

EXHIBIT B

GENERAL CODE

CHAPTER II – FRANCHISES

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Sec. G-II 1.1 **Franchise Required**

A franchise granted by the Board of Supervisors is required for any construction, operations, or activities in Nevada County for which a County franchise may be required under applicable state law, including but not limited to: cable and open video systems; solid waste collection, transfer and disposal; electrical and gas transmission; and other conduits or pipelines in County road rights-of-way, whether above or below the surface.

Unless waived by the Board of Supervisors, no person, partnership, or corporation shall engage in any construction, operations, or activities without first having applied for and been granted a franchise pursuant to this Chapter. This prohibition may be enforced by the County through injunctive relief and any other remedies or penalties provided by federal, state, and local law.

Franchises granted under this Chapter shall be non-exclusive; provided, that the Board of Supervisors may limit the number of franchises to that number which best serves the public health, safety, and welfare.

Sec. G-II 1.2 Application for New Franchise, or Renewal, Extension, or Transfer

An applicant for a new, renewed, extended, or transferred franchise shall submit a written application to the Board of Supervisors, which shall provide written confirmation to the applicant when the application is complete. To be complete, the application must address all matters referenced under applicable federal, state, and local law.

The application fee shall cover all of the County's reasonable costs in analyzing and processing the application, including costs of publication and copying. An initial fee deposit of \$5,000 shall be required to cover the initial analysis and processing of the application by County staff, and/or outside consultants, at hourly rates in effect at the time. If the deposit is not fully utilized, the balance unused shall be returned with interest. If the deposit becomes insufficient, the applicant shall be required to augment it.

The applicant may be required to submit additional information after the application is confirmed as complete, so that the Board of Supervisors may properly evaluate the following: the past experience and quality of service of the applicant; the applicant's operating policies and business objectives both short term and long term; the financial depth of the applicant, including assets, debts, and operating capital; the proposed rates to public customers or subscribers; and data on construction, operating performance, and franchise fee accounting practices.

Sec. G-II 1.3 Hearing on Application

After the application is complete, and before approving an application, the Board of Supervisors shall hold a public hearing to consider the application and all related information. Interested members of the public may appear and be heard. The Board shall cause notice as to the time and place of the hearing to be issued, posted and published, pursuant to applicable state law. In the absence of state requirements, the notice shall be published once a week for two successive weeks, and the hearing shall be held not less than 10 days, nor more than 30 days, after the date of the first publication of the notice. The hearing may be continued from time to time as the Board deems necessary.

Sec. G-II 1.4 Manner of Granting

A franchise under this Chapter may be granted by resolution or ordinance of the Board of Supervisors, as required by state law. The granting resolution or ordinance shall either include or reference the County's entering into a franchise agreement, if any.

The grant of a franchise shall include such terms and conditions as are necessary to achieve the following: protection of the public health, safety, and welfare; compliance with all relevant provisions of state and federal law; establishing standards for cost-effective service for public customers and subscribers; and providing financial and legal safeguards for the County.

Sec. G-II 1.5 Franchise Fees, and Verification Procedures

Every franchise granted under this Chapter shall require payment of a designated franchise fee to the County at regular intervals, once a year or more frequently. The fee shall be designated as authorized by state law, such as a percentage of gross or other formula, but it shall be described in clear and specific terms, both geographic and economic, so as to facilitate calculation and payment of the fee according to generally accepted accounting principles. The fee description shall also ensure that the payments can be verified by the responsible County departments.

As regards verification, the responsible administrative departments and the Auditor-Controller shall cooperate to ensure timely and accurate receipt of fees. This may be achieved by means of internal controls, such as review of deposits and payment history, copying and forwarding of supporting documentation, and scrutiny of overall compliance with the terms and conditions of the franchise.

The Auditor-Controller shall provide administrative departments with suggested procedures, informal guidance, and a timetable for periodic reviews and possible audits. A franchise shall be considered for possible audit at least every three years, but the decision to undertake an audit shall be dependent on the specific circumstances warranting the audit from a cost-effectiveness standpoint, especially if an independent auditing firm is required.

The scheduling, performance and oversight of audits may be addressed from time to time by resolution of the Board of Supervisors. The Board shall be the final authority in any determination on the correctness of franchise fees received by the County.

Sec. G-II 1.6 Possessory Interest in Public Property

A franchise shall contain notification of the possible property tax liability arising from the holding of a possessory interest in public property. (Cal. Rev. & Tax. Code §107.6)

Sec. G-II 1.7 Bond or Other Security

A franchise shall require a bond or other security for faithful performance during the term of the franchise and/or during periods of construction affecting road rights-of-way. This is to ensure reimbursement to the County for facility removal and for restoration, and to cover losses occasioned by a default or failure to perform terms of the franchise. The type of security and the time for its submittal to the Clerk of the Board shall be set forth in the franchise. A bond shall be executed by a corporate surety authorized to do business in California. Other security may be in the nature of a cash security fund or letter of credit. Any bond or other security must be acceptable to the Board of Supervisors after review by the Risk Manager or County Counsel.

Sec. G-II 1.8 Insurance

A franchise shall require that the grantee carry workers' compensation insurance and such liability insurance as is appropriate for the franchise, including, but not limited to, comprehensive or commercial general liability, automotive liability, product and completed operations, and property damage. The type of insurance, amount of coverage, and required endorsements shall be set forth in the franchise. Endorsements shall include the following: additional insured status for the County of Nevada and its agents; 30 days prior notice to the County of any cancellation or modification; franchisee's insurance as primary insurance.

Policies shall be issued by companies authorized to do business in California, and financial ratings shall be no less than "A" VII in the latest edition of "Bests Key Rating Guide", published by A.M. Best Guide, or as otherwise approved by the Board of Supervisors after review by the Risk Manager or County Counsel.

Sec. G-II 1.9 Remedies: Forfeiture, Liquidated Damages, and Penalties

A franchise shall set forth remedies for the County in the event of a material default in any performance of the franchise, including, but not limited to, the continuous coverage of bonds and insurance. Such remedies may include the following: forfeiture of the franchise; revocation or modification of the franchise; assessment of liquidated damages; imposition of penalties; or any other lawful remedy.

