

INTERLOCAL AGREEMENT

This Agreement, made and entered into on _____, by and between the State of Nevada, acting by and through its Department of Transportation, hereinafter called the "DEPARTMENT", and City of Reno, 1 East First Street, Reno NV 89501, hereinafter called the "CITY".

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 (NRS), the Director of the DEPARTMENT may enter into those 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; and

WHEREAS, the purpose of this Agreement is for the DEPARTMENT to reimburse the CITY for the design and installation of wildlife fencing and a cattle guard along State Route 341 (SR 341) Right of Way line (hereinafter "PROJECT"); and

WHEREAS, the PROJECT is located on a roadway owned and maintained by the DEPARTMENT and shall be funded using State gas tax funds; and

WHEREAS, the services of the CITY shall be of benefit to the DEPARTMENT and to the 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 provide the DEPARTMENT with wildlife fencing and a cattle guard within the DEPARTMENT's Right of Way line on both sides of SR341 from milepost 3.334 to 3.954, and on the east side of SR341 from milepost 3.954 to 4.282, as part of the CITY's Horse Protection Project South Phase.

2. To bill the DEPARTMENT upon completion of the PROJECT for actual PROJECT costs not to exceed Two Hundred Eighty Thousand and No/100 Dollars (\$280,000.00). The DEPARTMENT shall deduct any preliminary engineering and construction engineering costs incurred by the DEPARTMENT for the PROJECT to determine the actual invoice cost. The CITY shall provide supporting documentation to be audited to confirm that work performed conforms to the DEPARTMENT's guidelines.

3. The CITY shall, at no cost to the CITY, obtain an encroachment occupancy permit, and comply with all applicable federal, state, and local laws, statutes, ordinances, rules, and

regulations and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this Agreement, including, without limitation, worker's compensation laws, licensing laws, and regulations.

ARTICLE II - DEPARTMENT AGREES

1. To contribute State funds for the PROJECT, estimated to be and not to exceed Two Hundred Eighty Thousand and No/100 Dollars (\$280,000.00).

2. To establish and maintain a budget for the PROJECT. This budget shall be maintained by the Design Division of the DEPARTMENT, and all invoices shall be submitted to the Design Division for approval and reimbursement.

3. To issue an encroachment occupancy permit to the CITY, at no cost to the CITY, for the installation of wildlife fencing along SR341 right of way line and a cattle guard at the south limit of fencing.

4. 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 III - IT IS MUTUALLY AGREED

1. The term of this Agreement shall be from the date first written above through and including June 30, 2025, 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.

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

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. All change order requests shall be made in writing. Each party shall complete its review of all change orders submitted to it by the other party, within five (5) working days after service of such change orders. In the event the CITY does not provide the DEPARTMENT with a written response to the DEPARTMENT's change orders within five (5) working days following the DEPARTMENT's service of such change orders, the DEPARTMENT shall proceed with the change orders so as not to delay the PROJECT and shall assume no liability therefore. The CITY shall be responsible for all costs associated with change orders requested by the CITY which cannot be foreseen at this time.

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.

6. 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 facsimile with simultaneous regular mail, or by 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:

Tracy Larkin Thomason, P.E., Director
Attn.: Natalie Caffaratti, P.E., Division Chief
Nevada Department of Transportation
Division: Roadway Design
1263 South Stewart Street
Carson City, Nevada 89712
Phone: 775-888-7490
Fax:
E-mail: ncaffaratti@dot.nv.gov

FOR CITY:

John Flansberg, P.E.
City of Reno
P.O. Box 1900, Reno, NV 89505
1 E. First St., Reno, NV 89501
Phone: 775-657-4570
Fax:
E-mail: FlansbergJ@Reno.Gov

7. 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.

8. 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, the recovery of actual damages and the prevailing party's reasonable attorney's fees and costs.

9. 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.

10. 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.

11. 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 an actual or pending claim, within thirty (30) calendar days of the indemnified party's notice of such 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.

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. Failure to declare a breach or the actual waiver of any particular breach of this 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, including another breach of the same provision.

14. 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.

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

16. Except as otherwise expressly provided by 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.

17. Pursuant to NRS Chapter 239, information or documents may be open to public inspection and copying. The parties shall have the duty to disclose unless a particular record is confidential by law or a common law balancing of interests.

18. 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.

19. 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.

20. 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.

21. Any alteration considered extra work shall be addressed through a written amendment to this Agreement. The amount and payment for extra work, as well as designation of responsibility for payment of such work, shall be specified in such amendment.

22. Any recipient or subrecipient of funds under this Agreement agrees to comply with the Federal Funding Accountability and Transparency Act and implementing regulations at 2 CFR Part 170, including Appendix A, available at <http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf>.

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 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.

24. In connection with the performance of work under this Agreement, the parties agree not to discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity or expression, age, disability or national origin, 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.

25. 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 Reno

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

Hillary Schieve
Mayor

Director

Approved as to Legality and Form:

Attest:

Deputy Attorney General

Mikki Huntsman
City Clerk

Approved as to Form:

Susan Ball Rothe
Deputy City Attorney