



# WASHOE COUNTY

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## STAFF REPORT

BOARD MEETING DATE: December 8, 2015

**DATE:** December 2, 2015  
**TO:** Board of County Commissioners  
**FROM:** Kevin Schiller, Assistant County Manager  
328-2008, [kschiller@washoecounty.us](mailto:kschiller@washoecounty.us)

**THROUGH:** John Slaughter, County Manager

**SUBJECT:** Public Hearing and possible action:

- 1) To consider an application by NV Energy, doing business as Sierra Pacific Power Company for a franchise agreement to provide electric service to portions of Washoe County, including any objections on the matter;
- 2) If determined to be in the best interests of the residents of Washoe County, to approve a Franchise Agreement between NV Energy, doing business as Sierra Pacific Power Company and the County of Washoe, retroactive to September 7, 2015, effective for a period of twenty (20) years from the effective date of the agreement, with upon review by the County an extension of the term of the franchise for five (5) years, fixing the terms and prescribing the conditions pursuant to which the franchise is to be granted, the character or kinds of service to be rendered, the maximum rates to be charged for the service, and such other matters as may be properly connected therewith;
- 3) If the Franchise Agreement is approved, to adopt a Resolution Authorizing and Approving the Issuance of a Franchise to NV Energy, doing business as Sierra Pacific Power Company to supply electric service to Portions of Washoe County, Nevada; and
- 4) If the Franchise Agreement is approved, to approve an associated Agreement to Pay Annually to Washoe County 2% of the franchisee's Net Profits under the franchise for the Benefit of the County School District Fund of Washoe County, State of Nevada; and
- 5) If the Franchise Agreement is approved, the Board has the option approve an associated franchise fee to be determined by the Board of up to 5% of gross profits. (All Commission Districts.)

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### SUMMARY

This public hearing was set pursuant to an application submitted by Sierra Pacific Power Company d/b/a NV Energy to provide natural electric service to portions of Washoe County. On October 13, 2015, the Board of County Commissioners (Board) directed the Washoe County Clerk to cause notice of the public hearing to be held December 8, 2015, at which time all objections to the granting of such franchise shall be presented to the Board.

**AGENDA ITEM #24**

Pursuant to NRS 709.070, notice of this hearing was duly advertised in the Reno Gazette Journal for four consecutive weeks beginning October 16, 2015 and concluding on November 6, 2015. In addition, Notice of this hearing was posted in three public places at least 10 days prior to this hearing.

Washoe County Strategic Objective supported by this item: Stewardship of our community.

### **PREVIOUS ACTION**

On July 14, 1965, the Board caused received application and caused notice to be published and posted of an application from Sierra Pacific Power Company for a Franchise Agreement to provide electrical service to portions of Washoe County for a term of fifty (50) years for the purpose of installing, operating and maintaining electrical, light, heat, and power lines and all necessary or proper appliances in Washoe County, for distributing electric, light, heat and power to the public for any and all lawful purposes.

On September 7, 1965, the Board approved and entered into a franchise agreement with Sierra Pacific Power Company to provide electrical service to portions of Washoe County for a term of fifty (50) years for the purpose of installing, operating and maintaining electrical, light, heat, and power lines and all necessary or proper appliances in Washoe County, for distributing electric, light, heat and power to the public for any and all lawful purposes.

On October 13, 2015, the Board directed the Washoe County Clerk to cause notice to be published and to post an application by Sierra Pacific Company, d/b/a NV Energy, for a Franchise Agreement to provide electric service to portions of Washoe County and to set the date for a hearing on the application to include any objections for December 8, 2015.

### **BACKGROUND**

The power to grant franchise agreements by the Board is contained within the Nevada Revised Statutes (NRS) 709.050 to 709.170 and requires the Board to cause notice of the application upon receipt. Washoe County received the attached letter (application – See Attachment A) for franchise agreement from NV Energy. The process for granting a franchise agreement has distinct steps, the first of which is to cause notice of the application to be published and to set a public hearing. The notice must contain pertinent information about the application and explain the process for making objections. The notice must be published once each week for a total of four consecutive weeks in a general circulation newspaper in the county, in this case the Reno Gazette Journal. The notice must also be posted in three public locations in the county at least 10 days prior to the application hearing, and the County Clerk will prove that notice was given at the meeting when the application hearing occurs and will make that a part of the record. Attachment B is the public notice prepared for this application from NV Energy.

The primary goals of the hearing are for the commission to hear objections, if any, to the granting of the franchise, and to determine if granting the franchise is in the best interests of the residents of the county. If granted, a franchise must fix the terms and prescribe the conditions pursuant to which the franchise is to be granted, the character or kinds of service to be rendered, the maximum rates to be charged for the service, and other matters properly connected therewith.

Currently NV Energy is operating within Washoe County under a 50 year franchise which expired. Due to timing required under NRS chapter 709, the current franchise if approved by the

Board is to be effective retroactive to September 7, 2015 and through September 7, 2035, with a possible extension of five years through September 7, 2040.

This is the maximum term allowed by statute (NRS 709.060) for new franchises. The actual length of the franchise is a matter within the discretion of the county commission, meaning that franchises could be granted for less than that amount of time.

### **FISCAL IMPACT**

Per NRS 709.070, the cost of the publication for the public hearing, approximately \$480, is born by the applicant.

Per Section 12 of the Franchise Agreement and Washoe County Code, NV Energy is obligated to pay any fees required of it under chapter 25 of the Washoe County Code. That fee amount is currently set in the code at 5% of gross profits derived from operation of the franchise in the unincorporated county. Typically, the franchise fee is passed along to end users as an item in their bills. While Nevada statutory law does not set the actual amount of the franchise fee, it does impose an overall limit, which is 5% of the gross revenue of the franchisee that is derived from operations within the jurisdiction of the franchise. NRS 354.59883(3)(b)(1). Otherwise, the fee amount is a matter of discretion for the county commission.

Per NRS 709.110, every applicant for a franchise for any of the purposes mentioned in NRS 709.050 shall, within 10 days after such franchise is granted, file with the county recorder of such county an agreement properly executed by the grantee of such franchise, right or privilege to pay annually on the first Monday of July of each year to the county treasurer of the county wherein such franchise, right or privilege is to be exercised, for the benefit of the county school district fund, 2 percent of the net profits made by such grantee in the operation of any public utility for which such franchise is granted.

