BILL NO. 2001-1

ORDINANCE NO. 5289

AN ORDINANCE GRANTING TO SIERRA PACIFIC COMMUNICATIONS, INC., A NEVADA CORPORATION AUTHORIZED TO DO BUSINESS IN NEVADA, A NON-EXCLUSIVE FRANCHISE FOR A TELECOMMUNICATIONS SERVICE WITHIN THE CORPORATE LIMITS OF THE CITY OF LAS VEGAS, SUBJECT TO AND IN ACCORDANCE WITH THAT CERTAIN FRANCHISE AGREEMENT ENTERED INTO BETWEEN THE CITY OF LAS VEGAS AND SIERRA PACIFIC COMMUNICATIONS, INC.; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO.

Proposed by: Mark Vincent, Director
Department of Finance and Business Services

Summary: Grants to Sierra Pacific Communications, Inc., a non-exclusive franchise for the purpose of constructing, using and maintaining a telecommunications service within the corporate limits of the City of Las Vegas, subject to and in accordance with the terms and conditions of the Franchise Agreement between the City of Las Vegas and Sierra Pacific Communications, Inc., incorporated by reference into this Ordinance.

THE CITY COUNCIL OF THE CITY OF LAS VEGAS DOES HEREBY ORDAIN AS FOLLOWS:

SIERRA PACIFIC COMMUNICATIONS, INC., FRANCHISE

SECTION 1: For the purpose of this Ordinance, the following terms and phrases, words, abbreviations and their derivations shall have the meaning given herein:

(A) **"Company"** means Sierra Pacific Communications, Inc., a Nevada limited liability company, authorized to do business in the State of Nevada.

(B) **"Telecommunications"** means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

(C) **"Telecommunications carrier"** means any provider of telecommunications services. "Telecommunications carrier" does not include any person that, in the ordinary course of his or her operations, makes telephones available to the public or to transient users of his or her premises, for interstate telephone calls using a provider of operator services.

(D) **"Telecommunications service"** means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available to directly to the

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public, regardless of the facilities used. This definition is intended to include commercial mobile service ("CMS"), competitive access service, and alternative local telecommunications services to the extent they are offered to the public or to such classes of users as to be effectively available to the public. Telecommunications services only includes Title II services and expressly excludes cable services as defined in Title VI, of the Communications Act of 1934, as amended, by the Telecommunications Act of 1996. "Telecommunications service" shall not include cable services as defined in Title 47, Chapter 5. Subchapter V-A of the United States Code, as amended (47 USCA 521, et seq.) or as recognized by the FCC.

SECTION 2: The City of Las Vegas, Nevada, hereby grants to Sierra Pacific Communications, Inc., the non-exclusive right, privilege, authority and permission to construct, use and maintain a telecommunications service system in, upon, along, across, above, over and under all present and future streets, avenues, highways, alleys, bridges and public ways within the incorporated boundaries of the City of Las Vegas, subject to and in accordance with the terms and conditions of that certain document entitled Franchise Agreement dated the 17th day of January, 2001 (effective date) by and between the City of Las Vegas and Sierra Pacific Communications, Inc.

SECTION 3: If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this ordinance or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof. The City Council of the City of Las Vegas, Nevada, hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective.

SECTION 4: All ordinances or parts of ordinances, sections, subsections, phrases,

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sentences, clauses or paragraphs contained in the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, in conflict herewith are hereby repealed.

PASSED, ADOPTED AND APPROVED this 17th day of January, 2001.

APPROVED:

By [signature]
OSCAR B. GOODMAN, Mayor

ATTEST:

[signature]
BARBARA JO RONEMUS, City Clerk

APPROVED AS TO FORM:

[signature] 12-20-00
Date

The above and foregoing ordinance was first proposed and read by title to the City Council on the 3rd day of January, 2001 and referred to the following committee composed of the Councilmembers Mack and Weekly for recommendation; thereafter the said committee reported favorably on said ordinance on the 17th day of January, 2001 which was a regular meeting of said Council; that at said regular meeting, the proposed ordinance was read by title to the City Council as first introduced and adopted by the following vote:

VOTING "AYE": Mayor Goodman and Councilmembers Reese, M. McDonald, Brown, L. B. McDonald, Weekly and Mack

VOTING "NAY": NONE

EXCUSED: NONE

APPROVED:

OSCAR B. GOODMAN, Mayor

ATTEST:

BARBARA JO RONEMUS, City Clerk

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT, entered into this 17th day of January, 2001, between the City Council, City of Las Vegas, a municipal corporation of the State of Nevada and Sierra Pacific Communications, a public utility corporation organized and existing under the laws of the State of Nevada ("SIERRA PACIFIC"):

WITNESSETH:

WHEREAS, the CITY OF LAS VEGAS is a municipal corporation duly incorporated within the State of Nevada, and authorized, pursuant to the Charter of the City of Las Vegas and applicable provisions of general laws of the State of Nevada, to enter into this Franchise Agreement; and

WHEREAS, SIERRA PACIFIC did, on the 26th day of May, 2000, file with the City of Las Vegas, State of Nevada, a written request for a Franchise for a term of ten (10) years with an option to renew for five (5) years for the purpose of constructing, installing, operating and maintaining a Telecommunications Service System within the corporate limits of the City; and

WHEREAS, subsequent to the filing of this application, the City Council adopted a resolution acknowledging the filing of this application and setting forth the name of the applicant for and the purpose, character of, terms, time and conditions of the proposed Franchise Agreement and the date, time and place of a public hearing on the question of the advisability of granting said proposed Franchise to SIERRA PACIFIC; and

WHEREAS, said application coming on regularly for hearing on the 17th day of January, 2001, and it appearing by an Affidavit of Publication that due and legal notice of the filing of said application, and of the filing of the date, time and place for consideration of the same, has been given by publication of that Resolution adopted by the City Council in the Las Vegas Review Journal, a newspaper of general circulation within the City of Las Vegas, County of Clark, State of Nevada, to-wit:

In the issue of said newspaper published on the 4th day of January, 2001, and the 11th day of January, 2001; and

. . .

WHEREAS, the CITY OF LAS VEGAS has been requested to grant the right, privilege, permission and authority to do those acts more specifically described herein by SIERRA PACIFIC; and

WHEREAS, the CITY COUNCIL of the CITY OF LAS VEGAS, in the exercise of its lawful power has determined that it is in the best interests of the inhabitants of the CITY OF LAS VEGAS that a Franchise be granted, subject to the terms and conditions hereinafter set forth;

NOW THEREFORE, in consideration of the premises and of the performance by SIERRA PACIFIC of the conditions hereinafter set forth, the City Council of the CITY OF LAS VEGAS, State of Nevada, hereby grants a Franchise to SIERRA PACIFIC , subject to the following terms and conditions.

SECTION 1: SHORT TITLE.

This Franchise Agreement may be cited as the SIERRA PACIFIC Franchise Agreement.

SECTION 2: DEFINITIONS.

For the purpose of this Franchise Agreement, the following terms, phrases, words and their derivations shall have the meaning given in this Section. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined in this Section shall be given their common and ordinary meaning.

A. **"City"** is the City of Las Vegas, a municipal corporation of the State of Nevada.

B. **"City Clerk"** means City Clerk of the City of Las Vegas or a designated representative.

C. **"Company"** is and refers to Sierra Pacific Communications, a public utility corporation organized and existing under the laws of the State of Nevada ("SIERRA PACIFIC").

D. **"Council"** refers to the legislative body of the City of Las Vegas sometimes referred to as "City Council."

E. **"Director"** means the Director of the Public Works Department of the City of

Las Vegas or his/her designee.

F. **"Facilities"** are and refer to and include, but are not limited to, plant, works, systems, improvements and equipment owned, leased or otherwise used by the Company such as poles, wires, fixtures, equipment, underground circuits and conduit in Public Rights-of-way and other property necessary or convenient for the transmissions, distribution, and/or connection of Telecommunications Service.

G. **"Franchise"** means the non-exclusive authorization granted herein to rent and use Rights-of-way and Public Places to construct, operate, and maintain Company Facilities in the City or any portion or portions thereof for the specific purpose of maintaining a Telecommunications Service.

