

**NV ENERGY MPOWERED™ COMMERCIAL PROGRAM
PARTICIPATION AGREEMENT**

This NV Energy mPowered Commercial Program Participation Agreement (“Agreement”) is entered into on _____ (the “Effective Date”) by and between SIERRA PACIFIC POWER COMPANY, a Nevada corporation, d/b/a NV Energy (“NVE”), having offices located at 6226 West Sahara Avenue, Las Vegas, Nevada 89146, and The City of Reno, with its principal place of business located at 1 East First Street, Reno, Nevada 89502. NVE and Customer may be referred to as the “Parties” herein.

RECITALS

WHEREAS:

NVE is conducting the mPowered Commercial Program (the “Program”) to provide potential savings on Customer’s electricity bill by reducing peak demand and, where possible, optimizing System(s) to improve energy efficiency at Customer Facilities. The Program is comprised of Demand Response Components offered by NVE to enable participating NVE customers to reduce electricity costs through control and/or optimization of their System(s). The Program targets a minimum of twenty (20) annual Demand Response Events (“DR Events”).

NVE is conducting the Program to provide Customer Incentives to its customers who have, or plan to install, advanced equipment controls within a Facility. The advanced controls are designed to provide one or more of the following: 1) provide an enhanced level of energy efficiency; 2) increase customer convenience and control capabilities; and, 3) allow the customer to participate in NVE initiated DR Events to reduce electricity system peak demand.

NVE will provide Customer Incentives in return for: 1) sharing data about the cost and performance of the systems; and, 2) Customer’s participation in NVE initiated DR Events to reduce electricity system peak demand.

NVE’s costs for running the Program are subject to approval by the Public Utilities Commission of Nevada (“PUCN”). Continuance of the Program beyond December 31, 2016 is subject to appropriate PUCN approval of funding for demand side management programs.

The Agreement shall be dated and signed by both Parties, and the Statement of Work shall be governed by the terms of this Agreement. In the event of any conflict between the terms of this Agreement and the terms contained in the Statement of Work, the conflict shall be resolved in accordance with the following order of precedence (from highest to lowest): the terms of this Agreement; the terms of the Statement of Work. A detailed Statement of Work is provided as “**Attachment A**” and “**Attachment B**”.

NOW THEREFORE, for good and valuable consideration the adequacy of which is hereby acknowledged, the Parties agree as follows:

1. CERTAIN DEFINITIONS

Capitalized terms used herein and not otherwise defined shall have the meanings set forth below:

“Baseline” means the calculated demand developed by creating an average profile using the three hottest non-DR Event days that match the event day type during the previous ten days to the event. There are two event day types: (1) non-holiday weekdays; and (2) all holidays and weekends.

“BMS” means the building energy management system at the Facility.

“Confidential Information” shall mean all proprietary information of the disclosing party and its affiliated and related companies, including information provided to the disclosing party by third parties that the disclosing party is obligated to keep confidential, whether provided before or after the Parties execute this Agreement. Notwithstanding anything contained herein to the contrary, the term “Confidential Information” shall not include information which: (i) was previously known to receiving Party; (ii) was or becomes generally available to the public through no fault of the receiving Party; (iii) was rightfully in receiving Party’s possession free of any obligation of confidence at, or subsequent to, the time it was communicated to receiving

Party by the disclosing Party; (iv) was developed by employees or agents of receiving Party independently of and without reference to any information communicated to Recipient by receiving Party by disclosing Party; or (v) was communicated by disclosing Party to an unaffiliated third party free of any obligation of confidence.

“Customer Incentive” is defined as the “Non-monetary Incentives” and/or “Monetary Incentives” received as a result of participation in the Program.

“Customer Override” means cancellation by the Customer of its participation in a single DR Event.

“Customer Equipment” means the advanced DR enabled control hardware, BMS, associated control software, and related energy efficient equipment already installed at the Facility and owned by the Customer.

“Demand Reduction” means the difference between the Baseline and the DR Event day demand during each event hour.

“Demand Response Automation Server” (DRAS) means a computer server application that is used to facilitate the automation of customer response to various Demand Response programs and dynamic pricing through a communication client.

“Demand Response Component” means a technology or process NVE deploys to reduce the peak load at a Customer Facility.

“Demand Response Event” or “DR Event” means a short period during which NVE calls upon the Facility to reduce demand (kW) in order to achieve utility system peak load shaping objectives or to help ensure electric grid reliability in emergency situations. Such requests will be made automatically by the NVE demand response management system to the Program Equipment, compatible Customer Equipment and Customer contacts via electronic communication over the Internet. A contact list up to three (3) people will be notified automatically via e-mail, text message and voice message of the start time and duration of the event. Except for emergency situations, events and notifications will typically be made at least three (3) hours before the start of the DR Event.