In addition, while the current proposed agreement sets the franchise fee at 5%, this can be reduced on a case by case basis through a change to Washoe County Code. With direction from the Board, this code initiation request will be brought forward to facilitate this code amendment to support economic development on a case by case basis with BCC approval.

### **RECOMMENDATION**

It is recommended that the Commission hold a public hearing and take the following possible action:

- 1) Consider an application by NV Energy for a franchise agreement to provide electric service to portions of Washoe County, including any objections on the matter;
- 2) If determined to be in the best interests of the residents of Washoe County, to approve a Franchise Agreement between NV Energy and the County of Washoe, retroactive to September 7, 2015, effective for a period of twenty (20) years from the effective date of the agreement, with upon review by the County an extension of the term of the franchise for five (5) years, fixing the terms and prescribing the conditions pursuant to which the franchise is to be granted, the character or kinds of service to be rendered, the maximum rates to be charged for the service, and such other matters as may be properly connected therewith;

- 3) If the Franchise Agreement is approved, to adopt a Resolution Authorizing and Approving the Issuance of a Franchise to NV Energy to supply electric service to Portions of Washoe County, Nevada; and
- 4) If the Franchise Agreement is approved, to approve an associated Agreement to Pay Annually to Washoe County 2% of the franchisee's Net Profits under the franchise for the Benefit of the County School District Fund of Washoe County, State of Nevada; and
- 5) If the Franchise Agreement is approved, to approve the continuation of the current rate of the franchise fee pursuant to WCC chapter 25.

### **POSSIBLE MOTION**

Should the Board agree with staff's recommendation and determine after the public hearing on the matter that it is in the best interests of the residents of Washoe County, a possible motion would be: "Move to:

- 1) Approve a Franchise Agreement between NV Energy and the County of Washoe, retroactive to September 7, 2015, effective through September 7, 2035, with a possible extension of five years through September 7, 2040, to provide electric service to portions of Washoe County, according to the terms and the conditions specified as a result of the hearing, including the character or kinds of service to be rendered, the maximum rates to be charged for the service, and such other matters as may be properly connected therewith;
- 2) Adopt a Resolution Authorizing and Approving the Issuance of a Franchise to NV Energy to provide electric service Portions of Washoe County, Nevada, pursuant to the Franchise Agreement; and
- 3) Approve an associated Agreement to Pay Annually to Washoe County 2% of the franchisee's Net Profits under the franchise for the Benefit of the County School District Fund of Washoe County, State of Nevada."
- 4) Approve the continuation of the current rate of the franchise fee pursuant to WCC chapter 25.



RECEIVED

JUL 02 2015

OFFICE OF  
C.S.D. ENGINEERING & CAPITAL PROJECTS

June 30, 2015

Mr. Dave Solaro  
Washoe County  
P.O. Box 11130  
Reno, NV 89520

Dear Mr. Solaro:

Re: NV Energy Application for Renewal of Electric Franchise

NV Energy, doing business as Sierra Pacific Power Company, ("NV Energy") is a public utility qualified to do business under the laws of the State of Nevada and qualified to transact business in Washoe County, Nevada (the "County").

NV Energy currently provides electric service in the County pursuant to the Franchise granted September 7, 1965 by the Washoe County Board of County Commissioners, which according to its terms expires on September 7, 2015.

In accordance with NRS 709.050 through 709.170, and to permit the uninterrupted service and distribution of electricity in Washoe County, NV Energy respectfully requests the renewal of its electric franchise from the County to maintain, use, operate, install, construct, repair and replace its electric system and facilities including but not limited to poles, towers, supports, wires, conductors, cables, guys, platforms, crossarms, braces, transformers, insulators, conduits, ducts, vaults, manholes, meters, cut-offs, switches, generators, communications circuits, attachments and appurtenances within all present and future public rights-of-way of the County, including all streets, roads, highways, bridges, public utility easements and public places in the County. NV Energy requests that the franchise be granted for a term of twenty-five years (25) commencing on or before September 7, 2015.

Enclosed for your consideration is a proposed Franchise agreement between the County and NV Energy. We respectfully require that this application be set for hearing at the Board's next regular meeting or as soon as possible thereafter.

If you have any questions please do not hesitate to contact me at (702)334-5601.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Caudill".

Paul Caudill  
NV Energy President and CEO

Enc: Draft Electric Franchise

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**Publishers of**

**Reno Gazette-Journal**

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STATE OF NEVADA  
COUNTY OF WASHOE

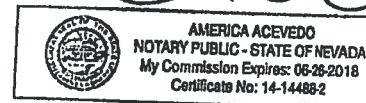
WCCOMP NOV12'15 9:22

Being first duly sworn, deposes and says: That as the legal clerk of the Reno Gazette-Journal, a daily newspaper of general circulation published in Reno, Washoe County, State of Nevada, that the notice referenced below has published in each regular and entire issue of said newspaper between the dates: 10/16/2015 - 11/6/2015, for exact publication dates please see last line of Proof of Publication below.

Subscribed and sworn to before me

Signed: *[Handwritten Signature]*

*[Handwritten Signature]*



**Proof of Publication**

NOTICE OF FILING NOTICE IS HEREBY GIVEN that the Board of County Commissioners of Washoe County, Nevada, will hold a public hearing at the County Commission Chambers, Washoe County Administration Complex, 1001 East Ninth Street, Building A, in Reno, Washoe County, Nevada on Tuesday, December 8, 2015, for the purpose of consideration of an application filed by NV Energy, doing business as Sierra Pacific Power Company, ("NV Energy") for a Franchise Agreement with Washoe County. NV Energy, has filed an application with the Board of County Commissioners of Washoe County, Nevada for a franchise permitting the said applicant to permit and provide electric service to maintain, use, operate, install, construct, repair and replace electric system and facilities including but not limited to poles, towers, supports, wires, conductors, cables, guys, platforms, crossarms, braces, transformers, insulators, conduits, ducts, vaults, manholes, meters, cut-offs, switches, generators, communication circuits, attachments and appurtenances within all present and future public rights-of way of the County, including all streets, roads, highways, bridges, public utility easements, and public places in the County, including all Energy requests in Washoe County, as more fully set forth in the application of NV Energy on file in the Washoe County Clerk's office. Any and all interested parties are hereby notified that on the 8th day of December 2015, a public