H. **"Gross Revenues"** shall mean any and all intrastate retail revenue collected by the Company for services provided to customers within the City including but not limited to:

1. All Telecommunications Service revenues charged on a flat rate basis;
2. All revenue for intrastate long distance calls originating in the state of Nevada and billed to an address physically located in the City of Las Vegas;
3. All revenues from installation service charges;
4. All revenues from connection or disconnection fees;
5. All revenues from penalties or charges to customers for checks returned from banks;
6. All revenues from joint pole or conduit use;
7. All revenues from authorized rental or use of any portion of the Company's network in the City, including plant and facilities leased to others;
8. Recoveries of bad debts previously written off and revenues from the sale or assignment of bad debts. Gross revenues may be adjusted for net write-off of uncollectible accounts computed on the average annual rate for customers within the City of Las Vegas jurisdiction;
9. Any and all revenues that are designated by City, State or Federal law to be subject to these Franchise Agreement fees or which may develop by future technology within this industry; and

10. Any and all revenues from video dial tone, data transmission or Personal Communication Service.

"Gross Revenues" shall not include any tax passed through to consumers on behalf of governmental agencies received by the Company for services provided to customers through use of Facilities, or any charges passed through to the customers for interconnection with the local exchange provider. Gross revenue shall not include proceeds from the sale of bonds, mortgages or other evidence of indebtedness, securities or stocks. Gross revenue shall not include long haul wholesale revenues, and shall not include any revenue other than intrastate revenue collected from retail customers.

The Company is not required to measure each category of revenues separately; however, in the event of an audit by the City, the Company will be required to provide an appropriate justification for amounts reported as gross revenues under this Franchise Agreement.

I. **"Line Extension"** means any extension of distribution or transmission Facilities into areas within the boundaries of the City not then served by the Company.

J. **"Mayor"** means the Mayor of the City of Las Vegas or his/her designated representative.

K. **"Public Places"** means all sidewalks, alleys, or other public ways and any and all public places, spaces, grounds and buildings of the City within the City limits.

L. **"Reasonable Attorney Fees"** are reasonable charges for legal representation as may be incurred by the City and determined by a court of proper jurisdiction.

M. **"Rights-of-way"** means all present and future streets, avenues, highways, alleys, bridges and public ways, (excluding railroad rights-of-way) of the City within the City limits.

N. **"Telecommunications"** means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

O. **"Telecommunications Carrier"** means any provider of telecommunications services. "Telecommunications carrier" does not include any person that, in the ordinary course of his or her operations, makes telephones available to the public or to transient users of his or her premises, for interstate telephone calls using a provider of operator services.

P. **"Telecommunications Service"** means the offering of telecommunications services permitted to telecommunications carriers under the Telecommunications Act of 1996, for a fee directly to the public, or to such classes of users as to be effectively available to directly to the public, regardless of the facilities used. This definition is intended to include commercial mobile service ("CMS"), competitive access service, and alternative local Telecommunications Services to the extent they are offered to the public or to such classes of users as to be effectively available to the public. Telecommunications Services only includes Title II services and expressly excludes cable services as defined in Title VI, of the Communications Act of 1934, as amended, by the Telecommunications Act of 1996. "Telecommunications Service" shall not include cable services as defined in Title 47, Chapter 5. Subchapter V-A of the United States Code, as amended (47 USCA 521, et seq.) or as recognized by the FCC. Before proposing to provide such cable services in the City, Company agree to obtain a separate Franchise Agreement from the City for the provision of this service, unless such cable service is exempt from franchising under Title 47 USC.

Q. **"Treasurer"** shall mean the Treasurer of the City of Las Vegas.

SECTION 3: GRANT OF FRANCHISE.

A. The City of Las Vegas, Nevada, hereby grants to SIERRA PACIFIC, a Nevada corporation, authorized to do business in the State of Nevada, subject to the terms, conditions, and limitations contained in this Franchise Agreement, a non-exclusive franchise with permission to rent, use and occupy Rights-of-way and Public Places, to provide Telecommunications Service and the right and privilege to erect, construct, maintain and operate a telecommunications system within the corporate limits of the City as the same now exist or may be extended in the future, and a nonexclusive franchise, right and privilege to erect, construct, maintain and operate wires, fixtures, equipment, underground circuits and conduits and other property necessary or convenient for the transmission and distribution of Telecommunications Service in the City and to its inhabitants and to transmit, distribute and sell Telecommunications Service, upon, over, along, under and across the streets, alleys, roads and other public ways and places, including, but not limited to private property easements on which a preliminary subdivision plat has been approved by the City for the provision of public utilities within the corporate limits of the City as the same now exist or may be extended in the future.

B. The Company shall be subject to all requirements of City ordinances, rules, regulations and specifications hereafter enacted or established in so far as such ordinances are not in violation of any State or Federal regulation.

C. This grant of Franchise to the Company does not give permission to the Company to provide cable services or open video services without a separate agreement with the City; provided, however, that Company shall not be required to obtain a separate franchise from City to operate an open video system if the Federal Communications Commission has approved certification of Company's open video system under Section 653 of the Telecommunications Act of 1996.

SECTION 4: DURATION.

The Franchise granted herein is for a period of ten (10) years from and after the effective date of this Franchise Agreement. If Company is in compliance with all the material provisions of this Franchise Agreement, Company has the option of renewing the Franchise under the same terms and conditions of this Franchise Agreement for one (1) additional period of five (5) years.

SECTION 5: CONSTRUCTION PLANS AND DRAWINGS.

A. Before the Company may conduct underground work involving excavation, new construction or major relocation work in any Rights-of-way or Public Place:

1. The Company shall first notify the City and shall comply with any special conditions relating to location, scheduling, coordination and public safety;

2. The Company shall make proper application for an encroachment agreement with the Department of Public Works;

3. The Company shall file maps and drawings with the Director showing the location of any construction or extension of its Facilities and services in any Rights-of-way or Public Place of the City. For multi-conduit banks, maps and drawings shall show overall size, material and configuration of the duct bank. As further set out in Section 16, upon request from the City the Company shall provide City with updates of the maps and drawings showing the location of any new construction, extension or relocation of its Facilities. All materials provided pursuant to this

Section shall be kept confidential to the fullest extent possible under the law; and

4. The Company shall participate in "Call Before You Dig" with regard to giving and receiving notice of the location of facilities and excavations.

B. Such proposed construction work to be done by the Company shall be performed in a safe manner subject to the approval of the Director and in accordance with applicable Federal and State laws and City ordinances, regulations and permitting requirements. Company shall pay all normal permit fees and provide the City with evidence of insurance coverage pursuant to Section 25.

SECTION 6: INSTALLATIONS, EXCAVATIONS AND RESTORATIONS.

A. The Company shall have the right to excavate in, occupy and use any and all Rights-of-way and Public Places for the purpose of installing, erecting, constructing, repairing, maintaining, removing, relocating and operating its Facilities after obtaining any and all appropriate permits from the City, provided, however, that:

1. The Company shall not, pursuant to this Franchise Agreement, place any of its Facilities, on, over, under or within any City park duly designated as such by the City, but nothing herein contained shall preclude the City from granting a revocable permit therefore;

2. The Company shall not place any of its Facilities, on, over, or within the median portion of any boulevard or parkway without first having obtained the written permission of the City;

3. Where appropriate and as may be required by the City through any permitting process, installation, excavations and restorations affecting street and/or lane closures shall, as often as practicable, be performed after 6:30 p.m. and before 6:00 a.m., but in no event shall any such work be performed from 7:00 a.m. to 9:00 a.m. and from 4:00 p.m. to 6:00 p.m. except for emergency repairs;

4. The City reserves the right to assist in the coordination and scheduling of any Company projects where such project may be reasonably coordinated with the placement of other Company facilities. Otherwise, and subject to City permitting processes and approvals, it is recognized that, notwithstanding the foregoing, the Company retains discretion over the timing of the

Company's proposed projects which shall be in accordance with the Company's construction schedule or its network ring which schedule shall be furnished to the City during Company's initial permitting process by the City; and

5. The Company shall, to the extent commercially reasonable, employ "trenchless" technology in the placement of its Facilities. Except in an emergency, not less than seven (7) working days prior to the commencement of any work by the Company which involves excavation in any Rights-of-way or Public Place, the Company shall notify the Director and any appropriate utility coordinating committee for purposes of utility location. Minimum notice to the City shall be by telephone communication or in person prior to any work, followed by notice in writing as soon as practical. Company will provide advance notice so as not to disrupt services of the City or any other person or utility using any Rights-of-way and Public Places in the City and allow the City to place any inspector it may deem necessary at the site of the project.

