

Item # 30B

**City of Carson City
Agenda Report**

Date Submitted: October 6, 2009

Agenda Date Requested: October 15, 2009

To: Board of Supervisors

Time Requested: 10 minutes

From: Joe McCarthy, Office of Business Development

Subject Title: Action to approve Amendment Two to the Settlement Agreement between Carson City Nugget, Inc., and Carson City regarding abandonment of streets.

Staff Summary: This Amendment Two to the Settlement Agreement allows the City to make available to the Nugget settlement funds in the amount of \$438,589.00 to explore a master development on and about the Nugget's downtown Carson City properties.

Type of Action Requested: (check one)
 Resolution Ordinance
 Formal Action/Motion Other (Specify) - None

Does This Action Require A Business Impact Statement: Yes No

Recommended Board Action: I move to approve Amendment Two to the Settlement Agreement between Carson City Nugget, Inc., and Carson City regarding abandonment of streets.

Explanation for Recommended Board Action: See staff summary

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

Fiscal Impact: The fiscal impact is \$438,589.00

Explanation of Impact: The fiscal impact will not change.

Funding Source: This incentive comes from the remaining unspent bond proceeds, but the needed amount dedicated to satisfying the provision of the street abandonment settlement with the Carson Nugget has been preserved.

Alternatives: Not approve the Agreement, modify the agreement.

Supporting Material: Amendment Two to the Settlement Agreement between Carson City Nugget, Inc., and Carson City regarding abandonment of Streets and Incentive Program Application.

Prepared By: Eva Chwalisz, Management Assistant

Reviewed By: John McLean Date: 10-6-09
(Department Head)

John McLean Date: 10-6-09
(City Manager)

Marie Bankert Date: 10-6-09
(District Attorney)

Mark Brumley Date: 10-6-09
(Finance Director)

Board Action Taken:

Motion: _____ 1) _____ Aye/Nay
2) _____

_____ (Vote Recorded By)

AMENDMENT TWO TO THE SETTLEMENT AGREEMENT BETWEEN
CARSON CITY NUGGET, INC., CARSON NUGGET, INC., AND CARSON CITY
REGARDING ABANDONMENT OF STREETS

THIS AGREEMENT is made and entered into this ____ day of October, 2009, between CARSON CITY NUGGET, INC. and CARSON NUGGET, INC., hereinafter referred to as "NUGGET", and CARSON CITY, a consolidated municipality and political subdivision of the State of Nevada, hereinafter referred to as "CITY", as follows:

WHEREAS, NUGGET claims to have suffered certain injuries and damages as a result of its payments to the CITY for the CITY'S abandonment of certain portions of Plaza Street and abandonment of certain portions of Spear Street; and

WHEREAS, the claims of NUGGET arising out of the Abandonments are set forth in and are the subject of case number 00-00262A filed in the First Judicial District Court of the State of Nevada, in and for Carson City (hereinafter referred to as "Action"), wherein CITY is the Defendant and NUGGET is the Plaintiff; and

WHEREAS, the parties to said litigation arrived at a mutually satisfactory resolution of their dispute and potential claims on April 3, 2008 which is memorialized in the "SETTLEMENT AGREEMENT BETWEEN CARSON CITY NUGGET, INC., CARSON NUGGET, INC., AND CARSON CITY REGARDING ABANDONMENT OF STREETS" (hereinafter referred to as the "Agreement") dated April 3, 2008; and

WHEREAS, paragraph 23 of the Agreement permits the parties to amend the Agreement; and

WHEREAS, on June 5, 2008, the parties entered into "AMENDMENT ONE TO THE SETTLEMENT AGREEMENT BETWEEN CARSON CITY NUGGET, INC., CARSON NUGGET, INC., AND CARSON CITY REGARDING ABANDONMENT OF STREETS" which amended paragraph 11 of the Agreement to require the CITY to pay to NUGGET a sum of money not to exceed \$50,000 for the cost of one or more feasibility studies; and

WHEREAS, the total cost paid by the City for the feasibility study was \$10,000; and

WHEREAS, the CITY desires to make available the remaining \$40,000 for costs referred to in Paragraph 8 or Paragraph 9 of the Agreement; and

WHEREAS, on November 20, 2008, the parties entered into "ADDENDUM ONE TO THE SETTLEMENT AGREEMENT BETWEEN CARSON CITY NUGGET, INC., CARSON NUGGET, INC., AND CARSON CITY REGARDING ABANDONMENT OF STREETS" wherein the parties added paragraph 24 to the Agreement which states, in part, that the CITY agrees to pay all costs associated with the construction and installation of a transformer for the Arlington Square Ice Rink, and that all costs paid by the CITY for the construction and installation shall reduce the \$481,088.00 that is to be used towards projects listed in paragraph 8 of the Agreement or paragraph 9 of the Agreement; and