Prior to effectuating any remedy, the franchise shall be afforded timely written notice of the alleged default or violation, and a reasonable period of time to cure or correct. This shall be followed, if necessary, by an evidentiary hearing before the Board of Supervisors. Procedures for such notice, correction period, and hearing shall be in accordance with applicable federal, state and local law.

Sec. G-II 1.10 Indemnification

A franchise shall require that a holder of a franchise defend, indemnify, and hold harmless the County and its officers, employees, and agents from all liability for damages proximately resulting from any operations or activity under the franchise.

Sec. G-II 1.11 Assignment Prohibited

A franchise may not be assigned, or otherwise transferred without application to, and approval by, the Board of Supervisors.

Sec. G-II 1.12 Eminent Domain

Nothing in this Chapter shall impair or affect the right of the County to acquire a franchisee's property by exercise of the power of eminent domain.

Sec. G-II 1.13 Improvements to Roads

Nothing in this Chapter shall be construed to obligate the County to construct, repair, or maintain any road to any particular standard because of proximity to franchise property.

Sec. G-II 1.14 Conflicting Provisions and Severability

If any provision in this Chapter is held by a court to conflict with state or federal law and to be preempted, the remaining provisions in this Chapter shall not be invalidated. If a conflict arises between a provision in this article and a provision in other articles of this Chapter, the latter provision shall control. If a conflict arises between a provision in this Chapter and a provision in a franchise agreement approved by the Board of Supervisors, the latter provision shall control.

ARTICLE 2

CABLE SYSTEMS AND OPEN VIDEO SYSTEMS

Sec. G-II 2.1 Definitions

For the purposes of this Article, the following terms, phrases, words, and abbreviations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number; and words in the singular number include the plural number; and the masculine gender includes the feminine gender. The words "shall" and "will" are mandatory, and "may" is permissive. Words not defined in this Article shall have the same meaning as in Title 47 of the United States Code, and if not defined therein, the

Cal. Pub. Util. Code §§ 5800-5970, and if not defined therein, their common and ordinary meaning.

References to governmental entities or officials, whether persons or entities, refer to those entities or their successors in authority. If specific provisions of law referred to herein are renumbered, then the reference shall be read to refer to the renumbered provision. References to laws, ordinances, or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances, and regulations now in force or hereinafter enacted or amended.

- A. “Access,” “PEG access,” or “PEG use” refers to the availability of a Cable system or open video system for public, education, or government use (including Institutional Network use) by various agencies, institutions, organizations, groups, and individuals, including the County of Nevada and its designated Access providers, to acquire, create, and distribute programming not under a Franchisee’s editorial control, including, but not limited to:
 - 1. “Public Access” or “Public Use” means access where organizations, groups, or individual members of the general public, on a non-discriminatory basis, are the primary or designated programmers or users having editorial control over their communications;
 - 2. “Education Access” or “Education Use” means access where accredited educational institutions are the primary or designated programmers or users having editorial control over their communications;
 - 3. “Government Access” or “Government Use” means access where government institutions or their designees are the primary or designated programmers or users having editorial control over their communications;
- B. “Affiliate” means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person.
- C. “Basic Service” means any service tier regularly provided to all subscribers which includes the retransmission of local television broadcast signals.
- D. “Cable Act” means the Cable Communications Policy Act of 1984, 47 U.S.C. §§ 521 -573., as amended by the Cable Television Consumer Protection and Competition Act of 1992, as further amended by the Telecommunications Act of 1996, as further amended from time to time.
- E. “Cable Communications System” refers to Cable systems.
- F. “Cable system” is defined as set forth in Section 522(7) of Title 47 of the United States Code.
- G. “Cable Service” as defined in Cal. Pub. Util. Code § 5830(c) means:
 - 1. The one-way transmission to subscribers of (i) video programming, or (ii) other programming service; and
 - 2. Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- H. “Channel” means a portion of the electromagnetic frequency spectrum which is used in a Cable system and which is capable of delivering a television signal

whether in an analog or digital format. The definition does not restrict the use of any Channel to the transmission of analog television signals or one-way transmission.

- I. “County” means the County of Nevada and all departments, divisions, and agencies established by state law or by the Nevada County Code.
- J. “Construction, Operation, or Repair” and similar formulations of that term means the named actions interpreted broadly, encompassing, among other things, installation, extension, maintenance, replacement of components, relocation, undergrounding, grading, site preparation, adjusting, testing, make-ready, and excavation.
- K. “Downstream Channel” means a Channel designed and activated to carry a transmission from the headend to other points on a Cable communications system, including interconnections.
- L. “FCC” means the Federal Communications Commission.
- M. “Franchise” means an initial authorization, or renewal of an authorization, issued by a franchising entity, regardless of whether the authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, that authorizes the construction and operation of any network in the right-of-way capable of providing video service to subscribers, as defined in Cal. Pub. Util. Code § 5830(f).
- N. “Franchise Area” means the area of the County of Nevada that a Franchisee is authorized to serve by the terms of its Franchise or by operation of law.
- O. “Franchisee” refers to a person holding a Cable Communications System Franchise.
- P. “Franchise Fee” means the fee adopted pursuant to Cal. Pub. Util Code § 5840.
- Q. “Gross Revenues” means all revenue actually received by the holder of a state franchise as defined in Cal. Pub. Util. Code § 5860(d).
- R. “License” refers to the legal authorization, terminable at will, to use a particular, discrete, and limited portion of the public rights-of-way to construct, operate, or repair a cable system.
- S. “Nevada County Administrator” means the Nevada County Executive Officer or their designee.
- T. “Operator” when used with reference to a system, refers to a person:
 - 1. Who directly or through one or more affiliates provide service over a Cable Communications System and directly or through one or more affiliates owns a significant interest in such facility; or
 - 2. Who otherwise controls or is responsible for, through any arrangement, the management and operation of such a facility.
- U. “OVS” means an open video system. A reference to an OVS includes pedestals, equipment enclosures (such as equipment cabinets), amplifiers, power guards, nodes, cables, fiber optics, and other equipment necessary to operate the OVS, or installed in conjunction with the OVS.

