

# **EPHRAIM CITY POWER**

## **NET METERING LICENSE AGREEMENT For Customer-Owned Electric Generating Systems of 25kW or Less COMMERCIAL**

This NET METERING LICENSE AGREEMENT (“Agreement”) is between \_\_\_\_\_ (“Customer”) and Ephraim City - Department of Power (“Ephraim City Power”). Customer and Ephraim City Power may be referred to collectively herein as “Parties” and individually as “Party”.

The Parties have entered into this Agreement in order to set forth the terms and conditions under which Customer is licensed to interconnect its electric generating system and receive net metering from Ephraim City Power.

### **1 CUSTOMER ELECTRIC GENERATING SYSTEM**

- 1.1 Customer’s Net Metering License Application is hereby incorporated into this Agreement as Exhibit A.
- 1.2 Ephraim City Power standard rates for this installation and service will apply, as defined in the City Electric Service Schedule, except as modified by this document or applicable state or federal law.
- 1.3 Customer has elected, in accordance with City of Ephraim Ordinance 16-02 to operate, at its own expense, a customer owned generation facility and net metering system, with a generating capacity of not more than twenty-five kilowatts (25 kW) aggregated at the service interconnection point, in parallel with Ephraim City Power’s electrical system. This generating system is intended to offset either part or all of the Customer’s electrical requirements.
- 1.4 The electrical generating system used by the Customer shall be located on the Customer’s premises. It shall include all equipment necessary to meet applicable safety, power quality, and interconnection requirements. The electrical generating system shall comply with Ephraim City Power Net Metering Standards
- 1.5 Ephraim City Power shall have the sole authority to determine which interconnection requirements set forth herein (including Exhibits) are applicable to Customer’s proposed installation.
- 1.6 Any costs or expenses incurred by Ephraim City Power due to modifications made to Ephraim City Power’s existing electric power system as a result of the interconnection of Customer’s generating system shall be paid by the Customer. All costs must be paid in full prior to the connection to Ephraim City Power’s electrical system.

1.7 Ephraim City Power will be the owner of the renewable attributes of the electricity that is generated, to include any and all credits, certificates, benefits, environmental attributes, emissions reductions, offsets, and allowances, however entitled, attributable to the generation of electricity from the customer owned-renewable generation and its displacement of conventional energy generation.

## **2 TERMS OF NET METERING BILLING AND ENERGY CREDITING**

2.1 Ephraim City Power shall determine the net electricity produced or consumed by the Customer and the amounts to be billed to Customer during each billing period in accordance with the Ephraim City Power rates and metering practices, which may be amended from time to time.

2.2 If the electricity supplied by Ephraim City Power exceeds the electricity generated by the Customer, then the Customer shall be billed for the net electricity supplied by Ephraim City Power, at the rate and with the customer charge(s) paid by other customers of Ephraim City Power in the same rate class as Customer.

2.3 If the electricity generated by the Customer exceeds consumption and is distributed back to Ephraim City Power during the billing period, then the Customer shall be billed for the customer service charge(s) paid by other customers of Ephraim City Power in the same rate class as Customer; and shall be credited for the net excess kilowatt-hours generated during the billing period, at wholesale rate according to the attached fee schedule, with this kilowatt-hour credit appearing on Customer's bill for the following billing period.

2.4 On April 30<sup>th</sup> of each calendar year, any remaining unused kilowatt-hour credit accumulated during the previous year shall be granted to Ephraim City Power, without any compensation to the Customer-Generator.

## **3 INTERRUPTION OR REDUCTION OF DELIVERIES**

3.1 Ephraim City Power may require Customer to interrupt or reduce deliveries as follows: (a) when necessary in order to construct, install, maintain, repair, replace, remove, investigate, or inspect any of its equipment or part of its system; or (b) if Ephraim City Power determines in its sole judgment that curtailment, interruption, or reduction is necessary because of emergencies, or compliance with good electrical practices as determined by Ephraim City Power.

3.2 To the extent reasonably practicable, Ephraim City Power shall give Customer notice of possible interruption or reduction of deliveries.

3.3 Notwithstanding any other provision of this Agreement, if at any time Ephraim City Power determines in its sole judgment that either (a) the electric generation system may endanger Ephraim City Power personnel, or (b) the continued operation of customer's electric generation system may endanger the integrity of the Ephraim City Power electric system, or (c) the electric generation system has been changed or modified without

written approval from its approved License Application, Ephraim City Power shall have the right to disconnect Customer's electric generation system from the Ephraim City Power electric system. Customer's electric generation system shall remain disconnected until such time as Ephraim City Power is satisfied that the condition(s) that caused the issues referenced in (a) or (b) or (c) of this section 3.3 have been corrected.