B. Whenever work is performed in any Rights-of-way or Public Place, the Company shall take all reasonable precautions to minimize interruption to traffic flow, damage to property or creation of a hazardous condition.

C. After any excavation shall be made and after work is completed pursuant to the provision of this Franchise Agreement, the Company, at Company expense shall, as soon as practicable, but not longer than one (1) day, remove all surplus material in compliance with specifications, requirements and regulations of the City in effect at the time of such restoration and restore the portion of the Rights-of-way or Public Place. Following written notice to Company, the Company has thirty (30) days to use its best efforts to make the restoration in a manner satisfactory to City and all costs incurred for such restoration, whether done with City work forces and equipment or otherwise, shall be paid by the Company, including the cost of any inspectors the City may assign to the project.

D. The Company shall be responsible for its pro rata share of the maintenance and repair of all Rights-of-way, to the extent the same are directly impacted by the presence of the Company's Facilities subject to all City Ordinances and within reasonable proximity of and upon which the Company maintains above-ground Facilities, including the removal of weeds and litter.

E. The Company shall ensure its Facilities in Rights-of-way and Public Places are located and constructed in a manner such that access is not impaired in compliance with the Americans with Disabilities Act (ADA). Following notice by the City of an ADA construction problem, the Company shall have thirty (30) days or other reasonable time as deemed by the City to remedy the problem.

SECTION 7: LOCATION AND RELOCATION OF FACILITIES.

A. All Facilities of the Company shall be placed so that they do not interfere with the use of Rights-of-way and Public Places by the City and shall only be placed after approval of the location by the Director and in accordance with any specifications adopted by the City governing the location of Facilities. The City reserves the right to construct, install, maintain and operate any public improvement, work or facility, do any work that the City may find desirable on, over or under any Rights-of-way and Public Places, and vacate, alter or close any Rights-of-way and Public Places. All such work shall be done, in such manner as not to obstruct, injure or prevent free use and operation of the Company's Facilities. Company agrees to obtain the City's express written approval before placing any new poles in Rights-of-way and other Public Places, that do not currently exist in Rights-of-way and other Public Places. The Company agrees to comply with Title 13 of the Las Vegas Municipal Code when locating facilities in Rights-of-way or other public places.

B. The City shall have the right to require the removal or relocation of Facilities used by the Company in any Rights-of-way or Public Place as may reasonably be required by the City for any reason, after notice to the Company, including but not limited to, City projects for the installations of water, sanitary sewer, storm drainage, landscaping, or traffic signal facilities, road reconstruction and construction. The Company shall remove and relocate such Facilities within the City within sixty (60) days following written notice to do so from the City. Prior to any such relocation, the City agrees to provide for suitable location for such relocated Facilities sufficient to maintain service. The cost directly attributable to removal or relocation of Company Facilities shall be paid by the Company. The Company shall at the City's request, if joint use, pursuant to Section 11 is not feasible due to technical reasons, relocate its Facilities to accommodate another franchisee in the City if both the Company's and other franchisee's facilities can be located in the City's

Rights-of-way without interfering with operations of Company's Facilities. The costs of any reallocations occasioned by another franchise agreement of the City, shall be paid by said other franchisee, and in no event shall the costs be the responsibility of the City. The Company shall remove and relocate its Facilities upon receipt of payment of anticipated costs from other franchisee. Other franchisee shall pay the Company any balance owed within thirty (30) days of receipt of statement following the Company's completion of removing and replacing its Facilities.

The Company shall reconstruct, replace or restore any street, alley, or public way or place, and any water, sewer, sanitary sewer, storm drainage, traffic signalization facilities, or other facility of the City disturbed by the Company, in a timely fashion, without cost to the City to a condition acceptable to the City consistent with reasonable standards of safety and appearance. Any facility so disturbed by the Company shall be reconstructed, replaced, or restored only under the supervision of City personnel. Subject to the provision of Section 5 herein and upon notice to the City, the Company may remove or relocate transmission and distribution Facilities maintained by the Company on its own initiative.

C. When the City, acting through itself, an agent, contractor or permit holder, proposes to improve a street, including but not limited to, landscaping, traffic signalization, water line, storm sewer or sanitary sewer, repair or installation, within the Rights-of-way or other Public Place under its jurisdiction or control, and such improvements include: (1) excavation, and (2) the placement of underground utilities vaults and conduit sufficient for Company's Telecommunications Service distribution purposes, by and at the expense of someone other than the Company, then upon notification by the City and upon such reasonable scheduling as may be required by the City's ordinances and policies, the Company shall replace such overhead distribution Facilities as are then within the effected Rights-of-way with underground Facilities within the vaults and conduits provided therefore. Any such placement shall be at Company expense. The conversion from overhead to underground shall be conditioned upon the City requiring the undergrounding in the area in which both the existing and new Facilities are and will be located and the City shall require: (1) that all existing overhead communication and electric distribution facilities in such area be removed; (2) that each customer served from such existing overhead distribution facilities shall, in accordance with the

Company's rules for underground service, make all Facility changes on customer's premises necessary to receive service from the underground Facilities of the Company as soon as it is available; and (3) that the Company is authorized to discontinue its overhead service on completion of the underground Facilities. Such replacement of overhead with underground distribution Facilities shall be paid for by the Company.

SECTION 8: PUBLIC WORKS AND IMPROVEMENTS.

A. The City reserves the right to construct, install, maintain and operate any public improvement, work or facility and do any work that the City may find desirable on, over or under any Rights-of-way or Public Place. All such work shall be done, if possible, in such manner as not to obstruct, injure or prevent free use and operation of the Company's Facilities.

B. Whenever the City shall excavate or perform any work in any present and/or future Rights-of-way or Public Place of the City, or shall contract, for such excavation work, where such excavation or work may disturb but not require removal or relocation of Company's Facilities, the City shall notify the Company sufficiently in advance of such contemplated excavation or work to enable the Company to take such measures as may be deemed necessary to protect such Facilities from damage and possible inconvenience or injury to the public or the City's Rights-of-way or Public Place. If the Company cannot take such measures, the Company shall be required to relocate its Facilities in accordance with Section 7. In such case, the Company upon request, shall furnish field markings to the City or contractor, as the case may be, showing the location of all its Facilities in the area involved in such proposed excavation or other work.

C. Whenever the City shall vacate any Rights-of-way or Public Place for the convenience or benefit of any person or governmental agency or instrumentality, the Company's rights shall be preserved as to any of its Facilities then existing in such Rights-of-way or Public Place.

SECTION 9: MOVING OF BUILDINGS.

Whenever it becomes necessary to temporarily rearrange, remove, lower or raise the cables or wires or other apparatus of the Company to permit the passage of any building, machinery or other object, the Company shall perform such rearrangement upon the receipt of written notice from the person or persons desiring to move said building, machinery or other objects. The written notice shall detail the route of movement of the building, machinery or other object. The costs incurred by the Company in making such rearrangements of its aerial facilities will be borne, excepting the City, by the person or persons seeking such rearrangement, unless the aerial facilities are placed or maintained in violation of the applicable rules of any local, state, or federal regulatory agency and thereby interferes with the movement.

SECTION 10: SAFETY STANDARDS.

The Facilities of the Company shall at all times be constructed, operated and maintained so as to protect and safeguard the health and safety of the public and to this end Company shall observe all rules pertaining thereto prescribed by any local, state, or federal regulatory authority.

SECTION 11: JOINT USE AGREEMENTS.

The Company is authorized to enter into joint-use agreements with any person or entity franchised by the City with respect to the placement of Facilities. The Company may require any such person or entity to furnish evidence of adequate insurance covering the Company and adequate bonds covering the performance of the person or entity attaching to the Company's Facilities as a condition precedent to granting permission to any such person or entity to attach transmission facilities to the Company's Facilities; provided that the Company's requirements for such insurance shall be reasonable.

SECTION 12: FEES; CONDITIONS.

A. As consideration for this Franchise Agreement (which provides for the use by the Company of Rights-of-way and other Public Places within the boundaries of the City, which the City contends are valuable public properties acquired and maintained by the City at great expense to its taxpayers and citizens) the Company agrees that it must acquire a valid unexpired business license from the City and pay business license fees based on its gross revenue pursuant to the provisions of Title 6, Chapter 67, of the Las Vegas Municipal Code. The Company further agrees that the definition of "gross revenue" as set forth in Section 2 of this Franchise Agreement is controlling for determining gross revenue; provided, however, the exception for sales of services to other Telecommunications Service providers holding a certificate of public convenience and necessity from the Public Utilities Commission of Nevada or to operators of a commercial mobile radio service allowed in the provisions of LVMC 6.67.020 still applies. Should the City enter into a future franchise agreement with any company providing services substantially similar to those stated herein, the Company shall have the option, within sixty (60) days of final adoption by the City, of substituting the franchise terms and conditions adopted by the City, in place of the terms and conditions of this Franchise Agreement.

