

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 City of Fernley, 595 Silverlace Blvd., Fernley, NV 89408, hereinafter called the AGENCY. Individually they are each a PARTY and collectively they are the PARTIES.

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 establish roles and responsibilities for ownership, maintenance, operation, and repair of the traffic signal systems as listed by intersection according to Article III, Paragraph 4., hereinafter called SIGNAL SYSTEMS; and

WHEREAS, This Agreement supersedes and replaces any other existing Agreement or Agreement language pertaining to the SIGNAL SYSTEMS that govern traffic movements along the DEPARTMENT's State Maintained Highways and Routes. Portions of these SIGNAL SYSTEMS may also be located within the AGENCY's jurisdictional boundaries or may be included entirely by virtue of prior maintenance responsibilities; and

WHEREAS, the SIGNAL SYSTEMS consist of pole foundations, signal lights, supporting arms and poles, luminaire arms and luminaires attached to signal poles, 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; and

WHEREAS, maintenance is defined as actions performed on a regularly scheduled basis to preserve the intended working condition of the SIGNAL SYSTEMS up to and including full service life replacement. Also, minor actions to correct a recurring problem, accommodate changes in prevailing traffic, or to update equipment to the current state of the practice; and

WHEREAS, capital improvement is defined as a major modification to the physical configuration and/or operational parameter of the SIGNAL SYSTEMS; and

WHEREAS, capital improvements are not included in this AGREEMENT and shall be initiated by a permit application submitted to the District Permit Office; and

WHEREAS, the SIGNAL SYSTEM services of the AGENCY and their continued functioning will be of benefit to the DEPARTMENT, the AGENCY, the people of the State of Nevada, and the traveling public; and

WHEREAS, the PARTIES hereto are 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. To operate, maintain, repair, and provide necessary labor and electrical power for all SIGNAL SYSTEMS and all related ancillary components required to safely operate and maintain the SIGNAL SYSTEMS. Maintenance, repair, and operational standards and practices shall be consistent with applicable state and national standards and guidelines.

2. To invoice the DEPARTMENT for one hundred percent (100%) of the replacement/repair cost for all SIGNAL SYSTEM equipment replaced or repaired due to incidental damages, provided replacement/repair costs per signalized intersection 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 per signalized intersection (unrecoverable by insurance) shall contain documentation that fully describes the emergency situation and justification for the claim.

4. To notify the DEPARTMENT in writing and obtain written approval from the DEPARTMENT for unforeseen work (not otherwise explained in this Agreement any SIGNAL SYSTEM in which the AGENCY is wanting to be reimbursed by the DEPARTMENT.

5. To invoice the DEPARTMENT after maintenance, repairs, or replacement of the agreed upon work has been successfully completed by the AGENCY.

6. To submit to the DEPARTMENT any as-built plans or documentation of work performed on SIGNAL SYSTEMS. The documentation submitted shall reference this Agreement number on the first page of each submittal.

7. To provide the DEPARTMENT District Engineer a list of anticipated SIGNAL SYSTEM maintenance, or repairs exceeding One Thousand Five Hundred and No/100 Dollars (\$1,500.00) each along with an estimated annual cost for which the AGENCY will request reimbursement per signalized intersection. This list shall be delivered to the DEPARTMENT District Engineer within thirty (30) calendar days of initial execution of this Agreement and by the 31st day of January of each year thereafter to enable budgeting of necessary funds. Available funding may impact approval of work requiring reimbursement.

8. To perform routine maintenance and coordinate with the DEPARTMENT Permit Office, at (775) 834-8330, two (2) working days prior to performing scheduled maintenance activities and provide information regarding the nature of the activity and planned traffic control information. The Permit Office will prepare required highway restriction reports and coordinate with

affected DEPARTMENT operations. A DEPARTMENT encroachment permit is not needed for maintenance or repair work performed on SIGNAL SYSTEMS.

9. To notify DEPARTMENT with as much notice as possible if emergency repair activities cause significant impact to traffic, require lane closures, or require excavation through improved surfaces of the roadway. For emergencies during business hours, notify the DEPARTMENT Permit Office at (775) 834-8330 and during non-business hours the Utilities 24/7 Hotline, at (775) 834-8488.

