

**COOPERATIVE (STEWARDSHIP) AGREEMENT
CHARLESTON AND VALLEY VIEW INTERSECTION IMPROVEMENTS**

This Agreement is made and entered into the 27th day of May, 2003, by and between the State of Nevada, acting by and through its Department of Transportation, hereinafter called the DEPARTMENT, and City of Las Vegas, 400 East Stewart Street, Las Vegas, NV 89101, hereinafter called the CITY.

WITNESSTH:

WHEREAS, agreements between the DEPARTMENT and public agencies are authorized under Chapters 277 and 408 of the Nevada Revised Statutes (NRS); and

WHEREAS, the DEPARTMENT and the Nevada Division of the Federal Highway Administration (FHWA) have entered into a Stewardship Plan allowing the DEPARTMENT to assume the responsibilities of the FHWA under Title 23 United States Code for design, plans, specifications, estimates, contract awards, and inspection of projects; and

WHEREAS, the Stewardship Plan allows the DEPARTMENT under certain circumstances to further delegate project review, oversight and administration to capable local agencies; and

WHEREAS, this Agreement is intended to delegate authority to the CITY to design, advertise, award, and manage construction of improvements to the intersection of Charleston Boulevard and Valley View as outlined in the Project Scope attached hereto and incorporated herein as Attachment A, hereinafter called the PROJECT; and

WHEREAS, the PROJECT has been approved for Safety funds; and

WHEREAS, this Agreement and the PROJECT is of mutual benefit to the DEPARTMENT and the CITY as it provides a means of designing and constructing a project in the most efficient and cost-effective method.

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

ARTICLE I - DEPARTMENT AGREES:

1. To follow State Law, regulations and directives for developing and approving project designs, overseeing projects and administering contracts.
2. To delegate authority to the CITY to design (including the development of plans, specifications, and estimates), complete the National Environmental Policy Act (NEPA) documentation, obtain the environmental permits and clearances, advertise, award, and manage construction of the PROJECT.

3. To assure that the CITY's actions are in accordance with Federal, State and local laws, regulations and policies.

4. To program Federal Safety funding for Four Hundred Thirty-seven Thousand Six Hundred Eleven and 00/100 Dollars (\$437,611.00) and State funding for Twenty-three Thousand Thirty-two and 00/100 Dollars (\$23,032.00) for the PROJECT, and to set up a Project Identification Number to track all PROJECT costs.

5. Once the funding is programmed, to authorize through a written notice to proceed, the CITY to proceed with the design of the PROJECT.

6. To coordinate the NEPA process, environmental permits and clearances with the appropriate Regulatory Agency and the CITY based on the documentation provided by the CITY.

7. Upon receipt of the NEPA documentation, environmental permits and clearances, to assure that Federal environmental laws and regulations were met on the PROJECT and to certify the PROJECT in accordance with Federal requirements.

8. To review and comment on the CITY's design (including plans, specifications and estimates) in a timely manner.

9. To review the CITY design and assure that American Association of State Highway Transportation Officials (AASHTO) and Manual of Uniform Traffic Control Devices (MUTCD) Guidelines are followed.

10. To review all exceptions to DEPARTMENT, and AASHTO design standards, and to approve those exceptions when acceptable.

11. To invoke the DEPARTMENT's authority under NRS 408.210 (4) to require relocation or adjustment of any encroachments including utility facilities on DEPARTMENT permits occupying the DEPARTMENT's right-of-way pursuant to NRS 408.210 and/or NRS 408.423 needed to accommodate construction of the PROJECT.

12. To exercise final approval over utility adjustments that are within the DEPARTMENT's right-of-way and to have full authority to inspect said utility relocations.

13. To assure that Federal right-of-way laws and regulations are met on this PROJECT and document those actions in accordance with the DEPARTMENT's administrative requirements.

14. To assure that the CITY's procedures for advertising, bid opening and award of the PROJECT are in accordance with the Federal requirements.

15. To assure that all reporting and project documentation, as necessary for financial management and applicable Federal requirements, is submitted by the DEPARTMENT to the FHWA.

16. To authorize the CITY to proceed with the advertisement/award of the contract and construction of the PROJECT, through a written notice to proceed once the final design (including plans, specifications and estimates) has been reviewed and approved, all certifications have been completed and the funding authorized.

