

INTERLOCAL AGREEMENT

This Agreement, made and entered into the \_\_\_\_\_ day of \_\_\_\_\_, 2013, by and between the STATE OF NEVADA, acting by and through its Department of Transportation, hereinafter called the DEPARTMENT, and the CITY OF SPARKS, a municipal corporation of the State of Nevada, (hereinafter referred to as, CITY).

WITNESSETH:

WHEREAS, an Interlocal Agreement is defined as an agreement by public agencies to “obtain a service” from another public agency; 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 DEPARTMENT currently owns and maintains Interstate 80 (“I-80”) and will continue to own and maintain I-80; and

WHEREAS, the DEPARTMENT has constructed Intelligent Transportation System (ITS) devices including, but not limited to Dynamic Message Signs (DMS), Microwave Radar Detection Sensors (MRDS), Closed Circuit Television (CCTV) cameras, Travel Time Signs (TTS), fiber optic cables, conduits, junction boxes and cabinets housing related device equipment along I-80 from the Robb Drive Interchange to the Vista Boulevard Interchange, Milepost WA 9.23 to 19.67, in the Cities of Reno and Sparks, Washoe County, Nevada, to maintain the interstate pavement condition, alleviate traffic congestion and improve safety and mobility; and

WHEREAS, the purpose of this Agreement is to identify the DEPARTMENT’s and the CITY’s responsibilities for ongoing maintenance of the ITS devices; and

WHEREAS, the DEPARTMENT and the CITY are willing and able to perform as 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 permit the DEPARTMENT or the DEPARTMENT’s authorized representative to temporarily occupy the Maintenance Areas within the CITY’s right-of-way as depicted in Exhibits A & B including the eastbound lane of both Victorian Ave and Brierley Way adjacent to I-80. The Maintenance Areas include the space between the shoulder stripe and fence so long as the area is adjacent to one of the ITS devices and is necessary for maintenance purposes.

2. To permit DEPARTMENT or DEPARTMENT's authorized representative to temporarily occupy the Maintenance Area within the CITY's right-of-way as depicted in Exhibit C from the western right-of-way boundary to the southbound travel lane of a small segment of Kietzke Lane for the purpose of maintenance of a DEPARTMENT- owned fiber optic cable. This segment of Kietzke Lane will span from the roadway adjacent to the northern end of the DEPARTMENT's District II communication shop building up to the southern right-of-way boundary of the Union Pacific Railroad overpass crossing (approximately 300 feet total length). This cable will serve as a key path for a fiber optic network serving both the DEPARTMENT's and the CITY's existing and future ITS facilities/traffic signals.

3. To permit the DEPARTMENT or the DEPARTMENT's authorized representative to occupy the Maintenance Area within the CITY's right-of-way as depicted in Exhibit D along 15<sup>th</sup> Street to the north of the west parking lot of John Ascuaga's Nugget, east of the I-80/Rock Boulevard interchange. Maintenance will be performed using a bucket truck to extend up the retaining wall, beyond the freeway grade to access the equipment.

4. To include provisions in the CITY's future contracts and permit documents that require coordination between CITY's contractor and/or the CITY's permittee associated with any CITY projects that affect maintenance for the ITS. CITY agrees to coordinate such construction activities that affect ITS maintenance with the DEPARTMENT and/or the DEPARTMENT's representative. Coordinated activities may include, but will not be limited to, traffic control efforts and attendance at coordination meetings.

5. To include provisions in the CITY's future contract and permit documents to protect the run of conduit and fiber optic cable along Kietzke Lane and for any necessary modifications to be coordinated with the DEPARTMENT before issuance of CITY's future contracts and permits. All future work to be performed on this fiber optic cable shall be regulated by DEPARTMENT, and any incidental damages must be reported to DEPARTMENT within twenty-four (24) hours of the occurrence.

## ARTICLE II - DEPARTMENT AGREES

1. To retain all responsibilities for the maintenance of the ITS described herein and the DEPARTMENT-owned fiber optic cable serving the ITS devices.

2. To allow the CITY to observe, review, and inspect maintenance operations for the DEPARTMENT's ITS which are performed from the CITY rights-of-way with the understanding that all items of concern are to be reported to the DEPARTMENT and to the DEPARTMENT's District II, Maintenance Division.

