INTERLOCAL AGREEMENT

This Agreement, made and entered into the 3rd day of March, 2009, by and between Clark County, Nevada, a political subdivision of the State of Nevada, acting by and through the Clark County Board of Commissioners, which is its governing body (hereinafter called “COUNTY”), and the Regional Transportation Commission of Southern Nevada, a political subdivision of the State of Nevada (hereinafter called “RTC”).

WITNESSETH:

WHEREAS, the COUNTY is the owner of Signal Cabinets, Service Pedestals, Streetlight Poles, Traffic Signal Poles, School Flasher Poles, hereinafter Municipal Facilities or Municipal Facility, located in the Rights-of-Way (ROW) of the County; and

WHEREAS, RTC desires to use space on certain of the Municipal Facilities located in the ROW for construction, operation and maintenance of only telecommunications equipment, which includes closed circuit television cameras, sensors, antennas and cabinets as identified in Exhibit A, necessary for Freeway and Arterial System of Transportation (FAST), and security purposes for the public transit system’s operation, including utilizing Equipment certified by the Federal Communications Commission (“FCC”) and in accordance with FCC rules and regulations (hereinafter referred to as FAST Equipment); and

WHEREAS, for the purpose of operating FAST RTC wishes to locate, place, attach, install, operate, control, and maintain FAST Equipment on the Municipal Facilities in the ROW; and

WHEREAS, the COUNTY will allow the RTC the right to use and physically occupy portions of the Municipal Facilities to power the FAST Equipment; and

WHEREAS, RTC will maintain the FAST Equipment attached to the Municipal Facilities under this Agreement; and

WHEREAS, Nevada Revised Statute (NRS) 277.180 authorizes any one or more public agencies to contract with anyone 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

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

ARTICLE I – RTC AGREES

1. Submit to the authorized representative of the COUNTY for approval a proposed design for any FAST Equipment that will include Municipal Facilities RTC proposes to use.
Upon receipt of the proposed design, the COUNTY will identify those Municipal Facilities to which RTC can attach the FAST Equipment.

2. RTC shall not attach its FAST Equipment to more than a total of twenty-five (25) poles in the ROW within one square mile, regardless of whether such poles are owned by the COUNTY or RTC, or third parties.

3. If RTC selects a Municipal Facility that is structurally inadequate to accommodate the FAST Equipment, RTC will at its sole cost and expense upon approval from the COUNTY, replace the Municipal Facility with one that is acceptable to and approved by the COUNTY and dedicate such Municipal Facility to the COUNTY at no cost or expense to the COUNTY.

4. In the event of an emergency or to protect the public health or safety, or at the request of the COUNTY, prior to the COUNTY accessing or performing any work on a Municipal Facility on which RTC has installed FAST Equipment, the COUNTY may require RTC to deactivate such FAST Equipment. In such case, COUNTY will contact RTC at (702) 432-5300 herein to request immediate deactivation. If RTC fails to respond in a timely manner, depending on the nature of the emergency, COUNTY may deactivate said FAST Equipment to perform necessary work with no liability to COUNTY. COUNTY will deactivate at its own discretion and notify RTC. RTC agrees to pay the COUNTY the cost of the deactivation within thirty (30) days of receipt of billing from the COUNTY.

5. RTC will at its sole cost and expense maintain the FAST Equipment attached to the Municipal Facilities under this Agreement.

6. The FAST Equipment shall not extend higher than twenty-four inches (24") above the height of the existing Municipal Facility. In the case of a new installation by RTC, the overall height of RTC's pole and equipment shall not exceed thirty-five feet (35') above the ROW grade unless otherwise approved by the COUNTY.

7. RTC shall, at its sole cost and expense and to the satisfaction of COUNTY: (a) remove, repair or replace any of its FAST Equipment that is damaged, becomes detached or has not been used for the a period of more than 90 days; and/or (b) repair any damage to ROW, Municipal Facilities or property, whether public or private, caused by RTC, its agents, employees or contractors in their actions relating to attachment, operation, repair or maintenance of FAST Equipment, (c) remove, repair or replace any of its FAST Equipment requested by the COUNTY. If RTC does not remove, repair or replace such damage to its FAST Equipment or to ROW, Municipal Facilities or other property, the COUNTY shall have the option, upon 15 days' prior written notice to RTC, to perform or cause to be performed such removal, repair or replacement on behalf of RTC and shall charge RTC for the actual costs incurred by the COUNTY. If such FAST Equipment causes a public health or safety emergency, as determined by the COUNTY, the COUNTY may immediately perform reasonable and necessary repair or removal work on behalf of RTC and will notify RTC as soon as practicable. Upon the receipt of a demand for payment by the COUNTY, RTC shall within 30 days of such receipt reimburse the
County for such costs. The terms of this provision shall survive the expiration, completion or earlier termination of this Agreement.

