



**REGIONAL TRANSPORTATION COMMISSION**

*Metropolitan Planning • Public Transportation & Operations • Engineering & Construction*

Metropolitan Planning Organization of Washoe County, Nevada

November 20, 2020

**AGENDA ITEM 3.23**

**TO:** Regional Transportation Commission

**FROM:** Dale Keller, P.E.  
Engineering Manager

Bill Thomas, AICP  
Executive Director

**SUBJECT: Interlocal Cooperative Agreement between the State of Nevada Department of Transportation and the Regional Transportation Commission for the Design and Construction of the US 395/Lemmon Drive Interchange**

**RECOMMENDATION**

Approve the Interlocal Cooperative Agreement (ICA) with the Nevada Department of Transportation (NDOT) for the design and construction of the US 395 / Lemmon Drive Interchange as part of the Lemmon Drive Project; authorize the RTC Executive Director to execute the agreement.

**SUMMARY**

This ICA defines the roles, responsibilities, and funding to incorporate the proposed US 395 / Lemmon Drive Interchange improvements with RTC’s Segment 1 widening project. NDOT agrees to contribute ten million and no/100 dollars (\$10,000,000.00) for the project. The RTC agrees to design, construct, and administer all project activities.

**FISCAL IMPACT**

NDOT will contribute state fuel tax funds to the project in the amount of \$10,000,000. The following is a summary of NDOT’s obligation.

**NDOT Contributions**

<b>Fiscal Year</b>	<b>Payment Dates</b>	<b>Total Amount per Fiscal Year</b>
FY 2021	Payment on June 30, 2021	\$2,000,000
FY 2022	Quarterly Payments of \$2,000,000 on September 30, 2021, December 30, 2021, March 30, 2022, and June 30, 2022	\$8,000,000
<b>TOTAL</b>		<b>\$10,000,000</b>

**PREVIOUS ACTIONS BY BOARD**

September 18, 2020	Received an update on the project
August 20, 2020	Received an update on the project
July 17, 2020	Received an update on the project
June 19, 2020	Received an update on the project
May 22, 2020	Received an update on the project
September 20, 2019	Approved the Professional Services Agreement (PSA) with Jacobs Engineering for the design of the Lemmon Drive Project
May 20, 2019	Approved the Procurement for the Selection of Engineering Professional Services for Design the Lemmon Drive Project

Attachment

**INTERLOCAL AGREEMENT**

This Agreement, made and entered into on \_\_\_\_\_, by and between the State of Nevada, acting by and through its Department of Transportation, hereinafter called the "DEPARTMENT", and the Regional Transportation Commission of Washoe County, 1105 Terminal Way, Reno, NV 89502, hereinafter called the "RTC".

**WITNESSETH:**

WHEREAS, an Interlocal Agreement is defined as an agreement by public agencies to "obtain a service" from another public agency; and

WHEREAS, pursuant to the provisions contained in Chapter 408 of the Nevada Revised Statutes (NRS), the Director of the DEPARTMENT may enter into those agreements necessary to carry out the provisions of the Chapter; and

WHEREAS, NRS 277.180 authorizes any one or more public agencies to contract with any one or more other public agencies to perform any governmental service, activity, or undertaking which any of the public agencies entering into the agreement is authorized by law to perform and refers to such as an interlocal contract; and

WHEREAS, the RTC desires to widen Lemmon Drive from US 395 to Military Road; and

WHEREAS, the DEPARTMENT desires to complete the Lemmon Drive Interchange improvements that are detailed in the US 395 North Valleys Project; and

WHEREAS, the purpose of this Agreement is for the RTC to design and construct the diverging diamond interchange (DDI) at US 395 Lemmon Drive (hereinafter "PROJECT"); and

WHEREAS, the purpose of this Agreement is to define the funding, maintenance and operations responsibility for the PROJECT; and

WHEREAS, the services of the RTC will be of benefit to the DEPARTMENT and to the people of the State of Nevada; and

WHEREAS, the RTC is willing and able to perform the services described herein.

