

**CITY OF RENO, NEVADA
ELECTRICAL SYSTEM FRANCHISE AGREEMENT
GRANTED TO SIERRA PACIFIC POWER COMPANY,
D/B/A NV ENERGY**

~~This~~ **THIS** AGREEMENT is made and entered into this _____ day of _____, 20240, (the "Effective Date") by and between the City of Reno, a political subdivision of the State of Nevada ("City"), and Sierra Pacific Power Company, d/b/a NV Energy, a Nevada corporation ("Franchisee"). City and Franchisee are sometimes collectively referred to as the "Parties," or singularly as a "Party." In consideration of the covenants and agreements described below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

WHEREAS, the Franchisee, a corporation organized and existing under and by virtue of the laws of the State of Nevada, is duly qualified to transact business within the State of Nevada, is engaged in the business of operating an Electrical System to provide retail electric service;

WHEREAS, pursuant to RMC Sec. 2.140(l)(c), the City Council may provide or grant franchises for public transportation and utilities; and,

NOW, THEREFORE, in consideration of the premises and of the performance by Franchisee of the requirements below set forth, and subject to the following terms and conditions, the City grants this Franchise to the Franchisee.

1. DEFINITIONS

Except as otherwise provided herein, the definitions and word usage set forth in RMC Chapters 5.90.320, *et. seq.*, and 12.04.010, *et. seq.*, as amended from time to time., are incorporated herein and shall apply in this Agreement, and the following additional definitions shall apply to this Agreement. Terms, phrases, words and their derivations shall have the meanings set forth therein, unless the context clearly indicates that another meaning is intended. Words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive.

- 1.1. "Agreement" means this franchise agreement and any amendments, exhibits or appendices hereto.
- 1.2. "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:

- 1.2.1. replacement devices or materials that are of equivalent standards although not identical;
- 1.2.2. replacement of devices or materials no longer regularly manufactured with the next highest grade or size;
- 1.2.3. any upgrading required by applicable laws, regulations or ordinances, including without limitation, the undergrounding of overhead facilities;
- 1.2.4. replacement devices or materials which are used for reasons of economy (e.g., non-stocked items which may be uneconomical to purchase); or
- 1.2.5. 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.
- 1.3. "Certificate" means the certificate of public convenience and necessity issued to Franchisee by the PUCN for the provision of Electric Services
- 1.4. "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.
- 1.5. "Electrical System," "System" 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.
- 1.6. "Franchisee" means the non-exclusive authorization granted by the City Council to the Franchisee to construct, maintain and operate its Electrical System in the Rights-of-Way to provide electric services to customers within the Franchise Area, in accordance with the terms and conditions set forth in the Code and this Agreement.
- 1.7. "Franchise Area" means that area of Franchisee's service territory, as such service territory is established under Franchisee's Certificate, which is located with the City of Reno, including property as subsequently annexed.
- 1.8. "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)
- 1.9. "NRS" means the Nevada Revised Statutes, as amended from time to time.
- 1.10. "PAC" means pole attachment contracts or joint pole agreements under which Franchisee permits the attachment of facilities used by others to Franchisee's Facilities.
- 1.11. "PUCN" means the Public Utilities Commission of the State of Nevada, and its successors.
- 1.12. "RMC" or "Code" means the Reno Municipal Code, as amended from time to time.
- 1.13. "Right-of-Way" or "Rights-of-Way" means public property including air space, dedicated, granted, held, prescriptively used, or authorized by patent of the United States of America, for City public street and public utility purposes, except as limited by any underlying grant and except public streets in any federal aid highway or any highway controlled by the state within the City.

2. TERM

The Effective Date of this Agreement shall be the date the City grants this Franchise to Franchisee as written above. This Agreement shall continue in full force and effect for a period of ten (10) years from the Effective Date of this Agreement.

Upon review by the City, and in the event Franchisee is found to be in full compliance with all terms of the Franchise, Franchisee shall be granted a five (5) year extension of the term. Franchisee must provide written request of its desire to extend the term of this franchise at least six (6) months prior to the end of the initial ten (10) year term.

3. COMPLIANCE WITH LAWS, ORDINANCES AND REGULATIONS

- 3.1. In the event of any conflict between any amendment to the Code provisions and the provisions of this Agreement, the Code provisions shall control.
- 3.2. This Agreement may be altered or amended upon agreement of the City and the Franchisee. The City Council reserves the right to legislate concerning the use by the Franchisee of the Rights-of-Way for the public welfare or the protection of the public interest at any time hereafter upon such notice to the Franchisee as may be required by state law or City ordinance and an opportunity for the Franchisee to be heard.
- 3.3. By this Section it is not intended that Franchisee be subject to any greater obligation to comply with Code than it would be otherwise. Franchisee retains its right to legally challenge to Code or any amendment thereto.

