



WASHOE COUNTY

Integrity Communication Service

www.washoecounty.us

CM/ACM	<u> </u>
Finance	<u>KE/CH</u>
DA	<u>DWV</u>
Risk Mgt	<u>DE</u>
HR	<u>n/a</u>
Other	<u>n/a</u>

STAFF REPORT

BOARD MEETING DATE: *April 25, 2017*

DATE: Thursday, April 13, 2017

TO: Board of County Commissioners

FROM: Quinn Korbolic, IT Manager, Technology Services
(775)328-2348, qkorbolic@washoecounty.us

THROUGH: Craig Betts, CIO, Technology Services

SUBJECT: The Joint Operating Committee (JOC) of the Washoe County Regional Communications System (WCRCS) requests that the Washoe County Commission accept this agreement granting the Nevada Department of Transportation (NDOT) access to install new microwave communications and traffic management data equipment into select Washoe County owned and operated radio communications facilities in exchange for Washoe County Regional Communications receiving a share of the created bandwidth to be used in the ongoing operations and future expansion of the WCRCS. (All Commission Districts)

SUMMARY

The Washoe County Regional Communications System (WCRCS) Joint Operating Committee (JOC) requests that the Washoe County Commission accept this agreement allowing the Nevada Department of Transportation (NDOT) to install new microwave communications equipment into WCRCS communications facilities, allowing them to gather live traffic system data, while sharing the newly created bandwidth with WCRCS and supporting growth and updates of the communications system.

Washoe County Strategic Objective supported by this item: Safe, Secure and Healthy Communities

PREVIOUS ACTION

In October, 1999, Washoe County, the Washoe County School District, the Nevada Department of Transportation, the City of Reno, the City of Sparks and the Truckee Meadows Fire Protection District entered into an agreement to establish the Washoe County Regional Communication System (WCRCS).

On June 18, 2002, an Amendment to the Washoe County Regional 800 MHZ Communications System October 1999 Interlocal agreement was approved by the Board of County Commissioners to include updates to sponsoring a private provider such as the

application process, review and recommendation, final action and governing law and venue.

On April 22, 2014, the Board of County Commissioners approved an Interlocal Agreement between the Nevada Department of Transportation and Washoe County to share the cost of the Hardware Refresh of the Washoe County Regional Communications System Voice Interoperability Data Access (VIDA) communications system switches, in an amount not to exceed [\$500,000].

On October 14, 2014, the Board of County Commissioners approved the Interlocal Agreement between Washoe County, the Washoe County School District, the Nevada Department of Transportation, the City of Reno, the City of Sparks and the Truckee Meadows Fire Protection District to provide for the continued development and operation of the Washoe County Regional Communications System (WCRCS).

On December 13, 2016 the Board held a second reading adopted an amendment to WCC 5.456 authorizing the Chief Information Officer to negotiate and execute agreements with other public and private entities as are required to assure the continued present and future operation of Washoe County's emergency radio system(s) and to present such agreements to the Washoe County Board of Commissioners for final approval when required by law or policy; and describing that such agreements may include, without limitation, provisions for sharing the use, governance, operation, maintenance, and upgrade of any Washoe County radio system with other public or private entities, unless otherwise prohibited by law.

On January 27, 2017 The Joint Operating Committee recommended the acceptance of the agreement granting the Nevada Department of Transportation (NDOT) access to install new microwave communications and traffic management data equipment into select Washoe County owned and operated radio communications facilities in exchange for WCRCS receiving a share of the newly created bandwidth. The newly created bandwidth is to be used in the ongoing operations and future expansion of the WCRCS.

BACKGROUND

Washoe County operates a public safety communications system in partnership with 20 other federal, state, and local agencies. The Nevada Department of Transportation is an active, contributing, member of the Washoe County Regional Communications System (WCRCS)

The WCRCS will be transitioning to a Project 25 (P25) Communications System in the future. The Microwave Upgrade resulting from this agreement will support this new technology.

FISCAL IMPACT

No fiscal impact.