17. To assign a Project Coordinator and/or a Resident Engineer to act as the DEPARTMENT's representative to monitor all aspects of the PROJECT with specific responsibility to ensure all Federal requirements are met.

18. To issue an encroachment permit to the CITY, at no cost to the CITY, allowing the CITY to occupy the DEPARTMENT's right-of-way for the purpose of constructing the PROJECT.

19. To reimburse the CITY upon completion of the PROJECT, for ninety-five percent (95%) of eligible PROJECT costs based on supporting documentation minus any DEPARTMENT PROJECT costs. Total reimbursement shall not exceed the total programmed amount minus any DEPARTMENT PROJECT costs.

20. To maintain the pavement, islands, and curb and gutter portion of the PROJECT after construction and upon final acceptance of the work within the limits of the PROJECT.

21. To be responsible for the five percent (5%) match of the Federal Funds.

ARTICLE II - CITY AGREES:

1. To perform or have performed by consultant forces the design (including the development of plans, specifications and estimates), obtain the environmental permits and clearances, advertise, award and provide the construction management of this PROJECT, as outlined in Attachment A, in accordance with State and local laws, regulations and policies and Federal regulations and policies including but not limited to those listed in the "Contract Administration Core Curriculum Participant's Manual and Reference Guide", incorporated herein by reference. The PROJECT shall be designed and constructed in accordance with AASTHO, MUTCD, and DEPARTMENT standards. The PROJECT shall be operated, and maintained in accordance with State laws, regulations, directives, and safety standards.

2. To include the required Federal and State provisions in the bid documentation including but not limited to those listed in Attachment B, attached hereto and incorporated herein.

3. To require those utility companies having franchise agreements with the CITY, when permitted under the terms of the franchise agreement, to relocate their facilities if necessary or otherwise accommodate the new improvements at no cost to the PROJECT or the CITY.

4. To complete the NEPA documentation and coordinate the NEPA process, environmental permits and clearances with the DEPARTMENT.

5. To invite the DEPARTMENT to project meetings including field reviews, right-of-way settings, review meetings and the pre-construction conference.

6. To submit to the DEPARTMENT for review and approval, preliminary plans at sixty percent (60%), ninety percent (90%) and one hundred percent (100%) design stages. The ninety percent (90%) and one hundred percent (100%) submittals shall include the PROJECT specifications and cost estimate.

7. To provide design exception documentation to the DEPARTMENT for approval.

~~8. To submit to the DEPARTMENT for review and approval five (5) final sets of plans, specifications and estimates prior to advertising.~~

9. To obtain an encroachment permit from the DEPARTMENT, at no cost to the CITY, allowing the CITY to occupy the DEPARTMENT's right-of-way for the purpose of constructing and maintaining the PROJECT, prior to advertising the PROJECT.

10. To follow the terms and conditions of the encroachment permit and to incorporate those terms and conditions into the contract bid documents.

11. To obtain the DEPARTMENT's approval for all exceptions to DEPARTMENT and AASHTO design standards.

12. To provide certification that the design was completed to DEPARTMENT, AASHTO and/or MUTCD standards.

13. To proceed with the PROJECT advertisement only after receiving written approval from the DEPARTMENT.

14. To submit the bid tabulation to the DEPARTMENT for review and to award the contract only after receiving the DEPARTMENT's concurrence.

15. To perform the contract administration of the construction contract by providing appropriate personnel to observe, review, inspect, perform materials testing, to be in responsible charge of the construction and be capable of answering any question that may arise in relation to the contract plan and specifications during construction, to be responsible for insuring that all applicable NEPA, environmental permits and clearances requirements for monitoring and mitigation during construction of the PROJECT are being met, and to report to the DEPARTMENT's Resident Engineer questions as to the administration of the contract in accordance with Federal requirements and acceptable fulfillment of the contract on the part of the contractor.

16. To receive DEPARTMENT approval for any supplementals and/or change orders prior to incorporating into the PROJECT.

17. To allow the DEPARTMENT or its designated representatives to observe, review,

and inspect all work associated with the PROJECT during construction.

18. To perform PROJECT documentation and quality control during contract administration according to the CITY's established procedures, as approved by the DEPARTMENT. If the CITY does not have DEPARTMENT approved procedures, it must then follow the procedures contained in the DEPARTMENT's "Documentation Manual" and "Construction Manual", incorporated herein by reference.

