

BILL NO. 6-16-98-4 (A)

SUMMARY - Requires an interested party to apply for and receive a monorail corridor agreement and franchise to install and operate a monorail, sets standards for installation and operation of a monorail, provides for use of public rights-of-way.

ORDINANCE NO. 2146
(of Clark County, Nevada)

AN ORDINANCE TO AMEND TITLE 5 OF THE CLARK COUNTY CODE; DELETING CHAPTER 5.04, MONORAIL CORRIDORS, AND REPLACING IT WITH A NEW CHAPTER 5.04, FRANCHISED MONORAIL TRANSPORTATION SYSTEMS; PROVIDING FOR APPLICATION AND ISSUANCE OF MONORAIL CORRIDOR AGREEMENTS AND MONORAIL FRANCHISES; SETTING STANDARDS FOR DESIGN, INSTALLATION, OPERATION, MAINTENANCE AND REMOVAL OF MONORAILS; PROVIDING FOR THE USE OF PUBLIC RIGHTS-OF-WAY FOR THE INSTALLATION, OPERATION AND MAINTENANCE OF MONORAILS; ESTABLISHING TERMS AND CONDITIONS OF MONORAIL CORRIDOR AND FRANCHISE AGREEMENTS; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF CLARK, STATE OF NEVADA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Title 5 of the Clark County Code is hereby amended by deleting Chapter 5.04 and anddig a new Chapter 5.04 as follows:

5.04.010 Definitions. For purposes of this chapter the definitions shown in chapter 6.14 of this code shall apply; in addition, the following definitions shall apply:

(a) “Abandonment” or “abandoned” means that all or a portion of a monorail has not been in continuous operation transporting passengers for a period to be specified in the franchise agreement, unless such failure to operate is permitted by this chapter or the franchise agreement or is caused by reasons of force majeure.

(b) “Applicant” means the prospective monorail franchisee or monorail corridor agreement holder who submits a completed application as set forth in this chapter.

(c) “Application” means all written documentation, statements, representations and warranties provided to the county, in accordance with this chapter, by an applicant, to be relied upon

by the county commission in making its determination of whether to grant or withhold a franchise or monorail corridor agreement.

(d) “Artificial person” means any form of business organization and any other non-governmental legal entity, including but not limited to a profit or non-profit corporation, partnership, limited liability company, association, trust, or unincorporated organization.

(e) “Certificate of operation” means a document issued by the director of the building department on an annual basis certifying that a monorail has been inspected and found to be in compliance with the manufacturer’s requirements for operation and maintenance, the approved operations and maintenance manual(s) and applicable requirements of this chapter.

(f) “Commencement of construction” means that time and date when the first physical construction of a monorail is initiated, after the appropriate permits are issued for such work.

(g) “Completion of construction” means that time and date when a monorail is installed and is operational in a manner approved by the county as evidenced by a certificate of operation in accordance with the requirements of this chapter and the franchise agreement.

(h) “County” means the County of Clark, Nevada.

(i) “County commission” means the Board of County Commissioners of the county.

(j) “County manager” means the county manager appointed by the county commission to perform such administrative functions of the county government as may be required of him by the county commission, or his designee.

(k) “Director of administrative services,” “director of the building department,” “director of business license,” “director of comprehensive planning,” “director of finance,” “director of public works,” “director of risk management” or “fire chief” means the county departmental director or officer specifically named, or his designee.

(l) “Fixed guideway” means a mass transportation facility which uses and occupies a separate right-of-way or rails exclusively for public transportation, including without limitation, fixed rail, automated guideway transit and exclusive facilities for buses.

(m) “Install and operate” or “installation and operation” means to design, lay, construct, erect, equip, test, put into commission, maintain, operate, use to provide transportation service, repair, renew replace, enhance the capacity of, modernize, or improve a monorail, or to cause or direct any of these activities.

(n) “Lender” means any person or governmental entity making a loan, guarantee or other credit facility or holding a credit instrument issued in connection with the financing of a monorail, and any trustee or collateral or administrative agent appointed in connection therewith.

(o) “Monorail” is a generic term meant to describe a non-technology specific system to transport passengers that is installed and operated on a fixed guideway, including associated passenger stations, power propulsion systems, intermodal facilities, lots for parking motor vehicles, workshops and other land and structures. The term does not include a system to transport passengers between two end points with no intermediate stops.

(p) “Monorail corridor” or “corridor” means a geographical area within the county, designated by the county commission as exclusive to the holder of a monorail corridor agreement within which the holder has identified or intends to identify a monorail route.

(q) “Monorail corridor agreement” or “corridor agreement” means an agreement wherein the county grants, for a limited period of time, an exclusive right to a person to negotiate a monorail franchise within a specified geographical area within the county.

(r) “Monorail corridor agreement holder” or “holder” means the person to whom a monorail corridor agreement is granted.

(s) “Monorail franchise” or “franchise” means the authorization granted to a person, by the county commission, to install and operate a monorail within the unincorporated area of the county for the provision of public transportation, and to use the specified rights-of-way for the installation and operation of a fixed guideway system for its monorail. The conditions and requirements of such authorization will be described within a monorail franchise agreement for such purpose.

(t) “Monorail franchise agreement” or “franchise agreement” means an agreement setting forth the terms and conditions of a monorail franchise.

(u) “Monorail franchisee” or “franchisee” means the person to whom a monorail franchise is granted and includes the meaning of the word “owner” as defined in Nevada Revised Statutes section 705.665.

(v) “Monorail master business license” means the master business license issued by the county, pursuant to chapter 6.14 of this code, permitting the various business activities associated with the operation of a monorail.

(w) “Monorail route” or “route” means the authorized route with respect to which the county commission has approved a monorail franchisee to install and operate a monorail.

(x) “Operator” means the agent of the monorail franchisee appointed by the franchisee to operate the monorail.

(y) “Person” means a natural person or an artificial person. The term “Person” does not include a government, governmental agency, or political subdivision of a government.

(z) “Prohibited use notice” means a formal written document issued by the director of the building department indicating non-compliance with the requirements of certification, installation, inspection, operation or other such portions of this chapter and further indicating that the monorail may not be operated for other than inspection or testing.

(aa) “Public improvement” means roadways and pavements, sidewalks, curbs and gutters, landscaping, street lights, foundations, poles and traffic signal conduits, water mains, sanitary and storm sewers, tunnels, subways, people movers, viaducts, bridges, underpasses, and overpasses across, along, over or under any rights-of-way, or other such improvements which are to be used by the general public.

