



STAFF REPORT

Report To: Board of Supervisors **Meeting Date:** March 5, 2020

Staff Contact: Darren Schulz, Public Works Director

Agenda Title: For Possible Action: Discussion and possible action regarding Cooperative Agreement P784-19-019 between Carson City and the Nevada Department of Transportation (NDOT) for the upgrade of the stormwater system from Oregon Street to the Linear Ditch in an amount not to exceed \$200,000. (Darren Schulz, Dschulz@carson.org; Dan Stucky; DStucky@carson.org)

Staff Summary: As part of the future Oregon Street to Linear Ditch Storm Drain Extension Project, the drainage system through the NDOT maintenance yard between Oregon Street and the Linear Ditch will be up- sized to increase the system capacity and improve stormwater conveyance in the area. These project improvements will compliment other stormwater system upgrades occurring in the area as part of the South Carson Complete Streets Project. Since this City project will benefit both parties by reducing flooding in the area, NDOT has agreed to cooperate on the project by providing reimbursement for a portion of the project construction costs.

Agenda Action: Formal Action / Motion **Time Requested:** 5 minutes

Proposed Motion

I move to approve the agreement.

Board's Strategic Goal

Sustainable Infrastructure

Previous Action

N/A

Background/Issues & Analysis

The Carson City Downtown area, NDOT Headquarters and maintenance yard, and the DMV Public Safety building have seen flooding over the years. Most flooding occurs from smaller storms lasting over several days. The City's drainage system has little capacity and is quickly overwhelmed causing water to pond on the streets and parking lots. The stormwater improvements proposed with the Oregon Street to Linear Ditch Storm Drain Extension Project in combination with the extensive stormwater improvements proposed as part of the South Carson Complete Streets Project will result in an upgraded stormwater system with larger pipes and more inlets. These capacity improvements will allow for more stormwater flow to enter and be conveyed in a subsurface storm drain system to the Linear Ditch and away from the downtown area. Specifically, the future Oregon Street to Linear Ditch Storm Drain Extension Project will benefit the overall drainage in the area, as well as benefiting the NDOT headquarters and maintenance yard. Due to this mutual benefit, this cooperative agreement would allow for Carson City to seek reimbursement from NDOT for construction costs associated with the project in an amount not to exceed \$200,000.

Applicable Statute, Code, Policy, Rule or Regulation

NRS 277.080 to 277.110, inclusive.

Financial Information

Is there a fiscal impact? Yes

If yes, account name/number: Stormwater Project P370518077, State Grant Revenue Account 5057582-434010

Is it currently budgeted? No

Explanation of Fiscal Impact: The total estimated cost for the Oregon Street to Linear Ditch Storm Drain Extension Project (P370518077) is \$700,000 budgeted in account 5053705-507010. The project is currently in the bidding/award stage. If the agreement is approved, \$200,000 will be added to the grant revenue budget (5057582-434010), therefore reducing the City’s cost of the project to an estimated \$500,000.

Alternatives

Do not approve the agreement and provide alternate direction.

Attachments:

[P784-19-019updated.pdf](#)

Board Action Taken:

Motion: _____

1) _____

2) _____

Aye/Nay

(Vote Recorded By)

COOPERATIVE AGREEMENT

This Agreement is made and entered into on _____, by and between the State of Nevada, acting by and through its Department of Transportation, hereinafter called the "DEPARTMENT", and Carson City, a Consolidated Municipality, 3505 Butti Way, Carson City, NV 89701, hereinafter called the "CITY".

WITNESSETH:

WHEREAS, a Cooperative Agreement is defined pursuant to Nevada Revised Statutes (NRS) 277.110 as an agreement between two or more public agencies for the joint exercise of powers, privileges, and authority; and

WHEREAS, pursuant to the provisions contained in Chapter 408 of the Nevada Revised Statutes, the Director of the DEPARTMENT may enter into those agreements necessary to carry out the provisions of the Chapter; and

WHEREAS, NRS 277.110 authorizes any two or more public agencies to enter into agreements for joint or cooperative action; and

WHEREAS, the parties to this Agreement are public agencies and authorized to enter into agreements in accordance with NRS 277.080 to 277.110, inclusive; and

WHEREAS, the purpose of this Agreement is for DEPARTMENT to provide funds to CITY to assist CITY with upgrading the storm drain system from Oregon Street through the NDOT maintenance yard to the linear ditch, as shown on Exhibit A, hereinafter called the "PROJECT"; and

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

WHEREAS, the parties hereto 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 obtain from the DEPARTMENT all required permits required for the PROJECT and to comply with all permit requirements. While the CITY agrees in this Agreement to obtain all required permits for the PROJECT, said permits are not the subject of this Agreement and the CITY will obtain said permits through the DEPARTMENT's established processes in place at the time that the permit application was or will be submitted to the DEPARTMENT.
- 2. To construct the PROJECT in compliance with all applicable laws, regulations, permits, ordinances, and the CITY's development standards. The CITY will provide supporting documentation to confirm that the work performed on the PROJECT conforms to DEPARTMENT and CITY guidelines.
- 3. To invoice the DEPARTMENT upon completion of the PROJECT for reimbursement of PROJECT construction costs in an amount not to exceed Two Hundred

Thousand and No/100 Dollars (\$200,000.00). The CITY will provide supporting documentation demonstrating that the PROJECT costs exceeded that amount.