RECOMMENDATION

The Joint Operating Committee (JOC) of the Washoe County Regional Communications System (WCRCS) recommends that the Washoe County Commission accept this agreement granting the Nevada Department of Transportation (NDOT) access to install

new microwave communications and traffic management data equipment into select Washoe County owned and operated radio communications facilities in exchange for Washoe County Regional Communications receiving a share of the created bandwidth to be used in the ongoing operations and future expansion of the WCRCS.

POSSIBLE MOTION

Should the Board agree with the Joint Operating Committee of the Washoe County Regional Communication System, a possible motion would be: “Accept this agreement granting to the Nevada Department of Transportation (NDOT) access to install new microwave communications and traffic management data equipment into select Washoe County owned and operated radio communications facilities in exchange for Washoe County Regional Communications receiving a share of the created bandwidth to be used in the ongoing operations and future expansion of the WCRCS.”

COOPERATIVE AGREEMENT

This Agreement is 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 Washoe County, a political subdivision of the State of Nevada, 1001 E. Ninth Street, Building A, Reno, NV 89512, hereinafter called the COUNTY.

WITNESSETH:

WHEREAS, NRS 277.110 authorizes any two or more public agencies to enter into agreements for joint or cooperative action; and

WHEREAS, the parties to this Agreement are public agencies and authorized to enter into agreement in accordance with NRS 277.080 to 277.110; and

WHEREAS, a Cooperative Agreement is defined as an agreement between two or more public agencies for the "joint exercise of powers, privileges and authority;" 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, the purpose of this Agreement is to establish each party's responsibilities concerning the installation, ownership, maintenance, and operation of point-to-point and point-to-multi-point microwave communication equipment, hereinafter called the "SYSTEM," in support of Intelligent Transportation Systems (ITS) and Public Safety communications, to be installed pursuant to the DEPARTMENT's Good of the State Contract and located at the Washoe County NOC, Peavine Mountain, Chimney Peak, and Slide Mountain communication facilities; and

WHEREAS, the communication site maintenance and operation services to be provided by the COUNTY will be of benefit to the DEPARTMENT, the COUNTY, and to the people of the State of Nevada; and

WHEREAS, the COUNTY desires to grant to DEPARTMENT, and DEPARTMENT desires to accept, an exclusive, but limited Irrevocable Right to Use (IRU) for the purpose of installing DEPARTMENT-owned radio equipment on COUNTY communications facilities at specific tower and rack elevations, and an associated nonexclusive, but limited Irrevocable Right to Use the SYSTEM, as hereafter described, upon the terms and conditions hereinafter set forth; and

WHEREAS, DEPARTMENT desires to grant to COUNTY and COUNTY desires to accept, an exclusive, but limited Irrevocable Right to Use (IRU) the SYSTEM mounted on the COUNTY towers as hereafter described, upon the terms and conditions hereinafter set forth; 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 - COUNTY AGREES

1. To provide the DEPARTMENT access, at no cost, to COUNTY-owned or leased communication facilities as described in Exhibit #2 attached to the RIGHT OF ENTRY AGREEMENT, attached hereto as "Attachment 1", at Washoe County NOC, Peavine Mountain, Chimney Peak, and Slide Mountain to include equipment rack/shelves, communication infrastructure, and tower space sufficient for installation, maintenance, and operation of the SYSTEM based on availability of space. The DEPARTMENT shall be responsible for any and all costs needed to improve all towers sites and facilities based on direct feedback from the COUNTY identified in the planning and installation phases of the SYSTEM. The COUNTY reserves the right to stop work until all requested changes have been completed in accordance with COUNTY installation requirements. Refer to Exhibit #1 attached to the RIGHT OF ENTRY AGREEMENT, attached hereto as "Attachment 1", for a matrix of the Major Joint Construction/Operation Roles And Responsibilities.

2. To operate, monitor, maintain, troubleshoot, repair, obtain, and maintain required FCC licensing, and provide electrical power for the SYSTEM, including the provision of such services to the radio equipment located on the COUNTY's communication facilities located at Washoe County NOC, Peavine Mountain, Chimney Peak, and Slide Mountain. The COUNTY shall perform its duties in a manner conforming to accepted industry standards and practices and without cost to the DEPARTMENT, and the COUNTY's duties shall be undertaken in a manner conforming to accepted industry standards and practices.

