

OFFICIAL RECORD

Requested By:

DC/COMMUNITY DEVELOPMENT

Assessor's Parcel Number: N/A

Date: MARCH 6, 2009

Recording Requested By:

Douglas County - NV
Karen Ellison - Recorder
Page: 1 Of 7 Fee: 0.00
BK-0309 PG- 1267 RPIT: 0.00



Name: LYNDA TEGLIA, COMMUNITY DEVELOPMENT

Address: _____

City/State/Zip: _____

Real Property Transfer Tax: \$ N/A

AGREEMENT #2009.045

(Title of Document)

FILED

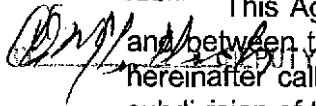
NO. 2009.045

Agreement Number UM046-09-030

2009 MAR -6 AM 9:28

INTERLOCAL AGREEMENT

TED THIRAN
CLERK



This Agreement, made and entered into the 3rd day of March, 2009, by and between the STATE OF NEVADA, acting by and through its Department of Transportation, hereinafter called the DEPARTMENT, and Douglas County Board of Commissioners, a political subdivision of the State of Nevada, hereinafter referred to as, COUNTY.

WITNESSETH:

WHEREAS, an Interlocal Agreement is defined as an agreement by public agencies to "obtain a service" from another public agency; 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 277.180 authorizes any one or more public agencies to contract 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 refers to such as an Interlocal Contract, hereinafter called an Agreement; and

WHEREAS, the DEPARTMENT currently owns and maintains SR 207 and will continue to own and maintain SR 207; and

WHEREAS, the purpose of this Agreement is for Project PLH-0207(005) EA 73194 to construct erosion control and water quality improvements along SR 207 from the intersection of SR 207/US 50 to Dagget Pass and for the purpose of addressing right-of-way, construction, ownership, and maintenance responsibilities for Project PLH-0207(005) EA 73194 hereinafter called PROJECT; and

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

WHEREAS, it is necessary to do PROJECT improvements, to incorporate portions of the COUNTY roadways/streets into SR 207 right-of-way; 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 - COUNTY AGREES

1. To permit DEPARTMENT and their authorized representatives, to occupy right-of-way presently owned or controlled by COUNTY during construction of the PROJECT and to access all COUNTY property and streets within or adjacent to SR 207 from the intersection of US 50 to Daggett Pass.

2. To use the COUNTY's best efforts to require those utility companies having franchise agreements to relocate their facilities in accordance with the franchise agreements that are in conflict with the PROJECT.

3. Right-of Way for the PROJECT presently owned and maintained by the COUNTY will continue to be owned and maintained by the COUNTY.

4. Existing and proposed drainage, water quality and erosion control improvements constructed or improved as part of the PROJECT that are located within COUNTY's right-of-way, shall be maintained by the COUNTY or their representatives except where the DEPARTMENT has obtained a permanent easement.

5. The access rights described in Article I, Paragraph 1, shall commence upon the award of the Construction Contract for the PROJECT and approval in accordance with Article III Paragraph 1 of this Agreement and shall continue for thirty-six (36) months. COUNTY will be notified by certified mail or personal service of the Award Date. DEPARTMENT'S contractor will notify the COUNTY and COUNTY's tenants 30 days prior to occupying COUNTY property.

ARTICLE II - DEPARTMENT AGREES

1. To assume all costs for construction of PROJECT including engineering and utility relocation.

2. To be responsible for the design of the PROJECT, in accordance with DEPARTMENT standards, policies and specifications, and to prepare right-of-way plans, construction plans and specifications, and otherwise to develop all information necessary for the construction of PROJECT.

3. To leave COUNTY's remaining rights-of-way and all properties owned or controlled by COUNTY that DEPARTMENT occupies and disturbs in a clean and neat manner and all items removed, restored in as nearly their original conditions as existed prior to DEPARTMENT's occupation and use.

4. To provide the COUNTY plans and specifications for review and comment, and to invite COUNTY to the specification review meeting to address said comments.