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

**ARTICLE I - RTC AGREES**

**Funding**

1. To fund and administer the entire PROJECT (less the programmed amounts as set forth in Article II, Paragraph 1) which includes, but is not limited to, engineering, right-of-way acquisition, utility relocations, preparation of plans, special provisions, construction estimates, construction, construction management, quality control, quality control testing, and materials testing.

2. To proceed with the PROJECT construction only after receiving a written confirmation of funding approval. The DEPARTMENT's contribution to PROJECT construction

cost is contingent on State Transportation Improvement Plan (STIP) and Work Program amendment approval for Fiscal Year 2021 (FY2021).

3. To invoice the DEPARTMENT after the start of construction on a quarterly basis, for the DEPARTMENT's contribution amounts as set forth in Article 2, Paragraph 1.

#### Project Administration

4. To monitor all PROJECT activities to ensure compliance with applicable environmental laws and regulations.

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

6. To allow the DEPARTMENT to review, comment, and approve PROJECT change orders as well as other changes to the contract documents, plans, and specifications which involve DEPARTMENT facilities to the PROJECT. The DEPARTMENT's written response shall be made within five (5) working days of its notice of change order or other changes. No response from the DEPARTMENT within this time frame shall constitute the DEPARTMENT's consent to and acceptance of such change orders or other changes and for the RTC to proceed with the work.

#### Design Engineering

7. To design and construct the DEPARTMENT facilities using DEPARTMENT standards, specifications, and procedures set forth in the RTC's construction contract with its contractor for the development, analysis, and design of the PROJECT, except with the standards, specifications, and procedures set forth in the construction contract and where agreed upon by both parties.

8. To obtain the DEPARTMENT's approval for all exceptions to DEPARTMENT and AASHTO design standards.

9. To provide the DEPARTMENT with two (2) copies and one (1) electronic submittal of each design submittal for the PROJECT and to invite the DEPARTMENT to the review meetings with the RTC to address said comments, if any.

10. To submit to the DEPARTMENT for a fourteen (14) day review and approval of, preliminary plans at sixty percent (60%), one hundred percent (100%), and bid set document submittals.

#### Construction

11. To construct the PROJECT and perform all required construction management inspections and quality assurance testing for the PROJECT.

12. To perform and be responsible for the construction administration of those facilities under DEPARTMENT's jurisdiction related to the PROJECT.

13. To allow the DEPARTMENT to observe, review, and comment on all construction work of those facilities under DEPARTMENT's jurisdiction related to the PROJECT within two (2) working days of any inspection. Any such comments shall be immediately directed to the RTC's Project Manager and RTC's Construction Administration Consultant.

14. To obtain a DEPARTMENT encroachment occupancy permit, at no cost to RTC, allowing the RTC to occupy within the DEPARTMENT right-of-way for the purpose of constructing and temporarily maintaining the PROJECT.

15. The RTC shall, at its own expense, obtain and pay for all licenses, permits, and/or fees and comply with all applicable federal, state, and local laws, statutes, ordinances, rules, and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this Agreement, including, without limitation, worker's compensation laws, licensing laws, and regulations.

16. To submit the PROJECT's as-built plan for DEPARTMENT review and invite the DEPARTMENT to the RTC final inspection of the PROJECT.

17. To maintain the improvements as part of the PROJECT upon completion and the DEPARTMENT's final written acceptance of the PROJECT.

## ARTICLE II - DEPARTMENT AGREES

### Funding

1. To fund Ten Million and No/100 Dollars (\$10,000,000.00) for the PROJECT, herein called the "DEPARTMENT CONTRIBUTION". The following is a summary of the DEPARTMENT CONTRIBUTION with identified funding sources:

DEPARTMENT CONTRIBUTION TO THE PROJECT:	\$10,000,000.00
DEPARTMENT State Gas Tax Funds	
FY 2021	\$2,000,000.00
Payment of \$2,000,000.00 on June 30,2021	
FY 2022	<u>\$8,000,000.00</u>
Quarterly payments of \$2,000,000.00 each of September 30,2021, December 30, 2021, March 30, 2022, and June 30, 2022.	
TOTAL FUNDING FOR DEPARTMENT CONTRIBUTION	\$10,000,000.00

### Project Administration

2. To assign a project manager with approval authority on behalf of the DEPARTMENT to act as the DEPARTMENT's representative and designated point of contact to oversee the DEPARTMENT's portion of the PROJECT and to ensure compliance with applicable DEPARTMENT requirements and a continuity of communications between the RTC and the DEPARTMENT.

