

INTERLOCAL AGREEMENT – TRAFFIC SIGNAL CONTROLLERS

This Agreement, made and entered into on \_\_\_\_\_, by and between the State of Nevada, acting by and through its Department of Transportation, hereinafter called the DEPARTMENT, and the City of Sparks, 431 Prater Way, Sparks, NV 89432, hereinafter called the CITY, the parties are collectively referred to as PARTIES.

WITNESSETH:

WHEREAS, an Interlocal Agreement is defined as an agreement by public agencies to "obtain a service" from another public agency, hereinafter called parties; and

WHEREAS, pursuant to the provisions contained in Chapter 408 of the Nevada Revised Statutes, the Director of the DEPARTMENT may enter into agreements necessary to carry out the provisions of the Chapter; and

WHEREAS, NRS 277.180 authorizes any one or more public agencies to contract with any one or more other public agencies to perform any governmental service, activity, or undertaking which any of the public agencies entering into the agreement is authorized by law to perform and refers to such as an Interlocal Contract, hereinafter called an Agreement; and

WHEREAS, the purpose of this Agreement is for the CITY to install thirty-five (35) DEPARTMENT-furnished Trafficware 980 ATC Traffic Signal Controllers, TS-2 Type 2, 4-port, w/ Vers. 76.X software (Green Machine), hereinafter called CONTROLLERS, which will allow the CITY to enhance their operational readiness, increase security, and improve monitoring and control of the DEPARTMENT's signalized intersections. Refer to Attachment A - Traffic Signal Controller Upgrade List for CONTROLLER locations; and

WHEREAS, the installation of the CONTROLLERS will provide increased safety and enhance motorist progression throughout the CITY; and

WHEREAS, the services of the CITY will be of benefit to the DEPARTMENT and to the people of the State of Nevada; and

WHEREAS, the CITY is willing and able to perform the services described herein.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, it is agreed as follows:

ARTICLE I – CITY AGREES

1. To provide the DEPARTMENT's Assistant Chief Traffic Engineer with a Scope of Work detailing the CONTROLLER installation, scheduling, and a draft of the final system acceptance documentation(s), within thirty (30) calendar days of receipt of the DEPARTMENT furnished CONTROLLERS.

2. To install the DEPARTMENT furnished CONTROLLERS within eighteen (18) months after the receipt date of the DEPARTMENT furnished CONTROLLERS.

3. To submit to the DEPARTMENT's Assistant Chief Traffic Engineer the final system acceptance document(s) within thirty (30) calendar days once the CITY has completed the installation of the DEPARTMENT-furnished CONTROLLERS.

4. To reimburse the DEPARTMENT for the DEPARTMENT's cost within thirty (30) calendar days for each CONTROLLER not installed in the eighteen (18) month period once the CITY submits the final acceptance documentation to the DEPARTMENT Assistant Chief Traffic Engineer.

## ARTICLE II - DEPARTMENT AGREES

1. To provide the CITY with thirty-five (35) CONTROLLERS for the CITY to install at DEPARTMENT signalized intersections listed on Attachment A - Traffic Signal Controller Upgrade List.

2. To observe, review, and inspect all work associated with the installation of the DEPARTMENT-furnished CONTROLLERS with the understanding that any and all items of concern are reported to the DEPARTMENT's Assistant Chief Traffic Engineer.

## ARTICLE III - IT IS MUTUALLY AGREED

1. The term of this Agreement shall be from this Agreement date through the eighteen (18) month installation period or until the installation of all improvements contemplated herein have been completed and accepted by the DEPARTMENT, save and except the responsibility for maintenance as specified herein, whichever occurs first.

2. The CITY shall not be assessed with monetary damage or required to pay for the CONTROLLERS if for any of the following reasons the CITY is unable to complete the installation of the thirty-five (35) controller units in the twelve (12) month time allotted for installation. Those reasons include during any delay in the completion of the work caused by acts of God, the public enemy, fire, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, incompatible equipment or due to other such causes outside of the CITY's control, provided that the CITY shall within ten (10) calendar days from the beginning of such delay notify the DEPARTMENT's Assistant Chief Traffic Engineer in writing of the causes of delay.

3. This Agreement shall not become effective until and unless approved by appropriate official action of the governing body of each party.

