



RULE 9
NON-REFUNDABLE CONSTRUCTION
AGREEMENT

Contract No: **NRC0000191887A**
Project No: 0000191887
Date Prepared: **04/24/2009**

This Non-Refundable Construction Agreement ("**Agreement**") is made and entered between **NEVADA POWER COMPANY**, a Nevada Corporation, d/b/a NV Energy (hereinafter called "**Utility**") and CITY OF LAS VEGAS (hereinafter called "**Applicant**") (individually, a "**Party**" and collectively, the "**Parties**").

BASIS

- A. Utility owns and operates electric transmission and distribution facilities and provides electric service within Clark and Nye Counties, Nevada, in accordance with a tariff filed with and approved by the Public Utilities Commission of Nevada ("**Commission**").
- B. Applicant has requested that Utility relocate or alter existing Utility facilities on and/or Applicant has requested "Service" or a "Line Extension," as defined in Rule 1, for the provision of service by Utility to the premises owned or controlled by Applicant commonly known as JONES BLVD FROM ELKHORN TO HORSE and further described as APN 12513201024 (the "**Property**").
- C. Utility will in accordance with Rule 9, applicable provisions of other portions of its Tariff Schedules, and this Agreement, relocate or alter Utility facilities, as requested by Applicant.
- D. This Agreement involves a project of typical risk with service for new capacity.
- E. Applicant acknowledges that it must follow Utility's procedures for identifying and resolving conflicts between its Development and Utility's above-ground and underground electric transmission and distribution facilities and that Utility will only waive or approve such a conflict through a recordable use agreement signed by Applicant and Utility and duly notarized.

NOW, THEREFORE, it is agreed by and between the Parties as follows:

WITNESSETH

- A. Line Extension. In order to provide service to Applicant, Utility must extend its lines as shown on the service design identified as JONES BLVD IMPROVMENT SVC which is attached to this Agreement as **Exhibit "A"** and made a part of it. Applicant approves this design.
- B. Estimated Costs. As summarized on **Exhibit "B"** attached to this Agreement, Utility estimates the Costs of the Line Extension Project to be **\$5,801.00**.
- C. Estimated Advance. The estimated Advance is **\$.00**, consisting of:
 - (1) CIAC. A CIAC in the amount of **\$.00**. This amount includes a non-taxable, non-refundable cost of **\$.00** and a taxable, non-refundable cost of **\$.00**. The Excess Allowance, if any, has been applied. The CIAC is subject to Cost True-up.
 - (2) Advance Subject to Refund. An Advance Subject to Refund in the amount of **\$.00**. This amount includes Applicant's responsibility for proportionate share attachments per Rule 9, Section A.16 ("**Proportionate Share Attachments**") in the amount of **\$.00**.
 - (3) Tax Effect. Tax Effect as follows:
 - (a) A Tax Effect relating to the Advance Subject to Refund in the amount of **\$.00**.



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- (b) A Tax Effect relating to the CIAC in the amount of **\$.00**.
- (c) A Tax Effect relating to Applicant's non-cash contributions to Utility pursuant to Rule 9, Section A.12 (such as trenching and substructures performed by Applicant and/or its contractors/subcontractors) in the amount of **\$.00**. This Tax Effect is not subject to refund.
- D. Estimated Allowance. Applicant's estimated Allowance pursuant to Rule 9, Section B.3 is **\$10,578.00**. ("**Estimated Allowance**"). Of this amount, **\$10,578.00** is being provided to Applicant on the Effective Date based on Applicant's representation and Utility's reasonable expectation that the supporting number of meters and/or Demand will be initiated within the 12-month period following the In-Service Date ("**Initial Allowance**"). If the Estimated Allowance is more than Applicant's Cost Responsibility, the Allowance may offset any applicable CIAC pursuant to Rule 9, Sections A.6 and B.3 ("**Excess Allowance**"). The Excess Allowance is **\$4,777.00**.
- E. Initial Payment. Contemporaneously with execution of this Agreement, Applicant must pay Utility **\$.00** ("**Initial Payment**").
- F. Other Contracts/Projects.
- (1) Proportionate Share Contracts. Because Applicant is attaching to existing line extensions, Applicant is a proportionate participant per Rule 9, Section A.16 with respect to the following contracts:

<u>Contract No.</u>	<u>Dated</u>	<u>Expiration</u>	<u>Title</u>
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- (2) Projects Agreement Is Contingent on. This Agreement is contingent on projects and/or completion of projects as listed:

<u>Project No.</u>	<u>Initiated</u>	<u>Title</u>
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- (3) Master Planned Community Contracts. If this Development is within a master planned community, this Agreement is associated with the following master planned community contracts:

<u>Contract No.</u>	<u>Dated</u>	<u>Expiration</u>	<u>Title</u>
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AGREEMENT

1. Definitions

In addition to other terms defined elsewhere in this Agreement, when the following terms appear in the Agreement, they have the following meanings.

