

COOPERATIVE (MATCHING) AGREEMENT
CHARLESTON MEDIANS

This Agreement is made and entered into this 9TH day of DECEMBER, 2008, by and between the STATE OF NEVADA, acting by and through its Department of Transportation, hereinafter called the DEPARTMENT, and the City of Las Vegas, 731 South Fourth Street, Las Vegas, NV 89101, hereinafter called the CITY.

WITNESSETH:

WHEREAS, a Cooperative Agreement is defined as an agreement between two or more public agencies for the "joint exercise of powers, privileges and authority;" 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 277.110 authorizes any two or more public agencies to enter into agreements for joint or cooperative action; and

WHEREAS, the parties to this Agreement are public agencies and authorized to enter into agreement in accordance with NRS 277.080 to 277.110; and

WHEREAS, this Agreement is intended to delegate authority to the CITY to design, advertise, award and manage construction of landscaped median islands with landscaping on Charleston Blvd. (SR 159) from Las Vegas Blvd. to Maryland Parkway as outlined in the Project Scope attached hereto and incorporated herein as Attachment A, hereinafter called the PROJECT; and

WHEREAS, the PROJECT has been selected and approved for funding under the Landscape and Aesthetics Community Matching Funds Program, under which this PROJECT is eligible for funding contributions of fifty percent (50%) State funds, contributed to the PROJECT by the DEPARTMENT and fifty percent (50%) local funds, contributed to the PROJECT by the CITY; and

WHEREAS, this Agreement and the PROJECT is of mutual benefit to the DEPARTMENT, the CITY, and the people of the State of Nevada 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 of the mutual covenants herein contained, it is agreed as follows:

ARTICLE I – CITY AGREES:

1. To perform or have performed by consultant forces: (a) the design (including the development of plans, specifications and estimates); (b) the acquisition of environmental permits and clearances; and (c) the advertisement, award and construction management of the PROJECT, as outlined in Attachment A, in accordance with applicable Federal and State regulations and policies and safety standards. The PROJECT shall be designed and constructed in accordance with DEPARTMENT standards. The PROJECT shall be designed,

constructed, operated and maintained in accordance with applicable Federal, State and laws, regulations, policies, ordinances and safety standards.

2. To invite the DEPARTMENT to PROJECT meetings, including but not limited to field reviews, plan review meetings and the pre-construction conference.

3. 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, cost estimate and bid documents.

4. To provide design exception documentation to the DEPARTMENT for review and approval.

5. To submit to the DEPARTMENT three (3) final sets of plans, specifications, estimates and bid documents for the DEPARTMENT's use.

6. 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.

7. To follow the terms and conditions of the encroachment permit issued by the DEPARTMENT and to incorporate those terms and conditions into the contract bid documents.

8. To obtain the DEPARTMENT's approval for all exceptions to DEPARTMENT and American Association of State Highway Officials (AASHTO) design standards.

9. To require the CITY's contractor to provide a warranty period for not less than one year for plant establishment.

10. To proceed with the PROJECT advertisement only after receiving a "Notice to Proceed" from the DEPARTMENT.

11. To perform the contract administration of the construction contract by providing appropriate personnel to: (a) observe, review, inspect, perform materials testing; (b) be in responsible charge of the construction; (c) be capable of answering any question that may arise in relation to the contract plan and specifications during construction; (d) to be responsible for insuring that all environmental permits and clearances requirements for monitoring and mitigation during construction of the PROJECT are being met; and (e) to report to the DEPARTMENT's Resident Engineer questions as to the administration of the contract, compliance with State requirements and acceptable fulfillment of the contract on the part of the contractor.

12. To submit to the DEPARTMENT for review and approval, any addenda, supplementals and change orders and to obtain written DEPARTMENT approval for any addenda, supplementals and change orders prior to incorporating into the PROJECT.

13. To allow the DEPARTMENT or its designated representatives to monitor all work associated with the PROJECT during construction.

14. 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. The manuals may be obtained from the DEPARTMENT's Administrative Services Division.

15. To submit two (2) sets of as-built plans to the DEPARTMENT prior to requesting the DEPARTMENT's attendance of the CITY's final inspection of the PROJECT.

16. As work progresses on the PROJECT, the CITY shall provide the DEPARTMENT with monthly invoices for payment of the PROJECT COSTS. The invoice shall be based upon and accompanied by auditable supporting documentation. Total reimbursement shall not exceed the total obligated amount, as established in Article II Paragraph 4. Invoices for the preliminary engineering phase shall be forwarded to the DEPARTMENT's project coordinator for payment processing. Invoices for the construction phase including the final invoice shall be forwarded to the DEPARTMENT's Resident Engineer for review. The Resident Engineer shall forward the invoice to the DEPARTMENT's project coordinator for payment processing.

