



REGIONAL TRANSPORTATION COMMISSION

Metropolitan Planning • Public Transportation & Operations • Engineering & Construction


Metropolitan Planning Organization of Washoe County, Nevada

February 15, 2019

AGENDA ITEM 3.8

TO: Regional Transportation Commission

FROM: Blaine Petersen, P.E.
Engineer II



Lee G. Gibson, AICP
Executive Director

SUBJECT: Interlocal Cooperative Agreement with NDOT for Fiber Optic Sharing

RECOMMENDATION

Approve an Interlocal Cooperative Agreement (ICA) with the Nevada Department of Transportation (NDOT) for shared use of fiber optic communication infrastructure; authorize the RTC Executive Director to execute the agreement.

SUMMARY

NDOT currently owns and maintains fiber optic communication lines along I-580 and I-80, and allows the RTC to connect to and use certain portions of this fiber for non-critical transportation data.

The attached proposed ICA (see Attachment A) further defines responsibilities and terms between NDOT and the RTC for this proposal.

FISCAL IMPACT

There is no fiscal impact associated with this item.

PREVIOUS ACTIONS BY BOARD

July 15, 2016 Approved Interlocal Agreement with NDOT for Fiber Optic Use

ADDITIONAL BACKGROUND

This is a revision of the previous agreement with additional language to better define role, responsibilities of NDOT and RTC; and to install fiber optic infrastructure where possible with additional capacity for use by local agencies and NDOT.

ADVISORY COMMITTEE(S) RECOMMENDATION

There are no advisory committee recommendations regarding this agenda item.

Attachment

INTERLOCAL AGREEMENT

This Agreement, made and entered into on _____, 2019, by and between the State of Nevada, acting by and through its Department of Transportation, hereinafter called the "DEPARTMENT", and REGIONAL TRANSPORTATION COMMISSION (RTC) OF WASHOE COUNTY, hereinafter called the "RTC". Individually they are each a "Party" and collectively they are the "Parties."

WITNESSETH:

WHEREAS, NRS 277.180 provides that any one or more public agencies may 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 contract is authorized by law to perform, including those for the purposes of joint use or operation of a system of public transportation pursuant to NRS 277.180(g); and

WHEREAS, pursuant to the provisions contained in Chapter 408 of the Nevada Revised Statutes (NRS), 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; and

WHEREAS, the purpose of this Agreement is to set forth the terms and conditions for the provision of telecommunications needs and services from DEPARTMENT's telecommunication infrastructure to RTC's telecommunication infrastructure and from RTC's telecommunication infrastructure to DEPARTMENT's telecommunication infrastructure for the purpose of providing efficient transportation services to the people of the State of Nevada; and

WHEREAS, telecommunication infrastructure is defined as network switches; network IP address management; and facility communications cabling to include but not limited to fiber optics, copper, wireless communications medium and spare conduit, hereinafter called "INFRASTRUCTURE"; and

WHEREAS, the purpose of this Agreement is to delegate authority to RTC to manage services of the DEPARTMENT's INFRASTRUCTURE dedicated to RTC, and to delegate authority to the DEPARTMENT to manage services of the RTC's INFRASTRUCTURE dedicated to DEPARTMENT in accordance with the Agreement; and

WHEREAS, sharing INFRASTRUCTURE, maintenance and services between RTC and DEPARTMENT will be of benefit to each party and to the people of the State of Nevada; and

WHEREAS, sharing telecommunication infrastructure, maintenance and services between RTC and DEPARTMENT will be for transportation purposes only and is defined as data for non-commercial purposes; and

WHEREAS, the RTC is willing and able to perform the services described herein; and

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WHEREAS, this Agreement will supercede and replace in its entirety agreement NM490-16-016 dated 8-25-2016.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, it is agreed as follows:

ARTICLE I - RTC AGREES

1. To reserve twelve (12) dark strands of single mode fiber optic cable (white buffer tube) within all RTC INFRASTRUCTURE for DEPARTMENT's use and to allow the DEPARTMENT to occupy spare conduit upon approval by the RTC within RTC's INFRASTRUCTURE.

2. The RTC's INFRASTRUCTURE is for Transportation Purposes only and is not intended to be used by the DEPARTMENT's mission critical applications.

3. In the event of emergency or unplanned RTC INFRASTRUCTURE failure the RTC will provide its best effort to identify the cause of and rectify failures in a timely manner to minimize outages. The troubleshooting will start with checking network issues, then inspecting the physical structure of the switches, and finally testing the physical structure of the fiber cables. The RTC shall fund one hundred percent (100%) for all approved and completed maintenance and repairs to RTC INFRASTRUCTURE. The RTC makes no assurances that repairs to failure will be corrected within a predetermined time.

