



# WASHOE COUNTY

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Risk Mgt. N/A  
HR N/A  
Comptroller CH

## STAFF REPORT

BOARD MEETING DATE: July 12, 2016

**DATE:** June 14, 2016

**TO:** Board of County Commissioners

**FROM:** Clara Lawson, P.E., PTOE, Licensed Engineer, Engineering and Capital Projects, Community Services, 328-3603, [clawson@washoecounty.us](mailto:clawson@washoecounty.us)

**THROUGH:** Dwayne Smith, P.E., Division Director, Engineering and Capital Projects Community Services Department, 328-2043, [desmith@washoecounty.us](mailto:desmith@washoecounty.us)

**SUBJECT:** Recommendation to approve an Interlocal Public Work Agreement (NM574-15-816) between Washoe County and the Nevada Department of Transportation for the purpose of constructing certain pedestrian improvements along SR 443, Sun Valley Boulevard, at the intersections of Skaggs Circle, Gepford Parkway, and 6<sup>th</sup> Avenue [no cost]. (Commission District 3.)

### SUMMARY

The purpose of this agreement between Washoe County and the Nevada Department of Transportation (NDOT) is to allow for NDOT to access portions of County right-of-way to construct pedestrian improvements for the benefit of the Sun Valley residents and to identify Washoe County's responsibility for maintenance of those specific improvements located within Washoe County right-of-way.

The pedestrian improvements include new sidewalk, lighting, bus stop pad, Rectangular Rapid Flashing Beacons (RRFB) pedestrian warning system and an ADA ramp, constructed along certain portions of Sun Valley Boulevard at the intersections of Skaggs Circle, Gepford Parkway, and 6<sup>th</sup> Avenue ("The Project"). The construction of these improvements is at no cost to Washoe County. In the future Washoe County will be responsible to maintain the portions of sidewalk and the ADA ramp since these facilities will be located within Washoe County right-of-way.

Washoe County Strategic Objective supported by this item: Safe, Secure, and Healthy Communities.

### PREVIOUS ACTION

No previous action.

### BACKGROUND

The purpose of this agreement is to construct pedestrian improvements including, sidewalk, lighting, bus stop pad, Rectangular Rapid Flashing Beacons (RRFB) pedestrian warning system and ADA improvements along SR 443 Sun Valley Boulevard at the

AGENDA ITEM # 5.D.1

intersections of Skaggs Circle, Gepford Parkway, and 6<sup>th</sup> Avenue. The agreement states that NDOT agrees to design and construct improvements at the three intersections. The agreement further states that County agrees to grant NDOT permission to work within the County's right-of-way and to maintain sidewalk and ADA ramp maintenance responsibilities that are within the County' right-of-way.

**FISCAL IMPACT**

There is no annual fiscal impact to maintain sidewalk and ADA improvements and the only anticipated costs will be associated with concrete replacement many years in the future.

**RECOMMENDATION**

It is recommended that the Board of County Commissioners to approve an Interlocal Public Work Agreement (NM574-15-816) between Washoe County and the Nevada Department of Transportation for the purpose of constructing certain pedestrian improvements along SR 443, Sun Valley Boulevard, at the intersections of Skaggs Circle, Gepford Parkway, and 6<sup>th</sup> Avenue [no cost].

**POSSIBLE MOTION**

Should the Board agree with staff's recommendation, a possible motion would be: "Move to approve an Interlocal Public Work Agreement (NM574-15-816) between Washoe County and the Nevada Department of Transportation for the purpose of constructing certain pedestrian improvements along SR 443, Sun Valley Boulevard, at the intersections of Skaggs Circle, Gepford Parkway, and 6<sup>th</sup> Avenue [no cost]."

INTERLOCAL PUBLIC WORK 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 the Washoe County Community Services Department, 1001 E. 9<sup>th</sup> Street, Reno, NV 89512, hereinafter called the COUNTY.

WITNESSETH:

WHEREAS, an Interlocal Agreement is defined as an agreement by public agencies to "obtain a service" from another public agency, hereinafter called parties; 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 purpose of this Agreement is for the DEPARTMENT to construct improvements to the sidewalk; lighting; bustop; and pedestrian warning system, including its Rectangular Rapid Flashing Beacons ("RRFB"), as well as improvements made under the Americans with Disabilities Act along SR 443, Sun Valley Blvd., at the intersections of Skaggs Circle, Gepford Pkwy, and 6<sup>th</sup> Ave ("PROJECT").