17. To be responsible for the fifty percent (50%) match of State funds and for one hundred percent (100%) of all costs exceeding the obligated State funds.

18. To accept maintenance responsibilities including utility costs for the improvements constructed as part of the PROJECT, upon completion and final written acceptance of the PROJECT by the DEPARTMENT.

ARTICLE II - DEPARTMENT AGREES:

1. To follow applicable Federal and State Laws, regulations and policies for developing and approving project designs, overseeing projects and administering contracts.

2. To delegate authority to the CITY to: (a) design the PROJECT (including the development of plans, specifications, and estimates); (b) obtain the environmental permits and clearances; and (c) advertise, award, and manage construction of the PROJECT.

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

4. To obligate State funding for a maximum of Five Hundred Thousand and No/100 Dollars (\$500,000.00) for the PROJECT.

5. To establish a Project Identification Number to track all PROJECT costs.

6. Once the funding is obligated, to provide the CITY with a written "Notice to Proceed," authorizing the design of the PROJECT.

7. Based upon documentation provided by the CITY, the DEPARTMENT shall coordinate efforts between the appropriate regulatory agencies and the CITY, to ensure that all necessary environmental permits and clearances are obtained.

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 DEPARTMENT, AASHTO 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 occupying the DEPARTMENT's right-of-way pursuant to DEPARTMENT permits issued 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 ensure that applicable right-of-way laws and regulations are met on this PROJECT and to document those actions in accordance with the DEPARTMENT's administrative requirements.

14. 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 and maintaining the PROJECT.

15. To authorize the CITY to proceed with the advertisement/award of the contract and construction of the PROJECT, once the final design (including plans, specifications and estimates) has been reviewed and approved by the DEPARTMENT, all certifications have been completed and the funding authorized. The DEPARTMENT shall issue such authorization through a written "Notice to Proceed".

16. To assign a Project Coordinator and/or a Resident Engineer to act as the DEPARTMENT's representative to monitor all aspects of the PROJECT.

17. To review and approve, when appropriate, addenda, supplementals and change orders to the construction contract of the PROJECT to ensure compliance with the terms of this Agreement. Approval of said addenda, supplementals and change orders does not alter the maximum reimbursement to the CITY as established in ARTICLE II Paragraph 4.

18. To reimburse the CITY, monthly as work progresses on the PROJECT, for fifty percent (50%) of ELIGIBLE PROJECT COSTS based on supporting documentation. Total reimbursement shall not exceed the total programmed amount, as established in ARTICLE II Paragraph 4. ELIGIBLE PROJECT COSTS are those costs as defined in the DEPARTMENT's Landscape and Aesthetics Community Match Program Procedures Manual. The manual may be obtained from the DEPARTMENT's Landscape and Esthetics Section.

19. To transfer to the CITY its portion of maintenance responsibility after construction and upon final acceptance of the work within the limits of the PROJECT.

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, 2010 or until construction of all improvements contemplated herein have been completed and accepted by the DEPARTMENT, whichever occurs first, save and except the responsibility for maintenance as specified herein.

2. The description of the Project may be changed by mutual written consent of the parties.

3. All right-of-way for the PROJECT is in place and no utility facilities, having prior rights or franchise agreements that require the CITY to pay for any relocation, will require relocation in order to accommodate the PROJECT.

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

5. The total estimated PROJECT costs are One Million and No/100 Dollars (\$1,000,000.00), which includes Five Hundred Thousand and No/100 Dollars (\$500,000.00), comprising State funding of fifty percent (50%), of the TOTAL ESTIMATED PROJECT COSTS, and a match of Five Hundred Thousand and No/100 Dollars (\$500,000.00), comprising fifty percent (50%) of the TOTAL ESTIMATED PROJECT COSTS, which match shall be the responsibility of the CITY. The parties acknowledge and agree that the TOTAL ESTIMATED PROJECT COSTS set forth in Article III Paragraph 6 are estimates only and that in no event shall the DEPARTMENT portion exceed the total obligated amount, as established in Article II Paragraph 4.

6. The following is a summary of TOTAL ESTIMATED PROJECT COSTS and available funds.

TOTAL ESTIMATED PROJECT COSTS:

CITY Preliminary Engineering Costs:	\$ 136,400.00
CITY Construction Engineering Costs:	\$ 41,100.00
Construction Costs:	<u>\$ 822,500.00</u>

<u>TOTAL ESTIMATED PROJECT COSTS:</u>	\$ 1,000,000.00
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AVAILABLE FUNDING SOURCES:

DEPARTMENT State Funds:	\$ 500,000.00
CITY Funds:	<u>\$ 500,000.00</u>

<u>TOTAL PROJECT FUNDING:</u>	\$ 1,000,000.00
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7. The CITY may not incur any PROJECT costs until this Agreement is executed by both parties and the DEPARTMENT has issued a "Notice to Proceed."

