Carson City Agenda Report

Date Submitted: May 21, 2012 Agenda Date Requested: June 7, 2012

Time Requested: 10 minutes

To: Board of Supervisors

From: Thomas Guinn, Utility Manager

Subject Title: For Possible Action: To approve and authorize the mayor to sign an Interlocal Agreement with NDOT for the Carson City Freeway Project which identifies responsibilities associated with Phase 2B-2 improvements, right-of-way, utility relocation and maintenance.

Staff Summary: This is the next step in the Carson City Freeway Project. Phase 2B-2 design is complete and packaged to go to bid. Carson City staff and NDOT have prepared the Phase 2B-2 Project Agreement similar in nature to the previous Project Agreements for Phase 1A, Phase 1B, Phase 2A and Phase 2B-1.

Type of Action Requested:	(check one)		
() Resolution	() Ordinance		
(X) Formal Action/Motion	() Other (Spec	ify)	
Does This Action Require A Busin	ness Impact Statement:	() Yes (X) No	

Recommended Board Action: I move to accept Public Works Recommendation to approve and authorize the mayor to sign an Interlocal Agreement with NDOT for the Carson City Freeway Project which identifies responsibilities associated with the Phase 2B-2 improvements, right-ofway, utility relocation and maintenance due to construction of Phase 2B-2.

Explanation for Recommended Board Action: Approving this Agreement will allow NDOT to proceed with bidding the Carson City Freeway Project Phase 2B-2. This agreement provides quitclaim of City rights-of-way to NDOT, acceptance of relinquishments of lands from NDOT to the City, acceptance of maintenance duties, obligations and responsibilities for said relinquished lands, requirements to relocate utilities, defines maintenance responsibilities for the storm drain system being constructed within Roland Street, Ponderosa Drive, and Bigelow Drive, and other various issues related to the project. The non-reimbursable total cost of \$661,180.67 includes work as outlined in the Agreement For The Adjustment Of Utility Facilities.

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

Fiscal Impact: \$661,180.67

Explanation of Impact: Reduction in budget by \$661,180.67

Funding Source: 2012 Water Bond and 2012 Sewer Bond

Alternatives: Provide other direction pursuant to Board Action

Supporting Material: Interlocal Agreement.			
Prepared By: Thomas Guinn, Utility Manager			
Reviewed By: Department Head (City Manager) (District Attorney) District Attorney (Finance Director)	MARINE POSTA A vent a region	Date: 5-29- Date: 5/28 Date: 5/29/12 Date: 5/29/12	12,
Board Action Taken: Motion:	1) 2)		Aye/Nay
(Vote Recorded By)			

Agreement Number
INTERLOCAL AGREEMENT

This Agreement, made and entered into the _____ day of _____, 2012, by and between the STATE OF NEVADA, acting by and through its Department of Transportation, hereinafter called the DEPARTMENT, and Carson City, Nevada, a consolidated municipality under the Nevada Revised Statues, hereinafter called the CITY.

WITNESSETH:

WHEREAS, an Interlocal Agreement is defined as an agreement by public agencies to "obtain a service" from another public agency; 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 DEPARTMENT and the CITY desire to construct the Carson City Freeway, a limited access freeway facility, which will ultimately traverse around downtown Carson City, Nevada, on the east side of Carson City from US 395 north at Lakeview Hill to the intersection of South Carson Street and Highway 50, hereinafter called the FREEWAY; and

WHEREAS, the construction of the Snyder Avenue Bridge, utility relocations, and drainage improvements from Muldoon Street to South Carson Street, (herein after called PHASE 2B-2) are needed to progress the construction of the FREEWAY; and

WHEREAS, the CITY wishes to cooperate with the DEPARTMENT in the construction of the FREEWAY, and believes that the construction of the FREEWAY will greatly improve traffic conditions in and through the CITY; and

WHEREAS, the purpose of this Agreement is to set forth the DEPARTMENT's and CITY's respective responsibilities associated with the PHASE 2B-2 portion of the FREEWAY, relating to those endeavors associated with improvements, right-of-way ownership, utility relocation and maintenance; and

WHEREAS, the DEPARTMENT desires to include the relocation of the CITY's sewer, and municipal and reclaimed water lines along Arthur Street, Muldoon Street, Center Drive, Hickory Drive, East Roland Street, Hillview Street, Bigelow Drive, Silver Sage Drive, Frontage Road, and South Carson Street in the PHASE 2B-2 construction contract (hereinafter called "UTILITIES"); and