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hearing will be conducted in the Commissioner's Chambers, first floor, Washoe County Administrative Building, A, located at 1001 East Ninth Street, Reno, Washoe County, Nevada commencing at 10:00 A.M. to hear any objections any person may have to the granting of said franchise, right or privilege. Objectors are notified that their objections must be filed in writing with the County Clerk prior to said date, or objectors may appear at the meeting and present their objections at the meeting at that time. DATED: October 14, 2015 NANCY PARENT, Washoe County Clerk and Clerk of the Board of County Commissioners No 64319 Oct 16, 23, 30, Nov 6, 2015

LEGALS	LEGALS
<b>NOTICE OF FILING</b>	
<p>NOTICE IS HEREBY GIVEN that the Board of County Commissioners of Washoe County, Nevada, will hold a public hearing at the County Commission Chambers, Washoe County Administration Complex, 1001 East Ninth Street, Building A, in Reno, Washoe County, Nevada on Tuesday, December 8, 2015, for the purpose of consideration of an application filed by NV Energy, doing business as Sierra Pacific Power Company, ("NV Energy") for a Franchise Agreement with Washoe County. NV Energy, has filed an application with the Board of County Commissioners of Washoe County, Nevada for a franchise permitting the said applicant to permit and provide electric service to maintain, use, operate, install, construct, repair and replace electric system and facilities including but not limited to poles, towers, supports, wires, conductors, cables, guys, platforms, crossarms, braces, transformers, insulators, conduits, ducts, vaults, manholes, meters, cut-offs, switches, generators, communication circuits, attachments and appurtenances within all present and future public rights-of-way of the County, including all streets, roads, highways, bridges, public utility easements, and public places in the County, including all Energy requests in Washoe County, as more fully set forth in the application of NV Energy on file in the Washoe County Clerk's office. Any and all interested parties are hereby notified that on the 8th day of December 2015, a public hearing will be conducted in the Commissioner's Chambers, first floor, Washoe County Administrative Building, A, located at 1001 East Ninth Street, Reno, Washoe County, Nevada commencing at 10:00 A.M. to hear any objections any person may have to the granting of said franchise, right or privilege. Objectors are notified that their objections must be filed in writing with the County Clerk prior to said date, or objectors may appear at the meeting and present their objections at the meeting at that time.</p>	
DATED: October 14, 2015	
NANCY PARENT, Washoe County Clerk and Clerk of the Board of County Commissioners	
No 64319	Oct 16, 23, 30, Nov 6, 2015

**RESOLUTION**

**A RESOLUTION AUTHORIZING AND APPROVING THE ISSUANCE OF A  
NON-EXCLUSIVE FRANCHISE TO SIERRA PACIFIC POWER COMPANY  
D/B/A NV ENERGY TO SUPPLY ELECTRIC SERVICE TO PORTIONS OF  
WASHOE COUNTY, NEVADA**

**BE IT RESOLVED** that Sierra Pacific Power Company, d/b/a NV Energy, qualified to do business in the State of Nevada as a public utility, did on the 2<sup>nd</sup> day of July, 2015, file its application for a non-exclusive franchise to permit it to electric service a certain portion of Washoe County, Nevada, more particularly described in Exhibit "A" attached hereto.

**WHEREAS**, upon receipt of said application, the Board of County Commissioners of Washoe County, State of Nevada, caused a notice of said application and a notice of hearing upon said application to be published in the Reno Gazette Journal, a newspaper of general circulation in Washoe County, Nevada, setting said hearing upon said application on December 8, 2015, and at the same time caused a notice to be posted in the following places located within Washoe County, Nevada, to-wit: Washoe County Courthouse, 75 Court Street, Reno, Nevada; Washoe County Complex, 1001 East 9<sup>th</sup> Street, Reno, Nevada; City of Sparks, 431 E. Prater Way, Sparks, Nevada; and the Washoe County Main Library, 350 South Center Street, Reno, Nevada.

**WHEREAS**, on the \_\_\_\_\_ day of \_\_\_\_\_, 2015, the matter was heard by the Board of County Commissioners of Washoe County, Nevada.

**WHEREAS**, the Board of County Commissioners of Washoe County, Nevada, is satisfied that all of the legal requirements as required by the Nevada Revised Statutes have been complied with, that proper notice has been given upon said application, and that no objections were filed to the granting of said application and/or any objections were duly heard and taken into account.

**WHEREAS**, the granting of said application would be in the public interest and in the best interests of the residents of Washoe County.

**NOW THEREFORE**, the Board of County Commissioners of Washoe County, Nevada does hereby approve the granting of said application and does hereby authorize a non-exclusive



franchise upon the terms and conditions as contained the in the Nevada Revised Statutes and as are more fully set forth in the that certain Non-Exclusive Franchise attached hereto.

**IT IS FURTHER ORDERED**, that the granting of said franchise shall be conditioned upon NV energy executing and delivering to the County Recorder within ten (10) days after the date hereof, an agreement to pay annually, on the first Monday of July of each year, to the County Treasurer of Washoe County, Nevada, for the benefit of the County School District Fund, two percent (2%) of the net profits made by NV Energy in the operation of its gas lines within unincorporated Washoe County, Nevada as described above, during the term of such franchise.

The motion to adopt the above resolution was made by County Commissioner \_\_\_\_\_ and seconded by County Commissioner \_\_\_\_\_ and the vote of said motion is as follows:

AYES: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSENT: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Marsha Berkbigler, Chair  
Washoe County Commission

ATTEST:

\_\_\_\_\_  
Washoe County Clerk

**WASHOE COUNTY, NEVADA  
ELECTRICAL SYSTEM FRANCHISE AGREEMENT  
GRANTED TO SIERRA PACIFIC POWER COMPANY,  
D/B/A NV ENERGY**

**THIS AGREEMENT** is made and entered into this 7th day of September, 2015, (the "Effective Date") by and between the County of Washoe, Nevada, a political subdivision of the State of Nevada ("County"), and Sierra Pacific Power Company, d/b/a NV Energy, a Nevada corporation ("Franchisee"). County and Franchisee are sometimes collectively referred to as the "Parties," or singularly as a "Party." In consideration of the covenants and agreements described below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

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

**WHEREAS**, pursuant to Nevada Revised Statutes Chapter 709, the County Commission may provide or grant certain franchises for public transportation and utilities; and,

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

**1. DEFINITIONS**

Except as otherwise provided herein, the definitions and word usage set forth below shall apply to this Agreement. Terms, phrases, words and their derivations shall have the meanings set forth therein, unless the context clearly indicates that another meaning is intended. Words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive.

