

Agreement Number PR 389-09-015

COOPERATIVE AGREEMENT

This Agreement is made and entered into this 2nd day of December, 2009, 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, 400 East Stewart Avenue, 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, the DEPARTMENT desires to complete the widening of the US-95 Highway, from Washington Avenue to Ann Road, Project # NH-095-2(051), E.A. 73451, from six (6) to eight (8) lanes and to construct CITY right turn lanes and to design plans for the relocation of CITY owned sanitary sewer manholes hereinafter called the PROJECT; and

WHEREAS, the purpose of this Agreement is to secure encroachment rights for the DEPARTMENT on CITY right-of-way, to establish design, construction, maintenance and cost participation responsibility, and to establish criteria to meet certain PROJECT requirements; and

WHEREAS, this agreement is of mutual benefit to the DEPARTMENT and the CITY as it provides a means of completing the PROJECT in the most efficient and cost-effective method; and

WHEREAS, the services to be provided under this Agreement will be of benefit to the DEPARTMENT and to the people of the State of Nevada; and

WHEREAS, the parties hereto are willing and able to perform the services described herein; and

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 review and comment, in writing, on DEPARTMENT plans and specifications which involve features or items related to the PROJECT, for which, the CITY assumes a maintenance responsibility. Response shall be received within twenty one (21) calendar days of

service of plans and specifications. Failure of CITY to respond within this time frame shall constitute the CITY's acceptance of such plans and specification and permission for the DEPARTMENT to proceed.

2. To operate, maintain and provide power for the proposed traffic signal system at the US-95 Southbound Off-ramp and the Rock Springs Drive intersection, including any luminaires mounted on the signal poles, in a satisfactory manner at no cost to the DEPARTMENT, except as noted in Article II, Paragraph 6 of DEPARTMENT AGREES.

3. To coordinate with the DEPARTMENT's Assistant District Engineer of Maintenance prior to any major signal system repair exceeding One Thousand Five Hundred and No/100 Dollars (\$1,500.00), as defined in Article II, Paragraph 6 of DEPARTMENT AGREES.

4. To notify, in advance, the DEPARTMENT's Assistant District Engineer of Maintenance that work will be performed within the DEPARTMENT right-of-way. Non-emergency work, requiring lane closure will require the submission of traffic control plans to the DEPARTMENT seventy-two (72) hours in advance of the performance of work.

5. To invoice the DEPARTMENT the actual cost of the repair defined in Article II, Paragraph 6 of DEPARTMENT AGREES. Repairs costing less than or equal to One Thousand Five Hundred and No/100 Dollars (\$1,500.00) or routine maintenance cost will be the responsibility of the CITY.

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

7. To ensure that all utility relocations under franchise rights are in compliance with the Americans with Disabilities Act (ADA).

8. To relocate all CITY owned utilities identified by the DEPARTMENT in writing that are in conflict with the PROJECT.

9. To grant the DEPARTMENT, or agents of the DEPARTMENT, the right to encroach upon CITY right-of-way and easements for the purpose of constructing the PROJECT. The construction within CITY right-of-way may include, but is not limited to, grading to improve drainage functions, reconstruction of curb, gutter and sidewalk, construction of drop inlets, construction of right turn lane and installation/modification of signal system. This permission is not only applicable to actual construction but includes any miscellaneous staging, detours, other traffic control scenarios or any other situation requiring encroachment upon said right-of-way for the construction of the PROJECT. CITY drainage easements to be graded occur along and adjacent to the west side of DEPARTMENT's US-95 right-of-way south of Alexander Road, south of Lone Mountain Road and north of Lone Mountain Road. CITY drainage easement areas in which grading will occur are generally depicted in Attachment A attached hereto. These rights shall expire upon completion of the PROJECT.

10. To permit full closure of Gowan Road, Lone Mountain Road and Alexander Road, to through traffic for the purpose of construction at respective areas. The DEPARTMENT's contractor shall only close a maximum of one (1) of these roads at a time, with

each road closure lasting approximately 45 working days with the exception of Gowan Road lasting approximately 90 working days, and traffic will be detoured onto other CITY owned roadways for each closure.

