

**City of Carson City
Agenda Report**

Date Submitted: May 21, 2015

Agenda Date Requested: June 4, 2015
Time Requested: 5 minutes

To: Mayor and Supervisors

From: Public Works Department (Darren Schulz)

Subject Title: For Possible Action: To approve Interlocal Agreement Number NM199-15-015 with the Nevada Department of Transportation (NDOT) that will result in the construction of Phase 2B-3 of the Carson City Freeway.

Staff Summary: Staff will present a proposed agreement between the City and NDOT that establishes the responsibilities of each party as it relates to the construction of Phase 2B-3 of the Carson City Freeway.

Type of Action Requested: (check one)
() Resolution () Ordinance
(XXX) Formal Action/Motion () Other

Does This Action Require A Business Impact Statement: () Yes (XX) No

Recommended Board Action: I move to approve Interlocal Agreement Number NM199-15-015 with the Nevada Department of Transportation (NDOT) that will result in the construction of Phase 2B-3 of the Carson City Freeway.

Explanation for Recommended Board Action: The proposed agreement provides for the construction of Phase 2B-3 of the Carson City Freeway and address issues associated with improvements, landscaping, and maintenance. The agreement also outlines the procedure to address any unforeseen changes necessary for utilities as it relates to construction of the freeway. On May 13, 2015, the Carson City RTC acted to recommend that the Board of Supervisors approve this agreement.

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

Fiscal Impact: N/A

Explanation of Impact: N/A

Funding Source: N/A

Alternatives: N/A

Supporting Material: Proposed Agreement Number NM199-15-015

Prepared By: Patrick Pittenger, AICP – Transportation Manager

Reviewed By: [Signature] Date: 5/26/15
(Department Head)

Concurrences: [Signature] Date: 5/26/15
(City Manager)

[Signature] Date: 5/26/2015
(District Attorney)

[Signature] Date: 5/26/15
(Finance Director)

Board Action Taken:

Motion: _____

- 1) _____
- 2) _____

Aye/Nay

(Vote Recorded By)

INTERLOCAL AGREEMENT

This Agreement, made and entered into the _____ day of _____, _____, 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 Statutes, 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 at I-580/US 50/US 395 and South Carson Street, hereinafter called the FREEWAY; and

WHEREAS, the construction of a four lane controlled access freeway to terminate at a four-legged at-grade intersection at I-580/US 50/US 395 and South Carson Street, (herein after called PHASE 2B-3) 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 the CITY's respective responsibilities associated with the PHASE 2B-3 portion of the FREEWAY, relating to those endeavors associated with improvements, right-of-way ownership, utility relocation, and maintenance; and

WHEREAS, the CITY anticipates that unforeseen changes that may be necessary to complete utilities included in and affected by the PHASE 2B-3 (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 have an inspector on-site, at no cost to the DEPARTMENT, during the construction and installation of irrigation and landscaping components with the understanding that all items of concern are to be reported to the DEPARTMENT's Resident Engineer and not to the contractor.

2. To allow the DEPARTMENT's contractor to pulverize, reshape, and overlay Frontage Road CCFR06 (Junction Drive) between Roland Street and Appion Way.

3. To allow the DEPARTMENT's contractor and NV Energy to install facilities in the following locations: 4902 S. Carson Street, 4904 S. Carson Street, 5122 Silver Sage Drive, 1071 Bigelow Drive, 1803 Clearview Drive, 1793 Koontz Drive, 5441 S. Carson Street, 5443 S. Carson Street; to allow the removal of service and four (4) power poles along the East side of US 395 near Arthur Street and the old frontage road; and to allow the DEPARTMENT's contractor to install water service for irrigation and landscaping at 4767 S. Carson Street.

4. That the concrete cap placed over the Carson City water line in the general area of Ramp "R4A" will be sufficient to protect water facilities in place and to allow the DEPARTMENT's contractor to install per contract plans.

5. To observe, review, and inspect all project construction work within CITY right-of-way for acceptance, at no cost to the DEPARTMENT, with the understanding that all items of concern are to be reported to the DEPARTMENT's Resident Engineer and not to the contractor.

6. To operate, maintain, provide and pay for power for the traffic signal systems at the new four legged at-grade intersection at I-580/US 50/US 395 and South Carson Street; and at the Fairview Drive Interchange and associated ramp terminals on Fairview Drive, in a satisfactory manner to the DEPARTMENT without cost to the DEPARTMENT.

