

COOPERATIVE AGREEMENT

This Agreement is 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, P.O. Box 1900, Reno, Nevada 89505-1900, hereinafter called the "CITY".

WITNESSETH:

WHEREAS, a Cooperative Agreement is defined pursuant to Nevada Revised Statutes (NRS) 277.110 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 those 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 agreements in accordance with NRS 277.080 to 277.110, inclusive; and

WHEREAS, under this Agreement, the CITY will grant permission for the DEPARTMENT to enter CITY's right-of-way for the improvement of traffic safety at the vicinity of DOT #833-586K on Highland Avenue, Reno, Nevada as listed in Attachment A – Scope of Services, hereinafter called the "PROJECT;" and

WHEREAS, the purpose of this Agreement is to address each party's responsibilities concerning the PROJECT, and

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

1. The CITY agrees to authorize the DEPARTMENT and its authorized agents and contractors to occupy the CITY's right-of-way and or easements for the purpose set forth in this Agreement and to issue the DEPARTMENT all permits required by the CITY in order for the DEPARTMENT to comply with all CITY permit conditions.

2. The CITY agrees to review the preliminary plans and specification within thirty (30) calendar days upon receipt and attend the review meeting to address CITY's comments.

3. The City agrees to operate and maintain the improvements made by the DEPARTMENT for the PROJECT within the CITY's right of way without cost to the DEPARTMENT.

4. The CITY agrees to obtain appropriate agreements with the Union Pacific Railroad Company hereinafter called the "RAILROAD" for the purpose of allowing the RAILROAD within CITY right-of-way for the relocation of any affected existing utilities and or structures to accommodate the PROJECT.

5. The CITY agrees to require those utility companies having franchise agreements with the CITY, 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, DEPARTMENT or the CITY.

ARTICLE II - DEPARTMENT AGREES

1. The DEPARTMENT agrees to fund and administer the entire project.

2. The DEPARTMENT agrees to provide the CITY with preliminary plans and specifications for review and comment and to invite the CITY to the specification review meeting to address said comments.

3. The DEPARTMENT agrees to acquire all temporary and permanent easements required to construct the PROJECT within CITY right-of-way.

4. The DEPARTMENT agrees to observe, review, and inspect all work associated with the PROJECT during construction and installation, at no cost to the CITY.

5. The DEPARTMENT agrees to manage all appropriate agreements with the RAILROAD pertaining to the PROJECT.

6. The DEPARTMENT agrees to be responsible for the design and construction of the PROJECT in accordance with CITY standards, policies, specifications, where applicable, and develop all information necessary for the construction of the PROJECT.

7. To assign a Right-of-Way Agent 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 NAC Chapter 408 and 23 CFR Part 645.

8. The DEPARTMENT agrees to provide the CITY with a warranty period of not less than one year after substantial completion of the PROJECT for those improvements for which the CITY will be responsible for operating and maintaining.

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, 2024, or until construction of all improvements contemplated herein have been completed and accepted by the CITY, save and except for the responsibility for operation and 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. To the fullest extent of NRS Chapter 41 liability limitations, the CITY shall indemnify, hold harmless and defend the DEPARTMENT 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 CITY's own officers, employees, and agents in fulfillment or performance of the terms, conditions, and/or covenants of this Agreement. This indemnification obligation is conditioned upon the performance of the duty of the DEPARTMENT seeking indemnification (indemnified party), to serve the CITY (indemnifying party) with written notice of an actual or pending claim, within thirty (30) calendar days of the indemnified party's notice of actual or pending claim. 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 the DEPARTMENT.

4. To the fullest extent of NRS Chapter 41 liability limitations, the DEPARTMENT shall indemnify, hold harmless, and defend the CITY 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 DEPARTMENT's own officers, employees, and agents, or anyone employed by any of them suffer, as a result of, or arising out of, the negligent or intentional acts or omissions of the DEPARTMENT, its agents and employees, or anyone employed by any of them, in fulfillment or performance of the terms, conditions, or covenants of this Agreement. This indemnification obligation is conditioned upon the performance of the duty of the CITY (indemnified party), to serve the DEPARTMENT (indemnifying party) with written notice of an actual or pending claim, within thirty (30) calendar days of the indemnified party's notice of actual or pending claim. 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 the CITY.