11. To review and comment, in writing, on DEPARTMENT submitted, contractor-designed, traffic control plans for the full closure of Gowan Road, Lone Mountain Road and Alexander Road. Response shall be received within seven (7) calendar days of service of plans. Failure of CITY to respond within this time frame shall constitute the CITY's acceptance of the plans and permission for the DEPARTMENT to proceed. CITY agrees to issue a no-fee barricade permit to the DEPARTMENT's contractor.

12. To grant the DEPARTMENT permission to permanently reduce the vertical clearance at the Gowan Road/US-95 underpass to a height no less than fourteen and one-half (14.5) feet.

13. To retain all of the existing maintenance responsibilities, including responsibilities in areas affected or improved by this PROJECT, upon completion of PROJECT construction.

14. To observe and inspect PROJECT construction work, which involves features or items related to the PROJECT for which the CITY has a maintenance responsibility. All items of concern by the CITY shall be reported to the DEPARTMENT's Resident Engineer and not to the contractor.

15. To review and comment, in writing, on all DEPARTMENT change orders which involve features or items related to the PROJECT for which the CITY assumes a maintenance responsibility, within seven (7) calendar days of service of such change orders. Failure of CITY to respond within this time frame shall constitute the CITY's acceptance of such change orders and permission for the DEPARTMENT to proceed.

16. To reimburse the DEPARTMENT for one hundred percent (100%) of design costs for the relocation of CITY owned sanitary sewer manholes that will be in conflict with the proposed realignment of the storm drain channel for the PROJECT at Alexander Road and at Lone Mountain Road, which are estimated at Twenty-Three Thousand Five Hundred Forty-Eight and No/100 Dollars (\$23,548.00).

17. To reimburse the DEPARTMENT for all costs associated with the PROJECT, including but not limited to mobilization, contingencies and construction engineering, within sixty (60) calendar days of receipt of the DEPARTMENT'S invoice for the construction of the CITY's right turn lanes located between Rainbow Boulevard and US-95 on the north side of Cheyenne Avenue and between Tenaya Way and US-95 on the south side of Cheyenne Avenue for an amount not to exceed One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00).

ARTICLE II - DEPARTMENT AGREES

1. To invoice the CITY with supporting documentation for design costs, within sixty calendar (60) days of receipt of the DEPARTMENT's invoice for the design of the plans to relocate CITY owned sanitary sewer manholes that will be in conflict with the proposed realignment of the storm drain channel for the PROJECT at Alexander Road and Lone Mountain Road which are estimated to be Twenty-Three Thousand Five Hundred Forty-Eight and No/100 Dollars (\$23,548.00).

2. To invoice the CITY with supporting documentation for all costs including mobilization, contingencies, and construction engineering, within sixty (60) calendar days of receipt of the DEPARTMENT'S invoice for the construction of the CITY's right turn lanes located between Rainbow Boulevard and US-95 on the north side of Cheyenne Avenue and between Tenaya Way and US-95 on the south side of Cheyenne Avenue for an amount not to exceed One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00). The DEPARTMENT will pay for all costs associated with the mobilization, contingencies, and construction engineering of those right turn lanes in excess of the CITY's contribution to the PROJECT of One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00).

3. To provide the CITY with two (2) copies of each set of PROJECT submittal plans and specifications for review and comment and to invite the CITY to the review meetings to address said comments.

4. To allow the CITY twenty-one (21) calendar days to review and provide comments on the plans and specifications for each PROJECT submittal.

5. To design and install traffic signal system at the US-95 Southbound Off-ramp and the Rock Springs Drive intersection in accordance with DEPARTMENT standards and to CITY standards where applicable to certain aspects of the design at no cost to the CITY.

