

Minutes of Nevada Department of Transportation
Board of Director's Meeting
March 11, 2013

Governor Brian Sandoval
Lieutenant Governor Brian Krolicki
Attorney General Catherine Cortez Masto
Frank Martin
Len Savage
Tom Fransway
Rudy Malfabon
Bill Hoffman
Dennis Gallagher

Sandoval: I will call the Department of Transportation Board of Director's Meeting to order. I will begin with Item 1 on the Agenda, which is receive Director's Report. Director Malfabon, good morning.

Malfabon: Good morning, Governor, Members. Thank you. Last month as you recall we had some of the 25 year recognition from the AASHTO. And actually since Tracy is here today we're going to go ahead and take one more photo op. She was in Las Vegas last time, so we'll take a photo op with her for the 25-year award.

And we also have our annual award winner from our employee recognition program. And what that is, is that employee recognition program is funded through a grant from the Western Association of State Highway and Transportation Officials, WASHTO, so all the Western State DOTs. And we have the annual winner, Kendall Marlar, here from Elko. He works on a maintenance crew up there. But I wanted to mention to the Board before Kendall comes up for his photo op what he's won for. On March 9, 2012, Kendall was driving in his NDOT vehicle. He noticed that he was flagged down by somebody that needed assistance. He parked his equipment, got out to see what they needed, and he discovered that their friend was pinned against the business' entrance by his own vehicle, in which the individual had left in gear. Kendall was able to calm the situation down and then proceeded to try and place the vehicle in reverse to release the person pinned, but the truck would not go into reverse. At once, and without hesitation, he shut off the vehicle, placed it in neutral and rolled it back, releasing the person pinned. He had noticeable injuries, but his quick response helped saved this person from a more drastic fate as far as we know.

So we're very proud that he won that recognition, the annual award where all NDOT employees that receive recognition are judged. So with that, we'll do a couple of photo ops with the Board, and then we'll go on to the rest of Director's Report.

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Sandoval: Congratulations.

Fransway: Now all we need's another 25.

Malfabon: Thank you, Kendall and Tracy, and congratulations once again. Moving on with rest of the Director's Report, I wanted to give the Board an update on legislative matters. We've had our work session and hearing on the Construction Manager at Risk, CMAR, process for NDOT. We want to eliminate the two-year sunset clause. That went well. We had a lot of support from our contractors that have been involved in the process and have observed as well as worked on the process.

We also have -- this week we have hearings on the bridge weight limits bill that NDOT has submitted, and also the road relinquishments bill which we probably have a lot more work to do. It's been -- we've attempted to reach out to the League of Cities and Nevada Association of Counties, and it's something that it's getting to the point where it's not as effective as what the original intent of the bill was, but we've been trying to work out the differences. But that bill will be heard later this week. We also have our budget hearing planned for Thursday of this week. So Budget Director Jeff Mohlenkamp will also be present at our hearing since we are a substantial part of the State budget.

A little update on some other CMAR related issues. Carlin Tunnels Project is the CMAR project that the Board previously approved. We expect to have the next phase of the Board approval, which is the approval of the contractor's guaranteed maximum price for the Carlin Tunnels. It's actually going to be split in two elements because it's such a different variety of work on that project. So the roadway portion expected to be around the \$4 million range will be in the April Board meeting. So next month we'll have the guaranteed maximum price approval for that. And May is the conclusion of negotiations and presentation to the Board for the guaranteed maximum price for tunnel lighting and bridge, so the other elements that were a very distinctive part of that work in April.

On the Tahoe Bike Path project, we expect to have the guaranteed maximum price to the Board in June for your approval. And the reason that's taking a little bit longer is we have to get some environmental approvals for some additional areas that were not originally covered in the original concept, but we're working with one of the resource agencies up at Tahoe to get coverage of the bike path to an area that was previously not cleared environmentally.

On other news of national importance for DOTs, I did attend the AASHTO Washington briefing. It was actually the same week as -- you had a Governor's conference, and you had just left when I got into town. So we

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had good coverage that week in Washington. The issue of that week, as you know, Governor, was sequestration and the impacts of that to not only the transportation sector, but all of the sectors of the national economy. But in terms of what sequestration means for us as a Department of Transportation, it doesn't have huge impacts, but it did have some impacts. There's a program called Equity Bonus where a certain amount of the transportation funding is split out amongst the states. Nevada is a recipient of more federal funds that we put in. They collect from our state. So other states, Equity Bonus is more of an important issue to them, but it would cause a -- it's estimated to be a slight cut of about 400 to 450,000, that range, of funds from the federal government.

The other portion that could result in a slight funding cut is in the issue of continuing resolution. So Congress has not passed a budget. We're operating under a continuing resolution through March 27. The House of Representatives recently passed their version of a continuing resolution through the rest of the fiscal year, and we would get a cut of about \$2 million. So we've let our financial people know so that they could program the federal funds accordingly. They say that it's not going to cause a huge impact to our program, because we anticipate under the current authorization we get about \$320 million a year. So that, in total about two and a half million dollar cut between the sequestration, the equity bonus cut and the continuing resolution reduction, that it would not have a significant impact, but it does have a slight impact.

The other thing to report, we did meet with our delegation and told each member about the importance of having some assurance of receipt of those federal transportation funds. So the next action is the expiration of MAP-21 is about a year and a half away. So in terms of how much time they have to put into it to get something to pass, they have already started doing some hearings on how MAP-21 is being enacted, and they'll actually start on the reauthorization of that transportation bill soon, and the transportation committees will get that passed through Congress.

Also, I was named Chairman of the standing committee on highway traffic safety. It's a very important role in trying to work with all of the State DOTs and AASHTO to drive down the number of fatalities on our highways, as well as what we do in our own home State here in Nevada.

Some project updates for the Board. Meadowood Mall Interchange, we had mentioned that we're still shooting for this month to get the freeway lanes back to their original configuration, so get that portable rail out of the way, get the traffic shifted back to where they should be in the lanes, and hopefully get the speed limit back up to 65 miles per hour in that section.

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There will also be a little bit of work that's temperature dependent that should be done this spring still. And I had already reported to the Board that there is a claim or a request for compensation for 1.4 million on behalf of the drilling subcontractor related to use of a material called self-consolidating concrete. So the contractor was saying because NDOT required that, specified that, and we had trouble with it on the project, it's your fault NDOT, and NDOT obviously is reviewing their materials that they provided, but we disagree at that time. We understand that that's not the only issue involved in that project. There will be another claim for all the other issues that were either related to things that they encountered on the project that cost more money for them. But we're hearing that in terms of how much money, they're saying approximately five million which includes about the one and a half million for the drilling subcontractor. So a substantial amount of money that they're saying that they're owed, and time, so we'll work those issues out, but we are setting up the administrative process of a Claims Review Board here. It's not binding. In fact, the contractor could elect to go to court to get the money back that they feel they're owed, but we'll do our best to go through the administrative process of the Claims Review Board.

On Project NEON you'll see two contracts later on in the meeting before the Board for approval. But just as an update, we did go through the selection process for legal services and financial advisor services. So these legal and financial advisors will give us support as we go through the process of hiring a firm, a team that will finance and design and construct the Project NEON, and possibly look at operations and maintenance as well as elements of that contract.

One of the issues that we had to respond to recently was the hiring of the legal firm, Nossaman. Nossaman had been working with NDOT previously on development of our P3 program, and they were the successful selection this time around. But there was a lot of concern with the firms that were local Nevada firms that they didn't get the work. But the process was a fair process. It was -- we did use federal aid, so we can't have local preferences on federal aid contracts. But we had representatives from the Attorney General's Office from both NDOT and I think it was Public Works was the other agency that allowed us the use of their (inaudible). And the thing is, Governor and Board members, we don't have a lot of public-private partnership deals struck in Nevada, so there is not a lot of Nevada experience on that. So typically we expected to see that it would be an out-of-state firm teaming up with a local firm. I believe that Nossaman probably has a local office, but it's primarily the expertise is outside of the state of legal services at this time.

On the financial side, Ernst and Young beat out one of the firms that had been previously working for NDOT as financial advisor on the P3 program,

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but Ernst and Young, again, it was a fair process with several members on the team that they listened to the presentations, read the proposals, rank them accordingly. Those scores are collected by admin services, so there's not a lot of discussion while they're putting down their points on their scoring. So it's a fair process. And Ernst and Young was the successful provider that we are proposing today in a later Board item.

