

Telecommunications



Franchise

GIGAPOWER, LLC

JANUARY 2, 2024 –
JANUARY 2, 2034

***DEPARTMENT OF BUSINESS LICENSE
FRANCHISE SERVICES DIVISION
500 S. GRAND CENTRAL PARKWAY, 3RD FLOOR
LAS VEGAS, NEVADA 89155***

CLARK COUNTY BOARD OF COMMISSIONERS
JAMES B. GIBSON, Chair • TICK SEGERBLOM, Vice Chair
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COUNTY MANAGER
KEVIN SCHILLER

CLARK COUNTY, NEVADA
TELECOMMUNICATIONS SYSTEM
FRANCHISE AGREEMENT
GRANTED TO
GIGAPOWER, LLC

THIS FRANCHISE is granted this 2nd day of January, 2024, by Clark County, Nevada, a political subdivision of the State of Nevada, acting by and through its Board of County Commissioners which is its governing body (hereinafter called "County"), to Gigapower, LLC (hereinafter called "Franchisee"), authorized by the Public Utilities Commission of Nevada to do business in the State of Nevada.

WITNESSETH:

WHEREAS, the Franchisee, a limited-liability company organized and existing under and by virtue of the laws of the State of Delaware, and duly qualified to transact business within the State of Nevada, is engaged in the business of operating a telecommunications system to provide subscription service, as defined by Clark County Code; and

WHEREAS, the County is authorized, pursuant to Nevada Revised Statutes Chapter 709, to grant a franchise to install, maintain and operate facilities, as defined by Clark County Code, which requires the use of County's rights-of-way; and

WHEREAS, Franchisee is building an "open access" network where multiple Internet Service Providers ("ISPs") will be able to utilize Franchisee's wholesale broadband transmission service over Franchisee's facilities to provide their own retail internet access service to residents and businesses in Clark County; and

WHEREAS, the Franchisee hereby attests that the information submitted in Franchisee's applications to the County to obtain the Telecommunications Utility System Franchise, attached hereto as Exhibit A and made a part hereof, is true and correct.

NOW, THEREFORE, in consideration of the premises and of the performance by the Franchisee of the requirements hereinafter set forth, and subject to the following terms and conditions, the County hereby grants to the Franchisee this Telecommunications Utility System Franchise.

TERMS AND CONDITIONS:

1. DEFINITIONS

Definitions of terms in this Franchise Agreement shall be the same as those definitions listed in Clark County Code Chapters 5.01 and 6.13, as amended from time to time.

2. *FRANCHISE AGREEMENT DURATION, CONDITIONS, EXTENSION*

- (A) This Franchise shall be non-exclusive and shall be in force and effect from the date first written above until the 2nd day of January, 2034. The Franchisee may request an extension of this Franchise Agreement, pursuant to Chapter 5.01 of the Clark County Code, as amended from time to time. Failure to extend this Franchise Agreement shall automatically terminate this Franchise Agreement on its expiration date.
- (B) The Franchisee shall be subject to all applicable requirements of County ordinances, rules, regulations and specifications hereafter enacted or established in so far as such ordinances are not in violation of any State or Federal regulation. The Franchise shall at all times comply with applicable Federal, State and local laws, rules and regulations concerning the provision of Telecommunications Services, including all applicable Federal Communications Commission and Nevada Public Utility Commission rules, regulations and orders that apply to the Franchisee. In the event of any conflict between the provisions in Titles 5, 6 or 30 of Clark County Code, as amended from time to time, and any provisions of this Franchise Agreement, the Code provision shall control.
- (C) Except as otherwise provided by applicable law: (1) Franchisee shall not permit use by other persons of its facilities located in County rights-of-way, including but not limited to the use by other persons who are required to obtain a business license, Franchise or Rights-of-Way License Agreement from the County for such use, unless and until the other persons obtain such licenses or franchise; and (2) unless required by law, the Franchisee shall not permit another person, other than an affiliate of the Franchisee that is providing video service and has obtained a Certificate of Authority from the Nevada Secretary of State, to install its own facilities in, on, under, along or above the Franchisee's facilities. Notwithstanding the above provisions, Franchisee may resale its broadband transmission service utilizing its facilities to a third party ISP. However, Franchisee shall provide in writing to the County the identity of any ISP who will be utilizing Franchisee's broadband transmission service prior to providing that service to the ISP.
- (D) Franchisee is hereby granted, during the term of this Franchise Agreement, a Franchise to install, operate and maintain its facilities in rights-of-way in unincorporated Clark County, pursuant to Clark County Code Titles 5, 6 and 30. Franchisee shall provide or make available to the County, upon request, the location of the facilities Franchisee has currently installed in the County rights-of-way.
- (E) Franchisee may expand this Franchise Agreement to install, maintain and operate its facilities in the County's rights-of-way beyond the original geographic area identified in this Agreement only by obtaining approval of an amended Franchise Agreement from the County. The County Commission may grant, with or without conditions, or deny such amendment in its sole discretion. In the event that an amendment of this