- V. "Person" includes any individual, corporation, partnership, association, joint stock company, trust, or any other legal entity, but not the County of Nevada.
- W. "Public Rights-of-Way" means the surface of and the space above and below any street, road, highway, freeway, bridge, lane, path, alley, court, sidewalk, parkway, drive, or right-of-way or easement primarily dedicated to travel, now or hereafter existing within the County of Nevada which may be properly used for the purpose of installing, maintaining, and operating a cable communications system; and any other property that a Franchisee is entitled by state or federal law to use by virtue of the grant of a franchise.
- X. "Public Property" means any property that is owned or under the control of the County of Nevada that is not a public rights-of-way, including, for purposes of this Article, but not limited to, buildings, parks, poles, structures in the public rights-of-way such as utility poles and light poles, or similar facilities or property owned by or leased to the County of Nevada.
- Y. "Revocation" means County of Nevada's affirmative act of terminating a franchise.
- Z. "School" means any accredited primary school, secondary school, college, and university.
- AA. "Subscriber" means the County of Nevada or any person who is lawfully receiving, for any purpose or reason, any cable service via a cable communications system with Franchisee's express permission, whether or not a fee is paid for such service.
- BB. "Termination" means the conclusion of a franchise by any means, including, but not limited to, by expiration of its term, abandonment, or revocation.
- CC. "Transfer" means any transaction in which:
 1. All or a portion of any facilities or any rights to use or operate facilities located in the public rights-of-way are sold, conveyed, transferred, assigned, encumbered or leased, in whole or in part, directly or indirectly, by one or more transactions to another person, whether voluntarily or by operation of law or otherwise; or
 2. There is any change, acquisition, or transfer in the identity of the person in control of the Franchisee, or any person that controls Franchisee, including, without limitation, forced or voluntary sale, merger, consolidation, or receivership; or
 3. The rights or obligations under the franchise are sold, conveyed, transferred, assigned, encumbered or leased, in whole or in part, directly or indirectly, by one or more transactions to another person, whether voluntarily or by operation of law or otherwise.
 4. "Unaffiliated Video Programming Provider" or "UVPP" means any person who uses capacity on a franchised cable system to deliver cable service or other communications service (as that term is used in 47 U.S.C. §542(h)) to subscribers and who is not an affiliate of the Franchisee.

5. “Upstream Channel” means a channel designed and activated to carry transmissions from a point on the cable system, other than the headend, to the headend or another point on the cable system.
6. “User” means a person, or official representative, or department of the County of Nevada utilizing a channel, capacity or equipment and facilities for purposes of producing or transmitting video, voice, and data materials contrasted with receiving it in the capacity of a subscriber. (Ord. 2415. (07/26/2016))

Sec. G-II 2.2 Franchise Required

No person may construct or operate a Cable Communications System in the County of Nevada without first obtaining a Franchise; provided that the following shall not be required to obtain a Franchise under this Article:

- A. County of Nevada; or
- B. A UVPP that is only delivering Cable service or other communications service (as that term is used in 47 U.S.C. §542(h)) to subscribers. (Ord. 2415. (07/26/2016))

Sec. G-II 2.3 Possessory Interest of Public Property

- A. A Franchise granted pursuant to this Article shall notify the Franchisee of potential tax liability for property taxes pursuant to Cal. Rev. & Tax Code §107.6. (Ord. 2415. (07/26/2016))

Sec. G-II 2.4 Failure to Obtain a Franchise

Consistent with the requirements of due process, a person’s failure to obtain a Franchise as required by this Article may, in the County’s discretion, result in:

- A. Forfeiture, by operation of law, of the person’s facilities located in the public Rights-of-Way that are not authorized by an existing Franchise; and/or
- B. A County order and/or court order that the facilities be removed, and that penalties and damages be paid as set forth in the County Code or in state law. (Ord. 2415. (07/26/2016))

Sec. G-II 2.5 Existing Franchises

Franchisees existing as of the effective date of this article shall, in addition to all the obligations and duties prescribed by the terms of their existing Franchises, be subject to the substantive and procedural requirements herein, except as prohibited by applicable law. Nothing herein is intended to invalidate a lawful, existing Franchise or to waive any obligations imposed by such a Franchise. (Ord. 2415. (07/26/2016))

Sec. G-II 2.6 Administration of Ordinance; Adoption of Regulations

- A. Adoption of Regulations. The County of Nevada may from time to time adopt regulations to implement the provisions of this ordinance.
- B. Delegation. The Nevada County Administrator or their designees are hereby authorized to administer the provisions of this ordinance and any franchise issued pursuant thereto, and to provide any notices (including non-compliance notices) and to take any action on the County of Nevada's behalf that may be required hereunder or under applicable law.
- C. No Waiver. The failure of the County of Nevada, upon one or more occasions, to exercise a right or to require compliance or performance under a franchise or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right has been specifically waived in writing.
- D. Administration of Public, Educational and Government Access. The County of Nevada may designate one or more entities, including itself, to control and manage the use of Public, Educational, and Government Access channels, facilities, and equipment. (Ord. 2415. (07/26/2016))

Sec. G-II 2.7 General Conditions Upon Construction, Operation and Repair

- A. Franchisee Must Follow Local Rules. The construction, operation, and repair of cable communications systems shall be performed in compliance with all laws, ordinances, departmental rules, regulations, and practices affecting such system. By way of example, and not limitation, this includes zoning and safety codes, construction standards, regulations for providing notice to persons that may be affected by system construction, and directives governing the time, place and manner in which facilities may be installed in the rights-of-way. Persons engaged in the construction, operation, or repair of communications facilities shall exercise reasonable care in the performance of all their activities and shall use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public or to property.
- B. No Permit Without Franchise. A franchise is required before a permit may be issued for work associated with the construction of a cable communications system. Any permit issued for such work to a person that does not hold a franchise shall vest no rights in the permittee; the permit may be revoked at will, and the permittee shall remove all facilities installed under the permit upon the County of Nevada's demand.
- C. Permits Must Be Obtained. Construction, operation, or repair of a cable communications system shall not commence until all required permits have been obtained from the proper County of Nevada officials and all required fees have been paid. All work performed will be performed in strict accordance with the conditions of the permit. Upon order of the County of Nevada, any work and/or construction undertaken that is not completed in compliance with the County of

Nevada's requirements, or which is installed without obtaining necessary permits and approvals shall be removed.