4. GRANT OF FRANCHISE

Subject to the terms and conditions of this Agreement and all applicable provisions of the Code, the City hereby grants a Franchise to Franchisee for an Electrical System within the Rights-of-Way of the Franchise Area for the sole purpose of providing Electric Services for which it holds a Certificate. By this grant, Franchisee is also granted the right to perform routine maintenance activities on its facilities within the Rights-of-Way of the Franchise Area. This Agreement does not confer any rights other than as expressly provided for herein or as mandated by federal, state, or local law. Franchisee hereby agrees to provide Electric Services in all portions of the Franchise Area to the extent required to do so by its Certificate.

5. LIMITATIONS ON GRANT OF FRANCHISE

- 5.1. The Franchise does not authorize any other license or permit required for the privilege of transacting or carrying on a business within the City of Reno as required by Code, or for attaching devices to poles or other structures owned by the City or any an entity other than Franchisee, its contractor or agents or for excavating or performing other work in or along Rights-of-Way.
- 5.2. Except as permitted by applicable law, nothing contained in this Agreement shall be construed as authorizing Franchisee to use, or permit the use of, any portion of its Electrical System for any purpose other than those reasonably necessary for the provision of Electric Service unless prior written approval is obtained from the City.

6. EFFECT OF ACCEPTANCE

By accepting the Franchise and executing this Franchise Agreement, the Franchisee:

- 6.1. Acknowledges and accepts the City's legal right to grant the Franchise, to enter this Franchise Agreement, to enact and enforce ordinance and regulations related to the Franchise;

- 6.2. Agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary, or allege in any claim or proceeding by the Franchisee against the City that any provision, condition or term of the Franchise Agreement at the time of the acceptance of the Franchise was unreasonable or arbitrary, or that at the time of the acceptance of the Franchise any such provision, condition or term was void or that the City had no power or authority to make or enforce any such provision, condition or term. Nothing contained in the Agreement shall be construed to require Franchisee to violate any law, regulation or tariff.

7. FRANCHISEE'S USE OF CITY PROPERTY

- 7.1. FRANCHISEE'S FUTURE ATTACHMENTS TO CITY PROPERTY. The Franchise granted herein does not authorize Franchisee to attach any part of its Facilities to City property located within or outside the Rights-of-Way, except for the Right-of-Way itself, until and unless Franchisee has entered into a separate written agreement with the City, in the City's sole discretion, supported by independent consideration, for the rights of attachment and use.
- 7.2. NO RETROACTIVE EFFECT OF FEE REQUIREMENTS. Nothing in this Section shall require Franchisee to pay any fees for attachments to and the use of City property prior to the Effective Date of this Agreement. The City agrees to reasonably negotiate with Franchisee to remedy the existence of any such prior attachments discovered on City property, which may include memorializing the existence of an attachment in a written document, so long as said attachment is not creating a detriment to the public welfare and safety, and may include payment of a fee from the Effective Date.

7.3. USE. All lines and appurtenances laid or placed by the Franchisee shall be so located in the Right-of-Way as not to obstruct or interfere with any pipes, sewers, drains, valves or other structures already installed.

7.4. LINES AND APPURTENANCES. Subject to the terms and conditions of this Agreement, Franchisee shall have the right to install, maintain and use any or all such lines and appurtenances from time-to-time as may be necessary or proper.

7.5. REPAIR OF PUBLIC ROADS. If any portion of a Right-of-Way shall be damaged by reason of defects in any of the lines and appurtenances utilized, maintained or constructed pursuant to the Franchise granted herein, or by reason of any other cause arising from the Franchisee's operations, or the existence of any lines and appurtenances constructed or maintained under this Franchise, the Franchisee shall, at its own cost and expense, within thirty (30) days or as soon thereafter as is practicable, repair any such damage and restore such Right-of- Way, or portion thereof, to as good a condition as it existed before such excavation, disturbance, work or other cause of damage occurred.

1.1.RELOCATION. The Franchisee shall relocate, without expense to the City, any Facilities, to include lines and appurtenances, previously installed and then maintained or used under this Franchise if and when made necessary by any lawful change of grade, alignment or width of any public road by the City, including the construction of any subway or viaduct; provided, however, that this provision shall remain in effect only so long as such public road, subway or viaduct shall remain under the jurisdiction of the City as a public road, and further provided that the City shall provide a suitable substitute Right-of-Way within which Franchisee may relocate its Facilities. This provision shall cease to be applicable to any public road if and when the City shall cease to have jurisdiction over or shall cease to be obligated to maintain such public road, and nothing herein contained shall be construed as constituting a contractual obligation of the Franchisee running to the authority assuming jurisdiction over or the obligation to maintain such public road. Nothing herein shall be construed to prohibit or restrict repayment by the State of Nevada or a third party for relocation of Franchisee's Facilities.