An update to the Board on Boulder City Bypass, we have the current project out for fencing and plant salvage. The next phase of the project is utility relocation and construction of the frontage road. We anticipate that it's going to advertise this fiscal year. As I mentioned previously to the Board, we're using federal earmarked for that construction. And I previously mentioned that there were some issues with eminent domain. Primarily one of the properties, Jericho Heights, I wanted to mention today that we received a counter-offer from them very recently, last week. We'll work at doing our due diligence on that counter-offer. But I just wanted to update the Board that we did receive that and we also are asking the court for more time to allow us to conduct discovery on that case for Jericho Heights.

You may see some reports because I believe that the counsel for the other party is going to reporters to try to pressure the State to settle on that. We don't feel that that's wise for us to just take their number and run with it, so we'll do our due diligence in investigating the feasibility of accepting that offer. But our outside counsel, I wanted to mention, Laura Fitzsimmons has been a great asset for us working for the State on this case, training our people on what to avoid and what to do to avoid these types of eminent domain cases in the future. And she's taking a well-needed vacation right now, too.

Later on this week, Governor, I'll be present tomorrow at the Board of Examiners meeting for the Blue Diamond RV Settlement. It was a property adjacent to Blue Diamond Road when we widened the freeway near the bridge over the railroad tracks. We had to elevate the road. And the property owner was saying that because we elevated the road, the height of the road, that it was a taking of their property. We settled -- we went to court on that and actually prevailed, but they filed an appeal and were going through the process of the appeal when we had a settlement conference with them. And we did have some negotiations in that and reached a settlement which I will present to the Board of Examiners tomorrow, along with Karissa Vero from the AG's Office (inaudible) that assisted us on that issue. And that concludes the Director's Report.

Sandoval: Thank you. Any questions from Board members for the Director?

Fransway: Governor?

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- Sandoval: Yes, Tom.
- Fransway: Yes, Governor. I do have some questions, but I think that they can wait until our fourth Agenda item.
- Sandoval: Okay. Frank, are you present in Las Vegas?
- Martin: Yes, sir.
- Sandoval: All right. Is the Attorney General present? No? Oh, yeah, there she is.
- Cortez Masto: Yes, Governor.
- Sandoval: All right. Good morning. We didn't have you on our screen, so I'm glad you're here. All right. We'll move on to Agenda Item No. 2, public comment. Is there any member of the public here in Carson City that would like to present comment to the Board? Is there anybody present in Las Vegas that would like to provide public comment to the Board?
- Martin: None here, sir.
- Sandoval: All right. Thank you. We will move on to Agenda Item No. 3, approval of February 11, 2013 Board minutes. Have all the members had an opportunity to review the minutes, and are there any changes?
- Savage: Yes, Governor, I have, and I do have one change. On Page 8, second paragraph it said "the Seymour Project." It should reflect the CMAR -- the acronym CMAR, Construction Management at Risk, for the Carlin Tunnel. That's the only correction I have, Governor. Thank you.
- Sandoval: Any other changes?
- Martin: I had one question. On Page 41, I believe it is, Rudy had made the statement about following up on projections -- let's see of his -- it starts on Page 40. "Governor, this is Kim. Just a follow up question. I think it was the November Board meeting, maybe October, I had asked Cole to get us a chart, when we settled one piece of property in Las Vegas that basically doubled value in a year. I said you can go back and tell us what you had estimated to settle it just so we can get a comfort level that our projections on these right-of-ways are going to come in with what we're estimating." And Rudy had made the statement that they would follow up on that this next month, and I didn't see it on the Agenda. So I'm wondering if that's going to be followed up on.
- Malfabon: Yes, Governor. In response to Member Martin's question, our anticipated process would be that we would have more thorough presentations to the Board on NEON on a quarterly basis, so we'll cover that item at that time. It would be -- next month would be the month where we actually have a

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more detailed presentation on NEON's status and we'll cover that item at that time.

Martin: Thank you.

Krolicki: Governor, I'd move for approval with the one edit on Page 8 that Member Savage pointed out, it's CMAR instead of Seymour.

Fransway: Second.

Sandoval: Thank you. We have a motion by the Lieutenant Governor for approval of the minutes with a change as referenced by Member Savage on Page 8, second by Member Fransway. Any questions or discussion on the motion? All in favor, please say aye.

Group: Aye.

Sandoval: Opposed no? Motion passes unanimously. We will move on to Agenda Item No. 4, approval of agreements over \$300,000.

Sisco: Thank you. Good morning, Governor, members of the Board. Scott Sisco, for the record, Assistant Director over Administration. Item No. 4 are approval of agreements over \$300,000. Moving to Page 3 of 28, we have four agreements this month for your approval. The first agreement is from Volt Delta Resources. That particular agreement is to operate and maintain Nevada's 511 system in the amount of \$1,920,000. The second agreement is -- and by the way, these first three are all new agreements, and the last one is an amendment, and the second one is from Nossaman, LLP. It's legal advisory for Project NEON, which the Director mentioned. And the third one is the financial advisory for Project NEON with Ernst and Young. Nossaman was \$1.4 million, Ernst and Young \$1,397,957, and then the fourth agreement over \$300,000 for your approval today, Samaritan Incorporated, with Freeway Service Patrol and amendment to cover the Las Vegas area as we get the final RFP out on the street. I'm happy to answer any questions or at least get the right people up here to answer any questions.

Sandoval: Thank you. I'll go to Member Fransway. He had some questions, I understand.

Fransway: Thank you, Governor. I hope that you don't regret that. But I did have time to -- some things caught my eye on this Agenda item. Particularly the first one looks like it was a cost savings of \$391,000, and I believe that had something to do with your leadership, Governor. Appreciate that. Question on two and three, and the Director talked about that earlier. My first question is, are these amounts for the life of the agreement? One agreement

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is for a four-year agreement, and Line Item 3 is for a year and a half plus. And they're about the same amount.

Sisco: Mr. Fransway, real quick, I'll jump in here, and then if I don't quite answer your questions, we'll get some additional. These two agreements, as you will recall when we gave you the various NEON presentations, these were the two that took us to get to that point with RFP, where we could actually get the RFP out on the street, evaluated, and get them out on the street. The legal agreement goes a little bit longer than the other one. We put extra time in there because that one's going to take a lot longer. It'll probably actually be evaluated into the period in which we're putting that contract together, whereas we hope the financial agreement will be finalized by the time that we are ready to actually put the contract out on the street. So there's a little bit of a time difference, but these are both real close to the 1.5 million estimate that we originally estimated it would take us to get that RFP out on the street on these two.

Fransway: Okay. And my question was will that be for the life of the agreement?

Sisco: The life of this particular agreement. Now, there may be additional scope of work as we go in and we evaluate the actual contract that we're going to put together, and the actual work that we're going to put together in that contract, but both of these, this is the total scope of work for getting that RFP out onto the street, and then getting them back in and getting the -- to the point of starting the contract preparation and negotiations.

Fransway: So the likelihood of further amendments is not likely over a four-year period?

Sisco: You know, I feel like I'm dancing around here, and I don't mean to be. For this particular scope of work, yes. Again, this is pretty much Nevada or NDOT's first public-private partnership that we're putting out there. We've taken and we've studied a lot what the other states have done in order to get that RFP on the street. We feel, and I know Mr. Hoffman guaranteed you, but we feel -- I'm going to put that out there, Bill, before you guarantee something else. We feel that this is what we need based on everything that we've watched these other states. And fortunately we're down far enough having watched other states do it where we feel this is good. Again, though, you just don't know. We're watching the changes that MAP-21 and some of these other things have done to the whole process. But based on everything to get this RFP on the street, we feel there will not be amendments for this scope of work.

Fransway: Okay. And I am aware that over a four-year period there may be some issues that arise that may warrant an amendment, but I'm hoping that over that four-year period they won't be substantial.