B. In addition to payment of consideration pursuant to Subsection (A), Company shall be liable for lawful property, ad valorem taxes and local improvement district assessments. The Company shall also be responsible for exactions, fees and charges, which are generally applicable during Company's real property development or use as required by the City's ordinances.

C. In the event that the business license fee set forth in this Franchise Agreement is declared illegal, unconstitutional or void for any reason by any court or proper authority, the Company shall be contractually bound to pay the City, at the same times and in the same manner as provided for herein, an aggregate amount equal to the amount which would have been paid as a business licensee fee; provided such fee is applied to all telecommunications providers in a competitively neutral, non-discriminatory manner. The Company shall continue to enjoy all rights and privileges granted to it under this Franchise. This Section, however, shall not constitute a waiver of any claim the Company may assert against the City.

D. Commencing on the effective date of this Franchise Agreement, the business license fees required to be paid pursuant to Subsection (A) shall be paid quarterly by the fifteenth (15) day of the second month following the end of each calendar quarter for which payment or portion thereof is due. For each year, a quarter shall be determined to end on the last day of March, June, September and December. The Company shall furnish to the City with each payment of compensation required by this Section a written statement, showing the amount of gross revenue of the Company subject to a fee under this Franchise Agreement, within the City, for a period covered by the payment.

E. Acceptance by the City of any payment due under this Section shall not be deemed to be a waiver by the City of any breach of this Franchise Agreement occurring prior thereto, nor shall the acceptance by the City of any such payments preclude the City from later establishing that a larger amount was actually due, or from collecting any balance due to the City.

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SECTION 13: PERFORMANCE BOND.

A. As security for compliance with the terms of this Franchise Agreement and the Las Vegas Municipal Code, including restoration of rights-of-way in which the Company has initiated projects to construct, maintain, operate, reconstruct, remove or relocate its facilities, the Company shall provide, and maintain at the minimum level herein specified for the life of this Franchise Agreement, security delivered to the Director of Department of Finance and Business Services, made payable to the City Treasurer, a performance bond, in the amount of TWO HUNDRED THOUSAND and NO/100ths DOLLARS ($200,000.00), or an amount agreed to by the City Council, to remain in force for the term of its Franchise, any or all of which may be claimed by the City as payment for fees and liquidated damages, and to recover losses resulting to the City from the Company's failure to perform.

B. All bonds shall be in accordance with the following:

1. All bonds shall, in addition to all other costs, provide for payment of reasonable attorney's 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 Company 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 power of attorney.

4. All bonds prepared by a licensed non-resident agent must be countersigned by a resident agent per Nevada Revised Statutes, Chapter 680A.3.

C. If at any time the City draws upon such performance bond, the Company shall within thirty (30) days of notice from the City replenish such performance bond to the original minimum amount established in this Section.

D. Reduction of Bond. Upon written application by the Company, the City may, at its sole option, in writing, permit the amount of the bond to be reduced or waive the requirements for a performance bond. Reductions granted or denied upon application by the Company shall be without prejudice to the Company's subsequent applications or to the City's right to require the full bond at any time thereafter. However, no application shall be made by the Company within one (1) year of any prior application.

E. Performance Bond Procedures. The following procedures shall apply to drawing on the performance bond:

1. If the Company fails to make timely payment to the City of any amount due under its agreement or applicable law, or fails to compensate the City within thirty (30) days of written notification that such compensation is due, for any damages, costs, or expenses the City suffers or incurs by reason of any act or omission of the Company in connection with this Franchise Agreement or its enforcement, or fails, after thirty (30) days' written notice, to comply with any provision of this Franchise Agreement or the Las Vegas Municipal Code that the City determines can be remedied by an expenditure of the security, the City may withdraw the amount thereof, with interest and any penalties, from the performance bond.

2. Within three (3) days of a withdrawal from a performance bond, the City shall mail, by certified mail, return receipt requested, written notification of the amount, date, and purpose of such withdrawal to the Company.

3. If at the time of a withdrawal from a performance bond by the City, the amounts available are insufficient to provide the total payment towards which the withdrawal is directed, the balance of such payment shall continue as the obligation of the Company to the City until it is paid.

4. No later than thirty (30) days after mailing of notification to the Company by certified mail, return receipt requested, of a withdrawal under a performance bond, the Company shall restore the performance bond to the total amount specified herein.

F. Failure Constitutes Material Violation. Failure to maintain or restore the performance bond shall constitute a material violation of this Franchise Agreement.

G. Remedies Cumulative. All remedies under this Franchise Agreement are cumulative unless otherwise expressly stated. The exercise of one remedy shall not foreclose use of another, nor shall the exercise of a remedy or the payment of liquidated damages or penalties relieve the Company of its obligations to comply with this Franchise Agreement. Remedies may be used singly or in combination; in addition, the City may exercise any rights it has at law or equity.

H. Relation to Insurance and Indemnity Requirements. Recovery by the City of any amounts under insurance, the performance bond, or otherwise does not limit the Company's duty to indemnify the City in any way; nor shall such recovery relieve the Company of its obligations under this Franchise Agreement, limit the amounts owed to the City, or in any respect prevent the City from exercising any other right or remedy it may have.

SECTION 14: BREACH.

In the event that a revocation of the Franchise is declared as provided under Section 26 (C)(4) of this Franchise Agreement, it shall be deemed a failure to perform on the part of the Company, and the City may proceed against and draw upon, as required, the Performance Bond or Surety Fund provided for in Section 13 of this Franchise Agreement for amounts due under the Agreement and owed to the City. In such event, it is agreed by and between the parties that the City will be damaged in an amount and to an extent not reasonably foreseeable or calculable, and, that, therefore, the City shall be entitled to the sum of ONE HUNDRED THOUSAND and NO/100ths DOLLARS ($100,000.00) as liquidated damages and not as a penalty, which sum shall be covered by the Bond or Surety Fund required to be posted by the Company.

SECTION 15: BOOKS OF ACCOUNT AND REPORTS.

A. The City shall have the right to annually review or audit the Company's books and records in accordance with regularly accepted accounting and audit standards regarding any amounts which may be owed under this Franchise Agreement. This right includes the right to review and audit all books and records of revenue which may be reasonably considered by the City to be subject to a franchise fee. The City shall give written notice to the Company of any additional amount claimed to be due to the City as a result of the City's review. Such amount due, if any, shall be paid within thirty (30) days following determination by the City that such amount is due and payable. If the City's review shows the Company has overpaid, said overpayment shall be reimbursed to the Company by the City within thirty (30) days of such determination.

. . .

B. The Company shall keep complete and accurate books and records of its business and operations pursuant to this Franchise Agreement in accordance with generally accepted accounting principles and in accordance with the rules and regulations of the State of Nevada.

C. In the event of an audit, the Company shall provide City specific books, records, contracts, accounts, documents and papers for its operations within the City.

D. All such books, records, and accounts of the Company shall be retained by the Company for a period of five (5) years. The Company shall make such records available to the City as are necessary for the City to complete its audit, and the same shall be available for inspection by the City, in the City, upon thirty (30) days notice from the City.

E. All audits will take place on Company premises in the Las Vegas area.

F. Upon request by the City, the Company shall provide to the City by U.S. mail, postage prepaid, a copy of all papers filed by the Company with any federal or state regulatory agency that pertain to the Company's Facilities located in Nevada.

SECTION 16: SUPPLYING MAPS UPON REQUEST.

Company shall maintain on file maps and operational data pertaining to its operations in the City. The City may inspect the maps and data at any time during business hours. Upon request of the City, the Company shall furnish to the City as soon as practical without charge, current maps either in a "hard copy" printed form or in the City's GIS format or compatible data base, showing the location and dimension of any existing facilities and proposed facilities, but not other proprietary information, used in operating the Company's Facilities within the City of Las Vegas served by the Company.

SECTION 17: RATES.