1.2.PLACEMENT AND INSPECTIONS. Before the work of maintaining existing Facilities, or installing new or upgrading of existing Facilities, including lines and appurtenances, is commenced, the Franchisee shall coordinate the location thereof with the City, comply with all City Code and permitting requirements, and the City shall give such directions for the location of such Facilities as may be reasonably necessary to avoid, sewers, water pipes, conduits or other structures lawfully in or under the Right-of-Way.

~~1.1.~~1.3.REPAIR OF WATER PIPES, SEWERS, DRAINS AND OTHER STRUCTURES. The Franchisee shall, at its own cost and expense, immediately repair or replace as necessary all water pipes, mains, service lines, valves, meters, sewer lines, culverts, conduits, and all other materials and equipment utilized in connection with water service, sewer service and drainage or facilities of other utilities damaged in any way by the Franchisee.

8. JOINT AND THIRD-PARTY USE OF FRANCHISEE'S FACILITIES; EXCAVATION; POLE OWNERSHIP

8.1. JOINT USE OF SYSTEM. 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.

8.2. **CITY NOTIFICATION OF USE OF FRANCHISEE'S FACILITIES BY THIRD PARTIES.** 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 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.

8.3. **PERMISSION REQUIRED TO TRANSFER FRANCHISEE'S FACILITIES TO THIRD PARTY.** 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.

8.4. **FRANCHISEE'S OVERHEAD RELOCATION ACTIVITIES.** 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:

8.4.1. 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

8.4.2. 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.

8.5. **FRANCHISEE'S RESPONSIBILITY FOR ITS FACILITIES.** Franchisee shall remain responsible for all claims and liabilities of whatever nature related to its

Facilities until such time as such Facilities have been:

- 8.5.1. completely removed and the Right-of-Way repaired and restored to its prior or better condition in accordance with the City of Reno Standard Details and the Design Manual, or its successor publication, as amended from time to time, to the reasonable satisfaction of the Director of Public Works;
- 8.5.2. abandoned in place as approved by the Director of Public Works in accordance with any applicable provisions of the Code; or
- 8.5.3. transferred to a third party with the consent of the City Council.

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.

- 8.6. **POLE ATTACHMENT AGREEMENTS TO BE FURNISHED TO CITY.** Franchisee shall, upon request, within a reasonable time period not to exceed 60 days provide the City with copies of any PACs or similar agreements allowing the use of Franchisee's Facilities in the Rights-of-Way.

9. WORK BY OTHERS

The City third 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 third ~~other~~ person or entity, including any contractor, subcontractor, or agent, from liability from damage to Franchisee's Facilities.

10. RELOCATION OF FACILITIES

- 10.1. **REMOVAL AND RELOCATION.** 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.
- 10.2. **PRIOR RIGHTS; COST FOR RELOCATION.** 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 10, 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 no Betterment may be performed in connection with any relocation under Section 10.2. 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 10. Franchisee shall provide to City documentation supporting its calculation of the actual cost of such Betterment. All other provisions of this Section 10 shall apply to Franchisee's work in performing the relocation of any Facilities covered by this Section.

- 10.3. 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.
- 10.4. 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 will be responsible for the actual cost of the relocation.
- 10.5. 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 City will recognize the Franchisee's prior right in the new location by issuance of an instrument/document recognizing the prior right.
- 10.6. 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, 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 improvements in City Rights-of-Way. The City will provide an alternate location, and if necessary, new City Right-of-Way, for the installation of facilities relocated pursuant to this Section.

10.7. [COMPENSATION FOR UNDERGROUNDING UNDERGROUNDING](#)

REQUESTS. The parties agree that the underground management plan is a successful model that both parties are committed to utilize, support, and grow. Notwithstanding that commitment, where the underground management plan is not utilized, the Franchisee shall not be required to remove existing overhead facilities and place them underground without full compensation for the costs for such activities. Compensation shall include, but not be limited to, the remaining undepreciated value of the existing facilities to be removed, removal costs of existing facilities, installation of the new underground facilities, and the reconnection costs for existing customers. The Franchisee is not responsible for the conversion of the customer's panels from overhead service to underground service. Where the facilities have deteriorated and are scheduled to be replaced by the Franchisee or are to be relocated, the Franchisee shall participate in the costs for installing the facilities underground in a dollar amount equal to that which the Franchisee would have incurred to replace or relocate them as overhead facilities. Where the costs for undergrounding existing overhead electric facilities will be funded by parties other than the Franchisee, and so long as the area where overhead facilities to be undergrounded would permit said undergrounding, the Franchisee will not unreasonably refuse to relocate those existing overhead electric facilities underground.

~~11.1.~~

~~12.11.~~

UNDERGROUND CONDUIT

~~12.1.11.1.~~

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.

~~12.2.11.2.~~ 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.

~~13.12.~~ FRANCHISE FEE

~~13.1.12.1.~~ **FEE AMOUNT.** During the Term of this Agreement, Franchisee agrees as compensation for the use of the Rights-of-Way to pay the City a franchise fee. The franchise fee shall be established by the City Council by ordinance, shall be payable quarterly, and shall not exceed the maximum amount allowed by law. The Franchise fee amount shall be derived from the gross revenues received by Franchisee for provision of Electric Services to customers located within the city limits.

