

**City of Carson City  
Agenda Report**

**Date Submitted:** December 2, 2010

**Agenda Date Requested:** December 16, 2010

**Time Requested:** Consent

**To:** Mayor and Board of Supervisors

**From:** Public Works - Transportation

**Subject Title:** Action to approve amendment number one to agreement number PR212-03-030 between Carson City and the Nevada Department of Transportation in the amount of \$181,154.50 to be reimbursed to Carson City for inspection fees related to the utility relocations at Lompa Field and Butti Way. (Patrick Pittenger)

**Summary:** Amendment number one to agreement PR212-03-030 would release the City of the responsibility of the voluntary betterment costs from the original agreement with the Nevada Department of Transportation in the amount of \$133,403, as the sewer lines were not constructed per specifications and an increased capacity was not realized. The amendment would also increase the reimbursement to the City, for the cost of inspection fees to \$181,154.50, an increase from the original estimated cost of \$60,000.

**Type of Action Requested:**

Resolution

Ordinance

Formal Action/Motion

Other ( )

**Does This Action Require A Business Impact Statement:**  Yes  No

**Recommended Board Action:** I move to approve amendment number one to agreement number PR212-03-030 between Carson City and the Nevada Department of Transportation in the amount of \$181,154.50 to be reimbursed to Carson City for inspection fees related to the utility relocations at Lompa Field and Butti Way.

**Explanation for Recommended Board Action:** On April 30, 2003, Carson City and the Nevada Department of Transportation (NDOT) entered into an agreement for the relocation of sewer lines, owned by Carson City, located at Lompa Field and Butti Way necessary for the construction of the Carson City freeway. The agreement stated that NDOT was to hire, supervise, and pay for the contractor on the project and the City would hire an inspector to verify that the work was being performed to specifications. NDOT would then reimburse the City up to \$60,000 for inspection services and the City would in turn reimburse the State in the amount of \$133,403 for the voluntary betterment received by the City for the increased capacity in the sewer line. However, the work was not performed by the contractor per the specifications and the contractor took longer to perform the work than expected. Because of this, the City did not receive the increased capacity/functionality of the sewer line and the City had to pay more inspection fees than originally estimated. A total of \$181,154.50 was paid by Carson City for inspection fees. NDOT reimbursed the City in November 2010 in the amount of \$60,000, which was the maximum amount allowed under the original agreement. Approval of this amendment will allow NDOT to release an additional, final payment of \$121,154.50 to the City.

**Applicable Statute, Code, Policy, Rule or Regulation:** N/A

**Fiscal Impact:** An increase to the sewer fund in the amount of \$181,154.50

**Explanation of Impact:** The recommended action would increase sewer fund 515-0000-334-9200 in the amount of \$181,154.50. Of this amount, Carson City Public Works has received \$60,000, for the inspection fees agreed upon in the original agreement from the Nevada Department of Transportation. The remaining \$121,154.50 would be received upon approval of the amendment.

**Funding Source:** N/A

**Alternatives:** Do not approve the amendment.

**Supporting Material:** Amendment no. 1 to agreement no. PR212-03-030; and the original agreement no. PR212-03-030.

**Prepared By:** Patrick Pittenger, Transportation Manager

**Reviewed By:**

  
\_\_\_\_\_  
(Public Works Director)

Date: 12-7-10

\_\_\_\_\_  
(City Manager)

Date: 12/7/10

  
\_\_\_\_\_  
(District Attorney's Office)

Date: 12/7/10

  
\_\_\_\_\_  
(Finance Director)

Date: 12/7/10

**Board Action Taken:**

Motion: \_\_\_\_\_

- 1) \_\_\_\_\_
- 2) \_\_\_\_\_

Aye/Nay

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Vote Recorded By)

Project: SPF-395-1(18)  
E.A.: 72154  
Carson Freeway,  
Lompa Field and Butti Way

AMENDMENT NO. 1 TO AGREEMENT NO. PR212-03-030  
FOR THE ADJUSTMENT OF UTILITY FACILITIES

This Amendment to Agreement No. PR212-03-030 for the Adjustment of Utility Facilities, is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the STATE OF NEVADA, acting by and through its DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the STATE, and CARSON CITY, NEVADA, a consolidated municipality under Nevada Revised Statutes, whose mailing address is 201 North Carson Street # 2, Carson City, Nevada 89701, hereinafter referred to as the CITY.