3. The COUNTY shall provide the DEPARTMENT an exclusive and Irrevocable (except as set forth in the termination provisions) Right to Use (IRU) the SYSTEM mounted on the COUNTY towers with the understanding that granting this does not convey legal title to COUNTY tower(s) and the associated facilities.

ARTICLE II - DEPARTMENT AGREES

1. To retain ownership of the SYSTEM located at the Washoe County NOC, Peavine Mountain, Chimney Peak, and Slide Mountain and to fund one hundred percent (100%) of the SYSTEM equipment and installation cost with State funds; to fund one hundred percent (100%) of the annual manufacturer technical support cost with State funds; to fund one hundred percent (100%) of the cost for repair of equipment including any required repair due to failure or accidental damage. Replacement or upgrade to the SYSTEM will be mutually agreed upon by both parties.

2. To provide to the COUNTY at no cost, a microwave IP data connection with a minimum one hundred fifty (150) Mbps aggregate bandwidth per link for the following microwave communication sites:

- a. Washoe County NOC to the DEPARTMENT District 2 Yard.
- b. Washoe County NOC to Peavine Mountain.
- c. Washoe County NOC to Chimney Peak.
- d. Washoe County NOC to Slide Mountain.
- e. Peavine Mountain to Chimney Peak.

3. To establish and maintain a budget for the NOC ITS Communication Installation SYSTEM. This budget will be maintained by the Traffic Operations Division of the DEPARTMENT, and all invoices shall be submitted to the Traffic Operations Division for approval and reimbursement.

4. To provide ten (10) copies of the preliminary plans and specifications for review and comment, and to invite the COUNTY to the specification review meeting to address said comments.

5. To allow the COUNTY to observe, review, and inspect SYSTEM construction work with the understanding that all items of concern are to be reported to the DEPARTMENT's Traffic Operations Technology Manager and not to the Contractor.

6. The DEPARTMENT shall provide the COUNTY an exclusive and Irrevocable (except as set forth in the termination provisions) Right to Use (IRU) the SYSTEM mounted on the COUNTY towers with the understanding that granting this does not convey legal title to the DEPARTMENT's SYSTEM installed on COUNTY tower(s) and facilities. As part of the IRU, the DEPARTMENT shall grant the COUNTY a communications drop at the Washoe County NOC, the DEPARTMENT District 2 Yard, Peavine Mountain, Chimney Peak, and Slide Mountain for exclusive use by the COUNTY at an aggregate speed of one hundred fifty (150) Mbps at each site. Additional capacity can be requested by the COUNTY, but additional increases in bandwidth will be determined based on the current capacity and utilization of the SYSTEM at the time of the request.

7. To allow the COUNTY to review and comment on the SYSTEM change orders which involve features or items related to the SYSTEM for which COUNTY assumes a maintenance responsibility. The COUNTY written response shall be made within five (5) working days of service of change. No response from the COUNTY within this time frame shall constitute COUNTY consent and acceptance for the DEPARTMENT to proceed.

8. To comply with the terms of the Washoe County Right of Entry Agreement attached as "Attachment 1."

ARTICLE III - IT IS MUTUALLY AGREED

1. TERM OF AGREEMENT. This Agreement shall not become effective until and unless approved by appropriate official action of the governing body of each party, and shall remain in effect until January 31, 2023, unless terminated sooner pursuant to the provisions of this Agreement. This Agreement may be extended for up to two additional periods of three (3) years each, which extension shall require the approval and official actions of the governing bodies of each party hereto. Except as otherwise provided herein, upon expiration or termination of the Agreement all rights and duties created by this Agreement shall be extinguished including any IRU's and rights of entry.

2. The DEPARTMENT, the COUNTY, and its permitted assignees and users may use the DEPARTMENT's SYSTEM for any lawful purpose. Neither the DEPARTMENT nor any permitted assignees or users of the DEPARTMENT's SYSTEM shall use the DEPARTMENT's SYSTEM for any unlawful or illicit purpose. The COUNTY shall have right to use the DEPARTMENT's SYSTEM towers during the term of this Agreement.