The rates to be charged by the Company for Telecommunications Service shall comply with the appropriate local, state or federal regulatory authority, or any other governmental official, commission or body having jurisdiction. If no governmental official or body had rate setting jurisdiction, the Company may set rates to be charged at its sole discretion. To the extent that the City may in the future become legally entitled to set fees and charges for the services provided pursuant to this Franchise Agreement, the City reserves the right to regulate the rates, fees, charges, deposits and associated terms and conditions for any service provided pursuant to this Franchise Agreement to the fullest extent permitted by applicable law with appropriate procedural due process, which may include renegotiation of applicable terms of this Franchise Agreement.

SECTION 18: FRANCHISE NOT EXCLUSIVE.

The Franchise Agreement hereby granted shall not be exclusive and shall not be construed as a limitation on the City's right to grant rights, privileges and authority to other persons or corporations similar to or different from those herein set forth to construct, install, operate or maintain a public utility.

SECTION 19: TRANSFERS.

A City Approval Required.

1. The Franchise granted to the Company pursuant to the terms of this Franchise Agreement shall be a privilege that is in the public trust and personal to the Company. The Company's obligations under this Franchise Agreement involve services whose performance involves trust and confidence in the Company.

2. No transfer of this Franchise Agreement or the Franchise granted pursuant thereto, or of control over the same (including, but not limited to, transfer by forced or voluntary sale, receivership, or similar means) shall occur unless prior application is made by the Company to the City and the City Council's prior written consent is obtained and only then upon such terms and conditions as the Council deems necessary and proper, except that the above requirement for consent shall not apply to any corporate merger, consolidation, or reorganization. Company shall also have the right, without consent, to sublease or assign this Agreement to its wholly-owned subsidiaries, or its affiliates, or parent company. Any such transfer without the prior written consent of the Council shall be considered to impair the City's assurance of due performance. The granting of approval for a transfer in one instance shall not render unnecessary approval of any subsequent transfer.

B. Approval Does Not Constitute Waiver. Approval by the City Council of a transfer does not constitute a waiver or release of any of the rights of the City under this Franchise Agreement, whether arising before or after the date of the transfer.

C. Application.

1. The Company shall promptly notify the Manager of the Division of Business Services of the Department of Finance and Business Services of any proposed transfer. If any transfer should take place without prior notice to the Manager, the Company will promptly notify the Manager that such a transfer has occurred.

2. At least one hundred twenty (120) calendar days prior to the contemplated effective date of a transfer, the Company shall submit to the Manager of the Business Services Division a written application for approval of the transfer. Such an application shall provide complete information on the proposed transaction, including details on the legal, financial, technical, and other qualifications of the transferee. At a minimum, the following information must be included in the application, unless these requirements are waived, reduced, or modified by the City:

a. All information and forms required under federal law;

b. A detailed statement of the corporate or other business entity organization of the proposed transferee, including an identification of any entity or entities that exercises actual working control over the Company;

c. Complete and unredacted copies of any contracts, financing documents, or other documents that relate to the proposed transaction, and all documents, schedules, exhibits, or the like referred to therein, except that the Company may redact such portions of those documents as are proprietary and confidential and would cause the Company substantial harm if disclosed, if and only if the Company makes the complete documents available for review and analysis by the City and its agents from the date of the application until the City approves or denies the application. The City's duty of confidentiality to Company under this section shall not be less than, or materially different from, its corresponding duty to other telecommunications service franchisees and cable service franchisees that have franchise agreements with the City during the Term.

3. At the Company's option, the Company may notify the Manager of the Business Services Division of the Department of Finance and Business Services of the proposed

transaction in general terms at least one hundred fifty (150) days prior to the contemplated effective date of a transfer, and request that the City waive some or all of the information requirements specified in Subsection (C)(2) of this Section. To the extent consistent with applicable law, the City may waive in writing any such requirement that information be submitted as part of the initial application, without thereby waiving any rights the City may have to request such information after the initial application is filed.

4. For the purposes of determining whether it shall consent to a transfer, the City or its agents may inquire into all qualifications of the prospective transferee and such other matters as the City may deem necessary to determine whether the transfer is in the public interest and should be approved, denied, or conditioned. The Company and any prospective transferees shall assist the City in any such inquiry, and if they fail to do so, the request for transfer may be denied.

D. Determination by the City Council.

1. In making a determination as to whether to grant, deny, or grant subject to conditions an application for a transfer, the City Council may consider, without limitation, the legal, financial, and technical qualifications of the transferee to comply with the Company's obligations under this Franchise Agreement; whether the Company is in compliance with this Franchise Agreement and, if not, whether the proposed transferee will cure any noncompliance; and whether operation by the transferee or approval of the transfer would adversely affect the City's interest under this Franchise Agreement, other applicable law, or the public interest.

2. Any transfer without the City Council's prior written approval shall be ineffective, and shall make the Company's franchise subject to cancellation at the City Council's sole discretion, and to any other remedies available under this Franchise Agreement or applicable law.

3. The Company shall be fully liable under this Franchise Agreement for any transfer that is in violation of the terms of this Franchise Agreement and caused in whole or in part by any other entity or entities, including but not limited to any parents or affiliated entities, as if such transfer had been caused by the Company itself.

4. Any mortgage, pledge or lease shall be subject and subordinate to the rights of the City under this Franchise Agreement and other applicable law.

E. Transferee's Agreement. No application for a transfer shall be granted unless the transferee agrees in writing that it will abide by and accept all terms of this Franchise Agreement, and that it will assume the obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of the Company under this Franchise Agreement for all purposes, including renewal, unless the City, in its sole discretion, expressly waives this requirement in whole or in part.

SECTION 20: ADDITIONAL CITY RIGHTS.

Pursuant to the City Charter and applicable State statute, the right and privilege of the City to construct, purchase or condemn a public utility or telecommunications provider located within or without the boundaries of the City is expressly recognized herein.

SECTION 21: CUSTOMER SERVICE STANDARDS.

Provided that the Public Utilities Commission of Nevada ceases to set or regulate customer service standards, then the following conditions shall apply:

A. The Company shall be required to establish and maintain offices within the Las Vegas metro area for customer service. Company shall make available at such offices, at a minimum, documents required by this Franchise Agreement with reasonable notice by the City to the Company.

B. Company representatives shall be available to respond to customer telephone inquiries and complaints Monday through Friday during normal business hours. The Company shall also maintain a toll-free number by which subscribers may report technical and other problems on a twenty-four hour basis.

C. Excluding those situations beyond the control of the network operator, the Company shall respond to service interruptions promptly and in no event later than six (6) hours, seven (7) days per week. Other service problems will be responded to within twenty-four (24) hours during the normal work week.

D. Company shall establish procedures for receiving, acting upon, and resolving subscriber complaints to the satisfaction of the City.

E. Company shall maintain a written records listing date and time of customer complaints, identifying the customer and describing the nature of the complaints and when and what action was taken by the Company in response thereto.

SECTION 22: EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION.

The Company is committed to stimulating and strengthening the participation of minorities and women within the Company and is also committed to the principle that the success and economic well being of the Company are related closely to the economic strength and vigor of the communities and people it serves.

SECTION 23: AGREEMENT TO REOPEN NEGOTIATIONS.

The City and the Company agree that the services provided pursuant to this Franchise Agreement are in an area of law undergoing significant review by state and federal authorities and that there is a real possibility that some of the terms of this Franchise Agreement may be preempted by state or federal law during the term of this Franchise Agreement. Therefore, the City and the Company expressly agree that:

A. The preempted terms of this Franchise Agreement including the terms relating to the compensation to be paid, shall be subject to renegotiation one (1) year from the effective date of this Franchise Agreement, and again, two (2) years and three (3) years from the effective date of this Franchise Agreement.

B. In addition to and separate and apart from the provisions of Subsection (A) of this Section, in the event an earlier negotiation must occur in order to comply with newly enacted or decided federal or state law, such negotiation shall begin within thirty (30) days after any request for renegotiation is issued by either the City or the Company, or at such time as it becomes apparent that a portion of this Franchise Agreement has been preempted by state or federal law.

C. The parties agree that upon the mutually acceptable conclusion of any such renegotiations, the parties will enter into any reasonably necessary amendments to this Franchise Agreement.

D. It is further expressly agreed that any renegotiation and subsequent amendment shall not reduce the initial term of this Franchise Agreement. In no event shall such renegotiations impose obligations on the Company that similar service providers would not also be subject to. Further, if the City's right to impose a franchise agreement is totally preempted, this Franchise Agreement is null and void.

SECTION 24: INDEMNIFICATION.

