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OFFICIAL RECORDS

Requested By

Dc/County Manager

DOUGLAS COUNTY RECORDERS

Karen Ellison - Recorder

Page: 1 Of 9

Fee: \$ 0.00

Bk: 1012 Pg: 1493



Deputy: sg

Assessor's Parcel Number: N/A

Date: OCTOBER 5, 2012

Recording Requested By: _____

Name: NIKKI, COUNTY MANAGER'S OFFICE
 & TAMMY, COMMUNICATION

Address: _____

City/State/Zip: _____

Real Property Transfer Tax: \$ N/A

 INTERLOCAL AGREEMENT #2012.211

(Title of Document)

This page added to provide additional information required by NRS 111.312 Sections 1-2. (Additional recording fee applies)

This cover page must be typed or legibly hand printed.

FILED

2012.211

INTERLOCAL AGREEMENT BETWEEN DOUGLAS COUNTY, CARSON CITY, LYON COUNTY AND STOREY COUNTY TO DEVELOP, OPERATE, AND MAINTAIN A MULTI-COUNTY ETHERNET MICROWAVE INTERCONNECT

2012 OCT -5 AM 9:48

TED THRAN
CLERK

This Agreement is made by and between Douglas County (Douglas), Carson City, Lyon County, and Storey County (referred to at times collectively herein as "the Parties" or individually as a "party"), each a political subdivision of the State of Nevada.

RECITALS

WHEREAS, the Parties are public agencies under Nevada Revised Statute (NRS) 277.100; and

WHEREAS, NRS 277.180(1) 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 contracting agencies is authorized by law to perform; and

WHEREAS, the Parties have constructed an Ethernet Microwave System connecting repeater sites and building(s) within each jurisdiction; and

WHEREAS, the Parties intend to provide an interconnect between four county governments, eight fire/EMS districts and various other districts (the "Project"). The types of services intended to be provided by this network are unlimited and only restricted by the bandwidth and the governing structure established by this agreement.

NOW THEREFORE, in consideration of the mutual covenants set forth below, the Parties agree as follows:

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

2. Term of Agreement. This Agreement shall be effective upon approval by each of the Parties' Board of County Commissioners or Board of Supervisors and shall remain in effect for five years from the date of approval. This agreement shall be automatically renewed for additional five year time periods unless terminated by any Party set forth in this Agreement 60 days prior to the renewal date.

3. Termination. This Agreement may be terminated by all Parties prior to the date set forth in paragraph (2), provided that a termination shall not be effective until 30 days after all Parties have agreed to terminate. This Agreement may only be terminated by mutual consent of all Parties without cause. This Agreement may be terminated by any party with cause. The Parties expressly agree that this Agreement

shall be terminated, by any party, immediately if for any reason Federal, State, or County funding ability to satisfy the Agreement is withdrawn, limited or impaired .

4. Notices. All written notices or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been 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 addresses set forth below:

County Manager, Douglas County
P. O. Box 218
Minden, NV 89423

City Manager, Carson City
201 N. Carson St., Suite 2
Carson City, NV 89701

County Manager, Lyon County
27 S. Main St.
Yerington, NV 89447

County Manager, Storey County
P.O. Box 846
Virginia City, NV 89440

Changes may be made in the names and addresses of the persons to whom notices are to be given pursuant to this paragraph.

5. INCORPORATED ACTIONS. The Parties agree that the services to be performed shall be specifically described as follows:

A. Administrative Committee

1. An Administrative Committee shall be established. The Parties chief administrative officer will each appoint one (1) individual to serve on this committee. Each of the appointed members will have one vote.
2. The Administrative Committee will be responsible to develop an operational and management structure that will provide for the continued development, operation, and maintenance of the system. At a minimum, the Administrative Committee will establish two sub-committees indicated in (a) and (b) below.

The Operations and Technology sub-committee will be responsible to conduct research, make recommendations,

and suggestions to the Administrative Committee. The Administrative Committee will be the final approving authority.