WHEREAS, the total cost that was paid by the CITY for the construction and installation of the transformer for the Arlington Square Ice Rink was \$82,499.00; and

WHEREAS, pursuant to the Agreement, NUGGET agrees to reduce the \$481,088.00 owed by CITY to NUGGET by the amount of \$82,499.00; and

WHEREAS, the parties desire to enter into this Second Amendment to the Agreement to allow the CITY to make available to the NUGGET the additional \$40,000, reduce the \$481,088.00 by the \$82,499.00 that was paid by the CITY for the construction and installation of the transformer and to reflect future projects and activities that will replace those projects currently listed in paragraph 8 of the Agreement or paragraph 9 of the Agreement.

NOW, THEREFORE, the parties agree to amend the following paragraphs in the Agreement to read as follows:

1. Paragraph 7 will be replaced in its entirety with the following language:
 7. As further additional compensation to NUGGET, CITY agrees to expend a total of \$438,589.00 on projects described in Paragraph 8 or Paragraph 9 of this Agreement.
2. Paragraph 8 will be replaced in its entirety with the following language:
 8. The NUGGET wishes to explore a master development on and about the NUGGET's downtown Carson City properties. As part of this master development, the NUGGET intends to accommodate within the master development a project that provides public benefit, and supports business development, incubation space and opportunities for private investment combined with a civic anchor institution, hereinafter the "Nugget Development Project." The details of the Nugget Development Project are yet to be determined. In order to fully explore the possibilities of such a development, pre-development work must be completed. In order to accomplish this pre-development work, CITY will issue payment to the Nugget in the full amount of the adjusted settlement amount or \$438,589.00. The Nugget will not comingle those funds with other Nugget

income, but set up the "Nugget Development Project" account which will be used solely to pay Nugget Development Project costs. The Nugget commits and warrants that it will spend those settlement funds solely on the Nugget Development Project. The Nugget agrees that CITY may request that Nugget provide satisfactory proof that the settlement funds are being expended in a manner in compliance with this Agreement. CITY agrees that, if any portion of this money will come from funds controlled by the Carson City Redevelopment Authority, CITY will take any and all actions necessary to ensure that the reimbursement is made in accordance with the requirements of chapter 279 of the Nevada Revised Statutes and the policies and procedures of the Carson City Redevelopment Authority and with the proper approval of the Carson City Redevelopment Authority. Any deliverables produced as a result of the pre-development work shall be made available to CITY. The City Manager or his designee shall review pre-development progress and due diligence and quarterly reports shall be made to the Board of Supervisors.

3. Paragraph 9 will be replaced in its entirety with the following language:
 9. In the event that the project described in Paragraph 8 of this Agreement goes forward, any money remaining from the amount set forth in Paragraph 8 that is not used for pre-development costs pursuant to Paragraph 8 shall be used for costs associated with the project. In the event that the project described in Paragraph 8 of this Agreement does not go forward, any money remaining from the amount set forth in Paragraph 8 shall be used by CITY to partially improve East Robinson Street and North Plaza Street curb, gutters and sidewalks (the "Street

Improvements") as shown in Exhibit E, attached hereto and incorporated herein by this reference. In the event the Street Improvements are not completed by December 31, 2011, the CITY will pay to NUGGET any remaining money set forth in Paragraph 8 of this Agreement that is not used for the pre-development costs of the project as described in Paragraph 8 or for the Street Improvement, or any other projects that may be agreed upon by the CITY and NUGGET. CITY agrees that, if any portion of this money will come from funds controlled by the Carson City Redevelopment Authority, CITY will take any and all actions necessary to ensure that the reimbursement is made in accordance with the requirements of chapter 279 of the Nevada Revised Statutes and the policies and procedures of the Carson City Redevelopment Authority and with the proper approval of the Carson City Redevelopment Authority.

IT IS FURTHER AGREED by NUGGET and CITY that no other provisions of the Agreement, the First Amendment to the Agreement and the First Addendum to the Agreement are affected by this Amendment.

IT IS FURTHER AGREED by NUGGET and CITY that this amendment will be attached to the "SETTLEMENT AGREEMENT BETWEEN CARSON CITY NUGGET, INC., CARSON NUGGET, INC., AND CARSON CITY REGARDING ABANDONMENT OF STREETS" dated April 3, 2008.

