

Interlocal Agreement between Board of Regents of the Nevada Higher Education, on Behalf of the
University of Nevada, Las Vegas and Clark County for
Track and Field Stadium Improvements

INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT (“*Agreement*”), by and between THE BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION, ON BEHALF OF THE UNIVERSITY OF NEVADA, LAS VEGAS, a constitutionally created entity of the State of Nevada (“*UNLV*”) and CLARK COUNTY, NEVADA, a political subdivision of the State of Nevada (“*County*”), and individually and collectively referred herein as the “*Party*” and “*Parties*”, respectively, is effective on the later of the date (“*Effective Date*”) approved by the Board of County Commissioners (“*BCC*”) or the Board of Regents (“*Board of Regents or designee*”).

RECITALS

WHEREAS, Nevada Revised Statute (“*NRS*”) 277.180 provides that one or more public agencies may enter into contracts for the performance of desired services; and

WHEREAS, UNLV is the owner of that certain real property known as the UNLV Myron Partridge Stadium/ located on Assessor’s Parcel Numbers 162-22-105-001 & 162-22-203-001 referred to as “Track and Field Stadium;” and

WHEREAS, UNLV desires to purchase and install new spectator bleachers at the Track and Field Stadium (the “*Project*”); and

WHEREAS, the County desires to provide funding for the Project as generally outlined in Exhibit “A,” which is attached hereto and by this reference incorporated herein; and

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

ARTICLE I. COUNTY AGREES:

1. To allocate funds in an amount not to exceed One Million Dollars (\$1,000,000.00) for the Project as generally depicted on Exhibit “A,” hereinafter referred to as the “Not to Exceed Amount.”
2. To reimburse UNLV for eligible expenses identified in Exhibit “A” within thirty (30) working days of receipt of invoices for reimbursement from UNLV with supporting documentation requested from the County within the Not to Exceed Amount.
3. If applicable, to review and comment for conceptual review in writing on Project plans and specifications, hereinafter referred to as “Plans” as follows:
 - A. County reviews and comments must be made in writing within fifteen (15) working days from submission of the Plans submittals to the County or as otherwise extended by mutual agreement.

Interlocal Agreement between Board of Regents of the Nevada Higher Education, on Behalf of the
University of Nevada, Las Vegas and Clark County for
Track and Field Stadium Improvements

B. If the County does not respond within the required time set forth in Subsection A above, the aforementioned shall be deemed accepted without comment by County unless County provides written justification for additional days for review, which the UNLV shall grant if reasonably requested.

C. The County's review of the Plans is limited to the overall conceptual plan and scope of work, but does not include a review of constructability and shall not relieve UNLV of any obligation to comply with any Applicable Laws or the requirements of any regulatory agencies, including without limitation, requirements related to the planning, design and construction of the Project.

4. Except as otherwise provided herein, UNLV will make the final determination as to design, purchase of materials and construction of the Project.

ARTICLE II. UNLV AGREES:

1. At its sole cost and expense, and subject to the reimbursement obligations of the County set forth hereinabove and the terms and conditions of this Agreement, UNLV agrees to complete the Project as outlined in Exhibit "A" including but not limited to, any costs associated with design, survey, inspection, and permits fees.

2. To provide the County a request for reimbursement for the construction of the Project no more than monthly with supporting invoices submitted by third-party vendors.

3. To construct the Project in accordance with the Plans reasonably acceptable to the County. All Project construction must be in accordance with all applicable laws, rules and regulations and this Agreement.

4. To bid and award the Project in accordance with Nevada law and provide the County with notification of the bid amount for the Project. If the lowest responsive and responsible bidder amount exceeds the Not to Exceed Amount then UNLV will not award the Project unless: (1) the County and UNLV supplement this Agreement by adding the additional funds necessary to construct the Project or (2) the County and UNLV approve in writing a reduction in the Scope of Work necessary for the Project costs to meet the Not to Exceed Amount.

5. If during the course of construction change orders are requested, which in addition to the amount to bid award amount will exceed the Not to Exceed Amount, UNLV shall not approve the change order unless the County and UNLV supplement this Agreement by adding the additional funds necessary to construct the Project.

6. Notwithstanding the above, if any additional costs of the Project are the result of UNLV's negligence those additional costs shall be the responsibility of UNLV's and not part of the Not to Exceed Amount.

