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Agreement Number 1207-03-016

DEVELOPER AGREEMENT

This Agreement, dated this 21st day of January, 2003, by and between the STATE OF NEVADA, acting by and through its DEPARTMENT OF TRANSPORTATION, (the DEPARTMENT), and JEFF DINGMAN, (the DEVELOPER).

WITNESSETH:

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, a concrete median barrier rail is in place on US 50 between the limits of mp DO 13.62 and mp CC 6.69. With an opening in the rail at mp CC 3.00 that allows for left turn access for adjacent property owners; and

WHEREAS, the DEPARTMENT has designed and plans to relocate the truck escape ramp near the median barrier rail opening, and estimates its construction cost at \$800,000, (hereinafter referred to as TRUCK RAMP PROJECT); and

WHEREAS, the DEVELOPER is seeking approval from Douglas County to develop a single-family residential subdivision known as the Clear Creek Ranch and Golf Club consisting of approximately 103 units and related amenities (hereinafter referred to as the SUBDIVISION); and

WHEREAS, in order to accommodate access to and from SUBDIVISION, DEVELOPER is urging DEPARTMENT to construct a full movement highway interchange near his subdivision on US 50, which is not planned or a priority of DEPARTMENT; and

WHEREAS, the purpose of this Agreement is to eliminate the priority for the TRUCK RAMP PROJECT and apply the associated construction cost of \$800,000 towards a project to implement closing the median rail opening, to relocate the left turn access to US 50 to a location approximately 1/4 mile west of the current location through the construction of a full movement highway interchange at such new location, and to provide public and private funding for such access relocation and interchange construction (hereinafter referred to as the PROJECT); and

WHEREAS, the DEVELOPER will execute an agreement with the State of Nevada, acting by and through its Division of State Lands whereby the Division of State Lands will grant to DEVELOPER an easement over certain real property for ingress to and egress from the SUBDIVISION (hereinafter referred to as STATE LANDS AGREEMENT); and

WHEREAS, the DEVELOPER will execute an agreement with adjacent property owners that will address a change in their access to Highway 50, (hereinafter referred to as OWNERS AGREEMENTS); and

WHEREAS, the actions of the DEVELOPER and DEPARTMENT will create a substantial mutual as well as public benefit by providing public/private funding for construction of an interchange at Highway 50 that will enhance safety as well as improve traffic efficiency; and

WHEREAS, the DEVELOPER 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 - DEVELOPER AGREES:

1. To pay all costs associated with the PROJECT in excess of \$800,000 (Eight Hundred Thousand Dollars), allocated by the DEPARTMENT. PROJECT costs are estimated to be \$3,740,000. This estimate does not include design and right of way of which DEVELOPER is also responsible.
2. To be responsible for design engineering for the PROJECT. Design of PROJECT will be to DEPARTMENT Standards and Specification. To provide design plans, right of way maps and legal descriptions to the DEPARTMENT at 60% and 90% completion for review and comment. The design shall also include a drainage impact report and an electrical power source. Final plans must be submitted to DEPARTMENT twelve (12) weeks prior to advertisement to allow preparation for soliciting bids.
3. To design PROJECT to accommodate access to the interchange from both side of US 50.
4. Within ten (10) calendar days of the final plan submittal, DEVELOPER will submit a cashier's check for \$2,940,000 to DEPARTMENT for deposit as identified in paragraph 3. under "DEPARTMENT AGREES". The purpose of the deposit is to secure the DEVELOPER'S obligations hereunder. If upon completion of the PROJECT a final amount is still due, the DEVELOPER will make payment of the remaining balance within thirty (30) calendar days of receipt of the final billing invoice from DEPARTMENT. DEPARTMENT will not advertise PROJECT without this submittal and will proceed to advertise the TRUCK RAMP PROJECT.
5. To complete the review of all change orders submitted by the DEPARTMENT, which pertain to the PROJECT and return comments within ten (10) calendar days after service of such submittal, otherwise the DEPARTMENT will proceed with change orders so as not to delay the PROJECT. No response from the DEVELOPER within this time frame will constitute the DEVELOPER'S consent and acceptance and the DEPARTMENT will proceed.
6. To hire a professional land surveyor licensed in the State of Nevada to provide property surveys, prepare and contract for title reports, calculate all parcels necessary for PROJECT, including all access and abutter's rights along US 50 for the interchange ramps, and permanent easements for slopes, maintenance and drainage that is necessary for PROJECT. Surveyor will be responsible for all parcel calculations for a frontage road system to be conveyed

to the appropriate County. Surveyor will prepare legal descriptions and right of way plans to DEPARTMENT standards for those property takings that will be conveyed to DEPARTMENT

7. To acquire all right of way necessary to provide a fully controlled access facility, and to have fully executed STATE LANDS AGREEMENT and OWNERS AGREEMENTS prior to PROJECT advertisement to address access to parcels effected with the closing of the median opening and with the acquisition of control of access along US 50 for the interchange. The access road to PROJECT will be a public facility.