- 1.1 Acceptance: Acknowledgement that particular components of applicable drawings or work specifically corresponding to discrete specifications of Utility Standards are, to the best of Utility's knowledge, compliant with the applicable Utility Standards.
- 1.2 Adjustment: Without limitation, the addition to, alteration, relocation or removal of Utility facilities under this Agreement and as may be further described in **Exhibit "A"**. Adjustments include without limitation Betterments.



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- 1.3 Advance: Three components consisting of CIAC, Advances Subject to Refund and the Tax Effect(s).
- 1.4 Advance Subject to Refund: The portion of the Advance that is eligible to be refunded.
- 1.5 Allowance: The maximum amount that Utility may invest toward Applicant's Line Extension Project per Rule 9, Section B.3, including the Cost of Adjustments but excluding Betterments and Applicant requested upgrades. Applicant is not entitled to an Allowance if Applicant's Development does not have permanent structures.
- 1.6 Allowance True-up: The accounting process in which Utility recalculates the Allowance based on Applicant's actual meter sets or Applicant's actual Demand, compares this recalculated Allowance to the Estimated Allowance, and adjusts the Allowance accordingly.
- 1.7 Betterment: Any deviation or upgrade in the Adjustment to an Utility facility, made primarily for the benefit and at the voluntary election of a Party, that is determined by Utility not to be in accordance with:
 - (A) Utility's normal design and construction practices with respect to size, type and quality of materials used that is adequate to accommodate Development's Demand, or
 - (B) The shortest practical route deemed suitable by Utility.
- 1.8 Contributions in Aid of Construction ("CIAC"): The portion of the Advance that is not eligible to be offset by an Allowance, including but not limited to those Costs referred to in Rule 9, Sections A.3, A.5, A.6, A.9, and A.10.
- 1.9 Cost or Costs: Direct and related indirect costs associated with this Agreement. Cost or Costs include but are not limited to: permitting; labor; engineering; surveys; material acquisition, handling and storage; contractors and subcontractors; third-party attachments to Utility facilities; administrative and general overheads; local, state and federal taxes and assessments; Allowance for Funds Used During Construction [AFUDC]; litigation guarantees; appraisals; attorneys' fees and expenses; acquisition of and compensation for property rights; expenses associated with acquiring an easement(s) for Utility facilities whether through negotiation or a condemnation lawsuit(s); Tax Effect; and improvements to real property that are related to the Utility facilities but not directly related to electrical requirements, such as fencing and landscaping, reduced by any applicable salvage value.
- 1.10 Cost True-up: The accounting process in which Utility compares actual Costs to the estimated Costs.
- 1.11 Demand: The Applicant's highest energy consumption for a given period of time. This time period is generally based on Applicant's peak load.
- 1.12 Development: Applicant's project on the Property for which Applicant has requested service from Utility which may include new service and/or the relocation or alteration of existing Utility facilities. Utility may assign a project identification number, aka "PID #," to this Development.
- 1.13 Effective Date: The date on which this Agreement is signed by the last of the Parties required to sign it, as set forth below the signatures at the end of this Agreement.
- 1.14 Force Majeure: An event or condition that is beyond the control of the affected Party and occurs without the fault or negligence of the affected Party. Force Majeure may include orders of government agencies, war, riots, acts of terrorism, civil insurrection, fires,



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floods, earthquakes, epidemics, weather, strikes, lock-outs, work stoppages or other labor difficulties, and other acts of God.

- 1.15 In-Service Date: The date on which the Line Extension Project has been energized to provide Service to the Development.
- 1.16 Laws: All federal, state, and local codes, ordinances, rules, statutes, enactments, orders, standards, and regulations, including those of any governmental agency, and all interpretations and replacements of, and changes and supplements to, any of the foregoing. Any specific reference to a Law in this Agreement refers to the Law as amended or supplemented.
- 1.17 Line Extension Project: The Utility facilities that will be added, altered, relocated or removed in order to provide service to the Development, as shown in **Exhibit "A"**.
- 1.18 Project Coordinator: The individual with authority to act as an agent of Utility or Applicant for purposes of the Agreement, as identified in Section 14.2 below.
- 1.19 Proportionate Share Refund: The refund Applicant receives if other Utility customers connect to Applicant's line extension and Applicant does not waive the refund, pursuant to Rule 9, Section A.16.
- 1.20 Refund of Advance: The refund Applicant will receive if the Allowance True-up is more than the Cost True-up. However, the refund provided to Applicant, if any, must not exceed the Advance Subject to Refund.
- 1.21 Rule 1: NPC's Electric Service Rule No. 1, Definitions. Rule 1 is part of the Tariff Schedules.
- 1.22 Rule 9: Utility's Electric Service Rule No. 9, Electric Line Extensions. Rule 9 is part of the Tariff Schedules and is the version in effect as of the Effective Date.
- 1.23 Tariff Schedules: The entire body of effective rates, charges, and rules, collectively, of the Utility as set forth in its rate schedules and rules for electric customers, as those rates, charges, and rules are amended from time to time. However, Rule 9 is the version in effect as of the Effective Date.
- 1.24 Tax Effect: The amount of any gross-up on Utility tax liability under Section 118 of the Internal Revenue Service Code for Advances Subject to Refund, CIAC, and Applicant's non-cash contributions that Applicant must pay in accordance with NAC § 704.6532 and Rule 9. Any applicable Tax Effect will be payable and applied at the rate in effect in Rule 9 as of the date the Agreement was prepared, which is 04/24/2009.
- 1.25 Utility Standards: Utility's required design, construction, material, and testing specifications as provided in writing to Applicant on Utility's website, as subsequently revised as deemed appropriate in Utility's discretion.

