

NYE COUNTY AGENDA INFORMATION FORM

Action
 Presentation
 Presentation & Action

Department: Public Works		Agenda Date:	
Category: Regular Agenda Item		July 16, 2019	
Contact: Tim Dahl, Public Works Director		Phone: 775-751-6276	Continued from meeting of:
Return to:	Location: Tonopah		Phone:
<p>Action requested: (Include what, with whom, when, where, why, how much (\$) and terms)</p> <p>Discussion and deliberation to consider entering into a Cooperative Agreement with the State of Nevada, acting through its Department of Transportation (NDOT) to define each party's responsibilities concerning the maintenance and operation of rectangular rapid flashing beacon systems at the intersection of Postal Drive and at the intersection of East Calvada Boulevard.</p>			
<p>Complete description of requested action: (Include, if applicable, background, impact, long-term commitment, existing county policy, future goals, obtained by competitive bid, accountability measures)</p> <p>This Cooperative Agreement would give NDOT and its authorized agents/contractors the ability to occupy Nye County right-of-way and/or easements to install the beacons after the necessary permits are obtained. Once the rapid flashing beacons are installed, Nye County will operate and maintain the Rectangular rapid flashing beacon systems. Construction and construction administration will be of no cost to Nye County. Long-term maintenance will be the responsibility of Nye County and of no cost to NDOT.</p>			
<p>Any information provided after the agenda is published or during the meeting of the Commissioners will require you to provide 20 copies: one for each Commissioner, one for the Clerk, one for the District Attorney, one for the Public and two for the County Manager. Contracts or documents requiring signature must be submitted with three original copies.</p>			
<p>Expenditure Impact by FY(s): (Provide detail on Financial Form)</p>			
			<input type="checkbox"/> No financial impact

Routing & Approval (Sign & Date)

1. Dept	Date	6.	Date
2.	Date	7. HR	Date
3.	Date	8. Legal	Date
4.	Date	9. Finance	Date
5.	Date	10. County Manager	Date

BR 06-19-19
 NA
 Place on Agenda
 ITEM # 59

COOPERATIVE AGREEMENT

This Agreement is made and entered into on July 16, 2019, by and between the State of Nevada, acting by and through its Department of Transportation, hereinafter called the "DEPARTMENT," and Nye County, 250 N. Highway 160, Suite 2, Pahrump, NV 89060, a political subdivision of the State of Nevada, hereinafter called the "COUNTY," each of whom may be individually referred to herein as "Party" and collectively as "Parties."

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 (NRS), 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 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 maintenance and operation of rectangular rapid flashing beacon systems located in Pahrump, Nevada, on SR 160, at the intersection of Postal Drive, and the intersection of East Calvada Boulevard, hereinafter called the "PROJECT;" and

WHEREAS, the rectangular rapid flashing beacon systems will be of benefit to the DEPARTMENT, to the COUNTY, 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 - COUNTY AGREES

1. To authorize the DEPARTMENT and its authorized agents and contractors to occupy the COUNTY's right-of-way and/or easements for the purpose set forth in this Agreement, so long as the DEPARTMENT has obtained all permits required by the COUNTY and has complied with all COUNTY permit conditions.

2. Upon construction completion by DEPARTMENT, the COUNTY will operate and maintain the rectangular rapid flashing beacon systems described-above in a manner that is reasonably satisfactory to the DEPARTMENT and without cost to the DEPARTMENT.

ARTICLE II - DEPARTMENT AGREES

1. To observe, review, and inspect all work associated with the PROJECT during construction with the understanding that any and all items of concern must be reported to the DEPARTMENT's Resident Engineer for correction.
2. To perform construction administration of the PROJECT at no expense to the COUNTY.

ARTICLE III - IT IS MUTUALLY AGREED

1. The term of this Agreement shall be from the date first written above through and including two years from date first written above, or until construction of all improvements contemplated herein have been completed and accepted by the DEPARTMENT. This Agreement shall be automatically renewed for an additional two-year period on the last day of each two-year term UNLESS a Party notifies the other Party in writing of its intention that this Agreement be terminated in accordance with Paragraph 3 of this Article III.
2. This Agreement shall not become effective until and unless approved by appropriate official action of the governing body of each Party.
3. This Agreement may be terminated by either Party at any time, 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 necessary to satisfy this Agreement is withdrawn, limited, or impaired.
4. 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: Kristina L. Swallow, P.E., Director
Attn.: Lori Campbell
Nevada Department of Transportation
Division: Traffic Safety Engineering
1263 South Stewart Street
Carson COUNTY, Nevada 89712
Phone: (775) 888-7462
Fax: (775) 888-7403
Email: lcampbell@dot.nv.gov

FOR COUNTY: Tim Dahl, Public Works Director
Nye County
250 N. Highway 160, Ste. 2
Pahrump, Nevada 89060
Phone: (775) 751-6276
Fax: (775) 751-4336
Email: tdahl@co.nye.nv.us

5. 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.

6. 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.

7. The Parties do not waive and intend to assert available NRS Chapter 41 liability limitations in all cases in fulfillment or performance of the terms, conditions, and/or covenants of this 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. Actual damages for any COUNTY breach shall never exceed the amount of funds which have been appropriated for payment or the performance of any work under this Agreement, but not yet paid, for the fiscal year budget in existence at the time of the breach.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

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

17. 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.

18. 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.

19. 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.

20. This Agreement constitutes the entire agreement of the Parties and as 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 or his or her designee.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year first above written.

NYE COUNTY

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

Name (Print)

Director

Title (Print)

Approved as to Form:

Approved as to Legality and Form:

Deputy Attorney General

Attorney

DRAFT