

INTERLOCAL AGREEMENT

This Agreement, made and entered into on _____, by and between the State of Nevada, acting by and through its Department of Transportation, hereinafter called the "DEPARTMENT", and Clark County Department of Public Works, 500 South Grand Central Parkway, Suite 2066, Las Vegas, Nevada 89155, 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 provide for conditions relating to the use of County right-of-way necessary for replacing the existing structurally deficient superstructure of the I-515 Bridge over Desert Inn Road (hereinafter "PROJECT"); and

WHEREAS, the services of the COUNTY with respect to the use of County right-of-way will be of benefit to the DEPARTMENT, the PROJECT, 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. Subject to the COUNTY's approval of traffic control plans for the PROJECT, to allow the DEPARTMENT and its agents to occupy all County right-of-way necessary for the design and construction of the PROJECT.

2. After plans are received and reviewed, as required by the COUNTY, including traffic control plans, and are determined to be acceptable to the COUNTY, to approve traffic control plans submitted by the DEPARTMENT's contractor at no cost or expense to the contractor, allowing the DEPARTMENT's contractor to occupy the COUNTY's right-of-way for the purposes of providing traffic detours and placing of traffic control devices needed for the purposes of constructing the PROJECT, subject to the terms and conditions of the approved traffic control plans and in accordance with all applicable laws and standards, including state, federal, and local. The term of the approved traffic control plans shall be dependent on the work being performed, as determined by the COUNTY, and the DEPARTMENT shall require its contractor to comply with all requirements of the approved traffic control plans and renew as required.

3. To review and comment in writing on the DEPARTMENT-submitted, contractor-designed traffic control plans for the PROJECT. The COUNTY's response shall be provided within fourteen (14) calendar days of receipt of such plans by the COUNTY, unless additional time is required by the COUNTY, in which case the COUNTY shall notify the DEPARTMENT that additional time is required. Failure of the COUNTY to respond within this time frame or as provided by County Code shall constitute COUNTY's acceptance of the plans and its permission for the DEPARTMENT's contractor to proceed.

4. To observe, review, and/or inspect, at the COUNTY's discretion, all work during construction under the COUNTY's jurisdiction associated with the PROJECT, with the understanding that any and all items of concern are reported to the DEPARTMENT's Resident Engineer for correction.

ARTICLE II - DEPARTMENT AGREES

1. To fund 100% of the PROJECT with Federal Competitive Highway Bridge Program (CHBP) funds and matching state funds, estimated to be Fourteen Million and No/100 Dollars (\$14,000,000.00).

2. 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 said comments.

3. To coordinate the development of traffic control plans including lane closures, barricade locations, and detour routes in County right-of-way with the COUNTY.

4. To require the DEPARTMENT'S contractor, at no cost or expense to the contractor, to submit traffic control plans for the COUNTY's review and approval, as determined by the COUNTY, and to maintain its traffic control devices. The term of the traffic control plans shall be dependent on the work being performed, as determined by the COUNTY, and the DEPARTMENT's contractor shall comply with all requirements of the approved traffic control plans and renew as required by the COUNTY. Each submittal for review of traffic control plans shall include a copy of this fully-executed Interlocal Agreement. The DEPARTMENT understands that the COUNTY will place conditions on the traffic control plans and has established fines and fees for the placement of unauthorized or improperly placed or maintained traffic control devices. As such, a traffic control plan violation notice may be issued to the contractor to pay fines or fees attributable to said violation within thirty (30) calendar days of issuance, and any such violation may result in revocation of the approved traffic control plan in addition to other legal remedies of the COUNTY.

5. To allow the COUNTY fourteen (14) calendar days to review, comment, and approve contractor-designed and submitted plans for any contractor-designed traffic control installations for any work proposed within County right-of-way and needed for the PROJECT.

6. To require its contractor to indemnify, defend, and hold harmless the COUNTY, its officers, employees, and agents, from any and all liabilities, damages, losses, claims, actions, or proceedings, including, without limitation, reasonable attorneys' fees, that are caused by the negligence, errors, omissions, recklessness or intentional misconduct of its contractor related to or arising out of the construction of the PROJECT, including, but not limited to, traffic control and the use of County right-of-way.

7. To require its contractor to name Clark County as an additional insured on its general comprehensive liability policy.

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, 2022, or until 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 occurs 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 and inspect project construction, and, if applicable, to review change orders in a manner which prevents PROJECT delays.

4. This Agreement may be terminated by either party prior to the date set forth above, provided that the 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 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 L. Swallow, P.E., Director
Attn.: Rick Splawinski, P.E.
Nevada Department of Transportation
Project Management Division
1263 South Stewart Street
Carson City, NV 89712
Phone: 775-888-7317
E-mail: rsplawinski@dot.nv.gov

FOR COUNTY: Denis Cederburg, P.E., Director
Clark County Department of Public Works
500 South Grand Central Parkway, Suite 2066
P.O. Box 554000
Las Vegas, NV 89155-4000
Phone: 702-455-6020
E-mail: dlc@ClarkCountyNV.gov

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, budgeted for the fiscal year 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, pandemics, epidemics, 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. Up to the limitation of law, including, but not limited to, NRS Chapter 41 liability limitations, each party shall be responsible for all liability, claims, actions, damages, losses, and expenses caused by the negligence, errors, omissions, recklessness or intentional misconduct of its own officers and employees. The parties do not waive and intend to assert available NRS Chapter 41 liability limitations in all cases.

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 this 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 expressly 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. 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>.

21. 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.

22. 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.

Clark County Department of Public Works

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

Randall J. Tarr
Assistant County Manager

Director


Attest:

Approved as to Legality and Form:

Lynn Marie Goya
County Clerk

Deputy Attorney General

Approved as to Form:



Laura C. Rehfeldt
Deputy District Attorney