2. Description and Design of the Line Extension Project

- 2.1 Design for Line Extension Project; Amendment. Utility's conceptual engineering design for the Line Extension Project is provided in **Exhibit "A."** Applicant approves the design and acknowledges that Applicant is bound by all notes on the design. **Exhibit "A"** may be amended from time to time by Utility to reflect changes as required.
- 2.2 Condition Precedent to Provide Service. Utility does not have an obligation to provide service to Applicant's Development until after Applicant resolves all conflicts between the Development and Utility's transmission and distribution facilities, at Applicant's expense and to Utility's satisfaction.



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- 2.3 Inaccurate Information and Field Conditions. Applicant understands that inaccurate, incomplete or outdated information and that surface and subsurface field conditions could delay the In-Service Date.
- 2.4 Sources of Power. The sources of power to the Development are subject to change, at Utility's discretion.
- 2.5 Providing Service to Applicant. Utility will provide electric service to Applicant in accordance with this Agreement, applicable Laws and Utility's Tariff Schedules.

3. Project Cost, Cash Advance, Allowance and Refunds

- 3.1 Estimated Costs on Exhibit "B". The estimated Costs of the Line Extension Project are delineated on **Exhibit "B"**.
- 3.2 Limitation on Refund of Advance. Applicant may not necessarily receive a 100% refund of the Advance. Depending upon the risk, project length, certainty of Demand, and other factors pertaining to the Applicant's Line Extension Project, the refund may range from \$0 to the maximum allowable.
- 3.3 Offset of Advance Subject to Refund. The Advance Subject to Refund may be offset by any Allowance, Proportionate Share Refunds, or other credits.
- 3.4 Non-Refundable Tax Effect. Given that CIAC, non-cash contributions, and Applicant facilities that exceed the minimum requirements are non-refundable, the Tax Effect associated with these is also non-refundable. However, CIACs are subject to Cost True-up.
- 3.5 Performance of Allowance and Cost True-ups. At Utility's discretion, Utility may perform an Allowance True-up and/or a Cost True-up after the In-Service Date. If Utility does not perform an Allowance True-up and/or a Cost True-up, Applicant is only responsible for the Costs identified on Exhibit "B" and as otherwise invoiced by Utility.
- 3.6 Refunds and Invoices Associated with Accounting Adjustments; Proportionate Share Refunds. If Utility performs the accounting adjustments in Section 3.5 above, Utility will apply amounts paid by Applicant to Utility under this Agreement and will either invoice Applicant or provide a Refund of Advance. Applicant will receive an invoice from Utility if the Cost True-Up is more than the Allowance True-up. Applicant might receive additional refunds because of Proportionate Share Refunds. The total of all refunds must not exceed the Advance Subject to Refund.
- 3.7 No Interest on Amounts Paid by Applicant. Utility will not pay Applicant any interest on the amount of any payment made in connection with this Agreement.

4. Applicant's Obligations

- 4.1 Responsibility for Costs. Applicant is responsible for all Costs associated with this Agreement, except for those Utility is specifically responsible for under Rule 9 ("**Applicant's Cost Responsibility**"). If one or more of the projects identified in Witnesseth Section F(2) cancels, is not completed on time, is reduced in scope or in some other manner affects Utility's ability to provide service to the Development or increases the Cost to serve the Development, the design for the Development might change and Applicant will be responsible for all Costs associated with that design change and increased Cost to serve the Development. Utility is not obligated to perform under this Agreement until after Applicant approves a modified design and pays Utility the additional Costs.



