



Meeting Date: 04/18/18
Agenda Item: #

Mission Statement

To provide our growing dynamic community excellent municipal services to make Fernley a great place to live, work, and play. Together, we enhance the desirability, safety, friendliness, aesthetics and quality of life in our city.

CITY OF FERNLEY CITY COUNCIL MEETING STAFF REPORT

REPORT TO: Mayor & City Council
REPORT THRU: Daphne Hooper, City Manager
REPORT BY: Derek W. Starkey, PE, City Engineer
REVIEWED BY: Brandi Jensen, City Attorney
REVIEWED BY: Denise Lewis, Finance Director
AGENDA ITEM: **Possible Action to ratify the NV Energy Facilities Relocation Agreement for the Hardie Lane Roadway Reconstruction Project, in the amount of \$68,007.00, plus a 10% contingency of \$6,800.**

ACTION REQUESTED: Consent Ordinance Resolution Motion Receive/File

RECOMMENDED ACTION BY CITY COUNCIL

Staff recommends the following action:

"I move to ratify the NV Energy Facilities Relocation Agreement for the Hardie Lane Roadway Reconstruction Project, in the amount of \$68,007.00, plus a 10% contingency of \$6,800."

Key Points:

1. This Agreement is necessary to complete proposed Hardie Lane Reconstruction Project improvements.
2. This Agreement will allow NV Energy to complete all necessary work for electrical infrastructure being installed by NV Energy as part of the Hardie LN Project.
3. The Hardie LN Project is partially funded under HWY Agreement No. P511-13-063.
4. This Agreement includes a preliminary estimate only; the final dollar amount may be amended.
5. If the final dollar amount exceeds the proposed 10% contingency, this Agreement will be brought back to City Council for review.

POLICY REFERENCE

Nevada Statutes: NRS 625.050 Practice of Professional Engineering
 NRS 625.530 Section 3 Restrictions upon Public Works
 NRS 332.115.b
 NRS 37

Fernley Municipal Code: N/A

Policies & Procedure Manual: City of Fernley Grants Policy, 2016 NDOT Right-of-Way Manual, 2017 NDOT LPA Manual

Community Assessment: Safe travel for kids, moving around town and sidewalks and bike paths, (pp. 12)

Other: City of Fernley Safe Routes to School Plan, adopted in 2011
 23 U.S.C. 313
 23 CFR 635
 23 CFR 645
 NAC 408

SUPPORTING INFORMATION

Proposed improvements that are part of a Local Public Agency (LPA) Project, frequently impact existing utilities. The LPA must coordinate with utility companies to identify facilities and to determine conflicts. Prior to publishing Advertisement for Bids for Construction, the City must provide a letter to NDOT certifying Right-of-Way and Utility impacts to the Project. As part of the Certification process, NDOT must ensure fully executed Agreements with applicable utility companies are in place.

The Federal Highway Administration’s (FHWA) Buy America policies require a domestic manufacturing process for all steel or iron products that are permanently incorporated into a Federal-aid highway construction project. FHWA’s regulations permit a minimal use of foreign steel and iron in the amount of \$2,500 or one-tenth of one percent of the total contract amount, whichever is greater, to be used in a Federal-aid project.

Per the 2017 NDOT LPA Manual, Section 6.5, “It is the responsibility of the LPA to ensure compliance with Buy America provisions and the NDOT Right-of-Way Division’s Buy America Policy for utility relocations.” This Policy was updated in 2016, and requires that all Projects advertised after January 6, 2016 must comply with amended Buy America Provisions, (in which a “parts exemption” from Buy America provisions, as established by a 2012 Memorandum, is no longer applicable).

Only those utilities with a documented Prior Right can be reimbursed for design costs, replacement easements, and adjustment/relocation costs. NV Energy established, (and NDOT approved), a Prior Rights claim for the Project area in September 2015. Buy America applies to all utility work that is accomplished as a result of a Federal-aid highway project even if such utility work is not reimbursed with Federal-aid highway funds. Buy America does not apply to utility work that is not eligible for reimbursement, (i.e. utilities that do not have a Prior Rights claim).