#### **4 INTERCONNECTION**

- 4.1 Customer shall comply with Ephraim City Power's Net Metering Standards and shall pay for designing, installing, inspecting, operating, and maintaining Customer's electric generating system in accordance with all applicable laws and regulations.
- 4.2 Customer shall deliver all excess energy to Ephraim City Power at the Customer's premises. Ephraim City Power will install and maintain a revenue meter capable of registering the bi-directional flow of electricity at the Customer's premises at a level of accuracy that meets all applicable standards, regulations and statutes or at the option of Ephraim City Power, a separate meter may be installed to measure production of the renewable generation source.
- 4.3 Customer shall pay for any non-standard meter electrical hook-up requested by the Customer.
- 4.4 Customer shall not commence parallel operation of the generating system until inspection and written approval of the interconnection has been given by Ephraim City Power. Such approval shall not be unreasonably withheld. Ephraim City Power shall have the right to have representatives present at the initial testing of Customers' protective apparatus, and the Customer shall notify Ephraim City Power of its intent to test Customer's electric generating system not less than two (2) working days prior to any scheduled test.
- 4.5 Once in operation, Customer shall make no changes or modifications in the equipment, wiring, or the mode of operation of its electric generating system without the prior written approval of Ephraim City Power.

#### **5 MAINTENANCE AND PERMITS**

Customer shall:

- 5.1 Obtain an electrical permit and pass electrical inspection before Customer's electric generating system can be connected or operated in parallel with Ephraim City Power's electric system.
- 5.2 Provide to Ephraim City Power written certification (Certificate of Completion) that Customer's electric generating system has been installed and inspected in compliance with the local building and/or electrical codes.

- 5.3 Maintain Customer's electric generating system and interconnection facilities in a safe and prudent manner and in conformance with all applicable laws and regulations including, but not limited to, Ephraim City Power's Net Metering Standards.
- 5.4 Obtain any governmental authorizations and permits required for the construction and operation of Customer's electric generating system and interconnection facilities, including electrical permit.
- 5.5 Reimburse Ephraim City Power for any and all losses, damages, claims, penalties, or liability it incurs as a result of Customer's failure to obtain or maintain any governmental authorizations and permits required for construction and operation of Customer's electric generating system or failure to maintain Customer's electric generation system as required in this Section.

## **6 ACCESS TO PREMISES**

6.1 Ephraim City Power may enter Customer's premises or property:

- 6.1.1 To inspect, with prior notice at all reasonable hours, Customer's protective devices and to read meter(s).
- 6.1.2 To disconnect the interconnection facilities at the Ephraim City Power meter or transformer, without notice, if, in Ephraim City Power's opinion, an unsafe or hazardous condition exists and such immediate action is necessary to protect persons, or Ephraim City Power facilities, or property of others from damage or interference caused by Customer's electric generating facilities, or lack of properly operating protective devices or inability to inspect the same.

## **7 INDEMNITY AND LIABILITY**

- 7.1 The Customer assumes the risk of all damages, loss, cost and expense and agrees to indemnify the City of Ephraim, its successors and assigns, and its respective directors, officers, employees and agents, from and against any and all claims, losses, costs, liabilities, damages and expenses including, but not limited to, reasonable attorney fees, resulting from or in connection with performance of the agreement or which may occur or be sustained by Ephraim City Power on account of any claim or action brought against the City for any reason including but not limited to loss to the electrical system of the Customer caused by or arising out of an electrical disturbance.
- 7.2 Such indemnity, protection, and hold harmless includes any demand, claim, suit or judgment for damages, death or bodily injury to all persons, including officers, employees or agents, and subcontractors of either Party hereto including payment made under or in connection with any Worker's Compensation Law or under any plan for employees' disability and death benefits or property loss which may be caused or contributed to by the Interconnection, maintenance, operation, use, presence, or removal of Customer's equipment. The only exception will be liability occasioned by the sole

negligence or willful misconduct of Ephraim City Power or its employees acting within the scope of their employment and liability occasioned by a partial negligence of Ephraim City Power or its employees acting within the scope of their employment to the extent that such partial liability is fixed by a court of competent jurisdiction.

7.3 The provisions of the Section 7 shall not be construed to relieve any insurer of its obligations to pay any insurance claims in accordance with the provisions of any insurance policy.

7.4 Ephraim City Power and the City of Ephraim shall have no liability, ownership interest, control or responsibility for the Customer's electric generating facility or its interconnection with Ephraim City Power's electric system, regardless of what Ephraim City Power knows or should know about the Customer's electric generating facility or its interconnection.

7.5 Customer recognizes that it is waiving immunity under Utah Industrial Insurance law, Title 51 RCW, and further agrees that this indemnification clause has been mutually negotiated. This indemnification shall extend to and include attorney's fees and the costs of establishing the right of indemnification hereunder in favor of the Utility.