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- 4.2 Payment of Advances. Applicant must pay all Advances based on the Costs identified initially in **Exhibit "B"** and those identified subsequently as part of the Section 3.5 accounting adjustment process.
- 4.3 Obligation to Construct Facilities in Compliance with Laws. Applicant and its agents must, at Applicant's expense, construct and install Rule 9, Section A.12 improvements, as shown on **Exhibit "A"**, perform work associated with these improvements, and comply with and perform in accordance with all Laws, Utility Standards, the Tariff Schedules, the National Electric Code, and the National Electrical Safety Code. These Rule 9, Section A.12 improvements and the work associated with these improvements include but are not limited to trenching, backfilling, excavation, pavement removal, restoration, repaving, conduits, risers, transformer pads, vaults, enclosures, boxes, work and materials relating to such structures and substructures, and other materials Utility deems necessary for the electrical facilities.
- 4.4 Identification and Resolution of Conflicts; Costs Associated with Conflicts. Utility is not obligated to provide service to the Development until after Applicant meets its obligations under this Section to Utility's satisfaction:
- (A) Identification of Conflicts. Applicant must identify, in writing and in a manner satisfactory to Utility, all conflicts between (1) the Development and Utility's underground and above-ground distribution and transmission facilities located within the Development, (2) the Development and Utility's underground and above-ground distribution and transmission facilities located within or adjacent to offsite improvements required for the Development (3) the Development and Utility's above-ground distribution and transmission facilities located adjacent to the Development, and (4) the Development and Utility's property rights within and adjacent to the Development, including easements, rights-of-way, and any other use or occupancy rights.
 - (B) Resolution of Conflicts with Utility's Facilities and Payment of Costs. If Applicant, its agents, its contractors, or its subcontractors damage, have damaged, render unsafe or have rendered unsafe Utility's above-ground or underground distribution and transmission facilities located within or adjacent to the Development or to the offsite improvements required for the Development, Applicant must (1) pay all Costs to render those facilities safe, to relocate the facilities impacted, and to construct any new facilities needed, and (2) provide or obtain property rights in Utility's name for the relocated facilities and/or new facilities, at no cost to Utility and in a location and form satisfactory to Utility (including but not limited to the type of property rights, the dimensions of the property rights area, and terms and conditions of the property rights).
 - (C) Resolution of Conflicts with Utility's Easements and Payment of Costs. If Utility determines, in its discretion, that Applicant, its agents, its contractors, or its subcontractors interfered with Utility's property rights, Applicant must (1) pay all Costs incurred by Utility that are associated with the interference and (2) either remove the interference and return the property rights area to a condition that is usable by Utility or provide or obtain replacement property rights in Utility's name, at no cost to Utility and in a location and form satisfactory to Utility (including but not limited to the type of property rights, the dimensions of the property rights area, and terms and conditions of the property rights).



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- 4.5 Payment of Invoices; Work Stoppage and Service Delay for Non-Payment. Applicant must pay Utility's invoices within 30 days of receipt. If Utility does not receive timely payment of its invoices, then Utility, without liability to Applicant, may stop work and/or not provide service to Applicant, until after Utility receives payment in full. Any delay in payment may result in a delay in the In-Service Date.
- 4.6 Interest. Any amount unpaid and due under this Agreement will accrue interest at the then current per annum simple prime rate, as published in the Money Rates section of the Wall Street Journal, plus one percent (1%), from the original due date through the date of receipt of payment by Utility.
- 4.7 Information Provided by and Needed from Applicant. Applicant understands that Utility relies on information provided by Applicant when performing Utility's obligations under this Agreement. Applicant understands that it has a continuing obligation to provide the most current and accurate information concerning its Development to Utility. Applicant also understands that Utility is not aware of and cannot know all surface and subsurface field conditions. Notwithstanding anything to the contrary in this Agreement, Applicant assumes all responsibilities, liabilities, and Costs for repair, replacement, redesign, modification or other work to the facilities associated with this Agreement:
- (A) Resulting from or arising out of incomplete, inaccurate or outdated data and other information supplied to Utility by Applicant; or
 - (B) Resulting from or arising out of changes affecting the accuracy or completeness of data or information after it is supplied to Utility by Applicant; or
 - (C) Resulting from or arising out of surface or subsurface field conditions; or
 - (D) That were installed based on surveys or staking provided by Applicant or Applicant's agents that are found to be located outside the recorded property rights granted for such facilities.
- 4.8 Inspection of and Responsibility for Facilities Installed by Applicant. For facilities installed by the Applicant:
- (A) Applicant must allow Utility to inspect the construction or installation of such facilities for Acceptance.
 - (B) Applicant assumes all responsibilities and liabilities for such facilities until Utility's Acceptance, in addition to providing the guarantees in Section 6.
- 4.9 Reduction of Service or Termination Charges. If Applicant fails to complete the Development, terminates or, as determined by Utility, significantly curtails or reduces electric service thereto during the depreciable life of the facilities installed under **Exhibit "A"**, then within 60 days of written notification by Utility, Applicant must pay reduction of service or termination charges in accordance with Rule 9, Section A.25.
- 4.10 Obligation to Provide Information to Utility. Within 10 days of Utility's written request, Applicant must provide information and documentation requested by Utility, including but not limited to absorption information, information and documentation relating to the amount(s) Applicant paid, if any, for third-party property rights, and information and documentation relating to the actual cost of Applicant's non-cash contributions to Utility pursuant to Rule 9, Section A.12. With respect to absorption information, Applicant must, at a minimum: (A) for residential-type developments, identify the number of units, type of units (single- or multi-family), sales and cancellations (or net sales) at given time intervals and (B) for commercial-type developments, identify the number of units, square footage



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for each type of load (casino, retail, convention, etc.), and dates of major load blocks such as chillers or pumps, if applicable, at given time intervals.