WHEREAS, a separate Cooperative Agreement between the CITY and the DEPARTMENT has been developed to identify prior land rights, funding, and cost participation of the UTILITES for PHASE 2B-2; and

WHEREAS, the CITY anticipates that unforeseen changes that may be necessary to complete UTILITIES included in and affected by the PHASE 2B-2 (hereinafter called "CHANGES"); and

WHEREAS, the services of the CITY will be of benefit to the DEPARTMENT and to the people of the State of Nevada; and

WHEREAS, the CITY and the DEPARTMENT 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. To convey by quitclaim deed to the DEPARTMENT, all its right, title and interest for parcels as depicted in the color GREEN on Exhibit "A" (SHEETS 1 through 7).
- 2. To present the "Resolution Consenting to Relinquishment and Land Transfer Agreement" to the CITY Board of Supervisors for their approval.
- 3. To accept conveyance from the DEPARTMENT by a "Resolution of Relinquishment", upon approval by the Transportation Board, all of the DEPARTMENT's right, title and interest in parcels as depicted in the color YELLOW on Exhibit "A" (SHEETS 2 through 7) together with any utility facilities and storm drain facilities situated therein.
- 4. To accept the maintenance duties, obligations and responsibilities for the parcels as depicted in the color YELLOW on Exhibit "A" (SHEETS 2 through 7). This maintenance shall include utilities, roadway and pavement repair and replacement, striping, snow removal, sweeping, sidewalks, curb and gutter, on-street storm drain facilities, street lighting, graffiti removal, signing and other improvements.
- 5. To enter into agreements for the adjustment and/or relocation of CITY's utilities to accommodate PHASE 2B-2.
- 6. To have an inspector on-site during the adjustment and/or relocation of CITY's utilities.
- 7. To accept maintenance duties, obligations and responsibilities for the storm drain system being constructed within Roland Street, Ponderosa Drive, and Bigelow Drive that is outside the control of access of the FREEWAY as depicted in YELLOW on Exhibit "B".
- 8. To convey the CITY's real property interests and any and all access and abutter's rights in and to portions of the parcel as depicted in the color GREEN on Exhibit "A" (SHEETS 1 through 7) to the DEPARTMENT.
- 9. To provide to the DEPARTMENT, final plans and specifications stamped by a professional engineer registered in the state of Nevada, for the inclusion of the UTILITIES in the PHASE 2B-2 construction contract.
 - 10. To pay for all non-reimbursable and betterment costs associated with the

UTILITIES. The total estimated non-reimbursable and betterment costs to be paid for by the CITY is Six Hundred Sixty-One Thousand One Hundred Eighty and 67/100 Dollars (\$661,180.67) as referenced in the CITY's PHASE 2B-2 utility agreement.

- 11. To obtain all other necessary approvals for the relocation and installation of the UTILITIES and inclusion in the DEPARTMENT's construction contract.
- 12. Upon notification the CITY shall complete testing and inspection and provide acceptance of the UTILITIES within three (3) weeks. This acceptance schedule will be included in the PHASE 2B-2 construction contract. Should the CITY's failure to complete this work result in conflict, interference or delay to the DEPARTMENT and or its contractors, the CITY shall pay for the actual costs attributable to such delay.
- 13. To obtain right-of-way occupancy permits from the DEPARTMENT prior to entering upon the DEPARTMENT's rights-of-way, for the purposes of construction, maintenance or reconstruction of utilities with the understanding that the fee for such permits will be waived.
- 14. To allow continuous use of access in and to CITY streets from adjacent properties for all driveways constructed in and to CITY streets located within PHASE 2B-2.
- 15. To observe, review, and inspect all project construction work within CITY right-ofway for acceptance with the understanding that all items of concern are to be reported to the DEPARTMENT's Resident Engineer and not to the Contractor.
- 16. To grant permission, and hereby does grant permission to the DEPARTMENT, its agents and/or contractors to occupy CITY drainage easements, CITY owned lands, streets and right-of-way for the purpose of constructing the PHASE 2B-2 and portions of CITY streets, drainage and other improvements for the duration of PHASE 2B-2 as depicted in the PHASE 2B-2 construction contract documents. Traffic detours and contractor haul routes will be allowed on CITY streets as depicted in Exhibit "C", attached hereto and incorporated herein.
- 17. To be responsible for all costs associated with CHANGES requested by the CITY for improvements to PHASE 2B-2 or CITY owned facilities that are not deemed the DEPARTMENT's responsibility by the assignment of prior rights or agreements and that cannot be foreseen at this time.
- 18. To submit all requests for the DEPARTMENT's approval for CHANGES in writing.
- 19. To complete the review of all submittals and requests for CHANGES for utilities submitted to the CITY by the DEPARTMENT within five (5) working days after service of such submissions. In the event the CITY does not provide the DEPARTMENT with the CITY's written response within five (5) working days following the DEPARTMENT's service of such documents upon the CITY, the DEPARTMENT will proceed with submittals and change orders so as to not delay the PROJECT and will assume no liability therefore.
- 20. Design costs will be included in the DEPARTMENT's invoice to the CITY with each billing for CHANGES requested by the CITY.

ARTICLE II - DEPARTMENT AGREES

1. To advertise, award, and administer the construction contract for PHASE 2B-2 and to be responsible for all construction costs excluding CHANGES and utility relocations

deemed the responsibility of the CITY or otherwise addressed in a separate cooperative agreement.

- 2. To leave those portions of adjacent CITY streets upon which entry is required for the purposes herein in as neat and presentable condition as existed prior to such entry. Any damage to or significant deterioration of CITY streets, caused by DEPARTMENT or DEPARTMENT's contractor if legal loads are exceeded by the DEPARTMENT and or its contractors, or otherwise caused through their negligence, recklessness or intentional misconduct, shall be repaired by the DEPARTMENT to their prior condition, at no cost to CITY. The CITY will review and approve street repairs within ten (10) working days upon notification of DEPARTMENT.
- 3. To prepare quitclaim deed to convey all of CITY's right, title and interest in parcels as depicted in the color Green on "Exhibit "A" attached hereto and made a part hereof.
- 4. To convey to the CITY those portions of right, title, and interest in parcels as depicted in the color yellow in Exhibit "A", attached hereto and incorporated herein. To prepare the "Resolution Consenting to Relinquishment, and Land Transfer Agreement", and "Resolution of Relinquishment" and present to the DEPARTMENT's Transportation Board for its approval.
- 5. To prepare agreements for the adjustment and/or relocation of CITY's utility facilities.
- 6. To include the CITY's relocation construction plans for the UTILTIES in the PHASE 2B-2 construction contract. The estimated reimbursable UTLITIES costs to be paid for by the DEPARTMENT due to the CITY's prior rights is Seven Hundred Ninety-Four Thousand Five Hundred Twenty-Three and 13/100 Dollars (\$794,523.13) as referenced in the CITY's PHASE 2B-2 utility agreement.
- 7. To bill the CITY for all non-reimbursable and betterment costs associated with the UTILITIES. The total estimated non-reimbursable and betterment costs to be paid for by the CITY is Six Hundred Sixty-One Thousand One Hundred Eighty and 67/100 Dollars (\$661,180.67) as referenced in the CITY's PHASE 2B-2 utility agreement.
- 8. To bill the CITY quarterly for all costs associated with CHANGES incurred during PHASE 2B-2 construction including design costs.
- 9. To require DEPARTMENT's Contractor to notify the CITY at least five (5) days in advance of the need to adjust signal heads or modify signal operation and timing as necessary to accommodate traffic movements during various stages of PHASE 2B-2 traffic control.
- 10. To allow the CITY to observe, review, and inspect project construction work within CITY right-of-way with the understanding that all items of concern are to be reported to the DEPARTMENT's Resident Engineer and not to the Contractor.
- 11. To review and approve CHANGES requested by the CITY within five (5) working days after service of such submissions. Said approval shall not be unreasonably withheld.
- 12. To allow the CITY to review and comment on change orders that involve features or items related to PHASE 2B-2 or UTILITIES for which the CITY assumes a maintenance responsibility. Approval shall be made within five (5) working days of service of change order as described in Paragraph 16 of ARTICLE I-CITY AGREES. No response from the CITY within this time frame shall constitute the CITY's acceptance of the changes and authorization for the

DEPARTMENT to proceed.

- 13. To require DEPARTMENT's PHASE 2B-2 contractor to access the freeway corridor to and from DEPARTMENT owned streets and right-of-way.
- 14. To require the DEPARTMENT's contractor to list the CITY as an additional insured on contractor's liability insurance, and provide CITY with a certificate of insurance. The contractor shall also furnish the CITY with an Insurance Policy Additional Insured Endorsement and Certificate of Liability and Property Damage Insurance with a single limit of One Million Dollars and No/100 (\$1,000,000.00) naming the CITY as an additional insured and shall maintain such insurance for the entire period during which the contractor shall occupy and/or conduct excavation, construction and/or installation activities within the CITY's right-of-way.

ARTICLE III - IT IS MUTUALLY AGREED

- 1. The term of this Agreement shall be from the date first written above through or until the construction of all improvements contemplated herein have been 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. The parties agree to allow each other to observe, to inspect project construction and to review applicable change orders in a timely manner which prevents PROJECT delay. All change order requests shall be made in writing. Each party shall complete its review of all change orders submitted to it by the other party within five (5) working days after service of such change orders. In the event the CITY does not provide the DEPARTMENT with a written response to the DEPARTMENT's change orders within five (5) working days following the DEPARTMENT's service of such change orders upon the CITY, the DEPARTMENT will proceed with the change orders so as to not to delay the PROJECT and will assume no liability therefore. The CITY shall be responsible for all costs associated with change orders requested by the CITY, which cannot be foreseen at this time. It is the intention of the parties that this review does not constitute a joint exercise of powers pursuant to NRS 277.080 to 277.170.
- 4. 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.
- 5. 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 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: Susan Martinovich, P.E., and Director

Attn.: Nick Johnson

Nevada Department of Transportation

Project Management Division 1263 South Stewart Street Carson City, NV 89712 Phone: (775) 888-7319

Fax: (775) 888-7322

E-mail: njohnson@dot.state.nv.us

FOR CITY: Patrick Pittenger

City of Carson City

201 North Carson Street, #2 Carson City, Nevada 89706 Phone: (775) 283-7396

Fax: (775) 887-2112

E-mail: ppittenger@carson.org

- 6. 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.
- 7. 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.
- 8. 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.
- 9. 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.
- 10. 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 attorney's 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.

- 11. 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.
- 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. 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.
- 14. Neither party shall assign, transfer or delegate any rights, obligations or duties under this Agreement without the prior written consent of the other party.
- 15. 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.
- 16. Pursuant to NRS Chapter 239, 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.
- 17. 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.
- 18. 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.
- 19. 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 First Judicial District Court, Carson City, Nevada, for enforcement of this Agreement.
- 20. The DEPARTMENT does not provide any warranty that the estimate is an accurate reflection of the final cost. The DEPARTMENT disclaims any such warranty. The final costs may vary widely depending on the Contractor's bid prices. The CITY shall be wary in its reliance on the estimates set forth in the Agreement.
- 21. 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.

- 22. Should this Agreement be terminated by the CITY prior to completion of PHASE 2B-2, the CITY will reimburse the DEPARTMENT for all improvement costs incurred up to the point of Agreement termination, and all costs incurred by the DEPARTMENT because of the Agreement termination.
- 23. The CITY 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 CITY and the DEPARTMENT. The CITY will ensure 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 CITY and the DEPARTMENT. The CITY 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 CITY (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 written permission of the DEPARTMENT.
- 24. Any claims by the CITY for street damage or significant deterioration of CITY streets due to DEPARTMENT or DEPARTMENT's contractor shall be substantiated by before and after photo documentation or other means of evidence that specifically attributes the actual cause of the damage to one or both of the parties, their contractors, and or agents. Significant deterioration shall only be considered as the DEPARTMENT's responsibility if legal loads are exceeded by the DEPARTMENT and or its contractors, and or other actions and or inactions of the DEPARTMENT and or its contractors constituting negligence, recklessness or intentional misconduct resulting in street failures.
- 25. DEPARTMENT will allow CITY and its agents and contractors to participate in negotiations and meetings regarding the potential claims of the DEPARTMENT and/or its contractors, for delays incurred by the DEPARTMENT and/or its contractors, arising from the actions and or inactions of the CITY and or the CITY's utility contractors relative to the relocation and/or adjustments of CITY utilities.
- 26. Any recipient or Sub recipient of funds under this agreement agrees to comply with the Federal Funding Accountability and Transparency Act and implementing regulations at 2CFR Part 170, including Appendix A available at http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf.
- 27. 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.
- 28. This Agreement shall not become effective until and unless approved by the Nevada State Transportation Board of Directors.
 - 29. 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.

CARSON CITY	State of Nevada, acting by and through its DEPARTMENT OF TRANSPORTATION		
	Director		
Name (Print)	Approved as to Legality & Form:		
Title (Print)	Deputy Attorney General		
Approved as to Form:			
Attorney			

