Interlocal Agreement between Board of Regents of the Nevada Higher Education, on Behalf of the
University of Nevada, Las Vegas and Clark County for
Track and Field Stadium Improvements

7. UNLV shall comply with all environmental laws with respect to the Project and property, including but not limited receiving the applicable environmental clearances and approvals Any environmental reports, studies, mitigation and cleanup costs are not part of the Project costs and are outside of the Not to Exceed Amount and not the responsibility of the County. In the event UNLV does not agree to assume said costs, either party may terminate the Agreement upon notice and any advanced unused funds of the Project shall be return to the County within ninety (90) days.
8. To allow the County to provide appropriate personnel to observe, review and comment on the construction of the Project.
9. To provide notices of the Project substantial completion and final completion to the County within ninety (90) days.
10. To provide the County with the Project closeout records received by UNLV including as applicable electronic scans of the Project's as-built drawings, Material Safety Data Sheets (SDS), specifications and maintenance manuals within ninety (90) of completion of the Project.
11. Subject to annual budgeted appropriation of sufficient funds by UNLV, to operate and/or maintain the Project at UNLV's sole cost and expense, upon completion of Project, for a period of no less than twenty (20) years.
12. To provide access to the County to inspect the Project and upon completion of the County's inspection, to address all of the findings of non-compliance with this Agreement within thirty (30) days of the County's written notice of any areas of concern, or such additional time as reasonably necessary to complete such work.
13. If any funds are advanced to UNLV, UNLV agrees to return any unused funds to the County within ninety (90) days of the completion of the Project or the termination of this Agreement.

ARTICLE III. IT IS MUTUALLY AGREED:

1. UNLV will bid the Project within six (6) months of the *Effective Date (unless otherwise agreed by the parties to extend)* of this Agreement and complete the Project on or before September 30, 2022 unless otherwise agreed by the parties to extend. Subject to sufficient appropriations, UNLV will own, operate, and provide all future utility, maintenance, and security costs for the Project and make it available for public use for a period of no less than twenty (20) years from the construction completion date. As used in this section, public use means UNLV's ordinary use and operation of the Track and Field Stadium as a government entity or as a public entity, and any other uses approved by UNLV, consistent with its promulgated policies and procedures; provided, however, that the Track and Field Stadium shall not be subject to any of the County's ordinances or regulations related to parks or other County facilities.

Interlocal Agreement between Board of Regents of the Nevada Higher Education, on Behalf of the
University of Nevada, Las Vegas and Clark County for
Track and Field Stadium Improvements

2. That any disputes related to the Project will be resolved amongst the Parties' respective staff. Any disputes that cannot be resolved by staff shall be referred to UNLV's Senior Vice President, Business Affairs and the County's Director of Real Property Management or her designee for final resolution. Any settlements must be approved by UNLV's President.

3. Prior to the release of the solicitation for the construction of the Project, the County or UNLV may terminate this Agreement upon receipt of thirty (30) days written notice; provided that the County shall reimburse actual expenses incurred by UNLV, if UNLV invoices those expenses within thirty (30) days of notice of termination..

4 UNLV may decide to outsource the operation and maintenance of the Project to a third-party operator at UNLV's sole cost and expense. Notwithstanding UNLV shall continue to be responsible for the operation, maintenance, and security of the Project.

5. The County, as a local governmental entity, is subject to the requirements of NRS 244.230 and NRS 354.626, which require County to budget annually for its expenses and which prohibit County from obligating itself to expend money or incur liability in excess of the amounts appropriated for a particular function or purpose. All County's financial obligations under this Agreement are subject to those statutory requirements, and subparagraphs 5.A and 5.B below, hereinafter referred to as the "*Fund Out Clause*."

A. Notwithstanding the monetary obligations of this Agreement, the total amount of County's payment obligations hereunder for any fiscal year shall not exceed the amount that County has appropriated for the Project as set forth in this Agreement.

B. Notwithstanding the monetary obligations of this Agreement, this Agreement shall terminate and County's liability and payment obligations thereunder shall be extinguished at the end of the fiscal year (June 30) in which the County's governing body fails to appropriate monies for the ensuing year for the payment of all amounts which will then become due.

6. UNLV, as a State government entity, is subject to State appropriation laws and regulations. In the event no funds or insufficient funds are appropriated and budgeted or are otherwise unavailable in any fiscal period for obligations under this Agreement, then this Agreement shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to UNLV of any kind whatsoever.

7. It is mutually understood that no obligation or commitment is created under this Agreement to require County to be responsible for the design, construction, operation, maintenance, security costs or utility costs of the Project.

8. That utility relocation costs are not to be included as part of the Project. The Parties agree to require, if allowed by Franchise Agreement, those utility companies having Franchise Agreements with County and/or City to relocate their facilities to accommodate the construction of the Project. UNLV agrees to pay all costs and expenses of any necessary utility relocations to the extent solely related to the

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University of Nevada, Las Vegas and Clark County for
Track and Field Stadium Improvements

Project, which are not required to be paid and/or relocated at utility's cost pursuant to a Franchise Agreement.