5. **Property Rights**

- 5.1 Obligation to Acquire and Convey Property Rights. Applicant must, without cost to Utility, grant and convey, or obtain for Utility, all property rights, such as easements, subordination agreements, conveyances, deeds, permits and rights-of-way, that Utility deems it requires for the Utility facilities (or any portion thereof) affected under this Agreement. In Utility's discretion and at Applicant's Cost, Utility may obtain an appraisal(s) of the property rights.
- 5.2 Condition Precedent to Commence Construction. Utility is not obligated to commence construction of any facilities until the required property rights are permanently granted to Utility in a manner that is satisfactory to Utility as to both location and form (including but not limited to the dimensions of the property rights area and terms and conditions relating to the property rights).
- 5.3 Ownership of Facilities and Equipment. All facilities constructed and equipment installed by the Applicant and Utility under this Agreement will become property owned, maintained, and controlled by Utility upon Utility's Acceptance. Utility has the right to use, and allow other Utility customers to use, those facilities and equipment for any purpose. Utility may also allow designated telecommunications carriers and cable television companies to use the facilities and equipment if Utility is required to do so by the federal Telecommunications Act or other laws. If Applicant requests that spare conduit be installed in connection with this Agreement and pays the Costs associated with that conduit, Utility is not required to reserve that conduit for Applicant and may use it for other Utility customers and allow designated telecommunications carriers and cable television companies to use that conduit. Further, the sources of power to the Development are subject to change, at Utility's discretion.
- 5.4 Survival. This Section 5 will survive termination of this Agreement.

6. **Guarantees**

- 6.1 Guarantee Against Defects. Applicant guarantees, regardless of Utility's Acceptance, all work Applicant and its contractors/subcontractors perform and all material they furnish under this Agreement against defects in materials and workmanship for a period of 1 year beginning with the In-Service Date of the applicable facilities and equipment.
- 6.2 Utility's Option to Remedy Defect. Utility may, at its option and upon written notice to Applicant, either itself remedy or require Applicant to remedy any defect in materials or workmanship provided by Applicant and its contractors/subcontractors that develop during the one-year period provided for in Section 6.1. Should Utility choose to remedy such defect, Applicant will pay Utility all Costs incurred.
- 6.3 Modification or Relocation of Electric Facilities. Where Applicant has requested that Utility install electric facilities prior to the establishment of final grade or the alignment of roads, streets, or alleys, or in unimproved areas and a conflict arises, Applicant must pay all Costs associated with the relocation or modification of any electric facilities and, at Applicant's expense, must grant or obtain for Utility all property rights Utility deems it requires for the relocated/modified facilities, in accordance with Rule 9, Section A.10. The property rights must be granted to Utility in a manner that is satisfactory to Utility as to both location and form (including but not limited to the dimensions of the property rights area and terms and conditions relating to the property rights).



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- 6.4 Sole Source Guarantee. Applicant guarantees that Utility will be the sole source of electric service to the Development.

7. **Default**

- 7.1 Procedure. If a Party ("**Defaulting Party**") fails to comply with the terms and conditions of this Agreement and the failure continues for 30 days after the Defaulting Party receives written notice of such failure from the other Party ("**Non-Defaulting Party**"), then the Non-Defaulting Party is entitled to declare the Defaulting Party in default and is entitled to all remedies authorized by law, with the exception that Utility's failure to achieve any scheduled date is not an event of default.
- 7.2 Notice to Utility's Legal Department. In addition to sending written notice to Utility's Project Coordinator regarding Utility's failure to comply with the terms and conditions of this Agreement, Applicant must also send a copy of the notice to Utility's Legal Department at the address specified in the "Notices" Section of the Agreement.