(bb) “Public utility” means any person that provides electric energy or natural gas, telecommunications services, cable television services (including community antenna television service), interactive computer services, or sells or resells personal wireless services, regardless of whether that person is subject to the regulations of, or holds a certificate of public convenience and necessity from the Public Utilities Commission.

(cc) “Public utility facility” or “public utility facilities” means antennae, transmitters, poles, wires, cables, conduits, amplifiers, instruments, equipment, and other appliances used by a public utility to provide public utility service in the county.

(dd) “Qualified individual” means a natural person who is technically qualified to install and/or operate a monorail, and who acts as an agent of the monorail franchisee in satisfaction of the installation and/or operation requirements of this chapter.

(ee) “Right-of-way” or “rights-of-way” means public property dedicated to, granted to, or held, administered or prescriptively used by the county or other public entities for public street purposes or drainage ways, and, except as limited by any underlying grant, shall include the surface, the air space above the surface and the area below the surface of the full width of the way, including sidewalks, any part of which is used by the public or open to the public as a matter of right for the purpose of vehicular and pedestrian traffic.

(ff) “Transfer and assign” means the full or partial transfer of ownership, control, or the right of control of the franchise, either direct or indirect. The term “control” includes actual working control in whatever manner exercised, and the right of control shall include situations wherein that right is exercisable through intervening corporations, partnerships, or other legal entities. A transfer of control shall be conclusively deemed to occur whenever a majority of the voting control of the franchisee is acquired by a person or persons, in privity, other than a person who was in direct or indirect control of the franchisee at the time the franchise was awarded or whose acquisition of control has been previously approved. The terms “transfer or assign” shall not include: (1) any mortgage, security interest, pledge, or encumbrance of any of the assets of the franchisee as security for monies borrowed; or (2) any mortgage, security interest, pledge, or other encumbrance of the stock or partnership, membership or other ownership interest of the franchisee as security for monies borrowed.

(gg) “Within the county” or “in the county” means within the unincorporated areas of the county, including unincorporated towns.

5.04.020 Purpose. The purpose of this Chapter is:

(a) To authorize and regulate, in a non-discriminatory manner, the installation and operation of franchised monorails within the county.

(b) To authorize the granting of monorail corridor agreements and the granting of franchises for the installation and operation of monorails, pursuant to Nevada Revised Statutes subsections 705.610 through 705.700.

(c) To set certain standards incident to the installation and operation, and removal of franchised monorails by incorporating applicable uniform codes and other requirements and restrictions.

(d) To provide land use and zoning requirements applicable to real property used for monorails.

(e) To address the compatibility of franchised monorails for connection with a system of transportation operated on public fixed guideways.

(f) To provide requirements for the connection of franchised monorails with other private transportation systems.

(g) To provide for the use of rights-of-way by monorails.

(h) To authorize and establish procedures for the issuance of all necessary permits required for the installation and operation of a monorail

5.04.030 Jurisdictions of County Departments.

(a) Except as provided for in this chapter, the county manager may delegate authority to the directors of the affected county departments as is necessary for the purposes of the administration of this chapter.

(b) Any right or power in or duty impressed upon any officer or employee of the county by virtue of this chapter shall be subject to transfer by the county commission to any other officer or employee of the county.

5.04.040 Monorail Franchise Required. (a) Except as provided in subsection (b), no monorail which requires fares for passage, whether paid by or for passengers, shall be installed or operated by any person in, on, over, or under any county rights-of-way without a monorail franchise granted by the county commission.

(b) A monorail which is installed in, on, over, or under any rights-of-way through an easement in which the owner has a property interest, or through county approved leasehold, shall not be required to obtain a monorail franchise pursuant to this chapter or a monorail master business license pursuant to chapter 6.14 of this code.

5.04.050 Monorail Master Business License. Upon the grant of a monorail franchise by the county commission, the director of business license shall issue a monorail master business license to the franchisee, provided the franchisee has complied with license requirements and all approvals for such license have been obtained pursuant to chapter 6.14 of this code.

5.04.060 Business License(s) for Non-Monorail Business(es). Before engaging in any business activity not authorized by the monorail master business license issued under Chapter 6.14 of this code, a monorail franchisee shall obtain any necessary business license required by applicable provisions of titles 6, 7 and 8 of this code.

5.04.070 Monorail Corridor Agreements: application and approval. A monorail corridor agreement approved by the county commission shall grant the holder the exclusive right to negotiate a franchise agreement within the identified monorail corridor for a limited period of time set by the county commission. The following procedures will apply to applications for monorail corridor agreements:

(a) The applicant shall make a written request to the director of administrative services for a monorail corridor agreement, including all of the following:

(1) A statement setting forth all agreements and understandings existing between the applicant and any person with respect to the applicant's acting as an agent or representative of another person regarding the monorail.

(2) A list of officers and directors, or members and managers in the case of a limited liability company, and a list of stockholders holding more than ten percent (10%) of outstanding stock and their relative interests in the corporation. If any listed stockholders are artificial persons, a list of stockholders, partners or owners of these entities holding more than ten percent (10%) of outstanding stock or ownership interest in the entity.

(3) For a partnership, a list of all partners and their relative interests in the partnership. If any listed partners are artificial persons, a list of stockholders, partners or owners of

these entities holding more than ten percent (10%) of outstanding stock or ownership interest in the entity.

(4) A map depicting the proposed corridor and other written documents describing the legal boundaries of the proposed monorail corridor; the map must be submitted in such form for convenient reproduction in a newspaper, in compliance with the requirements of subsection (b) of this section.

(5) A statement reasonably describing how the applicant will secure the appropriate financial and technical ability to install and operate the monorail, and how the applicant has controlled and/or will control essential components of the proposed alignment.

(6) Written expressions of interest from owners of property within the proposed monorail corridor, other than the applicant, on, in, under or over which a monorail route may be proposed.

(7) An application filing fee in an amount determined by the director of administrative services as sufficient for payment of all costs necessary to provide the public notices required by subsection (b) of this section.

(b) In the event the director of administrative services determines the application to be incomplete, he will so notify the applicant within ten (10) days of such determination. When the director of administrative services, after consultation with the director of the building department, the director of business license, the director of comprehensive planning, the director of public works and the fire chief, determines that the application satisfies the requirements of subsection (a), he shall prepare a monorail corridor agreement with the applicant, and cause public notice in a newspaper of general circulation of a proposal by the applicant to enter into a monorail corridor agreement with the county, including a map depicting the proposed monorail corridor. Such public notice shall be advertised a minimum of twice in the thirty (30) day period prior to the county commission meeting at which the monorail corridor agreement will be considered.