3. The DEPARTMENT shall not, in use of the DEPARTMENT's SYSTEM, employ equipment, technologies, or methods of operation that interfere in any way with or adversely affect the SYSTEM or the use of the SYSTEM by the COUNTY or third parties or their respective radio frequencies, equipment or facilities associated therewith.

4. The Parties shall not proceed with work until the COUNTY receives a written "Notice to Proceed" from the DEPARTMENT. If either Party does commence said work prior to issuance of said Notice to Proceed, that Party shall forfeit any and all right to reimbursement for that portion of the work performed prior to said dates. Furthermore, neither Party 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 either Party 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 either Party violates the provisions of this Section, that Party waives any and all claims and damages against the other Party, 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. 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 or electronic mail 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.: Jim Whalen
Nevada Department of Transportation
Division: Traffic Operation
1263 South Stewart Street
Carson City, Nevada 89712
Phone: 775-888-7080
Fax: 775-888-7090
E-mail: jwhalen@dot.state.nv.us

FOR COUNTY: Bob Lucey, Chair
Washoe County Commission
Atten: Washoe County Manager's Office
PO BOX 11130, Reno, NV 89520-0027
Phone: 775-328-2012
Fax: 775-328-2491
E-mail: blucey@washoecounty.us

6. The COUNTY will ensure that any reports, materials, studies, photographs, negatives, drawings or other documents prepared in the performance obligations under this Agreement shall be the exclusive property of the COUNTY and the DEPARTMENT. The COUNTY will ensure any sub consultant will not use, willingly allow or cause to have such documents used for any purpose other than performance of obligations under this Agreement without the written consent of the COUNTY and the DEPARTMENT. The COUNTY shall not utilize (and shall ensure any sub consultant will not utilize) any materials, information or data obtained as a result of performance of this Agreement in any commercial or academic publication or presentation without the express written permission of the DEPARTMENT. The COUNTY (and any sub consultant) shall not reference an opinion of an employee or agent of the DEPARTMENT obtained as a result of performance of this Agreement in any publication or presentation without the written permission of the employee or agent to whom the opinion is attributed, in addition to the written permission of the DEPARTMENT.

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 attorneys' fees and costs, caused by the negligence, errors, omissions, recklessness, or intentional misconduct of its own 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 the performance of the duty of the party seeking indemnification (indemnified party), to serve the other party (indemnifying party) with written notice of actual or pending claim, 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.

9. 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.

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. An alteration ordered by the DEPARTMENT, which substantially changes the services provided for by the expressed intent of this Agreement will be considered extra work, and shall be specified in a written amendment which will set forth the nature and scope thereof. The method of payment for extra work shall be specified at the time the amendment is written.

12. 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.

13. If any provision of this Agreement is held to be illegal, invalid, or unenforceable by a court of competent jurisdiction, the parties shall, if possible, agree on a legal, valid, and enforceable substitute provision that is as similar in effect to the deleted provision as possible. The remaining portion of the Agreement not declared illegal, invalid, or unenforceable shall, in any event, remain valid and effective for the term remaining unless the provision found illegal, invalid, or unenforceable goes to the essence of this Agreement.

14. Except as otherwise expressly provided within 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. TERMINATION OF AGREEMENT

A. This Agreement may be terminated by either Party provided that a termination shall not be effective until one hundred twenty (120) 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.

B. In the event the Nevada Legislature does not appropriate sufficient or any funds for a DEPARTMENT biennium during the term of this Agreement, this Agreement shall terminate.

C. The COUNTY reasonably believes that funds can be obtained sufficiently to make all payments, or to perform its duties, during the term of this Agreement. If the COUNTY does not allocate funds for the COUNTY to perform its duties as described in this Agreement, this Agreement shall be terminated when appropriated funds expire, without penalty, charge or sanction to the COUNTY.

D. Except as otherwise provided herein, upon expiration or termination of the Agreement all rights and duties created by this Agreement shall be extinguished including any IRU's and rights of entry.

16. It is specifically agreed between the Parties executing this Agreement that it is not intended by any of the provisions of any part of the 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.