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- Sisco: Okay. Well, I do want to remind you that in that last presentation where we put these out, we did indicate that there may be the possibility that we use either -- one or more of these as advisors as we negotiate agreement and move forward with the actual agreement. But for this particular scope of work, to get that RFP on the street, we do not believe that there should be any additional amendments to this.
- Fransway: Thank you, Scott. Thank you, Governor.
- Martin: I have a couple of questions too.
- Sandoval: Please proceed.
- Martin: And along those lines, Scott, about the amendments and so on, in my world of vertical construction with the State Public Works Department, there is a point when you reach a 10 percent of the original contract value where there is a trigger. That trigger invokes certain requirements as far as going further with the contract. In other words, you got a \$1,400,000, so in my world, at \$140,000 worth of amendments, there is a trigger that happens where there's an audit and there's a few other things. Does that same kind of situation exist within DOT?
- Sisco: Mr. Hoffman, you want to jump in on that one?
- Hoffman: Good morning, Governor, Transportation Board members. I'm not aware that we have anything like that at NDOT. I'm not sure that there's a trigger that starts audit processes or anything like that. We can look into that certainly.
- Sisco: And, again, one of the things that I'll remind you of is these two particular consultations agreements, they are strictly for putting together an RFP. Most of the additional work is going to come in negotiating that contract and moving forward from that contract beyond. So we feel that the scope of work for these particular things, we shouldn't see any cost overruns. So we made it clear in the negotiations with these two consultants that Mr. Hoffman guaranteed that there weren't going to be any.
- Martin: Okay. I understand that part, but I echo Member Fransway's concerns that one of the things that's created some of the most discussion in some of the meetings I've attended is the consistent amendments to consultant's agreements and which seem to be ongoing all the time. And I have a concern because these are significant agreements, significant amounts of money, and on a significant project. So I have a concern that that's what we're going to see here. It'll just be an ongoing situation amendment after amendment.

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- Sisco: One of the things we can do here as we had promised before is we can continuously monitor these and bring in the Director's Report an update on where we're at on these contracts as we move towards getting those RFPs out on the streets so that you'll all know ahead of time if there's anything coming. But, again, we don't believe that for this scope of work there should be, but we can make sure that we add that to the Agenda each month as we bring these RFPs out to the street.
- Martin: Okay. And I don't know if the rest of the Board feels a need to know on a quarterly basis, an update on where we are with these budgets, so that by knowing how much we billed and what the potential cost to complete is, that's kind of the same -- I think Member Savage uses that same kind of report in his business, to anticipate where it's going to come out in the end. So I don't know if the rest of the Board -- that's something maybe for another discussion. On the Ernst and Young contract, where is that managed from, what office?
- Sisco: Their San Francisco office is their closest office where their expertise for the public-private partnerships is. Now, they have one of their members, because they ended up having a last minute consultant change, is coming from New York, but we negotiated with them to make sure we weren't going to pay any difference in their travel costs or their time costs from their San Francisco exchange out.
- Martin: Okay. You asked -- you answered one question, because in the number here undoubtedly is travel and per diem, and I'm wondering how they could be even close in the financial side of it to a firm that's located say in Las Vegas or -- well, not Las Vegas, but in Reno where it's working directly with, or maybe in Las Vegas. I know when I hire a subcontractor here locally that comes from Austin, Texas, there's a huge difference in cost.
- Sisco: Yes. And, again, they did include their travel costs in this. And, again, for the expertise that we were looking for in putting together a public-private partnership RFP, that was pretty close for us for this particular -- in particular this financial advisor. I think our -- I'm trying to remember where other competitors were from, and I think San Francisco was about as close as we were getting.
- Martin: Okay. Who else proposed?
- Sisco: Our current -- our previous consultant which was KPMG and we had two others. And I'm trying to remember...
- Hoffman: If I could, Scott?
- Sisco: Yes.

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- Hoffman: Bill Hoffman, for the record. It was Claret was a financial advisor, KPMG and Ernst and Young were the three that interviewed. And then if you guys want to know the legal advisors, those three that interviewed were Nossaman, Armstrong Teasdale and Ballard Spahr.
- Martin: Okay. And on the legal side, where were the other two firms located? Obviously Nossaman is out of town as well, out of state.
- Hoffman: I'll go ahead and answer that question. Again, Bill Hoffman, for the record. It was interesting with both the legal and financial advisors in that they teamed up with P3 experts from across the country. They tried as much as they could to tie themselves into Las Vegas or Reno offices, but for the most part, those that held the most experience and most expertise were from outside of the State of Nevada. We had Philadelphia, New York, San Francisco, Los Angeles. They were -- those experts that we felt we needed did not have local presence in Nevada.
- Martin: Okay. Thank you.
- Sandoval: I have a question on that legal. Are we going to be paying, or was it negotiated, are we going to be paying 500 bucks on hour for lawyers to be flying on airplanes and things of that nature?
- Hoffman: Bill Hoffman. We want to try to minimize that as much as we can. There were some very good, I believe, negotiations made. Travel costs, there were other things that we tried to take into consideration to reduce the overall cost of their services, but I think, unfortunately, we're going -- in some instances we'll be paying those hourly rates for them to travel.
- Sandoval: And who is going to be responsible for reviewing the timesheets and the billings for this firm?
- Hoffman: That'll be the responsibility of the project team. I don't want to promise anything for Dennis, but I'm sure that our AG's Office would like to get a look at those. And we have a project manager that will be looking -- that's their sole purpose is to look for scope, schedule and budget. And certainly the consultant services, that's their job is to look over those costs every time those invoices come in. So it'll be a joint effort between those experts, the legal experts. Dave Olsen in our financial management group will also be involved, but it'll be the project manager's sole purpose to look over those and make sure that the costs that have been billed are those costs actually incurred.
- Sandoval: And what is the hourly rate? I just threw out 500, but I'm curious. Do you know?

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Hoffman: I wouldn't want to say without having the detail behind that. I'm not quite sure what those costs are.

Malfabon: This is Rudy Malfabon. It was noted that they had negotiated a five percent reduction in the hourly rates, but I don't know what the actual rate was.

Sandoval: Five percent of what?

Malfabon: Yeah. Lou? Lou Holland from the AG's Office.

Holland: Governor and members of the Board, the rates for the Nossaman firm vary depending upon the particular attorney involved. Corey Boock will be one of the primary attorneys involved. His rate is \$605 an hour. We have other attorneys at lesser rates. There's Geoff Petrov out of Houston who occasionally supports the effort. He's at about \$450 an hour. So there's a range.

Sandoval: But I -- yeah, and I don't know -- I haven't had an opportunity to look at the scope of work, but if this is advisory in nature and not appearance in nature, I would imagine it wouldn't be necessary for them to travel to Nevada very often.

Holland: That's true. We try to minimize their travel as much as we can. We do a lot of telephone conferences when necessary. And, you know, there are times that we have them here to do training our folks, those kind of things, NDOT staff. They do some training and some risk management type meetings. We get together for those. But we try to minimize travel. Everybody's very conscious about the budget constraints that we have here in the State.

Sandoval: And I think you can appreciate that this is going to be watched very closely with regard to these contracts. And, again, I share the sentiment of some of the other Board members as we approve these now and they're four years, and then two or three years down the road we start to see the amendments, and this is a lot of money. And I understand that we have to get the best attorneys out there. I obviously have -- would like to see Nevada firms get the work. But if in the judgment of the committee that reviewed this that the Nevada firms didn't have the expertise like this Nossaman firm did, again, I'm not going to interfere with that, but at the same time, we have to consider the travel, these expenses and those things.

But I think I agree with Member Martin. I would, I guess, take it at face value today that we're going to have a quarterly update as to where we are on these things. I think the suggestion of Member Martin in terms of how we monitor them was an excellent one as well. But I just -- I guess it's one of those things, at least in my little over two years on the Board, we've seen this happen quite a bit where we have an amount of money and then we start to have these extensive amendments, particularly in the legal area. And we

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just want to make sure that we stay within the boundaries of the original agreement.

Holland: Governor, Lou Holland once again. One of the things that we have done is create a very close budgeting of the legal firms that we watch, I personally watch, where we monitor the expenses versus the budget. We have broken out the budget in particular tasks off the scope of work. We track each of those to find out how we're doing on a month-to-month basis as we get invoices in, and closely monitor it.

