

TRANSIT WIRELESS INTERLOCAL CONTRACT

THIS TRANSIT WIRELESS INTERLOCAL CONTRACT ("Agreement"), made and entered into the _____ day of _____, 2009, by and between the City of Las Vegas, Nevada, a municipal corporation in the State of Nevada ("City"), and Regional Transportation Commission of Southern Nevada, a political subdivision of the state of Nevada ("RTC"). City and RTC individually or collectively are referred to herein as the "Party" or "Parties."

RECITALS

WHEREAS, NRS 277.180 authorizes any one or more public agencies to contract with 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;

WHEREAS, City is the owner of traffic signal cabinets, service pedestals, streetlight poles, traffic signal poles, school flasher poles, traffic signal bridges, sign bridges and dynamic message sign poles and bridges (collectively "Traffic Equipment") located in the City rights-of-way ("ROW"); and

WHEREAS, RTC desires to use space within or upon certain Traffic Equipment in the ROW for construction, operation and maintenance of its telecommunications network ("Network") serving the RTC and utilizing equipment certified by the Federal Communications Commission ("FCC") and in accordance with FCC rules and regulations; and

WHEREAS, for the purpose of operating the Network, RTC wishes to locate, place, attach, install, operate, control, and maintain equipment ("Network Equipment") within or upon Traffic Equipment in the ROW; and

WHEREAS, City wishes to permit the RTC to use space within or upon certain Traffic Equipment in the ROW for operations of the Network;

NOW THEREFORE, for and in consideration of the premises, of the mutual promises and agreements that are hereinafter contained, and of other good and valuable considerations, the receipt of sufficiency of which are hereby acknowledged by each of the Parties, the Parties do hereby agree as follows:

ARTICLE I

RTC AGREES:

1. To submit to the City's Public Works Director or designee a proposed design for any Network that will include Traffic Equipment the RTC proposes to utilize for its Network Equipment. Once City evaluates the placement of the Network Equipment within or upon the Traffic Equipment, City will identify and/or approve Traffic Equipment to which RTC can attach the Network Equipment. Upon submittal of the proposed final design, City will review and approve or disapprove the proposed final design. This process shall be completed in advance of the standard City review and approval process for equipment installed in the ROW. Prior to the any City's review, all existing Traffic Equipment located within home owner's association ("HOA") common areas or easements, or within master-planned communities shall have written approval from their respective governing bodies.

2. RTC shall not attach Network Equipment to more than a total of 25 separate pieces of Traffic Equipment in the ROW within one square mile, regardless of whether such poles are owned by the City, a third party, or RTC.
3. If RTC selects Traffic Equipment that is structurally inadequate to accommodate the Network Equipment, RTC may at its sole cost and expense replace the Traffic Equipment with one that is approved by City. Upon installation, the new Traffic Equipment shall become the property of City. RTC shall follow all City policies and procedures to install new Traffic Equipment, including City's Land Development and temporary traffic control work zone requirements.
4. In the event of an emergency or to protect the public health or safety, prior to City accessing or performing any work on Traffic Equipment on which RTC has installed Network Equipment, City may require RTC to deactivate such Network Equipment if any City employees or agents must work in the vicinity of the Network Equipment. In each instance, City will contact RTC at (702) 432-5300 herein to request immediate deactivation. If RTC fails to respond within 48 hours, City may deactivate the Network Equipment and perform necessary work with no liability to the City. In the event of an emergency or at the sole discretion of City, City may deactivate the Network Equipment immediately and notify RTC subsequent to deactivation.
5. RTC staff, through its FAST division, or those City approved contractors directly hired by RTC holding the necessary certifications, shall install and maintain all Network Equipment within or upon Traffic Equipment.
6. Network Equipment shall not extend higher than 24-inches above the height of any existing Traffic Equipment. In the case of a new Network Equipment installation the overall height of the Network Equipment shall not exceed 35-feet above grade unless otherwise approved in writing by City.
7. RTC shall, at its sole cost and expense and to the satisfaction of the City:
 - (a) remove, repair or replace any Network Equipment that is damaged, becomes detached or has not been used for the Network for a period of more than 90 days; and/or
 - (b) repair any damage to Network Equipment, ROW, Traffic Equipment or property, whether public or private, caused by RTC, its agents, employees or contractors in their actions relating to attachment, operation, repair or maintenance of Network Equipment. If RTC does not remove, repair or replace such damage, City shall have the option, upon 15 days prior written notice to RTC, to perform or cause to be performed such removal, repair or replacement on behalf of RTC and shall charge RTC for the actual costs incurred by City. If such damage causes a public health or safety emergency, as solely determined by City, City may immediately perform reasonable and necessary repair or removal work on behalf of RTC and will notify RTC as soon as practicable. Upon the receipt of a demand for payment by City, RTC shall within 30 days of such receipt reimburse City for such costs. The terms of this provision shall survive the expiration, completion or earlier termination of this Agreement; and/or
 - (c) remove, repair or replace all Network Equipment that causes interference, either intended or unintended, with other equipment used by the City, or for the City's benefit. This determination of interference shall be made at the City's sole discretion.
8. RTC shall upon 90 days' written notice by City pursuant to the expiration or earlier termination of this Agreement, promptly, safely and carefully remove the Network Equipment from Traffic