8. **Confidentiality**

- 8.1 Exchanging Information. Utility may provide Applicant with information to be used in complying with the Agreement. Some or all of this information, including but not limited to, oral information, documents, files, drawings, and data, may be confidential.
- 8.2 Labeling Information Confidential. If Utility wants this information to be treated as "Confidential Information", Utility must clearly label the written information as "Confidential Information" and, with respect to oral information, Utility must prior to or within twenty-four (24) after the particular oral communication is made identify in writing that the oral communications are confidential.
- 8.3 Protection of Confidential Information. Applicant must keep all information designated as "Confidential Information" in a secure location.
- 8.4 Return or Destruction of Confidential Information. Upon Utility's request, Applicant must promptly either return to Utility, or certify the destruction of, all information identified as "Confidential Information" that Applicant received, together with all copies and extracts.
- 8.5 Sharing Confidential Information. Applicant may disclose confidential information to its affiliates, attorneys, consultants, contractors and subcontractors (collectively, "**Third Parties**"); provided, that the Third Party signs an agreement in a form acceptable to Utility in which the Third Party agrees to be bound by the terms of this Confidentiality Section and to submit to the jurisdiction of the District Court, Clark County, Nevada, or any Nevada court with jurisdiction in or over that matter, for purposes of enforcement of that agreement and this Confidentiality Section, and any ancillary proceedings regarding interpretation, enforcement or effect of those agreements.
- 8.6 Request for Confidential Information Through Legal Process. If Applicant becomes legally compelled (by deposition, interrogatory, request for documents, order, subpoena, civil investigative demand or similar process issued by a court of competent jurisdiction or by a government body) to disclose any information identified as "Confidential Information", Applicant must provide prompt written notice of any such requirement to Utility and seek a protective order preventing or limiting disclosure.
- 8.7 Rights and Limitations. Utility does not grant any right or license, by implication or otherwise, to Applicant as a result of Utility's disclosure of information identified as "Confidential Information". Utility makes no representation or warranties regarding the accuracy or completeness of this information. Applicant expressly recognizes that this



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information is provided "AS IS" and Utility makes NO WARRANTIES, EXPRESS OR IMPLIED STATUTORY OR OTHERWISE, WITH RESPECT TO THE CONFIDENTIAL INFORMATION AND EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES.

9. Force Majeure

- 9.1 Notice of Force Majeure. If any delay due to Force Majeure occurs or is anticipated, the affected Party must promptly notify the other Party in writing of the delay. This notice must include a description of the delay and the cause and estimated duration of the delay.
- 9.2 Duty to Mitigate Effects of Delay. The affected Party must exercise due diligence to shorten, avoid, and mitigate the effects of the delay.
- 9.3 Notice of Resumption of Performance. The affected Party must promptly notify the other Party in writing when the Force Majeure event has ended and when performance will resume.
- 9.4 Liability; Termination Option. Utility is not liable to Applicant for Costs incurred as a result of any delay or failure to perform as a result of Force Majeure. In the event of any delay due to Force Majeure, Utility may terminate the Agreement without liability upon 30-days notice.
- 9.5 Notice to Utility's Legal Department. In addition to sending written notice to the Project Coordinator for delay, anticipated delay, and resumption of performance in relation to Force Majeure, Applicant must also send a copy of the notice to Utility's Legal Department at the address specified in the Section 14.3 of the Agreement.

10. Representations

- 10.1 No Pending Actions, Suits or Proceedings. Applicant represents that to its knowledge as of the date of this Agreement, there are no actions, suits or proceedings pending or threatened against Applicant in any court or before any administrative agency that would prevent its performance under this Agreement.
- 10.2 Authority. Each Party has taken all actions as may be necessary or advisable and proper to authorize this Agreement, the execution and delivery of it, and the performance contemplated in it. The persons executing this Agreement state and acknowledge that they are authorized and empowered to do so on behalf of the Party so designated.

11. Precedence

- 11.1 Utility's Tariff Schedules; Commission. This Agreement is made by the Parties pursuant to Utility's Tariff Schedules. Those Tariff Schedules apply to this Agreement, are binding on the Parties, and supersede any portion of this Agreement should a conflict arise. However, the applicable portions of Rule 1 and Rule 9 that relate to Section 3 of this Agreement will be the versions of those rules that are in effect as of the Effective Date. This Agreement is, at all times, subject to such changes or modifications by the Commission as the Commission may from time to time direct in the exercise of its jurisdiction.
- 11.2 Integration. The Agreement, together with all other documents and agreements executed in connection with providing service to Applicant's project(s), represents the entire and integrated agreement between Utility and Applicant and supersedes all prior and contemporaneous oral and written communications, representations, and agreements relating to the subject matter of the Agreement. However, should a conflict arise between this Agreement and the "Applicant Mylar/Improvement Plans Certification &



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Acknowledgement" for the Development (if any) or between this Agreement and the "Property Owner Final Map Acknowledgement" for the Development (if any), this Agreement will supersede the portion of the acknowledgement that conflicts even if the acknowledgement is signed after the Effective Date.