- D. No Interference. Interference with the use of the public rights-of-way by others, including others that may be installing cable communications systems, must be minimized. The County of Nevada may require a person using the rights-of-way to cooperate with others through joint trenching and other arrangements to minimize adverse impacts on the rights-of-way.
- E. Plans for and Publicizing Work. Work shall be publicized as the County of Nevada may direct from time to time. The publication of work may be used to notify the public and operators of other communications systems, of the impending work, in order to minimize inconvenience and disruption to the public.
 - 1. Each Franchisee shall provide the County of Nevada with a plan for any initial system construction, or for any substantial rebuild, upgrade or extension of its facility, which shall show its timetable for construction of each phase of the project, and the areas of the County that will be affected.
 - 2. The Administrator for the County of Nevada may from time to time, when the County receives application for a permit to use a particular route, or upon the Administrator's own initiative, designate by published order a route or proposed route for installation of communications facilities and may (1) require all persons who wish to emplace underground facilities along that route or any part thereof to install them during a specified period provided all costs are shared equitably and (2) otherwise prohibit initial emplacement of such facilities along the route or any part thereof for twenty-four (24) months or after such other, longer period as is necessary to protect the public interest.
- F. Existing Poles to Be Used. To the extent possible, operators of cable communications systems shall use existing poles and conduit. Additional poles may not be installed in the right-of-way, nor may pole capacity be increased by vertical or horizontal extenders, without the permission of the Administrator for the County of Nevada.
 - 1. To minimize disruption of public passage or infrastructure, to forestall or relieve exhaustion of rights-of-way capacity, or to protect environmentally sensitive areas, the County of Nevada Administrator may require as a condition of issuing any rights-of-way permit for erection of new poles or construction of underground conduit, the installation of which requires excavation of or along any traveled way that the Franchisee, Licensee, or holder of the rights-of-way permit provide pole space or empty conduits in excess of its own present and reasonably foreseeable requirements for the purpose of accommodating the County and/or other franchisees and licensees.
- G. Undergrounding
 - 1. Whenever all existing utilities are located underground in an area in the County of Nevada, every cable communications systems operator in the same area must locate its cable communications system underground.

2. Whenever the owner of a pole locates or relocates underground within an area of the County of Nevada, every cable communications systems operator in the same area shall concurrently relocate its facilities underground.
 3. The Administrator for the County of Nevada may, for good cause shown, exempt a particular system or facility or group of facilities from the obligation to locate or relocate facilities underground, where relocation is impractical, or where the County and the subscriber's interest can be protected in another manner. Nothing in this Code prevents the County of Nevada from ordering communications facilities to be located or relocated underground except for Franchisee's ordinary engineering practice making undergrounding impracticable or infeasible under other provisions of the Codes of the County of Nevada.
- H. Prompt Repairs. Any and all public rights-of-way, other public property, or private property that is disturbed or damaged during the construction, operation, maintenance or repair of a cable communications system shall be promptly repaired by the operator. Public property and public rights-of-way must be restored to the satisfaction of the County of Nevada or to a condition as good or better than before the disturbance or damage occurred.
- I. Movement of Facilities for Government
1. A cable communications systems operator shall, by a time specified by the County of Nevada, protect, support, temporarily disconnect, relocate, or remove any of its property when required by the County of Nevada by reason of traffic conditions; public safety; public right-of-way construction and repair (including regrading, resurfacing or widening); public right-of-way vacation; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of government-owned system or utility, public work, public facility, or improvement; or for any other purpose where the work involved would be aided by the removal or relocation of the cable communications system. Collectively, such matters are referred to below as the "public work."
 2. Except in the case of emergency, the County of Nevada shall provide written notice describing where the public work is to be performed at least one week prior to the deadline by which a cable communications systems operator must protect, support, temporarily disconnect, relocate or remove its facilities. However, in an emergency, or where a cable communications system creates or is contributing to an imminent danger to health, safety, or property, the County of Nevada may protect, support, temporarily disconnect, remove, or relocate any or all parts of the cable communications system without prior notice, and charge the cable communications systems operator for costs incurred.

J. Movement for Others

1. To accommodate the construction, operation, or repair of the facilities of another person authorized to use the streets or public property, a Franchisee shall, by a time specified by such person, protect, support, temporarily disconnect, relocate or remove its facilities. The Franchisee must be given written notice describing where the construction, operation or repair is to be performed at least fifteen (15) days prior to the time by which its work must be completed. The County of Nevada may resolve disputes as to responsibility for costs associated with removal, relaying, or relocation of facilities among entities authorized to install facilities in the streets or on public property if such entities are unable to do so themselves.
2. A cable communications systems operator shall, on the request of any person holding a valid permit issued by a governmental authority, temporarily raise or lower its wires by a time specified to permit the moving of buildings or other objects. A cable communications systems operator shall be given not less than seven (7) days advance notice to arrange for such temporary wire changes. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same.

K. Abandonment in Place

1. A cable communications systems operator may abandon any property in place in the public rights-of-way upon written notice to the County of Nevada. However, if, within ninety (90) days of the receipt of written notice of abandonment, the County of Nevada determines, that the safety, appearance, functioning or use of the public rights-of-way and facilities in the public rights-of-way will be adversely affected, the property must be removed by a date specified by the County of Nevada.
2. A cable communications systems operator that abandons its property must, upon request, transfer ownership of the properties to the County of Nevada at no cost, and execute necessary quitclaim deeds and indemnify the County of Nevada against future costs associated with mitigating or eliminating any environmental hazard associated with the abandoned property.

L. System Subject to Inspection. Every cable communications system shall be subject to inspection and testing by the County of Nevada. Each operator must respond to requests for information regarding its system and plans for the system as the County of Nevada may from time to time issue, including requests for information regarding its plans for construction, operation and repair and the purposes for which the plant is being constructed, operated, or repaired.