- a. Operations sub-committee: Individuals will be appointed by the Elected or Appointed Department Head for each discipline indicated below. The appointed individuals will be representatives of their agency and will have the authority to speak for their agency.

This sub-committee will be comprised of one official from each of the following disciplines:

- Fire – one representative from each District or Department within the County
- Law Enforcement – one representative from each agency in the county
- EMS – One representative from each District or Department within the county (if a given County has a combined fire and EMS agency this discipline will be eliminated)
- Emergency Management – one individual from each county representing Emergency Management and general government.

- b. Technology Sub-Committee: Individuals will be appointed by the by the parties chief administrative officer. The appointed individuals will be representatives of their County.

The sub-committee will be comprised of one official from each of the following disciplines:

- Information Technology – one representative from each County.
- Land Radio System – one representative from each County.

- 3. The Administrative Committee can develop such other guidelines, operational procedures, policies, sub-committee etc. that they deem necessary for the operation of the system, provided the development of such documents do not conflict with NRS, local ordinances, or other agreements.

B. Responsibilities of all Parties

1. The Parties agree to maintain and repair existing equipment and facilities – including the repeater sites and building – in their respective jurisdictions.
2. Each entity maintains ownership of its own facilities and equipment within its jurisdictional boundaries and no transfer of ownership is implied as part of this agreement.
3. Each entity is responsible for the maintenance of its own facilities and equipment within its jurisdictional boundaries.
4. Each party must exercise reasonable care in the performance of its obligations and rights under this agreement to ensure that the other party's facilities and operations are not impaired or damaged.
5. If any occurrence or conditions during operation or maintenance of the Project threaten the physical integrity or operational capability of a party's separate facilities, upon notification to the other Parties the affected party may stop operation or maintenance of the Project or take any action that the affected party determines to be necessary to protect its own separate facilities. Any party may remove part of the equipment, if required, for emergency repair of its separate facilities provided that such affected facilities or equipment are restored as soon as possible by the removing party.

6. INSPECTION AND AUDIT.

A. Books and Records. Each party agrees to keep and maintain under general accepted accounting principles full, true and complete records, agreements, books, and documents as are necessary to fully disclose to the other Parties, the State or United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with any applicable regulations and statutes.

B. Inspection and Audit. Each party agrees that the relevant books, records (written, electronic, computer related or otherwise), including but not limited to relevant accounting procedures and practices of the party, financial statements and supporting documentation, and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location where such records may be found, with or without notice by the other Parties, the State or Federal government.

C. Period of Retention. All books, records, reports, and statements relevant to this Agreement must be retained by each party pursuant to state and federal retention requirements. The retention period runs from the date of termination of this Agreement. Retention time shall be

extended when an audit is scheduled or in progress for a period reasonably necessary to complete the audit and/or to complete any administrative and judicial litigation which may ensue.

7. Breach; Remedies. Failure of any 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 actual damages, and to a prevailing party reasonable attorney's fees and costs.

8. Limited Liability. The Parties will not waive and intend to assert available NRS Chapter 41 liability limitations in all cases. Contract liability of all Parties shall not be subject to punitive damages. To the extent applicable, actual contract damages for any breach shall be limited by NRS 354.626.

9. Indemnification.

A. To the extent permitted by law, including, but not limited to, the provisions of Nevada Revised Statutes Chapter 41, each party shall indemnify, hold harmless and defend, not excluding the other's right to participate, the other party 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 indemnifying party, its officers, employees and agents. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of the indemnity which would otherwise exist as to any party or person described in this paragraph.

B. Except as otherwise provided in Subsection (d) below, the indemnifying party(ies) shall not be obligated to provide a legal defense to the indemnified party(ies), nor reimburse the indemnified party(ies) for the same, for any period occurring before the indemnified party(ies) provides written notice of the pending claim(s) or cause(s) of action to the indemnifying party(ies), along with:

1. a written request for a legal defense for such pending claim(s) or cause(s) of action; and
2. a detailed explanation of the basis upon which the indemnified party(ies) believes that the claim or cause of action asserted against the indemnified party(ies) implicates the culpable conduct of the indemnifying party(ies), its officers, employees, and/or agents.