Also to add onto something that Bill Hoffman said a while ago, the Armstrong Teasdale firm had one attorney with P3 experience. He was based -- I take that back. Armstrong Teasdale had two attorneys based in St. Louis that had P3 experience, and Ballard Spahr had one attorney based in Philadelphia with P3 experience. So we're looking at outside the State for P3 experience in all of the firms that were interviewed.

Sandoval: And then just, you know, I'm sure -- I don't know if it's going to be you, Mr. Holland, or whoever, but just make sure that we don't have one partner, three associates and two paralegals all billing on the same meeting and doing the same things.

Holland: We watch that very closely, Governor.

Martin: I have one more question. How many trips was actually anticipated for someone in the 600 or even the \$450 range to come to Reno and/or Las Vegas?

Holland: This is Lou Holland once again. I'm not sure of that number. Perhaps someone from project management might know that.

Martin: And the reason that I ask -- and a little bit later we're going to be asked to approve an amendment to an existing contract because quote/unquote, "There were more site visits required than was anticipated." And I can see that maybe following forward. So I was just wondering what -- if it was established how many site visits was within the \$1.4 million.

Malfabon: Rudy Malfabon. In response, Governor and Board members, in task four of the backup on page 20 of 28, it says that there were anticipated to be two meetings per month in the first three months, and then one per month for in person key meetings. So we would try to get the key individual or individuals from those firms typically at the -- this is on the financial side, but I'm assuming that it's the same team meetings with the legal side. And so initially we'll have more frequent meetings, but then we'll try to -- once everybody's up to speed on the project team on the NDOT side with the outside advisors, we'll try to concentrate on a more cost effective teleconferences or video conferences.

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- Martin: That page 20 of 28 was for Ernst and Young, Rudy.
- Malfabon: Yes.
- Martin: And I was asking about the attorney because I'm assuming that the accountant side isn't \$600 an hour.
- Malfabon: In response to Member Martin, it would be the same meetings, the same team meetings typically for the -- because we're going to get the NDOT team together will be a larger group, and we'll get the financial and legal folks and technical folks present at those same team meetings, Frank.
- Martin: Okay.
- Sisco: And, again, just confirming with the project managers, yeah, we're looking at the same things. Similar at the beginning, but we hope to -- again, both of the teams have very senior level people with their companies in them that will be involved in the very beginning, and be weaned off as their project management from their side takes over and we start dealing with the lower level employees, if you will.
- Malfabon: And we will commit to the quarterly updates, the first one being next month, where the project manager, Cole Mortensen, will give more detailed information as far as status of right-of-way acquisition, budget and the legal and financial services contracts.
- Sandoval: Board members, any further questions with regard to Agenda Item 3? Member Fransway.
- Fransway: Before we (inaudible) if I could address Line Item 4. And a lot of this may be resolved in just clarification, but for this particular amendment, it appears to me that the 801,000 for Samarantania is relative to District 1. Now, their whole contract is for District 1 and District 2, I would assume.
- Malfabon: No. I'll respond to that, Member Fransway. That contract is for District 1 because we put out an RFP for both districts separately. And it's a good point to make is that Rick Nelson had the Freeway Service Patrol vehicle that we're going to self-perform for three months or so -- is it three months? It's actually parked downstairs, so if the Board members...
- Sandoval: Yeah, I saw that.
- Malfabon: ...on the way in and the way out could, you know, take a look at that vehicle. But our intention is have this amendment cover that lag in time between getting the new vendor onboard for Freeway Service Patrol services in District 1 in Las Vegas, and in the meantime for that lag in District 2, we're going to self-perform the service and see how we compare with the vendor that responds to the RFP for District 2.

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- Fransway: Okay. So far it looks to me like we're into this \$9,000,558. Now, is that District 1 only?
- Malfabon: I believe they were separate contracts, so District 1 -- is that correct, Rick? On the amendment, these were usually separate contracts with Samaratania. Okay. Rick Nelson.
- Inda: Good morning. Denise Inda, Traffic Operations. We have to clarify Member Fransway's question. Currently we have one agreement for the entire Freeway Service Patrol program in the State. A portion of the service in Las Vegas, a portion of the service in Reno. So that nine and a half million dollar total is for all of the service throughout the State. We're only adding additional funds on for Las Vegas to keep service through the new -- or the successful firm that will be providing the FSP service in the future.
- Fransway: Okay. Thank you for that, but the way I see the whole service is that it was authorized to commence in September of 2007 at a cost of 5.7 million plus. And that was for a four-year period, which equals about 1.4 million per year. Now, over the last two years there's been four amendments and they've averaged about 2 million per year. And so that's 600,000 more. And I'm just trying to figure that out. Because if you look at the CPI, that's way high.
- Inda: Part of the reason the costs have -- say the cost per month, if you will, has increased is not because they're charging us more. They're still charging us the same hourly rate as when we first initiated the agreement. But what we have done over the years is we've changed the hours and the routes of the service, particularly in Las Vegas. So the coverage, if you will, has expanded, and that's what's costing more money.
- In this last amendment for Las Vegas, as Member Savage is well aware of, because we've been talking to him in great detail about our program, we have actually refined the routes and the hours. We did investigation based on crash data, on traffic volumes, so the routes have slightly shrunk in Las Vegas, because we really want to make sure that we're getting the most response for that service, that, you know, we're putting it in the most -- the more highly congested areas where it's going to make the biggest difference, and reduce congestion, improve reliability, those sorts of things.
- So that's why the cost seems to have gone up. It's because our routes expanded. But we've actually trimmed that back slightly. But we do have - - for example, we do have more vans in the program than we did originally in 2007.
- Fransway: Okay. So in your view then the expanded routes are seeing positive results?

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Inda: Yes and no. We had expanded those routes in the past with significant input from the Highway Patrol. And what we have done is we've actually looked at the numbers and we've tweaked those routes slightly. So we are contracting the routes a little bit in Las Vegas, because even though Highway Patrol and, you know, most everyone would like us to have service on every road 24/7, we know that we don't have the money to provide that service, and that there's not the same benefit 24/7 everywhere. So we've contracted the routes and adjusted them to where we think that the public is going to receive the most benefit -- the most value.

Fransway: Okay. So hopefully NEON will fix that.

Inda: NEON is a capacity project and it will provide additional capacity in the area. And as we are doing now, and we will do every time a project goes through, we do evaluate what the needs are in that area, and we can and will adjust the routes and the hours accordingly. We certainly will do that.

Malfabon: Just to add to Member Fransway's comment. Project NEON will definitely improve the flow of traffic in that area on I-15, but we will still need Freeway Service Patrol services, because the same drivers kind of cruise the entire network, so they go on all the major freeways during the peak time that we have them contracted out to provide that service.

Fransway: Thank you, Governor. Thank you.

Sandoval: Member Savage.

Savage: Thank you, Governor. Just a couple comments on Item No. 4, and a couple questions, because I do, again, thank Mr. Nelson and Ms. Inda for stopping by the office almost on a monthly basis to update myself on FSP concerns. And I think it's a great opportunity for this pilot program up here in the north. We've asked for substantiation documents from the current provider for some months and weeks worked over this past year. But, Mr. Nelson, if you could please update us on the pilot program to begin here April 1 in the northern section of the State, number one. And number two, the question on Page 26 of 28, the comment, "cannot go on a federal fiscal year cycle per April," if you could answer those two questions for me, I'd appreciate that.

Nelson: For the record, Rick Nelson, Assistant Director of Operations. As to the update, the proposals have been received from those firms competing for the Freeway Service Patrol program both north and south, and they're being evaluated right now. We anticipate bringing a recommendation to the Board for approval to the August Board meeting.

So the pilot program for the Freeway Service Patrol will provide coverage in the Reno/Sparks area from the time the agreement expires at the end of March through when the successful vendor -- when that contract is

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approved, if we choose to approve it. So really we're looking at about a six-month pilot program to get us towards the end of September. And this amendment, in fact, will expire at the end of September. So we need to know what we're going to do by then.

We scheduled a mid-period evaluation of our pilot program where we're self-performing the Freeway Service Patrol duties in the Reno area. So we want to follow that closely to see how much it's costing us per assist, and how much the program is benefiting the region. So that's really where we stand.

