

Assessor's Parcel Number: N/A

Date: MAY 7, 2015

Recording Requested By:

Name: NIKKI SCHMIDT, PUBLIC WORKS
 (JE)

Address: _____

City/State/Zip: _____

Real Property Transfer Tax: \$ N/A



KAREN ELLISON, RECORDER

 COOPERATIVE AGREEMENT #2015.096
(Title of Document)

FILED

NO. 2015.096

Agreement Number R152-14-010

2015 MAY -7 PM 3: 39

COOPERATIVE AGREEMENT
SR 756, CENTERVILLE LANE, AT STRUCTURE B-287

DOUGLAS COUNTY

CLERK
[Signature]
BY *[Signature]*

This Agreement is made and entered into this 23 day of April, 2015, by and between the STATE OF NEVADA, acting by and through its Department of Transportation, hereinafter called the DEPARTMENT, and DOUGLAS COUNTY, a municipal corporation and political subdivision of the State of Nevada, 1407 Highway 395 N, Gardnerville, Nevada 89410, 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 277.110 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 purpose of this Agreement is to address each Party's responsibilities concerning the design, construction, construction management, maintenance, and funding for the widening of structure B-287, constructing new curb, gutter, and sidewalk on SR 756, Centerville Lane, in Douglas County, hereinafter called the PROJECT; and

WHEREAS, the PROJECT has been approved for Five Hundred Seventy Thousand and No/100 Dollars (\$570,000.00) in Federal funds, T.A.P. (Transportation Alternative Program); and

WHEREAS, the parties hereto 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:

ARTICLE I - COUNTY AGREES

1. To reimburse the DEPARTMENT within thirty (30) calendar days after receipt of the DEPARTMENT's invoice for the COUNTY's portion of the PROJECT costs, estimated to be Thirty Thousand and No/100 Dollars (\$30,000.00) for the five (5%) percent local match, plus one hundred percent (100%) of all cost exceeding Six Hundred Thousand and No/100 Dollars (\$600,000.00), plus all costs not eligible for federal funding.

2. To accept ownership of and perform all maintenance, repair, and operational responsibilities for the sidewalk and all improvements located behind back of curb and gutter on SR 756, Centerville Lane, constructed as part of the PROJECT upon completion and the DEPARTMENT's final written acceptance of the PROJECT.

3. To complete the review of all supplementals and change orders submitted by the DEPARTMENT and return comments within five (5) calendar days after the DEPARTMENT's service of such submittal, otherwise the DEPARTMENT will proceed with supplementals and change orders so as to not delay the PROJECT. No response from the COUNTY within this time frame will constitute the COUNTY's consent for the DEPARTMENT to proceed. The DEPARTMENT will consider all comments received from the COUNTY; however, the DEPARTMENT's decision shall be binding on the parties

4. To permit the DEPARTMENT and its contractors to enter on COUNTY-owned lands and roadways for the purpose of constructing the PROJECT. This permission is not only applicable to actual construction but includes any miscellaneous detours or other traffic control scenarios that may be needed for the purposes of constructing the PROJECT. This Agreement constitutes authorization to the DEPARTMENT for such purposes.

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

6. To review the design plans and specifications at the intermediate and final submittal level and provide any comments to the DEPARTMENT at the specifications review meetings.

7. To review the bid tabulation for the construction contract and to provide the DEPARTMENT with written concurrence of the award of the contract within seven (7) calendar days of receipt of the bid tabulations. The DEPARTMENT will not award this PROJECT without the COUNTY's written approval of the lowest responsive and responsible low bidder.

8. 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 DEPARTMENT's Resident Engineer for correction.

ARTICLE II - DEPARTMENT AGREES

1. To fund Ninety-Five percent (95%) of the PROJECT with Federal funds, estimated to be and not to exceed Five Hundred Seventy Thousand and No/100 Dollars (\$570,000.00).

2. To bill COUNTY upon completion of the PROJECT for its match of incurred PROJECT costs estimated to be Thirty Thousand and No/100 Dollars (\$30,000.00) plus all costs not eligible for Federal funding and/or exceeding the Federal funding, as established in Article II, Paragraph 1.

3. To advertise, award, and administer the PROJECT once approval from the COUNTY has been received as described in Paragraph 7 of ARTICLE I – COUNTY AGREES.

4. To invoke the DEPARTMENT'S authority under Nevada Revised Statute 408.210(4) for the relocation or adjustment of any encroachment, including utility facilities in place under a DEPARTMENT permit, occupying the DEPARTMENT'S right-of-way pursuant to Nevada Revised Statute 408.423, needed to accommodate construction of the PROJECT.

5. 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.

