the City Clerk, which shall include a detailed plan of self-insurance, including retention limits, named excess insurance carrier, if any, and a copy of audited financial statements. The City may impose conditions or requirements, including posting of security. Such conditions or requirements may be unique from one Franchisee to another. The City may, at any time during the term of the Franchise Agreement, revoke approval of a plan of self-insurance, or impose requirements or conditions for continued approval. Failure to comply with the conditions or requirements imposed by this agreement shall be deemed as failure to meet the requirement for insurance under this section, and as a violation of a condition of the Franchise Agreement.

Section 17. Security for Performance

- A. Prior to being issued the Franchise, as security for compliance with the terms of the Franchise Agreement and the SMC, including restoration of Rights-of-way in which the Franchisee has initiated projects to construct, maintain, operate, reconstruct, remove or relocate its Facilities, the Franchisee shall provide, and maintain at the minimum level herein specified for the life of the Franchise Agreement, security to the City Manager, in the form of either cash deposited with the City Manager, made payable to the City of Sparks, an irrevocable pledge of certificate of deposit, an irrevocable letter of credit, or a performance bond, in the amount of fifty thousand dollars (\$50,000) to remain in full force for the term of the Franchise, any or all of which may be claimed by the City as payment for fees and penalties, and to recover losses resulting to the City from the Franchisee's failure to perform. Prior to the City drawing upon such performance security, the City shall notify Franchisee and provide thirty (30) business days for Franchisee to remedy all outstanding performance issues.
- B. If bonds are used to satisfy these security requirements, they shall be in accordance with the following:
 - 1. All bonds shall, in addition to all other costs, provide for payment of reasonable attorneys' fees.
 - 2. All bonds shall be issued by a surety company authorized to do business in the state of Nevada, and which is listed in the U.S. Department of the Treasury Fiscal Service (Department Circular 570, Current Revision): companies holding certificates of authority as acceptable sureties on federal bonds and as acceptable reinsuring companies.
 - 3. The Franchisee shall require the attorney-of-fact who executes the bonds on behalf of the surety to affix thereto a certified and current copy of his or her power of attorney.

4. All bonds prepared by a licensed non-resident agent must be countersigned by a resident agent per the NRS, Section 680A.300.
- C. If at any time the City draws upon such performance security, the Franchisee shall within thirty (30) days of notice from the City replenish such performance security to the original minimum amount established in this section. If performance security is inadequate to compensate City for costs incurred, Franchisee shall make payment to compensate the City for the balance of costs incurred within thirty (30) business days after the City draws upon such performance security.

Section 18. Franchise Fee

- A. From April 26, 2006, through June 30, 2006, the Franchisee, its successors and assigns, shall pay a Franchise fee of two percent (2.0%) of the sales of electric energy to retail customers. Effective July 1, 2006, the Franchisee, its successors and assigns, shall pay a Franchise fee of two and one half percent (2.5%) of Gross Revenues with an increase of one half percent (0.5%) effective July 1 of each year, until the Franchise fee reaches five percent (5.0%) which will be paid to the City for all subsequent years of the remaining term of this Franchise Agreement. Such fees shall be collected as provided in NRS 354.5988, including the collection from governmental entities of the State, other than the City, who receives electric service in the Franchise Area. The Franchisee shall not charge a franchise fee for facilities owned by the City of Sparks.
- B. The City agrees to reduce, as necessary, the Franchise fee charged to the Franchisee so that the combined Utility License fee and Franchise fee do not exceed the maximum combined fee permitted by law.
- C. The Franchisee shall, commencing upon the date of the City's approval of the Franchise, pay the Franchise fee to the City within thirty (30) days following the end of each calendar quarter throughout the term of the Franchise. Franchisee shall ensure that any additional monies due to the City as a result of City Council approved annexations are incorporated into Franchise Fee payments in the first quarter such annexations take effect.
- D. Nothing in this Franchise Agreement will limit the City's ability to impose additional Fees on Franchisee to the extent permitted by law.
- E. If the Franchise Fee provisions of the Code relative to Franchisee are repealed or declared invalid by a court of competent jurisdiction during the Term of this Agreement, Franchisee agrees as compensation for the use of the Rights-of-Way to pay the City a Business License fee. The Business License fee shall be established by the City Council, not to exceed the maximum amount allowed by law.
- F. In the event the Franchisee continues to operate all or any part of the electrical distribution system providing electric service after the term of this Agreement, then the Franchisee shall continue to comply with all applicable provisions of this

Agreement, including without limitation, all compensation and other payment provisions of this Agreement, throughout the period of such continued operation, provided that any such continued operation shall in no way be construed as a renewal of or other extension of this Agreement or the Franchise.

Section 19. Right to Audit

The City may, at any reasonable time, examine the books and records of the Franchisee for the purpose of verifying the Franchisee's compliance with any of the terms of the Franchise.

- A. If as a result of such audit, it is determined that Franchisee is delinquent in the payment of any fee to which the ordinance applies, the City will assess combined penalties and interest of 2 percent per month of the delinquent amount until paid. If the delinquency is the result of the failure of the City to notify Franchisee of an annexation, no penalties or interest may be imposed on delinquent payments received more than 30 days before the City provides Franchisee of such notice.
- B. The City may make systematic inspections and random audits of all business within the City to insure compliance with the Franchise. Records of inspections and audits shall not be deemed public records, and the City shall not release the amount of license taxes paid or report gross income of any Person by name without written permission of the Franchisee, provided that statistics compiled by classifications may be made public.

Section 20. Regulation of Rates and Service

The Franchisee shall maintain and operate its Facilities and render efficient service in accordance with the rates, rule, tariffs, and regulations prescribed by the Public Utilities Commission of the State of Nevada.

Section 21. Franchise has no Monetary Value

The acceptance of the Franchise granted herein shall be deemed to be an agreement on the part of the Franchisee to place no monetary value upon the Franchise for rate making purposes nor in the event that any property of the franchisee is obtained by the City through legal right of condemnation or by other legal means.

Section 22. Law Governing

The Franchise will be governed by the laws of Nevada with respect to both its interpretation and performance.

AGREED TO ON THE DATE FIRST SET FORTH.

SIERRA PACIFIC POWER COMPANY

By: [Signature]
Title: President

CITY OF SPARKS, NEVADA

By: [Signature]
Geno Martini, Mayor

ATTEST:

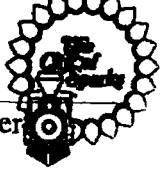
By: [Signature]

Title: Notary
 CONNIE D. SILVEIRA
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No. 97-2188-2 - Expires June 18, 2008

APPROVED AS TO FORM:

By: [Signature]
Title: Assistant General Counsel

ATTEST:

By: [Signature]
Deborine Dolan, City Clerk


APPROVED AS TO FORM:

By: [Signature]
Chester H. Adams, City Attorney