4. The CITY shall not proceed with work until the CITY receives a written "Notice to Proceed" from the DEPARTMENT. If the CITY does commence said work prior to receiving said Notice to Proceed, the CITY shall forfeit any and all right to reimbursement for that portion of the work performed prior to said dates. Furthermore, the CITY shall not rely on the terms of this Agreement in any way, including but not limited to any written or oral representations and warranties made by the DEPARTMENT or any of its agents, employees, or affiliates, or on any dates of performance, deadlines, indemnities, or any other term contained in this Agreement or otherwise prior to receipt of the Notice to Proceed. In the event the CITY violates the provisions of this Section, the CITY waives any and all claims and damages against the DEPARTMENT, its employees, agents, and/or affiliates, including but not limited to monetary damages and/or any other available remedy at law or in equity arising under the terms of this Agreement.

5. The parties agree to allow each other to observe, to inspect project installation and to review applicable changes in a timely manner which prevents delay to the installation of the DEPARTMENT furnished CONTROLLERS. All changes shall be made in writing. Each party shall complete its review of all changes submitted to it by the other party, within five (5) working days after service of such changes. In the event the CITY does not provide the DEPARTMENT with a written response to the DEPARTMENT's changes within five (5) working days following the DEPARTMENT's service of such changes, the DEPARTMENT will proceed with the changes so as not to delay the PROJECT, and will assume no liability. Therefore, the CITY shall be

responsible for all costs associated with changes requested by the CITY, which cannot be foreseen at this time. It is the intention of the parties that this review does not constitute a joint exercise of powers pursuant to NRS 277.080 to 277.170.

6. This Agreement may be terminated by either party prior to the date set forth above, provided that a termination shall not be effective until thirty (30) calendar days after a party has served written notice upon the other party. This Agreement may be terminated by mutual consent of both parties or unilaterally by either party without cause. The parties expressly agree that this Agreement shall be terminated immediately if for any reason federal and/or State Legislature funding ability to satisfy this Agreement is withdrawn, limited, or impaired.

7. All notices or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by facsimile with simultaneous regular mail, or by certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address set forth below:

FOR DEPARTMENT: Rudy Malfabon, P.E., Director  
Attn.: Tom Moore, Assistant Chief Traffic Engineer  
Nevada Department of Transportation  
Division: Traffic Operations  
1263 South Stewart Street  
Carson City, Nevada 89712  
Phone: (775) 888-7566  
Fax: (775) 888-7090  
E-mail: tmoore@dot.state.nv.us

FOR CITY: Neil C. Krutz, P.E.,  
Deputy City Manager for Community Services  
Attn: Ron Korman, Public Works Manager  
City of Sparks  
431 Prater Way  
Sparks, NV 89432  
Phone: (775) 353-2271  
Fax: (775) 353-2390  
E-mail: rkorman@cityofsparks.us

8. Each party agrees to keep and maintain under generally accepted accounting principles full, true, and complete records and documents (written, electronic, computer related, or otherwise) pertaining to this Agreement and present, at any reasonable time, such information for inspection, examination, review, audit, and copying at any office where such records and documentation are maintained. Such records and documentation shall be retained for three (3) years after final payment is made.

9. Failure of either party to perform any obligation of this Agreement shall be deemed a breach. Except as otherwise provided for by law or this Agreement, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including but not limited to the recovery of actual damages, and the prevailing party's reasonable attorney's fees and costs.

10. The parties do not waive and intend to assert available NRS Chapter 41 liability limitations in all cases. Agreement liability of both parties shall not be subject to punitive damages. Actual damages for any DEPARTMENT breach shall never exceed the amount of funds which

have been appropriated for payment under this Agreement, but not yet paid, for the fiscal year budget in existence at the time of the breach.

11. Neither party shall be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including without limitations, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the Agreement after the intervening cause ceases.

12. To the fullest extent of NRS Chapter 41 liability limitations, each party shall indemnify, hold harmless, and defend, not excluding the other's right to participate, the other from and against all liability, claims, actions, damages, losses, and expenses, including but not limited to reasonable attorney's fees and costs, arising out of any alleged negligent or willful acts or omissions of the party, its officers, employees, and agents. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity, which would otherwise exist as to any party or person, described herein. This indemnification obligation is conditioned upon service of written notice to the other party within thirty (30) calendar days of the indemnified party's notice of actual or pending claim or cause of action. The indemnifying party shall not be liable for reimbursement of any attorney's fees and costs incurred by the indemnified party due to said party exercising its right to participate with legal counsel.

