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Agreement Number R624-01-010

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COOPERATIVE AGREEMENT

This Agreement, dated this 5th day of Dec, 2001, by and between the STATE OF NEVADA, acting by and through it's DEPARTMENT OF TRANSPORTATION, hereinafter called the DEPARTMENT, and Douglas County, a political subdivision of the State of Nevada hereinafter called the COUNTY.

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 277.080 to 277.170 authorizes any one or more public agencies to enter into agreements with any one or more other public agencies to perform any governmental service, activity or undertaking which any of the public agencies entering into the agreement is authorized by law to perform; and

WHEREAS, the purpose of this agreement is for design and construction of bicycle lanes, along Elks Point Road, from the intersection of United States Highway 50 (US 50) in Douglas County, Nevada, to Dorla Court and a separate bicycle path from Dorla Court to Nevada Beach Park, hereinafter referred to as PROJECT; and

WHEREAS, Elks Point Road (State Route 760) is owned by the DEPARTMENT and will be continued to be owned and maintained by the DEPARTMENT; and

WHEREAS, the COUNTY will amend their special use permit with the United State Forest Service to allow for the construction and maintenance of PROJECT within the United State Forest Service property boundaries; and

WHEREAS, as a result of this agreement, the COUNTY will accept maintenance responsibilities for the portion of the bicycle facility located off the shoulder of Elks Point Road (State Route 760); and

WHEREAS, the Transportation Equity Act for the 21ST Century (TEA 21) provides funding for all modes of transportation through the Enhancement Funding category, under which this PROJECT is eligible for 95% federal funds/5% COUNTY funds; and

WHEREAS, the PROJECT will be of benefit to the DEPARTMENT, the COUNTY and to the people of the State of Nevada by allowing for a bike path separated from State Route 760; and

WHEREAS, the DEPARTMENT and the COUNTY are 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:

COUNTY AGREES:

1. To reimburse the DEPARTMENT within thirty (30) days after receipt of the DEPARTMENT's invoice for their portion of the PROJECT costs, the 5% matching funds, estimated to be Twenty-Five Thousand (\$25,000.00) Dollars, for one hundred percent (100%) of all costs exceeding Five Hundred Thousand (\$500,000.00) Dollars, and for all costs not eligible for Federal Funds.

2. To be responsible for adjustments and/or relocations of utilities which are on easement or prescriptive rights with the COUNTY. Said adjustments and/or relocations will be in accordance with Nevada Revised Statutes and the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, as amended.

3. To accept maintenance responsibilities for the portion of the bicycle facility located off the shoulder of SR 760 and to amend their special use permit with the United States Forest Service to construct a bike path and perform maintenance where the facility is located on the United States Forest Service property.

4. To reimburse the DEPARTMENT within thirty (30) days for all Federal Enhancement Funding costs incurred, in conjunction with the PROJECT, up to the date of termination or cancellation should the PROJECT be terminated or canceled by the COUNTY. This reimbursement includes all design costs incurred.

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

6. To amend their special use permit with the United State Forest Service to allow for the construction and maintenance of PROJECT within the United State Forest Service property boundaries.

DEPARTMENT AGREES:

1. To design, advertise, award and administer the PROJECT to the DEPARTMENT's standards, policies and specifications.

2. To program and authorize funding for 95% of the PROJECT with Federal Enhancement Funds, not to exceed Four Hundred Seventy-Five Thousand (\$475,000.00) Dollars.

3. To bill COUNTY upon completion of the PROJECT for their match of incurred PROJECT costs estimated to be Twenty Five Thousand (\$25,000.00) Dollars, plus all costs exceeding Five Hundred Thousand (\$500,000.00) Dollars, plus all costs not eligible for Federal Funds.

4. To provide the COUNTY preliminary plans and specifications for review and comment, and to invite the COUNTY to the specification review meeting, the pre-construction conference and subsequent construction progress meetings, to address said comments.

5. To allow the COUNTY to observe, review, and inspect the PROJECT's construction work with the understanding that all items of concern are to be reported to the DEPARTMENT's Resident Engineer and not to the Contractor.

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

7. To retain ownership and maintenance responsibilities for State Route 760.

8. To invoke the DEPARTMENT's authority under Nevada Revised Statute 408.210 (4) for the relocation or adjustment of any encroachments, including utility facilities, occupying the DEPARTMENT's right-of-way pursuant to Nevada Revised Statute 408.210 and/or Nevada Revised Statute 408.423, needed to accommodate construction of the PROJECT.