Equipment. If RTC fails to complete this removal work on or before the 90 days subsequent to the issuance of notice pursuant to this Section, then the City, upon written notice to RTC, shall have the right at City's sole election, but not the obligation, to perform this removal work and charge RTC for the actual costs and expenses, including, without limitation, reasonable administrative costs. RTC shall pay to City actual costs and expenses incurred by City in performing any removal work and any storage of RTC's property after removal within thirty days of the date of a written demand for this payment from the City. After City receives the reimbursement payment from RTC for the removal work performed by City, City shall promptly make available to RTC Network Equipment belonging to RTC and removed by City pursuant to this Section. City shall not be liable for any damage to Network Equipment removed by City and delivered to RTC. If the City does not receive reimbursement payment from RTC within 60 days, or if City does not elect to remove such items at the City's cost after RTC's failure to so remove prior to 90 days subsequent to the issuance of notice pursuant to this Section, or if RTC does not remove RTC's property within 60 days of such property having been made available by City after RTC's payment of removal reimbursement as described above, any items of RTC's property remaining within or upon the Traffic Equipment or stored by City after City's removal thereof may, at City's option, be deemed abandoned and City may dispose of such property in any manner as determined by City. Alternatively, City may elect to take ownership to the abandoned property, and RTC shall submit to City an instrument satisfactory to the City transferring to the City the ownership of such property. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

9. RTC shall use the Network Equipment located within or upon Traffic Equipment in the ROW solely for its own use, and shall not sell, trade, barter, share, or allow use of any of the Network Equipment or Network's bandwidth capacity to any third party, other than City.
10. RTC shall allow access and allocate to City, if sufficient capacity exists, a portion of the Network bandwidth generated from Network Equipment located within or upon Traffic Equipment not to exceed 25 percent of the total bandwidth available with the Network. This access shall be subject to the limitations of the installed equipment's funding source. The use of this bandwidth shall be for the exclusive use of City.

ARTICLE II

CITY AGREES

1. City hereby authorizes RTC to enter upon the ROW and to locate, place, attach, install, operate, maintain, control, remove, reattach, reinstall, relocate, and replace Network Equipment within or upon Traffic Equipment for the purposes of operating and maintaining the Network.
2. To reduce the disruption to Traffic Equipment, RTC may power Network Equipment by using the power sources that service the Traffic Equipment. The power used by RTC's Network Equipment shall be determined by the usage identified on the specifications for the Network Equipment installed pursuant to this Agreement, provided that City may verify the actual power consumed by RTC's Network Equipment using measurements of the power consumed prior to the installation of the Network Equipment compared to the power consumed after the installation of the Network Equipment. If the cost of power consumed becomes greater than that of the currently agreed upon Network Equipment by 100 percent, City may require, at their sole discretion, reimbursement of power costs. All electrical work and installations related to the power-sharing authorized by this Agreement shall be performed by a licensed contractor that is approved by City and in a manner that is approved by City.

3. To process all of the requests for attachments to Traffic Equipment through the standard City processes. All fees and costs associated with the review and approval process shall remain in place, unless explicitly waived by City. This includes all fees for temporary traffic control plans required for the construction, installation, repair, and maintenance of these sites within the ROW.

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 term of this Agreement shall be from the date first written above, and shall be in effect for 10 years.
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 CITY: Ms. Elizabeth N. Fretwell
City of Las Vegas
City Manager
400 E. Stewart Ave., 8th Floor
Las Vegas, NV 89101

FOR RTC: Mr. Jacob Snow
Regional Transportation Commission
600 Grand Central Parkway
Las Vegas, NV 89106
Phone: (702) 676-1501
Fax: (702) 676-1518

5. Failure of either Party to perform any obligation of this Agreement shall be deemed a breach. Except as otherwise provided before 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's fees and costs.
6. 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 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.

7. 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.
8. 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 30 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.
9. 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.
10. 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.
11. 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.
12. Neither Party shall assign, transfer or delegate any rights, obligations or duties under this Agreement without the prior written consent of the other Party.
13. All or any property presently owned by either Party shall remain in such possession upon termination of this Agreement, and there shall be no transfer of property between the Parties during the course of this Agreement.
14. 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.

15. 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.
16. 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.
17. 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 jurisdiction of the Nevada district courts for enforcement of this Agreement.
18. 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.

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19. Counterparts; Electronic Delivery. This Agreement may be executed in counterparts, all such counterparts will constitute the same contract and the signature of any party to any counterpart will be deemed a signature to, and may be appended to, any other counterpart. Executed copies hereof may be delivered by facsimile or e-mail and upon receipt will be deemed originals and binding upon the parties hereto, regardless of whether originals are delivered thereafter.

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

Date of Council Action:

City of Las Vegas

By: _____
Oscar B. Goodman, Mayor

Attest:

Beverly Bridges, CMC
City Clerk

Approved As To Legality and Form:

Julius S. Rudella 2/26/07
Deputy City Attorney Date

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Date of Commission Action:

Regional Transportation
Commission of Southern Nevada

By: _____
Larry Brown, Chairman

Attest:

Toni Michener
Executive Assistant

Approved As To Legality And Form:

Zev Kaplan, General Counsel