The Company, as a condition of the grant of this Franchise Agreement, and in consideration thereof, shall protect, indemnify, and hold the City harmless against all claims for damages to persons or property by reason of the construction, maintenance and operation of its Facilities, and conduct of business, or any way arising out of performance under this Franchise Agreement, directly, or indirectly, when or to the extent injury is caused, or alleged to have been caused, wholly or in part, by any act, omission, negligence, or misconduct of the Company or any of its contractors, subcontractors, officers, agents, or employees, or by any person for whose act, omission, negligence, or misconduct, the Company is by law responsible.

This provision is not intended to create liability for the benefit of third parties but is solely for the benefit of the Company and the City. In the event any claim is made against the City that falls under this indemnity provision and a Court of competent jurisdiction should adjudge, by final decree, that the City is liable therefor, the Company shall indemnify and hold the City harmless of and from any such liability, including any court costs, expenses, and Reasonable Attorney Fees incurred by the City in defense thereof and incurred at any stage. Upon commencement of any suit, proceeding at law or in equity against the City relating to or covering any matter covered by this indemnity, wherein the Company has agreed by accepting this Franchise Agreement, to indemnify and hold the City harmless, or to pay said settlement, final judgment and costs, as the case may be, the City shall give the Company immediate notice of such suit or proceeding; whereupon the Company shall provide a defense to any such suit or suits, including any appellate proceedings brought in connection therewith, and pay as aforesaid, any settlement, costs or judgments that may be rendered against the City by reason of such damage suit.

Upon failure of the Company to comply with the "defense of suit" provisions of this Franchise Agreement, after reasonable notice to it by the City, the City shall have the right to defend the same and in addition to being reimbursed for any settlement or judgment that may be rendered against the City, together with all costs incurred therein, the Company shall reimburse the City Reasonable Attorney Fees, including those employed by the City in such case or cases, as well as all expenses incurred by the City by reason of undertaking the defense of such suit or suits, whether such suit or suits are successfully defended, settled, comprised, or fully adjudicated against the City. In the event the City is compelled to undertake the defense of any such suit by reason of the Company's failure to perform as here and above provided, the City shall have the full right and authority to make or enter into any settlement or compromise of such adjudication as the governing body shall deem in the best interest of the City, this without the prior approval or consent of the Company with respect to the terms of such compromise or settlement.

SECTION 25: INSURANCE.

A. Company, concurrently with the filing of an acceptance of granting of this Franchise Agreement, shall furnish to the City and file with the City Clerk, and at all times during the existence of this Franchise Agreement, maintain in full force and effect, at its own cost and expense, a general comprehensive liability insurance policy for the protection of the City, its officers, boards, commissions, agents and employees, in a Company approved by the City Manager and a form satisfactory to the City Attorney, protecting the City and all persons against liability for loss or damage for personal injury, death and property damage occasioned by the operations of Company under this Franchise Agreement, with minimum liability limits of ONE MILLION and NO/100ths DOLLARS ($1,000,000.00) for personal injury or death of any one person and THREE MILLION and NO/100ths DOLLARS ($3,000,000.00) for personal injury or death of two or more persons in any one occurrence and FIVE HUNDRED THOUSAND and NO/100ths DOLLARS ($500,000.00) for damage to property resulting from any one occurrence.

B. The policies mentioned in the foregoing Subsection (a) shall name the City, its officers, boards, commissions, agents and employees as additional insured and shall contain a provision that a written notice of cancellation of, or reduction in coverage under each policy shall be delivered to the City at least thirty (30) days in advance of the effective date thereof; if any such insurance is provided by a policy which also covers the Company or any other entity or person other than those above named, then such policy shall contain the standard cross-liability endorsement.

C. With respect to the Company's obligation to comply with requirements for Commercial General (public) Liability Insurance Coverage, the City may allow the Company to self-insure upon annual production of evidence that is satisfactory to the City's Risk Manager. With respect to the Company's obligation to comply with the requirements for automobile liability insurance and for workers' compensation insurance, a Company may also self-insure.

SECTION 26: REMEDIES AND PENALTIES NOT EXCLUSIVE: DEFAULT

A. All remedies and penalties under this Franchise Agreement are cumulative and not exclusive, and the recovery or enforcement by one available remedy or imposition of any penalty is not a bar to recovery or enforcement by any other such remedy or imposition of any other penalty. The City reserves the right to enforce the penal provisions of any ordinance or resolution and to avail itself of any and all remedies available at law or in equity. Failure to enforce shall not be construed as a waiver of a breach of any term, condition or obligation imposed upon the Company by or pursuant to this Franchise Agreement. A specific waiver of a particular breach of any term, condition or obligation imposed upon the Company by or pursuant to this Franchise Agreement shall not be a waiver of any other or subsequent or future breach of the same or of any other term, condition or obligation, or a waiver of the term, condition or obligation itself. "Director" for the purposes of this Section means the Director of the Department of Finance and Business Services.

B. The Company agrees that an Event of Default shall include, but shall not be limited to, any of the following acts or failure to act by the Company:

1. Failure to obtain any applicable permits from the City pursuant to this Franchise Agreement;

2. Failure to comply with the terms of Section 19 which limits the assignment of this Franchise Agreement, or transfer of control of this Franchise Agreement;

3. Failure to supply the necessary performance bonding as specified in Section 13;

4. Final, unappealable adjudication against the Company for violation of any local, state or federal law that prohibits discrimination in employment, or prohibits the creation of hostile working environments for an employee of the Company;

5. Failure to make any of the payments set forth in Section 6 or Section 12 of this Franchise Agreement within the periods provided for such payment, including notice;

6. Failure to pay any permit fees, or failure to comply with any rules,

regulations, orders or directives of the City as set forth in this Franchise Agreement within the period provided for such payment, including notice;

7. Substantial or repeated failure to comply with Section 6 concerning Installations, Excavations and Restorations and, if applicable, Section 21 concerning Customer Service; or

8. Refusal to renegotiate the terms and conditions of this Franchise Agreement in accordance with Section 23.

C. Upon the occurrence of an Event of Default, then, in accordance with the procedures provided for in this Franchise Agreement, the City may:

1. Require the Company to take such actions as are reasonably required to remedy such Event of Default;

2. Seek money damages from the Company as compensation for such Event of Default;

3. Accelerate the expiration of the term of this Franchise Agreement by decreasing the term of the Franchise Agreement provided in Section 4; the extent of such acceleration shall be determined by the City and may include any period of time, but not less than six (6) months provided that six (6) months remain under this Franchise Agreement; or

4. As a last measure only, revoke the Franchise granted herein by termination of this Franchise Agreement.

D. The City shall exercise the rights set forth in this Section in accordance with the following procedures:

1. The Director shall notify the Company, in writing, of an alleged Event of Default. This written notice shall set forth with reasonable specificity the facts the City believes are the basis for declaring that an Event of Default has occurred. The Company shall, within sixty (60) days of the date the notice is received by the Company, or such additional time as the Director may specify in the notice, cure the alleged Event of Default, or, in writing, present for review by the Director a reasonable time frame and method to cure the Event of Default. The Company, in lieu of the cure of the Event of Default as set forth herein, may, in writing, present facts and arguments as to

why the Company disagrees that an Event of Default has occurred.

2. If the Company presents a written response that challenges whether an Event of Default has occurred, the Director shall within fourteen (14) days review the submitted materials and determine again whether an Event of Default has occurred. If the Director reaffirms that an Event of Default has occurred, the Company shall be notified in writing of this decision and shall, within thirty (30) calendar days, cure the alleged Event of Default.

3. If the Company fails to cure the Event of Default so declared pursuant to this Section within the time permitted by the Director, the Director shall prepare a written report to the Council and recommend action to be taken. If the City Attorney, after consideration of this report and hearing, agrees that an Event of Default has occurred, he/she may order an appropriate remedy as set forth in this Section.

E. In addition to the rights under this Section, the City, upon any termination, may direct the Company to remove, at the Company's sole cost and expense, any or all of the Facilities from all Rights-of-way and other Public Places within the City, subject to the following:

1. If the City determines that removal of buried fiber optic cable, or conduit is not necessary, the Company shall abandon its Facilities in place and transfer ownership of the installed Facilities to the City.

