

## **FACILITIES RELOCATION AGREEMENT**

This Agreement ("Agreement") is entered into and made effective as of the date of execution, by and between Nevada Power Company ("Utility") with offices at 6226 West Sahara, P.O. Box 98910, Las Vegas, Nevada, 89151 and the City of Las Vegas, Department of Public Works ("Applicant") with offices at 400 Stewart Avenue Las Vegas, NV 89101. The Parties are referred to herein individually as a "Party", and collectively as the "Parties".

### **BASIS FOR AGREEMENT**

- A) UTILITY owns and operates electric transmission and distribution facilities and provides electric service to the public in Clark and Nye Counties Nevada, in accordance with a tariff filed with the Public Utilities Commission of Nevada.
- B) UTILITY holds certain Property Rights, which among other things permits UTILITY to locate therein certain distribution and/or transmission poles and ancillary cable and related facilities.
- C) APPLICANT proposes to perform road improvements at the intersection of Martin Luther King Jr. Blvd. and Washington Ave. The proposed road improvements conflict with a portion of the UTILITY's existing Pecos-Shadow and Las Vegas Cogen Highland 138kV transmission line.
- D) APPLICANT requests that UTILITY modify its existing Facilities and UTILITY has determined that it can modify its Facilities pursuant to the requirements of UTILITY's rule 9 tariff filed with the Public Utilities Commission of Nevada.
- E) UTILITY provided APPLICANT with a Cost and preliminary scope of work to modify its facilities. APPLICANT agreed to UTILITY's proposed solution and will advance to UTILITY the Costs for the modification.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions contained herein, the Parties do hereby mutually covenant and agree as follows:

### **AGREEMENT**

#### **1. DEFINITIONS**

The following terms, whether used in the singular or plural, and when initially capitalized, have the stated meanings.

- 1.1. Agreement: This document consisting of Sections 1 through 13 and its attached Exhibits, as amended
- 1.2. APPLICANT: City of Las Vegas Department of Public Works, and its agents, assignees and successors.
- 1.3. Costs: Direct and indirect costs attributable to the Project, including without limitation those for engineering, procurement, construction, repair, labor; material acquisition, handling and storage; contractors and subcontractors; acquisition of Property Rights, escrow fees; third-party attachments to UTILITY facilities; contract termination or cancellation fees; administrative and general overheads such as "Allowance for Funds

## **FACILITIES RELOCATION AGREEMENT**

Used During Construction” (AFUDC); and local, state and federal taxes. Costs incurred by UTILITY in good faith prior to the execution of this Agreement are included within this definition.

- 1.4. **Facilities:** Those Facilities that are the subject of this Agreement are specifically anchor bolt steel pole structure number X5673, direct burial type steel pole structure X5764 which will be removed and replaced with one direct burial quad tangent steel pole structure and steel pole structure X5672 for which the APPLICANT will provide a protective pole concrete barrier and an attenuator device assembly.
- 1.5. **Improvement Plan** APPLICANT grading, detail, utility, and traffic drawings shown in Exhibit C.
- 1.6. **In-Service Date:** The date on which the Project is operational; and all Facilities replaced are removed, as part of UTILITY’s electric system having passed all required testing.
- 1.7. **Party:** Nevada Power Company or City of Las Vegas Department of Public Works.
- 1.8. **Permit:** Any applicable approval, permit, consent, waiver, exemption, variance, franchise, order, authorization, right, action, or license required from any federal, state, or local governmental authority, agency, court or other governmental body having jurisdiction over the matter in question which is necessary for the Parties to perform their obligations under this Agreement and under the applicable Laws.
- 1.9. **Plan and Profile:** UTILITY’s project design showing the modifications and attached to this Agreement as Exhibit B.
- 1.10. **Project:** The Project consists of the engineering, inspection, survey, design, procurement, permitting, construction and removal necessary to relocate and/or modify certain Facilities and associated appurtenances as described below and as specified in the Exhibits:
  - 1.10.1. UTILITY will remove anchor bolt type steel pole structure number. X5673 and direct burial type steel pole structure number X5674.
  - 1.10.2. UTILITY will install one (1) direct burial type quad tangent steel pole structure and transfer all existing conductors, messengers, wires and necessary appurtenances from structures X5673 and X5674 to the new quad tangent steel pole structure.
  - 1.10.3. The UTILITY’s existing direct burial type steel pole structure number X5672 will remain in its current location and the APPLICANT will, at APPLICANT’s sole cost provide a UTILITY approved protective concrete pole barrier with an attenuator device assembly.
- 1.11. **Project Manager:** The individual appointed by each Party to serve as the single point of contact for all issues related to engineering design, procurement, and construction of the Project.
- 1.12. **Property Rights:** Real property rights such as ownership, easements, rights of way, and permits issued by governmental authorities, necessary in UTILITY’s sole judgment to

## **FACILITIES RELOCATION AGREEMENT**

use the property for the installation, removal, operation and maintenance of Facilities under this Agreement.