(c) A public hearing to consider the proposed monorail corridor agreement, including the completed application and associated maps, designs and other documents, shall be scheduled on the agenda of a regularly scheduled meeting of the county commission immediately following the thirty (30) day public notice period described in subsection (b). The documents required by subsection (a) of this section and the proposed monorail corridor agreement shall be made available to the public at least fourteen (14) days in advance of the hearing required in this section.

5.04.080 Monorail Corridor Agreement Terms and Conditions. A monorail corridor agreement shall contain the following terms and conditions:

(a) A term of not more than one (1) year, which may be extended at the sole discretion of the county commission.

(b) An exclusive right to negotiate a monorail franchise agreement for a specific monorail route within the monorail corridor before expiration of the monorail corridor agreement. The monorail franchise agreement shall be subject to all applicable ordinances, rules and regulations of the county.

(c) During the term of the monorail corridor agreement, the county shall not grant to any other person a monorail corridor agreement or monorail franchise for a monorail route within the same monorail corridor, or overlapping the same monorail corridor, without the agreement of the holder in the holder's sole discretion.

(d) During the term of the monorail corridor agreement, the holder shall, upon request from the county, submit to the county information supporting the holder's ability to secure commitments to finance, acquire necessary rights-of-way and easements for, and install and operate the monorail. Failure to provide proof of ongoing and continuing activities necessary to submit a completed application for a monorail franchise agreement within thirty (30) days of a written request for such proof from the director of administrative services shall be a material breach of the monorail corridor agreement and shall be grounds for revocation of the monorail corridor agreement. After providing notice and a reasonable opportunity to cure the material breach of agreement, revocation of a monorail corridor agreement shall be determined by the county commission in a public hearing.

(e) A monorail corridor agreement shall not:

(1) grant, nor be construed to grant, any right to install and operate a monorail in, on, over or under any rights-of-way or property, or county property not owned by the holder, unless approved by the property owner;

(2) grant, nor be construed to grant, any change of zoning or approval of land use for any property located within the monorail corridor;

(3) grant or promise, nor be construed to grant or promise, any use of the county's power of eminent domain;

(4) imply an authority to use the county's power of eminent domain, nor imply a promise by the county to grant such authority;

(5) promise, nor be construed to promise, the grant of a monorail franchise in the future;

(6) be transferred or assigned without the approval of the county commission at a public hearing, after application by the prospective assignee and public notice of the assignment in the same manner as the original monorail corridor agreement; or

(7) be amended without public notice and approval by the county commission in the same manner as the original monorail corridor agreement.

(f) Upon grant of a monorail franchise to the holder, the monorail corridor agreement shall automatically be revoked.

5.04.090 Application for a Monorail Franchise. The following procedures will apply to all applications for new monorail franchises or renewals thereof:

(a) The applicant for a monorail franchise shall submit to the directors of comprehensive planning, public works, building department, and administrative services one copy each of a written report, including a route map, conceptual design drawings and other documents describing the specific proposed monorail route or routes, the location of the fixed guideway, its specific location within public rights-of-way, boarding stations, designated access points along the route for handling of emergency situations, maintenance building(s) and facilities, sources of power, parking lots for riders, and pertinent related information, in sufficient detail for: (1) the director of comprehensive planning to determine the necessary zoning and land use approvals required, pursuant to title 29 of this code; and (2) the director of public works to determine the specific locations, subject to adjustments within tolerances specified in the franchise agreement, where encroachments in, on, along, above or below the rights-of-way will be required for construction of the monorail, the amount of rights-of-way that will be used by the monorail,

and the effects of such use on current or future public improvements or other projects occurring in those rights-of-way.

(b) In addition to the report required in subsection (a), the applicant shall submit to the director of comprehensive planning all application documents required to apply for any zoning and land use permits pursuant to title 29 of this code.

(c) In addition to the report required in subsection (a), the applicant shall submit to the director of public works a written report which shall include:

(1) A proposed scope of a traffic impact analysis and mitigation study outlining the effects of the monorail on the rights-of-way on, along, under or over the proposed monorail route, which scope shall be approved in writing by the director of public works and, if applicable, by the Nevada department of transportation prior to approval of the franchise.

(2) A statement identifying each public utility whose facilities, to the best of the applicant's knowledge, will be affected by installation and operation of the monorail.

(d) In addition to the report required in subsection (a), the applicant shall submit to the director of the building department a written report describing the conceptual design and operational philosophy, including proposed technology, propulsion, guideway control, compatibility features of the proposed monorail, and how it will comply with those county code provisions for an operational monorail in sufficient detail, together with the documents provided for in subsection (a) of this section, for the director of the building department and the fire chief to determine the conformance of the report and conceptual design to adopted county construction, ride, and fire codes in effect at time of application. Said report shall include:

(1) The name(s) and statement(s) of qualification of the person(s) who the applicant proposes will be acting as operator, if other than the franchisee.

(2) The name(s) of the person(s) who the applicant proposes will be acting as qualified individual(s).

(3) A schedule setting forth the estimated dates of commencement of construction and completion of construction of the monorail.

(4) A statement of how the monorail will comply with the county construction and ride codes in effect at time of application and any alternates proposed from the code, with written justification and benefits derived for approving the proposal in terms of such areas as equivalence for safety, system dependability, operating environment, service delivery, and specifying design standards, in sufficient detail, together with the documents provided for in subsection (5) of this section, for the director of the building department and the fire chief to determine the conformance of the design to adopted county construction, ride, and fire codes in effect at time of application.

(5) A written statement indicating the compatibility of the proposed monorail and how it will interface with the technology and fixed guideway system proposed by the Clark County Regional Transportation Commission, and explaining the efficiency of rider transfers, use of the technology, and the level of service.

(6) Safety conceptual plans for handling emergency situations, providing for safety of passengers, employees, and general public, and hazard resolution process to be used in case of incidents occurring in, on, along, under or over the monorail or its structures, and incidents affecting rights-of-way which cause blockage and/or danger to life, limb or property. Such plans shall contain

emergency agency interface criteria for both fire department and police personnel, including a proposed method for drills to exercise the proposed hazard resolution processes.

(7) A description of the proposed monorail control and protection systems, to ensure that the monorail operates in a safe manner and delivers reliable transportation service.

(8) A description of the proposed monorail's operating performance in terms of reliability and maintainability.

(9) Proposed vehicle manufacturer, vehicle and system characteristics, passenger capacity, projected system transportation capacity per hour, and historical reliability.

(10) An operation and maintenance plan and quality assurance concepts which will be followed to develop operations and maintenance plans for use during the life of the monorail.

(11) The franchisee's proposed method to acquire design, construction and installation services, and to verify that design, code, maintenance and operation conditions and other franchise conditions are met prior to receiving certificate of operations.