6. To fund one hundred percent (100%) of the replacement cost, exceeding the first One Thousand Five Hundred and No/100 Dollars (\$1,500.00), for accidental damage to the signal system at the US-95 Southbound Off-ramp and the Rock Springs Drive intersection, provided the CITY is unable to recover the replacement cost from a third party. DEPARTMENT funds for replacement costs will be limited to the equipment cost for the controller cabinet, electrical service, detection system, poles, mast arms and signal heads.

7. The CITY is exempted from being required to obtain an encroachment permit from the DEPARTMENT for routine maintenance work on said signals, except as stated in Article 1, Paragraph 4, of CITY AGREES.

8. To design, or have designed by consultant forces, the relocation of CITY owned sanitary sewer manholes that will be in conflict with the proposed realignment of the storm drain channel at US-95 and Alexander Road and at US-95 and Lone Mountain Road.

9. To allow the CITY to observe and inspect PROJECT construction, which involves features or items related to the PROJECT, for which the CITY has a maintenance responsibility, with the understanding that all items of concern are to be reported to the DEPARTMENT's Resident Engineer and not to the contractor.

10. To allow the CITY to review and comment, in writing, on the DEPARTMENT initiated PROJECT change orders that involve features or items related to the PROJECT for which the CITY assumes a maintenance responsibility. Upon receiving a DEPARTMENT change order, the CITY shall notify the DEPARTMENT whether they will accept or reject the change order within seven (7) calendar days of service of change such order as described in Article I, Paragraph 15 of CITY AGREES. No response from the CITY within this time frame shall constitute CITY's acceptance of such change order(s) and permission for the DEPARTMENT to proceed. Any DEPARTMENT initiated change order submitted to the CITY shall not be unreasonably denied.

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, in order 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.

11. To ensure that all 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.

12. To provide the CITY a minimum of thirty (30) calendar days' notice prior to the full road closures described in Article 1, Paragraph 10, of CITY AGREES.

13. To perform general public outreach activities soon after the contract is awarded and to provide specific notices to all businesses and property owners located between Tenaya Way and Rainbow Boulevard along Gowan Road, Alexander Road and Lone Mountain Road 14 calendar days prior to the full road closures described in Article 1, Paragraph 10 of CITY AGREES.

14. To maintain the appropriate signs to warn motorists of the reduced vertical clearance described in Article 1, Paragraph 12, of CITY AGREES.

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, 2012, 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) 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.

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.: Jenica Finnerty, P.E.
Senior Project Manager
Nevada Department of Transportation
Project Management Division
1263 South Stewart Street

Carson City, NV 89712
Phone: (775) 888-7592
Fax: (775) 888-7322
E-mail: jfinnerly@dot.state.nv.us

FOR CITY:

Jorge Cervantes, P.E., Public Works Director
City of Las Vegas
City Hall
400 East Stewart
Las Vegas, NV 89101
Phone: (702) 229-6276
Fax: (702) 382-0848
E-mail: jcervantes@lasvegasnevada.gov

4. All right-of-way of 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. If it is determined at a later date that this is not the case, a written amendment to this Agreement shall be required.

5. The DEPARTMENT does not provide any warranty that the estimate provided in Article 1, Paragraph 16, of CITY AGREES is an accurate reflection of the final cost. The DEPARTMENT disclaims any such warranty. The CITY shall be wary in its reliance on the estimates set forth in the Agreement.

6. The DEPARTMENT does not provide any warranty that the amount provided in Article 1, Paragraph 17, of CITY AGREES is an accurate reflection of the final cost. The DEPARTMENT disclaims any such warranty. The CITY shall be wary in its reliance on the estimates set forth in the Agreement.

7. The CITY agrees to pay actual relocation design costs associated with the relocation of CITY sanitary sewer manholes provided in Article 1, Paragraph 16, of CITY AGREES whether they be greater than or less than the estimates shown herein.

8. The CITY agrees to pay actual construction, and construction engineering costs associated with the construction of CITY right turn lanes as provided in Article 1, Paragraph 17.

