

**CARSON CITY REGIONAL TRANSPORTATION COMMISSION
REQUEST FOR COMMISSION ACTION**

Date Submitted: September 29, 2009

Meeting Date: October 14, 2009

To: Regional Transportation Commission

From: Jeff Sharp, City Engineer

Subject Title: Action to adopt a resolution approving of and authorizing the Carson City Regional Transportation Commission Chairman to sign a Cooperative Matching Agreement for Carson City Gateway Signage by and between State of Nevada Department of Transportation and Carson City Regional Transportation Commission.

Staff Summary: The Carson City Gateway Signage project has been selected and approved for funding under the Landscape and Aesthetics Community Matching Funds Program, under which the project is eligible for funding contribution of fifty percent (50%) State funds contributed to the project by NDOT, and fifty percent (50%) local funds contributed to the project by RTC. The Cooperative Matching Agreement is required by NDOT in order to obtain the matching funds. The total project estimate is \$421,000 of which \$210,500 is available as matching funds.

Type of Action Requested: (check one)

() None – Information Only

() Formal Action/Motion

Recommended Commission Action: I move to adopt a resolution approving of and authorizing the Carson City Regional Transportation Commission Chairman to sign a Cooperative Matching Agreement for Carson City Gateway Signage by and between State of Nevada Department of Transportation and Carson City Regional Transportation Commission.

Explanation for Recommended Commission Action: See Staff Summary above.

Applicable Statute, Code, Rule or Policy: NRS 277.180

Fiscal Impact: \$210,500

Explanation of Impact: The total project estimate is \$421,000 of which \$210,500 is available as matching funds.

Funding Source: RTC funds and State of Nevada Landscape and Aesthetics Community Matching Funds Program.

Alternatives: Don't move forward with the Gateway Signage project.

Supporting Material: Resolution and Cooperative Matching Agreement

Prepared By: Jeff Sharp, City Engineer

Commission Action Taken:

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

_____ (Vote Recorded By)

RESOLUTION NO. _____

A RESOLUTION ADOPTING AND APPROVING AN INTERLOCAL CONTRACT BETWEEN CARSON CITY REGIONAL TRANSPORTATION COMMISSION AND THE STATE OF NEVADA DEPARTMENT OF TRANSPORTATION TO PROVIDE FOR LANDSCAPE AND AESTHETICS COMMUNITY MATCHING FUNDS TO DESIGN AND CONSTRUCT GATEWAY SIGNS AT THREE LOCATIONS ALONG EXISTING HIGHWAYS WITHIN CARSON CITY.

WHEREAS, pursuant to NRS 277.180, any one or more public agencies may enter into contracts with any one or more other public agencies for the performance of any governmental service, activity, or undertaking which any of the public agencies entering into the contract is authorized by law to perform; and

WHEREAS, the Carson City Regional Transportation Commission and the Department of Transportation are agencies of the State of Nevada; and

WHEREAS, NRS 277.180 provides that every such contract must be ratified by appropriate official action of the governing body of each party to the contract as a condition precedent to its entry into force; and

WHEREAS, NRS 277.180 also provides that every such contract must set forth fully the purposes, powers, rights, objectives and responsibilities of the contracting parties; and

WHEREAS, the parties to the Interlocal Contract desire to adopt and approve such contract as required by NRS 277.180. A copy of the contract is attached to this Resolution as Exhibit "A;" and

NOW, THEREFORE, BE IT RESOLVED that the terms and conditions of the Cooperative (Matching) Agreement for Carson City Gateway Signage are approved; and

BE IT FURTHER RESOLVED that the Cooperative (Matching) Agreement for Carson City Gateway Signage shall be spread at large upon the minutes or attached in full thereto as an exhibit, and that a copy of this Resolution shall be sent to the State of Nevada Department of Transportation.

Upon motion by Commissioner _____, seconded by Commissioner _____, the foregoing Resolution was passed and adopted this __ day of _____, 2009 by the following vote.

VOTE:	AYES:	_____

	NAYES:	_____

	ABSENT:	_____
	ABSTAIN:	_____

SHELLY ALDEAN, Chairman
Carson City Regional Transportation Commission

ATTEST

ALAN GLOVER, Clerk - Recorder
Carson City, Nevada

COOPERATIVE (MATCHING) AGREEMENT
CARSON CITY GATEWAY SIGNAGE

This Agreement is made and entered into this ____ day of _____, _____, by and between the STATE OF NEVADA, acting by and through its Department of Transportation (hereinafter "DEPARTMENT") and Carson City Regional Transportation Commission, 3505 Butti Way Carson City, NV 89701 (hereinafter "RTC").