(12) A list of anticipated design professionals and support consultants with applicable state license numbers and classifications.

(13) A list of anticipated construction contractors, installers and firms to be used, including state license numbers and classifications, to install the monorail and to verify that the monorail meets design and approved documents, when known.

(14) A statement of the environmental impacts from operation of the monorail, such as airborne noise and vibration from operation and any anticipated weather conditions which would limit operations.

(e) In addition to the report required in subsection (a), the applicant shall submit a written request in the form of an application to the director of administrative services which will include:

(1) Written proof of compliance with subsections (b), (c) and (d) of this section.

(2) A statement setting forth all agreements and understandings existing between the applicant and any person with respect to the applicant's acting as an agent or representative of another person regarding a monorail.

(3) A statement identifying ownership of the applicant as follows:

(A) For a sole proprietorship or partnership, a list of all owners and partners and their relative interests, or in the case of a limited liability company a list of all members and managers.

(B) For a corporation, a list of officers and directors, and a list of stockholders or shareholders holding more than ten percent (10%) of outstanding stock or shares and their relative interests in the corporation.

(C) If any stockholders, shareholders, partners or owners listed in (A) or (B) are artificial persons, a list of stockholders, shareholders, partners or owners of such artificial person holding more than ten percent (10%) of outstanding stock, shares or ownership interests in the artificial person.

(4) A copy of the application for monorail master business license filed with the director of business license pursuant to chapter 6.14 of this code.

(5) A description of the applicant's proposed plan of financing the monorail and description of the proposed business plan for operating the monorail.

(6) A cash deposit, surety bond or other security instrument, of a type and in an amount reasonably determined by the director of administrative services to be sufficient to pay costs of consultant services deemed necessary by the county manager, director of administrative services, director of public works and director of building department to perform independent analyses of the application; and to pay for the public notices required by this chapter. Such costs shall be borne in their entirety by the applicant. In no event shall the cost of consultant(s) services be higher than that agreed to in writing by the applicant.

(7) A statement reasonably describing how the applicant has secured or anticipates securing control of necessary private property interests within the proposed route, including identification of parcels under the applicant's control, parcels for which property owners currently have stated a willingness to allow access for use by a monorail, parcels for which no conditional letter of permission or expression of interest has been received, and parcels for which the applicant may apply for use of eminent domain in the future, of which the applicant is aware at time of application.

(f) If an applicant requests the county to become involved in the financing of a monorail, including by issuing economic development bonds or providing the issuance of obligations under Revenue Procedure 82-26 or any similar Internal Revenue Service Procedure, the county commission may consider such request and may or may not agree to become involved in the financing, in its sole discretion. In no event will the county become involved in the financing of a monorail in any manner unless the financing is rated with an investment grade rating, in one of the top four rating categories, by Standard & Poor's or Moody's Investors Service. Any financing of a monorail in which the county becomes involved must otherwise meet the requirements of the county's economic development revenue bond and private activity bond volume cap guidelines in effect at time of application. The applicant shall submit an application for such financing in substantially the same form attached to those guidelines.

(g) When an application is submitted pursuant to subsection (e), the county manager shall select a financial consultant or consultants, at least one of whom is qualified in evaluating transportation financing, who shall examine the applicant's plan of financing the monorail and the business plan and provide a written report which identifies the potential financial risks to, or obligations upon, the county or other governmental agency that may result from the monorail, and methods for mitigating those financial risks or obligations; and which identifies an adequate amount of security that should be required by the county in order to complete the monorail or remove those portions of the monorail in, on, over, or under rights-of-way and restore those rights-of-way in the event the monorail is not completed or is abandoned; and which assesses the likelihood that the county or another governmental agency would be required to subsidize or acquire the monorail in order to assure service to the public. The financial information provided to said consultant(s) by the applicant shall be held confidential, but may be reviewed by county employees or agents in the course of their duties. A copy of the report(s) shall be delivered to the applicant for his review and comments prior to finalization. The final report and applicant's comments shall be delivered to the director of finance, who shall review it and forward it, together with his advice and comments, to the director of administrative services. Said report shall be considered with the application.

(h) In the event the director of administrative services determines the application to be incomplete, he will so notify the applicant within ten (10) days of such determination. When the director of administrative services, after receipt of all required documents, reports and analyses, and

after consultation with the director of the building department, director of business license, director of comprehensive planning, director of finance, director of public works, and the fire chief, determines an application for a monorail franchise to be complete, he shall, in consultation with the district attorney's office and other county departmental directors and officials, prepare a monorail franchise agreement in conformance with this chapter and present it, together with the application, before the county commission.

5.04.100 Monorail Franchise Approval by County Commission. The approval of a new or renewal of an existing monorail franchise by the county commission and its acceptance by the applicant shall be reflected by execution of a monorail franchise agreement. A proposed monorail franchise agreement shall be considered by the county commission in the following manner:

(a) The proposed monorail franchise agreement, together with the completed application and associated maps, designs and other documents, shall be placed on the agenda of a regularly scheduled meeting of the county commission. At that meeting, the county commission shall:

(1) set a date for a public hearing to approve or deny the monorail franchise agreement, no earlier than twenty-five (25) days after the application and agreement are first brought before it and no earlier than the date as of which the planning commission has taken action on the zoning and land use approvals required for the monorail under title 29 of this code;

(2) cause public notice of the map and other information detailing the specific route and location of the proposed monorail in the same manner as prescribed for a monorail corridor agreement pursuant to subsection 5.04.070(b) of this chapter;

(3) direct that notice of the proposed route, including the date of the public hearing set forth in subsection (a)(1) of this section, be given in the manner required by the applicable provisions of title 29 of this code. The applicant shall pay all costs associated with researching each affected parcel and issuing such notices. Owners of property affected by the installation and operation of the proposed monorail shall be given an opportunity to be heard at the scheduled public hearing;

(4) direct that notice of the proposed monorail franchise be given to all public utilities and rights-of-way licensees, and any other entity known to have facilities within rights-of-way affected by the proposed monorail; and

(5) direct that a copy of the completed application and proposed monorail franchise agreement be placed on file with the county clerk and made available for public inspection.

(b) At the public hearing, the county commission shall consider whether to grant or deny the monorail franchise and related terms and conditions; to authorize the issuance of monorail master business license; to approve or deny any zoning or land use approvals required by the applicable provisions of title 29 of this code attendant to the installation and operation of a monorail on the specified monorail route; and to approve or deny the issuance of all necessary permits or licenses required by the county commission for the installation and operation of a monorail. The county commission may make the issuance of certain permits and licenses subject to specific terms and conditions set forth in the franchise agreement.