M. Underground Services Alert. Each operator of a cable communications system that places facilities underground shall be a member of the regional notification center for subsurface installations (Underground Services Alert) and shall field mark the locations of its underground communications facilities upon request. The operator shall locate its facilities for the County of Nevada at no charge.

- N. Plan for Construction. Every franchise shall specify for the County of Nevada a construction schedule that will apply to any required construction, upgrade, or rebuild of the cable communications system. The schedule shall provide for the prompt completion of the project, shall show its timetable for construction of each phase of the project, with benchmarks for deliverables and the areas of Nevada County that will be affected. The County of Nevada shall have the right to impose penalties on the operator for a failure to meet the accepted timetable and benchmarks.
- O. Use of Facilities by the County of Nevada. The County of Nevada shall have the right to install and maintain, free of charge upon any poles or in any conduit owned by a Franchisee any wire and pole fixtures that do not unreasonably interfere with the cable service operations of the Franchisee. (Ord. 2415. (07/26/2016))

ARTICLE 2.A

STATE VIDEO SERVICE FRANCHISES

Sec. G-II.2.A.1 General Provisions

- A. Purpose. This Section is applicable to video service providers who have been awarded a state video franchise under the Cal. Pub. Util. Code §§ 5800 - 5970 (the Digital Infrastructure and Video Competition Act of 2006 [“DIVCA”]), to provide cable or video services in any location(s) within the unincorporated boundaries of the County. It is the purpose of this Section to implement within the unincorporated boundaries of the County the provisions of DIVCA and the rules of the California Public Utilities Commission promulgated thereunder that are applicable to a “local franchising entity” or a “local entity” as defined in DIVCA.
- B. Rights Reserved.
1. The rights reserved to the County of Nevada under this Article are in addition to all other rights of the County of Nevada, whether reserved by this Article or authorized by law, and no action, proceeding or exercise of a right shall affect any other rights which may be held by the County of Nevada.
 2. Except as otherwise provided by DIVCA, a state franchise shall not include, or be a substitute for:
 - i. Compliance with applicable requirements for the privilege of transacting and carrying on a business within the County of Nevada, including, but not limited to, compliance with the conditions that the County of Nevada may establish before facilities may be constructed for, or providing, non-video services;
 - ii. Any permit or authorization required in connection with operations on or in public rights-of-way or public property, including, but not limited to, encroachment permits, street work permits, pole attachment permits, and street cut permits; and

- iii. Any permit, agreement or authorization for occupying any other property of the County of Nevada or any private person to which access is not specifically granted by the state franchise.
- 3. No permit issued by the County of Nevada to a State Franchise Holder is itself a franchise, nor shall any permit create a vested right that would prohibit the County of Nevada from revoking or amending the permit.
- C. Compliance with County Ordinances. Nothing contained in this Article shall be construed so as to exempt a State Franchise Holder from compliance with all ordinances, rules or regulations of the County of Nevada now in effect or which may be hereafter adopted which are consistent with this Chapter or Cal. Pub. Util. Code §§ 5800 - 5970, or any obligations under any franchise issued by the County of Nevada insofar as those obligations may continue to be enforced under Cal. Pub. Util. Code §§ 5800 – 5970.
- D. Compliance with DIVCA. When a video service provider holding a state franchise provides notice to the County of Nevada pursuant to Cal. Pub. Util. Code § 5840(m) of DIVCA that it is commencing to provide video service to the County, a holder of a local franchise is entitled to seek a state franchise pursuant to Cal. Pub. Util. Code §5930(c) and upon issuance of a state franchise by the California Public Utilities Commission for the franchise area the local franchise shall terminate. (Ord. 2415. (07/26/2016))

Sec. G-II.2.A.2 Definitions

Definitions Generally—Interpretation of Language. For purposes of this Article, the following terms, phrases, words, and their derivations shall have the meaning as set forth in this Section. Words not defined in this Section, shall have the same meaning as established in: (1) DIVCA, and if not defined therein, (2) California Public Utilities Commission rules implementing DIVCA, and if not defined therein, (3) Title VI of Title 47 of the Communications Act of 1934, as amended, 47 USC., and if not defined therein (4) their common and ordinary meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number, and “including” and “include” are not limiting. The words “shall” and “will” are always mandatory, but the use of those terms grants no private rights to any person with respect to the County of Nevada. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law referred to herein are renumbered, then the reference shall be read to refer to the renumbered provision. References to laws, ordinances or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances and regulations now in force or hereinafter enacted or amended.

- A. "Gross Revenues" defined in DIVCA Cal. Pub. Util. Code § 5860(d) means all revenues actually received by the holder of a state franchise or its affiliates that are derived from the operation of the holder's network to provide cable service or video service within the unincorporated areas of the County.
- B. "PEG Access," or "PEG" means the availability of a cable or State Franchise Holder's system for public, educational, or governmental use by various agencies, institutions, organizations, groups, and individuals, including organizations, groups, or individual members of the general public, educational institutions, and the County of Nevada and its designated access providers, to acquire, create, and distribute programming not under a State Franchise Holder's editorial control.
- C. "State Franchise Holder" means a cable operator or video service provider that has been issued a franchise by the California Public Utilities Commission to provide cable service or video service, as those terms are defined in California Public Utilities Code section 5830, within any portion of the unincorporated limits of the County.
- D. "Incumbent Cable Operator," as defined in DIVCA Cal. Pub. Util. Code §5830(i), means a cable operator or OVS serving subscribers under a franchise in a particular city, county or city and county franchise area on January 1, 2007.
- E. "Material Breach," as defined in DIVCA Cal. Pub. Util. Code §5900(j), means any substantial and repeated failure of a video service provider to comply with service quality and other standards specified in Cal. Pub. Util. Code § 5900(a). (Ord. 2415. (07/26/2016))

Sec. G-II.2.A.3 Franchise Fees

- A. Franchise Fees. Any State Franchise Holder operating within the unincorporated areas of the County shall pay to the County of Nevada a franchise fee equal to five percent (5%) of gross revenues that may be subject to a franchise fee under Cal. Pub. Util. Code § 5860.
- B. Payment of Franchise Fees. The franchise fee required pursuant to this Chapter shall be paid quarterly, in a manner consistent with California Public Utilities Code section 5860. The State Franchise Holder shall deliver to the County of Nevada, by check or other means, which shall be agreed to by the County of Nevada, a separate payment for the State franchise fee not later than forty-five (45) days after the end of each calendar quarter. Each payment made shall be accompanied by a report, detailing how the payment was calculated, and shall include such additional information on the appropriate form as designated by the County of Nevada.
- C. Examination of Business Records. The County of Nevada may examine the business records of a State Franchise Holder in a manner consistent with Cal. Pub. Util. Code § 5860(i).

