

FIRST AMENDMENT TO AGREEMENT REGARDING VEGAS LOOP

This First Amendment (“First Amendment”) is entered on this _____ day of _____ 2023 by and between The Boring Company (hereinafter referred to as “TBC”) and Clark County, by and through the Clark County Fire Department (hereinafter referred to as “CCFD”). TBC and CCFD are hereinafter referred to collectively as, the “Parties” and individually as the “Party”.

WITNESSETH

WHEREAS, pursuant to Section 9.1 of the Franchise Agreement entered into on October 20, 2021, CCFD and TBC were required to develop a list of equipment and staffing that TBC needed to cover CCFD’s public safety costs in connection with the Vegas Loop; and

WHEREAS, on January 17, 2023, the parties entered into an agreement titled “Agreement Regarding Vegas Loop”, whereby CCFD agreed to provide TBC with specified equipment and staffing (hereinafter referred to as “Agreement”); and

WHEREAS, TBC has agreed to reimburse CCFD for all equipment and staffing provided as outlined in the Agreement and this Amendment; and

WHEREAS, the parties desire to amend the Agreement to clarify and specify the Parties obligations.

NOW, THEREFORE, subject to the terms and conditions of this Amendment and the Agreement, and in consideration of the promises and mutual covenants herein contained, the Parties agree to amend the Agreement as follows:

1. **Recitals.** The foregoing recitals are true and correct and form a material part of this Amendment and are incorporated as if fully set forth in the body hereof. Any capitalized terms used, but not otherwise defined herein shall have the meaning ascribed to it in the Agreement.
2. Section 1 of the Agreement is hereby deleted and amended to read as follows:
 1. **Public Safety Services and Costs.** As required by Section 9.1 of the Franchise Agreement, TBC shall pay the fees, costs or salaries related to CCFD’s public safety costs in connection with the Vegas Loop. CCFD may provide public safety services by either engaging an Independent Contractor or to be provided by a CCFD Employee as provided below. The public safety services under this Agreement are for work exclusively with TBC on the Vegas Loop project matters as set forth below (to be contracted sequentially, not simultaneously).

a. Independent Contractor.

- i. Subject to the terms and conditions of this Agreement, CCFD has elected to engage the services of Wiercinski Consulting, LLC as an Independent Contractor to work exclusively with TBC on the Vegas Loop.
- ii. The Independent Contractor shall provide expertise in fire operations regarding the construction, operation and expansion of the Vegas Loop to ensure the public safety of residents and passengers.
- iii. During the term of this Agreement, the Independent Contractor shall bill the County, and TBC shall reimburse the County, for all reasonable and approved expenses, and hours worked in connection with the performance of the duties hereunder; such expenses and hours shall be pre-approved by the County.
- iv. In no case shall the amount invoiced by the County to TBC annually exceed \$218,000 (i.e., 224 hours worked per month).
- v. On a monthly basis, CCFD shall provide TBC an itemized report tracking each hour worked and expense incurred by the Independent Contractor. TBC shall pay for all expenses and hours actually worked for TBC by the Independent Contractor.
- vi. The Independent Contractor does not have to be continuously filled by the same person. Different individuals may be used to fill the Independent Contractor position at any time at the discretion of the Fire Chief.
- vii. TBC shall be invoiced for the Independent Contractor's services and hours worked on a monthly basis. The timeframe and frequency of invoicing shall be at CCFD's discretion.
- viii. The Independent Contractor is not or shall not be deemed a County employee for any purpose.

b. CCFD Personnel Substitution.

- i. With 30 days written notice to TBC, at CCFD's discretion, CCFD may hire and/or substitute in a full-time employee ("CCFD Personnel") to replace the Independent Contractor.