CARSON CITY, NEVADA

ATTEST:

By: _____
ROBERT L. CROWELL, Mayor

ALAN GLOVER
Clerk/Recorder

APPROVED AS TO FORM:

NEIL A. ROMBARDO
District Attorney

CARSON CITY NUGGET, INC., a Nevada Corporation

By: _____ Its: _____

CARSON NUGGET, INC., a Nevada Corporation

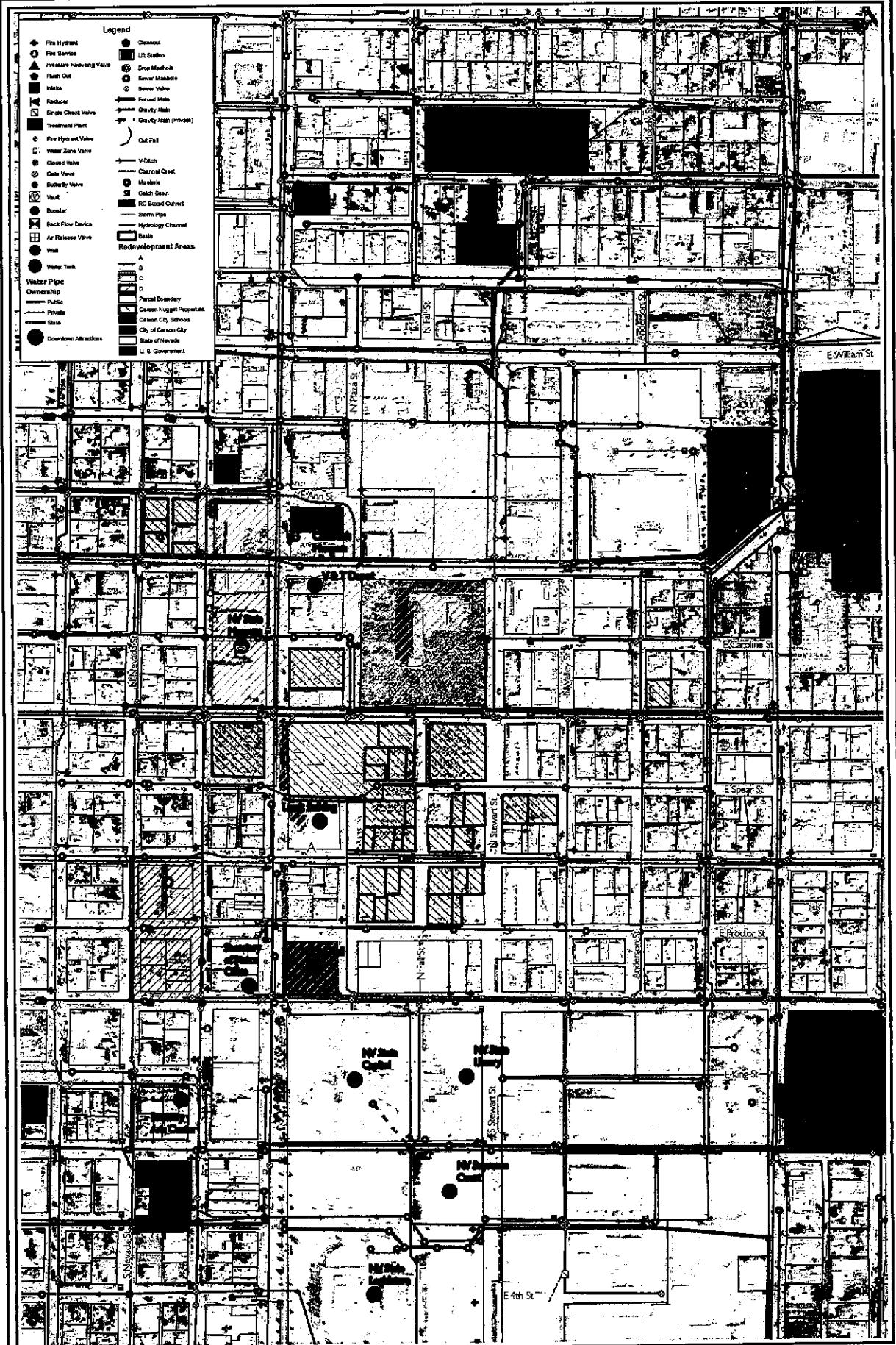
By: _____ Its: _____

STATE OF NEVADA)
CARSON CITY) : ss.

On this ____ day of _____, 2009, _____ and

____ personally appeared before me, a Notary Public, who acknowledged to me that they executed the foregoing Agreement.

NOTARY PUBLIC



Carson City
GIS Division
3505 Bulli Way
Carson City, NV 89701
(775) 887-2333
CARSON CITY, NEVADA
THIS MAP IS PROVIDED FOR THE CITY OF CARSON CITY
FOR ILLUSTRATIVE PURPOSES ONLY AND DOES NOT
REFLECT THE CURRENT AND UNEDITED ADDRESS
TO THE PUBLIC. THE ACCURACY OF THE DATA
DETERMINED BY THE CITY OF CARSON CITY.

Photo Flown:
2008

Carson Nugget, INC.
Redevelopment Area