~~13.2.12.2.~~ **ANNEXATION MONIES.** 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. City shall notify Franchisee of any City approved annexation, including the

address of the annexed property. Franchisee shall have ~~36~~³⁰ days from the date notice is received to change the billing of the annexed property.

- 12.3. **FRANCHISE FEE REPORT.** Franchisee shall submit to the City a quarterly Franchise Fee Report, in a mutually agreed upon format, not later than thirty (30) days after the last day of each March, June, September, and December throughout the term of this Agreement.
- 12.4. **ANNUAL FINANCIAL STATEMENTS.** On or before May 31 the Franchisee agrees to provide to the City copies of its Form 10K submitted to the Securities and Exchange Commission and its annual report for the previous year.
- 12.5. **PAYMENT AUDITS.** No acceptance of any Franchise Fee payment by the City shall be construed as an accord and satisfaction that the amount paid is in fact the correct amount or a release of any claim that the City may have for further or additional sums payable under this Agreement, and all amounts paid shall be subject to audit. Franchisee shall make relevant books and records available to the City as further provided below in Section 14.
- 12.6. **UNDERPAYMENT REMEDY.** If (as a result of such audit or other review, the City determines that the Franchisee has underpaid its fees in any twelve (12) month period by five percent (5%) or more, then, in addition to making full payment of the relevant obligation, the Franchisee shall reimburse the City for all of the reasonable costs associated with the audit or review, including all reasonable out-of-pocket costs for attorneys, accountants, and other consultants.
- 12.7. **INTEREST ON LATE PAYMENTS.** If any payment required by this Agreement is not actually received by the City on or before the applicable date fixed in the Agreement or by the City, the Franchisee shall pay interest thereon, from the due date to the date said payment is actually received by the City at a rate of two percent (2%) per NRS 354.59887(2)(c) for the period of delinquency.
- 12.8. **CONTINUING OBLIGATION.** In the event the Franchisee continues to operate all or any part of the Electrical 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 renewable of or other extension of this Agreement or the Franchise.

13. FRANCHISE FEE IN LIEU OF BUSINESS LICENSE FEE.

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.

14. RECORDS

14.1. COMPLETE AND ACCURATE BOOKS.

Throughout the term of this Agreement, Franchisee shall make available to the City complete and accurate books of account and record regarding the Franchisee's ownership and operation of the System and the provision of Services over the

system, in a manner reasonably acceptable to the City when necessary for the City to reasonably determine Franchisee's compliance with the terms and conditions of the Code and this Franchise Agreement. Franchisee shall maintain all relevant books and records for a period of at least seven (7) years following the calendar year to which the books and records pertain.

14.2. RIGHT TO INSPECT.

The City shall have the right to inspect upon reasonable written notice via the US mail, other mail carriers, or electronic mail, at any time during normal business hours and within the City limits, books, records, maps, plans, service complaint logs, performance test results and other like materials of the Franchisee which relate to the operation of the System and when necessary for the City to reasonably determine Franchisee's compliance with the terms and conditions of the Code and this Franchise Agreement.

- 14.3. "AS-BUILT" DRAWINGS. Upon request, Franchisee shall provide the City with a set of "as-built" drawings of a specific project, or any requested portion thereof.

15. TRANSFERS AND ASSIGNMENTS

If the transfer and assignment of Franchisee's certificate of public convenience and necessity has been approved by the PUCN, 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 PUCN, without the prior approval of the City Council, except that the transferee and assignee must provide a notarized document to the City Manager, acknowledging the transfer and assignment and that the transferee and assignee agrees 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. The City Manager shall file such notarized document with the franchise agreement on file in the City Clerk's office.

16. TECHNOLOGICAL IMPROVEMENTS, MAINTENANCE AND CONSTRUCTION STANDARDS

- 16.1. 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.

- 16.2. 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.

- 15.1. Franchisee is hereby granted the right to trim trees along the streets, alleys and public grounds of the City and any extension thereof to provide and maintain a safe installation of high voltage wires necessary, convenient or useful in the operation of its said System. In so doing, Franchisee will comply with Franchisee's established tree trimming standard and provide reasonable notice to the City of the general location and time for Franchisee's tree trimming activities. Franchisee will provide its standard and updates to the City at the City's request. The City and the Franchisee shall make good faith efforts and take reasonable steps to prevent new vegetation from being planted which, at maturity, will grow within ten feet of an energized conductor.
- 15.2. Franchisee shall maintain and operate its Facilities and render efficient service in accordance with the provisions of this Agreement and in accordance with the rules, regulations and orders of the PUCN as they now exist and as they may hereafter be amended or changed.
- 15.3. All lines and appurtenances which shall be laid and used under and pursuant to the provisions of this Franchise and in the exercise hereof shall be installed, constructed and maintained in accordance with any applicable codes, ordinances and regulations of the City, the Nevada Revised Statutes, the Nevada Administrative Code, and orders of the Public Utilities Commission of Nevada, and in a good and workmanlike manner, and shall be maintained in compliance with all such valid laws, ordinances, rules, regulations, codes and orders as are then in force.