8. The total PROJECT costs shall be determined by adding together the total costs incurred by the CITY for preliminary engineering, acquiring environmental permits and clearances, the utility adjustments, construction engineering, and construction costs. The CITY match will be calculated using the applicable percent of the TOTAL PROJECT COSTS eligible for State funding. The CITY is responsible for one hundred percent (100%) of all costs not eligible for State funding.

9. Eligible PROJECT costs are those defined in the applicable State Administrative Manual, Nevada Administrative code, NRS and NDOT Transportation Policies.

10. An alteration ordered by the DEPARTMENT which substantially changes the

services provided for by the expressed intent of this Agreement will be considered extra work, and shall be specified in an Amendment which 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.

11. 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.

12. The CITY has total and sole responsibility for the accuracy and correctness of data, plans, specifications and estimates prepared under the terms of this Agreement, and shall check all such material accordingly for completeness, missing items, correct multipliers and consistency. These deliverables shall be reviewed by the DEPARTMENT for conformity with the Agreement terms. The CITY acknowledges that review by the DEPARTMENT does not include detailed review or checking of major components and related details or the accuracy of such deliverables. The DEPARTMENT's review of said materials shall not release and absolve the CITY from its total and sole responsibility for the accuracy and correctness of materials.

13. 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.

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 reimburse the DEPARTMENT for all payments made by the DEPARTMENT by the date of termination and 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: Susan Martinovich, P.E., Director
Attn: Jason Tyrrell
Local Public Agency Coordinator
Nevada Department of Transportation
Roadway Design
123 E. Washington Street
P.O. Box 170
Las Vegas, Nevada 89125
Phone: (702) 671-8852
Fax: (702) 671-8850
E - mail: jtyrrell@dot.state.nv.us

FOR CITY: Mark Sorensen, P.E.
City of Las Vegas
400 Stewart Avenue
Las Vegas, NV 89101

Phone: (702) 229-2203
Fax: (702) 868-6374
E -mail: msorensen@lasvegasnevada.gov

16. The CITY will award the total contract in accordance with its rules and procedures to the lowest responsive and responsible bidder.

17. In the event the Nevada Legislature does not appropriate sufficient or any funds for a DEPARTMENT biennium during the term of this Agreement, this Agreement shall terminate.

18. The CITY will ensure 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. The 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. The CITY shall not utilize (and shall ensure any consultant will not utilize) any materials, information or data obtained as a result of performance of this Agreement in any commercial or academic publication or presentation without the express written permission of the DEPARTMENT. The CITY (and any consultant) shall not reference an opinion of an employee or agent of the DEPARTMENT obtained as a result of performance of this Agreement in any publication or presentation without the written permission of the employee or agent to whom the opinion is attributed, in addition to the permission of the DEPARTMENT.

19. 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, caused by the negligence, errors, omissions, recklessness or intentional misconduct of its own 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.

20. 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.

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

23. 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.

24. Except as otherwise expressly provided herein, all 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.

25. It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of the 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.

26. 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.

27. 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.

28. In connection with the performance of work under this Agreement, the PARTIES agree not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, sexual orientation or age, including, without limitation, with regard to employment, upgrading, demotion or transfer, recruitment or recruitment advertising layoff or termination, rates of pay or other forms of compensation, and selection for training, including, without limitation, apprenticeship. The PARTIES further agree to insert this provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

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

30. 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 the cooperative action set forth herein.

31. 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.

32. 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.


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

34. This Agreement constitutes the entire agreement of the parties and as 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 LAS VEGAS

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



Oscar B. Goodman
Mayor, City of Las Vegas

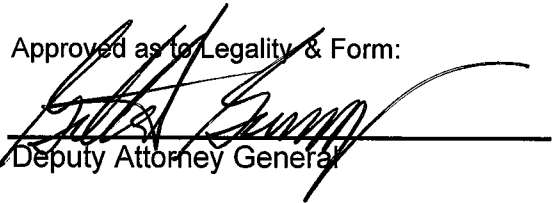
for 

Director

Attest:

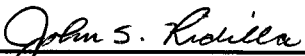


Beverly K. Bridges
City Clerk

Approved as to Legality & Form:


Deputy Attorney General

Approved as to Form:

 10/23/08

Deputy City Attorney

Attachment A

SCOPE OF WORK

CHARLESTON MEDIANS

The project consists of the construction of new median islands with landscaping to include, Canary Island Date Palms and other shrubs within the new median islands. The Project is located on Charleston Blvd. (SR 159) from Las Vegas Blvd. to Maryland Pkwy. The limits of the Project are depicted on the attached drawing.