And as Director Malfabon mentioned, one of the Freeway Service Patrol trucks that we plan to use to self-perform this service in Reno is parked out front. We'll have an operator there at the end of Board meeting who can open up the doors and you can see the kind of equipment and gear that is typically contained there. For your second question, Member Savage, on Page 28, I think I lost you on that one. Where are we at?

Savage: There's a comment at the bottom, if you could explain that. It was a handwritten comment, "cannot go on federal fiscal year cycle."

Inda: Denise Inda, Traffic Operations. That was a comment made by April Pogue in our financial management section. We've worked that through with her. Essentially she is making -- it's an issue that deals with bookkeeping and accounting. Because FSP utilizes federal funds, their office would have a problem if we had this agreement go into effect during the month where they're closing out the federal fiscal year. And so we've verified with their office that this agreement will be awarded prior to that, and the agreement will be in effect prior to the closing of the federal fiscal year. So there's not an issue on their part at all. And then the work will be able to commence once the contractor is up and running and mobilized for the next service. So it was just kind of an internal bookkeeping comment that we've verified that there's not an issue and no problems with.

Savage: And what's the federal fiscal year?

Inda: The federal fiscal year ends September 30. And so they have accounting and working through between the Department and the FHWA. And it's a very busy time for that office and they wanted to make sure that the money could properly be allocated.

Savage: Right.

Fransway: Question.

Sandoval: Member Savage, do you have any more questions?

Savage: I'm fine, thank you, Governor.

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- Sandoval: Okay. Member Fransway.
- Fransway: So -- thank you, Governor. So the last sentence of the first paragraph on Page 26 then is referring to federal fiscal year, not state fiscal year. Okay.
- Inda: Yes, that's accurate.
- Fransway: Okay. Now I got it.
- Sandoval: I actually have -- I think I -- you may have answered this question, Mr. Nelson, but this isn't 100 percent federal funded program, correct?
- Nelson: That is correct.
- Sandoval: And so the State pays for five percent of it?
- Nelson: That's correct.
- Sandoval: And then that federal money, is it specified only for this purpose, or is this money that could be spent on other things?
- Nelson: No, it's (inaudible) mitigation -- no? Oh, you better come up, Denise.
- Inda: Denise Inda. The funding is federal funding, and it's NHS funding, and so there are a variety of uses for this kind of money. And the Department over the years has determined that this is how it will be spent.
- Sandoval: So what would be other alternatives for how we would spend this money?
- Malfabon: In response, Governor and Board members, the NHS money goes to the National Highway System. That's the old category. Now it's called the National Highway Performance Program. But it's primarily the major routes, so interstate U.S. highways that carry a lot of the traffic.
- Sandoval; So this, for example, and I'm not suggesting or referring to anything, but this \$10 million could have been spent perhaps on a construction project?
- Nelson: Rick Nelson, for the record. That's correct.
- Sandoval: Okay. Thank you. Any further questions from Board members? And we won't have any more amendments for more money?
- Male: Mr. Hoffman's guarantee.
- Malfabon: Our guaranteeer.
- Nelson: We believe that through the series of amendments that's taken place and the attempts to solicit an RFP, that we think we've got the kinks worked out of this, and we have every faith that this will be the last amendment for this current contract.

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- Sandoval: Yeah, I don't think the next one will go real well. All right. If there are no -- do you have any further presentation, Mr. Sisco?
- Sisco: No. Just the Director recommends approval of all items under Item No. 4.
- Sandoval: So if there are no further questions, the Chair will accept a motion for approval of agreements over \$300,000 as described in Agenda Item No. 4.
- Savage: So moved, Governor.
- Sandoval: We have a motion for approval by Member Savage. Is there a second?
- Fransway: Second.
- Sandoval: Second by Member Fransway. Are there any questions or discussion on the motion? If there are none, all in favor of the motion, please say aye.
- Group: Aye.
- Sandoval: Opposed no? Motion passes unanimously. We will move on to Agenda Item No. 5, contracts, agreements and settlements.
- Sisco: Thank you. Governor, today we have three items under this. We have contracts under \$5 million that have been awarded, we have agreements under \$300,000 executed between January 19 and February 15, and we have one settlement entered by the Department which was presented to the Board of Examiners. Moving to Page 4 of 11, we have the two contracts awarded under 500,000. We have Contract No. 810-12 which was an HVAC system for the lab building and equipment shop at the Las Vegas Maintenance Station in Clark County. The engineer's estimate was \$760,062, and the Director awarded the contract January 23 to U.S. Mechanical LLC in the amount of \$802,700. Upon approval from (inaudible) we will enter into contract with the firm.
- Item No. 2 is Contract Number 814-12. The project is for the tenant improvements for the newly constructed Roop Street annex building out here behind our complex. Engineer's estimate was \$1,480,100. The Director awarded the contract on February 5, 2013 to Sheehan Beauchamp Builders in the amount of \$1,147,500. And again, upon approval of bond from the contractors, the State will enter into the contract with the firm. Those are the two contracts that we've awarded under \$5 million.
- If no questions, I'll move on to the next item which is Attachment B which is contract amendments and settlements under \$300,000. I do not believe we've identified any that we need to jump out at, so we'll just kind of jump right into your questions on those.
- Sandoval: Questions from Board members?

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Martin: I have one on Number 5.

Sandoval: Please proceed.

Martin: Here, again, it's an amendment to increase engineering fees from 2.7 million to 2.9 million, round numbers. And I'm just kind of not understanding why these amendments keep flowing through, specifically on engineering costs. So I just need a little bit of explanation on -- I mean, this was relocation of existing facilities. You walk out, take a look at the existing facilities, it goes from Point A to Point B. Engineering costs ought to be fairly simple, and yet we still are facing an amendment for \$150,000.

Malfabon: And in response, Governor, I'll try to do that, and John Terry is available also. This is Rudy Malfabon. In the Boulder City Bypass Project, we typically enter in with a utility company to cover their expenses including engineering costs of -- these ones are for Western Area Power, WAPA, so they have significant towers, structural steel towers to design. And when we enter into our agreement, they do their best to estimate it, but then as they get more defined in the actual costs of engineering, that comes into play. So I think that's what occurred in this case. And I don't know if John has anything to add to that, but it's typically where we have an agreement that says that we'll pay the actual costs for the relocation, including the engineering costs. And I guess the additional engineering expense is just related to the design of those steel towers for -- there are a significant number of towers that some are new and some are just relocating existing towers. Mr. Terry?

Sandoval: Does that satisfy your question, Member Martin?

Martin: Yeah, I think basically what Rudy is saying in a roundabout way is that it's the federal government telling us how much money we've got to pay them.

Malfabon: It is the federal -- WAPA is a federal, so -- but typically since our agreement says actual cost, we're open to pay what their expenses are.

Terry: John Terry, Assistant Director of Engineering. I mean, in this case, this is, yes, the federal government or a major utility. We enter into an agreement. Frankly, we enter into those utility agreements for that engineering cost pretty early in the process so we can cover their engineering costs, and as those actual costs of actual engineering develop, we process amendments so they can continue to do the design.

Martin: Okay. Thank you.

Malfabon: And just to add for Member Martin and the Board, we do enter into these agreements to cover engineering expenses so they can get on it right away, start their design and be assured that they're going to receive

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reimbursement. Obviously at some point when the design is done, then they start their acquisition of the materials for the relocation expenses. But it is a method that we use to try to save time is to get that agreement first and assure them that we're doing to reimburse them and then they do their work to relocate.

- Martin: It's a good deal. How would you like one like that, Member Savage?
- Savage: No comment.
- Sandoval: Are there any further questions with -- or do you still have more presentation?
- Sisco: No.
- Savage: Just let it go.
- Sisco: Yeah, let it go.
- Sandoval: If you want to keep going -- no?
- Sisco: I know when to stop.
- Sandoval: Any further questions from Board members with regard to Agenda Item No. 5? We'll move on to...
- Martin: I have one more.
- Sandoval: Oh, all right. Member Martin.
- Sisco: And there is a settlement also, an Item C on that.
- Martin: On Item No. 27, G.C. Wallace, there's an amendment. Is this contract for both architectural and civil services, or just civil services?
- Sisco: Mr. Terry?
- Terry: John Terry again. And the short answer, it is both.
- Martin: Okay. Thank you.
- Malfabon: And with respect to the settlement in Attachment C, that was previously approved by the Board of Examiners, and it had to do with an unfortunate event involving one of our drivers that resulted in some fatalities on two people.
- Sandoval: Any questions, Board members, with regard to the settlement? Truly a tragedy. All right then. Mr. Sisco, anything else?
- Sisco: No, that's it for Item No. 5.