Staff is requesting that Council ratify the NV Energy Agreement, which was executed by the Mayor on March 30, 2018. Once the City receives the fully executed Agreement from NV Energy, a copy will be submitted to NDOT to complete the ROW/Utility Certification review process prior to the Project going out to bid for construction.

FINANCIAL INFORMATION

FISCAL IMPACT:

1. Is There A Fiscal Impact?	Yes
2. Is it Currently Budgeted?	<u>Yes</u>
3. If Budgeted, Which Line Item/Account?	
	100-475-745

FISCAL SYNOPSIS:

The FY 17/18 budget for the Project is \$5,524,100.00

BACKGROUND INFORMATION

The Federal Highway Administration's (FHWA) Buy America policies require a domestic manufacturing process for all steel or iron products that are permanently incorporated into a Federal-aid highway construction project. FHWA's regulations permit a minimal use of foreign steel and iron in the amount of \$2,500 or one-tenth of one percent of the total contract amount, whichever is greater, to be used in a Federal-aid project.

The first official Utility Coordination Meeting for the Hardie LN Project occurred on June 24, 2015. Shortly thereafter, FHWA canceled a 2012 memorandum that had established certain parts exempt from Buy America provisions. This affected various components needed for the Hardie LN Project, and required that all components used for the NV Energy relocate be sourced domestically, or must fall within FHWA's \$2,500 or one-tenth of one percent minimal use exception.

NDOT updated their Buy America Policy in August 2016 to reflect the recent changes. After exhaustive efforts by NV Energy to find the remaining items from a domestic source, and efforts by the City to evaluate an alternative approach to relocate the existing infrastructure, the City applied for a Waiver to Buy America provisions per NDOT's direction in February 2017. The City's Waiver request was posted to the Federal Register to start the required 15-day public comment period in May 2017. The public comment period ended in May 2017, with no comments received. Per NDOT, the next step in the process was for FHWA Head Quarters to prepare a draft Federal Register notice to start the review and processing period for other federal offices involved in the waiver process, which would end with the publication of the final waiver. The City was also informed that a backlog of 12 waivers existed at the time; none of which were being approved or processed.

NV Energy procurement continued to search for Buy America compliant items. By February 2018 a sufficient amount of domestically sourced material had become available, that the non-compliant items fell within FHWA's \$2,500 minimum allowable exception. City received a draft Agreement from NV Energy in March 2018. NV Energy can't order required materials until a fully executed Agreement is in place. Therefore, the Mayor executed the Agreement on March 30, 2018, with intent to ratify at the April 18, 2018 City Council Meeting. It is imperative that NV Energy order materials for the Project before flux in the market, which may put the City's \$2,500 minimum exception at risk, thereby rendering the Project not compliant with Buy America Provisions. The Utility will also need sufficient time to order materials for the relocates prior to commencement of work.

PRIOR COUNCIL ACTION/REVIEW

March 6, 2013, Possible action to award contract to Nichols Consulting Engineers, Chtd. for Hardie Lane Reconstruction project, Rachel Street to Main Street, survey, design, construction engineering, quality assurance inspection and material sampling and testing in an amount not to exceed \$216,662.00, Motion passed.

May 2, 2013, Discussion and possible action to staff regarding fiscal year 2013/2014 proposed budget including but not limited to; all funds and departments, budget process, timelines, existing budget, assessment and goals for next year, Motion passed.

July 17, 2013, Possible action to approve the Cooperative Local Public Agency (LPA) Agreement for the Hardie Lane Safe Routes to School Project, funded amount \$802,102, Motion passed.

April 24, 2014, Discussion and possible action to staff regarding fiscal year 2014/2015 proposed budget including but not limited to; all funds and departments, budget process, timelines, existing budget, assessment and goals for next year, Motion passed.

