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Comm Dec  
Lynda Taylor

FILED

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'01 DEC 28 P3:17

Agreement Number RL25-01-010

COOPERATIVE AGREEMENTS

This Agreement, dated this 5<sup>th</sup> 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 to provide for the design, construction, and payment for the removal of damaged sidewalks and the construction of new wider sidewalks to enhance pedestrian use and safety; and

WHEREAS, a portion of this new sidewalk is eligible for Federal Enhancement Funds, from approximate Engineer's Station "PM" 30+09 to "E" 10+61 and from "E" 10+10 to "E" 10+20, all located in Douglas County, Nevada, hereinafter called PROJECT; and

WHEREAS, the Transportation Equity Act for the 21<sup>st</sup> 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 and 5% DEPARTMENT funds; and

WHEREAS, the COUNTY also desires to have additional sidewalk, curb & gutter, and valley gutter, constructed along SR 760 at their cost, from approximate Engineer's Station "E" 10+60 to "E" 11+60, hereinafter called SIDEWALK; and

WHEREAS, the construction of new sidewalk will be of benefit to the DEPARTMENT, the COUNTY and to the people of the State of Nevada by providing access to a new bike/pedestrian path; and

WHEREAS, the construction of new sidewalk will be of benefit to the DEPARTMENT, the COUNTY and to the people of the State of Nevada by providing access to a new bike/pedestrian path; 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:

COUNTY AGREES:

1. To reimburse the DEPARTMENT within thirty (30) days after receipt of the DEPARTMENT's invoice for one hundred percent (100%) of all PROJECT costs exceeding Fifty-Two Thousand Seven Hundred Fifty (\$52,750.00) Dollars, and for all PROJECT costs not eligible for Federal Funds.
2. To be responsible for and assume liability for payment of all costs associated with the construction of SIDEWALK. Costs include but are not limited to: relocation of utilities and drainage facilities, construction, construction engineering, and mobilization.
3. To reimburse the DEPARTMENT within thirty (30) days after receipt of the DEPARTMENT's invoice for all SIDEWALK costs, estimated at Twenty Thousand (\$20,000.00) Dollars.
4. To accept maintenance responsibilities, including but not limited to liability for payment of maintenance responsibilities, for the sidewalk, constructed for both PROJECT and SIDEWALK, along US 50 and SR 760.
5. 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.
6. 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.

7. To complete the review of all change orders submitted by the DEPARTMENT and provide the DEPARTMENT with the COUNTY's written response within four (4) business days after receipt of such change orders. In the event the COUNTY does not provide the DEPARTMENT with the COUNTY's written response to the DEPARTMENT's change orders within four (4) business days after receipt of such change orders, 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.

8. To authorize and hereby does authorize the DEPARTMENT, DEPARTMENT's authorized agents, and DEPARTMENT's contractor to occupy right-of-way presently owned by COUNTY for the construction of PROJECT and SIDEWALK, for the purposes set forth in the Agreement. This Agreement constitutes authorization to DEPARTMENT for such purposes.

**DEPARTMENT AGREES:**

1. To design, advertise, award and administer PROJECT and SIDEWALK 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 Fifty Thousand One Hundred Twelve Dollars Fifty Cents (\$50,112.50).

3. To fund the 5% match of the PROJECT with State funds, not to exceed Two Thousand Six Hundred Thirty-Seven Dollars Fifty Cents (\$2,637.50).

4. To provide the COUNTY with PROJECT and SIDEWALK 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 PROJECT and SIDEWALK construction work with the understanding that all items of concern are to be reported in writing to the DEPARTMENT's Resident Engineer and not to the Contractor.

6. To retain ownership and maintenance responsibilities for State Route 760 and US 50 except as described in Paragraph Number 4 of that section of the instant Cooperative Agreement entitled "COUNTY AGREES:".

7. 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 the 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 30<sup>th</sup> 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 30<sup>th</sup> day of October, 2004.

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  
Attn: 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, NV 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, the relocation of utilities, construction engineering, and construction costs. The match to be paid by the DEPARTMENT shall be five percent (5%) of the total PROJECT costs eligible for Federal funding.