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Sandoval: All right. Then we'll move on to Agenda Item No. 6, resolution requesting the State Board of Finance to issue highway revenue refunding bonds.

Sisco: Thank you. Again, for the record, Scott Sisco, Assistant Director over Administration. We get to do something fun here, save a little money instead of spend some. With me today is Dave Olson, our Chief Accountant, and also Lori Chatwood from the State Treasurer's Office, and in the Las Vegas office is Marty Johnson, NDOT's financial advisor in case any of the Board members have questions for them. Item No. 6 is a request for a resolution to be signed by the Chairman of the Board to be forwarded to the State Board of Finance requesting an issuance of highway refunding bonds of the State of Nevada.

As you will recall, we appeared before you approximately one year ago and refinanced a 2004 series bond resulting in an overall savings to the Highway Fund in the amount of \$5,701,393. In working with the State Treasurer's Office, an opportunity has once again been identified to refund some of our outstanding 2005 and 2006 series bonds resulting in savings to future bond payments of about \$7 million. If authorized, bonds will be sold by the State Treasurer with the proceeds put into an escrow account. The escrow account will then make the required interest payments on the bonds. And then on or about December 1, 2016, the payments that would have been made in the years 2017 to 2020 totaling \$65,130 will be made out of escrow account for the 2005 series bonds. And then on or about December 1, 2017, the payments that would have been made in the years 2019 through 2023, totaling \$58,340,000 will be made out of escrow account for the 2006 series bonds.

The reason for placing the funds in escrow and paying the bonds off at this particular time is due to the conveyance on those particular bonds preventing their early payoff prior to December of 2015 for the series 2005 bonds, and December of 2016 for the series 2006 bonds. The difference between the proceeds of approximately 143 million and 123 million bonds to be paid off is interest on the original bonds for the period of time between the refunding transaction and the bonds -- and when the bonds are refunded and the costs of the bonds refunding transaction. The anticipated net result of this transaction in dropping our current interest rate of 4.7 percent down to approximately 1.89 percent, again, resulting in an estimated overall savings to Nevada taxpayers of approximately \$7 million. Ultimately, the actual savings will be dependent upon the interest rate on the day of the actual bond sale, as well as final costs associated with processing the transaction.

We should note we are still examining the benefits of adding or subtracting maturities to this transaction. We may refund additional maturities if the rates drop, or subtract maturities if the rates increase. We will continue to

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monitor the interest rates, and ultimately the actual savings will be dependent upon the rates on the day of the bond sales. The most recent analysis as of last Friday is showing slightly more savings than the analysis that is included in your bond package. I believe you're showing 7.1, and as of Friday it was 7.9 million in potential savings.

There are two notable risks associated with such a transaction. First, similar to the risk any of us might face in locking in interest rates as part of a mortgage process, is the possibility that the rates change shortly afterwards, leaving one wishing they had waited longer or locked in earlier. But, again, we're looking at dropping the interest rates we're paying at 4.7 percent down to approximately 1.89 percent. It's hard to have too much buyer's remorse. The second, and although more costly risk, but also less likely, is the possibility that the conditions changed so substantially the interests rates we will ultimately pay, that the transaction becomes no longer cost effective. Should that occur after the bond rating companies have completed their work and the sale must be postponed or canceled, the costs incurred up to that point are estimated to be approximately \$100,000, a cost that would be the responsibility of the Department.

Ultimately the Department, the State Treasurer's Office and the State's financial advisor feel that this transaction is in the best interests of the State of Nevada, and subsequently the State taxpayers. Further, the Department will continue to seek out such opportunities for our 2008 series bonds, and as marketing conditions provide any similar opportunities, we anticipate bringing those requests forward in the future. The Department requests that the Board authorize the Chairman to sign the resolution found under Tab 6 authorizing the refunding of the highway bonds as described. And we'll be happy to answer any questions at this time. And we did provide the preliminary official statement to the State Treasurer, or former State Treasurer, and only a former State Treasurer would ever want to read that thing, but you're all welcome to a copy if you'd like.

Sandoval: Thank you, Mr. Sisco. And the Lieutenant Governor does have questions. Please proceed.

Krolicki: Just because I feel paternity on this, because I think I issued these bonds with Lori once upon a time. Thank you for the preliminary official statement, Scott, and, you know, I'm not sure if we'll have opportunity under my watch to do this again, but I would appreciate in the future doing this. And I understand the sequence is very tight, this just came out on Friday, you've got a Board of Finance meeting tomorrow, but it would be nice to have that, if possible.

A couple questions if I may, and Scott, you sound like a financial advisor, but maybe Lori or Marty Johnson or Dave would like to answer some of

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these things. Certainly with the risks, you know, I had an old boss who told me you never lose money taking a profit, so I will take that first risk of being even a better refunding opportunity off the table. The rating agencies, I don't recall that being a standard risk. I mean, it's almost a contingency fee if we issue. I believe they rated these bonds -- we did a refunding last year and some of this data should be fresh. Some of the issues, since they're not GO bonds, they're just revenue bonds, you know, the federal government risk should be clear, so I'm not quite sure, and I think the State issued bonds recently, so why are we paying -- it just seems a little high for me on the rating agency costs. Lori?

Chatwood: Thank you. Lori Chatwood, Deputy Treasurer for the State Treasurer's Office. The rating agencies, as you're aware, rate each bond issue that we take out. We have not been before them for the revenue bonds for a year since we refunded prior. If they go and issue a rating for us, we may have to pay those fees, if it does not result in an actual bond issuance. However, I would have to defer to Marty, but I believe we would have at least six months that that rating would be good. So if we only delayed the bond issuance, we would not be paying that again. However, if we totally canceled the bond issuance because the markets did not hold out, we may have to pay their fee. It's also based on the par amount. So we have asked in this resolution up to 200 million in bonds to be refunded to give us the flexibility as the markets may improve, that we could put additional maturities on that would best refund at this time. So it's a matter of the par that's actually issued and the timing of which the bond issuance actually takes place.

Krolicki: And, Lori, it's a pleasure to hear you and see you doing this, but there is an extent, there's a window that these ratings would be good for, so, again, I think the risk is mitigated. Lori, don't go far away. Scott, you mentioned that additional bonds may be tossed into the sale, and that was my question. If we look at what's outstanding, we've got the Series 2004 and 5 outstanding. Those coupons don't make at this point to put them in the refunding?

Chatwood: Correct. The efficiencies are not there presently. In some of our larger scenarios that we have run, some of the 16 and the 17 -- the 16 on the 2005 and the 17 on the 2006 for another approximately \$20 million or so could make sense. The efficiencies -- we have opportunity in the future to advance refund those possibly for savings. So by doing them now, I believe they're in the three percent range or some...

Krolicki: And that was the question, so -- and just for the Board, it's always been about five percent.

Chatwood: Correct.

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- Krolicki: So certainly these bonds more than qualify, but thank you for sharing that. So they are a bit off to be right.
- Chatwood: And, again, it depends if the market moved in our favor and we saw it reduce by, you know, five or ten basis points, they may be back in. But currently they are not.
- Krolicki: And the advanced refunding, the defeasance will be done in escrow with slugs?
- Chatwood: As long as the window is open, which is currently is, yes.
- Krolicki: Okay. Thank you. That's all my questions, Governor. It's fun to play State Treasurer every once in a while. These are my babies. I'm sending them out of the house now.
- Sandoval: Any further questions from Board members? Any further presentation, Mr. Sisco?
- Sisco: No, no, Governor. Again, the Director recommends that you approve the resolution and we have the resolution here for you to sign.
- Sandoval: Given that, the Chair will accept a motion to approve the resolution as described in Attachment C in Agenda Item No. 6, and also authorize the Chairman of the Board to sign the resolution.
- Krolicki: Governor, if I may, I would like to move that the resolution be approved and the Governor be authorized as Chairman to sign the resolution.
- Sandoval: We have a motion by the Lieutenant Governor. Is there a second?
- Fransway: Second, Governor.
- Sandoval: Second by Member Fransway. Any questions or discussion on the motion? All in favor, please say aye.
- Group: Aye.
- Sandoval: Opposed no? Motion passes unanimously. Thank you very much.
- Sisco: Thank you.
- Sandoval: Agenda Item No. 7, condemnation resolution.
- Malfabon: Governor, previously on the I-15 South design-build project we required a condemnation action on this Wykoff property. It's located along Warm Springs and it was for the purpose of utility relocations along Warm Springs, the power line, and also a communications company. In looking at the property, we realized that we needed an additional approximately a little

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bit less than two feet additional width of easement, so that's why we're asking for an amendment to the condemnation resolution.