8. To provide written confirmation from the appropriate County that all the access roads to the PROJECT will be maintained as public facilities.

9. To be responsible for environmental work, clearances and permitting requirements for PROJECT. This includes any permits or NEPA requirements from Federal Property owners including but not limited to: State Lands, BLM, and the National Forest Service.

10. To coordinate with Carson City to include PROJECT in the Carson City 2004 fiscal year Transportation Improvement Plan prior to PROJECT advertisement.

11. To maintain or provide for maintenance all of the PROJECT improvements excluding those listed in paragraph 7. under "DEPARTMENT AGREES", and including the riding surface over the structure and graffiti visible from the cross access road.

12. To deposit a cashiers check or any other acceptable financial instrument acceptable to DEPARTMENT in an amount of \$48,000 (Forty-eight Thousand Dollars) within 30 days of execution of this Agreement. If this amount is not received within this time frame, this Agreement shall be terminated and DEPARTMENT will proceed with TRUCK RAMP PROJECT.

ARTICLE II - DEPARTMENT AGREES:

1. After PROJECT advertisement, to remove the TRUCK RAMP PROJECT from the current State Transportation Improvement Program and contribute an amount not to exceed \$800,000 (Eight Hundred Thousand Dollars) earmarked for the TRUCK RAMP PROJECT to the PROJECT to be used only towards the construction of the PROJECT.

2. After DEVELOPER acquires all right of way and agreements as stated in paragraphs 7,8,9, and 10 of DEVELOPER AGREES, to advertise, award and administer the construction of PROJECT in accordance to DEPARTMENT standards, policies and procedures and to invoice DEVELOPER monthly for all costs in excess of \$800,000.

3. To deposit the DEVELOPER'S cashier checks as identified in paragraphs 4. and 12. under "DEVELOPER AGREES", with the State Treasury in an interest bearing Deferred Revenue Holding Account identified by this Agreement Number. The Principal will earn prorated interest through the quarter and interest will be credited to the account quarterly by the State Treasurer at the average Super Jumbo CD rate (paid on \$1,000,000.00 CD's) quoted by the three largest banks in Nevada. The DEPARTMENT will draw upon the account on a bi-weekly

basis or as necessary to cover the actual construction cost of the PROJECT. The DEVELOPER will be notified of the actual construction costs of the PROJECT and the funds withdrawn from the account by DEPARTMENT by an itemized billing invoice and a copy of the pay estimate. If the funds in the account become insufficient to cover the DEVELOPER'S share of the PROJECT costs, the DEPARTMENT reserves the right to request another cashier's check from DEVELOPER.

4. After the work has been performed and the DEPARTMENT has received all certificates, guarantees, releases, affidavits and any other documentation required by the Contract Specifications and Special Provisions, the DEPARTMENT will provide the DEVELOPER with a statement of all transactions processed through the DEPARTMENT and an itemized list of the actual cost of all work performed. If a balance is due, the DEVELOPER will be billed within thirty (30) days for the unpaid costs. Any remaining unexpended principal or interest earned on the DEVELOPER'S contribution held in the Deferred Revenue Account will be refunded to the DEVELOPER within thirty (30) calendar days after the end of the quarter following completion and final payment on the PROJECT.

5. To review the design plans at 30%, 60%, and 90% completion, and to prepare the construction specifications. Areas of concern will be directed to DEVELOPER to incorporate said comments.

6. To allow the DEVELOPER to observe PROJECT construction with escort by DEPARTMENT'S Resident Engineer. Items of concern will be reported to DEPARTMENT'S Resident Engineer and not to the Contractor.

7. To maintain the bridge structural components, the abutments, the piers if any, the slope paving if any, the approach slabs and the interchange ramps, and to remove graffiti visible from US 50.

8. To allow the DEVELOPER to name the finished interchange with review and approval by the DEPARTMENT and support from Carson City.

ARTICLE III - IT IS MUTUALLY AGREED:

1. The term of this Agreement shall be from the date first written above through and including the 31 day of December, 2004 or until construction of all improvements contemplated herein have been completed and accepted by the DEPARTMENT, save and except the responsibility for maintenance as specified herein, and payment by DEVELOPER has been made in full, or under the conditions in paragraph 2. under "MUTUALLY AGREED".

