

COOPERATIVE AGREEMENT

This Agreement is made and entered into this 11TH day of MARCH, 2011 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, a political subdivision of the State of Nevada, 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 CITY is constructing a new drainage system in the Rancho Drive right of way as part of "Gowan Outfall Lone Mountain Branch-Rancho to Decatur Storm Drain Project", hereinafter called the PROJECT, that will be within DEPARTMENT right of way; and

WHEREAS, the purpose of the agreement is to establish maintenance and responsibility for the new drainage system in Rancho Drive right of way; and

WHEREAS, the maintenance services to be provided by the CITY will be of benefit to the CITY, the DEPARTMENT, and to people of the State of Nevada; and

WHEREAS, the CITY 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 notify the DEPARTMENT, in advance, of work that will be performed within the DEPARTMENT right of way. Work within the right of way will require the submission of traffic control plans to the DEPARTMENT's Assistant District Engineer for Maintenance seventy two (72) hours in advance of the of the performance of work. Work outside of the right of way will require a twenty four (24) hour advanced notification provided to the DEPARTMENT Assistant District Engineer for Maintenance prior to the performance of the work.
2. To maintain, rehabilitate, or reconstruct the underground drainage structures within the DEPARTMENT right of way in accordance to the construction plan, all applicable

ordinances, regulations, standards, and Clark County Regional Flood Control District's (CCRFCD) Operation and Maintenance Manual when warranted due to impacts of normal storm water conveyance activities. The CITY shall repair damages in a timely manner to their original improved state.

3. To remove all rubbish, trash, debris, and surplus materials from the inside of the underground drainage structures per CCRFCD Operation and Maintenance Manual.
4. To assume all costs for maintenance of the underground drainage facilities constructed with PROJECT within DEPARTMENT right of way per the CCRFCD Operation and Maintenance Manual.
5. To notify DEPARTMENT of any maintenance concerns or damages to surface drainage structures identified by the CITY.
6. The CITY must obtain approval from the DEPARTMENT for any modifications and/or repair within DEPARTMENT right of way to the medians, landscaping, curb and gutter, and pavement required to perform maintenance on the drainage structure.

ARTICLE II – DEPARTMENT AGREES:

1. To perform diligent review of the CITY'S permit application for maintenance, rehabilitation, or reconstruction, within 10 working days.
2. To allow immediate access to the right of way during an emergency conditions.
3. To waive all fees necessary for obtaining permits and approvals from the DEPARTMENT for maintenance, rehabilitation, or reconstruction.
4. To keep the surface drainage structure clear of debris that would prevent the collection and conveyance of flow. To keep the culverts, inlets and catch basins free of debris, dirt, and gravel. To maintain the gutters and grates at the openings of the drop inlet structures to promote the positive drainage of flow. Maintain unlined swales, channels, and ditches to promote the positive drainage of flow.
5. To obtain approval from the CITY for any modification, reconstruction, and extension of drainage structures constructed with the PROJECT. The cost and expense of any modification, reconstruction, and/or extension of the PROJECT, including costs for adjustment of manholes and/or drop inlets, is the sole responsibility of the DEPARTMENT.
6. To notify CITY of any maintenance concerns or damages to underground drainage structure identified by the DEPARTMENT.
7. To allow the CITY forces to access the drainage structures within DEPARTMENT right of way to perform maintenance, rehabilitation, or reconstruction on the underground drainage structures.

8. To issue a right of way occupancy permit for the drainage system, after all review comments have been satisfied.

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 July, 2014 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, and shall remain in full force and effect unless otherwise terminated.
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 accept as stated in Article III paragraph IT IS MUTUALLY AGREED. The parties expressly agree that this agreement shall be terminated immediately if for any reason Clark County Regional Flood Control District 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 at: 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: Mohamed Rouas, Nevada Department of
Transportation
Assistant District Engineer for Maintenance
123 E. Washington Avenue
Las Vegas, Nevada 89101
Phone: (702) 385-6503
Fax: (702) 385-6511
E-mail: mrouas@dot.state.nv.us

FOR THE CITY OF LAS VEGAS:

Jorge Cervantes, P.E., P.T.O.E.
Director of Public Works/City of Las Vegas
400 Stewart Avenue
Las Vegas, Nevada 89101
Phone: (702) 229-6276
Fax: (702) 382-3232
E-mail: jcervantes@lasvegasnevada.gov

4. 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.

5. 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.
6. 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.
7. An alteration ordered by the CITY or 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.
8. 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.
9. 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.
10. 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.
11. Each party agrees to keep and maintain under generally accepted accounting 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. It is specifically agreed between the parties executing this Agreement that it is not.
12. 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.

13. Neither party shall assign, transfer or delegate any rights, obligations or duties under this Agreement without the prior written consent of the other party.
14. 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.
15. 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.
16. 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.
17. This Agreement shall not become effective until and unless approved by appropriate official action of the governing body of each party.
18. 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.
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. 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, Nevada

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



Oscar B. Goodman, Mayor

Attest

for 

Director

Approved as to Legality & Form:

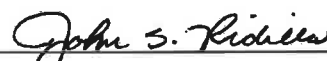


City Clerk



Deputy Attorney General

Approved as to Form:



Attorney
John S. Ridilla
Deputy City Attorney