Sandoval: Board members, any questions with regard to Agenda Item No. 7? If there are none, the Chair will accept a motion for approval of the condemnation resolution as described therein.

Fransway: Question, Governor.

Sandoval: Okay. We have a question from Member Fransway.

Fransway: Rudy, the State has revised their initial offer upwards. Has there been any movement on the other side at this time?

Malfabon: I believe that we anticipate that we might have to go to court on this one. I don't know if Paul has anything to add, but we feel that there are some other issues involved. The owner was substantially higher, I thought, they were in the several millions of dollars range. Paul Saucedo from Right-of-Way.

Saucedo: Governor, Members of the Board. Yeah, there's been a counter-offer presented that's significantly higher than what our original offer was, and I know there's been discussions back and forth with legal counsel, but we remain, at this point, real far apart. It's not looking real good at this time.

Malfabon: Now we think that we'll have to go to court on this one.

Sandoval: Any further questions? Is there a member who's willing to make a motion for approval?

Savage: I'll make a motion to approve, Governor.

Sandoval: Motion for approval by Member Savage. Is there a second?

Martin: Second.

Sandoval: Second by Member Martin. Any questions or discussion on the motion? All in favor, please say aye.

Group: Aye.

Sandoval: Opposed no? Motion passes unanimously. Agenda Item No. 8, old business.

Malfabon: Thank you, Governor. The standing items that we present on a regular basis, the outside counsel costs report. I wanted to note that we are spreading the work around with local firms -- local legal firms, and I think a blessing and a curse. We need a lot of legal support for some of these significant issues that we're facing. We did also have to present the Board with an actual hard copy because the reproduction cut off. It cut off part of

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the information, so we gave you a handout. Hopefully the Board members in Las Vegas have received that handout for outside counsel contracts. Any...

Martin: We have.

Malfabon: Any questions, Dennis Gallagher from Attorney General's Office is here to respond to them.

Sandoval: Questions from Board members?

Martin: I only had one. Most of these cases seem to be the right-of-ways, and a lot of them have to do with Project NEON. I only find three with disputes with contractors, and it's Primary Peak and Williams Brothers. But when I go to another report, there seems to be more disputes than just those. You have two disputes with Peak and one with Williams Brothers, and they're not on this listing. Why is that? Or has counsel not been hired for the others?

Gallagher: For the record, Dennis Gallagher from the Attorney General's Office. Board Member Martin, the Peak and Williams Brothers are reflected on the outside counsel contracts. We've retained the firm of Snell and Wilmer to assist on those.

Martin: Right.

Gallagher: And then any other construction claims we have not yet retained outside counsel, and may or may not depending on the amount of the claim and/or the complexity of the claim.

Martin: Okay. So the -- because I think Meadow Valley has one pending, and then the people that's doing the Meadowood Mall thing have got one pending. So you've not retained outside counsel at all on those two?

Gallagher: That is correct, Board Member.

Martin: Okay. And you didn't retain outside counsel on Capriotti?

Gallagher: We have not.

Martin: Okay. But Rudy, one point of clarification, or Rick, I think Capriotti settled out, right, 100 percent?

Malfabon: In response, Capriotti is the contractor working on Contract 3409, which is the U.S. 95 widening from around the Rainbow Curve there up to Ann Road and a little bit beyond there. They submitted a request for 3.8 million approximately. It had to do with the drilled shafts. The request was escalated at headquarters, but we resolved that portion. So the lion's share of Capriotti's issues were dealt with and a change order will be processed

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for that. But there was a portion that was denied (inaudible). It was about an \$112,000 issue and we're presenting that to a Contract Claims Review Board.

There was also another issue that's pending, Member Martin. It has to do with electrical work. And we have denied it for lack of justification, but we're still negotiating that item. It's approximately a \$600,000 item, and it has to do with keeping the intelligent transportation system hardware and the system functioning during the construction of the project. So we have different devices out there that help us to manage traffic, but when it's under construction and you're widening, you have to move a lot of stuff out of the way, and the contractor had to keep it temporarily operational, so he's requesting additional compensation for that effort. And we're still negotiating on that item pending additional justification and documentation from the contractor, Capriotti.

Martin: Okay. I was aware of both those claims. I just didn't know if we had hired outside counsel or not. So thanks for the clarification.

Malfabon: Not at this time.

Sandoval: Member Fransway.

Fransway: Thank you, Governor. Are all these outside counsel providers -- do they all go through the RFP process?

Malfabon: These ones are hired directly through the Attorney General's Office. When we have advisors for NEON we went through the RFP process, but typically these ones are through the Attorney General's Office through our Chief Deputy Attorney General, and with my approval.

Gallagher: Dennis Gallagher from the Attorney General's Office. Board Member Fransway, some of these firms are selected based upon not a formal RFP process. There are a small number of firms in the State of Nevada that do condemnation, inverse condemnation work. So what we've done is we've identified approximately ten of those firms and asked them for an expression of interest. Everything from hourly rates to resources, et cetera. And through an interview process, those firms were selected.

Fransway: Okay. The reason for my question was there are a lot of firms out there, and I just wanted to make sure that our search is broad enough to make sure that we get the best qualified for the best cost.

Gallagher: That's our goal too, Board Member Fransway. And as I pointed out, there are really a small number of firms that do this kind of work. And we compete with other government agencies, utilities, as well as private landowners for those services. So the pool is relatively small, but we

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believe we've gotten the best legal representation that we can, keeping in mind cost and the processes that are involved. Every time you pass, for example, a condemnation resolution, a clock starts by which we have to file, and the District Court's, because by statute these matters get precedent in trial settings, they set the trials pretty much within a two-year period which leads us to almost a criminal calendar type of stack system. And so that's one of the reasons too. We've been exploring trying to spread this out because we don't want to be faced with the likelihood of having three cases go to trial within a month and have the same firm involved in them and inadequately be prepared for a trial. So we will continue to explore and try to retain qualified counsel with experience in these various areas.

- Fransway: Thank you, Mr. Gallagher, and thank you, Governor.
- Sandoval: I guess we'll revisit my favorite case, this Falcon Capital. I don't know -- I know this information's been presented in different forms, and I haven't quite seen it (inaudible).
- Malfabon: And, Governor, we anticipate that next month we will have the summary of the costs associated with Falcon Capital, including right-of-way and legal.
- Sandoval: But right now, at least according to this chart, our offer was \$8,167, and the owner's demand was \$33.5 million, and the settlement was over \$20 million.
- Malfabon: That was the binding arbitration decision.
- Sandoval: Yes. And that doesn't include our fees and costs which you said you're going to gather. But that 20 million, does that include the interest?
- Gallagher: Yes, Governor. That's all in.
- Sandoval: Okay. So it'd be helpful to me when you present the fees and costs on top of that if we could break down that \$20.7 million so I can understand better where that, you know, when you say all in, what -- how many chips are in there and what each one of those are. And the other, I guess, issue that I notice is the gap between our offers and the demands. And I know that the defendants in these cases will inflate their demands, but it just seems like we've been paying closer to what their demands are than what our offers have been. And I don't know if it's avoidable or not, but I guess I'm more making a statement than asking a question that we'll be watching how those things are going, because, like I said, the -- you know, I just don't remember when I was on this Board, and perhaps it's just become more of a specialty within the law with these law firms, but we're spending an incredible amount of money on these things.