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 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.

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 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 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.

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 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.

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 state 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 expressly provided within 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.

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. If any litigation, claim or audit is started before the expiration of the three (3) year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

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 to be kept confidential by this Agreement.

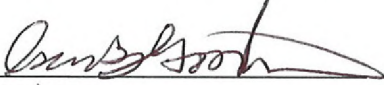
26. This Agreement shall not become effective until and unless approved by appropriate official action of the governing body of each party.

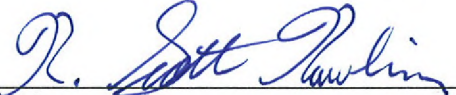
27. This Agreement constitutes the entire agreement of the parties and such is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment 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
through its DEPARTMENT OF TRANSPORTATION

State of Nevada, acting by and

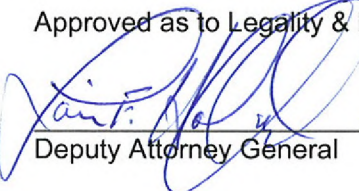

Oscar B. Goodman
Mayor, City of Las Vegas


Director
for

Attest:


Beverly K. Bridges, MMC
City Clerk

Approved as to Legality & Form:


12-11-09
Deputy Attorney General

Approved as to Form:

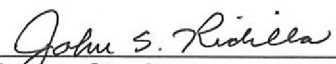

Deputy City Attorney

EXHIBIT A
PAGE 1 OF 4

- LEGEND -

 - CITY EASEMENTS IN WHICH GRADING WILL OCCUR

STATE	PROJECT NO.	COUNTY	SHEET NO.
NEVADA	NH-095-21051	CLARK	----

NOTE: DEPICTED UTILITY LOCATIONS ARE APPROXIMATE ONLY. CONTRACTOR TO VERIFY EXISTENCE AND LOCATION OF UNDERGROUND UTILITIES PRIOR TO CONSTRUCTION.

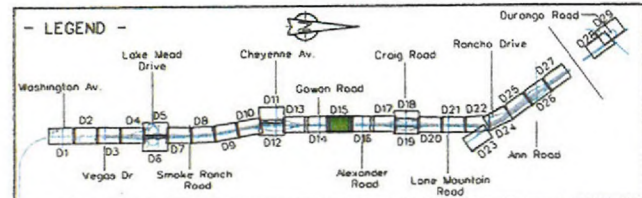
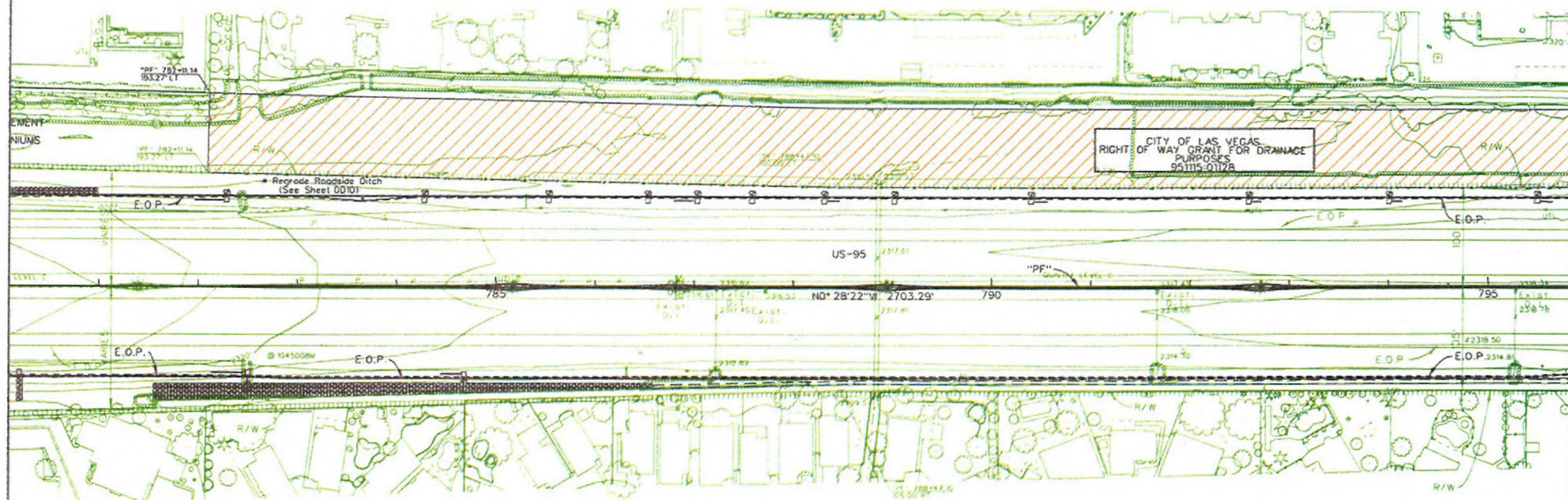