- ii. The CCFD Personnel's responsibilities will include, training, logistics, supplies, troubleshooting, research, coordination with Clark County Fire Prevention and Clark County Building Department, and other public safety duties as necessary.
- iii. In the event of a substitution, TBC shall reimburse CCFD for the substituted CCFD Personnel's hours worked at an annualized salary rate not to exceed \$218,000.00, plus any annual increases based on inflation and union adjustments, if applicable, at the top end of the scale for the CCFD Personnel's role. Future increases for a salaried employee are subject to approval by the Fire Chief and Clark County Manager in January of each calendar year and, if applicable, will be provided to TBC by December 31st of the preceding year. A full-time salaried employee shall work for a minimum of 40 hours per week for TBC.
- iv. The CCFD Personnel shall work exclusively with TBC, unless CCFD determines that such exclusivity is not required, in which case, TBC shall pay a pro-rated share of the annual salary based on the percentage workload assigned to Vegas Loop matters.
- v. The CCFD Personnel does not have to be continuously filled by the same person. Different individuals may be used to fill the CCFD Personnel position at any time at the discretion of the Fire Chief.
- vi. The CCFD Personnel shall be stationed at TBC's offices or a Fire Department Facility, at the Clark County Fire Chief's discretion.
- vii. On a monthly basis, CCFD shall provide TBC an itemized report tracking each hour worked by the CCFD Personnel.
- viii. CCFD shall be responsible for all of the CCFD Personnel's benefits, consistent with other similarly situated CCFD employees.
- ix. TBC shall be invoiced for the CCFD Personnel's salary on a monthly basis. The timeframe and frequency of invoicing shall be at CCFD's discretion.

3. Section 3 of the Agreement is hereby deleted and amended to read as follows:

3. Final Amounts. The payment amounts specified herein represent the complete and total amounts payable to CCFD for equipment and personnel assigned to Vegas Loop, and no further amounts shall be due by TBC to CCFD. All invoices submitted to TBC by CCFD shall be due and payable thirty (30) days from the date of the invoice.

4. Section 6 of the Agreement is hereby deleted and amended to read as follows:

6. Disputes. To the extent a dispute arises regarding Personnel performance or other matters, all disputes will be resolved by informal discussion between the Parties. In the event the parties are unable to resolve any dispute through good faith negotiations, the dispute will be resolved by alternative dispute resolution using a method to be agreed upon by the parties. The parties agree that the venue of any such dispute, either administratively or judicially, shall be in Clark County, Nevada. Any invoice disputes must be received in writing by CCFD within thirty (30) days from the date of the disputed invoice. If CCFD does not receive any disputes from TBC within thirty (30) days from the date of invoice, all invoices are deemed valid and due thirty (30) days from the date of invoice.

5. Section 7 of the Agreement is hereby deleted and amended to read as follows:

7. Assignment. Consistent with the terms of the Franchise Agreement, TBC may assign this Agreement to any affiliate or related non-profit by providing written notice to CCFD. Any assignment is specifically conditioned upon written approval by the Board of County Commissioners (“BCC”) of Clark County, Nevada, and shall not be effective until such approval is obtained. Such assignment may be conditioned upon the payment to CCFD of any debts actually owed pursuant to the terms and conditions of this Agreement.


6. **Compliant with Applicable Laws.** TBC shall exercise all rights and perform all obligations set forth in this Amendment and the Agreement in accordance with all applicable Federal, State, and municipal laws, rules, regulations, policies, codes and ordinances, including without limitation, environmental laws and regulations. The terms of this provision shall survive expiration or earlier termination of the Agreement.
7. **Effect on Agreement.** Except as expressly amended by this Amendment, all other terms and provisions of the Agreement shall remain unchanged and in full force and effect. In the event of any inconsistencies between the provisions of this Amendment and the Agreement, the provisions of this Amendment shall supersede and control.
8. **Severability.** If any provision of this amendment is found unenforceable, such provision shall not affect the enforceability of the remaining provisions of the Agreement.
9. **Counterparts.** This Amendment may be executed in multiple counterparts, each of which shall constitute an original and all of which when taken together shall constitute one and the same instrument. Facsimile and emailed copies of this Amendment, bearing the Parties’ respective signatures, shall be enforceable as originals.

10. **Headings.** The section headings of this Amendment are for convenience only and shall in no way define or limit the scope or content of this Amendment and shall not be considered in any interpretation or construction of all or any part of this Amendment. Where the sense of this Amendment requires, any reference to a term in the singular shall be deemed to include the plural of said term, and any reference to a term in the plural shall be deemed to include the plural of said term.

IN WITNESS WHEREOF, TBC and CCFD have caused this Amendment to be executed by their duly authorized representatives as of the date written below.

THE BORING COMPANY

BOARD OF COUNTY COMMISSIONERS
CLARK COUNTY, NEVADA

By:  November 1, 2023

STEVE DAVIS Date
President

By: _____
JAMES B. GIBSON
Chair

ATTEST:

LYNN MARIE GOYA, County Clerk

APPROVED AS TO FORM:



TIM BALDWIN, Deputy District Attorney