C. After the indemnifying party(ies) has begun to provide a legal defense for the indemnified party(ies), the indemnifying party(ies) shall not be obligated to fund or reimburse any fees or costs provided by any additional counsel for the indemnified party(ies), including counsel through which the indemnified party(ies) might voluntarily choose to participate in its defense of the same matter.

D. After the indemnifying party(ies) has begun to provide a legal defense for the indemnified party(ies), the indemnifying party(ies) shall be obligated to reimburse the reasonable attorney's fees and costs incurred by the indemnified party(ies) during the initial thirty (30) day period of the claim or cause of action, if any, incurred by separate counsel.

10. Force Majeure. No 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 limitation, 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 this Agreement after the intervening cause ceases.

11. Independent Public Agencies. The Parties are associated with each other only for the purposes and to the extent set forth in this Agreement, and in respect to performance of services pursuant to this Agreement, each party is and shall be a public agency separate and distinct from the other party and, subject only to the terms of this Agreement, shall have the sole 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.

12. Breach. The public interest is not served by the termination of the Agreement by one of the Parties absent an opportunity to resolve the alleged breach or have its position on the claimed breach heard before a qualified mediator as described herein.

If a party to this Agreement is in breach, any other party to the Agreement alleging the breach must provide written notice to the other party specifying the nature of the violation and allowing 30 days for the party in breach to correct the violation. If the breach is not corrected within the 30 day period then the matter may be submitted to non-binding mediation. If the Parties are unable to agree on a person to act as a neutral mediator, a request for a mediator shall be made to the Federal Mediation and Conciliation Services (FMCS) by a party. Any costs of mediation shall be split by the

Parties to the mediation. If the Parties are unable to resolve the issue through mediation, within ten (10) working days a party may submit the matter to any Nevada district court within the jurisdiction of one of the Parties to this Agreement.

13. Waiver of Breach. Failure to declare a breach or the actual waiver of any particular breach of the Agreement or its material or nonmaterial terms by any party shall not operate as a waiver by the Parties of any of their rights or remedies as to any other breach.

14. Severability. If any provision contained in this Agreement is held to be unenforceable by a court of law or equity, this Agreement will be construed as if the provision did not exist and the non-enforceability of the provision will not be held to render any other provision or provisions of this Agreement unenforceable.

15. Assignment. No party shall assign, transfer, sublet, or delegate any rights, obligations or duties under this Agreement without the prior written consent of the other Parties.

16. Ownership of Proprietary Information. Unless otherwise provided by law or this Agreement, any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code (which is intended to be consideration under this Agreement), or any other documents or drawings, prepared or in the course of preparation by any party in performance of its obligations under this Agreement shall be the joint property of all Parties.

17. Public Records. 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 made confidential by law or a common law balancing of interests.

18. Confidentiality. 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.

19. Proper Authority. 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 in paragraph (5).

20. Governing Law; Jurisdiction. 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 in any of the Parties' jurisdiction for enforcement of this Agreement.

21. Entire Agreement and Modification. This Agreement constitutes the entire agreement of the Parties and such are 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.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be signed and intend to legally bound thereby.

Douglas County Board of Commissioners

By: [Signature]
Les Bonner, Chair

Carson City Board of Supervisors

By: [Signature]
Robert L. Crowell, Mayor

Lyon County Board of Commissioners

By: [Signature]
Chuck Roberts, Chair

Storey County Board of Commissioners

By: [Signature]
Robert Kershaw, Chair

Attest: [Signature]
By: [Signature]
Ted Thran, Douglas County Clerk

By: [Signature]
Clerk to the Board

Attest:
By: [Signature]
Nikki Bryan, Lyon County Clerk

Attest:
By: [Signature]
Alan Glover, Carson City Clerk/Recorder

Attest:
By: [Signature]
Vanessa DuFresne, Storey County Clerk

CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original on file and on record in my office.

DATE: Oct 5, 2012
[Signature] Clerk of the 9th Judicial District Court
of the State of Nevada, in and for the County of Douglas.
By: [Signature] Deputy