WITNESSETH:

WHEREAS, a Cooperative Agreement is defined as an agreement between two or more public agencies for the "joint exercise of powers, privileges and authority;" and

WHEREAS, pursuant to the provisions contained in N.R.S. (Nevada Revised Statutes) Chapter 408, the Director of the DEPARTMENT may enter into agreements necessary to carry out the provisions of the said Chapter; and

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

WHEREAS, the parties to this Agreement are public agencies and authorized to enter into agreements in accordance with N.R.S. 277.080 to 277.110; and

WHEREAS, the RTC will design, advertise, award and manage construction of the Carson City Gateway Signage Project as outlined in the Project Scope attached hereto and incorporated herein as Attachment A (hereinafter "PROJECT"); and

WHEREAS, the PROJECT has been selected and approved for funding under the Landscape and Aesthetics Community Matching Funds Program, under which this PROJECT is eligible for funding contributions of fifty percent (50%) State funds contributed to the PROJECT by the DEPARTMENT, and fifty percent (50%) local funds, contributed to the PROJECT by the RTC; and

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, it is agreed as follows:

ARTICLE I – RTC AGREES:

1. To perform or have performed by consultant forces the: (a) design of the PROJECT (including the development of plans, specifications and estimates); (b) acquisition of environmental permits and clearances; and (c) advertisement, award and construction management of the PROJECT, as outlined in Attachment A, in accordance with applicable Federal and State regulations and policies and safety standards. The PROJECT shall be designed and constructed in accordance with DEPARTMENT standards. Landscaping and/or aesthetic treatments shall comply with the DEPARTMENT's Landscape and Aesthetic Master Plan, and any applicable Landscape and Aesthetic Corridor Plans. The PROJECT shall be designed, constructed, operated, and maintained in accordance with applicable Federal, State and local laws, regulations, regulations, policies, ordinances and safety standards.

2. To invite the DEPARTMENT to PROJECT meetings, including but not limited to field reviews, plan review meetings and the pre-construction conference.

3. To submit to the DEPARTMENT for review and approval, preliminary plans at thirty percent (30%), sixty percent (60%), ninety percent (90%), and one hundred percent (100%) design stages. The sixty percent (60%) submittals shall include the PROJECT right-of-way and utility certification. The ninety percent (90%) and one hundred percent (100%) submittals shall include the PROJECT specifications, cost estimate and bid documents.

4. To obtain an occupancy permit from the DEPARTMENT, at no cost to the RTC, allowing the RTC to occupy the DEPARTMENT's right-of-way for the purpose of constructing and maintaining the PROJECT, prior to advertising the PROJECT.

5. To follow the terms and conditions of the occupancy permit issued by the DEPARTMENT so long as the terms and conditions are consistent with the terms and conditions contained herein and to incorporate those terms and conditions into the contract bid documents. In the event of any inconsistencies and/or conflict in the terms and conditions, this Agreement shall take precedence.

6. To obtain the DEPARTMENT's approval for all exceptions to DEPARTMENT and American Association of State Highway Officials (AASHTO) design standards.

7. To have the PROJECT ready for advertisement within eighteen months (18) of receiving the Notice to Proceed for the preliminary engineering of the PROJECT. Failure to complete this task may result with the termination of this Agreement.

8. To proceed with the PROJECT advertisement only after receiving a written "Notice to Proceed" from the DEPARTMENT.

9. To submit to the DEPARTMENT three (3) sets of final plans, specifications, estimates and bid documents for the DEPARTMENT's use.

10. To perform the contract administration of the construction contract by providing appropriate personnel to: (a) observe, review, inspect, perform materials testing; (b) be in responsible charge of the construction; (c) be capable of answering any question that may arise in relation to the contract plan and specifications during construction; (d) to be responsible for ensuring that all environmental permits and clearances requirements for monitoring and mitigation during construction of the PROJECT are being met; and (e) to report to the DEPARTMENT's Resident Engineer on administration of the contract, compliance with State requirements and the contractor's acceptable fulfillment of the contract.

11. To submit to the DEPARTMENT for review and approval any addenda, supplementals and change orders and to obtain written DEPARTMENT approval for any addenda, supplementals and change orders prior to incorporating them into the PROJECT.

12. To allow the DEPARTMENT and its designated representatives to monitor all work associated with the PROJECT during construction.