- 1.1. "Agreement" means this franchise agreement and any amendments, exhibits or appendices hereto.
- 1.2. "Betterment" means any upgrading of the Electrical System being reconstructed, moved or relocated that is made solely for the benefit of and at the election of the Franchisee, including, but not limited to, an increase in the capacity of existing facilities or an expansion of the existing facilities; provided, however, that the following are not considered Betterments:
  - 1.2.1. Replacement devices or materials that are of equivalent standards although not identical;
  - 1.2.2. Replacement of devices or materials no longer regularly manufactured with the next highest grade or size;

- 1.2.3. Any upgrading required by applicable laws, regulations or ordinances, including without limitation, the undergrounding of overhead facilities;
  - 1.2.4. Replacement devices or materials which are used for reasons of economy (e.g., non-stocked items which may be uneconomical to purchase); or
  - 1.2.5. Any upgrading required by Franchisee standards; provided, however, the Franchisee standard was not designed or adopted to avoid any obligation of the Franchisee under this Agreement.
- 1.3. "Certificate" means the certificate of public convenience and necessity issued to Franchisee by the PUCN for the provision of Electric Services.
  - 1.4. "Code" means the Washoe County Code, as amended from time to time.
  - 1.5. "Electric Services" or "Services" means, without limitation, the provision of retail electric services that Franchisee is legally able to provide under existing or subsequent law in compliance with its Certificate.
  - 1.6. "Electrical System", "System" or "Facilities" means and includes, but is not limited to, the poles, towers, supports, wires, conductors, cables, guys, platforms, crossarms, braces, transformers, insulators, conduits, ducts, vaults, manholes, meters, cut-offs, switches, generators, communications circuits, attachments, appurtenances and any other equipment used by Franchisee in the provision of Electric Services.
  - 1.7. "Franchise" means the non-exclusive authorization granted by the County Commission to the Franchisee to construct, maintain and operate its Electrical System in the Rights-of-Way to provide electric services to customers within the Franchise Area, in accordance with the terms and conditions set forth in this Agreement.
  - 1.8. "Franchise Area" means that area of Franchisee's service territory, as such service territory is established under Franchisee's Certificate, which is located within the unincorporated County, including property as subsequently annexed.
  - 1.9. "Gross Revenue" means revenue received by Franchisee from retail customers within the County limits, including revenue derived from of following:
    - a) Sales of electric energy to retail customers;
    - b) Charges for a temporary meter;
    - c) Electric overtime reconnect charges;
    - d) Metered retest charges;
    - e) Service charges;
    - f) Service establishment charges;
    - g) Remote meter charges;
    - h) Reconnect overtime charge reversal;
    - i) Reconnect charges;

- j) Reconnect charge reversal;
  - k) Overtime service charges;
  - l) Meter test charges;
  - m) Late fees (forfeited discounts)
- 1.10. "NRS" means the Nevada Revised Statutes, as amended from time to time.
- 1.11. "PAC" means pole attachment contracts or joint pole agreements under which Franchisee permits the attachment of facilities used by others to Franchisee's Facilities.
- 1.12. "PUCN" means the Public Utilities Commission of the State of Nevada, and its successors.
- 1.13. "Right-of-Way" or "Rights-of-Way" means public property including air space, dedicated, granted, held, prescriptively used, or authorized by patent of the United States of America, for County public street and public utility purposes, except as limited by any underlying grant and except public streets in any federal aid highway or any highway controlled by the state within the County.

## **2. TERM**

The Effective Date of this Agreement shall be the date the County grants this Franchise to Franchisee as written above. This Agreement shall continue in full force and effect for a period of twenty (20) years from the Effective Date of this Agreement.

Upon review by the County, and in the event Franchisee is found to be in full compliance with all terms of the Franchise, Franchisee shall be granted a five (5) year extension of the term. Franchisee must provide written request of its desire to extend the term of this franchise at least six (6) months prior to the end of the initial twenty (20) year term.

## **3. COMPLIANCE WITH LAWS, ORDINANCES AND REGULATIONS**

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

## **4. GRANT OF FRANCHISE**

Subject to the terms and conditions of this Agreement and all applicable provisions of NRS chapter 709 and the Code, the County hereby grants a Franchise to Franchisee for an Electrical System within the Rights-of-Way of the Franchise Area for the sole purpose of providing Electric Services for which Franchisee holds a Certificate. By this grant Franchisee is also granted the right to perform routine maintenance activities on its facilities within the Rights-of-Way of the Franchise Area. This Agreement does not confer any rights other than as expressly provided for herein or as mandated by federal, state, or local law. Franchisee hereby agrees to provide Electric Services in all portions of the Franchise Area to the extent required to do so by its Certificate.

## **5. LIMITATIONS ON GRANT OF FRANCHISE**

- 5.1. The Franchise does not substitute for or take the place of any other license or permit required (1) for the privilege of transacting or carrying on a business within the County of Washoe as required by Code, (2) for attaching devices to poles or other structures owned by the County or any an entity other than Franchisee, its contractor or agents, or (3) for excavating or performing other work in or along Rights-of-Way.
- 5.2. Except as permitted by applicable law, nothing contained in this Agreement shall be construed as authorizing Franchisee to use, or permit the use of, any portion of its Electrical System for any purpose other than those reasonably necessary for the provision of Electric Service unless prior written approval is obtained from the County.
- 5.3. The maximum rates to be charged for the Electric Services to customers in the Franchise Area shall be those established pursuant to PUCN proceedings and rate tariffs.

## **6. EFFECT OF ACCEPTANCE.**

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

- 6.1. Acknowledges and accepts the County's legal right to grant the Franchise, to enter this Franchise Agreement, to enact and enforce ordinances and regulations related to the Franchise;
- 6.2. Agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary, or allege in any claim or proceeding by the Franchisee against the County that any provision, condition or term of the Franchise Agreement at the time of the acceptance of the Franchise was unreasonable or arbitrary, or that at the time of the acceptance of the Franchise any such provision, condition or term was void or that the County had no power or authority to make or enforce any such provision, condition or term. Nothing contained in the Agreement shall be construed to require Franchisee to violate any law, regulation or tariff.