ARTICLE II - DEPARTMENT AGREES

1. To reimburse CITY for a portion of the PROJECTS construction costs with State funds, and not to exceed Two Hundred Thousand and No/100 Dollars (\$200,000.00), within 60 days of receipt of the CITY's invoice.

2. To allow the CITY to construct, access, and inspect the PROJECT within the DEPARTMENT's Maintenance Yard, consistent with the DEPARTMENT's permits issued for the PROJECT.

ARTICLE III - IT IS MUTUALLY AGREED

1. The term of this Agreement shall be from the date first written above through and including June 30, 2021; or until construction of the PROJECT has been completed and accepted by the CITY or the DEPARTMENT.

2. This Agreement shall not become effective until and unless approved by appropriate official action of the governing body of each party.

3. The CITY shall not seek reimbursement from DEPARTMENT for work performed after the termination of this Agreement and agrees that DEPARTMENT shall make no payment for work performed following the expiration or termination dates, and the CITY shall forfeit any and all right to payment for such work.

4. The CITY, on behalf of itself, its spouses, heirs, executors, administrators, successors, subrogees, servants, insurers, attorneys, independent representatives, personal representatives, agents, and assigns, does hereby waive, release, and forever discharge the State of Nevada, the DEPARTMENT, and each and every of their departments, divisions, agencies, officers, directors, agents, contractors, and employees, from any and all claims, demands, liens, liability, actions, causes of action, and suits for damages, at law and in equity, in any way connected with or arising from the CITY's provision of services and work performed following termination of this Agreement and/or following the expiration date of this Agreement, as it may be amended from time to time through written amendment signed by the parties hereto and approved by appropriate official action of the DEPARTMENT's governing body, prior to such expiration date.

5. Neither the State of Nevada, the DEPARTMENT, nor any of their departments, divisions, agencies, officers, directors, agents, contractors, and employees, shall have authority to extend this Agreement beyond the expiration date set forth within this Agreement, unless such extension is set forth within a written amendment signed by the parties hereto and approved by appropriate official action of the DEPARTMENT's governing body prior to such expiration date. The CITY shall not rely upon any oral or written representations expressed extrinsic to a written amendment signed by the parties hereto and approved by appropriate official action of the DEPARTMENT's governing body prior to such expiration date, purporting to alter or amend this Agreement, including, but not limited to, representations relating to the extension of the Agreement's expiration date.

6. Paragraphs 1 through 6 of this Article III - It is Mutually Agreed, shall survive the termination and expiration of this Agreement.

7. 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 State Legislature funding ability to satisfy this Agreement is withdrawn, limited, or impaired.

8. 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 or electronic mail 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:

Kristina L. Swallow, P.E., Director
Attn.: Charles Wolf
Nevada Department of Transportation
Division: Hydraulics
1263 South Stewart Street
Carson City, Nevada 89712
Phone: 775-888-7622
Fax: 775-888-7177
Email: cwolf@dot.nv.gov

FOR CITY:

Darren Schulz
Public Works Director
3505 Butti Way
Carson City, NV 89701
Phone: 775-887-2355
Fax: 775-887-2112
Email: DSchulz@Carson.org

9. The CITY will award the PROJECT contract in accordance with its rules and procedures to the lowest responsive and responsible bidder. The CITY has the right to reject any and all bid proposals determined not to be in the best interest of the CITY.

10. The CITY agrees to pay the PROJECT costs.

11. The CITY will ensure that any reports, materials, studies, photographs, negatives, drawings or other documents prepared in the performance obligations under this Agreement shall be the exclusive, joint property of the CITY and the DEPARTMENT. The CITY will ensure any subconsultant 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 both the CITY and the DEPARTMENT. The CITY shall not utilize (and shall ensure any subconsultant 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 both the DEPARTMENT and CITY. The CITY (and any subconsultant) 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 and CITY.

12. 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.

13. To the fullest extent of NRS Chapter 41 liability limitations, each party shall indemnify, hold harmless, and defend, not excluding the other's right to participate, the other from and against all liability, claims, actions, damages, losses, and expenses, including, but not limited to, reasonable attorneys' fees and costs, caused by the negligence, errors, omissions, recklessness, or intentional misconduct of its own 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 the performance of the duty of the party seeking indemnification (indemnified party) to serve the other party (indemnifying party) with written notice of an actual or pending claim, within thirty (30) calendar days of the indemnified party's notice of such 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.

14. 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.

15. Failure to declare a breach or the actual waiver of any particular breach of this Agreement or any of 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, including a breach of the same term.

16. 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 First Judicial District Court of Nevada for enforcement of this Agreement.

17. 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 shall not be held to render any other provision or provisions of this Agreement unenforceable.

18. Except as otherwise expressly provided within 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.

19. 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.