13. The parties are associated with each other only for the purposes and to the extent set forth in this Agreement. Each party is and shall be a public agency separate and distinct from the other party and shall have the right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Agreement. Nothing contained in this Agreement shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for one agency whatsoever with respect to the indebtedness, liabilities, and obligations of the other agency or any other party.

14. Failure to declare a breach or the actual waiver of any particular breach of the Agreement or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

15. The illegality or invalidity of any provision or portion of this Agreement shall not affect the validity of the remainder of the Agreement and this Agreement shall be construed as if such provision did not exist. The unenforceability of such provision or provisions shall not be held to render any other provision or provisions of this Agreement unenforceable.

16. Neither party shall assign, transfer, or delegate any rights, obligations, or duties under this Agreement without the prior written consent of the other party.

17. Except as otherwise provided by this Agreement, all or any property presently owned by either party shall remain in such ownership upon termination of this Agreement, and there shall be no transfer of property between the parties during the course of this Agreement.

18. Pursuant to NRS Chapter 239, information or documents may be open to public inspection and copying. The parties will have the duty to disclose unless a particular record is confidential by law or a common law balancing of interests.

19. Each party shall keep confidential all information, in whatever form, produced, prepared, observed, or received by that party to the extent that such information is confidential by law or otherwise required by this Agreement.

20. The parties hereto represent and warrant that the person executing this Agreement on behalf of each party has full power and authority to enter into this Agreement and that the parties are authorized by law to perform the services set forth herein.

21. This Agreement and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada. The parties consent to the exclusive jurisdiction of the Nevada state district courts for enforcement of this Agreement.

22. Any alteration considered extra work shall be addressed through a written amendment to the Agreement. The amount and payment for extra work, as well as designation of responsibility for payment of such work, shall be specified in such amendment.

23. Any recipient or subrecipient of funds under this Agreement agrees to comply with the Federal Funding Accountability and Transparency Act and implementing regulations at 2 CFR Part 170, including Appendix A available at <http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf>.

24. It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof a third party beneficiary status hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.

25. In connection with the performance of work under this Agreement, the parties agree not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, sexual orientation, or age, including, without limitation, with regard to employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff, or termination, rates of pay or other forms of compensation, and selection for training, including, without limitation, apprenticeship. The parties further agree to insert this provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

26. This Agreement constitutes the entire agreement of the parties and such is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Agreement specifically displays a mutual intent to amend a particular part of this Agreement, general conflicts in language between any such attachment and this Agreement shall be construed consistent with the terms of this Agreement. Unless otherwise expressly authorized by the terms of this Agreement, no modification or amendment to this Agreement shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto and approved by the Attorney General.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

CITY OF SPARKS

State of Nevada, acting by and through its  
DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_  
Geno Martini, Mayor

\_\_\_\_\_  
Director

Approved as to Legality & Form:

ATTEST:

\_\_\_\_\_  
Deputy Attorney General

\_\_\_\_\_  
Sparks City Clerk

Approved as to Form:

\_\_\_\_\_  
Attorney

# Attachment A - Traffic Signal Controller Upgrade List

Intersection Location

El Rancho and McCarran
Glendale and Galletti
Glendale and 21st
Glendale and Industrial
Rock and I-80 EB
Rock and I-80 WB
Prater and I-80 EB
Prater and I-80 WB
McCarran and Greg
McCarran and Glendale
McCarran and Nugget
McCarran and Victorian
McCarran and Nichols
McCarran and Lincoln
McCarran and Prater
McCarran and Greenbrae
McCarran and York
McCarran and Baring
McCarran and Probasco
McCarran and 4th
McCarran and Rock
McCarran and Sullivan
Pyramid and I-80
Pyramid and Victorian
Pyramid and C
Pyramid and Prater
Pyramid and Oddie
Pyramid and Greenbrae
Pyramid and York
Pyramid and Roberta
Pyramid and McCarran
Pyramid and Queen
Pyramid and Disc
Pyramid and Los Altos
Pyramid and Golden View
Pyramid and Sparks
Pyramid and Lazy 5
Sparks and I-80 EB
Sparks and I-80 WB
Vista and I-80 EB
Vista and I-80 WB

NOTE: The controllers for highlighted intersections have been provided with the Pyramid / McCarran Intersection Project

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NDOT Signalized Intersections	41
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