5.04.110 Monorail Franchise Agreement Terms and Conditions. (a) A monorail franchise, together with a monorail master business license, shall grant permission to the franchisee to install and operate a monorail in, on, along, under or over those rights-of-way that are specifically described in the

franchise agreement, according to the terms and conditions contained in the franchise agreement, and to engage in those activities approved in the monorail master business license.

(b) In addition, the following provisions shall apply:

(1) The monorail franchise agreement shall incorporate and be subject to all applicable provisions of this chapter, all of which shall be binding upon the monorail franchisee and its permitted successors and assignees.

(2) All documents provided by the applicant as part of the completed application shall be made part of the franchise agreement, and all statements, representations, warranties and promises made therein by the applicant shall be binding upon the franchisee.

(3) A monorail franchise shall be terminable in accordance with the public notice and hearing provisions of section 5.04.180 of this chapter if the franchisee fails, for reasons other than force majeure, to commence construction of the monorail within the period of time, after the effective date of the monorail franchise, specified in the franchise agreement, in which case the county commission may reinstate such an expired monorail franchise at its sole discretion upon such terms, consistent with this chapter 5.04, as the county commission deems appropriate.

(4) Any monorail franchise granted pursuant to this chapter shall be for a fixed term and shall be renewable under such terms as set forth in the franchise agreement.

(5) The monorail franchise agreement shall specify a geographical area within which the county shall not permit, authorize or facilitate another monorail, except as provided in the franchise agreement.

(6) No privilege or exemption shall be inferred from the granting of any franchise unless it is specifically mentioned in this chapter or in the franchise agreement.

(7) The granting of a franchise pursuant to this chapter shall not impart to the franchisee any vested ownership right or ownership interest in any right-of-way or county property in which the monorail is installed or operated, notwithstanding the right to use such rights-of-way or county property as set forth in subsection (a) of this section.

(8) The franchisee shall at all times during the term of the franchise agreement be subject to all lawful exercise of the police power by the county, including any and all ordinances, rules or regulations which the county has adopted or may adopt, which apply to the public generally. Any conflict between the provisions of this chapter and any other present or future lawful exercise of county police powers shall be resolved in favor of said county police powers.

(9) The franchisee shall maintain records and allow for audits as provided in applicable sections of titles 6 and 8 of this code.

(10) The franchisee shall use substantially the same technology as detailed in its franchise agreement and shall install and operate, or cause to be installed and operated, a monorail according to the franchise agreement and the application submitted pursuant to section 5.04.090 of this chapter, on which approval of the franchise agreement is based.

(11) The franchisee may propose and the county may consider design or technology changes to the monorail which substantially comply with the adopted standards, codes and regulations, and the franchise agreement as follows:

(A) Proposed changes in design or technology which have a material effect on route, land use, rights-of-way, compatibility with systems of public transportation, passenger

stations, maintenance facilities or other structures, or passenger capacity, must be approved by the county commission in its sole discretion.

(B) Proposed design changes other than those listed in subsection (11)(A) must be approved by the director of the building department or the director of public works or both, as applicable, in his sole discretion.

(12) Additions, modifications, and replacements of the monorail, structures, facilities and buildings shall be in accordance with applicable sections of this chapter for design, installation and operation of the monorail. Additions, modifications or replacements of existing and new components or systems shall be in accordance with Clark County Code in effect at the time of the additions, modifications and replacement.

(A) Additions, modifications or replacements affecting land use, use of rights-of-way outside the allowable tolerances approved in the franchise agreement, compatibility with systems of public transportation, or passenger capacity must be approved by the county commission in its sole discretion.

(B) Additions, modifications or replacements other than those listed in subsection (12)(A) must be approved by the director of the building department or the director of public works or both, as applicable, in his sole discretion.

(13) The franchisee shall pay all normal fees and costs associated with application for permits and licenses to any county department, even if those permits and licenses are issued as part of the franchise.

(14) The business license fees set forth in chapter 6.14 of this code shall be paid by the franchisee in the manner required by the applicable provisions of chapter 6.14 of this code and the franchise agreement.

(15) The franchise agreement may include such other provisions as the county and the franchisee agree are necessary or useful to the installation or operation of the monorail and shall include any other provisions required by law.

5.04.120 Installation of Monorails. A monorail franchise granted pursuant to this chapter shall provide for construction and installation in the following manner:

(a) The franchise agreement shall identify encroachment requirements, the location of which shall be specified in the franchise agreement, necessary to install and operate the monorail in those rights-of-way specified in the agreement. The franchisee shall notify the director of public works prior to actual encroachment on any rights-of-way and be subject to his approval as to the time and method of said encroachment, and pursuant to subsection (b) of this section.

(b) Prior to encroachment in any rights-of-way, the franchisee shall:

(1) obtain approval from the director of public works on the detailed engineering plans that show the final locations of all supporting structures and related monorail facilities, within the tolerances specified in the franchise agreement, that will be installed, maintained and operated in rights-of-way, including air space, pursuant to section 5.04.090 of this chapter; and

(2) comply with all terms and conditions required by the director of public works resulting from the completed traffic impact analysis and mitigation study described in section 5.04.090, subsection (c)(1), and as approved by the director of public works, and, if applicable, by the Nevada department of transportation.

(c) All public improvement work performed by the franchisee in rights-of-way shall be inspected, completed and accepted in accordance with titles 5 and 27 of this code.

(d) In the case of damage caused by the franchisee to any rights-of-way, the franchisee shall at no cost and expense to the county repair, replace and restore the damaged area in accordance with titles 5 and 27 of this code.

(e) The franchisee shall not relocate any public utility facilities or public improvements, whether on a temporary or permanent basis, until first obtaining approval from the owner of the public utility facilities or public improvements. The costs of removing, relocating or reconstructing any public utility facility or public improvement shall be borne by the franchisee, unless otherwise agreed by the owner of the public utility facilities or public improvements. If the franchisee or its agents performs the relocation or reconstruction, it shall be performed only after consultation with the applicable public utility and in accordance with the standards of the industry.

(f) The monorail and associated structures, facilities, and buildings shall be designed and constructed in accordance with applicable state and federal laws, including the Americans With Disabilities Act, and applicable regulations promulgated pursuant to those laws, chapters 22.02 “Building Administrative Code,” 22.04 “Building Code,” 22.16 “Amusement and Transportation Systems Code,” 25.04 “Electrical Code,” of this code and related building department technical guidelines and codes, as adopted at the time of contracting for construction.