- 1.13. Rule 9: UTILITY's Electric Service Rule No. 9, in effect as of the Agreement's effective date, incorporated herein by reference.
- 1.14. Third Party Attachments: Those attachments identified by UTILITY which UTILITY has licensed to attach to UTILITY Facilities pursuant to UTILITY's federal obligation and for which APPLICANT is solely responsible to compensate directly to such Third Party for relocation Costs if applicable.
- 1.15. UTILITY: Nevada Power Company.

### **2. PROJECT SCOPE**

- 2.1. Subject to the terms of this Agreement UTILITY will at APPLICANT sole Cost perform the engineering, design, construction and work defined in Section 1.10 (Project) and its subsections. The Project Scope includes the Plan and Profile development, Improvement Plan Development and all Cost, payment and other administrative matters pertaining to this Agreement.

### **3. PLAN AND PROFILE DEVELOPMENT**

- 3.1. UTILITY will prepare the Plan and Profile in accordance with UTILITY's standards and will submit the final Plan and Profile to APPLICANT for informational purposes only.
- 3.2. The Plan and Profile is subject to revisions to reflect changes in the configuration of UTILITY's electrical system or changes in tentative routing up until such time that UTILITY receives APPLICANT's notice to proceed and payment of estimated Project Costs.

### **4. IMPROVEMENT PLAN DEVELOPMENT**

- 4.1. APPLICANT will use a professional engineer, licensed in the State of Nevada, to prepare, sign, and affix stamps to the Improvement Plans. These drawings will show Facilities placement and identify adequate safety measures for the protection of the Facilities and the public in accordance with UTILITY'S standards.
- 4.2. APPLICANT will submit final Improvement Plans to UTILITY for review and written approval by UTILITY's Transmission Department prior to beginning any work, or entry or encroachment onto UTILITY's Property Rights.
- 4.3. APPLICANT must submit the Improvement Plans to the appropriate governmental entity(s) for their review and approval and must obtain written authorization by the governmental entity(s) permitting road closures for maintenance and construction and as otherwise required.

## **FACILITIES RELOCATION AGREEMENT**

### **5. PROJECT SCHEDULE**

- 5.1. UTILITY will make commercially reasonable efforts to substantially complete the Project in accordance with the design schedule, but failure to meet any scheduled date is not a UTILITY event of default.
- 5.2. Each Party, upon knowledge thereof, will promptly provide written notice to the other of any change in schedule or any factor that is delaying or threatens to delay the schedule for Project.
- 5.3. APPLICANT may request UTILITY use reasonable efforts to expedite the Project In-Service Date at APPLICANT sole expense.
- 5.4. The Project is deemed complete following the In-Service Date.

### **6. SITE ACCESS, EASEMENTS AND APPLICABLE PERMITS**

- 6.1. APPLICANT will permit UTILITY access to, over, and across, any property owned or controlled by it, that is necessary for the purposes of carrying out this Agreement.
- 6.2. APPLICANT must, at its sole cost, obtain and convey to UTILITY all Property Rights that UTILITY reasonably deems necessary for the Project. Such Property Rights must be in a form and substance reasonably acceptable to UTILITY and sufficient to allow UTILITY to own, operate and maintain its Facilities.
- 6.3. UTILITY will obtain all other Applicable Permits deemed necessary for, or incidental to, the construction and continued operations and maintenance of the Project.
- 6.4. APPLICANT agrees to provide reasonable assistance, as UTILITY may request, to obtain these permits. Such support may include such things as writing letters of support to the applicable governmental authorities, speaking on behalf of UTILITY at hearings at UTILITY's request, and other actions reasonably requested to assist UTILITY in obtaining necessary governmental authorizations.

