

INTERLOCAL AGREEMENT

This Agreement, made and entered into the _____ day of _____, _____, 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, Nevada 89432, hereinafter called the 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 408; 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 has entered into an agreement with the Regional Transportation Commission (RTC) to construct certain improvements to the Pyramid and McCarran Corridors, which includes improvements at the intersection of State Route 445 (Pyramid Way) and State Route 659 (McCarran Boulevard), as generally depicted on Attachment A, hereinafter called the RTC PROJECT, attached hereto and incorporated herein; and

WHEREAS, the purpose of this Agreement is to delegate authority to the CITY to perform maintenance services on certain IMPROVEMENTS which are a part of the RTC PROJECT and located within the CITY, including landscaping (trees, shrubs, revegetated areas, boulders, rock mulch, decomposed granite, and edging/borders), landscape utilities (i.e., power and water services), irrigation elements and equipment, sculptural elements, pathway lighting, walls, seating areas, concrete sidewalks and pavers, and all appurtenances thereto; 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 operate and maintain, without cost to the DEPARTMENT and in a reasonable manner the following IMPROVEMENTS located within the CITY's and the DEPARTMENT's rights-of-way: trash collection and removal outside of detention basins, landscape plantings (i.e., trees, shrubs, and revegetated areas.), landscape appurtenances (i.e., boulders, rock mulch, decomposed granite, edging/borders, landscape irrigation, and controls), pathway lighting, walls, seating areas, pavers and concrete sidewalks as necessary to maintain the improvements in a fit, safe, aesthetic, and fully functional level of performance.

2. To keep pavers and concrete sidewalk on pedestrian pathways free of debris, snow, and ice (i.e., sweeping and snow removal) as necessary to maintain the IMPROVEMENTS in a fit, safe, and fully functional level of performance.

3. To operate, maintain and provide required utility services without cost to the DEPARTMENT (i.e., electrical power, data communication, water and irrigation services, etc.) for the improvements specified in Article I, Paragraph 1, herein above.

4. To be wholly responsible to perform graffiti removal and restoration of finishes, without cost to the DEPARTMENT, on all CITY-maintained landscape improvements and walls not facing McCarran Boulevard or Pyramid Way and other IMPROVEMENTS.

5. To notify the DEPARTMENT, Utilities 24/7 Hotline at (775) 834-8488, within one (1) hour of emergency repairs, if emergency repair activities impact traffic, require lane closures, require roadway closures or require excavation through the improved surfaces of the roadway.

6. The CITY shall perform its routine maintenance work on the IMPROVEMENTS as described in this Article I, Paragraphs 1 through 4, pursuant to an approved Annual Temporary Encroachment Permit issued by the DEPARTMENT.

ARTICLE II - DEPARTMENT AGREES

1. To perform maintenance of the sculptural elements and walls constructed as part of the IMPROVEMENTS, without cost to the CITY, including portions of such walls that extend onto adjoining CITY right-of-way as necessary to maintain the walls in a fit, safe, aesthetic, and fully functional level of performance.

2. To provide debris removal and noxious weed abatement (including yearly placement of pre-emergent herbicide) within the DEPARTMENT's right-of-way as

necessary to maintain the IMPROVEMENTS in a fit, safe, and fully functional level of performance without cost to the CITY.

3. To provide maintenance of the IMPROVEMENTS, including paved maintenance roads, access roads, and fire access roads, within the DEPARTMENT's right-of-way as necessary to maintain such improvements in a fit, safe, and fully functional level of performance without cost to the CITY.

4. To be wholly responsible to perform graffiti removal and restoration of finishes, without cost to the CITY, on sculptural elements and walls facing McCarran Boulevard and Pyramid Way.

5. To be responsible for detention basin debris removal and control of access fencing within the RTC PROJECT limits as part of the DEPARTMENT's customary maintenance responsibilities.

6. To repair damage to IMPROVEMENTS due to detention basin debris removal activities by the DEPARTMENT within a reasonable time following receipt of written notice from the CITY advising of such damage.

7. To be wholly responsible for customary repair, maintenance, and debris removal within proposed drainage channels and storm drain systems located in DEPARTMENT's right-of-way.

ARTICLE III - IT IS MUTUALLY AGREED

1. Any future minor upgrades or additions by the CITY to the IMPROVEMENTS as described in Article I, Paragraphs 1 through 4, herein above may be implemented by a DEPARTMENT permit.

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

3. The term of this Agreement shall be from the date first written above through and including two (2) years from date above. This Agreement shall be automatically renewed for an additional two (2) year period on the last day of each two-year term unless a party notifies the other party in writing within thirty (30) calendar days prior to the automatic renewal of this Agreement of its intention that this Agreement expire at the completion of the two (2) year term then in effect.

4. 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 city, federal and/or State Legislature funding ability to satisfy this Agreement is withdrawn, limited, or impaired.

5. 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.: Thor Dyson, P.E., District II Engineer
Nevada Department of Transportation
310 Galletti Way
Sparks, Nevada 89431
Phone: (775) 834-8300
Fax: (775) 834-8390
E-mail: tdyson@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, Nevada 89432
Phone: (775) 353-2271
Fax: (775) 353-2390
E-mail: rkorman@cityofsparks.us

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 the recovery of actual damages, and the prevailing party's reasonable attorney's 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 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.

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 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.

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

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

Geno Martini, Mayor

Director

Approved as to Legality and Form:

Deputy Attorney General

ATTEST:

Sparks City Clerk

Approved as to Form:

Attorney

Attachment A

The project consists of the construction of additional through and turn lanes, curb, gutter, sidewalk, bike lanes and landscape and aesthetics on Pyramid Way from the intersection of Tyler Way north to approximately 1,200 feet north of the intersection of Queen Way. The construction of additional turn lanes, curb, gutter, sidewalk, bike lanes and landscape and aesthetics on N. McCarran Boulevard from the intersection of Rock Boulevard east to the intersection of 4th Street.

