

Agreement Number R335-10-015

INTERLOCAL AGREEMENT

This Agreement, made and entered into the 6th day of November, 2010 by and between the STATE OF NEVADA, acting by and through its Department of Transportation, hereinafter called the DEPARTMENT, and the City of Las Vegas, 400 East Stewart Avenue, Las Vegas, NV 89101 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; 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 INTERCHANGE is defined as the proposed System-to-System Interchange between the US 95 and the Bruce Woodbury Beltway CC-215; and

WHEREAS, the purpose of this Agreement is to develop reasonable and feasible design alternatives to improve local access to the Bruce Woodbury Beltway CC-215 and to improve local traffic movements within the proposed INTERCHANGE area, analyzing and designing selected alternatives to current DEPARTMENT standards, performing the necessary NEPA processes, and incorporating the agreed upon access and local traffic movement alternative into the existing design of the INTERCHANGE, hereinafter called the PROJECT; and

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

WHEREAS, the parties hereto are 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 reimburse the DEPARTMENT for design costs within thirty (30) days after service of the DEPARTMENT'S invoice for the DEPARTMENT'S costs, not to exceed One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00). An amendment will be executed prior to acquiring Right of Way for the PROJECT to address Right of Way costs should it be necessary acquire Right of Way or relocate utilities for the PROJECT. An amendment shall be executed addressing all construction costs and maintenance of facilities for the PROJECT.

2. To the use of current DEPARTMENT standards, specifications, and procedures for the development, analysis, and design of the local access alternatives.

3. To consider a feasible alternative, any alternative that meets DEPARTMENT design standards, is geometrically compatible with the INTERCHANGE, and does not adversely affect the operations of the INTERCHANGE.

4. Additional funding required for the purchase of any necessary right-of-way and for the construction of the agreed upon local access alternative must be identified in the Southern Nevada Regional Transportation Commission's Regional Transportation Plan (RTP), prior to the DEPARTMENT beginning work on scope items (c)-(f) of ARTICLE III Paragraph 2.

5. To review and comment, in writing, on DEPARTMENT plans and documents which involve features or items related to the PROJECT. Response shall be received within twenty one (21) calendar days of service of plans and documents. Failure of the CITY to respond within this time frame will constitute the CITY's acceptance of features or items as the PROJECT and acceptance of such plans and documents and permission for the DEPARTMENT to proceed.

6. To assist the DEPARTMENT with public meetings as necessary.

ARTICLE II - DEPARTMENT AGREES

1. To bill monthly for the design costs incurred towards the agreed upon scope of work items as stated in ARTICLE III, not to exceed One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00). An amendment will be executed prior to acquiring Right of Way for the PROJECT to address Right of Way costs should it be necessary to acquire Right of Way or relocate utilities for the PROJECT. An amendment shall be executed addressing all construction costs and maintenance of facilities for the PROJECT

2. To develop cost estimates and perform necessary analysis on the local access improvement alternatives to identify reasonable design alternatives.

3. To provide the CITY with the transportation model and operational analysis used to analyze selected local access alternatives, and to invite the CITY to review the model and analysis.

4. To provide the CITY with DEPARTMENT plans and documents which involve features or items related to the PROJECT and invite, in writing, the CITY to review and comment on all design documents and to attend all design review meetings to address said comments.

5. To provide the CITY preliminary plans and documents, final plans and specifications for the approved local access roads connecting into the INTERCHANGE, and to allow the CITY twenty one (21) calendar days to respond. The limits of the design for the local access roads shall be extended from the interchange to logical termini at intersections with arterial roads as shown on the Master Plan of Streets and Highways.

6. To conduct public meetings as necessary.

ARTICLE III - IT IS MUTUALLY AGREED

1. The DEPARTMENT and the CITY will coordinate with Clark County Public Works in developing and agreeing upon a reasonable and feasible design alternative.

2. The PROJECT shall include the following scope of work items:

(a) Development of reasonable and feasible design concepts that will improve local access within the INTERCHANGE.

(b) Development of a transportation model and operational analysis for the selected design concepts.

(c) Perform the necessary environmental studies and analysis and to complete and comply with the NEPA processes and procedures necessary to revise or update the US 95 Northwest Corridor Environmental Assessment to include the selected local access alternatives in the INTERCHANGE.

(d) Development of Sixty Percent (60%) design plans, documents, and cost estimates necessary to incorporate the selected local access alternative into the design of the INTERCHANGE.

(e) Development of Ninety Percent (90%) design plans, documents, and cost estimates necessary to incorporate the selected local access alternative into the design of the INTERCHANGE.

(f) Development of Final design plans, documents, and cost estimates necessary to incorporate the selected local access alternative into the design of the INTERCHANGE.

3. This Agreement may be terminated by the DEPARTMENT if a reasonable and feasible design alternative cannot be identified or agreed upon by the DEPARTMENT, CITY and Clark County Public Works, and the DEPARTMENT will proceed with the original design of the INTERCHANGE. This Agreement may be terminated by the DEPARTMENT if funding to acquire Right of Way and construct the PROJECT cannot be identified and obtained, and the DEPARTMENT will proceed with the original design of the INTERCHANGE as of October 2009.

4. The term of this Agreement shall be from the date first written above through and including the 31st day of December, 2014 or until the construction 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.

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

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) 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 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: Susan Martinovich, P.E., Director
Attn.: Cole Mortensen, P.E.
Nevada Department of Transportation
Project Management Division
1263 South Stewart Street
Carson City, NV 89712
Phone: (775) 888-7742
Fax: (775) 888-7322
E-mail: cmortensen@dot.state.nv.us

FOR CITY: Jorge Cervantes, P.E., Public Works Director
City of Las Vegas
City Hall
400 East Stewart
Las Vegas, NV 89101
Phone: (702) 229-6276
Fax: (702) 382-0848
E-mail: jcervantes@lasvegasnevada.gov

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 to 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 maintained for a period of three (3) years after final payment under this Agreement. If any litigation, claim or audit is started before the expiration of the three (3) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

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 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.

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. Should this Agreement be terminated by the CITY prior to completion of the PROJECT, the CITY will reimburse the DEPARTMENT for all improvement costs incurred up to the point of Agreement termination, and all costs incurred by the DEPARTMENT because of the Agreement termination.

23. Any alteration considered extra work shall be addressed through an 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 the Amendment.

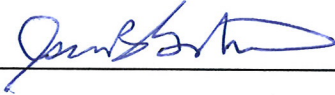
24. It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof a third party beneficiary status hereunder, or to authorize anyone not a party to this Agreement to maintain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

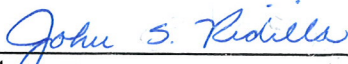
CITY OF LAS VEGAS



OSCAR B. GOODMAN
Name (Print)

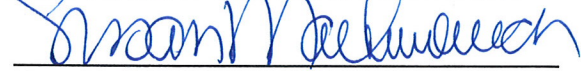
Mayor
Title (Print)

Approved as to Form:

 10/20/10
Attorney

John S. Ridilla
Deputy City Attorney

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


Director

Approved as to Legality & Form:


Deputy Attorney General

Attest: By 
BEVERLY K. BRIDGES, MMC, City Clerk