Franchise Agreement is approved by the County Commission, such amendment shall be subject to all the terms and conditions of this Franchise Agreement and the terms and conditions of any amended agreement, and Titles 5, 6 and 30 of the Clark County Code, as amended from time to time.

- (F) This Franchise Agreement does not grant the Franchisee or any affiliate permission to offer subscription Video Service in the County. In order to provide Video Service to customers within the unincorporated areas of Clark County the Franchisee or any affiliate, if applicable, must apply for and be granted a Certificate of Authority by the Nevada Secretary of State to provide video service and construct a video service network within Clark County as provided for in Chapter 711 of the Nevada Revised Statutes and apply for and obtain the appropriate business license from Clark County.
- (G) The Franchisee acknowledges that this Franchise is for installation of facilities in County rights-of-way only, and that installation in, on, under, along or above County property may be permitted only through separate agreement and payment of rental fees.
- (H) The Franchisee shall be responsible for the maintenance and upkeep of any of the Franchisee's above-surface facilities located immediately adjacent to the rights-of-way granted by this Agreement. The Franchisee agrees to provide to the Department of Business License a response as to the resolution of any complaints regarding any maintenance or upkeep issues that have been received and submitted by the Department to the Franchisee.

3. *FRANCHISEE'S WORK IN COUNTY RIGHTS-OF-WAY*

The Franchisee shall, in the installation, construction, operation, maintenance, reconstruction, removal, relocation or abandonment of its facilities in the County's rights-of-way, comply with all applicable provisions of Clark County Code Titles 5 and 6, and the improvement standards adopted in Title 30, as set forth and hereafter amended, and the "Uniform Standard Specifications for Off-Site Construction, Clark County Area" (latest edition) as adopted by the County Commission.

4. *REMAIN IN PLACE FACILITIES*

Remain in Place Facilities are facilities consisting of only subterranean conduit without cable or wiring that:

- (A) The Licensee owns or may own;
- (B) Exists as of the date of this Agreement and includes those that may be established in the future;
- (C) Are located in the County rights-of-way;
- (D) Are not in service and are no longer being used; and
- (E) The Licensee intends to remain in their existing place.

The Licensee agrees that the Remain in Place Facilities are allowed to remain in place subject to all applicable laws, regulations, standards and specifications, whether federal, state or local.

The Licensee and the County agree that the Remain in Place Facilities are not abandoned under Clark County Code Chapter 5.01, and, with respect to Remain in Place Facilities only, this provision supersedes the provisions relating to abandonment even after termination or expiration of the Agreement.

Should the Licensee allow for its Remain in Place Facilities to remain in place in the County rights-of-way, and such facilities interfere with existing or future County improvement(s) or work, as solely determined by the County, the Licensee hereby consents to the removal and disposal, as solely determined by the County, of the interfering Remain in Place Facilities by the County or its contractor. The Licensee disclaims its interest in the Remain in Place Facilities and releases the County and its contractors from all claims related to the removal and disposal of the Remain in Place Facilities. This provision supersedes expiration or termination of the Agreement.

For any facilities that are not Remain in Place Facilities, as defined herein, the provisions of Clark County Code Chapter 5.01 apply.