2. In removing any part of the Facilities, the Company shall refill and compact, at its own expense, any excavation that shall be made by it and shall leave all Rights-of-way and other Public Places in as good a condition as that prevailing prior to the Company's removal of the Facilities;

3. The City shall have the right to inspect and approve the conditions of the streets and Public Places after removal has occurred;

4. The removal shall commence within thirty (30) days of an order to remove being issued by the Director at the direction of the Council;

5. The Company shall be responsible for all necessary removals of the Facilities, and maintenance of the street area in the same manner and degree as if the Facilities were in active use, and the Company shall retain all liability associated with such removals.

6. Nothing herein shall cause the City to incur any costs related to the removal of the Company's Facilities or the transfer of ownership of said Facilities to the City.

SECTION 27: SEVERABILITY CLAUSE.

If any section, subsection, sentence, clause, phrase, term, provision, condition, covenant or portion of this Franchise Agreement is for any reason, held invalid, unenforceable or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate distinct and independent provision, and such holding shall not affect the validity or enforceability of the remaining portions of this Franchise Agreement. The Council hereby declares that it would have approved this Franchise Agreement and each portion thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

SECTION 28: NOTICES.

Any notice of other communication required or permitted to be given under this Franchise Agreement (herein the "Notices") shall be in writing and shall be (1) personally delivered, or (2) delivered by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid. The Notices shall be deemed received upon actual receipt. The Notices shall be directed to the parties at their respective addresses shown below, or such other address as either party may, from time to time, specify in writing to the other party in the manner described above to the following:

CITY:	Business Services Division Attn: Manager 400 Stewart Avenue, 3rd Floor Las Vegas, Nevada 89101
with a copy to:	City Attorney's Office City of Las Vegas 400 Stewart Avenue, 9th Floor Las Vegas, Nevada 89101
COMPANY:	Sierra Pacific Communications Manager, Facilities 6100 Neil Road Reno, Nevada 89520
with a copy to:	Sierra Pacific Resources General Counsel 6100 Neil Road Reno, Nevada 89520

. . .

SECTION 29: PUBLIC PURPOSE.

All of the regulations provided in this Franchise Agreement are hereby declared to be for a public purpose and the health, safety, and welfare of the general public. Any member of the governing body or City official or employee charged with the enforcement of this Franchise Agreement, acting for the City in the discharge of his duties, shall not thereby render himself personally liable; and he is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his said duties. Neither the City nor the Company by accepting this Franchise Agreement waives its right to seek all appropriate legal and equitable remedies as allowed by law upon violation of the terms of this Franchise Agreement, including seeking injunctive relief in a court of competent jurisdiction. Such right to injunctive relief is expressly reserved and all terms and provisions hereof shall be enforceable through injunctive relief. Neither party shall be liable for any consequential or punitive damages, including lost profits.

SECTION 30: APPLICABLE LAW.

This Franchise Agreement is governed by and construed and enforced in accordance with the laws of the State of Nevada, and the Federal Communications Act of 1934 as amended by the Telecommunications Act of 1996.

SECTION 31: STATE PUBLIC UTILITIES COMMISSION AND CHARTER REQUIREMENT.

This Franchise Agreement is subject to and contingent upon the Company complying with all applicable rules and regulations of the Public Utilities Commission of Nevada and the City adopting a Resolution, conducting a public hearing and enacting an Ordinance granting a Franchise Agreement to Company in accordance with Section 7.050 of the City Charter.

SECTION 32: DISCLOSURE OF PRINCIPLES.

Pursuant to Resolution R-79-99 adopted by the City Council effective October 1, 1999, and amendments thereto by the City Council on November 17, 1999, Franchisee warrants that it has disclosed, on the form attached hereto as Exhibit A, all principals, including partners, of Franchisee, as well as all persons and entities holding more than a 1% interest in Franchisee or any principal of

Franchisee. If Franchisee, principals, or partners described above are required to provide disclosure under federal law (such as disclosure required by the Securities and Exchanges Commission (SEC) or the Employee Retirement Income Act (ERIA)), and attaches current copies of such federal disclosures to Exhibit A, the requirement of this Section shall be satisfied. Throughout the term hereof, Franchisee shall within ten (10) days notify the City in writing of any material change in the above disclosure. Copies of new federal disclosure filings shall also be sent to the City within ten (10) days of any such filing.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their duly authorized representatives the day and year first herein above written:

CITY OF LAS VEGAS

By: ______________________
OSCAR B. GOODMAN, Mayor

"CITY"

ATTEST:

____
BARBARA JO RONEMUS, City Clerk

APPROVED AS TO FORM:

______________________ 12-6-00
Date

SIERRA PACIFIC COMMUNICATIONS

By: ______________________ /WFB

Its: Sen V.P.

"SIERRA PACIFIC"

CERTIFICATE
DISCLOSURE OF OWNERSHIP/PRINCIPALS

1. Definitions

"City" means the City of Las Vegas.

"City Council" means the governing body of the City of Las Vegas.

"Contracting Entity" means the individual, partnership, or corporation seeking to enter into a contract or agreement with the City of Las Vegas.

"Principal" means, for each type of business organization, the following: (a) sole proprietorship – the owner of the business; (b) corporation – the directors and officers of the corporation; but not any branch managers of offices which are a part of the corporation; (c) partnership – the general partner and limited partners; (d) limited liability company – the managing member as well as all the other members.

2. Policy

In accordance with Resolution 79-99 and 105-99 adopted by the City Council, Contracting Entities seeking to enter into certain contracts or agreements with the City of Las Vegas must disclose information regarding ownership interests and principals. Such disclosure generally is required in conjunction with a Request for Proposals (RFP). In other cases, such disclosure must be made prior to the execution of a contract or agreement.

3. Instructions

The disclosure required by the Resolutions referenced above shall be made through the completion and execution of this Certificate. The Contracting Entity shall complete Block 1, Block 2, and Block 3. The Contracting Entity shall complete either Block 4 or its alternate in Block 5. Specific information, which must be provided, is highlighted. An Officer or other official authorized to contractually bind the Contracting Entity shall sign and date the Certificate, and such signing shall be notarized.

4. Incorporation

This Certificate shall be incorporated into the resulting contract or agreement, if any, between the City and the Contracting Entity. Upon execution of such contract or agreement, the Contracting Entity is under a continuing obligation to notify the City in writing of any material changes to the information in this Certificate. This notification shall be made within fifteen (15) days of the change. Failure to notify the City of any material change may result, at the option of the City, in a default termination (in whole or in part) of the contract or agreement, and/or a withholding of payments due the Contracting Entity.

Block 1	Contracting Entity
Name	Sierra Pacific Resources
Address	6100 Neil Road
Telephone	1(800) 662-7575
EIN or DUNS	

Block 2	Description
Subject Matter of Contract/Agreement:	
RFP #:	

Block 3	Type of Business		
Individual	Partnership	Limited Liability Company	☒ Corporation

CERTIFICATE – DISCLOSURE OF OWNERSHIP/PRINCIPALS (CONTINUED)

Block 4 **Disclosure of Ownership and Principals**

In the space below, the Contracting Entity must disclose all principals (including partners) of the Contracting Entity, as well as persons or entities holding more than one-percent (1%) ownership interest in the Contracting Entity.

	FULL NAME/TITLE	BUSINESS ADDRESS	BUSINESS PHONE
1.	Franklin Advisers, Inc.	6100 Neil Rd., Reno, Nv.	1(800) 662-7575
2.	Prudential Investments	6100 Neil Rd., Reno, Nv.	1(800) 662-7575
3.	Colonial Management Assoc., Inc.	6100 Neil Rd., Reno, Nv.	1(800) 662-7575
4.	Barclays Global Investor, N.A..	6100 Neil Rd., Reno, Nv.	1(800) 662-7575
5.	TIAA –CREF Investment Management, Ir.	6100 Neil Rd., Reno, Nv.	1(800) 662-7575
6.	John Hancock Advisers, Inc.	6100 Neil Rd., Reno, Nv.	1(800) 662-7575
7.	Duff & Phelps Investment Management	6100 Neil Rd., Reno, Nv.	1(800) 662-7575
8.	Ban One Investment Advisors (OH)	6100 Neil Rd., Reno, Nv.	1(800) 662-7575
9.	MFS Investment Management	6100 Neil Rd., Reno, Nv.	1(800) 662-7575
10.	Lazard Asset Management	6100 Neil Rd., Reno, Nv.	1(800) 662-7575

The Contracting Entity shall continue the above list on a sheet of paper entitled "Disclosure of Principals – Continuation" until full and complete disclosure is made. If continuation sheets are attached, please indicate the number of sheets: 2

Block 5 **Disclosure of Ownership and Principals – Alternate**

If the Contracting Entity, or its principals or partners, are required to provide disclosure (of persons or entities holding an ownership interest) under federal law (such as disclosure required by the Securities and Exchange Commission or the Employee Retirement Income Act), a copy of such disclosure may be attached to this Certificate in lieu of providing the information set forth in Block 4 above. A description of such disclosure documents must be included below.