(g) Design plans, calculations, operation and maintenance manual(s), related documents, and fees for the monorail and associated structures, facilities, and buildings shall be submitted with a completed permit application to the county building department permit application center, in accordance with chapter 22.02 of this code, for review by the directors of the building department, public works, comprehensive planning, and the fire chief prior to building permit issuance. Where applicable, design plans, calculations, and associated documents shall be submitted to, and approvals obtained from, appropriate agencies, including but not limited to Las Vegas Valley Water District, Clark County Sanitation District, Clark County Fire Department, and Clark County Health District.

(h) Designs prepared for or by the franchisee shall be sealed by a registered professional engineer and/or registered architect, as may be appropriate.

(i) All plan review, permit, inspection, and operational certificate renewal fees shall be paid by franchisee in accordance with chapters 22.02 and 22.16 of this code, unless otherwise specified in the franchise agreement.

(j) Inspections of the monorail and its associated structures, facilities, and buildings and issuance of building permits shall be in accordance with chapters 22.02 and 22.16 of this code, the county approved design plans and operations and maintenance manual(s) and any special requirements of the permits required by the director of the building department that require a county-listed quality assurance agency. Third-party quality assurance inspections and/or testing shall be performed in accordance with the requirements of approved plans and the operation and maintenance manual(s) for monorails or fixed guideway systems in accordance with applicable provisions of chapters 22.02 and 22.16 of this code.

(k) A certificate of operation shall be issued and renewed annually in accordance with the applicable provisions of chapters 22.04 and 22.16 of this code, which shall be required to operate the monorail. It shall be the responsibility of the monorail franchisee to operate the monorail in accordance with the applicable provisions of chapter 22.16 of this code, this chapter and the approved operations

and maintenance manual(s). Failure to meet these requirements is cause for the director of the building department to initiate or recommend suspension of franchisee's certificate of operation pursuant to section 5.04.180 of this chapter.

(l) After completion of construction the franchisee shall maintain and provide to the director of the building department and director of public works, upon request and at no cost, detailed as-built plans.

5.04.130 Operating Standards for Monorails. (a) Operations and maintenance of the monorail shall comply with the franchise agreement, the approved operations and maintenance manual(s), approved plans, and county codes adopted at the time of plan approval and permit issue, together with the applicable provisions of chapter 22.02 of this code, the provisions of which in whole or in part may be set forth as requirements in the certificate of operation.

(b) The franchisee shall employ a qualified individual or individuals, or have available under contract at all times timely service by a qualified individual(s), to meet the requirements of the operations and maintenance manual(s) and operations and maintenance requirements imposed by this chapter and chapter 22.16 of this code.

(c) Fees for the inspection and monitoring of the operating monorail shall be paid in accordance with sections 22.02.520 and 22.02.710 of this code, unless otherwise specified in the franchise agreement.

(d) Except as provided in subsection (e) of this section, if the director of the building department determines that a monorail is not in material compliance with the requirements and provisions of this chapter, the franchise agreement, or the operations and maintenance manual(s), he shall notify the franchisee in writing of the non-compliance and specify the basis of such non-compliance and the time period in which the monorail must be brought into compliance.

(e) In the event that the franchisee has failed to bring the monorail into compliance within the period specified, or in the event that the non-compliance giving rise to such notice has resulted in, or presents an imminent threat to life, limb or property, the director of the building department may declare that continued operation of all or the affected portion of the monorail is prohibited and issue to the franchisee a prohibited use notice. The prohibited use notice shall declare the reasons for the finding. Upon receipt of the prohibited use notice, the franchisee shall immediately cease operation of all or a portion of the monorail as determined by the director of the building department.

(f) Upon issuance of a prohibited use notice, the director of the building department shall cause an out-of-service seal to be affixed to the monorail control panel, or other portion of the monorail as he determines, stating that the monorail shall not be operated except as necessary for repair, testing or inspection. In the event the franchisee does not adequately secure the monorail, the director of the building department may cause one or more out-of-service seals to be placed across any or all entrances to the monorail. Such notices shall not be removed except by order of the director of the building department after the monorail has been repaired, reinspected and certified for operation.

(g) When the franchisee has effected a repair of all deficiencies identified in the prohibited use notice, and any deficiencies discovered in the course of repairs which themselves could be the subject of a prohibited use notice, the franchisee shall notify the director of the building department and request an inspection. The director of the building department shall inspect the monorail within twenty-four (24) hours of such notification. If the director of the building department finds the deficiencies to

be corrected and all required tests to have been successfully completed, he shall remove the out-of-service seals and permit the monorail to resume operation (see subsection 22.16.060(c) of this code).

5.04.140 Amendment of Monorail Franchise Agreement. Amendments to the monorail franchise agreement must be approved by the county commission after a public hearing.

(a) Any substantial change to the location of a monorail in rights-of-way from that location in rights-of-way specified in the original franchise agreement shall constitute an amendment to the franchise agreement which must be approved by the county commission in advance of said change; and

(b) Any change in the route of the monorail having a material effect upon land use, and any addition or material modification to the original route specified in the original franchise agreement, shall constitute an amendment to the franchise agreement which must be approved by the county commission, in its sole discretion, only after public notice as specified in section 5.04.100, and notice to affected property owners, if any, in accordance with applicable sections of title 29 of this code, and after any affected property owners have been given a reasonable opportunity to be heard.

5.04.150 Eminent Domain. (a) The county herein specifically declares that the grant of a monorail franchise does not grant to the franchisee the power of eminent domain, even if the specified monorail route identified in the monorail franchise is on property in which the monorail franchisee has no property right or easement, and that exercise of the county's right of eminent domain to acquire property for a monorail shall be completely discretionary by the county commission. Further, the grant of a monorail franchise does not constitute a promise by the county, nor does it obligate the county to exercise its power of eminent domain for a monorail in the future with respect to the monorail.

(b) A monorail franchisee may request that the county exercise its power of eminent domain by providing a written application to the director of administrative services, which shall include the following:

- (1) A legal description of the property or easement area, clearly identifying its owner and detailing any easements;
- (2) An appraisal of the property or easement area;
- (3) Written evidence which shows that a reasonable offer was made to purchase the property or easement and reasonable time given for the owner to accept the offer;
- (4) Written information that demonstrates the need for the property or easement and all reasonable alternatives the franchisee has considered;
- (5) A deposit of cash made payable to the county treasurer, and delivered to the director of administrative services, in an amount equal to the appraisal of the subject property or easement or such greater amount as the county reasonably determines is necessary under the circumstances; and
- (6) A statement acknowledging that the franchisee shall reimburse the county for any and all legal costs resulting from the county exercising its power of eminent domain.