2. Should PROJECT not be advertised by March 31, 2004, DEPARTMENT will proceed to advertise TRUCK RAMP PROJECT and the \$800,000 DEPARTMENT contribution will no longer be available. Paragraph 2. under "DEVELOPER AGREES" requires final plans to be submitted to DEPARTMENT by January 6, 2004.

3. Until the award of the contract for PROJECT, this Agreement may be terminated upon thirty (30) calendar days written notice by mutual consent of both parties. Should

DEVELOPER terminate the Agreement or not meet PROJECT times lines as described herein to advertise PROJECT, DEPARTMENT shall retain the \$48,000 as mentioned in paragraph 12 of "DEVELOPER AGREES". This is the estimated increase in cost to DEPARTMENT as a result of delay to advertise TRUCK RAMP PROJECT. 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 not appropriated or is withdrawn, limited, or impaired, and the DEVELOPER waives all claims for damages.

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 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:

To the DEPARTMENT Thomas E. Stephens, P.E., Director
Attention: Wayne Kinder
Nevada Department of Transportation
Roadway Design Division
1263 South Stewart Street
Carson City, NV 89712
Phone (775)-888-7490
Fax: (775)-888-7401

To the DEVELOPER: Jeff Dingman
P.O. Box 16
Glenbrook, NV 89413
Fax: (775)-749-5180

With copy to: FELDMAN SHAW, LLP
Attn: Lewis S. Feldman
182 U.S. Highway 50
P.O. Box 1249
Zephyr Cove, NV 89448
Phone: (775)-588-5311
Fax: (775)-589-6447

5. The DEPARTMENT does not provide any warranty that the estimate is an accurate reflection of the final cost. The DEPARTMENT disclaims any such warranty. DEPARTMENT will not advertise PROJECT should the final engineer's estimate exceed the construction cost as mentioned in paragraph 8. under "MUTUALLY AGREED" unless DEVELOPER submits an additional cashiers check for increased amount. The final costs may vary widely depending on the Contractor's bid prices. The DEVELOPER shall be wary in its reliance on the estimates set forth in the Agreement.

6. 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, and will receive written concurrence from DEVELOPER to award.

7. Construction engineering costs will be the actual construction engineering costs incurred by the DEPARTMENT during the construction of the PROJECT, and are included as part of PROJECT costs.

8. PROJECT costs and funding are as follows:

Costs:	DEPARTMENT PE	\$ 5,000
	DEPARTMENT CF	\$ 487,000
	CONSTRUCTION	<u>\$1,248,000</u>
Total		\$3,740,000
Funding:	DEPARTMENT	\$ 800,000
	DEVELOPER	<u>\$2,940,000</u>
Total		\$3,740,000

9. To the fullest extent permitted by law, the DEVELOPER shall defend, indemnify and hold harmless the State of Nevada, and the employees, officers and agents of the State of Nevada from any liabilities, damages, losses, claims, actions or proceedings, including, without limitation, reasonable attorney's fees, that are caused by the negligence, errors, omissions, reckless or intentional misconduct of the DEVELOPER or the employees or agents of the DEVELOPER in the performance of this Agreement.

10. To the fullest extent permitted by law, the DEPARTMENT shall defend, indemnify and hold harmless the DEVELOPER, and the employees, officers and agents of the DEVELOPER from any liabilities, damages, losses, claims, actions or proceedings, including, without limitation, reasonable attorney's fees that are caused by the negligence, errors, omissions, reckless or intentional misconduct of the DEPARTMENT or the employees or agents of the DEPARTMENT in the performance of this Agreement.

11. The DEPARTMENT does not waive and intends 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 State 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 jurisdiction of the Nevada 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

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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. All or any property presently owned by either party shall remain in such possession upon termination of this Agreement, and there shall be no transfer of property between the parties during the course of this Agreement, except as identified herein.

17. 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.

18. 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.

19. 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.

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


21. 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.

22. 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.

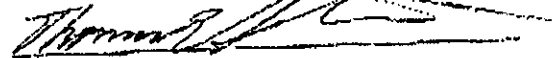
23. This Agreement constitutes the entire agreement, except it is dependent upon the necessary STATE LANDS AGREEMENTS and OWNERS AGREEMENTS and maintenance obligations, of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, 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.

Jeff Dingman




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


Director

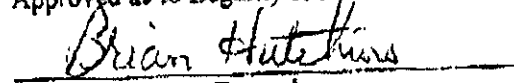
Reviewed:


Asst. Director

Recommended:


District Engineer/Division Head

Approved as to Legality & Form:


Deputy Attorney General

10/30/02