13. To perform PROJECT documentation and quality control during contract administration according to the RTC's established procedures, as approved by the DEPARTMENT. If the RTC does not have DEPARTMENT approved procedures, it must then follow the procedures contained in the DEPARTMENT's "Documentation Manual" and "Construction Manual," incorporated herein by reference. The manuals may be obtained from the DEPARTMENT's Administrative Services Division.

14. As work progresses on the PROJECT, the RTC shall provide the DEPARTMENT with monthly invoices for payment of the PROJECT COSTS. The invoice shall be based upon and accompanied by auditable supporting documentation. Total reimbursement shall not exceed the total obligated amount, as established in Article II, Paragraph 3. Invoices for the preliminary engineering phase shall be forwarded to the DEPARTMENT's project coordinator for payment processing. Invoices for the construction phase including the final invoice shall be forwarded to the DEPARTMENT's Resident Engineer for review. The DEPARTMENT's Resident Engineer shall forward the invoice to the DEPARTMENT's project coordinator for payment processing.

15. To be responsible for the fifty percent (50%) match of State funds and for one hundred percent (100%) of all costs exceeding the obligated State funds subject to the RTC's budgeted appropriations and the allocation of sufficient funds by the governing body of the RTC.

16. To accept maintenance responsibilities including utility costs for the improvements of the three gateway signs constructed as part of the PROJECT, upon completion and the DEPARTMENT's final written acceptance of the PROJECT. The items of work shall include the following:

- a. Trash and debris removal and disposal
- b. Graffiti removal/repair of hardscape, such as monuments, sculptural elements, etc.
- c. Inert ground cover maintenance and repair

ARTICLE II - DEPARTMENT AGREES:

1. To complete the National Environmental Policy Act (NEPA) documentation in conformance with 23 C.F.R. § 771.

2. To assist the RTC with obtaining the environmental permits and clearances.

3. To ensure that the RTC's actions are in accordance with Federal and State regulations, and policies.

4. To obligate State funding for a maximum of Two Hundred Ten Thousand Five Hundred and No/100 Dollars (\$210,500.00) for the PROJECT.

5. To establish a Project Identification Number to track all PROJECT costs.

6. Once the funding is obligated, to provide the RTC with a written "Notice to Proceed", authorizing the design of the PROJECT.

7. To review and comment on the RTC's design (including plans, specifications and estimates) in Twenty (20) working days and to ensure that DEPARTMENT, American Association of State Highway Transportation Officials (AASHTO) and Manual of Uniform Traffic Control Devices (MUTCD) Guidelines are followed and that the design meets the requirements of the Americans with Disability Act (ADA).

8. To review all exceptions to DEPARTMENT and AASHTO design standards, and to approve those exceptions when acceptable.

9. To invoke the DEPARTMENT's authority under N.R.S. 408.210(4) to require relocation or adjustment of any encroachments including utility facilities occupying the DEPARTMENT's right-of-way pursuant to DEPARTMENT permits issued pursuant to N.R.S. 408.210 and/or N.R.S. 408.423 needed to accommodate construction of the PROJECT.

10. To exercise final approval over utility adjustments that are within the DEPARTMENT's right-of-way and to have full authority to inspect said utility relocations.

11. To ensure that applicable right-of-way laws and regulations are met on this PROJECT and to document those actions in accordance with the DEPARTMENT's administrative requirements.

12. To issue an encroachment permit to the RTC, at no cost to the RTC, allowing it to occupy the DEPARTMENT's right-of-way for the purpose of constructing and maintaining the PROJECT.

13. To authorize the RTC to proceed with the advertisement/award of the contract and construction of the PROJECT, once the final design (including plans, specifications and estimates) has been reviewed and approved by the DEPARTMENT, all certifications have been completed and the funding authorized. The DEPARTMENT shall issue such authorization through a written "Notice to Proceed".

14. To assign a Project Coordinator and/or a Resident Engineer to act as the DEPARTMENT's representative to monitor all aspects of the PROJECT.

15. To review and approve when appropriate addenda, supplementals and change orders to the construction contract of the PROJECT to ensure compliance with the terms of this Agreement within five (5) working days. Failure to respond within five (5) working days constitutes approval. Approval of said addenda, supplementals and change orders does not alter the maximum reimbursement to the RTC as established in ARTICLE II Paragraph 3.

16. To reimburse the RTC, monthly as work progresses on the PROJECT, for fifty percent (50%) of ELIGIBLE PROJECT COSTS based on supporting documentation. Total reimbursement shall not exceed the total programmed amount, as established in ARTICLE II Paragraph 3. ELIGIBLE PROJECT COSTS are those costs as defined in the DEPARTMENT's Landscape and Aesthetics Community Match Program Procedures Manual. Said Manual may be obtained from the DEPARTMENT's Landscape and Aesthetics Section.