Name of Attached Document: ____________________

Date of Attached Document: ____________ Number of Pages: ________

I certify, under penalty of perjury, that all the information provided in this Certificate is current, complete, and accurate. I further certify that I am an individual authorized to contractually bind the above named Contracting Entity.

Donald Sims
Name

12/2/2000
Date

Subscribed and sworn to before me this 4 day of December 2000.

M. Joy Sowle
Notary Public

M. JOY SOWLE
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 93-1011-2 - EXPIRES DEC. 19, 2000

CERTIFICATE – DISCLOSURE OF OWNERSHIP/PRINCIPALS (CONTINUED)

Block 4 **Disclosure of Ownership and Principals**

In the space below, the Contracting Entity must disclose all principals (including partners) of the Contracting Entity, as well as persons or entities holding more than one-percent (1%) ownership interest in the Contracting Entity.

	FULL NAME/TITLE	BUSINESS ADDRESS	BUSINESS PHONE
1.	State Street Bank & Tr. Co. Boston	6100 Neil Rd., Reno, Nevada	1(800) 662-7575
2.	The Vanguard Group	6100 Neil Rd., Reno, Nevada	1(800) 662-7575
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

The Contracting Entity shall continue the above list on a sheet of paper entitled "Disclosure of Principals – Continuation" until full and complete disclosure is made. If continuation sheets are attached, please indicate the number of sheets: 2

Block 5 **Disclosure of Ownership and Principals - Alternate**

If the Contracting Entity, or its principals or partners, are required to provide disclosure (of persons or entities holding an ownership interest) under federal law (such as disclosure required by the Securities and Exchange Commission or the Employee Retirement Income Act), a copy of such disclosure may be attached to this Certificate in lieu of providing the information set forth in Block 4 above. A description of such disclosure documents must be included below.

Name of Attached Document: ______________________

Date of Attached Document: ____________ Number of Pages: ________

I certify, under penalty of perjury, that all the information provided in this Certificate is current, complete, and accurate. I further certify that I am an individual authorized to contractually bind the above named Contracting Entity.

____
Name

____
Date

Subscribed and sworn to before me this ______ day of

____________________, 2000.

____
Notary Public

RECEIVED
CITY CLERK

2001 JAN 16 A 11: 03

AFFP DISTRICT COURT
Clark County, Nevada

AFFIDAVIT OF PUBLICATION

STATE OF NEVADA)
COUNTY OF CLARK) SS:

Donna Stark, being 1st duly sworn, deposes and says:

That she is the Legal Clerk for the Las Vegas Review-Journal and the Las Vegas Sun, daily newspapers regularly issued, published and circulated in the City of Las Vegas, County of Clark, State of Nevada, and that the advertisement, a true copy attached for,

LV CITY CLERK 2296311LV
1549057

was continuously published in said Las Vegas Review Journal and/or Las Vegas Sun in 1 edition(s) of said newspaper issued from 01/06/01 to 01/06/2001, on the following days: JANUARY 6, 2001

Signed: Donna Stark

SUBSCRIBED AND SWORN BEFORE ME THIS THE 11

day of January 2001

Mary B. Sheffield

Notary Public

MARY B. SHEFFIELD
Notary Public - Nevada
No 99-53968-1
My appt. exp Mar. 8, 2003

BILL NO. 2001-1

AN ORDINANCE GRANTING TO SIERRA PACIFIC COMMUNICATIONS, INC., A NEVADA CORPORATION AUTHORIZED TO DO BUSINESS IN NEVADA, A NON-EXCLUSIVE FRANCHISE FOR A TELECOMMUNICATIONS SERVICE WITHIN THE CORPORATE LIMITS OF THE CITY OF LAS VEGAS, SUBJECT TO AND IN ACCORDANCE WITH THAT CERTAIN FRANCHISE AGREEMENT ENTERED INTO BETWEEN THE CITY OF LAS VEGAS AND SIERRA PACIFIC COMMUNICATIONS, INC., AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO.

Proposed by: Mark Vincent, Director, Department of Finance and Business Services
Summary: Grants to Sierra Pacific Communications, Inc., a non-exclusive franchise for the purpose of constructing, using and maintaining a telecommunications service within the corporate limits of the City of Las Vegas, subject to and in accordance with the terms and conditions of the Franchise Agreement between the City of Las Vegas and Sierra Pacific Communications, Inc., incorporated by reference into this Ordinance.

At a City Council meeting JANUARY 3, 2001 BILL NO.2001-1 WAS READ BY TITLE AND REFERRED TO RECOMMENDING COMMITTEE: Councilmembers Mack and Weekly

COPIES OF THE COMPLETE BILL ARE AVAILABLE FOR PUBLIC INFORMATION IN THE OFFICE OF THE CITY CLERK, 1ST FLOOR, CITY HALL, 400 STEWART AVENUE, LAS VEGAS, NEVADA
PUB: January 6, 2001
LV Review-Journal

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CITY CLERK

2001 FEB -2 A 10: 52

AFFP DISTRICT COURT
Clark County, Nevada

AFFIDAVIT OF PUBLICATION

STATE OF NEVADA)
COUNTY OF CLARK) SS:

Donna Stark, being 1st duly sworn, deposes and says:
That she is the Legal Clerk for the Las Vegas Review-Journal and the Las Vegas Sun, daily newspapers regularly issued, published and circulated in the City of Las Vegas, County of Clark, State of Nevada, and that the advertisement, a true copy attached for,

LV CITY CLERK 2296311LV
1566799

was continuously published in said Las Vegas Review Journal and/or Las Vegas Sun in 1 edition(s) of said newspaper issued from 01/20/01 to 01/20/2001, on the following days: JANUARY 20, 2001

Signed: Donna Stark

SUBSCRIBED AND SWORN BEFORE ME THIS THE 22

day of January 2001

Mary B. Sheffield

Notary Public

MARY B. SHEFFIELD
Notary Public - Nevada
No 99-53968-1
My appt. exp. Mar. 8, 2003

BILL NO. 2001-1
ORDINANCE NO. 5289

AN ORDINANCE GRANTING TO SIERRA PACIFIC COMMUNICATIONS, INC., A NEVADA CORPORATION AUTHORIZED TO DO BUSINESS IN NEVADA, A NON-EXCLUSIVE FRANCHISE FOR A TELECOMMUNICATIONS SERVICE WITHIN THE CORPORATE LIMITS OF THE CITY OF LAS VEGAS, SUBJECT TO AND IN ACCORDANCE WITH THAT CERTAIN FRANCHISE AGREEMENT ENTERED INTO BETWEEN THE CITY OF LAS VEGAS AND SIERRA PACIFIC COMMUNICATIONS, INC.; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO.

Proposed by: Mark Vincent, Director Department of Finance and Business Services
Summary: Grants to Sierra Pacific Communications, Inc., a non-exclusive franchise for the purpose of constructing, using and maintaining a telecommunications service within the corporate limits of the City of Las Vegas, subject to and in accordance with the terms and conditions of the Franchise Agreement between the City of Las Vegas and Sierra Pacific Communications, Inc., incorporated by reference into this Ordinance.

The above and foregoing ordinance was first proposed and read by title to the City Council on the 3rd day of January, 2001, and referred to the following committee composed of Councilmembers Mack and Weekly for recommendation; thereafter the said committee reported favorably on said ordinance on the 17TH day of January, 2001, which was a regular meeting of said City Council; and that at said regular meeting the proposed ordinance was read by title to the City Council as first introduced and adopted by the following vote:

VOTING "AYE": Mayor Goodman and Councilmembers Reese, M. McDonald, Brown, L.B. McDonald, Weekly and Mack
VOTING "NAY": NONE
EXCUSED: NONE

COPIES OF THE COMPLETE ORDINANCE ARE AVAILABLE FOR PUBLIC INFORMATION IN THE OFFICE OF THE CITY CLERK, 1ST FLOOR, 400 STEWART AVENUE, LAS VEGAS, NEVADA.
PUB: January 20, 2001
LV Review-Journal