8. RTC shall upon 90 days’ written notice by the COUNTY pursuant to the expiration or earlier termination of this Agreement, promptly, safely and carefully remove the FAST Equipment from all Municipal Facilities and ROW. Such obligation of RTC shall survive the expiration or earlier termination of this Agreement. If RTC fails to complete this removal work on or before the 90 days subsequent to the issuance of notice pursuant to this Section, then COUNTY, upon written notice to RTC, shall have the right at COUNTY’s sole election, but not the obligation, to perform this removal work and charge RTC for the actual costs and expenses, including, without limitation, reasonable administrative costs. RTC shall pay to COUNTY actual costs and expenses incurred by COUNTY in performing any removal work and any storage of RTC’s property after removal within 30 days of the date of a written demand for this payment from COUNTY. After COUNTY receives the reimbursement payment from RTC for the removal work performed by COUNTY, COUNTY shall promptly make available to RTC the property belonging to RTC and removed by COUNTY pursuant to this Section at no liability to COUNTY. If COUNTY does not receive reimbursement payment from RTC within such 30 days, or if COUNTY does not elect to remove such items at COUNTY’s cost after RTC’s failure to so remove prior to 90 days subsequent to the issuance of notice pursuant to this Section, or if RTC does not remove RTC’s property within 60 days of such property having been made available by COUNTY after RTC’s payment of removal reimbursement as described above, any items of RTC’s property remaining on or about the ROW, Municipal Facilities, or stored by COUNTY after COUNTY’s removal thereof may, at COUNTY’s option, be deemed abandoned and COUNTY may dispose of such property in any manner by Law. Alternatively, COUNTY may elect to take title to abandoned property, and RTC shall submit to COUNTY an instrument satisfactory to COUNTY transferring to COUNTY by the ownership of such property. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

9. RTC waives any and all claims, demands, causes of action, and rights it may assert against the COUNTY on account of any loss, damage, or injury to any FAST Equipment or any loss or degradation of service as a result of any event or occurrence which is beyond the control of the COUNTY or Municipality Facility taken out of service.

10. The COUNTY shall only be liable for the cost of repair to damaged FAST Equipment arising from the sole negligence or sole willful misconduct of the COUNTY’s employees and in no event be liable for indirect or consequential damages.

11. The RTC FAST Equipment shall not be used for any commercial purposes or for any other uses other than for the operations of FAST. RTC shall not derive any revenues from the FAST Equipment.

12. Should the cost of the power for the FAST Equipment become excessive, as solely determined by the COUNTY, the COUNTY may elect to charge RTC for the actual power used of the FAST Equipment. RTC agrees to pay for any power usage from the
Municipal Facilities within thirty (30) days from receipt of billing from the COUNTY in accordance with Article II, Section 2. All electrical work and installations related to the power-sharing authorized by this agreement shall be performed by a licensed contractor that is approved by COUNTY and in a manner that is approved by COUNTY.

13. RTC agrees to allow the COUNTY real time access to data and information collected by the FAST Equipment, excluding the transit security system, at no cost or expense to the COUNTY.

ARTICLE II – COUNTY AGREES

1. Subject to RTC obtaining all necessary permits, including an encroachment permit, the COUNTY hereby authorizes RTC to enter upon the ROW and to locate, place, attach, install, operate, maintain, control, remove, reattach, reinstall, relocate, and replace FAST Equipment in or on identified Municipal Facilities for the purposes of operating and maintaining the FAST.

2. To allow the RTC to utilize power to the Municipal Facilities (if available) to power the FAST Equipment by using the power sources that service the existing Municipal Facilities. The power used by FAST Equipment shall be determined by the usage identified on the specifications for the FAST Equipment installed pursuant to this Agreement, provided that COUNTY may verify the actual power consumed by FAST Equipment using measurements of the power consumed prior to the installation of the FAST Equipment compared to the power consumed after the installation of the FAST Equipment.

ARTICLE III – IT IS MUTUALLY AGREED

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

2. The term of this Agreement shall be from the date first written above.

3. 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.

4. 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 COUNTY: Denis Cederburg, Director
Clark County Public Works Department
500 South Grand Central Parkway
Las Vegas, Nevada 89155-4000
Telephone: (702) 455-6020
Fax: (702) 455-6040

FOR RTC: Jacob Snow, General Manager
Regional Transportation Commission
of Southern Nevada
600 South Grand Central Parkway
Las Vegas, Nevada 89106
Telephone: (702) 676-1501
Fax: (702) 676-1518

5. Failure of either party to perform any obligation of this Agreement shall be deemed a breach. Except as otherwise provided before 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.

6. 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 State 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.

7. 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.

8. Subject to the limitation established by law including, but not limited to NRS Chapter 41, each party will be responsible for the legal actions of its officers, directors and employees.

9. 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.

10. 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.

11. 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.

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

13. Except as otherwise provided in Article I, paragraph 8, all or any property presently owned by either party shall remain in such possession upon termination of this Agreement, and there shall be no transfer of property between the parties during the course of this Agreement.

14. 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.

15. 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.

16. 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.

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 jurisdiction of the Nevada district courts for enforcement of this Agreement.

18. 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.

19. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture, or other arrangement between County and RTC. No term or provision of this Agreement is intended to benefit any person, partnership, corporation, or other entity not a party hereto (including, without limitation, any broker), and no such other person, partnership, corporation or entity shall have any right or cause of action hereunder.

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

CLARK COUNTY, NEVADA
BOARD OF COMMISSIONERS

REGIONAL TRANSPORTATION
COMMISSION OF SOUTHERN NEVADA

RORY REID, Chairman

LAWRENCE BROWN, III, Chairman

ATTEST:

SHIRLEY B. PARRAGUIRRE, County Clerk

ATTEST:

TONI MICHENER, Executive Assistant

APPROVED AS TO FORM:

DAVID ROGER, District Attorney

APPROVED AS TO FORM:

CHRISTOPHER FIGGINS
Chief Deputy District Attorney

ZEV KAPLAN
General Counsel