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- Gallagher: Governor, if I may very briefly, the initial offer in this case, and you'll see it probably in a couple other cases, are based upon an appraised value and for a portion of the property owner's property, and that's what happened in this particular case. NDOT really just needed a small portion of it. The property owners then take the view that there had been a total taking of their property, and thus the numbers skyrocket. And then in this case, and we'll provide all the detail to the Board, we had both the total taking allegations of the real property, and then allegations of a total taking of their water rights. We've seen that in a few other cases. However, the Las Vegas cases we don't get a claim with water rights attached to them. But some of the other cases that are out here, if you notice a huge discrepancy between NDOT's offer and the landowners, typically what those are, the NDOT offer is based upon a condemnation action for a portion of their real property. The property owners' claim back is typically for an inverse condemnation wherein they allege that their entire property has been taken by NDOT.
- Sandoval: And we, in our last Agenda, hired consultants to value those water rights, so I also would like to see where we are in terms of the value of those water rights so that we can at least recapture a piece of this. And I understand, Director Malfabon, that the federal government has reimbursed us for some of this; is that right?
- Malfabon: Yes. We submitted some of these costs and have been reimbursed.
- Sandoval: So at some point, as this evolves, I'd like to see just a spreadsheet of exactly the entire history, at least physically, of the evolution and the closure of this case.
- Malfabon: And we hope to have that next month, Governor.
- Sandoval: Okay. Any further questions from Board members? Member Fransway.
- Martin: I have...
- Sandoval: Oh, let me go to Member Martin, and then I'll go back to you, Member Fransway. Member Martin.
- Martin: So in this instance, did we take possession of the 3,000 acre feet of water and the entire parcel of ground, or did we only take up possession of that portion that we wanted in the first place?
- Gallagher: Board Member Martin, for the record, Dennis Gallagher, the Attorney General's Office. The water rights and the real property were bifurcated into two proceedings. NDOT purchased the 31 acres of real property as part of a settlement conference that was conducted by Judge Adams in Washoe County. They paid approximately \$10 million for that 31 acres. The water issue went to binding arbitration. And the arbitrator found that there was

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total taking of 1,300 and some odd acre feet and awarded the costs for that plus interest on that. Right now we're in the process of getting those water rights conveyed to the State. We're having them appraised so we can present that to the Transportation Board.

Krollicki: To offset that \$20 million dollar, I mean, there's an asset that we now own with beneficial use and you will perfect that water right and that will be -- that asset will be indicated, is it sellable?

Gallagher: We certainly hope so, Lieutenant Governor. In addition, you know, we do have now 31 acres of land in the north end of Washoe Valley. What NDOT may ultimately do with that land, I'm sure they're exploring their options. But in addition to the real estate itself, which would probably be an ideal location for the Lieutenant Governor's mansion, there is a substantial amount of water rights, again, over 1,300 acre feet that will be conveyed to the State of Nevada.

Sandoval: But we paid 3 million an acre for at least the real property, correct? Yes?

Gallagher: Yes, Governor. I'm sorry. I'm trying to do the math in my head.

Sandoval: Okay. I'm sorry. Any further questions, Member Martin?

Martin: I think the math -- and I'm just a contractor, but I think the math is like \$300,000 an acre.

Sandoval: Or 300,000.

Gallagher: Yes.

Sandoval: Okay. I'm off...

Martin: Yeah, \$330,000 an acre.

Sandoval: I'd rather be wrong in that direction, I assure you.

Martin: Okay. And so the water rights, once they're deeded to -- they'd be deeded to the State, and then water rights become a salable -- and water rights was the other \$12 million, is that what I'm hearing, or the other 10 million?

Gallagher: Board Member Martin, Dennis Gallagher. Yes, it was 12 million plus the interest and fees on it, which took it up to about 20 million, but, yes, that is about the rough math. However, I'm somewhat reluctant to make that representation after I just made the mistake of saying 3 million instead of 300,000 an acre.

Sandoval: Well, that was my mistake. That was Governor math there.

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- Malfabon: We did try to get the interest reduced, but the decision of the arbitrator was that he would not reduce that substantial...
- Martin: When you do a break out of this settlement, you're going to break the interest out separately, right?
- Malfabon: Yes.
- Martin: Thank you.
- Sandoval: The challenge, Member Martin, here is that the arbitrator in the water right hearing found that the water rights had no value, and that's why we had to pay that amount of money.
- Martin: Wow. Amazing.
- Sandoval: We're hoping that this expert that we retain may perhaps find something differently.
- Martin: Okay. Thank you.
- Sandoval: I guess I should correct that. He found that they had value, but they weren't marketable, is a better way to put that.
- Gallagher: Yes. They couldn't be severed from the real property.
- Sandoval: All right. Any further question -- oh, Member Fransway, you have any questions?
- Fransway: Two questions, Governor. First one, if NDOT acquires the rights of -- or the water rights through the settlement, are we not subject to proving beneficial use? And if we are, is there a possibility of losing those water rights?
- Gallagher: Board Member Fransway, Dennis Gallagher from the Attorney General's Office. Excellent questions. We can research that, but I believe that once we get title to the water rights, the State will be able to utilize them and put them up for sale as well as use them down there, take the water, irrigate the 31 acres it acquired, et cetera.
- Fransway: Okay. So the answer is, yes, we will have to prove beneficial use. Obviously we will, everybody else does. And my second question is, are these cases remanded to State District Court or Federal Court or both?
- Gallagher: In this particular case, Board Member Fransway, it was commenced in State District Court in Washoe County. The initial filing was the State suing for condemnation of a portion of that 31 acres. And the real estate portion of it, or the real property portion of it, was resolved at a settlement conference with the Second Judicial District Court Judge, Judge Adams. The parties agreed that the water portion of the claim would go to binding arbitration,

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and so an arbitrator was retained for purposes of the water rights aspect of the case.

Fransway: Okay. So the condemnation cases in general, do they mostly go to State District Courts?

Gallagher: All of the condemnation cases are filed in State District Court, Board Member Fransway.

Fransway: Okay. Thank you. Thank you, Governor.

Sandoval: Any further questions with regard to Agenda Item No. 8?

Malfabon: Just to mention, Governor, on the fatality record, we have been seeing a good trend there with a reduction compared to this time last year. There were some crashes resulting in fatalities in Las Vegas over the weekend. One in particular was just ill timed with -- tragic, but right after the race was over, the NASCAR event, affected because with -- when there is a fatality on a highway, we have to work with local law enforcement and the county coroner has to come out and look at the site and deal with the fatality. So it did create some delays in traffic as a result. But on the amount of fatalities compared to last year, it is a good trend downward.

I wanted to also mention that we were previously discussing the Wykoff case. And on Page 1 of the monthly litigation report, you can see what the owner's offer is compared to the NDOT offer, \$10 million versus about 1.3 million. Unless there's any other questions, that is Item No. 8.

Sandoval: Hearing no further questions, we'll move on to Agenda Item No. 9, public comment. Is there any member of the public here in Carson City that would like to provide public comment to the Board?

Malfabon: Governor, I would like to mention in the public comment, Dennis Taylor is actually trying to sneak out. This is his last Board meeting. He is going to be retiring, and we'll definitely have his retirement ceremony at a future Board meeting, but he lives in Carson City, so he'll be around. But I wanted to wish him the best. He's been leading our Planning Division for several years now and we will miss him sorely. We wish you the best, Dennis.

Sandoval: Dennis, thank you.

Fransway: Governor, if I may.

Sandoval: Member Fransway.

Fransway: Dennis, I wish you well. Dennis and I have gotten know each other very well over the past several years with my stint as a County Commissioner. And I can tell you that NDOT was well suited to have Dennis come up and

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talk as one of the representatives of NDOT. And, Dennis, I'm going to miss you and I wish you well.

Taylor: Thank you. I appreciate it.

Sandoval: We do appreciate your dignity, class, effort, everything on behalf of the people of the State of Nevada. You've done a great job. I'll miss traveling with you as well. But, Dennis, thank you, personally for everything that you've done for the State of Nevada. Thank you. Any public comment from Las Vegas?

Martin: None here, sir.

Sandoval: Is there a motion for adjournment?

Krollicki: So moved.

Sandoval: Motion by the Lieutenant Governor, second by Member Fransway.

Fransway: Second.

Sandoval: All in favor, please say aye.

Group: Aye.

Sandoval: Motion passes. This meeting is adjourned. Thank you, ladies and gentlemen.



Secretary to the Board



Preparer of Minutes