4. To provide five (5) calendar days' notice to the DEPARTMENT for any planned network upgrade, modification, planned outages, maintenance or repairs that affects DEPARTMENT.

5. To, at all times, maintain control over and have complete responsibility over all personnel who have physical access to or who manage content delivery over DEPARTMENT's INFRASTRUCTURE.

6. To not operate their network or engage in any activity that is likely to cause harm to or disrupt DEPARTMENT's INFRASTRUCTURE or users of the DEPARTMENT's INFRASTRUCTURE.

7. To provide all necessary equipment and infrastructure and to pay for all costs of labor as may be necessary to connect RTC facilities to DEPARTMENT's INFRASTRUCTURE.

8. The RTC shall not offer to any other entity any portion of the capacity that has been assigned to RTC by DEPARTMENT without the expressed written approval of DEPARTMENT.

9. To maintain the security and integrity of DEPARTMENT's INFRASTRUCTURE by limiting access to RTC's equipment by only allowing adequately trained and certified persons.

10. To comply with all DEPARTMENT policies and procedures regarding third party access to the network prior to and while operating on DEPARTMENT's INFRASTRUCTURE. RTC shall not make any changes to the DEPARTMENT's INFRASTRUCTURE without prior written approval from the DEPARTMENT's INFRASTRUCTURE ITS Network Administrator. RTC may make changes to DEPARTMENT's INFRASTRUCTURE allocated to them using a DEPARTMENT approved contractor and system integrator after receiving the NTP and with full oversight by the DEPARTMENT.

11. To contact the DEPARTMENT for all maintenance and repair of any part of the

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DEPARTMENT's INFRASTRUCTURE used by the RTC. In this case, maintenance and repair will be completed by a DEPARTMENT approved contractor and/or system integrator. The maintenance and repair plan shall be submitted by the RTC sixty (60) calendar days prior to start of the planned maintenance and repair.

12. To be responsible to submit to the DEPARTMENT the test results for review and approval thirty (30) calendar days after any planned maintenance and repair.

13. To fund one hundred percent (100%) for all approved and completed maintenance and repairs after troubleshooting indicates that RTC's maintenance or repair is for RTC INFRASTRUCTURE and is within established RTC jurisdiction.

14. To be directly responsible for damages to DEPARTMENT property, facilities and/or equipment attributed to the RTC's personnel, equipment and/or activities.

15. To submit to the DEPARTMENT all plans for construction required for RTC to connect to the DEPARTMENT INFRASTRUCTURE and that occurs within a DEPARTMENT structure (manhole, equipment room, colocation space, etc.) or right-of-way thirty (30) calendar days in advance for approval.

16. The RTC and all successors, executors, administrators, and assigns of the RTC's interest in the Agreement shall be bound to the DEPARTMENT to the full legal extent to which the RTC is bound with respect to each of the terms of the Agreement.

ARTICLE II - DEPARTMENT AGREES

1. To reserve twelve (12) dark stands of single mode fiber optic cable (slate buffer tube) within all DEPARTMENT INFRASTRUCTURE for RTC's use and to allow the RTC to occupy spare conduit upon approval by the DEPARTMENT within the DEPARTMENT's INFRASTRUCTURE.

2. The DEPARTMENT's INFRASTRUCTURE is for transportation purposes only and is not intended to be used by the RTC's mission critical applications.

3. In the event of emergency or unplanned DEPARTMENT INFRASTRUCTURE failure the DEPARTMENT will provide its best effort to identify the cause of and rectify failures in a timely manner to minimize outages. The troubleshooting will start with checking network issues, then inspecting the physical structure of the switches, and finally testing the physical structure of the fiber cables. The DEPARTMENT shall fund one hundred percent (100%) for all approved and completed maintenance and repairs to DEPARTMENT INFRASTRUCTURE. The DEPARTMENT makes no assurances that repairs to failure will be corrected within a predetermined time.

4. To provide five (5) calendar days' notice to RTC for any planned network upgrade, modification, planned outages, maintenance or repairs that affects RTC.

5. To, at all times, maintain control over and have complete responsibility of all personnel who have physical access to or who manage content delivery over RTC's INFRASTRUCTURE.

6. To not operate its network or engage in any activity that is likely to cause harm to or disrupt RTC's INFRASTRUCTURE or users of RTC's INFRASTRUCTURE.

7. To provide all necessary equipment and infrastructure and to pay for all costs of labor as may be necessary to connect DEPARTMENT facilities to RTC's INFRASTRUCTURE.

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8. The DEPARTMENT shall not offer to any other entity any portion of the capacity that has been assigned to DEPARTMENT by RTC without the expressed written approval of RTC.