5. The total SIDEWALK 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.

6. The estimated PROJECT and SIDEWALK costs and funding sources are shown in the tables below:

PROJECT COSTS	Federal Enhancement Funds (@ 95%)	State Match (@ 5%)	Douglas County Funds	Totals
Construction	\$38,712.50	\$2,037.50	\$0.00*	\$40,750.00
CE by State	\$6,650.00	\$350.00	\$0.00*	\$7,000.00
PE by State	\$4,750.00	\$250.00	\$0.00*	\$5,000.00
Totals	\$50,112.50	\$2,637.50	\$0.00*	\$52,750.00*

\*Douglas County is responsible for all PROJECT costs above \$52,750.00 and all costs not eligible for Federal Funds.

SIDEWALK COSTS	Federal Enhancement Funds (@ 95%)	State Match (@ 5%)	Douglas County Funds	Totals
Construction	\$0.00	\$0.00	\$17,000.00	\$17,000.00
CE by State	\$0.00	\$0.00	\$2,500.00	\$2,500.00
PE by State	\$0.00	\$0.00	\$500.00	\$500.00
Totals	\$0.00	\$0.00	\$20,000.00	\$20,000.00

\*Douglas County is responsible for all SIDEWALK costs.

7. 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 its reliance on the estimates set forth in the Agreement.

8. 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 has the right to reject any and all bid proposals.

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

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. Should PROJECT costs, based upon the bid tabulation, exceed the estimated cost of Fifty-Two Thousand Seven Hundred Fifty Dollars (\$52,750.00), 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 participation in this Agreement, COUNTY will be responsible for all costs incurred by the DEPARTMENT as a result of Agreement termination.

14. Should SIDEWALK costs, based upon the bid tabulation, exceed the estimated cost of Twenty Thousand Dollars (\$20,000.00), COUNTY has the option of paying the additional costs or requesting the DEPARTMENT change order the SIDEWALK work out of the project. Should COUNTY elect to have the SIDEWALK work removed from the project, COUNTY shall notify DEPARTMENT in writing within 7 business days of the bid opening. Should COUNTY elect to have the SIDEWALK work removed from the project, COUNTY will be responsible for all costs incurred by the DEPARTMENT as a result of change ordering the SIDEWALK work out of the project.

15. 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 part 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.

16. 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.

17. 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 its rights or remedies as to any other breach.

18. 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.

19. 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.

20. The illegality or invalidity of any provisions 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 nonenforceability of such provision shall not be held to render any other provision or provisions of this Agreement unenforceable.

21. 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.

22. In the event the Nevada Legislature does not appropriate sufficient or any funds for the DEPARTMENT biennium during the purported term of this agreement, this agreement shall terminate.

23. 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.

24. 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.

25. 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.

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

27. 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.

28. 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.

29. 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.

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

31. This Agreement constitutes the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, 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 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

*Ronald Curtis*  
Chairman  
Douglas County Board of Commissioners

Attest:

*Barbara Reed*  
County Clerk

BY: *L. Lopez* DEPUTY

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

*Thomas E. Stephens*  
Thomas E. Stephens, P.E.  
Director

Reviewed:

*Susan G. Martinovich*  
Susan G. Martinovich  
Assistant Director - Engineering

Reviewed:

*Heidi A. Mireles*  
Heidi A. Mireles  
Chief Right-of-Way Agent

Recommended:

*Richard J. Nelson*  
Richard J. Nelson  
District II Engineer

Approved as to Form:

*David W. Royle*  
Attorney

Approved as to Legality & Form:

*Deputy Attorney General*  
Deputy Attorney General

a:SR760.ElksPointRoad  
Douglas County

REQUESTED BY  
**DOUGLAS COUNTY**

IN OFFICIAL RECORDS OF  
DOUGLAS CO., NEVADA

2001 DEC 31 AM 8: 52

LINDA SLATER  
RECORDER

\$ 8 PAID Ka 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 *Deputy Attorney General* Deputy

**SEAL**

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