17. Each Party agrees to keep and maintain under generally accepted accounting principles full, true, and complete records and documents 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 is maintained. Such records and documentation shall be maintained for three (3) years after final payment is made.

18. 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.

19. 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, gender identity or expression, age, disability or national origin 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.

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

21. 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 engage in the cooperative action set forth herein.

22. 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.

23. 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 to be kept confidential by this Agreement.

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

25. This Agreement and the Right of Entry attached hereto as "Attachment 1" 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.

County of Washoe

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

Bob Lucey
Chair, Washoe County Commission

Director

Approved as to Form:

Approved as to Legality & Form:

Attorney

Deputy Attorney General

**ATTACHMENT 1
RIGHT OF ENTRY AGREEMENT**

THIS AGREEMENT, entered into this _____ day of _____, is made by and between COUNTY OF WASHOE, a political subdivision of the State of Nevada, through its Community Services Department (the "Landowner"), and the State of Nevada Department of Transportation, (the "Licensee"). The term Licensee includes any contractor or subcontractor hired or employed by Licensee.

1. GENERAL.

1.1 Property. Landowner is the owner of certain land located in Reno, Washoe County, Nevada, more commonly known as _____ of which is more particularly shown on Exhibit # 2, attached hereto and incorporated herein by reference (the "Property").

1.2. Entry/Improvements. Licensee desires to enter ("Entry") onto a certain portion of the Property for the purposes of installation of microwave and radio and other related equipment which equipment is necessary for improvement and upgrade of the Washoe County Radio Communication System, more commonly known as "WCRCS". See Exhibit # 2 for location(s).

1.3. Consideration. In consideration for Entry, Licensee shall be responsible for all costs and expenses related to such installation, including compliance with all applicable erosion control, drainage, air quality and dust control measures and permitting requirements.

2. TERMS OF ENTRY.

2.1. Entry and Work. Subject to compliance with the provisions of this Agreement, Licensee is hereby granted the right and license to enter the Property during the term hereof for the purposes of transporting and installing the aforementioned equipment on the Property (the "Work"). No fee shall be charged by Landowner for Entry. All Work shall be performed and made at Licensee's sole cost and expense. Licensee shall be strictly liable for all claims of, all activities of, and compliance of, all contractors, vendors, material men, and other third parties involved with the Entry and the Work. Landowner makes no warranty or representation that any material or condition existing on the Property will be fit for Licensee's intended use. Licensee shall not excavate fill material from the Property. Dust control shall be maintained by Licensee to Landowner's satisfaction and Licensee shall be responsible for compliance with all applicable air emissions requirements. All access to the Property shall be subject to the Landowner's approval and designation of route. Entry and all Work shall be scheduled and coordinated prior to commencement with the Director or designee of the Department of Regional Parks and Open Space. Licensee shall not traverse, trespass on or disturb other real property owned by Landowner, unless prior written consent from Landowner is obtained.

2.2. Non-exclusive Right. The right and license of Entry granted herein is non-exclusive. Landowner may continue to use and to enjoy the Property in any manner not inconsistent with the right of Entry granted herein.

3. TERM, COMMENCEMENT AND TERMINATION OF AGREEMENT. This Agreement shall commence, and be binding and effective on the parties, on the last date of the execution by a party hereto. This Agreement shall terminate on the date when all Work and restoration has been satisfactorily completed and approved by Landowner. All work and

restoration must be complete prior to _____. Notwithstanding, either party shall have the option of terminating this agreement upon 120 days' notice to the other party. In the event the Agreement is terminated prior to completion of the work, Licensee shall restore the Property in accordance with Paragraph 6 prior to vacating the Property.

4. **COMPLIANCE WITH REQUIREMENTS.** Licensee shall comply with all applicable permits, authorizations, laws, rules and regulations of local, state and federal governmental authorities, including, without limitation, all Environmental Laws (hereinafter defined) in performing Work, and shall take every precaution to protect and safeguard the Property.