12. Miscellaneous Provisions

- 12.1 Indemnity. Applicant agrees to indemnify Utility, its directors, officers, employees, and contractors against and from any claims, losses, costs, suits, judgments, damages, and expenses, including attorneys' fees, that arise from and/or are based upon (A) Applicant's breach of any representation, warranty, or undertaking under the Agreement, (B) the acts or omissions of Applicant, or its employees, agents, contractors or subcontractors, in connection with this Agreement, and (C) bodily injury to or death of any person (including employees of Utility) or damage to or loss of use of property resulting from the acts or omissions of Applicant, or its employees, agents, contractors or subcontractors, in connection with this Agreement. This indemnity will be effective regardless of any negligence (whether active, passive, derivative, joint, concurrent or comparative) on the part of Utility, unless caused solely by the gross negligence or willful misconduct of Utility. For purposes of Utility's enforcement of this indemnity only, Applicant expressly waives all immunity given to Applicant under the workers' compensation laws or other employee benefits acts of any state or jurisdiction that conflicts with Applicant's indemnification obligations under this Section.
- 12.2 Assignment. This Agreement will be binding upon the successors and assigns of both Parties effective upon receipt of written consent of the non-assigning Party, such consent not to be unreasonably withheld. Notwithstanding the foregoing, either Party may assign this Agreement with written notice, but without the consent of the other Party, to any successor corporation in any merger. Applicant's successor or assignee must agree in writing to assume all obligations and liabilities under this Agreement.
- 12.3 Limitation of Damages. Notwithstanding anything to the contrary, Utility is not liable to Applicant for any punitive, consequential, indirect, exemplary or incidental damages, including, without limitation, damages based upon lost revenues or profits.
- 12.4 Choice of Law and Venue. The Agreement will be governed by and construed in accordance with the laws of the State of Nevada, without giving effect to its choice or conflicts of laws provisions. All actions that are beyond the scope of the Commission's jurisdiction must be initiated in the courts of Clark County, Nevada or the federal district court with jurisdiction over Clark County, Nevada. Applicant agrees it will not initiate an action against Utility in any other jurisdiction.
- 12.5 No Waiver. The failure of either Party to enforce any of the provisions of the Agreement at any time, or to require performance by the other Party of any of the provisions of the Agreement at any time, will not be a waiver of any provisions, nor in any way affect the validity of the Agreement, or the right of any Party to enforce each and every provision.
- 12.6 Independent Contractor. Applicant is an independent contractor for all purposes of the Agreement, and all persons engaged in fulfilling Applicant's obligation under the Agreement are employees, agents, contractors, or subcontractors of Applicant and not the employees, agents, contractors, or subcontractors of Utility. Nothing in the Agreement or any contract/subcontract by Applicant will create any contractual relationship between Applicant's contractor/subcontractor and Utility.
- 12.7 Interpretation. Each Party to this Agreement acknowledges that it has been represented by counsel in connection with negotiating and entering this Agreement, that each has



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AGREEMENT

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carefully reviewed and discussed its provisions with counsel and that each fully understands and has participated in drafting its provisions, and, accordingly, the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party are not to be employed or used in any interpretation of this Agreement.

- 12.8 Amendments. Any changes, modifications, or amendments to the Agreement are not enforceable unless consented to in writing by the Parties and executed with same formality as this Agreement.
- 12.9 No Third-Party Beneficiaries. Nothing expressed or implied in this Agreement is intended, or should be construed, to confer upon or give any person or entity not a party to this Agreement any third-party beneficiary rights, interests, or remedies under or by reason of any term, provision, condition, undertaking, warranty, representation, or agreement contained in this Agreement.
- 12.10 Remedies. All rights and remedies of Utility provided for in the Agreement will be cumulative and in addition to, and not in lieu of, any other remedies available to Utility at law, in equity, or otherwise.
- 12.11 Headings. The headings or section titles contained in this Agreement are used solely for convenience and do not constitute a part of this Agreement, nor should they be used to aid in any manner in the construction of this Agreement.
- 12.12 Discretion. Reference in this Agreement to the "discretion" of a Party means the Party's sole and absolute discretion. Such discretion is not subject to any external standard, including but not limited to, any standard of custom, "good faith" or reasonableness.
- 12.13 Severability. If any portion or provision of the Agreement is invalid, illegal, or unenforceable, or any event occurs that renders any portion or provision of the Agreement void, the other portions or provisions of the Agreement will remain valid and enforceable. Any void portion or provision will be deemed severed from the Agreement, and the balance of the Agreement will be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The Parties further agree to amend the Agreement to replace any stricken portion or provision with a valid provision that comes as close as possible to the intent of the stricken portion or provision.

13. Term and Termination

- 13.1 Term of Agreement. This Agreement is effective on the Effective Date and will continue for a term of five (5) years unless otherwise terminated under the provisions of this Agreement. Applicant will not be entitled to any refunds or moneys after the termination of this Agreement per Rule 9, Section B.4.
- 13.2 Obligations Surviving Default, Expiration, or Termination. Any default, expiration, or termination of this Agreement does not release Applicant from any liability or obligation to Utility for:
 - (A) Applicant's obligations under Section 4.3 above;
 - (B) Applicant's obligations under Section 4.4 above;
 - (C) Applicant's obligations under Section 4.7 above;
 - (D) Payment of reduction of service or termination charges in accordance with Section 4.94.9 above;
 - (E) Applicant's obligations under Section 5 above;
 - (F) Applicant's obligations under Section 6 above;



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- (G) Any indemnification obligation that arises pursuant to Section 12.1 above; and
- (H) Payment of all Costs associated with the Agreement, whether incurred before or after default, expiration or termination, and payment of all Costs that result from termination.