6. To perform the preliminary engineering, right-of-way acquisitions, coordinate utility relocations, and administrate the construction of the PROJECT.
7. To generate right-of-way mapping, title reports, and legal descriptions for those parcels to be acquired for the PROJECT.
8. To acquire all necessary right of way for the PROJECT in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended.
9. To coordinate and provide liaison for the relocation or adjustment of utilities in accordance with applicable State and Federal regulations, including but not limited to Nevada Administrative Code Chapter 408 and 23 CFR Part 645.
10. To hold a right of way setting meeting at the sixty percent (60%) design phase, wherein the DEPARTMENT shall provide plans showing the limits of existing right of way and easements, and any necessary right of way for the PROJECT i.e., Fee Takes, Permanent and Temporary Easements, and Permission to Construct limits.
11. To ensure that 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 complete the NEPA process, obtain any necessary environmental permits and clearances from the appropriate Regulatory Agency, and to certify the PROJECT in accordance with the federal requirements.
13. To provide the COUNTY with one copy of the preliminary plans and specifications for review and comment, and to invite the COUNTY to the specification review meeting to address said comments.
14. To allow the COUNTY to observe, review, and inspect PROJECT 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.
15. To allow the COUNTY to review and comment on the DEPARTMENT's PROJECT change orders which involve features or items related to the PROJECT for which the COUNTY assumes ownership, maintenance, and operational responsibility. The COUNTY's written response shall be made within five (5) calendar days of service of such change orders. No response from the COUNTY within this time frame shall constitute the COUNTY's consent and acceptance for the DEPARTMENT to proceed.
16. To provide the COUNTY's with a copy of the bid tabulations for the construction contract and to obtain the CITY'S concurrence on the award of the contract prior to awarding the construction contract for the PROJECT.
17. To provide the COUNTY with the current costs incurred on the PROJECT at the time of bid.
18. To continue all maintenance, repair and operational responsibilities for the roadway and curb and gutter on SR 756, Centerville Lane, constructed as part of the PROJECT.

ARTICLE III - IT IS MUTUALLY AGREED

1. The term of this Agreement shall be from the date first written above through and including December 31, 2017, or until construction of all improvements contemplated herein have been completed and accepted by the DEPARTMENT, save and except the responsibility for maintenance, repair, and operation as specified herein, whichever occurs first.

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

3. Neither the State of Nevada, the DEPARTMENT, nor any of their departments, divisions, agencies, officers, directors, agents, contractors, and employees, shall have authority to extend this Agreement beyond the expiration date set forth within this Agreement, unless such extension is set forth within a written amendment signed by the parties hereto and approved by appropriate official action of the DEPARTMENT's governing body prior to such expiration date. The COUNTY shall not rely upon any oral or written representations expressed extrinsic to a written amendment signed by the parties hereto and approved by appropriate official action of the DEPARTMENT's governing body prior to such expiration date, purporting to alter or amend this Agreement, including but not limited representations relating to the extension of the Agreement's expiration date.

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) 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.

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 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: Rudy Malfabon, P.E., Director
Attn.: Steve Bird
Nevada Department of Transportation
Road Design Division
1263 South Stewart Street
Carson City, NV 89712
Phone: (775) 888-7591
Fax: (775) 888-7401
E-mail: sbird@dot.state.nv.us

FOR COUNTY: James R. Nichols
County Manager
PO Box 218
Minden, NV 89423
Phone: (775) 782-9821
Fax: (775) 782-6255
Email: jnichols@douglasnv.us

6. The total PROJECT costs shall be determined by adding together the total costs incurred by the DEPARTMENT for construction costs. The COUNTY match will be calculated as the applicable percent of the total PROJECT costs eligible for Federal funding, plus all costs not eligible for Federal funding.

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. The DEPARTMENT has the right to reject any and all bid proposals determined not to be in the best interest of the State.

9. Should this Agreement be terminated by the COUNTY prior to completion of the PROJECT, the COUNTY 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 COUNTY agrees to pay actual PROJECT costs whether they be greater than or less than the estimates shown herein.

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) calendar 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 a written 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, property damage, contract damages, or for any reason whatsoever, 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.

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. In connection with the performance of work under this Agreement, the COUNTY agrees not to discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, disability, pregnancy, sexual orientation, genetic information (GINA) or gender identity or expression, including, without limitation, with regard to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including without limitation apprenticeship. The parties further agree to insert this provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

23. Both parties shall assure that no person shall on the grounds of race, color, national origin, gender, age or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any service, program or activity offered by

said parties, regardless of funding source. Both parties further assure that every effort will be made to prevent discrimination through the impacts of their programs, policies, and activities on minority and low-income populations.

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

25. 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.

26. 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.

27. 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.

28. 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.

DOUGLAS COUNTY

James R. Nichols
James R. Nichols
County Manager

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

[Signature]
Director

Approved as to Legality & Form:

[Signature] 4-20-2015
Deputy Attorney General

Douglas County

State of Nevada

CERTIFIED COPY

I certify that the document to which this certificate is attached is a full and correct copy of the original record on file in the Clerk-Treasurer's Office on this

7th day of July, 2015

By [Signature] Deputy