## **7. FRANCHISEE'S USE OF COUNTY PROPERTY**

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

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

- 8.1. **JOINT USE OF SYSTEM.** The County shall upon notice to the Franchisee have, for any reasonable municipal purpose (which does not include a third party business such as a cable or telecommunications business), the right to make use of the poles and conduits of the Franchisee within the Franchise Area, and any Rights-of-Way granted to the Franchisee, to the same extent telecommunication companies are authorized to use Franchisee's facilities provided such use complies with good and safe electrical operating practices, applicable legislation, and does not unreasonably interfere with the Franchisee's use thereof, at no charge to the County. The County is responsible for its own costs and any necessary and reasonable costs incurred by the Franchisee, including the costs of any alterations that may be required, as a result of the County using the poles and conduits of the Franchisee.
- 8.2. **COUNTY NOTIFICATION OF USE OF FRANCHISEE'S FACILITIES BY THIRD PARTIES.** The grant of Franchise herein does not permit use by third parties of Franchisee's Facilities located in Rights-of-Way. However, County acknowledges that state or federal law may require that Franchisee allow third parties to make attachments to Franchisee's Facilities. Franchisee shall notify County of the names and addresses of third parties who currently have attached their facilities to Franchisee's Facilities in Rights-of-Way, and of any future third parties upon their initial request to enter into an agreement for such attachment. Thereafter, upon verification by County that said third party is duly licensed, franchised or otherwise permitted to occupy the Rights-of-Way, or if no such verification is provided by the County within 45 days after Franchisee's notification to County, Franchisee may permit such third party to attach its facilities to Franchisee's Facilities within Rights-of-Way.
- 8.3. **PERMISSION REQUIRED TO TRANSFER FRANCHISEE'S FACILITIES TO THIRD PARTY.** Franchisee shall not transfer ownership of any of its Facilities



in the Rights-of-Way to any third party without the express written consent of the County, which consent may not be unreasonably withheld.

8.4. **FRANCHISEE'S OVERHEAD RELOCATION ACTIVITIES.** Whenever Franchisee plans to relocate to the underground any of its overhead Facilities within the Rights-of-Way, Franchisee shall apply and obtain all permits as may be required under applicable Code prior to commencing such excavation and shall provide written notice to all third parties located in the specific Rights-of-Way who have attached their own facilities to Franchisee's overhead Facilities that are to be placed underground, of the anticipated date of undergrounding of the overhead Facilities or of excavation, pursuant to any applicable provisions of the Code, as amended from time to time. Undergrounding notices shall specify:

8.4.1. That all third-party attachments must be removed or placed underground prior to scheduled removal of Franchisee's overhead Facilities, provided that the contract between Franchisee and the third party requires the third party to remove its attachments when Franchisee undergrounds its overhead facilities; and

8.4.2. An estimated timetable for when Franchisee will complete its undergrounding.

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

8.5. **FRANCHISEE'S RESPONSIBILITY FOR ITS FACILITIES.** Franchisee shall remain responsible for all claims and liabilities of whatever nature related to its Facilities until such time as such Facilities have been completely removed and the Right-of-Way repaired and restored to its prior or better condition in accordance with the Code and the County of Washoe Standard Details and the Design Manual, or its successor publication, as amended from time to time, to the reasonable satisfaction of the Director of Public Works.

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

8.6. **POLE ATTACHMENT AGREEMENTS TO BE FURNISHED TO COUNTY.** Franchisee shall, upon request, within a reasonable time period not to exceed 60

days provide the County with copies of any PACs or similar agreements allowing the use of Franchisee's Facilities in the Rights-of-Way.

## **9. WORK BY OTHERS**

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

## **10. RELOCATION OF FACILITIES**

- 10.1. **REMOVAL AND RELOCATION.** Franchisee will be responsible for the cost of removal or relocation of its Facilities in Rights-of-Way in accordance with applicable provisions of the Code.
- 10.2. **PRIOR RIGHTS; COST FOR RELOCATION.** Notwithstanding any other provision of this Agreement to the contrary, if the County requires Franchisee to relocate any of its Facilities located in the Rights-of-Way in which the Franchisee has demonstrated in accordance with this subsection that it had a valid easement prior to the time such location was dedicated to or otherwise received by the County, the County shall be responsible for Franchisee's actual costs of relocating such Facilities pursuant to this Section 10, including the cost of obtaining a new equivalent easement for Franchisee, if the County determines that no space is available in the Rights-of-Way for Franchisee's Facilities. The County will not be responsible for the relocation costs if the Facilities were not placed in conformance with the applicable statutes, ordinances and codes in effect at the time of the Facilities' original construction. Moreover, it is understood and agreed that County will not pay for or bear the cost of any incremental increase of engineering or construction costs involved in or pertaining to any Betterment, and that no Betterment may be performed in connection with any relocation under Section 10.2. If County determines that a Betterment is performed in connection with such a relocation, the actual cost of such Betterment shall appear as a credit in any invoice submitted by Franchisee to County for reimbursement of actual costs pursuant to this Section 10. Franchisee shall provide to County documentation supporting its calculation of the actual cost of such Betterment. All other provisions of this Section 10 shall apply to Franchisee's work in performing the relocation of any Facilities covered by this Section.
- 10.3. In instances where no Public Improvements or Facilities have been installed as of the Effective Date of this Agreement and a patent exists for roadway and utility purposes and is not patented or reserved specifically in the name of the County or Franchisee, the party which is first to install a Public Improvement or Facility in

such patent will be considered to have the prior right so long as in the case of the Franchisee the Facility was in place in accordance with applicable statutes, ordinances and codes.