7. To retain maintenance of CITY streets grade separated from the freeway within the freeway right-of-way up to the structure approach slabs. These streets include Koontz Lane and Clearview Drive. This maintenance shall include, but is not limited to, pavement surface, sidewalks, curb and gutter, storm drain systems, lighting, and signing.

8. To own, operate, provide and pay for power and water supply upon activation of services. Maintain landscaping, water service, plantings, and irrigation within the DEPARTMENT right-of-way. This includes Carson Street and Fairview Drive (See Exhibit A).

9. To maintain all irrigated landscape and the Cottonwood/Eagle sculpture aesthetic feature within the DEPARTMENT's right-of-way. The DEPARTMENT will maintain all other aesthetic features which are mounted to structures within the control of access boundaries shown on Exhibit A.

10. To be responsible for all costs associated with CHANGES requested by the CITY for improvements to PHASE 2B-3 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.

11. To submit all requests for the DEPARTMENT's approval for CHANGES in writing at least twenty (20) working days prior to the need for implementation of CHANGES to Phase 2B-3 or CITY owned facility.

12. 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.

13. That design costs will be included in the DEPARTMENT's invoice to the CITY with each billing for CHANGES requested by the CITY.

14. To participate in a final construction walk through at the completion of the project, and a final walk through at the end of the plant establishment period, at no cost to the DEPARTMENT, with the understanding that all items of concern are to be reported to the DEPARTMENT's Resident Engineer and not to the contractor.

ARTICLE II - DEPARTMENT AGREES

1. To advertise, award, and administer the construction contract for PHASE 2B-3.

2. 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-3 traffic control.

3. 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.

4. 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.

5. To allow the CITY to review and comment on change orders that involve features or items related to PHASE 2B-3 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 12 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.

6. To maintain the non-irrigated landscape and aesthetic features outside the boundary limits of Exhibit A, and all sculptural features attached to bridges.

7. To allow the CITY to construct, operate, and maintain the future multiuse path within the DEPARTMENT's right-of-way. The final location of the multiuse path is to be determined.

8. To allow the CITY to maintain CITY streets grade separated from the freeway within the freeway right-of-way up to the structure approach slabs without having to obtain an encroachment permit. The CITY will need to notify the DEPARTMENT five (5) days prior to

beginning maintenance activities.

9. To require DEPARTMENT's PHASE 2B-3 contractor to access the freeway corridor to and from DEPARTMENT owned streets and right-of-way.

10. To require DEPARTMENT's PHASE 2B-3 contractor to pulverize, reshape, and overlay Frontage Road CCFR06 (Junction Drive) between Roland Street and Appion Way.

11. 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.

12. To allow the CITY to maintain the irrigated landscape areas, as identified in Exhibit A, attached hereto and incorporated herein, and the Cottonwood/Eagle Sculpture aesthetic feature, without having to obtain an encroachment permit. The CITY will notify the DEPARTMENT prior to beginning maintenance activities on the Cottonwood/Eagle Sculpture.

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: Rudy Malfabon, P.E., and Director
Attn.: Jeff Lerud
Nevada Department of Transportation
Project Management Division
1263 South Stewart Street
Carson City, Nevada 89712
Phone: (775) 888-7589
Fax: (775) 888-7322
E-mail: jlerud@dot.state.nv.us

FOR CITY: Patrick Pittenger
City of Carson City
3505 Butti Way
Carson City, Nevada 89701
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. All aesthetic features called out in Article I, Paragraph 9, and Article II, Paragraph 6, are to be owned by the DEPARTMENT.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. Should this Agreement be terminated by the CITY prior to completion of PHASE 2B-3, 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.

24. 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.

25. 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.

26. 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.

27. 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>.

28. 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.