ARTICLE II - DEPARTMENT AGREES

1. To fund one hundred percent (100%) of the replacement/repair costs for SIGNAL SYSTEMS equipment replaced or repaired due to incidental damages, provided replacement/repair costs per signalized intersection exceed One Thousand Five Hundred and No/100 Dollars (\$1,500.00) and are unrecoverable by insurance or other means.

2. To fund one hundred percent (100%) of emergency replacement or repair costs without prior written agreed upon costs per signalized intersection (unrecoverable by insurance) associated with the SIGNAL SYSTEMS.

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

4. To fund one hundred percent (100%) of the costs for the anticipated SIGNAL SYSTEM maintenance or repairs exceeding One Thousand Five Hundred and No/100 Dollars (\$1,500.00) per signalized intersection provided that the list is received by the DEPARTMENT District Engineer on time (as noted in Article I, Paragraph 7) and the budget for reimbursement is approved.

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

6. To assume maintenance, repair and operations of the SIGNAL SYSTEMS as described in Article I, Paragraph 1. upon termination of this agreement.

ARTICLE III - IT IS MUTUALLY AGREED

1. The term of this Agreement shall be from the date first written above through and including two years from date above. This Agreement shall be automatically renewed for an additional two-year period on the last day of each two-year term unless a PARTY notifies the other PARTY in writing within thirty (30) calendar days prior to the automatic renewal of this Agreement of its intention that this Agreement expire at the completion of the two-year term then in effect.

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

3. The DEPARTMENT retains ownership of all SIGNAL SYSTEMS that govern traffic movements along the DEPARTMENT's State Maintained Highways/Routes within the DEPARTMENT's right-of-way. Portions of these SIGNAL SYSTEMS may be located within the AGENCY's jurisdictional boundaries or may be included entirely by virtue of prior maintenance responsibilities.

4. A listing of SIGNAL SYSTEMS shall be mutually agreed upon and signed by both PARTIES upon execution of this Agreement. As SIGNAL SYSTEMS are added and subtracted from the listing due to new construction, relinquishment of roadways or other occurrences, the DEPARTEMENT District Engineer and the AGENCY City Engineer will agree upon any revisions and sign and date an updated listing. The updated list will replace each succeeded list and be available in each PARTY's records office with a copy sent by the DEPARTMENT District Engineer to the Signals, Lighting and ITS Manager 1 in the DEPARTMENT's Traffic Operations Division.

5. The AGENCY is exempt from being required to obtain a formal permit from the DEPARTMENT for routine maintenance work on the SIGNAL SYSTEMS. The required coordination with the Department Permit Office is set forth in Article I, Paragraph 8.

6. If the AGENCY annexes areas with SIGNAL SYSTEMS within DEPARTMENT rights-of-way, then this Agreement shall supersede any previous agreements for these devices.

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. 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 to the other PARTY at the address set forth below:

FOR DEPARTMENT: Kristina L. Swallow, P.E., Director
Attn.: Kevin Maxwell, P.E., SLI Manager
Nevada Department of Transportation
Division: Traffic Operations
1263 South Stewart Street
Carson City, NV 89712
Phone: (775) 888-7087
E-mail: kmaxwell@dot.nv.gov

FOR AGENCY: Derek Starkey, P.E., City Engineer
City of Fernley
595 Silverlace Blvd.
Fernley, NV 89408
Phone: (775) 784-9918
Email: dstarkey@cityoffernley.org

9. 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 actual damages, and to a prevailing PARTY's reasonable attorney's fees and costs.

10. 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.

11. 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.

12. 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) 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.

13. 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.

14. 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.

15. 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.

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

17. 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.

18. Pursuant to NRS 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.

19. 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.

20. 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.

21. 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 district courts for enforcement of this Agreement.

22. 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.

23. 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.

City of Fernley

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

Daphne Hooper, ICMA-CM
City Manager, City of Fernley

Director

Approved as to Legality and Form:

Approved as to Legality and Form:

Brandi Jensen, Esq. City Attorney
City of Fernley

Deputy Attorney General

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