

COOPERATIVE AGREEMENT

This Agreement is made and entered into this 1st day of July, 2009, by and between the STATE OF NEVADA, acting by and through its Department of Transportation, hereinafter called the DEPARTMENT, and City of Las Vegas, 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, the purpose of this Agreement is to construct dual lefts in the eastbound and westbound directions on Charleston Blvd. at the intersection of Charleston Blvd. at Maryland Pkwy. located in Las Vegas, Nevada, and construct dual lefts in the eastbound and westbound directions on Craig Rd. at the intersection of Craig Rd. at Rainbow Blvd., and modify the median island at the intersection of Decatur Blvd. at Nebraska Ave, hereinafter referred to as the PROJECT; and

WHEREAS, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA LU) provides funding for all modes of transportation through its Safety Funding provisions, under which this PROJECT is eligible for ninety-five percent (95%) federal funds and five percent (5%) COUNTY funds; and

WHEREAS, the construction of the PROJECT will be of benefit to the DEPARTMENT, the CITY and to the people of the State of Nevada; and

WHEREAS, the DEPARTMENT 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 - CITY AGREES:

1. To reimburse the DEPARTMENT upon completion of the PROJECT within thirty (30) days after receipt of the DEPARTMENT's invoice for five percent (5%) of the total actual PROJECT costs, estimated to be One Million and Four Hundred Thousand and 00/100 Dollars (\$1,400,000.00).

2. To approve within two weeks of receipt the final plans and specifications for the PROJECT as prepared by the DEPARTMENT, said plans being acceptable to the Director of Public Works for the CITY. If the DEPARTMENT is not notified by the CITY within that period, the DEPARTMENT will proceed with the PROJECT as is.

3. To authorize the DEPARTMENT, its authorized agents and contractors to occupy the CITY's Right-of-Way or easements for the purposes set forth in this Agreement. This Agreement constitutes authority to the DEPARTMENT for such purposes.

4. To complete the review of all change orders submitted by the DEPARTMENT and return comments with in four (4) working days after receipt of such submittal, otherwise the DEPARTMENT will proceed with change orders so as to not delay the DEPARTMENT's PROJECT. No response from the CITY within this time frame will constitute the CITY's acceptance for the DEPARTMENT to proceed.

5. To provide the DEPARTMENT a written certification accompanied by supporting documentation, evidencing that the proposed improvements are to be constructed on property owned by the CITY.

6. To review all work associated with the PROJECT during construction with the understanding that any and all items of concern are reported to the DEPARTMENT's Resident Engineer for correction.

7. To be responsible for the five percent (5%) match of Federal funds and for one hundred percent (100%) of all costs not eligible for federal funding.

8. To retain ownership and maintain the improvements constructed as part of the PROJECT without cost to the DEPARTMENT upon completion of the PROJECT.

ARTICLE II - DEPARTMENT AGREES:

1. To obligate Federal Hazard Elimination funding for a maximum amount of One Million and Three Hundred and Thirty Thousand and No/100 Dollars (\$1,330,000.00).

2. To bill the CITY upon completion of the PROJECT for its five percent (5%) match of incurred PROJECT costs estimated to be Seventy Thousand and No/100 Dollars (\$70,000.00), and for one hundred percent (100%) all costs not eligible for federal funding.

3. To provide the CITY copies of the preliminary plans and specifications for review and comment, and to invite the CITY to the specification review meeting to address said comments.

4. To allow the CITY to observe, review, and inspect project construction work with the understanding that all items of concern are to be reported to the DEPARTMENT's Resident Engineer.

5. To observe, review, and inspect all work associated with the PROJECT during construction.

6. To allow the CITY to review and comment on the DEPARTMENT's PROJECT change orders which involve features or items related to the PROJECT for which the CITY assumes a maintenance responsibility. Approval shall be made within four (4) working days of service of change order as described in Paragraph 4 of ARTICLE I - CITY AGREES. No response from the CITY within this time frame shall constitute the CITY's acceptance for the DEPARTMENT to proceed.

ARTICLE III - IT IS MUTUALLY AGREED:

1. The term of this Agreement shall be from the date first written above through and including the 31st day of December, 2010 or until 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. 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.

3. 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.: Jim Ceragioli, Senior Project Coordinator
Nevada Department of Transportation
Safety / Traffic Division
1263 South Stewart Street
Carson City, NV 89712
Phone: (775) 888-7462
Fax: (775) 888-7403
E-mail: jceragioli@dot.state.nv.us

FOR CITY: Attn.: Mike Janssen, P.E., Assistant City Traffic Engineer
City of Las Vegas
Dept. of Public Works
400 Stewart Avenue, Las Vegas, NV 89101
Phone: (702) 229-4866
Fax: (702) 366-0032
E-mail: mjanssen@lasvegasnevada.gov

4. The total estimated PROJECT costs are One Million and Four Hundred Thousand and 00/100 Dollars (\$1,400,000.00), which includes: One Million and Three Hundred and Thirty Thousand and No/100 Dollars (\$1,330,000.00), which sum shall constitute the Federal Hazard Elimination Funds; and shall constitute ninety-five percent (95%) of the total Agreement estimated PROJECT costs, and a match of Seventy Thousand and No/100 Dollars (\$70,000.00), which sum is the responsibility of the CITY and which sum shall constitute five percent (5%) of the total Agreement Estimated PROEJCT cost.

5. The total PROJECT costs shall be determined by adding together the total costs incurred by the DEPARTMENT for preliminary engineering, right of way engineering, right of way acquisition, the relocation of utilities, construction engineering, and construction costs. The five percent (5%) match will be calculated as 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.

6. 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. The CITY shall be wary in its reliance on the estimates set forth in the Agreement.

7. The DEPARTMENT will award the total contract in accordance with its rules and procedures under the Standard Specifications for Road and Bridge Construction to the lowest responsive and responsible bidder. The DEPARTMENT has the right to reject any and all bid proposals determined not to be in the best interest of the State.

8. Construction engineering costs will be the actual construction engineering costs incurred by the DEPARTMENT during the construction of the PROJECT.

9. Should this Agreement be terminated by the CITY prior to completion of the PROJECT, the CITY will reimburse the DEPARTMENT for all improvement costs incurred up to the point of Agreement termination, and all costs incurred by the DEPARTMENT because of the Agreement termination.

10. The CITY agrees to pay actual PROJECT costs whether they be greater than or less than the estimates shown herein.

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 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.

13. 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.

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. 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 a written Amendment signed by the parties hereto, 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.

16. 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.

17. 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.

18. Except as otherwise specifically set forth herein, 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.

19. 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.

20. 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.

21. 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.

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

23. 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.

24. 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.

25. 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.

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

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.

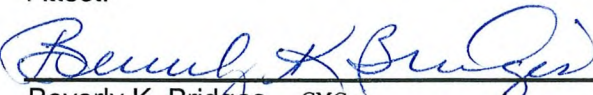
IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

CITY OF LAS VEGAS



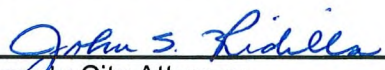
Oscar B. Goodman
Mayor, City of Las Vegas

Attest:



Beverly K. Bridges, CMC
City Clerk

Approved as to Form:



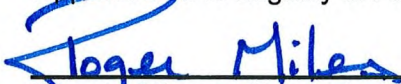
John S. Richards
Deputy City Attorney

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



R. Jett Paulin
Director
for

Approved as to Legality & Form:



Roger Miles
Deputy Attorney General