WITNESSETH:

WHEREAS, on April 20, 2003, the parties hereto entered into Agreement No. PR212-03-030 for the Adjustment of Utility Facilities, for the purpose of inspection and relocation of utility facilities owned by the CITY, with said inspections and relocations to be undertaken in connection with the STATE'S construction of Project SPF-395-1(18), E.A.72154, hereinafter referred to as AGREEMENT; and

WHEREAS, the AGREEMENT provides that the total estimated cost for performing inspections and the relocation of the CITY'S utility facilities is TWO MILLION TWO HUNDRED ELEVEN THOUSAND THREE HUNDRED TWENTY AND NO/100 DOLLARS (\$2,211,320.00), with ONE HUNDRED THIRTY THREE THOUSAND FOUR HUNDRED THREE AND NO/100 DOLLARS (\$133,403.00) of said sum attributable to voluntary betterments to be undertaken by the CITY; and the STATE agrees to pay the CITY the estimated inspection fees of SIXTY THOUSAND AND NO/100 DOLLARS (\$60,000.00) for performing or having performed inspection on said sewer line construction. CITY agrees to reimburse STATE the remainder of the betterments cost (\$133,403.00) minus inspection fees for a total cost of \$73,403.00; and

WHEREAS, (a) the aforesaid sums set forth within the AGREEMENT constitute estimated costs for the relocation of the CITY'S utility facilities; (b) the CITY has provided the STATE with documentation sufficient to show that the compensable actual inspection and relocation costs exceeded those estimated costs set forth within the AGREEMENT by ten percent (10%) or more; (c) the CITY is therefore entitled to the reimbursement of certain actual costs incurred in the relocation and inspection of the CITY'S utility facilities, which certain actual costs exceed those estimated costs set forth within the AGREEMENT; and

WHEREAS, this Amendment shall set forth that amount to be paid by the STATE to the CITY in reimbursement of the CITY'S compensable costs incurred in the relocation and inspection of the CITY'S utility facilities.

NOW, THEREFORE, the parties agree as follows:

1. Paragraph 6 is amended by deleting it in its entirety and inserting in its place:

"6. The total estimated cost for performing the adjustments by the STATE'S contractor is \$2,211,320.00. \$0.00 is attributable to salvage credits. The total actual inspection cost is ONE HUNDRED EIGHTY ONE THOUSAND ONE HUNDRED FIFTY FOUR AND 50/100 DOLLARS (\$181,154.50). The amount of ZERO AND NO/100 DOLLARS (\$-0-) is attributable to voluntary betterments. The CITY shall be reimbursed by the DEPARTMENT for the inspection cost of ONE HUNDRED EIGHTY ONE THOUSAND ONE HUNDRED FIFTY FOUR AND 50/100 DOLLARS (\$181,154.50), which reimbursement shall be made by the DEPARTMENT with Federal funds, and which reimbursement shall constitute the total amount to be paid by the DEPARTMENT to the CITY in reimbursement for the CITY'S cost incurred for inspection during the relocation of its utility facilities."

2. All of the other provisions of Agreement No. PR212-03-030, dated April 20, 2003, shall remain in full force and effect as if set forth herein.

IN WITNESS WHEREOF, the above named parties have hereunto set their hands and executed this Amendment the date first written above.

CARSON CITY, NEVADA, a consolidated municipality under Nevada Revised Statutes

STATE OF NEVADA, acting by and through its DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_  
Robert Crowell, Mayor *Date*

\_\_\_\_\_  
Director *Date*

ATTEST:

REVIEWED AND RECOMMENDED BY:

\_\_\_\_\_  
Alan Glover, Clerk-Recorder *Date*

\_\_\_\_\_  
Paul A. Saucedo, Chief R/W Agent *Date*

APPROVED:

APPROVED AS TO FORM AND LEGALITY:

 *12/7/10*  
\_\_\_\_\_  
Chief Deputy District Attorney, *Date*

\_\_\_\_\_  
Deputy Attorney General *Date*

\_\_\_\_\_  
Larry Werner, City Manager *Date*

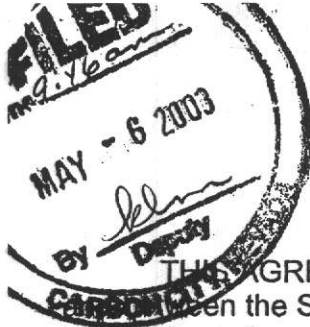
STATE OF NEVADA  
CARSON

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared before me, the undersigned, a Notary Public in and for Carson, State of Nevada, \_\_\_\_\_ personally known (or proved) to me to be the \_\_\_\_\_ Director of the Department of Transportation of the State of Nevada who subscribed to the above instrument for the Nevada Department of Transportation under authorization of Nevada Revised Statutes, Chapter 408.205; that he affirms that the seal affixed to said instrument is the seal of said Department; and that said instrument was executed for the Nevada Department of Transportation freely and voluntarily and for the uses and purposes therein mentioned.