5. 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 CITY 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.

6. Paragraphs 1 through 6 of this Article III - It is Mutually Agreed, shall survive the termination and expiration of this Agreement until such time as the applicable statutes of limitation expire.

7. 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.

8. 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:

Tracy Larkin Thomason, P.E., Director
Attn.: Lacey Tisler, P.E.
Nevada Department of Transportation
Division: Traffic Safety Engineering
1263 South Stewart Street
Carson City, Nevada 89712
Phone: (775) 888-7459
Fax: (775) 888-7403
Email: ltisler@dot.nv.gov

FOR CITY:

Kerrie Koski, P.E., Director of Public Works
Attn.: Kurt M. Dietrich, P.E., PTOE, Traffic Engineer
City of Reno
PO Box 1900
Reno, Nevada 89505-1900
Phone: (775) 334-3334
Fax: (775) 334-4626
Email: dietrichk@reno.gov

9. 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.

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 this Agreement after the intervening cause ceases.

11. 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.

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. 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.

14. 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.

15. 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.

16. 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.

17. In the event the Nevada Legislature does not appropriate sufficient or any funds for a DEPARTMENT biennium during the term of this Agreement, this Agreement shall terminate.

18. 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.

19. 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 at least six (6) years after termination of this Agreement.

20. 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 detail's 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.

21. 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, creed, color, national origin, sex, sexual orientation or age, 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.

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

23. 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.

24. Pursuant to NRS 239.010, information or documents may be open to public inspection and copying. The parties will have the duty to disclose such information or documents unless the particular information or document is confidential by law or a common law balancing of interests.

25. 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.

26. 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 Nevada 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 L. Schieve, Mayor

Director

Approved as to Legality and Form:

Attest:

Deputy Attorney General

Mikkil Huntsman, City Clerk

Approved as to Form:

Susan Ball Rothe, Deputy City Attorney

ATTACHMENT A
SCOPE OF SERVICES
INSTALL RAILWAY-HIGHWAY SAFETY
IMPROVEMENTS AT DOT #833-586K on
Highland Avenue, Reno, Nevada

BACKGROUND

The purpose of this projects is to reduce the number and severity of crashes at public railway-highway grade crossings. The project safety improvement includes preparation of conceptual design, to the final design submittal as well as post design support. This project is located at DOT #833-586K on Highland Avenue, Reno, Washoe County, Nevada.

SCOPE OF SERVICES

The scope of the proposed intersection improvements consists of a combination of the following:

- Extend concrete sidewalks on northside and southside of crossing.
- Public Right of Way Accessibility Guidelines (PROWAG) compliant features consisting of curb, curb ramp, gutter, sidewalk, and pedestrian ramps improvements.
- Install truncated domes on sidewalk appropriate locations.
- Install pedestrian gate, pedestrian railing, and relocate signal cabinet if required.
- Drainage improvements to minimize potential water surface runoff ponding.
- Upgrade vehicle gates.
- Railroad cabinet replacement and circuitry upgrades.
- Concrete crossing panel extension and existing panel replacement.
- Removal, relocation, replacement, and or installation of new traffic and railroad signs.
- Removal and replacement of cantilevers with complete vehicle assembly gates.
- Relocate existing railroad signals to allow safe and adequate distance for sidewalk and adhere to current Federal Railroad Administration (FRA) and Union Pacific Railroad (UPRR) Standards.

Items that will not be maintained by the City of Reno include:

- Flashing light with gate assemblies
- Rail controller cabinet
- Precast crossing panels
- Median mounted flashing light signal
- Signal conduit and cable within the UPRR easement.
- Ballast material under rails
- Rails
- Other items by UPRR