9. Each Party shall be responsible for its own negligence subject to the limitations on liability provided under Nevada Revised Statutes, Chapter 41. 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. 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 County: Attn.: Lisa Kremer
 Director of Real Property Management
 Clark County, Nevada
 500 South Grand Central Parkway, 4th Floor
 Las Vegas, Nevada 89155-1825
 Box 551825
 Telephone: (702) 455-4616
 E-mail:LisaK@ClarkCountyNV.gov

For UNLV: Attn.: Executive Director of Purchasing and Contracts
 University of Nevada, Las Vegas
 4505 S. Maryland Parkway
 Las Vegas, NV 89154-1033

Design and construction reviews and comments shall occur directly between the Parties' respective designees.

11. No joint venture is contemplated or established hereby, and neither of the Parties shall be deemed to be the agent of the other for any purpose by virtue of this Agreement.

12. This Agreement shall not be deemed to be for the benefit of any entity or person who is not a Party hereto, and neither this Agreement, nor any interest therein, may be assigned without the prior written consent of the non-assigning Party.

13. Each Party warrants to the other that they have the authority and capacity to perform the provisions hereof.

Interlocal Agreement between Board of Regents of the Nevada Higher Education, on Behalf of the
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Track and Field Stadium Improvements

14. 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 causes beyond its control which may include strikes, failure of public transportation, civil or military authority, public health emergency, epidemic, pandemic, 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.

15. 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.

16. 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 shall not be held to render any other provision or provisions of this Agreement unenforceable.

17. 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.

18. Pursuant to NRS 239.010, information or documents in connection with this Agreement may be open to public inspection and copying. The Parties will have the duty to disclose unless a particular record is confidential by law.

19. 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.

20. The Parties to this Agreement, and each of them, acknowledge that: 1) this Agreement and its reduction in final written form are a result of good faith negotiations between the Parties to this Agreement through their respective attorneys; 2) the Parties to this Agreement and their attorneys have reviewed and examined this Agreement before execution by said Parties or any of them; and 3) the rule of construction that ambiguities are to be construed against the drafting Party will not be employed in the interpretation of this Agreement.

21. This Agreement may be executed in counterparts, all such counterparts will constitute the same Agreement and the signature of any Party to any counterpart will be deemed a signature to, and may be

Interlocal Agreement between Board of Regents of the Nevada Higher Education, on Behalf of the
University of Nevada, Las Vegas and Clark County for
Track and Field Stadium Improvements

appended to, any other counterpart. Executed copies hereof may be delivered by facsimile or e-mail and upon receipt will be deemed originals and binding upon the Parties hereto, regardless of whether originals are delivered thereafter.

22. This Agreement only becomes effective upon approval by both the BCC and Board of Regents or designee, provided approval by one (1) Party is within ninety (90) calendar days of approval by the other Party.

23. In the event of termination of this Agreement, UNLV shall not be required to refund amounts received, but any unused funds from the Project shall be returned to the County within ninety (90) days

[Signatures on Next Page]

Interlocal Agreement between Board of Regents of the Nevada Higher Education, on Behalf of the University of Nevada, Las Vegas and Clark County for Track and Field Stadium Improvements

INTERLOCAL AGREEMENT

Signature Page

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date herein above set forth.

BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION, on behalf of the UNIVERSITY OF NEVADA, LAS VEGAS

CLARK COUNTY, NEVADA

Approved:

Melody Rose, Chancellor

Marilyn Kirkpatrick, Chair
Clark County Board of County Commissioners

Attest:

Lynn Goya
County Clerk

See Next page for Recommendations:

Approved as to Form:



Deputy District Attorney

Date of Board of Regents or Designee Approval:

Date of Clark County Commission Approval:

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The Board of Regents of the Nevada System of Higher Education, on behalf of the University of Nevada,
Las Vegas

Recommended By:

Desiree Reed-Francois, Athletics Director Date

Jean M. Vock, Senior Vice President, Business Affairs Date

Keith E. Whitfield, President Date

Approved as to Legal Form:

Elda Luna Sidhu, General Counsel Date

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Track and Field Stadium Improvements

EXHIBIT A
Scope of Work
Track and Field Stadium Bleacher Project

A. Project: Addition of bleachers at UNLV Track Facility

B. Deliverables

1. Primary deliverables include:

- Install bleachers at UNLV Track facility. Size and final number of bleachers to be determined and will not exceed the Not to Exceed Amount.

2. Standard Deliverables include:

- UNLV will maintain the Project after completion