### **7. COST RESPONSIBILITY, PAYMENT AND SETTLEMENT**

- 7.1. APPLICANT is solely responsible for all Costs it incurs towards satisfying the requirements of this Agreement.
- 7.2. APPLICANT is also responsible for all Costs incurred by UTILITY to satisfy the requirements of this Agreement.
- 7.3. APPLICANT must provide the UTILITY a purchase order for the Costs of \$224,648 and submit to UTILITY the executed Agreement prior to commencement of construction.
- 7.4. The estimated Cost to design, procure, and modify the Facilities by removing anchor bolt type steel pole structure number X5673 and direct burial type steel pole structure number X5674, installing one (1) direct burial type quad tangent steel pole structure, transferring all existing conductors, messengers, wires and necessary appurtenances to the new quad tangent steel pole structure and inspecting the APPLICANTS installation of a protective pole barrier with an attenuator device on existing direct burial type steel pole structure number X5672 is \$224,648 APPLICANT must provide the UTILITY a

## **FACILITIES RELOCATION AGREEMENT**

purchase order in the amount of \$224,648 prior to construction with a true up of actual and estimated costs to begin once construction is complete.

- 7.5. No later than 60 days after all charges have been recorded, UTILITY will compare the estimated and actual Costs and either invoice or refund the difference to APPLICANT.
- 7.6. UTILITY will not proceed with the Project until after it has received the purchase order in the amount of \$224,648 and the executed Agreement.
- 7.7. APPLICANT will pay UTILITY any invoiced amount no later than 60 days after receipt of invoice by APPLICANT.
- 7.8. Any amount unpaid by APPLICANT and due under this Agreement will accrue interest at the then current per annum simpler prime rate, as published in the Money Rates section of the Wall Street Journal, plus one percent (1%), from the original due date through the date of receipt of payment by owing Party.
- 7.9. Interest is not payable to APPLICANT on the amount of the advance payment(s) made by APPLICANT.
- 7.10. These modifications to UTILITY facilities are not necessary to support electric load increases, will not be used to provide service to the facility being developed, and are simply a reimbursement of UTILITY's incremental costs to modify its existing and proposed facilities so that APPLICANT may retain use of its property. Therefore, UTILITY believes the payments by APPLICANT to UTILITY under this Agreement are not Contributions in Aid of Construction ("CIAC") that will subject UTILITY to income tax liability pursuant to section 118 of the Internal Revenue Code of 1954, nor subject to tax gross-up pursuant to NAC § 704.6532. Should UTILITY later determine that UTILITY is subject to such tax liability, APPLICANT must pay UTILITY the gross-up required applied at the rate in effect in Rule 9 of the UTILITY tariff at the time the CIAC is made. As of the effective date of this Agreement, the applicable CIAC tax rate is 27%.

### **8. TERM AND TERMINATION**

- 8.1. This Agreement is effective on the day first written above when executed by all Parties and will terminate upon satisfaction of all obligations under this Agreement.
- 8.2. UTILITY may immediately terminate this Agreement if APPLICANT does not comply with the material terms and conditions of this Agreement or if UTILITY is unable to obtain applicable Permits after making commercially reasonable efforts to do so.
- 8.3. Expiration or termination of this Agreement does not release APPLICANT from any liability or obligation to UTILITY for:
  - 8.3.1. Payment of any amounts, due prior to or resulting from termination.
  - 8.3.2. Property Rights granted to UTILITY in Section 6.
  - 8.3.3. Indemnity obligations pursuant to Section 10 herein, to the extent of the statute of Limitations period applicable to any third party claim.

## **FACILITIES RELOCATION AGREEMENT**

### **8.4. If the Agreement is terminated:**

8.4.1. UTILITY will take all reasonable actions to minimize the Costs associated with shutting down the Project, which may include such things as restoring Facilities to their condition prior to construction being commenced or completing construction.

8.4.2. APPLICANT must fully reimburse UTILITY all its Costs, including reimbursement of any cancellation fees incurred as a result of UTILITY canceling its order for materials. UTILITY will apply the full amount of all prior APPLICANT payments towards these costs, including any such cancellation fee, and will either reimburse or invoice APPLICANT the difference. The provisions of Sections 7.6, 7.7, 7.8 and 7.9 apply to any reimbursement or invoice made or rendered under this Section.

## **9. DISPUTE RESOLUTION**

9.1. Except as otherwise stated, final and binding arbitration will be used to resolve any dispute or cause of action between the Parties to this Agreement, including but not limited to, contract issues, tort issues, equity issues, and the interpretation of laws or regulations. The arbitration will be held with Clark County, Nevada and administered by the American Arbitrators Association in accordance with its Commercial Arbitration Rules in effect at the time of arbitration. Any award or determination rendered by the arbitrator may be entered as a judgment in any court having jurisdiction thereof. Notwithstanding the foregoing the Parties may file an action seeking specific performance of this Agreement.

