

**CLARK COUNTY, NEVADA
REMAIN IN PLACE FACILITIES AGREEMENT**

THIS AGREEMENT is made and entered into effect this 16th day of March, 2021, (the "Effective Date") by and between the County of Clark, Nevada, a political subdivision of the State of Nevada ("County"), and Nevada Power Company, a Nevada corporation d/b/a NV Energy ("Utility").

The initial addresses of the Parties, which one Party may change by giving notice to the respective other Parties, are as follows:

COUNTY

Denis Cederburg, Director
Clark County Public Works Department
500 South Grand Central Parkway
Las Vegas, Nevada 89155-4000
Telephone: (702) 455-6020
Fax: (702) 455-6040

UTILITY

Jennifer Kelly, Director
Distribution Design Services - South
NV Energy
7155 S. Lindell Rd., M/S B90SD
Las Vegas, NV 89118
Telephone: (702) 402-6855

RECITALS

WHEREAS, Utility, a corporation organized and existing under and by virtue of the laws of the State of Nevada, and duly qualified to transact business within the State of Nevada is engaged in the business of operating an electric utility to provide electric Utility Service;

WHEREAS, the County, pursuant to NRS Chapter 709, has granted a franchise to Utility to install, maintain and operate Public Utility Facilities, as defined by the Clark County Code, in the County Right of Way, also defined by the Clark County Code, and the rights and obligations of the Utility are further set forth in the Electrical System Franchise Agreement dated January 18, 2005 ("Franchise Agreement"), which was extended by the mutual agreement of the County and Utility on January 7, 2020;

WHEREAS, Utility owns or may own certain existing facilities currently located in the County right of way throughout unincorporated Clark County that are no longer being used, are not in service and which Utility intends to remain in their existing place ("Remain in Place Facility/ies"). Such Remain in Place Facility/ies include but are not limited to subterranean conduit, electric cable, concrete footings, vaults, etc.;

WHEREAS, Utility frequently submits applications for encroachment permits, pursuant to Clark County Code Chapter 30.32, to install new facilities to be used and establish Remain in Place Facilities;

WHEREAS, the Franchise Agreement does not address Remain in Place Facilities;

WHEREAS, the Remain in Place Facilities, those that currently exist and those that will be established in the future, are no longer used and may remain in place unless there is interference with a public works project, subject to the terms and conditions of this Agreement;

NOW THEREFORE, in consideration of the above recitals, mutual covenants, terms and conditions contained in this Agreement, the Parties agree as follows:

AGREEMENT

1. Remain in Place Facilities, as used throughout this Agreement, include those existing as of the date of this Agreement and those that will be established in the future.
2. Utility agrees that the Remain in Place Facilities are no longer necessary, will no longer be in service for customers and will never be used again. Utility 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, including, but not limited to, removal of liquids and substances and capping, etc.
3. The County agrees that the Remain in Place Facilities will be allowed to remain in their existing placement subject to the terms and conditions of this Agreement and/or any encroachment permits and plans, as approved by the County, relating to any given Remain in Place Facilities.
4. Utility agrees to comply with all conditions of County-issued encroachment permits and/or County-approved plans relating to any given Remain in Place Facilities. Utility agrees to continue to maintain record of the Remain in Place Facilities currently mapped and/or known. From the Effective date of this Agreement, NVE 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 of the Clark County Code or as otherwise requested by the County.
5. If the County, in its sole discretion and determination, finds that a Remain in Place Facility interferes with an existing or planned and funded public improvement and the cost to remediate such interference exceeds \$2,000, as solely determined by the County, then, within thirty (30) days of receipt of written notice by the County, Utility agrees to remove the Remain in Place Facility, at its sole cost and expense and at no cost or expense to the County, and in accordance with all applicable laws, regulations, standards and specifications, whether federal state or local. If the removal of such Remain in Place Facility will take longer than thirty (30) days due to the scope of the work or other aspects of the work that may be out of the reasonable control of the Utility, such as a Force Majeure event or unforeseen field conditions, then Utility and the County will identify a mutually agreed upon timeline to complete the work. If Utility does not remove the Remain in Place Facility within the thirty (30) days or the agreed upon time period, the County, or its contractor, may do so at Utility's expense and Utility agrees to pay the County the cost of removal or alternative mitigation, as solely determined by the County, to eliminate the

interference, within thirty (30) days of receipt of invoice by the County. If the County determines that it, or its contractor, must remove or mitigate the interference with the Remain in Place Utility, County will notify the Utility in advance and does not need consent of the Utility.

If the cost to remediate an interference with a Remain in Place Facility and an existing or planned public improvement is \$2,000 or less, as solely determined by the County, then the County, or its contractor, will remove, mitigate or otherwise resolve the interference as solely determined by the County. The County will notify Utility in advance and does not need consent of the Utility.

6. Utility understands and agrees that it is responsible to the County for any and all costs directly incurred by the County as a result of the Remain in Place Facility, including design modifications, additional costs to the County's project and contractor (including delay damages), additional staffing and construction management costs, and any special treatments due to asbestos, leaking, soil contamination remediation, etc. Utility agrees to pay for these costs within thirty (30) days of receipt of invoice from the County. Utility understands and agrees that the County is not obligated to obtain concurrence from Utility before paying its contractor, consultants or staff for work necessitated as a result of the Remain in Place Facility. The County, in its sole discretion, will determine the amounts paid to its contractor, consultants and staff.
7. Utility agrees to indemnify, defend and hold harmless the County, its officers and employees, from any and all claims, lawsuits, damages, liability whatsoever to the extent they result from or relate to the Remain in Place Facilities, including, but not limited to, the removal, mitigation or other work relating to or arising out of the Remain in Place Facilities.
8. Utility and County agree that the Remain in Place Facilities are not abandoned under Clark County Code Title 5, and the Remain in Place Facilities may later be abandoned pursuant to Clark County Code Title 5.
9. Notwithstanding any other provision in this Agreement, it is mutually agreed that the County is not to incur any costs or expenses associated with, arising out of and/or related to the Remain in Place Facilities, or any removal, mitigation or other work arising out of and/or related to the Remain in Place Facilities.
10. All provisions, conditions and requirements of this Agreement that may be reasonably construed to survive termination or expiration of this Agreement shall survive termination or expiration of this Agreement.
11. This Agreement shall be effective upon the execution by all parties for whom signature space is provided below.
12. All notices or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered

personally in hand or electronic mail with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other Party at the addresses set forth herein.

13. Failure to declare a breach or the actual waiver of any particular breach of the Agreement or its material or nonmaterial terms by either Party shall not operate as a waiver by such Party of any of its rights or remedies as to any other breach.
14. This Agreement and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada. The parties consent to the exclusive jurisdiction of the Nevada state district courts for enforcement of this Agreement.
15. The illegality or invalidity of any provision or portion of this Agreement shall not affect the validity of the remainder of the Agreement and this Agreement shall be construed as if such provision did not exist. The unenforceability of such provision shall not be held to render any other provision or provisions of this Agreement unenforceable.
16. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original Agreement and each of which shall constitute one and the same Agreement. The counterparts of this Agreement may be executed and delivered by facsimile or other electronic signature (including portable document format) by either of the parties and the receiving party may rely on the receipt of such document so executed and delivered electronically or by facsimile as if the original had been received.
17. Utility understands and agrees that this Agreement applies to all of its Remain in Place Facilities located within unincorporated Clark County.
18. The Recitals to this Agreement are incorporated into and shall constitute a part of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their authorized officers the day and year first above written.

Signatures on next page