- 10.4. A claim from Franchisee for reimbursement for relocation of Facilities under a prior right must include a copy of the Easement instrument/document. If no such instrument/ document can be produced, the claim must include a statement clarifying the prior land right, and must be signed by an officer, director or manager of the Franchisee who avers that the information set forth in the claim is accurate and complete. The claim must be accurate and include supporting proof that a prior land right exists for the Franchisee's Facilities. If the Franchisee fails to provide the County with sufficient proof of a prior right, the Franchisee will be responsible for the actual cost of the relocation.
- 10.5. In instances where the Franchisee has demonstrated a prior right in accordance with this subsection and the County requires the Franchisee to relocate its Facilities outside of its original prior right location, the County will recognize the Franchisee's prior right in the new location by issuance of an instrument/document recognizing the prior right, unless the new location is a County Right-of-Way.
- 10.6. Without limiting or abrogating the rights of the Franchisee to seek and receive reimbursement under any applicable federal, state or local law or regulation, and consistent with applicable provisions of the Code and this Section, the County shall request, and Franchisee hereby agrees, to remove and/or relocate its Facilities to accommodate the construction or repair of public facilities or improvements in County Rights-of-Way. The County will provide an alternate location, and if necessary, new County Right-of-Way, for the installation of facilities relocated pursuant to this Section.
- 10.7. The Franchisee shall not be required to remove existing overhead facilities and place them underground without full compensation for the costs for such activities. Compensation shall include, but not be limited to, the remaining undepreciated value of the existing facilities to be removed, removal costs of existing facilities, installation of the new underground facilities, and the reconnection costs for existing customers. The Franchisee is not responsible for the conversion of the customer's panels from overhead service to underground service. Where the facilities have deteriorated and are scheduled to be replaced by the Franchisee or are to be relocated in accordance with Section 3 above, the Franchisee shall participate in the costs for installing the facilities underground in a dollar amount equal to that which the Franchisee would have incurred to replace or relocate them as overhead facilities. Where the costs for undergrounding existing overhead electric facilities will be funded by parties other than the Franchisee, the Franchisee will not unreasonably refuse to relocate those existing overhead electric facilities underground.

## **11. UNDERGROUND CONDUIT**

- 11.1. In the event the Franchisee installs new electrical conduit or opens a trench or replaces existing conduits within the Franchise Area, the Franchisee shall provide advance notice to a designated County representative to permit additional installation for the County of similar conduit and pull-wire. If the County wants additional similar conduit and pull-wire installed, it will so notify the Franchisee and in a timely manner provide similar conduit and pull-wire at County's expense to the Franchisee which will install it without further cost to the County, provided that such action by the County will not unreasonably interfere with the Franchisee's facilities or delay the accomplishment of the project.
- 11.2. The County and the Franchisee shall cooperate to minimize installation costs of underground conduit and pull-wire and to minimize cutting the public streets and public easements.

## **12. BUSINESS LICENSE**

- 12.1. Franchisee shall maintain a valid unexpired County business license and pay all applicable business license fees in accordance with the applicable provisions of chapter 25 of the Code during the Terms of this Agreement. Franchisee shall pay all other fees as may be required by Nevada revised Statutes and/or other applicable laws, ordinances or regulations.
- 12.2. **PAYMENT AUDITS.** No acceptance of any business license fees payment by the County shall be construed as an accord and satisfaction that the amount paid is in fact the correct amount or a release of any claim that the County may have for further or additional sums payable under this Agreement, and all amounts paid shall be subject to audit. Franchisee shall make relevant books and records available to the County as further provided below in Section 13.
- 12.3. **CONTINUING OBLIGATION.** In the event the Franchisee continues to operate all or any part of the Electrical System providing Electric Service after the term of this Agreement, then the Franchisee shall continue to comply with all applicable provisions of this Agreement, including without limitation, all compensation and other payment provisions of this Agreement, throughout the period of such continued operation, provided that any such continued operation shall in no way be construed as a renewal of or other extension of this Agreement or the Franchise.

## **13. RECORDS**

### **13.1. COMPLETE AND ACCURATE BOOKS.**

Throughout the term of this Agreement, Franchisee shall make available to the County complete and accurate books of account and record regarding the Franchisee's ownership and operation of the System and the provision of Services over the system, in a manner reasonably acceptable to the County when necessary for the County to reasonably determine Franchisee's compliance with the terms and conditions of the Code and this Franchise Agreement. Franchisee shall maintain all relevant books and records for a period of at least seven (7) years following the calendar year to which the books and records pertain.

### **13.2. RIGHT TO INSPECT.**

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

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

## **14. TRANSFERS AND ASSIGNMENTS**

If the transfer and assignment of Franchisee's certificate of public convenience and necessity has been approved by the PUCN, the Franchise may be transferred and assigned to the same person to whom the certificate of public convenience and necessity was transferred and assigned, or to such other person as approved by the PUCN, without the prior approval of the County Commission, except that the transferee and assignee must provide a notarized document to the County Manager, acknowledging the transfer and assignment and that the transferee and assignee agrees to abide by all terms and conditions of the Franchise, signed by the Franchisee's and its transferee's and assignee's respective officers duly authorized to do so, on a form approved by the County Manager. The County Manager shall file such notarized document with the Franchise Agreement on file in the County Clerk's office.

## **15. MAINTENANCE**

Franchisee is hereby granted the right to trim trees along the streets, alleys and public grounds of the county and any extension thereof in order to provide and maintain a safe installation of high voltage wires necessary, convenient or useful in the operation of its said system. In so doing, Franchisee will comply with Franchisee's established tree trimming standard and provide reasonable notice to the County of the general location and time for Franchisee's tree trimming activities. The County and the Franchisee shall make good faith efforts and take reasonable steps to prevent new vegetation from being planted which, at maturity, will grow within ten feet of an energized conductor.

## **16. REVOCATION AND PENALTIES**

- 16.1. The County Commission shall have the right to revoke and terminate this Agreement, in addition to any other rights or remedies set forth in this Agreement or provided by law, pursuant to the provisions of the Code, as amended from time to time.
- 16.2. After providing notice and an opportunity for the Franchisee to be heard and a reasonable opportunity to cure, the County Commission may impose upon the Franchisee reasonable fines or penalties in an amount not to exceed five hundred dollars (\$500.00) per day or any total amount per occurrence greater than one

hundred thousand dollars (\$100,000.00), if the County Commission finds that the Franchisee has failed to comply with any of the conditions or obligations imposed by this Franchise Agreement or any applicable provisions of the Code. For purposes of this Agreement, "occurrence" refers to an event and not individual instances of damage or loss that cumulatively result from an event. These fines or penalties shall be in addition to any other remedies available under law to the County. Any such fines or penalties shall be due within 30 days of Franchisee's receipt of written notification by County of the fine or penalty, made payable to the County Treasurer and delivered to the County Manager at the County's address indicated in Section 26 of this Agreement. A late charge of two percent (2%) of the fine or penalty imposed shall be assessed if the fine or penalty is not paid within such 30 days of the written notification.