(c) When the director of administrative services, after consultation with the director of comprehensive planning and the director of public works, determines that the application for use of eminent domain is complete, he shall present the application to the county commission at a regularly scheduled meeting. The county commission shall review the application and set a date for public hearing for approval or denial of the use of eminent domain, shall cause public notice of the public

hearing, and shall cause notice to be sent to the property owner(s) affected no less than 30 days prior to the public hearing date. The affected property owner(s) and the general public shall be given an opportunity to address the county commission prior to its decision. The franchisee shall reimburse the county for all costs associated with providing the various notices required by this section.

5.04.160 Inspections and Approvals; Enforcement by the County. (a) Any inspections or subsequent approvals undertaken by the county pursuant to this chapter are undertaken solely to ascertain compliance with this chapter and are not undertaken for the safety or other benefit of any individual or group of individuals as members of the public. Provisions in this chapter dealing with inspection or approval by the county do not expand the county's general law duties.

(b) The franchisee shall have no recourse whatsoever against the county for any loss, cost, expense, or damage arising out of the enforcement or lack of enforcement of any provision or requirement of this chapter or of any franchise agreement.

5.04.170 Franchise Reporting. On or before 120 days following the end of each fiscal year, or other yearly period specified in the franchise agreement, during the term of the franchise agreement the franchisee shall submit one copy each of an annual written report to the director of administrative services and director of business license. The written reports shall include the following information:

(a) A detailed financial report as required by title 6 of this code which conforms to Generally Accepted Accounting Principles (GAAP).

(b) A general report which details the following:

- (1) status of installation, if applicable;
- (2) total ridership, in monthly and annual totals, in sufficient detail to determine capacity in persons per hour, per direction;
- (3) incidents of cessation of operation, both planned and unplanned, including the cause, duration, and repairs required, if applicable;
- (4) accidents, emergencies and circumstances where injury or the threat of injury to persons occurred or material damage or the threat of material damage to property occurred;
- (5) any material claims made to the franchisee's insurer and any material claims paid by the franchisee's insurer; and
- (6) any lawsuits in which the franchisee is directly or indirectly involved and which have a material impact on the franchisee's ability to perform the duties of the franchise agreement.

5.04.180 Franchise Revocation, Suspension and Penalties. (a) After providing notice and an opportunity for the franchisee to be heard and a reasonable opportunity to cure as specified in the franchise agreement, including lender protection provisions, a franchise may be revoked or suspended by the county commission if it finds that the franchisee has failed to comply with applicable provisions of the Clark County Code, the franchise agreement, or the laws or regulations of the state of Nevada or of the United States. The county commission may, in its sole discretion, choose to:

(1) Impose monetary fines and other penalties upon the franchisee, including but not limited to assessment of penalties, suspension of construction or operation of the monorail, or restriction of business activities of the monorail franchise and monorail master business license; and/or

(2) Revoke or suspend the monorail franchise and monorail master business license, and impose terms and conditions for reinstatement or continuance.

(b) Decisions of the county commission pursuant to (a) of this section regarding penalties, suspensions or revocations of the monorail franchise shall automatically apply to the monorail master business license, unless otherwise determined by the county commission.

5.04.190 Abandonment of Monorail. After the franchisee has been provided notice and an opportunity to be heard and a reasonable opportunity to cure as specified in the franchise agreement, including lender protection provisions, the county commission may declare the monorail to be abandoned and may terminate the franchise and monorail master business license. The portions of the monorail structure occupying rights-of-way may be removed in accordance with applicable provisions of this chapter, or otherwise used as the county commission deems appropriate. The franchise and the monorail master business license may be reinstated at the sole discretion of the county commission upon reapplication by the former franchise holder pursuant to this chapter and chapter 6.14 of this code.

5.04.200 Removal Of Monorail Structures On Public Property or Rights-of-Way. (a) In the event that a franchise has been revoked or has expired without renewal, or a monorail has been found to be abandoned, the county may remove those portions of the fixed guideway structure in, on, along, under or over rights-of-way and may draw upon the proceeds of the removal security, posted pursuant to section 5.04.260 of this chapter, to reimburse costs of removal.

(b) Removal or relocation of a franchisee's monorail to accommodate a public improvement shall be in accordance with the terms and conditions of the franchise agreement and must be approved by the county commission only after a public hearing in which the franchisee and any person having an interest in the monorail has had an opportunity to be heard.

(c) When, in case of emergency it becomes necessary for the county or any public authority to remove or cause damage to any of the franchisee's monorail, no charge shall be made by the franchisee against the county for loss, damage, restoration, and repair.

(d) If the county commission declares a monorail to be a public nuisance pursuant to chapter 11.06 of this code, abatement of such public nuisance shall be completed in accordance with the provisions of chapter 11.06. In addition to notification requirements of chapter 11.06, the franchise agreement may provide for additional notification by the county to other interested parties in the event the county intends to declare the monorail a public nuisance.

5.04.210 Transfers And Assignments. The monorail franchise agreement and the rights, privileges, permissions, and authorities granted therein are personal to the monorail franchisee and cannot be sold, transferred, leased, assigned, or otherwise disposed of, in whole or in part, either by voluntary or involuntary proceedings without the approval of the county commission, which cannot be unreasonably withheld, after application by the prospective transferee or assignee, public notice and a public hearing in the same manner as for a new franchise, and upon such conditions as the county commission may prescribe; provided, however, that no restriction on transfers specified in this section shall be understood as preventing the monorail franchisee from conveying its properties to a trustee as security for bond and indebtedness in the normal course of the franchisee's business. The franchise

agreement may provide for certain transfers and assignments that do not require approval by the county commission.

5.04.220 Acquisition of Monorail by the County. If the county acquires a monorail:

(a) through use, or threat of use, of its right of eminent domain, the county shall provide the franchisee with adequate contractual assurance that:

(1) after acquisition, the county will provide service, fares and performance conforming to those existing at the time of acquisition, for a period necessary to protect the usefulness of the monorail to the franchisee; and

(2) the franchisee shall approve any future deletions from or reconfiguration of the monorail, including passenger stations; and

(3) the franchisee shall be held harmless from any liability or claim arising after the acquisition from the operation or any change made in the installation and operation of the monorail or from any act or omission of the county or its employees, contractors or agents; or

(b) through voluntary transfer, the county and franchisee may mutually agree to any terms.

(c) through abandonment, the monorail shall be deemed voluntarily transferred to the county, and the county may operate the monorail itself, auction the monorail to a qualified bidder, or remove those portions occupying rights-of-way, as determined by the county commission.