3. That the RTC will be the point of contact for all communications with the RTC's contractor for the PROJECT, including, but not limited to, reviewing comments on plans, specifications, traffic control plans, and inspections for the DEPARTMENT's portion of the PROJECT.

### Design Engineering

4. To review and comment on the RTC design (including plans, specifications and estimates) through the DEPARTMENT's pre-permit process. DEPARTMENT comments shall be provided within fifteen (15) working days from receipt of submittal. Failure of DEPARTMENT to

respond within this time frame shall constitute the DEPARTMENT's approval of the plan and specifications and permission for the RTC to proceed.

#### Construction

5. To allow the RTC to act on the DEPARTMENT's behalf and accept construction inspection oversight of DEPARTMENT's facilities of the PROJECT.

6. To assign a Resident Engineer to act as the DEPARTMENT's representative to review and comment on construction contract compliance of DEPARTMENT's facilities to the PROJECT.

7. To issue an encroachment permit to the RTC, at no cost to the RTC, for the PROJECT construction conducted within DEPARTMENT right-of-way. DEPARTMENT agrees to work with the RTC to identify, review and approve specific terms and conditions for the construction of PROJECT. To review and process any DEPARTMENT permits within the DEPARTMENT policy time frames with the intent of avoiding a delay in RTC's PROJECT schedule.

8. To review and approve when appropriate addenda, supplementals and change orders to the PROJECT construction to ensure the compliance with the terms of this agreement within five (5) working days. Failure to respond within five (5) working days shall constitute approval. Approval of said addenda, supplementals and change orders does not alter the contribution funds to RTC as established in ARTICLE I, Paragraph 3.

9. To observe, review, and inspect all work associated with the project during construction with the understanding that any and all items of concern are reported to the DEPARTMENT's Permit Office for correction.

10. To review RTC's as-built plans and attend the RTC final inspection of the PROJECT.

11. To own and maintain PROJECT improvements within the DEPARTMENT right-of-way; unless otherwise identified in any associated DEPARTMENT encroachment permit.

#### ARTICLE III - IT IS MUTUALLY AGREED

1. The term of this Agreement shall be from the date first written above through and including December 31, 2023, or until the construction of all improvements contemplated herein have been completed and accepted by the DEPARTMENT, save and except the responsibility for maintenance as specified herein, whichever occurs first.

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

3. The parties agree to allow each other to observe, to inspect project construction, and to review applicable change orders in a timely manner which prevents PROJECT delay. All change order requests shall be made in writing. Each party shall complete its review of all change orders submitted to it by the other party, within five (5) working days after service of such change orders. In the event the DEPARTMENT does not provide the RTC with a written response to the RTC's change orders within five (5) working days following the RTC's service of such change orders, the RTC will proceed with the change orders so as not to delay the PROJECT and will assume no liability therefore. The DEPARTMENT shall be responsible for all costs associated with change orders requested by the DEPARTMENT.

4. This Agreement may be terminated by either party prior to the date set forth above, provided that a termination shall not be effective until thirty (30) calendar days after a party has served written notice upon the other party. This Agreement may be terminated by mutual consent of both parties or unilaterally by either party without cause. The parties expressly agree that this Agreement shall be terminated immediately if for any reason federal and/or State Legislature funding ability to satisfy this Agreement is withdrawn, limited, or impaired.

5. 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 facsimile with simultaneous regular mail, or by 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:

Kristina L. Swallow, P.E., Director  
Attn.: Nick Johnson, P.E.  
Nevada Department of Transportation  
Division: C015  
1263 South Stewart Street  
Carson City, Nevada 89712  
Phone: (775) 888-7589  
E-mail: jpullen@dot.nv.gov

FOR RTC:

Bill Thomas, AICP, Executive Director  
Attn: Dale Keller, P.E.  
Regional Transportation Commission of Washoe County  
1105 Terminal Way, Suite 108  
Reno, NV 89502  
Phone: (775) 335-1827  
E-mail: DKeller@rtcwashoe.com

6. Each party agrees to keep and maintain under generally accepted accounting principles full, true, and complete records and documents (written, electronic, computer related, or otherwise) 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 are maintained. Such records and documentation shall be retained for three (3) years after final payment is made.