19. To require that the contractors and subcontractors for the PROJECT complete Form FHWA-1391, "Federal-Aid Highway Construction Contractors Annual EEO Report", in compliance with 23 U.S.C.140a and 23 Code of Federal Regulations Part 230. The data for Form FHWA-1391 shall be for PROJECT personnel only and shall be taken from the last payroll period for the month of July. The form shall be forwarded to the DEPARTMENT's Resident Engineer by the 20th of August for each year that work is completed on the PROJECT during the month of July.

20. To submit two (2) sets of as-built plans to the DEPARTMENT prior to requesting the conduct of the final inspection.

21. To invoice the DEPARTMENT upon completion of the PROJECT, for actual PROJECT costs based on supporting documentation. Total reimbursement shall not exceed the total programmed amount minus any DEPARTMENT PROJECT expenses. The invoice shall be forwarded to the DEPARTMENT's Resident Engineer for review. The Resident Engineer shall forward the invoice to the DEPARTMENT's Stewardship Coordinator.

22. To maintain the traffic signal lights, streetlights, and sidewalk portion of the PROJECT and to be responsible for the costs of supplying the power to the lights

23. To complete and sign Attachment C - "Affidavit Required under Section 112(c) of Title 23 United States Code", and Attachment D - "Certification Required by Section 1352 of Title 31, United States Code, Instructions for Completion of SF-LLL, Disclosure of Lobbying Activities", attached hereto and incorporated herein.

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, 2003, 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. Costs associated with this Agreement will be administered in accordance with the cost principles contained in Office of Management and Budget (OMB) Circular A-87.

3. The description of the PROJECT is preliminary and may be changed in accordance with Federal requirements and by mutual written consent of the parties.

4. All right-of-way for the PROJECT is in place and the parties believe that there are no utility facilities, which by means of prior rights or franchise agreements would require the CITY to pay for any utility relocation in order to accommodate the PROJECT. If it is determined at a later date that this is not the case, an amendment to this Agreement shall be required. The DEPARTMENT shall acquire all necessary right-of-way and/or work with the utility companies in order to relocate the impacted utilities. All costs associated with the right-of-way acquisition and/or utility relocation shall become a PROJECT cost. The CITY will be responsible for completing the additional NEPA documentation, environmental permits and clearances associated with the right-of-way acquisition. The DEPARTMENT will coordinate with the Regulatory Agencies and the CITY and will certify the PROJECT in accordance with the Federal requirements.

5. Each party agrees to perform the tasks identified in Attachment E - Responsibility Checklist, attached hereto and incorporated herein.

6. Each party agrees to complete a final inspection and punch list prior to final acceptance of the work by the DEPARTMENT.

7. The total PROJECT costs are Four Hundred Sixty Thousand Six Hundred Forty-three and 00/100 Dollars (\$460,643.00), which includes Four Hundred Thirty-seven Thousand Six Hundred Eleven and 00/100 Dollars (\$437,611.00), comprising ninety-five percent (95%), of Federal funding, and a match of Twenty-three Thousand Thirty-two and 00/100 Dollars (\$23,032.00), comprising five percent (5%), which match shall be the responsibility of the DEPARTMENT.

8. The following is a summary of estimated costs and available funds.

Estimated PROJECT Costs:

DEPARTMENT Preliminary Engineering Costs:	\$ 5,000.00
CITY Preliminary Engineering Costs:	\$ 25,000.00
DEPARTMENT Right-of-Way Costs:	\$ 15,000.00
DEPARTMENT Construction Engineering Costs:	\$ 5,000.00
CITY Construction Engineering Costs:	\$ 50,000.00
Construction Costs:	<u>\$360,643.00</u>

Total Costs: \$460,643.00

Available Funding Sources:

Federal Safety Funds:	\$437,611.00
DEPARTMENT Funds:	<u>\$ 23,032.00</u>

Total Funding: \$460,643.00

9. DEPARTMENT is responsible for the matching funds.
10. The CITY may not incur any PROJECT costs until this Agreement is executed and the DEPARTMENT has issued a "Notice to Proceed".
11. The total PROJECT costs shall be determined by adding together the total costs incurred by the DEPARTMENT and the CITY for preliminary engineering, completing the NEPA process and acquiring environmental permits and clearances, right-of-way engineering, right-of-way acquisition, the relocation of utilities, construction engineering, and construction costs. The DEPARTMENT match will be calculated using the applicable percent of the total PROJECT costs eligible for Federal funding. The CITY is responsible for one hundred percent (100%) of all costs not eligible for Federal funding.
12. The DEPARTMENT does not provide any warranty that the estimate is an accurate reflection of the final cost. The DEPARTMENT disclaims any such warranty. The final costs may vary widely depending on the Contractor's bid prices.
13. This Agreement may be terminated by either party 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. 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.
14. Should this Agreement be terminated by the CITY for any reason prior to completion of the PROJECT, or the Agreement is terminated by the DEPARTMENT due to the CITY's failure to perform, the CITY shall be required to reimburse all of the PROJECT costs incurred to date of termination, including any costs incurred by the DEPARTMENT as a result of the termination.
15. 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 DEPARTMENT: Thomas E. Stephens, P.E., Director
Attn: Kristena Shigenaga, P.E.
Stewardship Coordinator
Nevada Department of Transportation
Roadway Design
1263 South Stewart Street
Carson City, Nevada 89712
Phone: (775) 888-7569
Fax: (775) 888-7401
E - mail address: kshigenaga@dot.state.nv.us

FOR CITY:

Ed Nettenstrom, P.E.
Project Manager
City of Las Vegas
Department of Public Works
Engineering Design
400 East Stewart Street
Las Vegas, NV 89101
Phone: (702) 229-6272
Fax: (702) 382-3232
E -mail: enettenstrom@ci.las-vegas.nv.us

16. The CITY will award the total contract in accordance with its rules and procedures to the lowest responsive and responsible bidder. If the lowest responsive and responsible bid exceeds the Engineer's estimate by more than seven percent (7%) of the total estimate, the CITY has the right but not the obligation to reject any and all bid proposals.

17. The CITY will insure that any reports, materials, studies, photographs, negatives, drawings or other documents prepared in the performance obligations under this Agreement shall be the exclusive property of the CITY and the DEPARTMENT. CITY will ensure any consultant will not use, willingly allow or cause to have such documents used for any purpose other than performance of obligations under this Agreement without the written consent of the CITY and the DEPARTMENT.

18. 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 attorneys' 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 the performance of the duty of the party seeking indemnification ("indemnified party"), to serve the other party ("indemnifying party") with written notice of actual or pending claim, within 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.

19. 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.

20. An alteration ordered by the DEPARTMENT that substantially changes the services provided for by the expressed intent of this Agreement will be considered extra work, and shall be specified in an Amended Agreement that will set forth the nature and scope thereof. The method of payment for extra work shall be specified at the time the amendment is written.

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

22. 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 and the unenforceability of such provision shall not be held to render any other provision or provisions of this Agreement unenforceable.

23. 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.

24. 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.

25. Each party agrees to keep and maintain under generally accepted accounting principles full, true and complete records and documents 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 is maintained. Such records and documentation shall be maintained for three (3) years after final payment is made.

26. 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.

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

28. 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 engage in cooperative action set forth herein.


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

30. 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.

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


CITY OF LAS VEGAS



Oscar B. Goodman
Mayor

Attest:


Barbara Jo Ronemus
City Clerk


Approved as to Form:
 2-12-03

Robert S. Sylvain
Deputy City Attorney


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



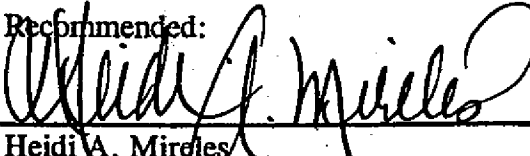
Director

Reviewed:


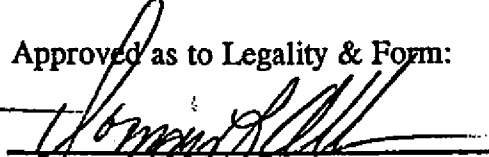
Susan Martinovich, P.E.
Assistant Director - Engineering

Recommended:


Eugene Weight, P.E.
District Engineer

Recommended:


Heidi A. Mireles
Chief Right-of-Way Agent

Approved as to Legality & Form:


Deputy Attorney General

Attachment A

SCOPE OF WORK
 CHARLESTON AND VALLEY VIEW
 INTERSECTION IMPROVEMENTS PROJECT

The project consists of all work necessary to construct a right turn pocket and a second left turn pocket on Charleston Boulevard at the intersection with Valley View. The right turn pocket will accommodate the Westbound to Northbound movement while the left turn pocket will accommodate the Westbound to Southbound movement. The estimated Project costs are as shown below:

DESCRIPTION	QTY	UNIT	UNIT PRICE	AMOUNT
MOBILIZATION AND DE-MOBILIZATION	1	LS	\$ 50,000.00	\$ 50,000.00
REMOVE ASPHALT PAVEMENT	1,100	SY	\$ 13.50	\$ 14,850.00
REMOVE CURB AND GUTTER	390	LF	\$ 6.25	\$ 2,437.50
REMOVE CONCRETE SIDEWALK	1,950	SF	\$ 2.75	\$ 5,362.50
REMOVE MEDIAN ISLAND	4,300	SF	\$ 1.75	\$ 7,525.00
ROADWAY EXCAVATION	275	CY	\$ 10.00	\$ 2,750.00
IRRIGATION AND LANDSCAPING REPAIR	1	LS	\$ 25,000.00	\$ 25,000.00
TYPE II AGGREGATE BASE	360	CY	\$ 20.00	\$ 7,200.00
4" HOT PLANTMIX RECYCLED BITUMINOUS PAVEMENT PATCH	1,515	SY	\$ 9.25	\$ 14,013.75
ADJUST MANHOLE TO FINISH GRADE	2	EA	\$ 475.00	\$ 950.00
4" CONCRETE SIDEWALK	1,720	SF	\$ 3.00	\$ 5,160.00
TYPE "L" CURB AND GUTTER	350	LF	\$ 11.00	\$ 3,850.00
CONCRETE TACK ON ISLAND	1,025	SF	\$ 5.75	\$ 5,893.75
CONSTRUCTION SURVEY	1	LS	\$ 13,000.00	\$ 13,000.00
RELOCATE STREETLIGHT	2	EA	\$ 4,500.00	\$ 9,000.00
REMOVE AND REPLACE NO. 5 PULLBOX	3	EA	\$ 450.00	\$ 1,350.00
REMOVE PEDESTRIAN SIGNAL POLE	1	EA	\$ 950.00	\$ 950.00
TRAFFIC SIGNAL MODIFICATION	1	LS	\$ 78,000.00	\$ 78,000.00
TRAFFIC CONTROL	1	LS	\$ 25,000.00	\$ 25,000.00
RELOCATE SIGN	1	EA	\$ 300.00	\$ 300.00
PERMANENT SIGN (GROUND MOUNTED)	2	EA	\$ 300.00	\$ 600.00
TYPE 1 FILM "ONLY"	15	EA	\$ 300.00	\$ 4,500.00
TYPE 1 FILM (ARROW)	15	EA	\$ 200.00	\$ 3,000.00
PAVEMENT MARKERS (NON-REFLECTIVE)	180	EA	\$ 1.90	\$ 342.00
PAVEMENT MARKERS (REFLECTIVE)	45	EA	\$ 2.80	\$ 126.00
6" STRIPING (PAINTED)	1,980	SF	\$ 6.25	\$ 12,375.00
DUST CONTROL	1	LS	\$ 7,000.00	\$ 7,000.00
SUBTOTAL				\$ 300,535.50
CONTINGENCY (20%)				\$ 60,107.10
CONSTRUCTION TOTAL				\$ 360,642.60
USE CONSTRUCTION TOTAL				\$ 360,643.00
DEPARTMENT PRELIMINARY ENGINEERING				\$ 5,000.00
CITY PRELIMINARY ENGINEERING				\$ 25,000.00
DEPARTMENT RIGHT OF WAY (INCIDENTALS)				\$ 15,000.00
DEPARTMENT CONSTRUCTION ENGINEERING				\$ 5,000.00
CITY CONSTRUCTION ENGINEERING				\$ 50,000.00
TOTAL ESTIMATED PROJECT COSTS				\$ 460,643.00