2. For a second material breach of the same nature within 12 months, a fine of \$1,000 may be imposed for each day the violation remains in effect, not to exceed \$3,000 for each violation.
3. For a third material breach of the same nature within 12 months, a fine of \$2,500 may be imposed for each day the violation remains in effect, not to exceed \$7,500 for each violation.
4. Any penalties imposed by the County of Nevada shall be imposed in a manner consistent with Cal. Pub. Util. Code § 5900. (Ord. 2415. (07/26/2016))

Sec. G-II.2.A.5 Permits and Construction

- A. Except as expressly provided in this Article, all provisions of the County of Nevada Codes and all County of Nevada administrative rules and regulations developed to any of these provisions, as now existing or as hereafter amended, shall apply to all work performed by or on behalf of a State Franchise Holder on any County public rights-of-way, public property, or County easement.
- B. Permits. Prior to commencing any work for which a permit is required by the County of Nevada Codes, a State Franchise Holder shall apply for and obtain a permit in accordance with the provisions of all County Codes and shall comply with all other applicable laws and regulations, including but not limited to all applicable requirements of Division 13 of Cal. Pub. Res. Code §§ 21000 - 21189.70.10. (The California Environmental Quality Act). Any work requiring County Land Use permits, building permits and/or grading permits, other than encroachment permits described below, shall be applied for and approved or denied in accordance with the provisions of County Codes including the appeal process of such an approval or denial outlined in the Codes for the County of Nevada.
- C. The Community Development Agency Director or designee shall either approve or deny State Franchise Holder's application for an encroachment permit, as defined in DIVCA Cal. Pub. Util. Code § 5885(c)(1), required under County of Nevada Code within sixty (60) days of receiving a completed permit application from the State Franchise Holder.
- D. If the Community Development Agency Director denies a State Franchise Holder's application for an encroachment permit, the Community Development Agency Director shall, at the time of notifying the applicant of denial, furnish to the applicant a detailed explanation of the reason or reasons for the denial.
- E. A State Franchise Holder that has been denied an encroachment permit by final decision of the Community Development Agency Director may appeal the denial to the County Board of Supervisors. Upon receiving a notice of appeal, the Board of Supervisors shall take one of the following actions:
 1. Affirm the action of the Community Development Agency Director without any further hearing; or

2. Refer the matter back to the Community Development Agency Director for further review with or without instructions; or
 3. Set the matter for a de novo hearing before the Board of Supervisors.
- F. In rendering its decision on the appeal, the Board of Supervisors shall not hear or consider any argument or evidence of any kind other than the record of the matter received from the Community Development Agency Director unless the Board of Supervisors is itself conducting a public hearing on the matter.
- G. The issuance of an encroachment permit is not a franchise and does not grant any vested rights in any location in the public rights-of-way, or in any particular manner of placement within the rights-of-way. Without limitation, a permit to place cabinets and similar appurtenances aboveground may be revoked and the permittee required to place facilities underground, in accordance with applicable law. (Ord. 2415. (07/26/2016))

Sec. G-II.2.A.6 Emergency Alert System

Each State Franchise Holder shall comply with the emergency alert system requirements of the Federal Communications Commission in order that emergency messages may be distributed over the State Franchise Holder's network. To the extent consistent with Cal. Pub. Util. Code § 5880, each State Franchise Holder shall install and maintain an audio override on all channels for transmission of emergency messages and alerts, and shall provide for character generated information to be superimposed on all channels for the hearing impaired. (Ord. 2415. (07/26/2016))

Sec. G-II.2.A.7 Public, Educational, and Government Access Channel Capacity, Support, Interconnection, and Signal Carriage

A. PEG Channel Capacity.

1. There are currently four (4) PEG access channels activated. A State Franchise Holder shall designate a sufficient amount of capacity on its network to allow the provision of four (4) PEG channels to satisfy the requirement of Cal. Pub. Util. Code § 5870, within the time limits specified therein.
2. A State Franchise Holder shall provide an additional PEG channel when the County of Nevada satisfies the standards set forth in Cal. Pub. Util. Code § 5870(d) or any entity designated by the County of Nevada to manage one or more of the PEG channels.
3. All State Franchise Holders shall comply with the provision of DIVCA related to PEG channels. Without limiting the foregoing, the PEG channels shall be carried on the basic service tier. To the extent feasible, the PEG channels shall not be separated from other channels carried on the basic service tier and channel numbers for the PEG channels shall be the same channel numbers used by the Incumbent Cable Operator, as defined in DIVCA Cal. Pub. Util. Code § 5830(i), unless prohibited by Federal Law and shall provide picture and sound

quality, channel accessibility, and location equal to, or substantially equal to, that provided by incumbent cable providers. After the initial designation of PEG channel numbers, the channel numbers shall not be changed without the agreement of the local entity unless the change is required by federal law.

B. PEG Support.

1. Amount of PEG support fee. Any State Franchise Holder shall pay to the County of Nevada—or if directed by the County of Nevada to the County's designated PEG provider—a PEG fee equal to one and four tenths percent (1.4%) of gross revenues, an amount equivalent to the level of PEG funding remitted by the Incumbent Cable Operator to the County's designated PEG provider during the period of January 1, 2006 to December 30, 2006.
2. The PEG support fee shall be used in a manner that is consistent with state and federal law.
3. A State Franchise Holder shall remit the PEG support fee quarterly, within forty-five days after the end of each calendar quarter. Each payment made shall be accompanied by a summary, detailing how the PEG support fee was calculated.
4. In the event that a State Franchise Holder fails to pay the PEG support fee when due, or underpays the proper amount due, the State Franchise Holder shall pay interest, pursuant to DIVCA Cal. Pub. Util. Code § 5860(h), at the rate per year equal to the highest prime lending rate during the period of delinquency, plus one percent (1%), or the maximum rate specified by state law.