17. REVOCATION AND PENALTIES

- 17.1. The City Council shall have the right to revoke and terminate this Agreement, in addition to any other rights or remedies set forth in this Agreement or provided by law, pursuant to the provisions of the Code, as amended from time to time.
- 17.2. After providing notice and an opportunity for the Franchisee to be heard and a reasonable opportunity to cure, the City Council may impose upon the Franchisee reasonable fines or penalties in an amount not to exceed five hundred dollars (\$500.00) per day or any total amount per occurrence greater than one hundred thousand dollars (\$100,000.00), if the City Council finds that the Franchisee has failed to comply with any of the conditions or obligations imposed by this Franchise Agreement or any applicable provisions of the Code. For purposes of this Agreement, "occurrence" refers to an event and not individual instances of damage or loss that cumulatively result from an event. These fines or penalties shall be in addition to any other remedies available under law to the City. Any such fines or penalties shall be due within 30 days of

Franchisee's receipt of written notification by City of the fine or penalty, made payable to the City Treasurer and delivered to the City Manager at the City's address indicated in Section 26 of this Agreement. A late charge of two percent (2%) of the fine or penalty imposed shall be assessed if the fine or penalty is not paid within such 30 days of the written notification.

- 17.3. If a fine or penalty which has been imposed by the City Council is not paid within such 30 days, Franchisee hereby grants the City authorization to deduct the amount of the fines or penalties plus late charges, if any, from the Franchisee's security deposit provided for such purposes, pursuant to Section 20 herein and the applicable provisions of the Code. If at any time the City has drawn upon such security deposit, the Franchisee shall within 30 days of notification from the City replenish such security deposit to the original minimum amount established in Code.

18. INDEMNIFICATION

- 18.1. Franchisee shall fully indemnify, defend and hold harmless the City, its officers, boards, commissions, elected officials, agents, attorneys, representatives, servants and employees against any and all costs, damages, expenses, claims, suits, actions, liabilities and judgments for damages, including but not limited to, expenses for legal fees, and disbursements and liabilities incurred or assumed by City in connection with:
- 18.1.1. Damage to persons or property, in any way arising out of or through the acts or omissions of Franchisee, its servants, officials, agents, attorneys, representatives or employees during the operation, construction or maintenance of the Electrical System.
- 18.1.2. Any and all claims arising out of Franchisee's failure to comply with the provisions of the Code, this Agreement or any federal, state or local law, or regulation applicable to Franchisee or the Electrical System.
- 18.2. If Franchisee Self-Insures. If Franchisee self-insures pursuant to Subsection 19.3 hereof, then, to the fullest extent permitted by law and without limiting any of Franchisee's obligations under Subsection 19.3 or Subsection 18.1, Franchisee shall indemnify, protect, defend and hold harmless the City, its officers, boards, commissions, elected officials, agents, attorneys, representatives, servants and employees against any and all liability, costs and expenses (including defense costs and legal fees), and claims, losses, liabilities, suits, or actions of any kind (collectively "Claims and Expenses") arising out of, relating to, or resulting from, the performance of or failure to perform Franchisee's obligations arising out of this Agreement (including performance or failure to perform by Franchisee's contractors and/or subcontractors), to the extent such Claims and Expenses would be indemnified pursuant to the insurance described in Section 18.1, except to the extent any claim or Expense is proximately caused by the negligence or willful misconduct of the City or its agents, employees, servants or independent contractors who are directly responsible to City.
- 18.3. If a lawsuit covered by the provisions of Subsection 18.1 shall be brought against City, either independently or jointly with Franchisee, or with any other person or municipality; the Franchisee, upon no less than ten (10) business days notice given

by City, shall defend City at the cost of the Franchisee. If final judgment is obtained against City, either independently or jointly with Franchisee or any other defendants, the Franchisee shall indemnify City and pay such judgment with all costs and satisfy and discharge the same.