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

## **17. INDEMNIFICATION**

- 17.1. Franchisee shall fully indemnify, defend and hold harmless the County, its officers, boards, commissions, elected officials, agents, attorneys, representatives, servants and employees against any and all costs, damages, expenses, claims, suits, actions, liabilities and judgments for damages, including but not limited to, expenses for legal fees, and disbursements and liabilities incurred or assumed by County in connection with:
- 17.1.1. Damage to persons or property, in any way arising out of or through the acts or omissions of Franchisee, its servants, officials, agents, attorneys, representatives or employees during the operation, construction or maintenance of the Electrical System
- 17.1.2. Any and all claims arising out of Franchisee's failure to comply with the provisions of the Code, this Agreement or any federal, state or local law, or regulation applicable to Franchisee or the Electrical System.
- 17.2. If Franchisee Self-Insures. If Franchisee self-insures pursuant to Subsection 18.3 hereof, then, to the fullest extent permitted by law and without limiting any of Franchisee's obligations under Subsection 18.3 or Subsection 17.1, Franchisee shall indemnify, protect, defend and hold harmless the County, its officers, boards, commissions, elected officials, agents, attorneys, representatives, servants and employees against any and all liability, costs and expenses (including defense costs and legal fees), and claims, losses, liabilities, suits, or actions of any kind (collectively "Claims and Expenses") arising out of, relating to, or resulting from, the performance of or failure to perform Franchisee's obligations arising out of



this Agreement (including performance or failure to perform by Franchisee's contractors and/or subcontractors), to the extent such Claims and Expenses would be indemnified pursuant to the insurance described in Section 17.1, except to the extent any Claim or Expense is proximately caused by the negligence or willful misconduct of the County or its agents, employees, servants or independent contractors who are directly responsible to County.

- 17.3. If a lawsuit covered by the provisions of Subsection 17.1 shall be brought against County, either independently or jointly with Franchisee, or with any other person or municipality, the Franchisee, upon no less than ten (10) business days' notice given by County, shall defend County at the cost of the Franchisee. If final judgment is obtained against County, either independently or jointly with Franchisee or any other defendants, the Franchisee shall indemnify County and pay such judgment with all costs and satisfy and discharge the same.
- 17.4. County shall cooperate with the Franchisee and reserves the right to participate in the defense of any litigation.
- 17.5. The County is in no manner or means waiving any governmental immunity it may enjoy or any immunity for its agents, officials, servants, attorneys, representatives and/or employees.
- 17.6. All rights of County, pursuant to indemnification, insurance, or performance bond(s), as provided for by the Code or this Agreement, are in addition to all other rights the County may have under the Code, this Agreement, or any other Franchising requirements, rule, regulation or law.
- 17.7. The County's exercise of or failure to exercise all rights pursuant to any Section of this Agreement shall not affect in any way the right of the County subsequently to exercise any such rights or any other right of County under this Agreement or any other rule, regulation or law.
- 17.8. It is the purpose of this Section to provide maximum indemnification to the County under the terms and conditions expressed and, in the event of a dispute, this Section shall be construed (to the greatest extent permitted by law) to provide for the indemnification of the County by the Franchisee.
- 17.9. The provisions of this Section shall not be dependent or conditioned upon the validity of the Code, this Agreement, or the validity of any of the procedures or agreements involved in the award or renewal of a Franchise, but shall be and remain a binding right and obligation of the County and Franchisee even if part or all of the Code, this Agreement, or the grant or renewal of a Franchise, is declared null and void in a legal or administrative proceeding. It shall be the express intent of the Franchisee and County, upon the effective date of the Franchise, that the provisions of this Section survive any such declaration and shall be a binding obligation of and inure to the benefit of the Franchisee and County and their respective successors and assigns, if any.
- 17.10. Notwithstanding the foregoing, Franchisee shall not be obligated to indemnify the County for its negligence in connection with the County's use of the Electrical

System, or for the County's negligence in connection with the County's use of any facilities provided by Franchisee pursuant to this Agreement.

17.11. The provisions of this Section 17 shall survive termination of this Agreement.

## **18. INSURANCE**

18.1. Unless Franchisee meets the self-insurance requirements set forth in Subsection 18.3 below, the Franchisee shall file with the County Clerk and shall thereafter during the entire term of such Franchise maintain in full force and effect, at its own expense, a general comprehensive liability insurance policy or policies which shall insure Franchisee and provide primary coverage for the County, its officers, boards, commissions, elected officials, agents, attorneys, representatives, servants and employees against liability for loss or liability for personal injury, death, property damage (both automobile and non-automobile caused), or other damages in accordance with the Insurance Requirements described in Subsection 18.2.

18.2. Insurance Requirements. Such policy or policies shall be issued by a company licensed to do business in the State of Nevada which have a Best rating of "A" or better, and shall be in a form agreed to by the County Attorney, with minimum combined single limits of liability coverage in the amount of one million dollars (\$1,000,000) and two million dollars (\$2,000,000) aggregate. The policy or policies shall name the County, its officers, boards, commissions, elected officials, agents, attorneys, representatives, servants and employees as additional insured ("Additional Insured Group") and contain a provision that a written notice of any cancellation of said policy shall be delivered to the County Clerk thirty (30) days in advance of the effective date thereof. Any substitute policy or policies shall be subject to the same approvals and shall comply with all of the provisions of this Subsection. The County Manager or designee may require increases in the amount of types of coverage no more frequently than every three (3) years. The Franchisee shall have three (3) months from the date of notification from the County Manager to comply with any increase.

18.3. Self-Insurance. Upon written approval by County's Risk Manager, which shall not be unreasonably withheld, Franchisee may fulfill the insurance obligations under Subsection 19.2 (including, without limitation, coverage for work performed by Franchisee's contractors and subcontractors) pursuant to self-insurance, if the following conditions are met:

18.3.1. Franchisee has in effect prior to the execution of this Agreement, a program of "self-insurance";

18.3.2. Franchisee agrees to protect County and any other member of the Additional Insured Group at the same level with respect to types of coverage and minimum limits of liability as County would have required of third-party insurance;

18.3.3. Franchisee agrees that such self-insurance shall include all duties, obligations and responsibilities with respect to any claim made under such self-insurance program (including, without limitation, providing a defense for County and the other members of the Additional Insured Group) in any

claim, lawsuit or other proceeding seeking damages for which an insurance carrier would otherwise be obligated by statute or common law to provide a defense, and if Franchisee questions such obligation where it is claimed by County, Franchisee shall nevertheless provide such defense with a reservation of the right to receive reimbursement from County if a final determination is made subsequently by a court of competent jurisdiction that such obligation did not exist), as well as all other provisions set forth in this Agreement which otherwise would have been applicable if Franchisee had obtained such insurance coverage from a third party;