14. Notices

- 14.1 Method of Delivery. Each notice, consent, request, or other communication required or permitted under the Agreement must be in writing, delivered personally or sent by certified mail (postage prepaid, return receipt requested), by facsimile (with electronic confirmation of receipt), or by a recognized international courier, and addressed to the Party's Project Coordinator as provided below.
- 14.2 Contact Information. The contact information for the Parties is:

	Utility	Applicant
Address	6226 W. SAHARA AVE. LAS VEGAS, NV 89146	400 N. STEWART AVE LAS VEGAS, NV 89101
Mailing Address	NORTH DISTRICT OFFICE 2215 E. LONE MOUNTAIN RD LAS VEGAS, NV 89031 MS 10	
Project Coordinator	JANE KING	JEREMY LEAVITT
Telephone	702/402-4340	229-1160
Cellular Telephone	702-275-6263	
FAX	702-657-4321	
Email Address	JKing@nvenergy.com	

- 14.3 Notice to Utility's Legal Department. For all notices given by Applicant to Utility under Sections 7.1 and 9.5, above, Applicant must also send a copy of the notice to:

NV Energy
Attn: Legal Department
6226 West Sahara Avenue, M/S 3A
Las Vegas, Nevada 89146
FAX: (702) 402-2069
- 14.4 Receipt of Notice; Change of Information. Each notice, consent, request, or other communication is deemed to have been received by the Party to whom it was addressed (A) when delivered if delivered personally; (B) on the third business day after the date of mailing if mailed by certified mail; (C) on the first business day after the facsimile transmission if delivered by facsimile; or (D) on the date officially recorded as delivered according to the record of delivery if delivered by courier. Each Party may change its



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Project Coordinator or contact information for purposes of the Agreement by giving written notice to the other Party in the manner set forth above.

IN WITNESS WHEREOF, the Parties execute this Agreement.

NEVADA POWER COMPANY d/b/a NV Energy

By: *Paul S. [Signature]* (for IB)

Name: IVORY BLUE

Title: Suprv, Design LVN

Date: 6-2-09

CITY OF LAS VEGAS

By: *[Signature]*

Name: OSCAR B. GOODMAN

Representing: City of Las Vegas

Title: Mayor

Date: 6/17/2009

Approved as to form

John S. Ridilla 6/13/09
John S. Ridilla Date
Deputy City Attorney

Attest: By *[Signature]*
BEVERLY K. BRIDGES, CMC, City Clerk

**NEVADA POWER COMPANY
PROJECT COST WORKSHEET ("Exhibit B")**

Project ID: 0000191887 Title: JONES BLVD IMPROVMENT SVC Units: 6 KVA: 30
Contract Type: Nonref Construction Agreement Coordinator: JANE KING Version Nbr 1

COST ESTIMATE SUMMARY

Cost Estimate Category	Total Cost Estimate	Total Applicant Cost	Applicant Non-Refundable	NPC Responsibility
Labor & Overhead	\$4,872	\$4,872	\$0	\$0
Material & Overhead	\$929	\$929	\$0	\$0
DCA	\$0	\$0	\$0	\$0
Trenching	\$0	\$0	\$0	\$0
Permits	\$0	\$0	\$0	\$0
Salvage	\$0	\$0	\$0	\$0
Total	\$5,801	\$5,801	\$0	\$0

ADVANCE CALCULATION

Cost Item	Cost Subject to Refund	Cost Item	Non-Refundable Cost
Applicant Cost Subject to Refund	\$5,801	Applicant Non-Refundable Cost	\$0
Equal Participant	\$0	Amount Not Subject To Excess Allowance (app. upgrade/relocation, temp power)	\$0
Proportionate Share	\$0	Amount Subject to Excess Allowance	\$0
Refund Subject To Allowance	\$5,801	Excess Allowance	\$0
Allowance	\$10,578	Remaining Non-Refundable (Subject to Excess Allowance)	\$0
Adjusted Applicant Cost	\$(4,777)	Amount Not Subject to Excess Allowance	\$0
		Attachments To Existing (LE/MP)	\$0
Total Subject to Refund	\$0	Total Non-Refundable Cost	\$0
		Non-Taxable Installation Costs	\$0
		Removal of Existing Facilities	\$0
		Total Non-Taxable Non-Refundable Cost	\$0
		Total Taxable Non-Refundable Cost	\$0

ADVANCE SUMMARY

Advance Subject to Refund		Current Tax Rate	<u>18.4000%</u>
Non-Taxable Advance	\$0		
Taxable Advance	\$0	Total Non-Taxable	
Tax	\$0	Total Taxable (Less Tax)	
Total Advance Subject to Refund	\$0	Total Tax	
Non-Refundable Advance		Total Advance	
Non-Taxable Advance	\$0		
Taxable Advance	\$0		
Tax	\$0		
Trench Tax	\$0		
Total Non-Refundable Advance	\$0		
Total Advance			