3. To limit use of CITY rights-of-way for ITS maintenance as depicted in Exhibits A & B and to only occupy the eastbound lane of both Victorian Ave and Brierley Way adjacent to I-80 including the space between the shoulder stripe and fence so long as the area is adjacent to one of the ITS devices.

4. To allow the CITY to observe, review, and inspect the maintenance operations for the fiber optic cable along Kietzke Lane, as depicted in Exhibit C, from the southern right-of-way boundary of the Union Pacific Railroad overpass to DEPARTMENT's District II communications building, which are performed within the CITY rights-of-way with the understanding that all items of concern are to be reported to the DEPARTMENT and to the DEPARTMENT's District II, Maintenance Division.

5. To limit use of CITY rights-of-way for maintenance of the fiber optic cable along Kietzke Lane, as depicted in Exhibit C, from the southern right-of-way boundary of the Union Pacific Railroad overpass to DEPARTMENT's District II communications building, keeping all work within the western right-of-way boundary and the southbound travel lane.

6. To limit use of CITY rights-of-way along 15<sup>th</sup> Street located to the north of the west parking lot of John Ascuaga's Nugget for maintenance of the ITS east of the Rock Boulevard/I-80 interchange as depicted in Exhibit D. All work shall be coordinated by the DEPARTMENT with the CITY and the Nugget management prior to work each time maintenance at this location is required. The Maintenance Area includes the space between the shoulder stripe and fence so long as the area is adjacent to one of the ITS devices and is necessary for maintenance purposes.

7. Work shall only be performed after authorization from the CITY and the Nugget's management has been given each time maintenance is to be required. Maintenance is not to be performed during any event at the Nugget which may significantly increase parking lot activity.

8. To provide the CITY with approved methods of traffic control consistent with the MUTCD, NDOT Standards, and Exhibits A, B, C and D as required for the ITS device installation and maintenance within the CITY rights-of-way. Maintenance activities shall be limited to the hours of 9:00 am to 3:00 pm Monday through Friday. No maintenance work shall be performed during any legal, state or federal holiday. Any request to deviate from these hours must be approved in writing by the Deputy City Manager or his appointee.

9. To restore in kind any CITY assets damaged as a direct result from work performed for the ITS device installation and maintenance performed in CITY right-of-way.

10. To review CHANGES requested by the CITY within ten (10) working days.

11. The Department shall not permanently install any further ITS devices in the CITY's right-of-ways referenced in this Agreement without prior written approval from CITY.

12. Any repair costs necessitated by damage, no matter what the cause, to the conduit or fiber optic cable within the CITY's right-of-way depicted in Exhibit C shall be the sole responsibility of the DEPARTMENT.

### ARTICLE III - IT IS MUTUALLY AGREED

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

2. The terms of the Agreement shall commence upon and continue for as long as maintenance to the ITS elements are needed.

3. 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) 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.

4. 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 telephonic facsimile with simultaneous regular mail, or mailed 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: Thor Dyson, P.E., District II Engineer  
Nevada Department of Transportation  
District 2 Maintenance  
310 Galletti Way  
Sparks, NV 89431  
Phone: (775) 834-8300  
Fax: (775) 834-8390  
E-mail: [tdyson@dot.state.nv.us](mailto:tdyson@dot.state.nv.us)

FOR CITY: Neil Krutz, P.E., Deputy City Manager  
Attn: Jon Ericson, P.E., PTOE, Transportation Manager  
City of Sparks  
431 Prater Way  
Sparks, Nevada 89432  
Phone: (775) 353-7809  
Fax: (775) 353-1638  
E-mail: [jericson@cityofsparks.us](mailto:jericson@cityofsparks.us)

5. 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.

6. 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 actual damages, and to a prevailing party's reasonable attorney fees and costs.

7. 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.

8. 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.

9. To the fullest extent of NRS Chapter 41 liability limitations, each party shall indemnify, hold harmless and defend, not excluding the others right to participate, the other from and against all liability, claims, actions, damages, losses, and expenses, including but not limited to reasonable attorney 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 fees and costs incurred by the indemnified party due to said party exercising its right to participate with legal counsel.

10. 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.

11. 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.

12. 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.

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

14. 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.

15. Pursuant to NRS 239.010, 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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  
municipal corporation of the State of Nevada

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

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name (Print)

Approved as to Legality & Form:

ATTEST:

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

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

\_\_\_\_\_  
Name (Print)

Approved as to Form:

\_\_\_\_\_  
City Attorney