“Demand Response Season” means the time period when most demand response events occur between July 1 and September 30 each year.

“Demand Response Test Event” or “DR Test Event” means a test of program processes and related NVE and Customer equipment to validate that the equipment and process work properly and the expected Demand Reduction occurs in response to a simulated DR Event request.

“Facility” or “Facilities” means the Customer building(s) where Customer Equipment, Program Equipment or Utility Equipment has been installed having the addresses specified in Attachment C – Facility Participation.

“Improvements” means equipment, software, programming, and third party labor and service fees required to make changes or additions to the Customer Equipment as required for proper and efficient participation in the Program.

“M&V” means Measurement and Verification and refers to the processes of verifying actual energy and demand savings created by the Customer Equipment, Program Equipment, Utility Equipment, Customer operations, and the Customer’s participation in DR Events.

“Monetary Incentives” means the monetary payments that NVE makes to Customer for DR Event participation in order to reimburse the Customer for costs incurred to procure and install Program Equipment as needed to participate and defined in Section 2 of the Statement of Work.

“Non-monetary Incentives” means non-monetary benefits such as technical support, advanced energy data reporting, positive public relations and improved efficiency received by Customer for participation in the Program.

“OpenADR” means the Open Automated Demand Response standard communications protocol as defined by the OpenADR Alliance.

“Program Equipment” means the advanced DR enabled control hardware, associated control software, and related energy efficient equipment that is provided or subsidized by the Program that will be installed at the Facility. Customer will own Program Equipment after completion of the initial term of this Agreement.

“Program Service” means program services and technologies defined in the Statement of Work designed to achieve demand savings and potential energy savings.

“PUCN” means the Public Utilities Commission of Nevada.

“System” means energy consuming equipment such as HVAC, lighting, motors and other equipment, within a customer Facility, where changes could be made to reduce peak load during DR Events and optimized to improve energy efficiency.

“Utility Equipment” means equipment that is installed at the Facility and owned by NVE for the purposes of conducting M&V and evaluating the performance of the Program.

2. NV ENERGY OBLIGATIONS AND RIGHTS

- a) NVE may elect to partner with third parties, such as subcontractors, for any aspect of Program implementation. However, NVE will be the primary contact and will manage interactions with its partners, if any.
- b) NVE, or its subcontractors, will conduct, if necessary, a thorough site survey and assessment of the Facility and its existing Customer Equipment.
- c) NVE will provide Customer the results of the initial site survey assessment which may identify Improvements to Customer Equipment along with estimated costs for those Improvements.
- d) NVE will coordinate and oversee the testing, commissioning, and start-up of the Program Service.
- e) NVE will cover the costs and will be responsible for the maintenance of the Utility Equipment. NVE will own Utility Equipment installed at the Facility pursuant to this Agreement.
- f) NVE will provide training to designated Customer staff on the participation process as defined in the Statement of Work.

3. CUSTOMER OBLIGATIONS AND RIGHTS

Program Equipment will be supplied by a vendor(s) chosen by NVE. An installation contractor, if needed for equipment not installed by program installers, will be selected in collaboration with the Customer and identified in Section 5 of the Statement of Work. Customer agrees to do the following:

- a) permit NVE, or its designated subcontractor(s), access to the Facility to install, commission, maintain, test, monitor and remove the Program Equipment and Utility Equipment;
- b) if enrolled in manual or semi-automated Demand Response Programs, migrate to new Program Equipment technologies for automating Demand Response prior to the beginning of a new Demand Response Season;
- c) permit NVE and its partners, or its designated subcontractor(s), access to the Facility to verify proper installation, configuration, and operation of the Customer Equipment and any other components of the Program;
- d) provide NVE, or its designated subcontractor(s), permission to use all energy usage related data generated during the Program, under the condition that the data shall be used solely for evaluation of the Program and such data shall not be publicly released without prior written consent, except with regard to data disclosed pursuant to an order or request of the PUCN or PUCN staff.
- e) cooperate to the best of its ability with NVE and its partners during all phases of the Program including completion of a customer satisfaction survey;
- f) direct Customer staff to participate in meetings and conference calls (including training sessions) that NVE deems necessary for successful implementation and operation of the Program during the Term of the Agreement. Dates, times and location of such meetings, conference calls and training sessions will be coordinated and agreed to mutually;
- g) provide copies of technical documents, designs, drawings, facility occupancy reports, and all other documents reasonably necessary, pertaining to the Facility, in a timely manner, as required by NVE for implementation of the Program; and
- h) Customer may choose to override any DR Event in its sole discretion at any time during the term of the Agreement. Notwithstanding the foregoing, Customer will commit to acceptance of, and full participation in, to the best of its ability, a minimum of at least 75% of DR Event notifications sent to Customer up to fifteen (15) DR Events, whichever is less, without Customer Override during the first calendar year of the Agreement.