18.3.4. Franchisee agrees that any insurance carried by County is in excess of Franchisee's self-insurance and will not contribute to it;

18.3.5. Franchisee provides to County the name and address of its claims administrator;

18.3.6. Franchisee agrees that it shall not reduce its coverage below the level or types of coverages which are required pursuant to Subsection 18.2 above;

18.3.7. Franchisee maintains a minimum net worth and minimum net current assets, as defined by generally accepted accounting principles, adequate in the County Manager's judgment to support Franchisee's self-insurance obligations hereunder; and

18.3.8. Franchisee has complied with all laws pertaining to self-insurance.

18.4. Acceptance. No Franchise granted under this Agreement shall be effective unless and until each of the foregoing policies of insurance as required in Section 18.2 has been delivered to the County Clerk, or Franchisee has provided to County a letter in form and substance satisfactory to County which certifies that Franchisee meets the self-insurance requirements of Subsection 18.3.

## **19. LOCAL EMERGENCY**

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

## **20. SECURITY FOR PERFORMANCE**

The Franchisee shall secure, maintain, and provide the County with security for performance in an amount required by Code as amended from time to time. The surety bond shall be irrevocable and in a form and contain the terms of drawing prescribed and approved by the Washoe County District Attorney's Office. The County may draw upon

the surety bond to obtain payment of sums due from Franchisee to the County under this Agreement, which sums (including but not limited to, assessed fines or penalties and late charges, if any) were not timely paid and which remain unpaid at least ten (10) days after written notice to Franchisee. At all times during the term of this Agreement, Franchisee shall replenish the surety bond to its full amount within thirty (30) days of receiving notice that some or all of the surety bond has been drawn by the County .

## **21. SEVERABILITY**

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

## **22. NO THIRD-PARTY BENEFICIARY**

Except as otherwise specifically provided herein, this Agreement does not create any third-party beneficiary right or remedy.

## **23. EFFECT OF COMPLIANCE INSPECTIONS**

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

## **24. NOTICES**

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

**NOTICES SHALL BE DIRECTED AS FOLLOWS:**

To Franchisee:

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

With copies to:

Mary Simmons, Vice President

To the County:

County of Washoe

John Slaughter, County Manager

P.O. Box 11130, Reno, Nevada 89520-0027

## **25. FORCE MAJEURE**

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

## **26. NO WAIVER; CUMULATIVE REMEDIES**

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

## **27. CONSTRUCTION OF AGREEMENT**

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

## **28. NO JOINT VENTURE**

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

### **29. GOVERNING LAW**

Without regard to choice of law principles, this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Nevada, including substantive, remedial, and procedural laws, and, to the extent applicable, the laws of the United States of America.

### **30. ENTIRE UNDERSTANDING OF THE PARTIES**

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

### **31. SUBJECT TO LAWS AND POLICE POWERS**

Franchisee agrees to comply with all statutes, ordinances, laws, rules, regulations, and requirements under Federal, State, County and other local authority (collectively, "Laws") applicable to the terms and conditions of this Agreement. All terms and conditions of this Agreement shall be subject to all applicable Laws and to the extent that any term or condition is in violation of any applicable Law, such term or condition shall be void and unenforceable. Any conflict between the provisions of this Agreement and any present or future lawful exercise of the County's police powers shall be resolved in favor of the latter. Subject to the right of the County police powers, in the event of a conflict between this Agreement and any ordinance of general applicability, such conflict shall be resolved in favor of the ordinance.

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

### **32. RETENTION OF SOVEREIGN IMMUNITY PROTECTIONS**

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

### **33. AUTHORITY TO EXECUTE AGREEMENT**

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



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

**34. BINDING EFFECT**

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

**35. INCORPORATION OF EXHIBITS**

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

**36. SECTION AND PARAGRAPH HEADINGS**

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

**37. SURVIVAL**

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

**38. DAYS**

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

**39. TIME OF THE ESSENCE**

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

**40. GIFTS**

Except where permitted by state law and local ordinance and where given for the use and benefit of the County, no officer or employee of Franchisee shall offer to any officer or employee of the County, either directly or indirectly, any rebate, gift, money, service without charge or other thing of value.

**[REMAINDER OF PAGE INTENTIONALLY BLANK]**

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

**UTILITY:**

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**COUNTY:**

**THE COUNTY OF WASHOE,**  
a political subdivision of the State of  
Nevada

By: \_\_\_\_\_  
Chair, Washoe County Commission

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

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Washoe County District Attorney's Office

**ATTEST:**

By: \_\_\_\_\_  
County Clerk

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

Sierra Pacific Power Company, doing business as NV Energy

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

AGREEMENT TO PAY ANNUALLY 2% OF NET PROFITS  
FOR BENEFIT OF COUNTY SCHOOL DISTRICT FUND OF  
WASHOE COUNTY, STATE OF NEVADA

In accordance with NRS chapter 709 and the electric Franchise granted by the Board of County Commissioners of Washoe County, Nevada (the "County") in favor of Sierra Pacific Power Company, a Nevada corporation d/b/a NV Energy, as of September 7, 2015, NV Energy agrees that during the term of the Franchise two percent (2%) of the net profits derived from its operations under the Franchise in unincorporated Washoe County shall be paid to the Washoe County Treasurer for the benefit of the Washoe County School District fund.

Effective as of September 7, 2015.

Sierra Pacific Power Company, d/b/a NV  
Energy

By: \_\_\_\_\_  
Name, Title: \_\_\_\_\_

Approved and Agreed:  
WASHOE COUNTY

By: \_\_\_\_\_  
Name, Title: \_\_\_\_\_

STATE OF NEVADA                    )  
  )  
COUNTY OF \_\_\_\_\_            )

On \_\_\_\_\_, 2015, personally appeared before me, a notary public, \_\_\_\_\_, personally known (or proved) to me to be the person whose name is subscribed to the above instrument who acknowledged that he/she executed the instrument in his/her authorized capacity.

\_\_\_\_\_  
Notary Public

STATE OF NEVADA                    )  
  )  
COUNTY OF \_\_\_\_\_            )

On \_\_\_\_\_, 2015, personally appeared before me, a notary public, \_\_\_\_\_, personally known (or proved) to me to be the person whose name is subscribed to the above instrument who acknowledged that he/she executed the instrument in his/her authorized capacity.

\_\_\_\_\_  
Notary Public