The Licensee agrees to comply with all conditions of County-issued encroachment permits and/or County-approved plans relating to any given Remain in Place Facilities. The Licensee agrees to continue to maintain record of the Remain in place Facilities currently mapped and/or known. From the effective date of this Agreement, the Licensee agrees to map and maintain record of all future Remain in Place Facilities. Said information shall be provided to the County in accordance with the provisions of Chapter 5.01 of the Clark County Code or as otherwise requested by the County.

5. *FRANCHISE PAYMENTS AND FEES*

The Franchisee shall pay all payments and fees assessed in accordance with its County business licenses(s) pursuant to Clark County Code Title 6, as amended from time to time.

6. *FRANCHISE REPORTING*

Each year during the term of the Franchise Agreement, the Franchisee shall submit a written report to the County Manager as required by Clark County Code Section 5.01.110.

7. *REVOCATION AND PENALTIES*

(A) After providing notice and an opportunity for the Franchisee to be heard and a reasonable opportunity to cure, the County Commission may impose fines or penalties in an amount deemed appropriate by the County Commission, but not exceeding the amount of security deposit established in Section 9 of this Agreement,

upon the Franchisee if the County Commission finds that the Franchisee has failed to comply with the applicable provisions of Clark County Code Titles 5, 6 or 30. Any such fines or penalties shall be due within thirty (30) days of written notification by the County, made payable to the County Treasurer, and delivered to the County's Director of Business License at the County's address indicated in Section 13 of this Franchise Agreement. A late charge of five percent (5%) of the fine or penalty imposed shall be assessed if the fine or penalty is not paid within thirty (30) days of the written notification.

If a fine or penalty which has been imposed by the County Commission is not paid within thirty (30) days from the date of written notification, Franchisee hereby grants County authorization to deduct the amount of the fine or penalty plus late charges, if any, from the security deposit provided for such purposes, pursuant to Section 9 of this Franchise Agreement and the applicable sections of Clark County Code Titles 5 and 6. If at any time the Director of Business License has drawn upon such security deposit, the Franchisee shall within thirty (30) days of notification from the Director of Business License replenish such security deposit to the original minimum amount established in section 9 of this Franchise Agreement.

- (B) In addition to the grounds for revocation set forth in the applicable sections of Clark County Code titles 5 and 6, this Franchise Agreement may be revoked if, after providing notice and an opportunity for the Franchisee to be heard, and a reasonable opportunity to cure, the County Commission finds that the Franchisee failed to make payment of fines or penalties due under this Franchise Agreement or to comply with the provisions of this Franchise Agreement.

8. *TRANSFER AND ASSIGNMENTS*

The terms and conditions for transfer and assignment of franchises pursuant to the applicable sections of Clark County Code Chapter 5.01, as amended from time to time, shall apply to this Franchise Agreement.

9. *INDEMNIFICATION*

The Franchisee shall indemnify, save harmless, and defend the County, its officers and employees in accordance with the indemnification provisions of the applicable sections of Clark County Code Chapter 5.01.

10. *INSURANCE AND SECURITY FOR PERFORMANCE*

- (A) The Franchisee shall secure, maintain and provide certification of all insurance coverages in the amounts, kinds and form required pursuant to the applicable sections

of Clark County Code Chapter 5.01 prior to commencement of any work in the County's rights-of-way.

- (B) The Franchisee shall provide to the Director of Business License security for performance pursuant to the applicable sections of Clark County Code Chapter 5.01 in the amount of two hundred fifty thousand dollars (\$250,000). Franchisee hereby grants the County authorization to deduct assessed fines or penalties and late charges, if any, pursuant to Section 6 of this Agreement and the applicable sections of Clark County Code Chapter 5.01, from such security deposit.

11. *RIGHTS RESERVED TO COUNTY*

The County does hereby expressly reserve its rights, powers and authorities pursuant to the applicable sections of Clark County Code Title 5, as may be amended. The County expressly reserves the right to amend this Franchise Agreement by amendment to the Clark County Code to the maximum extent permitted by law.

12. *AMENDMENTS*

This Franchise Agreement may only be amended by written agreement between the Parties, subject to the approval of the County Commission, except as otherwise provided in Section 10 above.