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IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

\_\_\_\_\_



AGREEMENT FOR THE ADJUSTMENT  
OF UTILITY FACILITIES

THIS AGREEMENT, made and entered into this 30<sup>th</sup> day of April, 2003, by and between the STATE OF NEVADA acting by and through its DEPARTMENT OF TRANSPORTATION, hereinafter referred to as STATE, and CARSON CITY, NEVADA, a consolidated municipality under Nevada Revised Statutes, whose mailing address is 201 North Carson Street # 2, Carson City, Nevada 89701 hereinafter referred to as CITY.

WHEREAS, in the course of construction of Project SPF-395-1(18), E.A. 72154, certain adjustments will have to be made to utility facilities owned by CITY; specifically, STATE shall install, adjust and/or relocate sewer lines located in Lompa Field and Butti Way. Relocations and adjustments will be performed by STATE'S contractor in accordance with CITY'S plans and specifications as provided to the STATE for approval; and,

WHEREAS, CITY has established its compensable interests in and to the facilities needing adjustment attached as EXHIBIT "A".

NOW, THEREFORE, STATE and CITY hereby agree as follows:

1. STATE shall install new 48" sewer line as shown on plans attached as EXHIBIT "B". Said adjustments will be performed in accordance with the provisions of 23 CFR 645 Subpart A of the U.S. Department of Transportation, Federal Highway Administration, hereinafter referred to as 23 CFR 645 Subpart A, said federal regulations being incorporated by reference.
2. The adjustments to CITY'S facilities will be performed by STATE'S contractor using its own personnel at its standard wages and working conditions and hours in accordance with the agreements with the STATE.
3. The parties recognize CITY is a self-insured entity and subject to the limitations set forth in Chapter 41 of the Nevada Revised Statutes, CITY hereby agrees to fully exonerate, indemnify, defend and hold harmless the State of Nevada, and its departments, divisions, agencies, officers or employees from and against all claims of actions, and all expenses incidental to the defense of any such claims or actions; based upon or arising out of damage or injury (including death) to persons or property due to any error, negligence, omission or act of the CITY or any person employed by him, or any others for whose acts the CITY is legally liable. The sums shall include, in the event of any actions, the amount of the judgment, court costs, expenses of litigation, expert witness fees and reasonable attorney's fees.

STATE hereby agrees subject to the limitations set forth in Chapter 41 of the Nevada Revised Statutes to fully exonerate, indemnify, defend and hold harmless the CITY, and its departments, divisions, agencies, officers or employees from and against all claims of actions, and all expenses incidental to the defense of any such claims or actions, based upon or arising out of damage or injury (including death) to persons or property due to any error, negligence, omission or act of the STATE or any person employed by him, or any others for whose acts the STATE is legally liable. The sums shall include, in the event of any actions, the amount of the judgment, court costs, expenses of litigation, expert witness fees and reasonable attorney's fees.

4. Should CITY elect to utilize an outside contractor to perform any or all of the inspection necessary within the work-site, CITY shall require said contractor to list STATE as an additional insured on contractor's liability insurance, and provide STATE with a certificate of insurance. The outside contractor shall furnish the STATE with an Insurance Policy Endorsement and Certificate of Liability and Property Damage Insurance with a single limit of One Million Dollars (\$1,000,000.00) naming the STATE as an additional insured and shall maintain such insurance for the entire period during which the outside contractor shall conduct inspection activities within the STATE'S right-of-way.

The policies shall include a provision requiring a thirty (30) day advance written notice of any modification or cancellation of said policies. The insurance provider shall furnish the STATE with Insurance Policy Endorsements, Declaration Page and Certificates of Insurance, evidencing such insurance prior to commencement of work or occupancy of said right-of-way. The STATE, CITY and the outside contractor agree that the cost of this insurance coverage shall be borne entirely by the CITY or the outside contractor and shall not be charged to the STATE. All insurance shall be with a COMPANY having an A.M. Best and COMPANY, Inc. policyholder rating of A-VII or better. This insurance policy shall remain in full force and effect until one year after the outside contractor's completion of work inspection activities upon and or cessation of the CITY'S occupancy of the STATE'S right-of-way under this Agreement.