4. COSTS AND OWNERSHIP OF THE EQUIPMENT

All costs associated with the purchase and installation of the Program Equipment shall be paid by NVE. NVE shall retain ownership of all Program Equipment until the end of the initial term of this Agreement. NVE shall purchase, install, operate, and remove at its own expense the Utility Equipment.

5. DR EVENT PARTICIPATION

Minimum Participation Criteria

Typically, there will be a minimum of twenty (20) DR Events scheduled for each calendar year of Program participation. The DR Event will typically be 2-3 hours in duration and will likely occur between the hours of 1:00 PM-7:00 PM on non-holiday weekdays. OSHA requirements and other employee safety issues should be considered when determining minimum System

operating levels. The Customer can choose to opt-out of a DR Event, but must participate in at least 75% of DR Event notifications sent to Customer up to fifteen (15) DR Events, whichever is less, prior to December 31, each program year and deliver the minimum kW of Demand Reduction defined in the Statement of Work.

6. CUSTOMER INCENTIVE DETAILS

NVE will provide a Customer Incentive to enable the Customer to take advantage of key benefits associated with Program measures in exchange for full Customer participation in the Program. The Customer Incentive is determined by the technology and Customer Demand Reduction commitment as summarized in Section 2 of the Statement of Work. Any Incentives for DR Events, if defined in the Statement of Work, would be paid annually by bill credit. Incentive payments and continued use of Program Equipment require Customer to meet DR Event participation requirements.

7. TERMINATION

Upon the termination of this Agreement for any reason, Customer shall have the option to keep any Program Equipment installed but will be immediately disconnected from NVE Program Services, and Customer's eligibility to receive Customer Incentives will immediately cease. Any third-party End User License Agreement (EULA) that may be entered concurrently with this Agreement will have separate terms. Customer's use of the Program Equipment may be severely limited by Licensor in its sole and absolute discretion. If Customer terminates this Agreement prior to the fifth anniversary (60 months) of the Effective Date, Customer shall pay NVE an early termination fee that shall be the depreciated value (using straight line depreciation) of Program Equipment cost as defined in the Statement of Work; depreciated over the 60 month term of the agreement. NVE shall waive any early termination fee if Customer notifies NVE of early termination and returns the Program Equipment in good working order to the designated NVE locations in 30 days or less after early termination

If NVE breaches the terms of the Agreement, the Customer may terminate its participation in the Program without any penalty to the Customer. In such event, NVE will remove Utility Equipment at NVE's expense and Customer will retain any Customer Incentive earned as of the date of termination.

If Customer does not return Program Equipment, Customer remains fully responsible for continued operation of the Program Equipment.

If Customer breaches the terms of this Agreement, NVE may terminate Customer's participation in the Program without any penalty to NVE. In such event, NVE may remove the Utility Equipment and Customer is subject to certain financial obligations according to straight line depreciation of Customer Incentive amount for Program Equipment retained by Customer based on the remaining months in the term of the Agreement from when the Customer met their participation obligations. If customer returns the Program Equipment in good working order to the designated NVE locations in 30 days or less after early termination, equipment termination fees are waived.

Either Party may terminate this Agreement by giving the other Party thirty (30) days prior written notice of termination. In the event of such termination, both Parties agree to waive any claim for damages resulting from contract termination. If the Agreement is terminated by the Customer, Customer is subject to certain financial obligations to reimburse NVE the depreciated value of Program Equipment outlined above.

8. TERM OF AGREEMENT

The initial term of this Agreement shall be from the date of execution by both Parties (the "Effective Date") and continue for five (5) years, unless terminated earlier by the Parties as set forth herein. Upon expiration of the initial term, this Agreement will renew annually on the same terms and conditions of this Agreement unless one of the parties provides 30 days written notice of termination.

9. WARRANTY DISCLAIMER

CUSTOMER EXPRESSLY AGREES THAT PURCHASE, INSTALLATION, AND USE OF PROGRAM EQUIPMENT, AND PARTICIPATION IN THE PROGRAM IS AT CUSTOMERS OWN RISK. CUSTOMER FURTHER AGREES THAT THE PROGRAM EQUIPMENT IS PROVIDED ON AN "AS IS" BASIS, WITHOUT WARRANTY FROM NVE OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF ACCURACY, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

Third party warranties from installation contractors or manufactures of equipment are provided with the Program Equipment pursuant to the term and conditions of those third party warranties.