13. *SEVERABILITY*

If any provision, section, paragraph, sentence, clause or phrase of this Franchise Agreement is for any reason held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity of the remaining portions of this Franchise Agreement. It is the intent of the Franchisee in requesting this Franchise Agreement and of the County Commission in approving this Franchise Agreement that no portion or provision thereof shall become inoperative or fail by reason of any invalidity or unconstitutionality of any portion of provision, and to this end all provisions of the Franchise Agreement are declared to be severable.

14. *GIFTS*

No officer or employee of Franchisee shall offer to any officer or employee of the County, either directly or indirectly, any rebate, contribution, gift, money, service without charge, or other thing of value whatsoever, except where given for the use and benefit of the County or political campaign contributions that comply with applicable federal, state and local laws.

15. NOTICE

All notices shall be sent to the County or Franchisee at the addresses indicated below. The Franchisee shall notify the County's Director of Business License of any change of address with ten (10) working days of such occurrence. Failure to provide notification, and any resulting delay in receipt of notice, shall not excuse the Franchisee from any obligation imposed by the Franchise Agreement, nor shall it serve as cause for reduction or removal of any restriction, fine or penalty imposed by the County.

COUNTY:

Director of Business License
Clark County
500 S. Grand Central Pkwy., 3rd Floor
PO Box 551810
Las Vegas, NV 89155-1810

FRANCHISEE:

Legal Department
Gigapower, LLC
311 S. Akard St., 21st Floor
Dallas, TX 75202

16. PUBLIC PURPOSE

All of the regulations provided in this Franchise Agreement are hereby declared to be for a public purpose and the health, safety and welfare of the general public. Any member of the governing body of County official or employee charged with the enforcement of this Franchise Agreement, acting for the County in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of said duties. Neither the County nor the Franchisee by accepting this Franchise Agreement waives its rights to seek all appropriate legal and equitable remedies as allowed by law upon violation of the terms of this Franchise Agreement, including seeking injunctive relief in a court of competent jurisdiction.

17. RELOCATION OF FACILITIES

- (A) 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 Chapter 5.01 and Title 30 of the Clark County Code.
- (B) PRIOR RIGHTS; COST FOR RELOCATION. Notwithstanding any other provision of this Franchise Agreement to the contrary, if the County requires the Franchisee to relocate any of its Facilities located in the Rights-of-Way in which the Franchisee has demonstrated in accordance with this Subsection B that it had a valid Easement prior to the time such location was dedicated to or otherwise received or acquired by the County, the County shall be responsible for Franchisee's actual costs of relocating such Facilities pursuant to this Subsection B, including the cost of obtaining a new equivalent Easement for the Franchisee if the County determines that no space is available in the Rights-of-Way for the Franchisee's Facilities. The County will not be responsible for the relocation costs if the Facilities were not installed in conformance with the applicable statutes, ordinances and codes in effect at the time

of the Facilities' original construction. All other provisions of this Section shall apply to the Franchisee's work in performing the relocation of any Facilities covered by this Section.

In instances where no Public Improvements or Facilities have been installed as of the Effective Date of this Franchise 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 to this Franchise Agreement 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 in effect at the time of the Facilities' installation.

In instances where Public Improvements or Facilities have been installed prior to the Effective Date of this Franchise Agreement in a patent not reserved specifically in the name of the County or Franchisee, prior rights will be determined pursuant to the terms and conditions of the franchise agreement in effect at the time of installation of said Public Improvement or Facilities.

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 easement 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 costs of the relocation.

In instances where the Franchisee has demonstrated a prior right in accordance with this Subsection B 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.

18. *APPLICABLE LAW*

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

IN WITNESS WHEREOF the parties hereto have set their hands the day and year first above written.

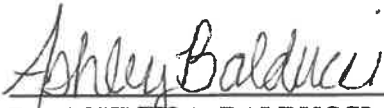
CLARK COUNTY BOARD OF COMMISSIONERS

By _____
JAMES B. GIBSON, Chairman

ATTEST:

LYNN MARIE GOYA, County Clerk

APPROVED AS TO FORM:
DISTRICT ATTORNEY



By: ASHLEY A. BALDUCCI
Deputy District Attorney

GIGAPOWER, LLC

By:  _____
NAME: Tom Kearney
TITLE: Chief Operations Officer