C. Interconnection.

Each State Franchise Holder and each Incumbent Cable Operator shall negotiate in good faith to interconnect their networks for the purpose of providing PEG programming. Interconnection may be accomplished by any means authorized under Cal. Pub. Util. Code § 5870(h). Each State Franchise Holder and Incumbent Cable Operator shall provide interconnection of PEG channels on reasonable terms and conditions and may not withhold the interconnection. If a State Franchise Holder and an Incumbent Cable Operator cannot reach a mutually acceptable interconnection agreement for PEG carriage, the County of Nevada may require the Incumbent Cable Operator to allow each State Franchise Holder to interconnect its network with the Incumbent Cable Operator's network at a technically feasible point on the State Franchise Holder's network as identified by the State Franchise Holder. If no technically feasible point of interconnection is available, each State Franchise Holder shall make interconnection available to each PEG channel originator programming a channel in the County and shall provide the facilities necessary for the interconnection. The cost of any interconnection shall be borne by each State Franchise Holder unless otherwise agreed to by the parties. (Ord. 2415. (07/26/2016))

Sec. G-II.2.A.8 Notices

- A. Each State Franchise Holder or applicant for a state franchise shall file with the County of Nevada a copy of all applications or notices that the State Franchise Holder or applicant are required to file with the California Public Utilities Commission.
- B. Unless otherwise specified in this Section, all notices or other documentation that a State Franchise Holder is required to provide to the County of Nevada under this Section or the California Public Utilities Code shall be provided to both the County Manager and the County staff person in charge of cable and telecommunications, or their successors or designees. (Ord. 2415. (07/26/2016))

**ARTICLE 2.B
MISCELLANEOUS**

Sec. G-II 2.B.1 Captions

The captions to sections throughout this Article are intended solely to facilitate reading and reference to the sections and provisions of this Article. Such captions shall not affect the meaning or interpretation of this Article. (Ord. 2415. (07/26/2016))

Sec. G-II 2.B.2 Calculation of Time

Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required under this Article or any franchise, and a period of time or duration for the fulfillment of doing thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of time. (Ord. 2415. (07/26/2016))

Sec. G-II 2.B.3 Severability

If any term, condition, or provision of this Article shall, to any extent, be held to be invalid or unenforceable by a valid order of any court or regulatory agency, the remainder hereof shall be valid in all other respects and continue to be effective. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the County of Nevada and shall thereafter be binding on the Franchisee and the County of Nevada. (Ord. 2415. (07/26/2016))

Sec. G-II 2.B.4 Connections to Cable System; Use of Antennae

- A. Subscriber Right to Attach. To the extent consistent with federal law, subscribers shall have the right to attach VCRs, receivers, and other terminal equipment to a Franchisee’s cable system. Subscribers also shall have the right to use their own remote-control devices and converters, and other similar equipment.
- B. Removal of Existing Antennae. A Franchisee shall not, as a condition of providing service, require a subscriber or potential subscriber to remove any existing antenna, or disconnect an antenna except at the express direction of the subscriber or potential subscriber, or prohibit installation of a new antenna, provided that such antenna is connected with an appropriate device and complies with applicable law. (Ord. 2415. (07/26/2016))

Sec. G-II 2.B.5 Discrimination Prohibited

- A. No Retaliatory Actions. A cable communications systems operator shall not discriminate among persons or the County of Nevada, or take any retaliatory action against a person or the County of Nevada because of that entity’s exercise of any right it may have under federal, state, or local law, nor may the cable communications systems operator require a person or the County of Nevada to waive such rights as a condition of taking service.
- B. Employment and Hiring Practices. A cable communications systems operator shall not refuse to employ, discharge from employment, or discriminate against any person in compensation or in terms, conditions, or privileges of employment because of race, color, creed, national origin, sex, sexual orientation, age, disability, religion, ethnic background, or marital status. A cable communications systems operator shall comply with all federal, state, and local laws and regulations governing equal employment opportunities, and hiring practices, as the same may be amended from time to time. (Ord. 2415. (07/26/2016))

Sec. G-II 2.B.6 Transitional Provisions

- A. Persons Operating Without a Franchise. The cable communications systems operator of any facility installed as of the effective date of this Article, for which a franchise is required under this Article, shall have three (3) months from the effective date of this Article to file one or more applications for a franchise. Any cable communications systems operator timely filing such an application under this Section shall not be subject to a penalty for failure to have such a franchise so long as said application remains pending; provided, however, nothing herein shall relieve any cable communications systems operator of any liability for its failure to obtain any permit or other authorization required under other provisions of the County of Nevada’s Codes, and nothing herein shall prevent the County of Nevada from requiring removal of any facilities installed in violation of the County of Nevada Codes.

- B. Persons Holding Franchises. Any person holding an existing franchise for a cable communications system may continue to operate under the existing County Code provisions to the conclusion of its present term (but not any renewal or extension thereof) with respect to those activities expressly authorized by the franchise; and provided further that, such person shall be subject to the other provisions of this Article to the extent permitted by law.
- C. Persons with Pending Applications. Pending applications shall be subject to this Article. A person with a pending application shall have thirty (30) days from the effective date of this Article to submit additional information to comply with the requirements of this Article governing applications. (Ord. 2415. (07/26/2016))

ARTICLE 3

FRANCHISES FOR SOLID WASTE SERVICES

Sec. G-II 3.1 Franchise Required

No person, partnership or corporation, without having first acquired from the Board of Supervisors a franchise, shall operate a solid waste service in any unincorporated area of the County of Nevada, where such service covers collection, transfer and disposal of garbage, trash, and other waste from residential, commercial and industrial properties.

Sec. G-II 3.2 Incorporation of Article 1 of This Chapter by Reference

All sections of this Chapter of the County of Nevada Code are hereby incorporated by reference and made a part of this Chapter as if set forth here in full.

Sec. G-II 3.3 Authority to Use Streets, Public Easements

Any garbage franchise holder shall have the right to use all public streets, highways, alleys, public properties or public easements of the County.