IT IS MUTUALLY AGREED:

1. The term of this Agreement shall be from the date first written above until the 30th day of October, 2004, and the construction of all improvements contemplated herein shall be completed and accepted by the DEPARTMENT, save and except the responsibility for maintenance as specified herein, no later than the 30th day of October, 04.

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 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
Att.: Glenn R. Petrenko, Senior Road Designer
Nevada Department of Transportation
1263 South Stewart Street
Carson City, NV 89712
(775) 888-7651

FOR COUNTY:

J. Robert Nunes, Director
Douglas County Community Development
1594 Esmeralda Avenue
Minden, Nevada 89423

4. 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, utility relocation, construction engineering, and construction costs. The COUNTY is responsible for the 5% match of the total PROJECT costs eligible for federal funding, plus all costs not eligible for Federal funding plus all project costs in excess of Five Hundred Thousand (\$500,000.00) Dollars.

5. The total estimated PROJECT costs are Five Hundred Thousand (\$500,000.00) Dollars, which includes Four Hundred Seventy-Five Thousand (\$475,000.00) Dollars (95%) of federal funding, and a 5% match of Twenty-Five Thousand (\$25,000.00) Dollars of which is the responsibility of the COUNTY.

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 COUNTY shall be wary in their 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. If the lowest responsive and responsible bid exceeds the Engineer's estimate by more than seven percent (7%) of the total estimate, the DEPARTMENT will notify the COUNTY, and under mutual agreement will make the determination to reject any and all bid proposals.

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

9. Should CONTRACT costs, based upon the bid tabulation, exceed the estimated cost of Five Hundred Thousand Dollars (\$500,000.00), COUNTY has the option of paying the additional costs or canceling their participation in this Agreement. Should COUNTY elect to terminate their participation in this Agreement, COUNTY shall notify DEPARTMENT in writing within 7 business days of the bid opening. Should COUNTY elect to terminate their participation in this Agreement, COUNTY will be responsible for all costs incurred by the DEPARTMENT as a result of Agreement termination.

10. Should this Agreement be terminated by the COUNTY prior to completion of the PROJECT, the COUNTY will reimburse the DEPARTMENT for all project costs and costs not chargeable to Federal Funds incurred up to the point of Agreement termination, and all costs incurred by the DEPARTMENT because of the Agreement termination.

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

12. If the COUNTY decides to cancel the PROJECT for any reason, the COUNTY will be responsible for the PROJECT costs spent to date.

13. 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 receipt of written notice by the indemnifying party 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 to hold harmless any attorney's fees and costs for the indemnified party's chosen right to participate with legal counsel.

14. 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.

15. 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.

16. 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.

17. 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.

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

19. 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.

20. 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.

21. 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.

22. 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.

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

24. 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.

25. 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.

26. 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.

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

28. This Agreement constitutes the entire agreement of the parties and such are 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.

DOUGLAS COUNTY

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

for Daniel C. Heller, County Manager
Chairman Bonnie Curtis
Douglas County Board of Commissioners

Jeffy Inman
Thomas E. Stephens, P.E.
Director

Attest:
Barbara Reed

Reviewed:
Susan Martinovich
Susan G. Martinovich, P.E.
Assistant Director, Engineering

County Clerk

BY: L. Lynch, DEPUTY

Reviewed:
Heidi A. Mireles
Heidi A. Mireles
Chief Right-of-Way Agent

Reviewed:
Richard J. Nelson
Richard J. Nelson, P.E.
District II Engineer

Approved as to Form:

B. Choy
Attorney

Approved as to Legality & Form:

Thomas J. [Signature]
Deputy Attorney General

a: Bike Agreement SR 760
Douglas County

REQUESTED BY
DOUGLAS COUNTY
IN OFFICIAL RECORDS OF
DOUGLAS CO., NEVADA

2001 DEC 31 AM 8: 51

LINDA SLATER
RECORDER

\$ e PAID ko DEPUTY

CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original on file and on record in my office.

DATE: December 28 2001
B. Reed Clerk of the 9th Judicial District Court
of the State of Nevada, in and for the County of Douglas.

By [Signature] Deputy

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