

Assessor's Parcel Number:  N/A

Date:  AUGUST 23, 2018

Recording Requested By:

Name:  NATALIE WOOD, COUNTY MANAGER'S OFFICE

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Real Property Transfer Tax: \$  N/A



KAREN ELLISON, RECORDER

INTERLOCAL AGREEMENT #2018.192

(Title of Document)

FILED

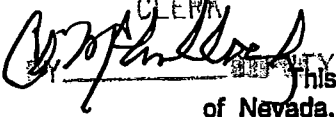
NO. 2018.192

2018 AUG 23 AM 9: 59

Agreement Number R327-18-201

DOUGLAS COUNTY  
CLERK

INTERLOCAL AGREEMENT



This Agreement, made and entered into on 08/17/2018, by and between the State of Nevada, acting by and through its Department of Transportation, hereinafter called the "DEPARTMENT", and Douglas County Community Development at 1594 Esmeralda Ave., Minden, NV 89423, hereinafter called the "COUNTY."

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 ("NRS"), the Director of the DEPARTMENT may enter into those 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 establish the COUNTY's contribution of funds toward the improvement of the Highland Way Approach to a Modified Type 4 at the junction of US 395 at SR 208 (Holbrook Junction) in Douglas County, Nevada, hereinafter "PROJECT;" and

WHEREAS, the services of the COUNTY will be of benefit to the DEPARTMENT and to the people of the State of Nevada; and

WHEREAS, the COUNTY is 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 with a contribution of Twenty-Five Thousand Three Hundred Fifty-Three and No/100 Dollars (\$25,353.00) towards the PROJECT.
2. To contribute funds to the DEPARTMENT within thirty (30) calendar days after receiving the notice of completion of the PROJECT.
3. To acknowledge the completion of the PROJECT does not obligate the DEPARTMENT to any future maintenance responsibilities for the Highland Way Approach.
4. To obtain all necessary DEPARTMENT occupancy and temporary permits for the Highland Way Approach and related features.
5. To obtain a DEPARTMENT temporary occupancy permit for any maintenance work within the DEPARTMENT's right-of-way.

## ARTICLE II - DEPARTMENT AGREES

1. To fund the PROJECT with state funds. This includes the Twenty-Five Thousand Three Hundred Fifty-Three and No/100 Dollars (\$25,353.00) contribution from the COUNTY.
2. To prepare the contract plans, specifications, bid estimates, and the special provisions, and to issue any required supplemental notices.
3. To advertise, award, and administer the construction of the PROJECT.
4. To provide the COUNTY with preliminary plans and specifications for review and comment, and to invite the COUNTY to the specification review meeting to address such comments.
5. To allow the COUNTY to observe, review, and inspect the PROJECT construction work with the understanding that all items of concern are to be reported to the DEPARTMENT's Resident Engineer and not the Contractor.
6. To issue the COUNTY a Category IV Highway Access Approach occupancy permit at no cost to the COUNTY.
7. To bill the COUNTY for its contribution of the Twenty-Five Thousand Three Hundred Fifty Three and No/100 Dollars (\$25,353.00) within thirty (30) calendar days after receiving the notice of completion of the PROJECT.
8. To provide the COUNTY with the notice of completion of the PROJECT.
9. To observe, review, and inspect all work associated with the project during construction with the understanding that any and all items of concern are reported to the DEPARTMENT's Resident Engineer for correction.