- 18.4. City shall cooperate with the Franchisee and reserves the right to participate in the defense of any litigation.
- 18.5. The City is in no manner or means waiving any governmental immunity it may enjoy or any immunity for its agents, officials, servants, attorneys, representatives and/or employees.
- 18.6. All rights of City, pursuant to indemnification, insurance, or performance bond(s), as provided for by the Code or this Agreement, are in addition to all other rights the City may have under the Code, this Agreement, or any other Franchising requirements, rule, regulation or law.
- 18.7. The City's exercise of or failure to exercise all rights pursuant to any Section of this Agreement shall not affect in any way the right of the City subsequently to exercise any such rights or any other right of City under this Agreement or any other rule, regulation or law.
- 18.8. It is the purpose of this Section to provide maximum indemnification to the City under the terms and conditions expressed and, in the event of a dispute, this Section shall be construed (to the greatest extent permitted by law) to provide for the indemnification of the City by the Franchisee.
- 18.9. The provisions of this Section shall not be dependent or conditioned upon the validity of the Code, this Agreement, or the validity of any of the procedures or agreements involved in the award or renewal of a Franchise, but shall be and remain a binding right and obligation of the City and Franchisee even if part or all of the Code, this Agreement, or the grant or renewal of a Franchise, is declared null and void in a legal or administrative proceeding. It shall be the express intent of the Franchisee and City, upon the effective date of the Franchise, that the provisions of this Section survive any such declaration and shall be a binding obligation of and inure to the benefit of the Franchisee and City and their respective successors and assigns, if any.
- 18.10. Notwithstanding the foregoing, Franchisee shall not be obligated to indemnify the City for its negligence for the City's use of the Electrical System, or for the City's use of any facilities provided by Franchisee pursuant to this Agreement.
- 18.11. The provisions of this Section 18 shall survive termination of this Agreement.

19. INSURANCE

- 19.1. Unless Franchisee meets the self-insurance requirements set forth in Subsection 12:1 below, the Franchisee shall file with the City Clerk and shall thereafter during the entire term of such Franchise maintain in full force and effect, at its own expense, a general comprehensive liability insurance policy or policies which shall insure Franchisee and provide primary coverage for the City, its officers, boards, commissions, elected officials, agents, attorneys, representatives, servants and employees against liability for loss or liability for personal injury, death,

property damage (both automobile and non-automobile caused), or other damages in accordance with the Insurance Requirements described in Subsection 19.2.

- 19.2. Insurance Requirements. Such policy or policies shall be issued by a company licensed to do business in the State of Nevada which have a Best rating of "A" or better; and shall be in a form agreed to by the City Attorney, with minimum combined single limits of liability coverage in the amount of one million dollars (\$1,000,000) and two million dollars (\$2,000,000) aggregate. The policy or policies shall name the City, its officers, boards, commissions, elected officials, agents, attorneys, representatives, servants and employees as additional insured ("Additional Insured Group") and contain a provision that a written notice of any cancellation of said policy shall be delivered to the City Clerk thirty (30) days in advance of the effective date thereof. Any substitute policy or policies shall be subject to the same approvals and shall comply with all of the provisions of this Subsection. The City Manager or designee may require increases in the amount of types of coverage no more frequently than every three (3) years. The Franchisee shall have three (3) months from the date of notification from the City Manager to comply with any increase.
- 19.3. Self-Insurance. Upon written approval by City's Risk Manager, which shall not be unreasonably withheld, Franchisee may fulfill the insurance obligations under Subsection 19.2 (including, without limitation, coverage for work performed by Franchisee's contractors and subcontractors) pursuant to self-insurance, if the following conditions are met:
 - 19.3.1. Franchisee has in effect prior to the execution of this Agreement, a program of "self-insurance";
 - 19.3.2. Franchisee agrees to protect City and any other member of the Additional Insured Group at the same level with respect to types of coverage and minimum limits of liability as City would have required of third-party insurance;
 - 19.3.3. Franchisee agrees that such self-insurance shall include all duties, obligations and responsibilities with respect to any claim made under such self-insurance program (including, without limitation, providing a defense for City and the other members of the Additional Insured Group) in any claim, lawsuit or other proceeding seeking damages for which an insurance carrier would otherwise be obligated by statute or common law to provide a defense, and if Franchisee questions such obligation where it is claimed by City, Franchisee shall nevertheless provide such defense with a reservation of the right to receive reimbursement from City if a final determination is made subsequently by a court of competent jurisdiction that such obligation did not exist), as well as all other provisions set forth in this Agreement which otherwise would have been applicable if Franchisee had obtained such insurance coverage from a third party;
 - 19.3.4. Franchisee agrees that any insurance carried by City is in excess of Franchisee's self-insurance and will not contribute to it;
 - 19.3.5. Franchisee provides to City the name and address of its claims administrator;

- 19.3.6. Franchisee agrees that it shall not reduce its coverage below the level or types of coverages which are required pursuant to Subsection 19.2 above;
- 19.3.7. Franchisee maintains a minimum net worth and minimum net current assets, as defined by generally accepted accounting principles, adequate in the City Manager's judgment to support Franchisee's self-insurance obligations hereunder; and
- 19.3.8. Franchisee has complied with all laws pertaining to self-insurance.
- 19.4. Acceptance. No Franchise granted under this Agreement shall be effective unless and until each of the foregoing policies of insurance as required in Section 19.2 has been delivered to the City Clerk, or Franchisee has provided to City a letter in form and substance satisfactory to City which certifies that Franchisee meets the self-insurance requirements of Subsection 19.3.