5.04.230 Indemnification. (a) To the maximum extent permitted by Nevada law, the franchisee shall indemnify, save harmless, and defend the county, its officers and employees, individually and collectively, from all damages, fines, liens, suits, claims, demands, actions, reasonable costs of investigation and litigation, reasonable attorneys' fees and expenses, reasonable consultants' fees and expenses, and reasonable expert witnesses' fees and expenses, judgments or liability of any kind arising out of or in any way connected with the installation, construction, operations, maintenance, or condition of the monorail. The franchisee is not required to indemnify or hold harmless the county, its officers and employees as provided herein, to the extent caused by, resulting from or arising out of the active negligence or intentional actions of one or more officers or employees of the county.

(b) The franchisee shall indemnify and hold harmless any county officer or employee who serves on a governing board which has control or oversight of the monorail.

(c) The amounts and types of required insurance coverage set forth in section 5.04.240 of this chapter shall in no way be construed as limiting the scope of indemnity set forth in this Section.

5.04.240 Insurance. The franchisee shall comply at all times with the insurance requirements of this section. Failure to obtain and maintain insurance coverages in the amounts required by this section or the franchise agreement shall be cause for immediate cessation of installation and operation of the monorail, except for those activities necessary to mitigate any safety hazard as required by the county commission, and shall be grounds for revocation, suspension or penalties pursuant to this chapter.

(a) Upon commencement of construction and continuing until completion of construction, the franchisee shall secure and maintain general liability insurance with coverage for property damage caused by its construction and installation activities, and liability insurance with coverage for injury and property damage as specified by resolution by the county commission and amended from time to time, and which are available at commercially reasonable terms.

(b) Upon completion of construction and continuing through the term of the franchise agreement, the franchisee shall maintain liability insurance with coverage for bodily injury and property damage against all risk arising from its operations, in amounts specified by resolution by the county commission and amended from time to time, and which are available at commercially reasonable terms.

(c) The franchisee shall at all times maintain workers' compensation insurance in compliance with Nevada Revised Statutes chapters 616 and 617.

(d) All policies of insurance required under this section shall be issued by insurance companies licensed or authorized to do business in the State of Nevada in accordance with applicable sections of Nevada Revised Statutes Title 57, from carriers having a rating from the A.M. Best Company of no less than A-VIII. Proof of coverage shall be evidenced by submitting an insurance certificate, or certificates, to the director of administrative services, which names the county as an additional insured and indicates that the county will be notified no less than 30 days prior to alteration, cancellation, termination or non-renewal of coverage.

5.04.250 General Security Requirements. The franchisee shall provide the following forms of security to the county:

(a) The franchisee shall place, or cause to be placed, the design drawings and technical specifications of the technology used in its monorail, in escrow for the life of the monorail and provide proof of such escrow and proof of the county's irrevocable right to obtain and use said design drawings and technical specifications.

(b) Within thirty (30) days of the grant of the monorail franchise, the franchisee shall provide to the director of administrative services security in an amount stated by resolution of the county commission. The county may draw against this security for payment of any unpaid fees, penalties, or to recover other actual costs, including liquidated damages specified in the franchise agreement, that may be incurred as a result of the franchisee's failure to comply with the provisions of its franchise agreement, this chapter or chapter 6.14 of this code. If the county draws upon the proceeds of any security, the franchisee shall, within thirty (30) days of notice from the county, replenish such security to the amount required by the county commission.

(c) All forms of security required by this section must include provisions which:

- (1) provide for payment of all reasonable legal fees and costs incurred by the county in its efforts to enforce payment; and

- (2) require the issuer to notify the county manager no later than 30 days before cancellation, or issuance of statement of intent not to renew said security instrument.

(d) The security required by this section or any other provision in this chapter or chapter 6.14 of this code shall be in the form of a cash deposit made payable to the county treasurer, an irrevocable letter of credit or pledge of certificate of deposit issued by a Nevada bank, a performance bond issued by a surety authorized to conduct business within the State of Nevada, or any other like security approved by the director of administrative services.

5.04.260 Security for Removal of Monorail. Prior to commencement of construction and throughout the term of the franchise agreement, the franchisee shall provide the director of administrative services security which guarantees completion of the monorail and/or demolition and removal, as appropriate, of any structures within rights-of-way, and restoration of those rights-of-ways

in accordance with the improvement standards of title 27 of this code, in the event the monorail is abandoned or the franchise is terminated. The amount of security or penal amount of the bond shall be established by resolution by the county commission as necessary to cover cost of construction of those portions of the monorail constructed or installed in the rights-of-way, and include an amount to cover the expense of engineering or consulting that may be required to carry out the demolition and removal, and restoration of rights-of-ways, and reimbursement of legal costs incurred by the county.

5.04.270 Rights Reserved To The County. Without limitation upon the rights which the county might otherwise have, the county does hereby expressly reserve the rights, powers, and authorities to exercise its governmental powers now or hereafter to the full extent that such powers may be vested in or granted to the county; and to grant multiple exclusive monorail corridor agreements and monorail franchises within the county to other persons for the operation of monorails pursuant to this chapter and as it may be amended, subject, however, to the exclusive rights of the franchisee within a geographic area defined in the franchise agreement.

5.04.280 Notice. All notices shall be sent to the franchisee or to the county at the addresses indicated in the franchise agreement. The franchisee shall notify the director of administrative services of any change of address within ten (10) working days of such occurrence. Failure to provide such notification of change of address, and any resulting delay in receipt of notice, shall not excuse the franchisee from any obligation imposed by this chapter or by its franchise agreement, nor shall it serve as cause for reduction or removal of any monetary fine or other penalty or restriction imposed by the county.

5.04.290 Force Majeure. In the event a franchisee's performance of any of the terms, conditions or obligations required by this chapter or franchise agreement is prevented by a cause or event beyond the control and without the fault or negligence of the franchisee, including but not restricted to, acts of God, acts of another franchisee, epidemics, quarantine restrictions, freight embargoes, explosions, strikes, sabotage, riots or civil disturbances, acts of public enemies, unusually severe weather and natural disasters such as floods, earthquakes, landslides, and fires, such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof. Delays of agents, subcontractors or suppliers of any tier are recognized to be within the franchisee's control unless the agent's, subcontractor's or supplier's failure to perform is attributable to the above listed excusable causes.

SECTION 2. If any provision, section, paragraph, sentence, clause, or phrase of this chapter is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of the remaining portions of this chapter. It is the intent of the county commission in adopting this chapter that no portion or provision thereof shall become inoperative or fail by reason of any invalidity or unconstitutionality of any other portion or provision, and to this end all provisions of this chapter are declared to be severable.

LORETTA BOWMAN, County Clerk

This ordinance shall be in force and effect from and after the 21ST day of JULY, 1998.