January 7, 2015, Possible action to approve Amendment A, to extend and incorporate additional scope of work for engineering services and associated fees, for the existing Hardie Lane Reconstruction Contract with Nichols Consulting Engineers, Chtd., in an amount not to exceed \$324,267.03, Motion passed.

March 18, 2015, Possible action to approve the Amendment of the Cooperative Local Public Agency (LPA) Agreement for the Hardie Lane Safe Routes to School Project, to extend the Project limits, include additional Project Scope and accept additional funding from the Transportation Alternatives Program, (TAP), in the amount of \$34,000, Motion passed.

May 7, 2015, Discussion and possible action to staff regarding fiscal year 2015/2016 proposed budget including but not limited to; all funds and departments, budget process, timelines, existing budget, assessment and goals for next year, Motion passed.

June 3, 2015, Possible action to approve Amendment B, to incorporate additional scope of work for engineering services and associated fees, in relation to NEPA compliance requirements, for the existing Hardie Lane Reconstruction Project Contract, to Nichols Consulting Engineers, Chtd., in an amount not to exceed \$17,761, Motion passed.

May 18, 2016, Discussion and possible action to staff regarding fiscal year 2016/2017 proposed budget including but not limited to; all funds and departments, budget process, timelines, existing budget, assessment and goals for next year, Motion passed.

August 3, 2016, Possible Action to approve Amendment No. 2 of the Cooperative Local Public Agency (LPA) Highway Agreement No. P511-13-063 for the Hardie Lane Safe Routes to School Project, Motion passed.

September 7, 2016, Presentation on the status of the City's current grant projects with the Nevada Department of Transportation.

December 07, 2016, Discussion and possible Action to approve Amendment C, to incorporate additional scope of work for the existing Engineering Services Contract for the Hardie Lane Reconstruction Project, to NCE, in an amount not to exceed \$208,633.57, Motion passed.

May 17, 2017, Discussion and possible action to staff regarding fiscal year 2017/2018 proposed budget including but not limited to; all funds and departments, budget process, timelines, existing budget, assessment and goals for next year, Motion passed.

July 5, 2017, Possible Action to approve the acquisition of two (2) Temporary Construction Easements (TCEs) and one (1) Permanent Easement (PE) located at APN: 020-041-65 (295 East Main Street), from T&N Fernley, LLC, in the amount of \$3,900, Motion passed.

August 2, 2017, Possible Action to approve the acquisition of the following Temporary Construction Easements (TCEs):

- a) APN: 020-061-22 (176 Hardie LN), Evans, in the amount of \$1,000
- b) APN: 020-061-21 (170 Hardie LN), Bridgewater Investments, LLC, in the amount of \$1,000
- c) APN: 020-061-20 (150 Hardie LN), Singh and Grewal, in the amount of \$1,000
- d) APN: 020-061-23 (180 Hardie LN), Bush and Donohue, in the amount of \$1,000
- e) APN: 020-041-64 (100 Hardie LN), Palmer, in the amount of \$2,000
- f) APN: 020-082-19 (355 Hardie LN), Sagar Energy Corp., in the amount of \$1,000, Motion passed.

August 2, 2017, Possible Action to approve the acquisition of one (1) Right-of-Way Take (ROW Take), one (1) Permanent Easement (PE) and one (1) Permission to Construct (PTC) located at APN: 020-131-02 (450 Hardie LN), from Lyon County School District, in the amount of \$60,300, Motion passed.

September 20, 2017, Possible Action to approve the acquisition of one (1) Temporary Construction Easement (TCE) located at APN: 020-061-19 (275 E. Cedar ST), in the amount of \$7,000., Motion passed.

December 6, 2017, Possible Action to approve the acquisition of one (1) Temporary Construction Easement (TCE) and one (1) Permanent Easement (PE) located at APN: 020-102-01 (315 East Main Street), from the United States Postal Service (USPS), in the amount of \$2,000, Motion passed.

ATTACHED INFORMATION

- 1) NV Energy Facilities Relocation Agreement