## ARTICLE III - IT IS MUTUALLY AGREED

1. The term of this Agreement shall be from the date first written above through and including December 31, 2020, or until the DEPARTMENT receives the COUNTY's contribution and 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 comes first.
2. This Agreement shall not become effective until and unless approved by appropriate official action of the governing body of each party.
3. The parties agree to allow each other to observe, to inspect project construction and to review applicable change orders in a timely manner which prevents PROJECT delay. All change order requests shall be made in writing. Each party shall complete its review of all change orders submitted to it by the other party, within five (5) working days after service of such change orders. In the event the COUNTY does not provide the DEPARTMENT with a written response to the DEPARTMENT's change orders within five (5) working days following the DEPARTMENT's service of such change orders, the DEPARTMENT will proceed with the change orders so as not to delay the PROJECT, and will assume no liability therefor. The COUNTY shall be responsible for all costs associated with change orders requested by the COUNTY. It is the intention of the

parties that this review does not constitute a joint exercise of powers pursuant to NRS 277.080 to 277.170.

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 thirty (30) 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:

Rudy Malfabon, P.E., Director  
Attn.: Tara Smaltz  
Nevada Department of Transportation  
Division: District II Traffic  
310 Galletti Way  
Sparks, NV 89431  
Phone: 775-834-8320  
Fax: 775-834-8390  
E-mail: tsmaltz@dot.nv.gov

FOR COUNTY:

Lawrence A. Werner  
Douglas County Manager  
1594 Esmeralda Avenue  
Minden, NV 89423  
Phone: 775-782-9821  
Fax: 775-782-6297  
E-mail: lwerner@douglasnv.us

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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, including another breach of the same provision.

13. 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.

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

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. The DEPARTMENT does not provide any warranty that the estimate is an accurate reflection of the final cost. The DEPARTMENT disclaims any such warranty. The final costs may vary widely depending on the Contractor's bid prices. The COUNTY shall be wary in its reliance on the estimates set forth in the Agreement.

21. The DEPARTMENT will award the total contract in accordance with its rules and procedures under the Standard Specifications for Road and Bridge Construction to the lowest responsive and responsible bidder. The DEPARTMENT has the right to reject any and all bid proposals determined not to be in the best interest of the State.

22. Construction engineering costs will be the actual construction engineering costs incurred by the DEPARTMENT during the construction of the PROJECT.

23. The COUNTY will ensure that any reports, materials, studies, photographs, negatives, drawings, or other documents prepared in the performance of obligations under this Agreement shall be the exclusive property of the COUNTY and the DEPARTMENT. The COUNTY will ensure that any 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 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 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.

24. Any alteration considered extra work shall be addressed through a written amendment to this Agreement. The amount and payment for extra work, as well as designation of responsibility for payment of such work, shall be specified in such amendment.

25. Any recipient or subrecipient of funds under this agreement agrees to comply with the Federal Funding Accountability and Transparency Act and implementing regulations at 2 CFR Part 170, including Appendix A available at <http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf>.

26. 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.

27. 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.

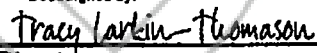
28. This Agreement constitutes the entire agreement of the parties and such is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment 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.

Douglas County

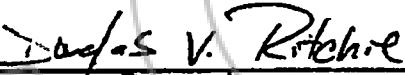
  
\_\_\_\_\_  
Douglas County Manager

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

DocuSigned by:  
  