5. **LIENS.** Licensee shall pay when due all bills and amounts due for labor, services or materials provided for or incorporated in the Property for the Work pursuant to the Entry. Licensee shall remove or cause to be removed within fifteen (15) days after recordation thereof any claims of mechanic's or material men's liens or other charges or encumbrances against the Property that arise from or relate to the Entry and the Work.

6. **RESTORATION AND INDEMNITY.** Licensee agrees to restore the Property to its original condition to the extent reasonably possible upon completion of the Work and termination of this Agreement. Licensee's obligation hereunder to restore the Property shall include, without limitation, the removal of any debris, equipment, structures, fixtures, supplies, materials and other items necessary and incidental to Entry and performance of the Work. To the fullest extent of NRS Chapter 41 liability limitations, each party shall indemnify, hold harmless and defend, not excluding the other's rights to participate, the other from and against all liability, claims, actions, damages, losses, and expenses, including but not limited to reasonable attorneys' fees and costs, caused by the negligence, errors, omissions, recklessness or intentional misconduct of its own 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 the performance of the duty of the party seeking indemnification ("indemnified party"), to serve the other party ("indemnifying party") with written notice of any actual or pending claim, within 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 or costs incurred by the indemnified party due to said party exercising its right to participate in the resolution of any such claim or cause of action.

7. **ENVIRONMENTAL.** During the term of this Agreement Licensee shall not manufacture, process, store, distribute, use, discharge, place, or dispose of any Hazardous Substances in, under or on the Property or any property adjacent thereto. For purposes hereof, "Hazardous Substances" shall include: 1) those substances defined as "hazardous substances", "hazardous materials", "toxic substances", "toxic material"; or "regulated substances" under any federal, state or local law, ordinance, regulation, statute or rule; 2) any petroleum based or related products except petroleum products used in construction of the Work performed hereunder; and 3) any other substance, material or waste regulated under any federal, state or local law, ordinance, regulation, statute or rule relating to the aforementioned, to the environment or to industrial hygiene (collectively, "Environmental Laws").

8. **NOTICES.**

All notices and demands by any party hereto to any other party, required or desired to be

given hereunder shall be in writing and shall be validly given or made only if personally delivered or deposited in the United States mail, postage prepaid, return receipt requested or if made by Federal Express or other similar delivery service maintaining records of deliveries and attempted deliveries, or if made by facsimile. Service shall be conclusively deemed made upon receipt if personally delivered or, if delivered by mail or delivery service, on the first business day delivery is attempted or upon receipt, whichever is sooner.

Any notice or demand to Landowner shall be addressed to Landowner at:

Washoe County:

Eric Crump, Operations Division Director
Washoe County Community Services Department
PO Box 11130
Reno, NV 89520

Any notice or demand to Licensee shall be addressed to Licensee at:

The parties may change their addresses for the purpose of receiving notices or demands as herein provided by a written notice given in the manner aforesaid to the others, which notice of change of address shall not become effective, however, until the actual receipt thereof by the others.

9. Miscellaneous.

A. **Assignment.** Neither this Agreement nor any rights or obligations of Licensee hereunder may be transferred, assigned or conveyed by Licensee without the written consent of Landowner, provided that Licensee may delegate performance of obligations hereunder to contractors or others performing the Work on the Property. Said delegation shall not relieve Licensee of liability hereunder.

B. **Survival of Covenants.** Any of the representations, warranties, covenants and agreements of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination shall survive the termination and shall not be merged therein.

C. **Parties Bound.** This Agreement shall be binding upon and inure to the benefit of the parties of this Agreement and their respective heirs, executors, administrators, legal representatives, successors and assigns.

D. **Severability.** If any provision of this Agreement is held to be illegal, invalid, or unenforceable by a court of competent jurisdiction, the parties shall, if possible, agree on a legal, valid, and enforceable substitute provision that is as similar in effect to the deleted provision as possible. The remaining portion of the Agreement not declared illegal, invalid, or unenforceable shall, in any event, remain valid and effective for the term remaining unless the provision found illegal, invalid, or unenforceable goes to the essence of this Agreement.

E. Time. Time is of the essence to the performance of any provision of this Agreement. If the date for performance of any provisions of the Agreement is a Saturday, Sunday, or banking holiday in the State of Nevada, the date for performance shall be extended until the next day that is not a Saturday, Sunday or banking holiday.