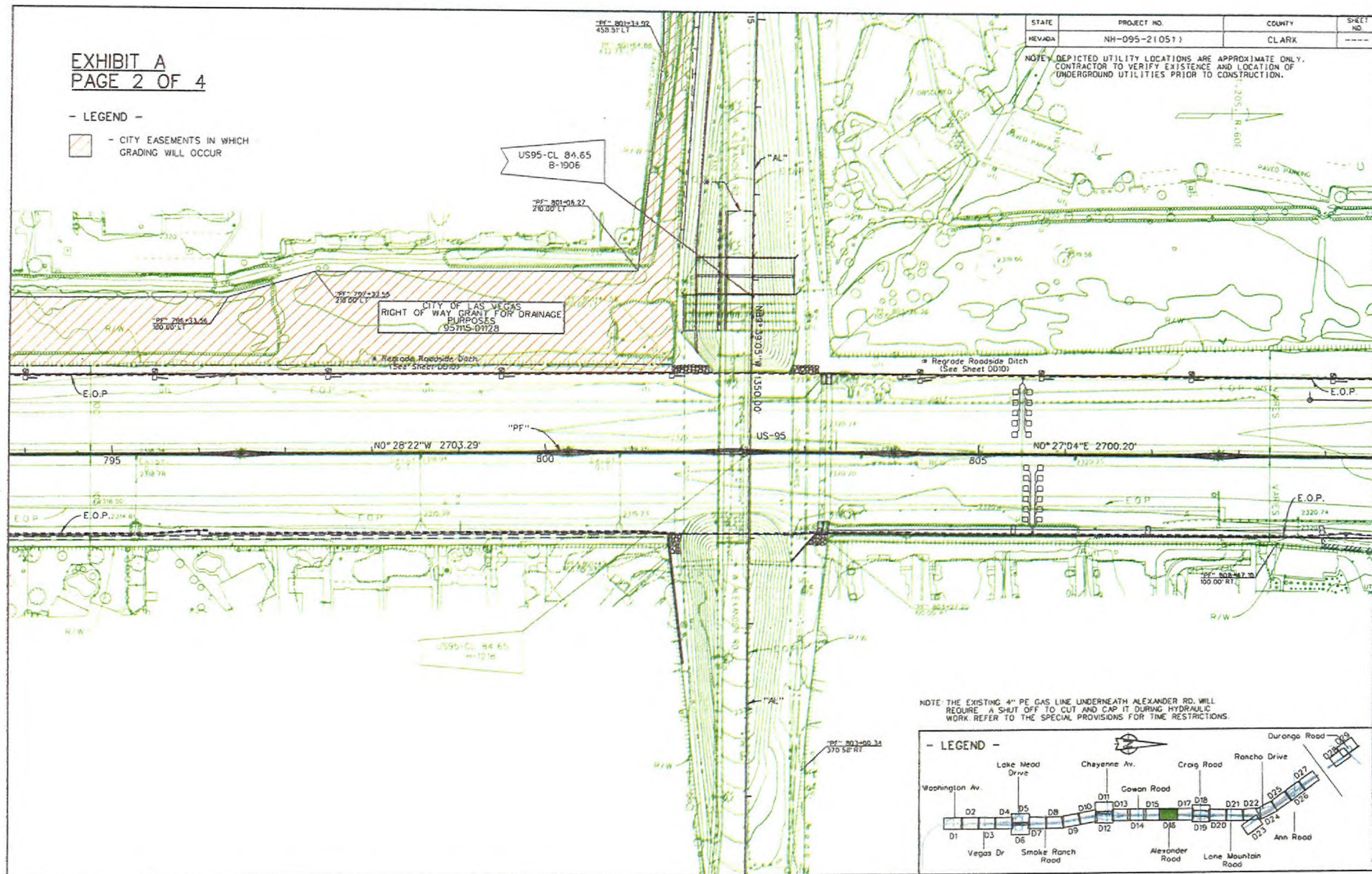
EXHIBIT A
PAGE 2 OF 4

- LEGEND -

 - CITY EASEMENTS IN WHICH GRADING WILL OCCUR

STATE	PROJECT NO.	COUNTY	SHEET NO.
NEVADA	NH-095-21051	CLARK	----

NOTE: DEPICTED UTILITY LOCATIONS ARE APPROXIMATE ONLY. CONTRACTOR TO VERIFY EXISTENCE AND LOCATION OF UNDERGROUND UTILITIES PRIOR TO CONSTRUCTION.



NOTE: THE EXISTING 4" PE GAS LINE UNDERNEATH ALEXANDER RD. WILL REQUIRE A SHUT OFF TO CUT AND CAP IT DURING HYDRAULIC WORK. REFER TO THE SPECIAL PROVISIONS FOR TIME RESTRICTIONS.