20. 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 are maintained. Such records and documentation shall be maintained for three (3) years after final payment is made.

21. 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.

22. In connection with the performance of work under this Agreement, the parties agree not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, sexual orientation, or age, including, without limitation, with regard to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including, without limitation, apprenticeship. The parties further agree to insert this provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

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

24. 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 engage in the cooperative action set forth herein.

25. 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.

26. Each party shall keep confidential all information, in whatever form, produced, prepared, observed, or received by that party to the extent that such information is confidential by law or otherwise required to be kept confidential by this Agreement.

27. This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument.

28. 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 Board of Supervisors

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

Robert Crowell, Mayor

Director

Approved as to Form:

Approved as to Legality and Form:

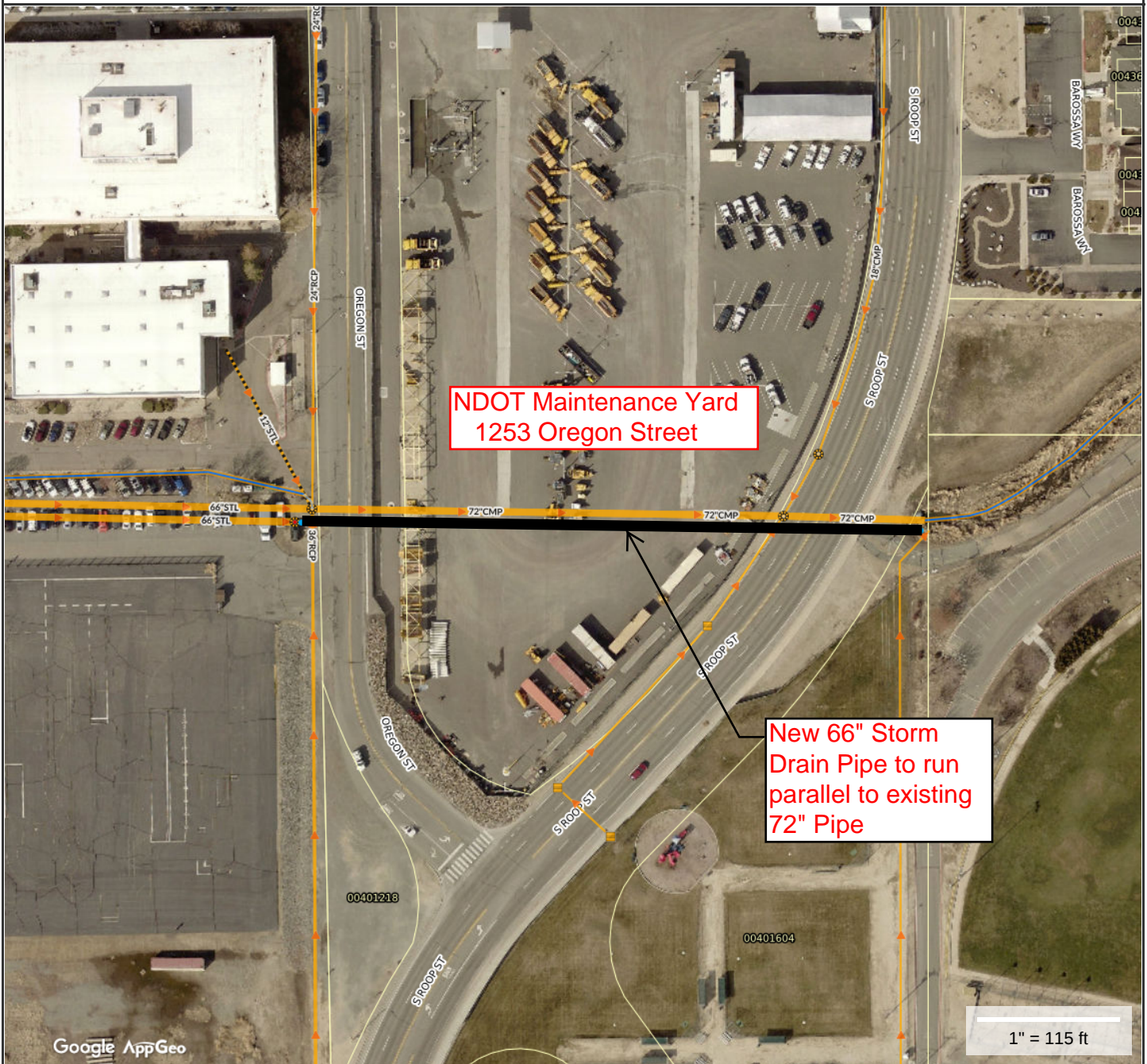
Deputy District Attorney

Deputy Attorney General

Attest:

Aubrey Rowlatt, Clerk-Recorder

Exhibit A



Description of Work:
Carson City Public Works plans to extend an existing 66" storm drain pipe from the west side of Oregon Street to the east across Oregon Street and through the NDOT Maintenance Yard, ending at Linear Ditch as depicted in this exhibit. The work will include construction of approximately 580' of 66" spiral ribbed pipe, two new storm drain manholes, as well associated improvements required to install the storm drain pipe.