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

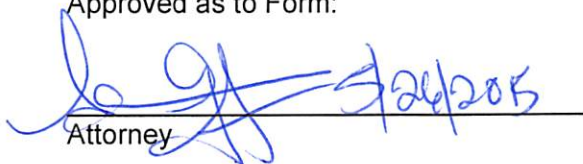
State of Nevada, acting by and through its
DEPARTMENT OF TRANSPORTATION

Robert L. Crowell, Mayor

Director

Approved as to Form:

Approved as to Legality and Form:




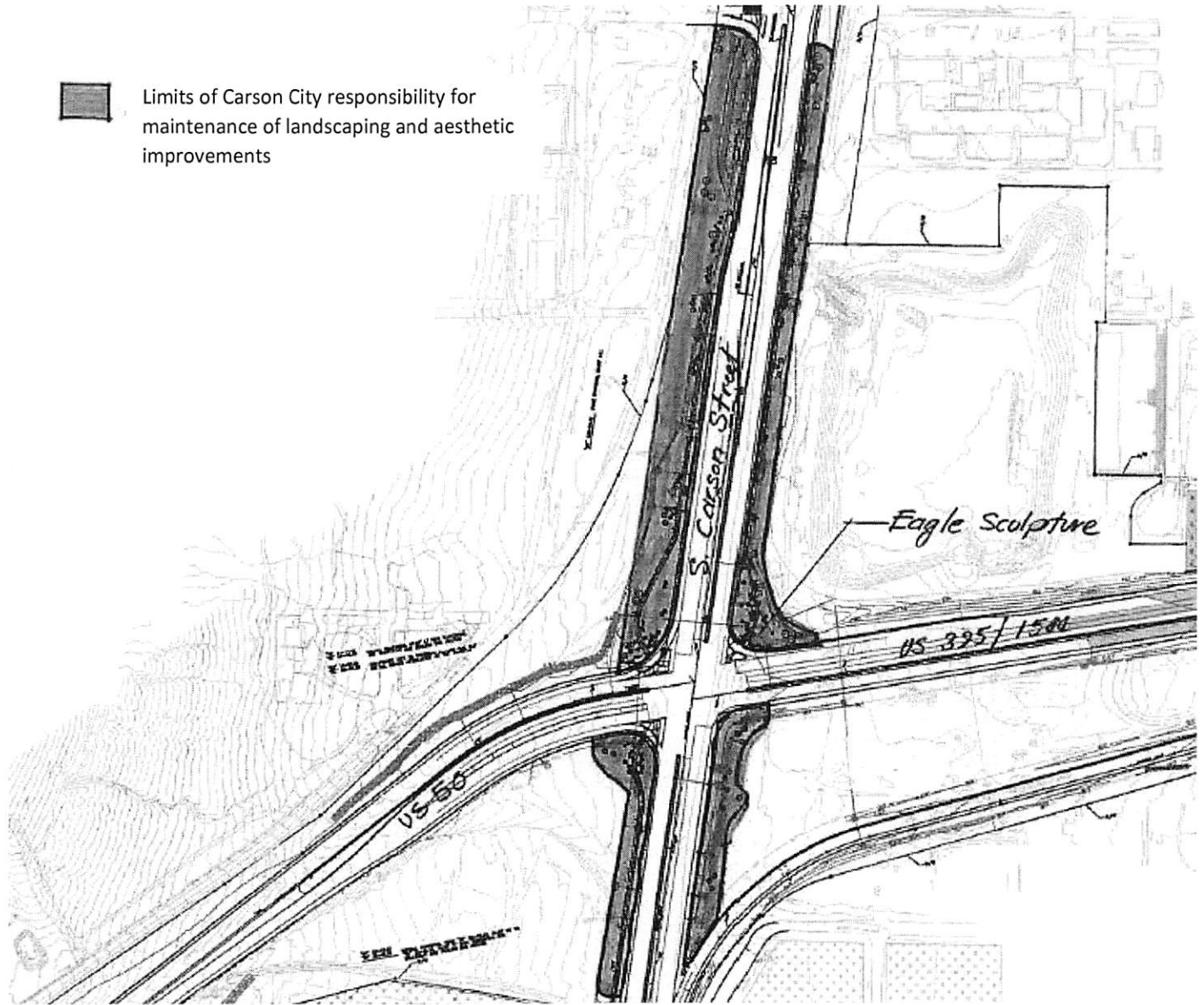
Attorney

Deputy Attorney General

Exhibit A

Limits of maintenance of landscaping and aesthetic features

 Limits of Carson City responsibility for maintenance of landscaping and aesthetic improvements





Limits of Carson City responsibility for maintenance of landscaping and aesthetic improvements