20. SECURITY FOR PERFORMANCE

The Franchisee shall secure, maintain, and provide the City with security for performance in an amount required pursuant to the provisions of RMC Chapter 2.12, as amended from time to time. The surety bond shall be irrevocable and in a form and contain the terms of drawing prescribed and approved by the City Attorney's Office. The City may draw upon the surety bond to obtain payment of sums due from Franchisee to the City under this Agreement, which sums (including but not limited to, assessed fines or penalties and late charges, if any) were not timely paid and which remain unpaid at least ten (10) days after written notice to Franchisee. At all times during the term of this Agreement, Franchisee shall replenish the surety bond to its full amount within thirty (30) days of receiving notice that some or all of the surety bond has been drawn by the City.

21. LOCAL EMERGENCY

In case of fire, flood, earthquake, tornado, snow-emergency, acts of war, elements of nature or acts of God, terrorism, riots, civil disorders, rebellions or revolutions, court order or any other emergency as determined by the City in its sole discretion, the City may cut, move or relocate any portion of the Electrical System without incurring any liability to the Franchisee. To the extent practicable, Franchisee shall be consulted prior to any such cutting, moving, or relocation of the Electrical System and be given the opportunity to perform such work itself. All costs to repair or replace parts of the Electrical System damaged or destroyed during a local emergency shall be borne by the Franchisee.

22. SEVERABILITY

If any section, paragraph, sentence or clause of this Agreement is declared by a court of competent jurisdiction to be unenforceable or void by reason of public policy or otherwise, then the remaining provisions of such agreement shall nonetheless remain in force to the fullest extent permitted by law.

23. NO THIRD-PARTY BENEFICIARY

This Agreement does not create for the public, or any member thereof, a third-party beneficiary right or remedy.

24. EFFECT OF COMPLIANCE INSPECTIONS

Any inspections or subsequent approvals undertaken by the City pursuant to this Agreement are undertaken solely to ensure compliance with this Agreement and are not undertaken for the safety or other benefit of any individual or group of individuals as members of the public. Provisions of the Code dealing with inspection or approval by the City do not expand the City's general law duties, nor does any inspection or approval by the City reduce or eliminate any liability of Franchisee.

25. NOTICES

All notices, reports, or demands required to be given to or served on the City and/or Franchisee shall be in writing and shall be deemed to have been given when delivered personally to the persons designated below, or when seventy-two (72) hours have elapsed after being deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, or on the next business day if sent by express mail or overnight air courier addressed to the party to which notice is being given. Either party may by notice to the other change its address for receipt of notices.

NOTICES SHALL BE DIRECTED AS FOLLOWS:

To Franchisee:

Sierra Pacific Power, d/b/a NV Energy
6100 Neil Rd.
Reno, Nevada 89511
Telecopy: (775) 834-4811
Telephone: (775) 834-4208

With copies to:

[Ryan Bellows, Ombudsman](#)

~~Mary Simmons, Ombudsman~~

To the City:

City of Reno
1 East First St.
P.O. Box 1900
Reno, Nevada 89505
Attn: City Manager
Telecopy: (775) 334-2097
Confirmation No.: (775) 334-2020

With copies to:

City Attorney's Office
1 East First St.
P.O. Box 1900
Reno, Nevada 89505
Telecopy: (775) 334-2420
Confirmation No.: (775) 334-2050

26. OMBUDSMAN

- 26.1. Franchisee shall designate and maintain an Ombudsman for the duration of this Agreement. Franchisee shall notify the City of the name and title of the person serving as Franchisee's Ombudsman. The Ombudsman must be a senior corporate official who does not directly or indirectly report to any person who manages this Agreement, or any City account, on a day-by-day basis. On an ongoing basis, Franchisee shall immediately notify the City when an Ombudsman is replaced.
- 26.2. If, for whatever reason, a dispute arises between the Parties that cannot be resolved to the City's satisfaction, the City, at its sole option, may submit the dispute to the Ombudsman who shall ensure that the matter is formally reviewed; considered; and resolved and/or responded to; by the Franchisee within seven (7) days.
- 26.3. This Section, however, does not in any way legally obligate the City to submit a dispute to the Ombudsman as a condition precedent to enforcing its rights hereunder in law or in equity, including the right to seek damages for breach, a decree of specific performance, injunctive relief or any other remedy that would be available to the City in the event of a breach, or threatened breach, of any provision of this Agreement by the Franchisee, or any of the Franchisee's successors or assigns.

27. FORCE MAJEURE

- 27.1. The Franchisee shall be not liable for any failure or delay in the performance of its obligations pursuant to this Agreement and such failure or delay shall not be deemed a default of this Agreement or grounds for termination hereunder if and to the extent such failure or delay is caused, directly or indirectly, by fire, flood, earthquake, tornado, snow-emergency, elements of nature or acts of God, acts of war; terrorism, riots, civil disorders, rebellions or revolutions, or court order (a "Force Majeure Event").
- 27.2. Upon the occurrence of a Force Majeure Event, the Franchisee shall be excused from any further performance of those of its obligations pursuant to this Agreement affected by the Force Majeure Event for as long as: (1) such Force Majeure Event continues; and (2) the Franchisee continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.