10. LIMITATION OF LIABILITY

Except for negligent acts or willful misconduct of NVE, Customer disclaims all liability of NVE, whether based in contract, tort, negligence, strict liability or otherwise, for damages of any kinds (including without limitation direct, indirect, incidental, consequential, special, punitive or exemplary damages) in any way arising from: (i) the installation of the Customer Equipment or the failure in function or operation of the Customer Equipment; (ii) participation in the Program, or (iii) any Demand Response Event, even if Customer is expressly advised of the possibility of such damages.

Except for NVE and Customer's obligation to pay amounts due to the other Party pursuant to the Customer Incentive Section 5 or Termination Section 6 above, the limit of each Party's liability (whether in contract, tort, negligence, strict liability in tort or by statute or otherwise) to the other, arising out of or in any manner related to this Agreement, for any and all claims, will not in the aggregate exceed NVE applicable insurance limits. In no event will either Party be liable to the other for any indirect, special, incidental, consequential, exemplary or punitive loss, damages, or expenses (including lost profits or savings) except for negligent acts or willful misconduct of NVE.

11. NON-DISCLOSURE

The Parties shall not disclose information that has been marked as Confidential Information unless express written consent has been granted. Notwithstanding the foregoing, either Party may disclose Confidential Information in response to a valid order by a court or other governmental body, in accordance with NRS 239, or as otherwise required by Public Utility Commission of Nevada or its staff or as necessary to establish the rights of either Party under this Agreement; provided, however, that: (a) the receiving Party promptly notifies the disclosing Party of such disclosure requirement; (b) cooperates (at disclosing Party's expense) in any lawful effort by disclosing Party to oppose or limit such disclosure; and (c) discloses only so much of such Confidential Information as, on advice of counsel, it is legally obligated to disclose. In addition, the Parties may disclose information to its third party contractors who are required for the performance of its obligations under this Agreement. The Parties will be responsible for the unauthorized disclosure of Confidential Information by such a contractor. If any third party contractors are retained, Customer will be notified in writing of such parties.

NVE acknowledges that the Customer is currently in a multi-year agreement with AMERESCO, Inc. whereby AMERESCO is responsible for guarantee of savings from the implementation of HVAC and control system upgrades. The mPowered program's baseline and post event savings calculations; excluding any proprietary code and algorithms, and recommended operational modifications will be made available for review by AMERESCO to ensure compliance with the pre-existing operational standards and ongoing savings guarantees currently under contract.

12. ASSIGNMENT

This Agreement and all incorporated agreements may be automatically assigned by either Party to a third party in the event of an acquisition, sale, merger, or assignment of all or substantially all of the assets and business of such Party to the assignee. No other assignment may be made without the prior written consent.

13. RELATIONSHIP OF PARTIES

The Parties to this Agreement, including M&V subcontractors, are independent entities and no joint venture, agency, partnership or employer-employee relationship is intended or created hereby.

Any notices under this Agreement shall be sent in writing by registered mail, electronic mail (email), or express delivery service and deemed given upon receipt.

14. GOVERNING LAW

This Agreement shall be governed the laws of the State of Nevada (without regard to conflict of law principles). Customer agrees and submits to the exclusive jurisdiction of the federal or state courts of competent jurisdiction sitting in Reno, Nevada.

Should any part of this Agreement be held invalid or unenforceable, that portion shall be construed consistent with applicable law and the remaining portions of this Agreement shall remain in full force and effect, provided that neither Party is deprived thereby of the fundamental benefit of its bargain.

A Party's failure to enforce any provision of this Agreement shall neither be deemed a waiver of such provision nor of their right to enforce such provision.

JURY TRIAL WAIVER. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS CONTRACT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

15. ENTIRE AGREEMENT

This Agreement represents the entire agreement between Customer and NVE and supersedes all prior understandings and communications, oral or written. Either Party's failure to enforce any provision of the Agreement at any time, or to require performance by the other Party of any provision of the Agreement at any time, will not be a waiver of any provision or in any way affect the Agreement's validity or any Party's right to enforce each and every provision.

IN WITNESS WHEREOF, the Parties' duly authorized representatives have executed this Agreement as of the date written below.

Sierra Pacific Power Company d/b/a NV Energy	The City of Reno
Name:	Name:
Title:	Title:
Signature:	Signature:
Date Signed:	Date Signed: