

Telecommunications



Franchise

E-CARE NEVADA, INC.

**April 17, 2012 –
April 17, 2022**

***DEPARTMENT OF BUSINESS LICENSE
FRANCHISE SERVICES DIVISION
500 S. GRAND CENTRAL PARKWAY, 3RD FLOOR
LAS VEGAS, NEVADA 89155-1810***

**CLARK COUNTY BOARD OF COMMISSIONERS
SUSAN BRAGER, Chair • STEVE SISOLAK, Vice Chair
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**COUNTY MANAGER
DONALD G. BURNETTE**

CLARK COUNTY, NEVADA
TELECOMMUNICATIONS UTILITY SYSTEM
FRANCHISE AGREEMENT
GRANTED TO
E-CARE NEVADA, INC.

THIS FRANCHISE is granted this 17th day of April, 2012, by Clark County, Nevada, a political subdivision of the State of Nevada, acting by and through its Board of County Commissioners which is its governing body (hereinafter called "County"), to E-CARE NEVADA, INC. (hereinafter called "Franchisee"), authorized by the Nevada Public Utilities Commission of Nevada to do business in the State of Nevada.

WITNESSETH:

WHEREAS, the Franchisee, a corporation organized and existing under and by virtue of the laws of the State of Nevada, is engaged in the business of operating a telecommunications utility system to provide subscription service, as defined by Clark County Code; and

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

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

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

TERMS AND CONDITIONS:

1. DEFINITIONS

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

2. FRANCHISE AGREEMENT DURATION, CONDITIONS, EXTENSION

(A) This Franchise shall be non-exclusive and shall be in force and effect from the date first written above until the 17th day of April, 2022. The Franchisee may request one additional five-year extension of this Franchise Agreement, pursuant to Chapter 5.01 of the Clark County Code, as amended from time to time. Failure to extend

this Franchise Agreement shall automatically terminate this Franchise Agreement on its expiration date.

- (B) The Franchisee shall be subject to all applicable requirements of County ordinances, rules regulations and specifications hereafter enacted or established in so far as such ordinances are not in violation if any State or Federal regulation. The Franchisee shall at all times comply with applicable Federal, State and local laws, rules and regulations concerning the provision of Telecommunication Services, including all applicable Federal Communications Commission and Public Utilities Commission of Nevada rules and regulations and orders that apply to the Franchisee. In the event of any conflict between the provisions in Titles 5, 6 or 30 of Clark County Code, as amended from time to time, and any provisions of this Franchise Agreement, the Code provision shall control.
- (C) Except as otherwise provided by applicable law: (1) Franchisee shall not permit use by other persons of its facilities located in County rights-of-way, including but not limited to the use by other persons who are required to obtain a business license, Franchise or Rights-of-Way License Agreement from the County for such use, unless and until the other persons obtain such licenses or franchise; and (2) unless required by law, the Franchisee shall not permit another person, other than an affiliate of the Franchisee that is providing video service and has obtained a Certificate of Authority from the Nevada Secretary of State, to install its own facilities in, on, under, along or above the Franchisee's facilities
- (D) Franchisee is hereby granted, during the term of this Franchise Agreement, a Franchise to install, operate and maintain its facilities in rights-of-way in unincorporated Clark County, as identified in the map attached hereto, labeled Exhibit B and made a part hereof, and pursuant to Clark County Code Titles 5, 6 and 30. Franchisee shall provide or make available to the County, upon request, the location of the facilities Franchisee has currently installed in the County rights-of-way.
- (E) Franchisee may expand this Franchise Agreement to install, maintain and operate its facilities in the County's rights-of-way beyond the original geographic area identified in this Franchise Agreement only by obtaining approval of an amended Franchise Agreement from the County. The County Commission may grant, with or without conditions, or deny such amendment in its sole discretion. In the event that an amendment of this Franchise Agreement is approved by the County Commission, such amendment shall be subject to all the terms and conditions of this Franchise Agreement and the terms and conditions of any amended agreement, and Titles 5, 6 and 30 of the Clark County Code, as amended from time to time.
- (F) This Franchise does not grant the Franchisee or any affiliate permission to offer subscription Video Service in the County. In order to provide Video Service to customers within the unincorporated areas of Clark County the Franchisee or any affiliate must apply for and be granted a Certificate of Authority by the Nevada

Secretary of State to provide video service and construct a video service network within Clark County as provided for in Chapter 711 of the Nevada Revised Statutes and apply for and obtain the appropriate business license from Clark County.