WHEREAS, the services of the DEPARTMENT will be of benefit to the COUNTY and to the people of the State of Nevada; 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 grant to the DEPARTMENT and its authorized agents and contractors permission to work within the COUNTY'S right-of-way for the purpose of constructing the PROJECT and maintain the RRFB and lighting systems.

2. The COUNTY shall retain sidewalk and ADA ramp maintenance responsibilities that are within the COUNTY right-of-way as part of the PROJECT, upon completion and the COUNTY'S final written acceptance of the PROJECT.

## ARTICLE II - DEPARTMENT AGREES

1. To Design and administer the construction contract using DEPARTMENT Standard Plans and Standard Specifications for Road and Bridge Construction that match or most closely match the COUNTY's Standard Details for Public Works Construction for the portions of the PROJECT that are in the COUNTY's right of way.
2. To provide the COUNTY with preliminary plans and specifications for review and comment, and to invite the COUNTY to the specification review meeting to address said comments.
3. To allow the COUNTY 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.
4. To allow the COUNTY to review and comment on the DEPARTMENT'S PROJECT change orders which involve features or items related to the PROJECT'S for which the COUNTY assumes a maintenance responsibility.
5. To operate, maintain, and provide energy for the RRFB, and street lights without any cost to the COUNTY. Maintenance activities shall comply and remain current with industry accepted practices.
6. To retain sidewalk and ADA ramp maintenance responsibilities that are within DEPARTMENT's right-of-way as part of the PROJECT, upon completion and the DEPARTMENT's final written acceptance of the PROJECT.
7. To obtain all required Washoe County permits including, but not limited to, applicable street cut permits, which permit costs will be waived by 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 December 31, 2016, or until the PROJECT is 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. 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.
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 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:

Rudy Malfabon, P.E., Director  
Attn.: Lori Campbell  
Nevada Department of Transportation  
Division: Planning Traffic Safety Engineering  
1263 South Stewart Street  
Carson City, Nevada 89712  
Phone: (775) 888-7462  
Fax: (775) 888-7403  
E-mail:lcampbell@dot.state.nv.us

FOR WASHOE COUNTY:

David Solaro, Arch., P.E.  
Attn: Clara Lawson, P.E., PTOE  
Washoe County Public Works  
1001 E. 9<sup>th</sup> Street,  
Reno, NV 89512  
Phone: (775) 328-3603  
Fax: (775) 328-3699  
E-mail: clawson@washoecounty.us

5. 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.

6. 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.

7. 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.

8. 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.

9. 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, 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 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.

10. 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.

11. 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.

12. 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.

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

14. Except as otherwise 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.

15. Pursuant to NRS Chapter 239, information or documents arising from the PROJECT or this Agreement may be open to public inspection and copying. The parties will have the duty to disclose that information or documents, unless a particular record is confidential by law or a common law balancing of interests.

16. 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.

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 perform the services set forth herein.

18. 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.

19. 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.

20. Construction engineering costs will be the actual construction engineering costs incurred by the DEPARTMENT during the construction of the PROJECT.

21. The DEPARTMENT agrees to pay actual PROJECT costs whether they be greater than or less than the estimates shown herein.

22. The DEPARTMENT will ensure that any reports, materials, studies, photographs, negatives, drawings, or other documents prepared in the performance of obligations under this Agreement shall be the exclusive property of the COUNTY and the DEPARTMENT. The DEPARTMENT will ensure that 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 DEPARTMENT 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.

23. 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>.

24. 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.

25. 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, gender identity or expression, 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.

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 Attorney General.

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

WASHOE COUNTY, acting by and through its  
DEPARTMENT OF COMMUNITY SERVICES

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

\_\_\_\_\_  
Kitty K. Jung, Chair  
Washoe County Commission

\_\_\_\_\_  
Director

ATTEST:

Approved as to Legality & Form:

\_\_\_\_\_  
Washoe County Clerk

\_\_\_\_\_  
Deputy Attorney General