17. To transfer to the RTC maintenance responsibility including utility costs for the improvements of the three gateway signs constructed as part of the PROJECT upon completion and the DEPARTMENT's final written acceptance of the PROJECT. The items of work shall include the following:

- a. Trash and debris removal and disposal
- b. Graffiti removal/repair of hardscape, such as monuments, sculptural elements, etc.
- c. Inert ground cover maintenance and repair

ARTICLE III - IT IS MUTUALLY AGREED:

1. The term of this Agreement shall be from the date first written above through and including the December 31, 2011, or until construction of all improvements contemplated herein have been completed and accepted by the DEPARTMENT, whichever occurs first, save and except the responsibility for maintenance as specified herein.

2. The description of the PROJECT may be changed by mutual written consent of the parties.

3. All right-of-way for the PROJECT is in place and no utility facilities, having prior rights or franchise agreements that require the RTC to pay for any relocation, will require relocation in order to accommodate the PROJECT. If it is determined at a later date that this is not the case, a written amendment to this agreement shall be required.

4. Each party agrees to complete a joint final inspection prior to final acceptance of the work by the DEPARTMENT.

5. The TOTAL ESTIMATED PROJECT COSTS are Four Hundred Twenty-One Thousand and No/100 Dollars (\$421,000.00), which includes Two Hundred Ten Thousand Five Hundred and No/100 Dollars (\$210,500.00), comprising State funding of fifty percent (50%) of the TOTAL ESTIMATED PROJECT COSTS; and a match of Two Hundred Ten Thousand Five Hundred and No/100 Dollars (\$210,500.00), comprising fifty percent (50%) of the TOTAL ESTIMATED PROJECT COSTS, which match shall be the responsibility of the RTC. The parties acknowledge and agree that the TOTAL ESTIMATED PROJECT COSTS set forth herein are only estimates and that in no event shall the DEPARTMENT portion exceed the total obligated amount, as established in Article II, Paragraph 3.

6. The following is a summary of TOTAL ESTIMATED PROJECT COSTS and available funds:

TOTAL ESTIMATED PROJECT COSTS:

RTC Preliminary Engineering Costs:	\$ 10,000.00
RTC Construction Engineering Costs:	\$ 18,000.00
Construction Costs:	<u>\$393,000.00</u>

<u>TOTAL ESTIMATED PROJECT COSTS:</u>	\$421,000.00
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AVAILABLE FUNDING SOURCES:

DEPARTMENT State Funds:	\$210,500.00
RTC Funds:	<u>\$210,500.00</u>

<u>TOTAL PROJECT FUNDING:</u>	\$421,000.00
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7. The RTC may not incur any reimbursable PROJECT COSTS until this Agreement is executed by both parties and the DEPARTMENT has issued a written "Notice to Proceed."

8. The TOTAL PROJECT COSTS shall be determined by adding together the total costs incurred by the RTC for preliminary engineering, acquiring environmental permits and clearances, construction engineering, and construction costs. The RTC match will be calculated using the applicable percent of the TOTAL-PROJECT COSTS eligible for State funding. Subject to budgeted appropriations and the allocation of sufficient funds by the governing body of the RTC, the RTC is responsible for one hundred percent (100%) of all costs not eligible for State funding.

9. An alteration requested by the either party which substantially changes the services provided for by the expressed intent of this Agreement shall be considered extra work, and shall be specified in an Amendment which will set forth the nature and scope thereof. The method of payment for extra work shall be specified at the time the amendment is written.

10. The TOTAL ESTIMATED PROJECT COSTS may not be an accurate reflection of the final cost. The final costs may vary widely depending on the Contractor's bid prices.

11. Plans, specifications, and estimates shall be reviewed by the DEPARTMENT for conformity with the Agreement terms. The RTC acknowledges that review by the DEPARTMENT does not include detailed review or checking of major components and related details or the accuracy and sufficiency of such deliverables.

12. This Agreement may be terminated by mutual consent of both parties without cause. The parties expressly agree that this Agreement shall be terminated upon written notification if for any reason Federal and/or State and/or RTC funding ability to satisfy this Agreement is withdrawn, limited, or impaired.

13. Should this Agreement be terminated by the RTC for any reason prior to the completion of the PROJECT, or the Agreement is terminated by the DEPARTMENT due to the RTC's failure to perform, the RTC shall be solely responsible for the TOTAL PROJECT COSTS and shall reimburse the DEPARTMENT for any payments made to the RTC.