\_\_\_\_\_  
Director

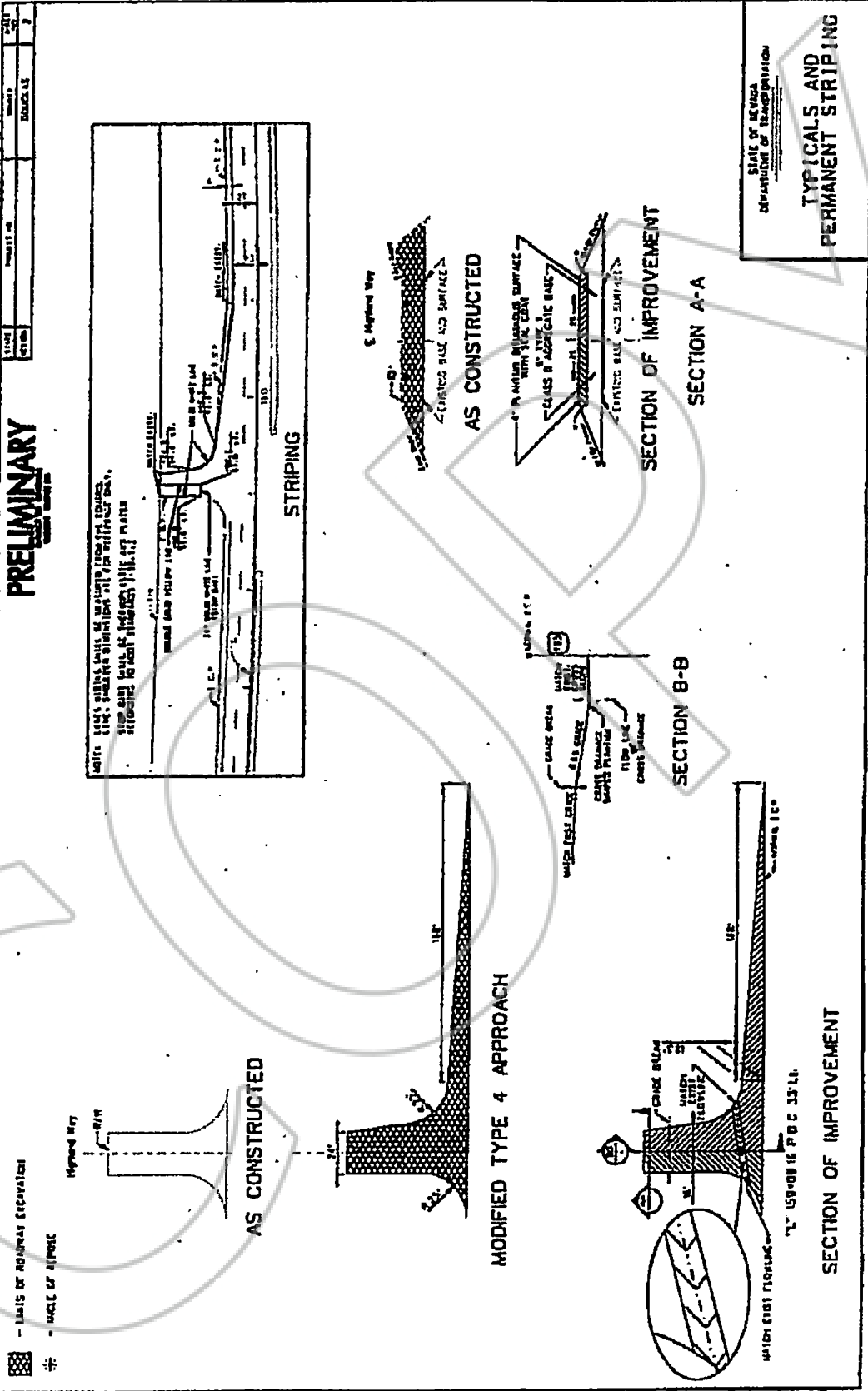
LAWRENCE WERNER 7/18/18  
Name and Title (print)

Approved as to Form:

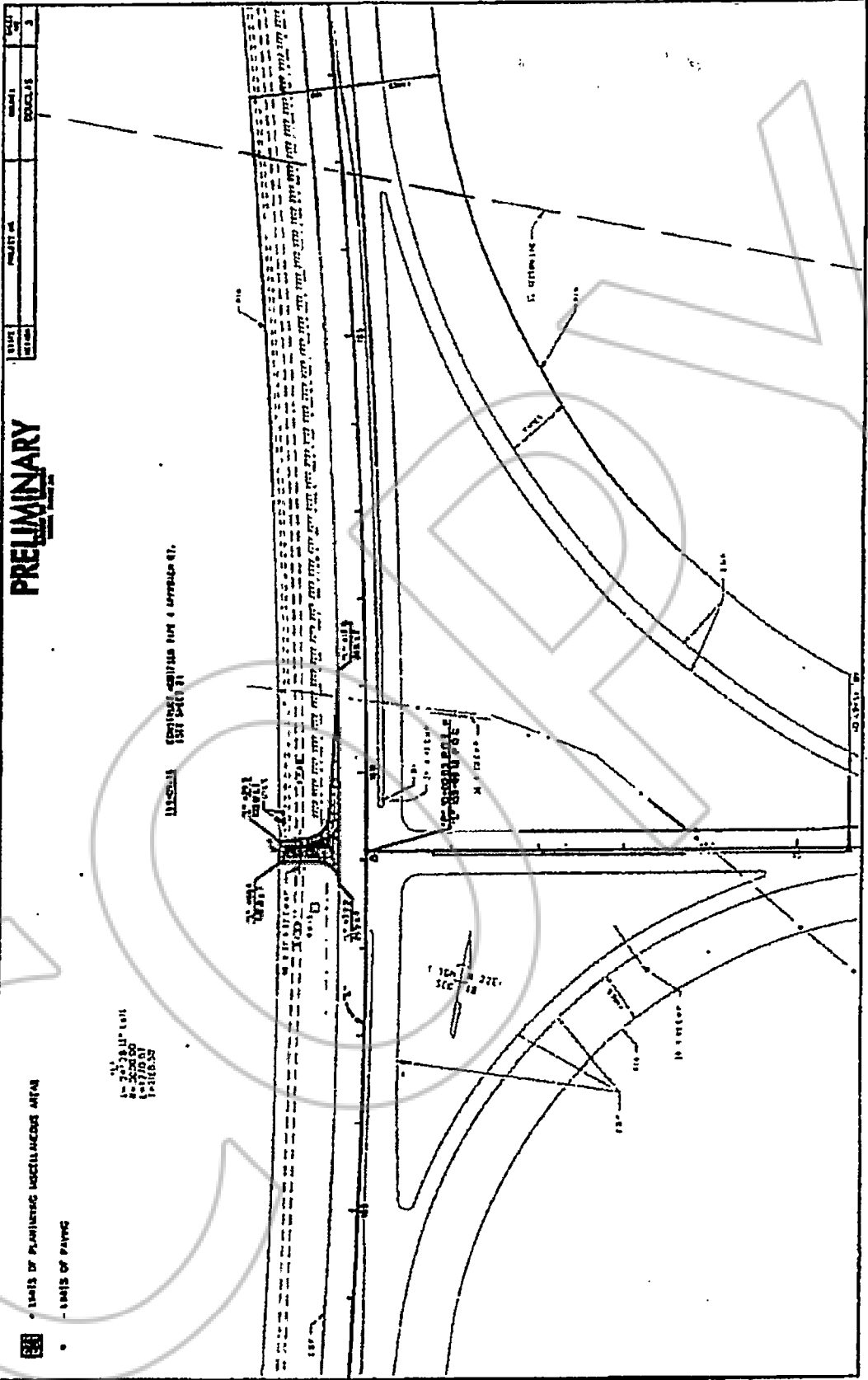
  
\_\_\_\_\_  
Attorney, Deputy, District Attorney

Approved as to Legality and Form:

DocuSigned by:  
  
\_\_\_\_\_  
Deputy Attorney General







**PRELIMINARY**

• LIMITS OF PLANNING MISCELLANEOUS UTILITIES

• LIMITS OF EASEMENT

N.T.  
 1-20-38 111.011  
 4-25-00 50  
 1-11-02 25

MISCELLANEOUS UTILITIES PER EASEMENT AT

222' N 120° E

COPY

Douglas County

State of Nevada

CERTIFIED COPY

I certify that the document to which this certificate is attached is a full and correct copy of the original record on file in the Clerk-Treasurer's Office on this

23<sup>rd</sup> day of August, 2018  
By [Signature] Deputy