Sec. G-II 3.4 Duties of Franchise Holder

Every garbage franchise grantee under this Chapter shall:

- A. Develop and maintain garbage collection and recycling services within the franchise area.
- B. Maintain a regular pick-up schedule for all populated areas within the franchise area as specified in the franchise agreement.
- C. Dispose of all collected solid waste at a fully permitted solid waste facility.
- D. Comply with all conditions and terms of this Code regarding Waste Disposal.

- E. Operate the County owned Washington and North San Juan Transfer Stations.
- F. Operate the County owned McCourtney Road Recycling Facility.
- G. Operate any additional programs specified by the County of Nevada in the franchise agreement.

ARTICLE 4

LIBERTY ENERGY POWER COMPANY FRANCHISE

Sec. G-II 4.1 Definitions

Whenever in this ordinance the words or phrases hereinafter in this section defined are used, they shall have the respective meanings assigned to them in the following definitions:

- A. The phrase “public roads” shall mean the public highways, streets, roads, ways and places as the same now or may hereafter exist within the area now being served by Liberty Energy Power Company in the County of Nevada, including state highways and/or freeways now or hereafter established within said County of Nevada.
- B. The phrase “poles, wires, conduits and appurtenances” shall mean poles, towers, supports, wires, conductors, cables, guys, stubs, platforms, crossarms, braces, transformers, insulators, conduits, ducts, vaults, manholes, meters, cutouts, switches, and, without limitation to the foregoing, any other property, located or to be located in, upon, along, across, under or over the public roads within the County of Nevada, and used or useful in transmitting and/or distributing electricity.
- C. The phrase “installing, maintaining, and using” shall mean to construct, erect, install, lay, operate, maintain, use, repair or replace.

Sec. G-II 4.2 Franchise Granted to Liberty Energy Power Company

The franchise of installing, maintaining, and using poles, wires, conduits and appurtenances, including communication circuits, in so many and in such parts of the public roads within the area now being served by Liberty Energy Power Company in Nevada County as the grantee of said franchise may from time to time elect to use, subject to provisions of this Code, for the purpose of transmitting and distributing electricity to the public for any and all purposes, is hereby granted by said County to Liberty Energy Power Company, its successors and assigns.

Sec. G-II 4.3 Term of Franchise - Fifty Years

The term of said franchise shall commence with the effective date hereof, and continue and remain in full force and effect for fifty (50) years or until such time as the grantee shall surrender or abandon same or said franchise shall be forfeited for non-compliance by the possessor thereof with its terms, or the State of California, said County of Nevada, or other public corporation thereunto duly authorized, shall

purchase by voluntary agreement or shall condemn and take under the power of eminent domain in accordance with then existing law all property actually used and useful in the exercise of said franchise situate within the unincorporated area of said County of Nevada. Said franchise shall never be considered or taken into account, in fixing the value of said property, in excess of the actual cost to the grantee hereof in procuring the same.

Sec. G-II 4.4 Poles, Wires, Etc., to be Installed, Constructed, Maintained Under Supervision of County Road Commissioner

All poles, wires, conduits, and appurtenances which shall be constructed and used under and pursuant to the provisions of this ordinance, and in the exercise of said franchise shall be installed, constructed, and maintained in compliance with all valid laws and ordinances from time to time in force.

Sec. G-II 4.5 Relocation of Poles, Wires, Etc., to be Done by Grantee

Grantee of this franchise shall relocate, without expense to County, any poles, wires, conduits and appurtenances theretofore installed, and then maintained or used under this franchise, if, and when made necessary by any lawful change of grade, alignment or width of any public road by the County of Nevada, including the construction of any subway or viaduct, provided however, that the cost of any such relocation made necessary by the construction or any lawful change of grade, alignment or width of any freeway constructed by the State of California shall be divided equally between grantee and the State of California.

Sec. G-II 4.6 Grantee to Place Public Roads Damaged by Installation of Poles, Etc., In Good Condition

Grantee shall, immediately upon installing, maintaining, and using said poles, wires, conduits and appurtenances, or any part thereof, at its own cost and expense, place said public roads, or so much thereof, as may have been damaged thereby, in as good order and condition as that in which they were before being disturbed or excavated for the purpose of installing, maintaining, and using said poles, wires, conduits, and appurtenances, or any part thereof.

Sec. G-II 4.7 Grantee Has Right to Install, Maintain and Use Any or All Poles, as Necessary and Proper

Grantee shall have the right of installing, maintaining, and using any or all of such poles, wires, conduits and appurtenances from time to time as may be necessary and proper.

Sec. G-II 4.8 Grantee Shall Pay County 2% of Gross Annual Receipts

Grantee shall, during the term for which this franchise is granted pay to the County of Nevada two percent (2%) of the gross annual receipts of applicant arising from the use, operation, or possession of the franchise provided, however, that such payment shall in no event be less than one percent (1%) of the gross annual receipts of applicant or derived from the sale within the limits of the County of Nevada of the utility service for which the franchise is awarded. Such percentage shall be payable annually from the date of the granting of the franchise, and if such payment shall not be made, such franchise shall be forfeited. The method of computing said payment shall be in accordance with that laid down by the Supreme Court of the State of California in its construction of the foregoing language, and any future modification of such method set forth in any decision of the Supreme Court hereafter rendered shall supersede the method prior to such decision.

Sec. G-II 4.9 Franchise Granted Under Provisions of Laws of State of California

The said franchise is granted under and pursuant to the provisions of the laws of the State of California which relate to the granting of franchises by counties.

Sec. G-II 4.10 This Franchise Shall Not Be Exclusive

This franchise shall not be exclusive.

ARTICLE 5

FRANCHISES FOR TRANSMISSIONS OF ELECTRICITY, GAS, OIL AND WATER

Sec. G-II 5.1 Franchise Required

As permitted under state law, a County franchise shall be required for operations or activities involving transmission of electricity, gas, oil, or water, above or below ground, in the unincorporated area of the County of Nevada, and the franchise shall only be granted by the Board of Supervisors under the authority of the “Franchise Act of 1937” (Cal. Pub. Util. Code §§ 6201 – 6302).