14. All notices or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by telephonic facsimile or electronic mail with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address set forth below:

FOR DEPARTMENT: Susan Martinovich, P.E., Director
Attn: Juan Hernandez, E.I.
Local Public Agency Coordinator
Nevada Department of Transportation
Roadway Design
1263 South Stewart Street
Carson City, Nevada 89712
Phone: (775) 888-7988
Fax: (775) 888-7401
E-mail: jhernandez@dot.state.nv.us

FOR RTC: Jeff Sharp, P.E.
Carson City Regional Transportation Commission
3505 Butti Way
Carson City, NV 89701
Phone: 775-887-2300 ext. 30084
Fax: 775-887-2112
E-mail: jsharp@ci.carson-city.nv.us

15. Up to the limitation of law, including, but not limited to, N.R.S. Chapter 41 liability limitations, each party shall be responsible for all liability, claims, actions, damages, losses, and expenses, caused by the negligence, errors, omissions, recklessness or intentional misconduct of its own officers and employees.

16. The parties do not waive and intend to assert available N.R.S. Chapter 41 liability limitations in all cases. Agreement liability of both parties shall not be subject to punitive damages. Actual damages for any State or RTC breach shall never exceed the amount of funds which have been appropriated for payment under this Agreement, but not yet paid, for the fiscal year budget in existence at the time of the breach.

17. This Agreement and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada. The parties consent to the jurisdiction of the Nevada district courts for enforcement of this Agreement.

18. The illegality or invalidity of any provision or portion of this Agreement shall not affect the validity of the remainder of the Agreement and this Agreement shall be construed as if such provision did not exist. The unenforceability of such provision shall not be held to render any other provision or provisions of this Agreement unenforceable.

19. Failure to declare a breach or the actual waiver of any particular breach of the Agreement or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

20. Except as otherwise expressly provided herein, all property presently owned by either party shall remain in such ownership upon termination of this Agreement, and there shall be no transfer of property between the parties during the course of this Agreement.

21. It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of this Agreement to create any rights in any person or entity, public or private, a third party beneficiary status hereunder, or to authorize anyone not a party to this Agreement to maintain a suit pursuant to the terms or provisions of this Agreement.

22. Each party agrees to keep and maintain under generally accepted accounting principles full, true and complete records and documents pertaining to this Agreement and present, at any reasonable time, such information for inspection, examination, review, audit and copying at any office where such records and documentation is maintained. Such records and documentation shall be maintained for three (3) years after final payment is made.

23. The parties are associated with each other only for the purposes and to the extent set forth in this Agreement. Each party is and shall be a public agency separate and distinct from the other party and shall have the right to supervise, manage, operate, control and direct performance of the details incident to its duties under this Agreement. Nothing contained in this Agreement shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for one agency whatsoever with respect to the indebtedness, liabilities, and obligations of the other agency or any other party.

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

25. Both parties shall assure that no person shall on the grounds of race, color, national origin, gender, age or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any service, program or activity offered by said parties, regardless of funding source. Both parties further assure that every effort will be made to prevent discrimination through the impacts of their programs, policies, and activities on minority and low-income populations.

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

27. The parties hereto represent and warrant that the person executing this Agreement on behalf of each party has full power and authority to enter into this Agreement and that the parties are authorized by law to engage in the cooperative action set forth herein.

28. Pursuant to N.R.S. 239.010, information or documents may be open to public inspection and copying. The parties will have the duty to disclose unless a particular record is confidential by law or a common law balancing of interests.

29. Each party shall keep confidential all information, in whatever form, produced, prepared, observed or received by that party to the extent that such information is confidential by law.

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

31. This Agreement constitutes the entire agreement of the parties and as such is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Agreement specifically displays a mutual intent to amend a particular part of this Agreement, general conflicts in language between any such attachment and this Agreement shall be construed consistent with the terms of this Agreement. Unless otherwise expressly authorized by the terms of this Agreement, no modification or amendment to this Agreement shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto and approved by the Attorney General.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

Carson City Regional Transportation
Commission

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

Shelly Aldean
Chairperson

Director

Approved as to Form:

Approved as to Legality & Form:

Neil A. Rombardo
District Attorney

Deputy Attorney General

Attachment A

**SCOPE OF WORK
Carson City Gateway Signage**

The project consists of constructing one (1) gateway sign at three (3) different locations in Carson City. The limits of the project are: along the Carson City Freeway (US 395) southbound near the Washoe County border, along US 395 northbound near the Douglas County border, and along US 50 westbound near the Lyon County border.