28. NO WAIVER; CUMULATIVE REMEDIES

The failure of any Party at any time or times to require performance of any provision hereof shall in no manner affect the right at a later time to enforce the same. No waiver by any Party of any condition, or of any breach of any term, covenant, representation, or warranty contained herein, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or breach or waiver of any other condition or of any breach of any other term, covenant, representation or warranty, nor shall any single or partial exercise of any such right or remedy preclude any other right or remedy.

29. CONSTRUCTION OF AGREEMENT

The terms and provisions of this Agreement shall not be construed strictly in favor of or against either party, regardless of which Party drafted any of its provisions.

30. NO JOINT VENTURE

NOTHING HEREIN SHALL BE DEEMED TO CREATE A JOINT VENTURE OR PRINCIPAL-AGENT RELATIONSHIP BETWEEN THE PARTIES, AND NEITHER PARTY IS AUTHORIZED TO, NOR SHALL EITHER PARTY ACT TOWARD THIRD PERSONS OR THE PUBLIC IN ANY MANNER THAT WOULD INDICATE ANY SUCH RELATIONSHIP WITH THE OTHER.

31. GOVERNING LAW, JURISDICTION AND VENUE

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Nevada and, to the extent applicable, the laws of the United States of America. The Second Judicial District Court in and for Washoe County, State of Nevada shall have jurisdiction and venue over all disputes arising under this Agreement.

32. ENTIRE UNDERSTANDING OF THE PARTIES

This Agreement (including the exhibits to this Agreement) constitutes the entire agreement of the Parties with respect to the matters addressed herein. This Agreement may not be amended, nor may any of the terms, covenants, representations, warranties or conditions hereof be waived, except by a written instrument executed by the Party against which such amendment is to be charged.

33. SUBJECT TO LAWS AND POLICE POWERS

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.

Franchisee agrees that, to the extent it may be applicable to this Franchise and activities conducted pursuant to this Franchise, Franchisee shall comply with the Americans with Disabilities Act (42 U.S.C., Section 1201, *et seq.*) and with the regulations promulgated pursuant thereto.

34. RETENTION OF SOVEREIGN IMMUNITY PROTECTIONS

Notwithstanding any other provision in this Agreement, nothing herein shall be construed to compromise, reduce or otherwise limit the rights of the City to sovereign immunity or other liability protections for government entities, employees or agents under the Law, including, but not limited to, its sovereign immunity rights under Chapter 41, Nevada Revised Statutes, all such rights hereby reserved by the City.

35. AUTHORITY TO EXECUTE AGREEMENT

City hereby represents and warrants to Utility that the execution of this Agreement by its undersigned officers has been duly authorized and approved by its

governing board in accordance with applicable law and regulations. Utility hereby represents and warrants to City that the execution of this Agreement by its undersigned officers is duly authorized and is in accordance with applicable law and utility's corporate bylaws.

36. BINDING EFFECT

All of the rights and obligations under this Agreement shall be binding and inure to the benefit of the Parties hereto and their respective successors, permitted transferees, and assigns.

37. INCORPORATION OF EXHIBITS

Each recital and every exhibit to which reference is made in this Agreement is hereby incorporated in this Agreement by this reference.

38. SECTION AND PARAGRAPH HEADINGS

The headings which appear at the commencement of each section are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between any heading and the section itself, the section itself and not the heading shall control as to construction.

39. SURVIVAL

The representations, warranties, indemnities and waivers set forth in this Agreement, and provisions relating to payments and record retention, shall survive the termination, for any reason whatsoever, of this Agreement.

40. DAYS

All references to "days" herein shall mean calendar days, unless otherwise indicated.

41. TIME OF THE ESSENCE

Time is of the essence with regard to the performance of Franchisee's obligations under this Agreement.

41. GIFTS

Except where permitted by state law and local ordinance (including but not limited to, RMC Section 2.20.010, *et seq.*, as amended), no officer or employee of Franchisee shall offer to any officer or employee of the City, either directly or indirectly, any rebate, gift, money, service without charge or other thing of value, except where given for the use and benefit of the City.

(REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the dates below their signatures and it shall be effective when fully executed.

UTILITY:

**SIERRA PACIFIC POWER COMPANY,
D/B/A NV ENERGY,**
a Nevada corporation

By:_____

Name:_____

Title:_____

Date:_____

CITY:

THE CITY OF RENO,
A municipal corporation of the State of Nevada

By:_____

Date: _____

APPROVED AS TO FORM:

By: _____
City Attorney's Office

ATTEST:

By: _____
City Clerk