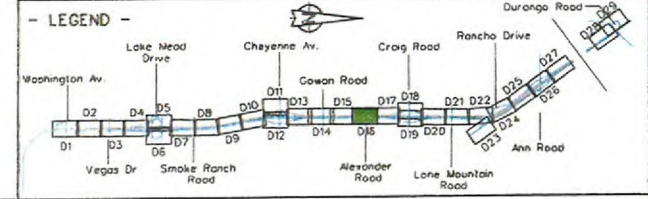


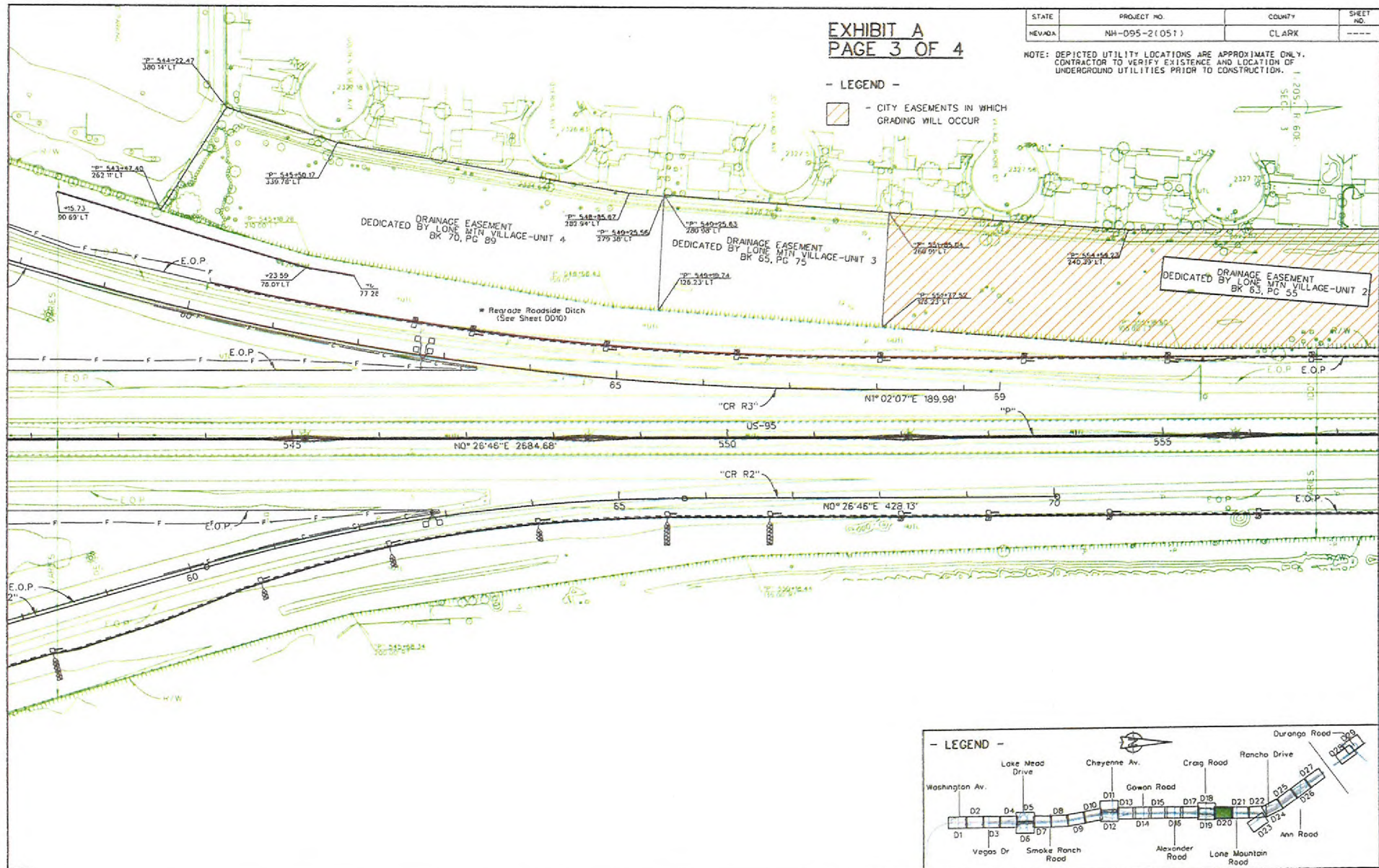
EXHIBIT A PAGE 3 OF 4

STATE	PROJECT NO.	COUNTY	SHEET NO.
NEVADA	NH-095-2(051)	CLARK	----

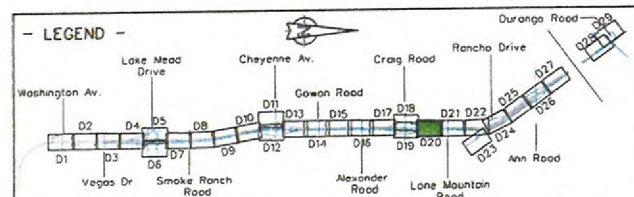
NOTE: DEPICTED UTILITY LOCATIONS ARE APPROXIMATE ONLY.
CONTRACTOR TO VERIFY EXISTENCE AND LOCATION OF
UNDERGROUND UTILITIES PRIOR TO CONSTRUCTION.

- LEGEND -

 - CITY EASEMENTS IN WHICH
GRADING WILL OCCUR



- LEGEND -



- LEGEND -

MENT
VILLAGE-UNIT 2
5

CD BY LONE BK B3 MTN VILLAGE-UNIT PG 55

US95-CL 85.67
B-2935

DEDICATED BY SECOND AMENDED MAP OF PAINTED DESERT
BK 41, PG 28

STATE	PROJECT NO.	COUNTY	SHEET NO.
NEVADA	NH-095-2 (051)	CLARK	----

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CONTRACTOR TO VERIFY EXISTENCE AND LOCATION OF
UNDERGROUND UTILITIES PRIOR TO CONSTRUCTION.

- LEGEND -

- LIMITS OF PAVING

- LEGEND -

