

**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 Public Works, 500 S. Grand Central Pkwy., Las Vegas, NV 89155, hereinafter called the "AGENCY".

**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 roles and responsibilities for ownership, maintenance, operation, and repair of pedestrian activated flashing signal systems consisting of pole foundations, signal lights, supporting arms and poles, luminaire arms and luminaires attached to signal poles, signs, push buttons, signal controller, controller cabinet and internal components, power service, battery back-up, conductors, detection system, intersection and interconnect cabling, advance flashers, and all related equipment to make the traffic signals fully functional, hereinafter referred to as PEDESTRIAN FLASHING SIGNAL SYSTEMS; and

WHEREAS, this Agreement pertains to the PEDESTRIAN FLASHING SIGNAL SYSTEMS listed in Exhibit "A", attached hereto and by this reference incorporated herein, and supersedes and replaces any other existing Agreement or Agreement provision to the extent it pertains to PEDESTRIAN FLASHING SIGNAL SYSTEMS that are listed in Exhibit "A" and that govern traffic movements along the DEPARTMENT's State Maintained Highways and Routes. Portions of these PEDESTRIAN FLASHING SIGNAL SYSTEMS, as described in Exhibit "A", may also be located within the AGENCY's jurisdiction; and

WHEREAS, the Agreement entered into between COUNTY and DEPARTMENT dated September 20, 1983 remains in full force and effect except the COUNTY will maintain the PEDESTRIAN FLASHING SIGNAL SYSTEM on the median in the right of way at the location of Tropicana Avenue and Morris Street subject to the terms and conditions of the parties set forth herein.

WHEREAS, the PEDESTRIAN FLASHING SIGNAL SYSTEMS and their continued functioning will be of benefit to the DEPARTMENT, the AGENCY and to the people of the State of Nevada; and

WHEREAS, the AGENCY 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 – AGENCY AGREES

1. Subject to budgeted appropriations, to operate, maintain, repair, and provide necessary labor and electrical power for all PEDESTRIAN FLASHING SIGNAL SYSTEMS, as shown on Exhibit "A", attached hereto and by this reference incorporated herein, and all related ancillary components required to safely operate and maintain the PEDESTRIAN FLASHING SIGNAL SYSTEMS. Maintenance is defined as actions performed on a regularly scheduled basis to preserve the intended working condition of the PEDESTRIAN FLASHING SIGNAL SYSTEMS, and includes minor actions to correct a recurring problem, accommodate changes in prevailing traffic, or to update equipment to the current state of the practice. Maintenance, repair, and operational standards and practices shall be undertaken in a manner conforming to accepted industry standards and practices.

2. Except as provided in Article I, Section 3 below, to invoice the DEPARTMENT for one hundred percent (100%) of the replacement/repair cost for all PEDESTRIAN FLASHING SIGNAL SYSTEMS equipment replaced or repaired due to damages, provided the replacement/repair costs exceed One Thousand Five Hundred and No/100 Dollars (\$1,500.00) and are unrecoverable by insurance or other means.

3. To invoice the DEPARTMENT for one hundred percent (100%) of emergency replacement or repair costs without prior written agreed upon costs associated to the SIGNAL SYSTEMS. All invoices submitted for emergency costs (unrecoverable by insurance) shall contain documentation that fully describes the emergency situation and justification.

4. With respect to Article I, Sections 2 and 3 herein, AGENCY agrees to invoice the DEPARTMENT after maintenance, repairs, or replacement of the work has been successfully completed by the AGENCY.

## ARTICLE II - DEPARTMENT AGREES

1. To fund one hundred percent (100%) of the replacement/repair costs for PEDESTRIAN FLASHING SIGNAL SYSTEMS equipment replaced or repaired due to damages, provided replacement/repair costs exceed One Thousand Five Hundred and No/100 Dollars (\$1,500.00) and are unrecoverable by insurance or other means. DEPARTMENT shall pay these costs within thirty (30) days of receipt of invoice from AGENCY.

2. To fund one hundred percent (100%) of emergency replacement or repair costs without prior written agreed upon costs (unrecoverable by insurance) associated with the PEDESTRIAN FLASHING SIGNAL SYSTEMS. DEPARTMENT shall pay these costs within thirty (30) days of receipt of invoice from AGENCY.

3. To fund one hundred percent (100%) of cost for approved unforeseen work on the PEDESTRIAN FLASHING SIGNAL SYSTEMS.

4. To process each of the AGENCY's invoices upon validation of costs and within thirty (30) calendar days upon receipt.

## ARTICLE III - IT IS MUTUALLY AGREED

1. Capital improvements are not included in this Agreement and shall be initiated by a permit application submitted to the NDOT District Permit Office. Capital improvement is defined as a major modification to the physical configuration

and/or operational parameter of the PEDESTRIAN FLASHING SIGNAL SYSTEMS.

2.

The term of this Agreement shall be from the date first written above and continue in perpetuity for the operation and maintenance as specified herein.

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

4. The PEDESTRIAN FLASHING SIGNAL SYSTEMS shall be and remain the sole and exclusive property of the DEPARTMENT.

5. A listing of PEDESTRIAN FLASHING SIGNAL SYSTEMS is attached as Exhibit A.

6. The AGENCY is exempt from being required to obtain a permit from the DEPARTMENT for the maintenance work, defined in Article I, section 1, on the PEDESTRIAN FLASHING SIGNAL SYSTEMS.

6. If the AGENCY annexes areas with PEDESTRIAN FLASHING SIGNAL SYSTEMS within DEPARTMENT rights-of-way, then said PEDESTRIAN FLASHING SIGNAL SYSTEM is automatically deleted from Exhibit "A".

7. 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.

8. This Agreement shall be construed and interpreted according to the laws of the State of Nevada.

9. This Agreement shall inure and be binding upon the respective successors and assigns of the parties hereto.

10. This Agreement constitutes the entire agreement between the parties and shall not be modified unless in writing and signed by the parties.

11. 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 with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed by the other party at the address set forth below:

FOR DEPARTMENT:

Kristina L. Swallow, P.E., Director  
Attn.: Kevin Maxwell, P.E., CPM  
Nevada Department of Transportation  
Division: Traffic Operations  
1263 S. Stewart St.  
Carson City, NV, 89713  
Phone: 775-888-7087  
E-mail: kmaxwell@dot.nv.gov

FOR AGENCY:

Denis L. Cederburg, Director  
Clark County Public Works  
500 S. Grand Central Pkwy.  
Las Vegas, NV 89155  
Phone: (702) 455-3530  
E-mail: DLC@clarkcountynv.gov

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 breach by either Party 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, pandemics or epidemics. 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. 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.

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 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.

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. 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 239.010, information or documents may be open to public inspection and copying. The parties will have the duty to disclose unless a particular record is 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. 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. 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.

28. The recitals set forth above are and for all purposes shall be interpreted as being an integral part of this agreement and are incorporated in this Agreement by reference.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

Clark County Public Works

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

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Marilyn Kirkpatrick, Chair  
Board of County Commissioners

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Director

Approved as to Legality and Form:

Approved as to Legality and Form

  
\_\_\_\_\_  
Laura Rehfeldt, Deputy District Attorney

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Deputy Attorney General

### **Exhibit A**

1. Boulder Highway/Palm Senior Housing (approximately 4350 Boulder Highway)
2. Boulder Highway/Sun Valley Drive
3. Boulder Highway/Whitney Avenue
4. Boulder Highway/Hamilton Avenue
5. Flamingo Road/Mojave Road
6. Flamingo Road/Cameron Street
7. Tropicana Avenue/Morris Street