9. To maintain the security and integrity of RTC's INFRASTRUCTURE by limiting access to DEPARTMENT's equipment by only allowing adequately trained persons.

10. To comply with all RTC policies and procedures regarding third party access to the network prior to and while operating on RTC's INFRASTRUCTURE. The DEPARTMENT shall not make any changes to the RTC's INFRASTRUCTURE without prior written approval from the RTC's INFRASTRUCTURE ITS Network Administrator. DEPARTMENT may make changes to RTC's INFRASTRUCTURE allocated to them using an RTC approved contractor and system integrator after receiving the NTP and with full oversight by the RTC.

11. To contact the RTC for all maintenance and repair of any part of the RTC's INFRASTRUCTURE used by the DEPARTMENT. In this case, maintenance and repair will be completed by an RTC approved contractor and/or system integrator. The maintenance and repair plan shall be submitted by the DEPARTMENT sixty (60) calendar days prior to start of the planned maintenance and repair.

12. To be responsible to submit to the RTC the test results for review and approval thirty (30) calendar days after any planned maintenance and repair.

13. To fund one hundred percent (100%) for all approved and completed maintenance and repairs after troubleshooting indicates that the DEPARTMENT's maintenance or repair is for DEPARTMENT INFRASTRUCTURE and is within established DEPARTMENT right-of-way.

14. To be directly responsible for damages to RTC property, facilities and/or equipment attributed to the DEPARTMENT's personnel, equipment and/or activities.

15. To submit to the RTC all plans for construction required for the DEPARTMENT to use or connect to the RTC INFRASTRUCTURE and that occurs within a RTC structure (manhole, equipment room, colocation space, etc.) or right-of-way thirty (30) calendar days in advance of construction for approval.

16. The DEPARTMENT and all successors, executors, administrators, and assigns of the DEPARTMENTS's interest in the Agreement shall be bound to the RTC to the full legal extent to which the DEPARTMENT is bound with respect to each of the terms of the Agreement.

ARTICLE III - IT IS MUTUALLY AGREED

1. The parties will retain ownership of their respective INFRASTRUCTURE.

2. The term of this Agreement is from the date first written above and shall not become effective until and unless approved by appropriate official action of the governing body of each part, and shall remain in effect until April 1, 2021, unless terminated sooner pursuant to the provisions of this Agreement. This Agreement shall be automatically renewed for an additional two (2) year period on April 1, 2021 and automatically renew on the last day of each two (2) year term unless a party notifies the other party in writing within one hundred twenty (120) calendar days prior to the automatic renewal of this Agreement of its intention that this Agreement should expire at the completion of the two (2) year term then in effect.

3. Should a portion of failing INFRASTRUCTURE cross a boundary of responsibility, NDOT will take the lead in determining the cause of failure by troubleshooting steps as described in Article II, Paragraph 3. Results of testing will determine repair responsibility and the PARTIES

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will follow Article I, Paragraph 11 and Article II, Paragraph 11.

4. This Agreement may be terminated by either party prior to the date set forth above, 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. 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.

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:

Kristina Swallow, P.E., Director
Attn.: Seth Daniels, P.E., Assistant Chief Traffic Engineer
Nevada Department of Transportation
Division: Traffic Operations
1263 South Stewart Street
Carson City, Nevada 89712
Phone: (775) 888-7566
Fax: (775) 888-7090
E-mail: sdaniels@dot.nv.gov

FOR RTC:

Lee G. Gibson, AICP, Executive Director
Attn.: Blaine Petersen, Project Manager
Regional Transportation Commission of Washoe County
1105 Terminal Way, Suite 108
Reno, NV 89502
Phone: (775) 332-2137
Fax: (775) 348-1051
E-mail: bpetersen@rtcwashoe.com

7. Each party agrees to keep and maintain under generally accepted accounting principles full, true, and complete records and documents (written, electronic, computer related, or otherwise) pertaining to this Agreement and present, at any reasonable time, such information for inspection, examination, review, audit, and copying at any office where such records and documentation are maintained. Such records and documentation shall be retained for three (3) years after final payment is made.

8. 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.

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. 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.

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10. 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.

11. 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.

12. 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.

13. Failure to declare a breach or the actual waiver of any 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, including another breach of the same provision.

14. 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.

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

16. 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.

17. 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.

18. 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.

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19. 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.

20. 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.

21. No transfer or assignment of any rights of either party under this Agreement may be made without the express written approval of each party.

22. The parties may, by mutual written agreement, modify or amend this Agreement.

23. 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.

24. 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.

Regional Transportation Commission (RTC)
of Washoe County

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

Executive Director

Director

Approved as to Legality and Form:

Deputy Attorney General

Approved as to Form:

Dale Ferguson, RTC Chief Counsel