## **10. INDEMNIFICATION AND LIABILITY**

10.1. Each Party ("Responsible Party") agrees to defend and indemnify the other ("Indemnified Party") against third party claims for damages to such third party proximately caused by the breach of Responsible Party's obligations hereunder, or its negligent acts or omissions, or it intentional misconduct. This obligation to indemnify does not extend to claims where the Party seeking indemnity is or was solely responsible for causing the damages; provided, however, should fault be apportioned, the obligations of this Section is not to be construed to require either Party to pay more than its proportionate share of any claim.

10.2. In no event is UTILITY liable to APPLICANT for any punitive, consequential, incidental, indirect, or special damages or lost profits incurred or alleged to have been incurred by anyone, whether arising out of tort, breach of contract, breach of warranty, strict liability or any other claim as a result of any delay or modification to the transmission line schedule, construction, routing or rerouting.

## **11. REPRESENTATIONS**

11.1. Each Party represents that as of the date of this Agreement, it is duly organized, validly existing and in good standing under the laws of the State of Nevada with the valid

# FACILITIES RELOCATION AGREEMENT

corporate or governmental power to enter into and perform all of its obligations under this Agreement.

## 12. INTERPRETATION

- 12.1. Any modification, waiver, termination, rescission, discharge, or cancellation of the Agreement or of any terms will be binding only if in writing and executed by an authorized representative of both Parties.
- 12.2. This Agreement may be executed in any number of counterparts, and all such counterparts executed and delivered, such as an original, shall constitute but one and the same instrument.
- 12.3. This Agreement is to be construed and interpreted under the laws of the State of Nevada.
- 12.4. In the event any of the terms of this Agreement conflict with those of Rule 9, the terms of Rule 9 control.

## 13. NOTICES

- 13.1. All written notices will be sent to the Parties at the addresses stated on Exhibit A with copies as so designated.
  - 13.1.1. Exhibit A may be revised at any time by providing written notice to the other Party.
  - 13.1.2. APPLICANT will include a reference to UTILITY contract number 07-01015 in any such notice.

**IN WITNESS WHEREOF, THE PARTIES HERETO HAVE CAUSED THIS AGREEMENT TO BE EXECUTED BY THEIR DULY AUTHORIZED REPRESENTATIVE.**

### NEVADA POWER COMPANY


By: 

Print  
Name: Ronald Bilodeau

Title: Staff Contracting Agent

Date: 10/16/07

### CITY of LAS VEGAS DEPARTMENT of PUBLIC WORKS

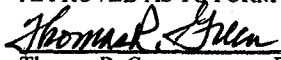
By: 

Print  
Name: OSCAR B. GOODMAN

Title: MAYOR

Date: 9/19/07

APPROVED AS TO FORM

 8/30/07  
Thomas R. Green Date  
Deputy City Attorney

ATTEST: 