F. Waiver. Either party may specifically waive any breach of the terms and conditions hereof by the other party, but no waiver specified in this Section shall constitute a continuing waiver of similar or other breaches of the terms and conditions hereof. All remedies, rights, undertaking, obligations, and agreements contained herein shall be cumulative and not mutually exclusive.

G. Governing Law. The parties agree that this Agreement is entered into in the State of Nevada and shall therefore be governed by the laws of Nevada without resort to conflict of laws principles. The parties also consent to jurisdiction in the state and federal courts of Nevada and agree that such courts shall have exclusive jurisdiction over disputes arising out of the interpretation of this Agreement.

H. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an executed original, and all of which together shall constitute one and the same instrument.

I. Entirety and Amendments. This Right of Entry and the Cooperative Agreement to which it is attached embody the entire Agreement between the parties and supersede all prior Agreements and understandings if any, relating to the Property, and may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought. No oral statements or representations made before or after the execution of this Agreement regarding the subject matter of this Agreement are binding on a party, nor may any such oral statements or representations be relied on by a party.

J. Headings. Headings used in this Agreement are used for reference purposes only and do not constitute substantive matter to be considered in construing the terms of this Agreement.

K. Not a Partnership. The provisions of this Agreement are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the parties.

L. No Recordation. Neither this Agreement nor any notice hereof shall be recorded in the office of the Washoe County Recorder.

IN WITNESS WHEREOF, the parties hereto or a representative or either have set their hands and subscribed their signatures as of the date and year indicated.

LANDOWNER:

COUNTY OF WASHOE, a political subdivision of the State of Nevada

By: _____ Date: _____
Dave Solaro, Director
Washoe County Community Services Department

STATE OF NEVADA

COUNTY OF WASHOE

On the _____ day of _____, 201__, _____
personally appeared before me, a Notary Public, and acknowledged to me that the party executed
the above instrument for the purpose therein contained.

Notary Public
My Commission Expires _____

LICENSEE:

By: _____ Date _____

STATE OF NEVADA

COUNTY OF WASHOE

On the _____ day of _____, 201__, _____
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Notary Public
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Exhibit #1
MAJOR JOINT CONSTRUCTION/OPERATION ROLES AND RESPONSIBILITIES
 NDOT Microwave Sites: Peavine Mountain, Chimney Peak, and Slide Mountain

Item	Own	Install	Test, Configure, Troubleshoot	Daily Operation	Maint/Repair	EOL Repl.
NDOT Microwave System and associated equipment installed at COUNTY facilities	NDOT	NDOT	NDOT	COUNTY	COUNTY NDOT	NDOT
The act of initially installing NDOT equipment on County Towers, Snow Bridges, Building Entrances, Ladder Trays, Racks, and Facilities	N/A	NDOT	NDOT	COUNTY	COUNTY	NDOT
Additional improvements to accommodate NDOT microwave system for County Towers, Snow Bridges, Building Entrances, Ladder Trays, Racks, and Facilities	NDOT	NDOT	NDOT	County	COUNTY NDOT	NDOT
Ownership and Maintenance of County Towers, Snow Bridges, Building Entrances, Ladder Trays, Racks and Facilities	COUNTY	COUNTY	COUNTY	COUNTY	COUNTY	COUNTY

Exhibit #2

WASHOE COUNTY OWNED/LEASED COMMUNICATION SITE LOCATIONS
FOR NDOT OWNED MICROWAVE EQUIPMENT

Site Name	Address	Latitude	Longitude	Township	Range	Section
Washoe County NOC	5195 Spectrum Blvd., Reno, NV 89512	39-34-49.7N	119-48-45.7W	20N	19E	23
Peavine Mountain	N/A	39-35-22.7N	119-55-45.7W	20N	18E	23
Slide Mountain	N/A	39-18-51.7N	119-53-05.7W	17N	19E	30
Snowflake	N/A	39-14-50.7N	119-55-24.7W	16N	18E	14
Chimney Peak	N/A	39-27-36.7N	119-57-29.7W	18N	18E	4