7. Failure of either party to perform any obligation of this Agreement shall be deemed a breach. Except as otherwise provided for by law or this Agreement, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, but not limited to, the recovery of actual damages and the prevailing party's reasonable attorney's fees and costs.

8. The parties do not waive and intend to assert available NRS Chapter 41 liability limitations in all cases. Agreement liability of both parties shall not be subject to punitive damages. Actual damages for any DEPARTMENT 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.

9. Neither party shall be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including, without limitations, earthquakes, floods, winds, or storms. In such an event, the intervening cause must not be through the fault of the party asserting such an excuse, and the

excused party is obligated to promptly perform in accordance with the terms of the Agreement after the intervening cause ceases.

10. To the fullest extent of NRS Chapter 41 liability limitations, each party shall indemnify, hold harmless, and defend, not excluding the other's right to participate, the other from and against all liability, claims, actions, damages, losses, and expenses, including, but not limited to, reasonable attorneys' fees and costs, caused by the negligence, errors, omissions, recklessness, or intentional misconduct of its own officers, employees, and agents. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described herein. This indemnification obligation is conditioned upon the performance of the duty of the party seeking indemnification (indemnified party) to serve the other party (indemnifying party) with written notice of an actual or pending claim, within thirty (30) calendar days of the indemnified party's notice of such actual or pending claim or cause of action. The indemnifying party shall not be liable for reimbursement of any attorney's fees and costs incurred by the indemnified party due to said party exercising its right to participate with legal counsel.

11. 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.

12. Failure to declare a breach or the actual waiver of any particular breach of this 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, including another breach of the same provision.

13. 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 or provisions shall not be held to render any other provision or provisions of this Agreement unenforceable.

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

15. Except as otherwise expressly provided by this Agreement, all or any 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.

16. Pursuant to NRS Chapter 239, 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.

17. 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 or otherwise required by this Agreement.



18. 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 perform the services set forth herein.

19. 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 exclusive jurisdiction of the Nevada state district courts for enforcement of this Agreement.

20. The RTC will ensure that any reports, materials, studies, photographs, negatives, drawings, or other documents prepared in the performance of obligations under this Agreement shall be the exclusive, joint property of the RTC and the DEPARTMENT. The RTC will ensure that any consultant will not use, willingly allow, or cause to have such documents used for any purpose other than performance of obligations under this Agreement without the written consent of both the RTC and the DEPARTMENT. The RTC shall not utilize (and shall ensure any consultant will not utilize) any materials, information, or data obtained as a result of performance of this Agreement in any commercial or academic publication or presentation without the express written permission of the DEPARTMENT. The RTC (and any consultant) shall not reference an opinion of an employee or agent of the DEPARTMENT obtained as a result of performance of this Agreement in any publication or presentation without the written permission of the employee or agent to whom the opinion is attributed, in addition to the written permission of the DEPARTMENT.

21. Any alteration considered extra work shall be addressed through a written amendment to this Agreement. The amount and payment for extra work, as well as designation of responsibility for payment of such work, shall be specified in such amendment.

22. Any recipient or subrecipient of funds under this Agreement agrees to comply with the Federal Funding Accountability and Transparency Act and implementing regulations at 2 CFR Part 170, including Appendix A, available at <http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf>.

23. 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 in the public or any member thereof a third party beneficiary status hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.

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. This Agreement constitutes the entire agreement of the parties and 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.

RTC Washoe

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

\_\_\_\_\_

\_\_\_\_\_

Director

\_\_\_\_\_  
Name and Title (Print)

Approved as to Legality and Form:

\_\_\_\_\_

\_\_\_\_\_

Deputy Attorney General

\_\_\_\_\_  
Name and Title (Print)

Approved as to Form:

\_\_\_\_\_  
Attorney

SAMPLE