- (G) The Franchisee acknowledges that this Franchise is for installation of facilities in, on, under, along or above County rights-of-way only, and that installation in, on, under, along or above other County property may be permitted only through separate agreement and payment of rental fees.
- (H) The Franchisee shall be responsible for the maintenance and upkeep of any of the Franchisee's above-surface facilities located immediately adjacent to the rights-of-way granted by this Agreement. The Franchisee agrees to provide to the Department of Business License a response as to the resolution of any complaints regarding any maintenance or upkeep issues that have been received and submitted by the Department to the Franchisee.

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

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

4. *FRANCHISE PAYMENTS AND FEES*

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

5. *FRANCHISE REPORTING*

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

6. *REVOCATION AND PENALTIES*

- (A) After providing notice and an opportunity for the Franchisee to be heard and a reasonable opportunity to cure, the County Commission may impose fines or penalties in an amount deemed appropriate by the County Commission, but not exceeding the amount of security deposit established in Section 9 of this Agreement, upon the Franchisee if the County Commission finds that the Franchisee has failed to comply with the provisions of Clark County Code Titles 5, 6 or 30. Any such fines or penalties shall be due within thirty (30) days of written

notification by the County, made payable to the County Treasurer, and delivered to the County's Director of Business License at the County's address indicated in Section 14 of this Franchise Agreement. A late charge of five percent (5%) of the fine or penalty imposed shall be assessed if the fine or penalty is not paid within thirty (30) days of the written notification.

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

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

7. TRANSFER AND ASSIGNMENTS

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

8. INDEMNIFICATION

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

9. INSURANCE AND SECURITY FOR PERFORMANCE

- (A) The Franchisee shall secure, maintain and provide certification of all insurance coverage in the amounts, kinds and form required pursuant to the applicable sections of Clark County Code Chapter 5.01 prior to commencement of any work in the County's rights-of-way.

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

charges, if any, pursuant to Section 6 of this Agreement and the applicable sections of Clark County Code Chapter 5.01, from such security deposit.

10. *RIGHTS RESERVED TO COUNTY*

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

11. *AMENDMENTS*

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

12. *SEVERABILITY*

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

13. *GIFTS*

No officer or employee of Franchisee shall offer to any officer or employee of the County, either directly or indirectly, any rebate, contribution, gift, money, service without charge, or other thing of value whatsoever, except where given for the use and benefit of the County.

14. *NOTICE*

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

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

FRANCHISEE:

E-CARE NEVADA, INC.
900 S. Pavilion Center Dr., Ste. 180
Las Vegas, NV 89144

15. PUBLIC PURPOSE

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

16. RELOCATION OF FACILITIES

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

In instances where no Public Improvements or Facilities have been installed as of the Effective Date of this Franchise Agreement and a patent exists for roadway and utility purposes and is not patented or reserved specifically in the name of the

County or Franchisee, the party to this Franchise Agreement which is first to install a Public Improvement or Facility in such patent will be considered to have the prior right so long as, in the case of the Franchisee, the Facility was in place in accordance with applicable statutes, ordinances and codes in effect at the time of the Facilities' installation.

A claim from Franchisee for reimbursement for relocation of Facilities under a prior right must include a copy of the Easement instrument/document. If no such easement instrument/document can be produced, the claim must include a statement clarifying the prior land right, and must be signed by an officer, director or manager of the Franchisee who avers that the information set forth in the claim is accurate and complete. The claim must be accurate and include supporting proof that a prior land right exists for the Franchisee's Facilities. If the Franchisee fails to provide the County with sufficient proof of a prior right, the Franchisee will be responsible for the actual costs of the relocation.

In instances where the Franchisee has demonstrated a prior right in accordance with this Subsection B and the County requires the Franchisee to relocate its Facilities outside of its original prior right location, the County will recognize the Franchisee's prior right in the new location by issuance of an instrument/document recognizing the prior right.

17. APPLICABLE LAW

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

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

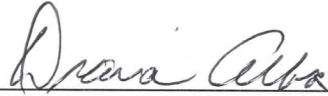
CLARK COUNTY BOARD OF COMMISSIONERS

By



SUSAN BRAGER, Chair

ATTEST:




DIANA ALBA, County Clerk

APPROVED AS TO FORM:
DISTRICT ATTORNEY



By: MARK E. WOOD, Deputy District Attorney

E-CARE NEVADA, INC.

By: 
NAME: Thomas A. Reiman
TITLE: President