5. The STATE has elected to utilize an outside contractor to perform any or all of the adjustments necessary within the work-site. STATE shall require said contractor to list CITY as an additional insured on contractor's liability insurance, and provide CITY with a certificate of insurance. The outside contractor shall furnish the CITY with an Insurance Policy Endorsement and Certificate of Liability and Property Damage Insurance with a single limit of One Million Dollars (\$1,000,000.00) naming the CITY as an additional insured and shall maintain such insurance for the entire period during which the outside contractor shall occupy and or conduct excavation, construction and or installation activities on CITY'S facility.

The policies shall include a provision requiring a thirty (30) day advance written notice of any modification or cancellation of said policies. The insurance provider shall furnish the CITY with Insurance Policy Endorsements, Declaration Page and Certificates of Insurance, evidencing such insurance prior to commencement of work, excavation, construction, installation of said facilities. The STATE, CITY and the outside contractor agree that the cost of this insurance coverage shall be borne entirely by the STATE or the outside contractor and shall not be charged to the CITY. All insurance shall be with a company having an A.M. Best and Company, Inc. policyholder rating of A-VII or better. This insurance policy shall remain in full force and effect until one year after the outside contractor's completion of work, including but not limited to excavation, construction and installation activities upon and or cessation of the STATE'S construction of CITY'S facility.

6. The total estimated cost for performing the adjustments by the STATE'S contractor is \$2,211,320.00, of which \$2,077,917.00 is eligible for reimbursement. \$0.00 is attributable to salvage credits and \$133,403.00 is attributable to voluntary betterment. The STATE agrees to pay the CITY the estimated inspection fees of \$60,000.00 for performing or having performed inspection on said sewer line construction. CITY agrees to reimburse STATE the remainder of the betterments cost (\$133,403.00) minus inspection fees for a total cost of \$73,403.00. Details of the estimated costs are set forth in EXHIBIT "C" attached.

7. The parties designate that the method of developing the adjustment costs shall be actual direct and related indirect costs to be accumulated in accordance with an approved work order accounting system or procedure prescribed by the applicable Federal or State regulatory body in accordance with the provisions of 23 CFR 645 Subpart A.

8. CITY shall submit to STATE four copies of a detailed, itemized statement showing all the costs for reimbursement of inspection fees.

9. The accounts and records of CITY pertaining to the inspection fees shall be subject to audit by representatives of STATE and/or the Federal Government at the earliest practicable date following STATE'S receipt of billing from CITY. CITY shall retain the financial records relating to the inspection fees and shall make the records available for inspection by representatives of STATE and/or the Federal Government upon request during the course of the adjustments and for a period of not less than three years after CITY has received final payment.

10. STATE'S contractor shall contact CITY'S Construction Manager, John Benzing at (775) 887-2355 ext. 1018, a minimum of ten (10) days prior to starting construction of CITY'S facility. CITY shall not proceed with inspection until such time as STATE'S contractor has commenced with construction of CITY'S facility.

11. Upon completion of the above mentioned Project, CITY and STATE shall execute a Joint Use-Quitclaim Agreement reflecting CITY'S and STATE'S separate and mutual rights with the appropriate descriptions contained therein.

12. CITY shall not pass over or through the freeway access control fence for purposes of maintenance, repair, replacement, inspection or operation of its facilities, and shall instead achieve access from freeway interchanges, frontage roads, cross streets or other access roads. Access is not permitted from the freeway main-traveled way or ramps.

13. Notwithstanding the provisions of paragraph 12 above, in the case of an extreme emergency involving CITY'S facilities, CITY may, with the prior approval of STATE'S district engineers, have reasonable use of the freeway for performing emergency maintenance.

14. The laws of the State of Nevada shall be applied in interpreting and construing this agreement.

15. This agreement constitutes the entire agreement between the parties and shall not be modified unless in writing and signed by the parties.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their officials, thereunto duly authorized, on the date first above written.

CARSON CITY

By: [Signature] 3/20/03  
RAY MASAYKO, Mayor Date

ATTEST:  
[Signature] 3/20/03  
ALAN GLOVER, Clerk-Recorder Date

APPROVED:  
[Signature] 3/29/03  
Chief Deputy District Attorney Date

[Signature] 4/2/03  
Deputy City Manager Date

REVIEWED AND RECOMMENDED BY:

[Signature] 12 APR 03  
District Engineer Date

[Signature] 04/15/03  
Heidi A. Mireles, Chief Right-of-Way Agent Date

APPROVED AS TO LEGALITY AND FORM:

[Signature] 4/28/03  
Deputy Attorney General Date

STATE OF NEVADA, acting by and through its DEPARTMENT OF TRANSPORTATION

[Signature]  
Asst. Director 4/28/03 Date