

**Carson City Board of Supervisors
Agenda Report**

Date Submitted: April 6, 2011

Agenda Date Requested: April 21, 2011
Time Requested: Consent

To: Mayor and Supervisors

From: Public Works

Subject Title: Action to approve an interlocal agreement between the City and NDOT whereby the City will allow NDOT to apply micro-surface paving and restripe Old Hot Springs Road (a City street) from the junction of Goni Road to the dead end at the I-580 grade separation, at no cost to the City. (Sharp)

Staff Summary: NDOT has an office on Old Hot Springs Road. NDOT workers every day walk along the roadway for exercise. The roadway is plenty wide enough, but not striped properly to allow designated bicycle/pedestrian walkways along the edges. There aren't any sidewalks along the roadway. The proposed micro-paving will obliterate the existing striping and create a nice smooth surface. The proposed new striping will result in a 6-foot wide bicycle/pedestrian lane along each side while still accommodating a full width traffic lane in each direction.

Type of Action Requested: (check one)
 Resolution Ordinance
 Formal Action/Motion Other (Specify)

Does This Action Require A Business Impact Statement: Yes No

Recommended Board Action: I move to approve an interlocal agreement between the City and NDOT whereby the City will allow NDOT to apply micro-surface paving and restripe Old Hot Springs Road (a City street) from the junction of Goni Road to the dead end at the I-580 grade separation, at no cost to the City.

Explanation for Recommended Board Action: See staff summary above.

Applicable Statute, Code, Policy, Rule or Regulation: NRS Chapter 408; NRS 277.045 and 277.180.

Fiscal Impact: None to Carson City. The project will be performed by NDOT and funded 100% by State funds, estimated at \$35,000.

Explanation of Impact: N/A

Funding Source: N/A

Alternatives: Do not approve the agreement.

Supporting Material: Interlocal Agreement.

Prepared By: Jeff Sharp, City Engineer

Reviewed By: 
(Public Works Director)

Date: 4-12-11


(City Manager)

Date: 4/12/11


(District Attorney)

Date: 4/12/11

Board Action Taken:

Motion: _____		Aye/Nay
	1) _____	_____
	2) _____	_____
	3) _____	_____
	4) _____	_____
	5) _____	_____

(Vote Recorded By)

INTERLOCAL AGREEMENT

This Agreement, made and entered into the _____ day of _____, _____, by and between the STATE OF NEVADA, acting by and through its Department of Transportation, hereinafter called the DEPARTMENT, and the city of Carson City; a political subdivision of the State of Nevada, hereinafter called the CITY.

WITNESSETH:

WHEREAS, an Interlocal Agreement is defined as an agreement by public agencies to "obtain a service" from another public agency; and

WHEREAS, pursuant to the provisions contained in Chapter 408 of the Nevada Revised Statutes, the Director of the DEPARTMENT may enter into agreements necessary to carry out the provisions of the Chapter; and

WHEREAS, NRS 277.180 authorizes any one or more public agencies to contract with any one or more other public agencies to perform any governmental service, activity or undertaking which any of the public agencies entering into the agreement is authorized by law to perform and refers to such as an Interlocal Contract, hereinafter called an Agreement; and

WHEREAS, the purpose of this Agreement is to micro-surface Old Hot Springs Road from the junction of Goni Road, to the dead end at the I-580 grade separation; and

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

WHEREAS, the CITY is willing to allow the services described herein.

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

ARTICLE I - CITY AGREES

1. To allow the DEPARTMENT to micro-surface and traffic stripe Old Hot Springs Road from the junction of Goni Road, to the dead end at the I-580 grade separation, to allow for 6 feet of shoulders for pedestrian use due to lack of sidewalks, hereinafter called the PROJECT.
2. The continued ownership and maintenance of Old Hot Springs Road, shall remain with the CITY.

ARTICLE II - DEPARTMENT AGREES

1. To micro-surface Old Hot Springs Road from the junction of Goni Road, to the dead end at the I-580 grade separation.
2. To restripe, for vehicular traffic, Old Hot Springs Road from the junction of Goni Road, to the dead end at the I-580 grade separation, after micro-surfacing operations are completed.

3. To fund 100% of PROJECT with State funds, estimated to be and not to exceed Thirty Five Thousand and NO/100 Dollars (\$35,000.00).

4. To establish and maintain a budget for the PROJECT. This budget will be maintained by the Maintenance and Operations Division of the DEPARTMENT, and all invoices shall be submitted to the Maintenance and Operations Division for approval and reimbursement.

ARTICLE III - IT IS MUTUALLY AGREED

1. The term of this Agreement shall be from the date first written above through and including the 31 day of August, 2011 or until the construction of all improvements contemplated herein have been completed and accepted by the DEPARTMENT, whichever occurs first, save and except the responsibility for maintenance as specified herein.

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 shall not proceed with said work until a copy of this fully executed, signed by all individuals on the signatory lines below (hereinafter the "Final Execution Date"), Agreement is received. If either Party does commence said work prior to receiving copy of this fully executed Agreement or prior to the Final Execution Date, that Party shall forfeit any and all right to reimbursement for that portion of the work performed prior to said dates. Furthermore, the Parties 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 the DEPARTMENT 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 the Final Execution Date and/or 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.

4. The parties agree to allow each other to observe, and to inspect project construction in a timely manner which prevents PROJECT delay.

5. This Agreement may be terminated by either party prior to the date set forth above, provided that a termination shall not be effective until thirty (30) days after a party has served written notice upon the other party. This Agreement may be terminated by mutual consent of both parties or unilaterally by either party without cause. The parties expressly agree that this Agreement shall be terminated immediately if for any reason federal and/or State Legislature funding ability to satisfy this Agreement is withdrawn, limited, or impaired.

6. All notices or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by facsimile with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address set forth below:

FOR DEPARTMENT: Susan Martinovich, P.E., Director
Attn.: Anita Bush, P.E., Assistant Chief Maintenance Engineer
Nevada Department of Transportation
Architecture, Maintenance and Operations Division
1263 South Stewart Street

Carson City, NV 89712
Phone: (775) 888-7050

FOR CITY:

Jeff Sharp, P.E., City Engineer
Public Works Department
3505 Butti Way
Carson City, NV 89701
Phone: (775) 283-7084

12. 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.

13. 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.

14. 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.

15. 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.

16. To the fullest extent of NRS Chapter 41 liability limitations, each party shall indemnify, hold harmless and defend, not excluding the other's right to participate, the other from and against all liability, claims, actions, damages, losses, and expenses, including but not limited to reasonable attorney's fees and costs, arising out of any alleged negligent or willful acts or omissions of the party, its officers, employees and agents. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity, which would otherwise exist as to any party or person, described herein. This indemnification obligation is conditioned upon service of written notice to the other party within 30 days of the indemnified party's notice of actual or pending claim or cause of action. The indemnifying party shall not be liable for reimbursement of any attorney's fees and costs incurred by the indemnified party due to said party exercising its right to participate with legal counsel.

17. 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.

18. 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.

19. 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.

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. 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.

22. 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.

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 by this Agreement.

24. 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.

25. 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.

26. 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.

27. Any alteration considered extra work shall be addressed through an Amendment to the Agreement. The amount and payment for extra work, as well as designation of responsibility for payment of such work, shall be specified in the Amendment.

28. 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.

29. 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.

30. 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.

Carson City,
a political subdivision of the State of Nevada

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

Name (Print)

Director

Approved as to Legality & Form:

Title (Print)

Deputy Attorney General

Approved as to Form:

Attorney

Date