## **8 FORCE MAJEURE**

8.1 **Suspension of Obligations.** Neither Party shall be liable to the other for, or be considered to be in breach of or default under this Agreement because of any failure or delay in performance by such Party under this Agreement to the extent such failure or delay is caused by or results from any such cause or condition which is beyond such Party's reasonable control, or which such Party is unable to prevent or overcome by exercise of reasonable diligence (any such cause or condition, a "Force Majeure"), including breach of contract or failure of performance by any person providing services to the City of Ephraim.

8.2 **Notice; Required Efforts to Resume Performance.** Any Party claiming Force Majeure shall give the other Party maximum practicable advance notice of any failure or delay resulting from a Force Majeure, and shall use its reasonable best efforts to overcome the Force Majeure and to resume performance as soon as possible; provided however, that nothing in this Agreement shall be construed to require either Party to settle any labor dispute in which it may be involved.

8.3 **No Excuse of Payment Obligations.** Notwithstanding any other provision of this Agreement, in no event shall a Force Majeure excuse a Party's failure or delay to pay any amounts due and owing to the other Party under or pursuant to this Agreement.

## **9 INDEPENDENT CONTRACTORS**

The Parties hereto are independent contractors and shall not be deemed to be partners, employees, franchisees or franchisers, servants or agents of each other for any purpose whatsoever under or in connection with this Agreement.

## **10 ASSIGNMENT; BINDING AGREEMENT**

The Customer shall not assign its rights under this Agreement to any other Party without the express written consent of Ephraim City Power. Ephraim City Power may impose reasonable conditions on any such assignment to ensure that all of Customer's obligations under this Agreement are met and that none of Customer's obligations are transferred to Ephraim City Power as a result of default, bankruptcy, or any other cause.

## **11 NO THIRD PARTY BENEFICIARIES**

Except as expressly set forth in this Agreement, none of the provisions of this Agreement shall inure to the benefit of or be enforceable by any third Party.

## **12 ENTIRE AGREEMENT**

This Agreement and the Exhibits attached hereto set forth the entire agreement of the Parties and supersede any and all prior agreements with respect to the subject matter of this Agreement. The rights and obligations of the Parties hereunder shall be subject to and governed by this Agreement.

## **13 GOVERNING LAW; VENUE**

This Agreement shall be governed by and construed in accordance with the laws of the State of Utah (regardless of the laws that might otherwise govern under applicable principals of conflicts of law of such state). Venue for any action arising under or in connection with this Agreement shall be in the Superior Court for Sanpete County, Utah.

## **14 RULES OF CONSTRUCTION; STATUTORY REFERENCES**

Any inconsistencies between Ephraim City Power rates and this agreement shall be governed by the terms and conditions of this Agreement. No provision of this Agreement shall be construed in favor of or against either of the Parties hereto by reason of the extent to which any such Party or its counsel participated in the drafting thereof or by reason of the extent to which such provision or any other provision or provisions of this Agreement is or are inconsistent with any prior draft thereof. Any reference to statutes or laws will include all amendments, modifications, or replacements of the specific sections and provisions concerned.

## 15 AMENDMENT, MODIFICATIONS OR WAIVER

Any amendments or modifications to this Agreement shall be in writing and agreed to by both Parties. The failure of any Party at any time or times to require performance of any provision hereof shall in no manner affect the right at a later time to enforce the same. No waiver by any Party of the breach of any term or covenant contained in this Agreement, whether by conduct or otherwise, shall be deemed to be construed as a further or continuing waiver of any such breach or waiver of the breach of any other term or covenant unless such waiver is in writing.

## 16 NOTICES AND OTHER COMMUNICATIONS

Notice Methods and Addresses. All notices, requests, demands and other communications required or permitted to be given under this Agreement shall be given in writing.

All notices to either Party shall be made to the addresses set forth below. Any notice shall be deemed to have been given on the date delivered, if delivered personally, by overnight air courier service or by facsimile transmission; or, if mailed, shall be deemed to have been given on the date shown on the return receipt as the date of delivery or the date on which the United States postal service certified that it was unable to deliver, whichever is applicable.

Power Director  
Ephraim City Power  
5 South Main  
Ephraim, Utah 84627  
Telephone: (435) 283-4631  
FAX: (435) 283-4867

CUSTOMER:  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
FAX: \_\_\_\_\_

And a copy to  
Ephraim City Manager  
5 South Main  
Ephraim, Utah 84627

## 17 EXHIBITS

The Agreement includes the following Exhibits attached and incorporated by reference:  
**Exhibit A:** Net Metering License Application

**18 TERM OF AGREEMENT**

This Agreement shall be and remain in effect until terminated by either Party on thirty (30) days' prior written notice. The Customer's electric generating system may be disconnected from the Ephraim City Power's electrical system at any time if, in Ephraim City Power's sole judgment, the Customer's electric generating system is considered unsafe or having adverse impact on the existing customers.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives.

**CUSTOMER**

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

**EPHRAIM CITY POWER**

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_