By: Vicky Darling  
Acting Chief Deputy City Clerk

# FACILITIES RELOCATION AGREEMENT

## EXHIBITS

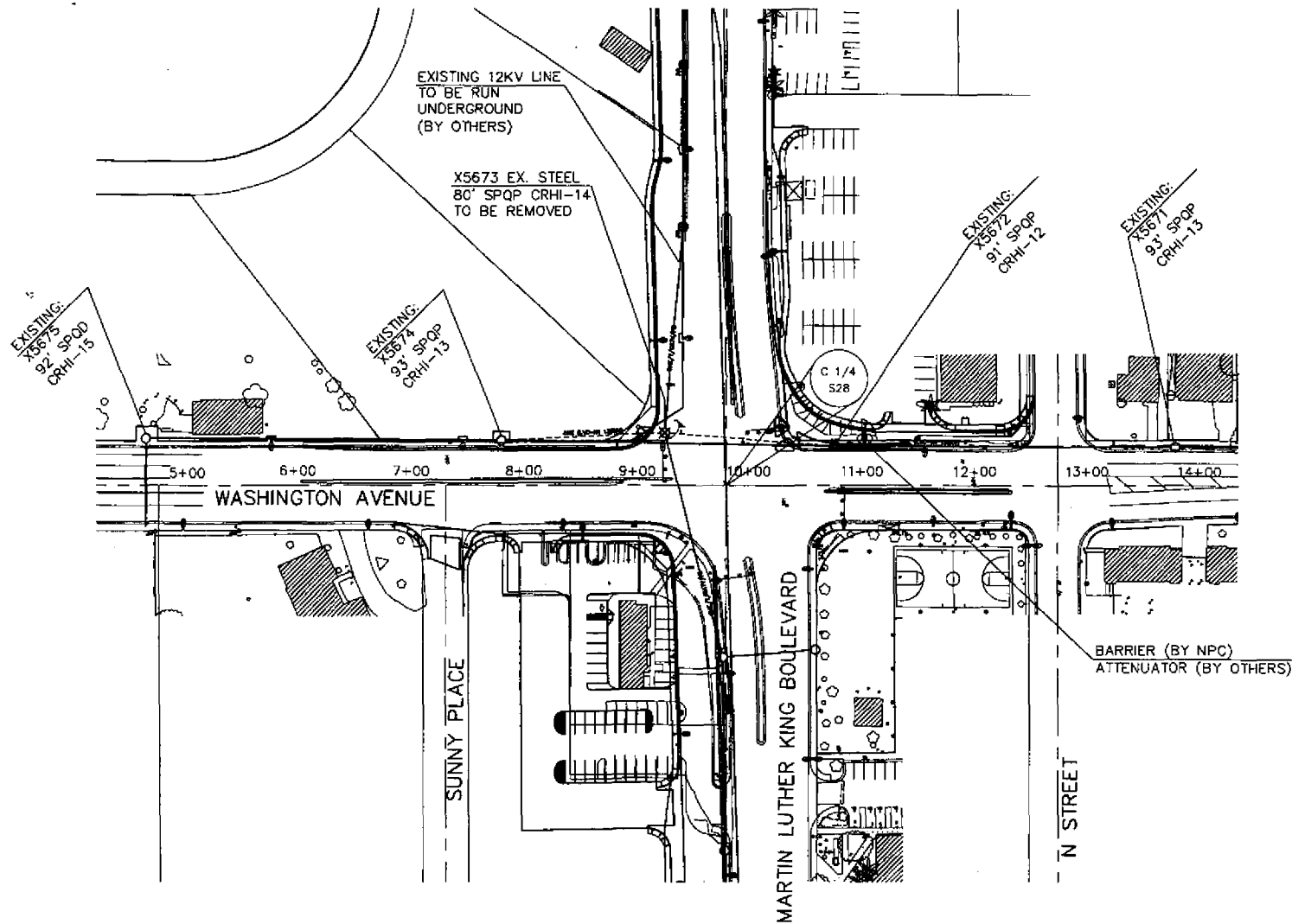
### *Exhibit A – Agreement Contacts*

<b>UTILITY (Nevada Power Company)</b>	
Address	Nevada Power Company 6226 W. Sahara Ave. Las Vegas, NV. 89146
Mailing Address	P.O. Box 98910 Las Vegas, NV, 89151-0001
Project Manager	Jim Roulias
Telephone	(702) 227-2667
Cellular Telephone	NA
FAX	(702) 367-5489
Email	<a href="mailto:jroulias@nevp.com">jroulias@nevp.com</a>

<b>APPLICANT (City of Las Vegas Department of Public Works)</b>	
Address	400 Stewart Avenue. Las Vegas NV 89101
Project Manager	Mark Sorensen
Telephone	(702) 229-2203
Cellular Telephone	N/A
FAX	N/A
Email	<a href="mailto:msorensen@lasvegasnevada.gov">msorensen@lasvegasnevada.gov</a>

# **FACILITIES RELOCATION AGREEMENT**

## ***Exhibit B –NPC's Plan and Profile***



**LEGEND:**

- NEW POLE
- EXISTING POLE
- ⊗ EXISTING POLE TO BE REMOVED
- ⊠ EXISTING POLE TO BE REPLACED
- ▲ ANGLE
- DEAD END

**NOTES:**

1. THIS POLE REMOVAL IS IN THE TRANSMISSION SCOPE OF WORK. DISTRIBUTION LINE SCOPE UNDER SEPARATE AGREEMENT.

REV	DESCRIPTION	DATE	DESIGNED	DATE	CHECKED	DATE	APPROVED	DATE
1	FIRST EXHIBIT	8/8/07		8/8/07		8/8/07		8/8/07
REVISION DESCRIPTION RECORD		DRAFTER	DATE	DESIGNED	DATE	CHECKED	DATE	APPROVED

**Nevada Power** TRANSMISSION ENGINEERING

138KV TRANSMISSION LINE  
HIGHLAND - LV COGEN  
MLK BLVD. & WASHINGTON ST.  
TRANSMISSION SCOPE EXHIBIT

PROJECT ID: TL329TOMLN DWG. 441.138.EXH-1

SCALE: N/A

SHEET 1 OF 1

I:\PROJECTS\138KV\138KV\_TRANSMISSION\_SCOPE\_EXHIBIT\138KV\_TRANSMISSION\_SCOPE\_EXHIBIT.dwg  
 PLOT DATE: 8/8/07 11:30:24 AM  
 PLOT BY: J. B. BROWN

# **FACILITIES RELOCATION AGREEMENT**

## ***Exhibit C –APPLICANTS Improvement Plan***