5. To observe, review, and inspect all work associated with the PROJECT during construction with the understanding that any and all items of concern are reported to the DEPARTMENTS Resident Engineer for correction.

6. To retain ownership of and maintenance responsibilities for SR 207, including maintenance of improvements constructed by the PROJECT that are located within SR 207 right-of-way and within permanent easements acquired for the PROJECT.

ARTICLE III - IT IS MUTUALLY AGREED

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

2. The term of this Agreement shall commence upon the award of the Construction Contract for the PROJECT and approval in accordance with Article III Paragraph 1 above and shall continue for thirty-six (36) months. COUNTY will be notified by certified mail or personal service of the Award Date or until the 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.

3. The parties agree to allow each other to observe, to inspect PROJECT construction and to review applicable change orders in a timely manner which prevents project delay. It is the intention of the parties that this review does not constitute a joint exercise of powers pursuant to NRS 277.080 to 277.170.

4. 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.

5. 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:

Susan Martinovich, P.E., Director
Attn.: Jon L. Bunch, Chief Right-of-Way Agent
Nevada Department of Transportation
Right-of-Way Division RM 320
1263 South Stewart Street
Carson City, NV 89712
Phone: (775) 888-7480
Fax: (775) 888-7313
E-mail: jbunch@dot.state.nv.us

FOR COUNTY

Douglas County
Board of County Commissioners
c/o T. Michael Brown, Douglas County Manager
P.O. Box 218
Minden NV, 89423
Telephone (775) 782-9821
Fax (775) 782-6255



6. Each party agrees to keep and maintain under generally accepted accounting principles full, true and complete records and documents (written, electronic, computer related or otherwise) 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 are maintained. Such records and documentation shall be retained for three (3) years after final payment is made.

7. Failure of either party to perform any obligation of this Agreement shall be deemed a breach. Except as otherwise provided for by law or this Agreement, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including but not limited to actual damages, and to a prevailing party's reasonable attorney fees and costs.

8. 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.

9. 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.

10. To the fullest extent of NRS Chapter 41 liability limitations, each party shall indemnify, hold harmless and defend, not excluding the others right to participate, the other from and against all liability, claims, actions, damages, losses, and expenses, including but not limited to reasonable attorney 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 service of written notice to the other 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 for reimbursement of any attorney fees and costs incurred by the indemnified party due to said party exercising its right to participate with legal counsel.

11. 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.

12. 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.



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

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

15. 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, save and except the grant by COUNTY to DEPARTMENT of the parcel as described in Article 1, Paragraph 5 and Exhibit "A", and save and except the acceptance by DEPARTMENT of ownership and maintenance of SR-207.

16. 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.

17. 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.

18. 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 perform the services set forth herein.

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 exclusive jurisdiction of the Ninth Judicial District Court in and for the County of Douglas, State of Nevada, for enforcement of this Agreement.

20. The COUNTY 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 COUNTY and the DEPARTMENT. The COUNTY 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 COUNTY and the DEPARTMENT. The COUNTY 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 COUNTY (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.

21. It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of this 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.

22. 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.

COUNTY OF DOUGLAS

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

Nancy McDermid
Nancy McDermid, Chair
Douglas County Board of Commissioners

Kent S. Cooper 3/2/09
Director

Attest:

Recommended:

Ted Thran
Ted Thran, Douglas County Clerk/Treasurer
Approved as to Form:

Kent S. Cooper 3/2/09
Kent Cooper, Asst. Director, Engineering

Jack Ward
Deputy District Attorney

Thor Dyson 2/23/09
Thor Dyson, District II Engineer

Reviewed:

Jon L. Bunch
Jon L. Bunch, Chief Right-of-Way Agent

Approved as to Legality & Form:

Catherine Harper
Deputy Attorney General

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: MAY 6, 2009
TED THRAN Clerk of the 9th Judicial District Court
of the State of Nevada, in and for the County of Douglas.

By Cristina M. Pullock Deputy