



REGIONAL TRANSPORTATION COMMISSION

Metropolitan Planning • Public Transportation & Operations • Engineering & Construction

Metropolitan Planning Organization of Washoe County, Nevada

MEETING DATE: July 16, 2021

AGENDA ITEM 4.8

From: Mark Maloney, Director of Public Transportation and Operations

RECOMMENDED ACTION

Approve an Interlocal Cooperative Agreement (ICA) with the Nevada Department of Transportation to provide funding to the RTC for the ED Pass Program in the amount of \$200,000.

BACKGROUND AND DISCUSSION

The ED Pass program allows all University of Nevada, Reno and Truckee Meadows Community College students, faculty and staff to ride all RTC fixed route services by showing the driver their school ID. Since its inception, ridership at both schools has increased by over 40% even through the pandemic. Approval of the Cooperative Agreement (ICA) with the Nevada Department of Transportation will allow the RTC to receive funding for the ED Pass Program. The current Transportation Act provides funding for all modes of transportation under which the ED Pass Program is eligible for ninety-five percent (95%) federal funds and five percent (5%) RTC funds. This agreement authorizes the state to utilize \$200,000 in CMAQ funds to reimburse the RTC for 95% of program related expenses. The remaining 5% of the expenses are paid by the RTC as the required local match for these federal funds. The project is included in the current Regional Transportation Improvement Program (RTIP).

FISCAL IMPACT

The reimbursable not-to-exceed amount is \$200,000.

PREVIOUS ACTIONS BY BOARD

Feb. 21, 2020 Approved the Interlocal Cooperative Agreement to provide funding to the RTC for implementation of the ED Pass Program.

ATTACHMENT(S)

- A. Interlocal Agreement between Nevada Department of Transportation and RTC

COOPERATIVE AGREEMENT

This Agreement is 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 Regional Transportation Commission of Washoe County, 1105 Terminal Way, Reno, NV 89502, hereinafter called the "RTC".

WITNESSETH:

WHEREAS, a Cooperative Agreement is defined pursuant to Nevada Revised Statutes (NRS) 277.110 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 Chapter 408 of the Nevada Revised Statutes, the Director of the DEPARTMENT may enter into those agreements necessary to carry out the provisions of the Chapter; and

WHEREAS, NRS 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 NRS 277.080 to 277.110, inclusive; and

WHEREAS, the purpose of this Agreement is to provide funding to the RTC for the implementation of the ED PASS Grant Program which will provide transit passes to all University of Nevada, Reno (UNR) and Truckee Meadows Community College (TMCC) students, faculty and staff, hereinafter called the "PROJECT;" and

WHEREAS, the current Transportation Act provides funding for all modes of transportation under which this PROJECT is eligible for ninety-five percent (95%) federal funds and five percent (5%) matching funds; and

WHEREAS, the PROJECT has been approved for Federal Congestion Mitigation and Air Quality (CMAQ) funds, Catalog of Federal Domestic Assistance (CFDA) Number CFDA 20.205; and

WHEREAS, the ED PASS Program, to be provided by the RTC will be of benefit to the DEPARTMENT, the RTC, and to the people of the State of Nevada; and

WHEREAS, the parties hereto are 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

1. To provide the DEPARTMENT with an analysis of student, faculty, and staff commuting needs, program design and implementation, ongoing program evaluation and consulting, bus pass subsidy program newsletters and mass mailings, print/radio/TV promotion, community education programs, student and university target marketing, flex-fare transit programs, and coordinated transportation programs.

2. To bill the DEPARTMENT quarterly and upon completion of the PROJECT for actual PROJECT costs (with supporting documentation) of which ninety-five percent (95%) of the eligible PROJECT costs will be reimbursed with CMAQ funds in a total amount not to exceed Two Hundred Thousand and No/100 Dollars (\$200,000.00). The RTC is responsible for the five percent (5%) match of Ten Thousand Five Hundred Twenty-Seven and No/100 Dollars (\$10,527.00). The RTC will provide supporting documentation to be audited to confirm that work performed conforms to DEPARTMENT and Federal Highway Administration guidelines.

3. During the performance of this Agreement, the RTC, for itself, its assignees, and successors in interest agrees as follows:

a. Compliance with Regulations: The RTC shall comply with all of the regulations relative to nondiscrimination in federally-assisted programs of 49 CFR Part 21 as they may be amended from time to time (hereinafter "Regulations"), which are herein incorporated by reference and made a part of this Agreement.

b. Nondiscrimination: The RTC, with regard to the professional services performed by it during the Agreement, shall not discriminate on the grounds of race, color, religion, sex, sexual orientation, gender identity or expression, age, disability or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The RTC shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices, when this Agreement covers a program set forth in Appendix B of the Regulations.

c. Solicitations for Subcontracts, Including Procurement of Materials, and Equipment: In all solicitations either by competitive bidding or negotiation made by the RTC for professional services to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the RTC of the subcontractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, religion, sex, sexual orientation, gender identity or expression, age, disability or national origin.

d. Information and Reports: The RTC shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its facilities as may be determined by the DEPARTMENT or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of the RTC is in the exclusive possession of another who fails or refuses to furnish this information, the RTC shall so certify to the DEPARTMENT, or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.

e. Sanctions for Noncompliance: In the event of the RTC noncompliance with the nondiscrimination provisions of this Agreement, the DEPARTMENT shall impose such Agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

1. Withholding of payments to the RTC under this Agreement until the RTC complies, and/or

2. Cancellation, termination or suspension of this Agreement, in whole or in part.

f. Agreements with subcontractors will include provisions making all subcontractor records available for audit by the DEPARTMENT and/or the FHWA.

g. Incorporation of Provisions: The RTC will include the provisions of Paragraphs (a) through (f) above in every subcontract, including procurement of materials and leases of equipment, unless exempt by Regulations, order, or instructions issued pursuant thereto. The RTC will take such action with respect to any subcontract or procurement as the DEPARTMENT or the FHWA may direct as a means of enforcing such provisions, including sanctions for non-compliance. In the event the RTC becomes involved in, or is threatened with, litigation by a subcontractor or supplier as a result of such direction, the RTC may request the DEPARTMENT to enter into such litigation to protect the interests of the DEPARTMENT, and the RTC may request the United States to enter into such litigation to protect the interests of the United States.

ARTICLE II - DEPARTMENT AGREES

1. To fund ninety-five percent (95%) of the PROJECT with CMAQ funds, estimated to be and not to exceed Two Hundred Thousand and No/100 Dollars (\$200,000.00).

2. To establish and maintain a budget for the ED Pass Program PROJECT. This budget will be maintained by the Multimodal and Program Development (MPD) Division of the DEPARTMENT, and all invoices shall be submitted to the MPD Division for approval and reimbursement.

ARTICLE III - IT IS MUTUALLY AGREED

1. The term of this Agreement shall be from the date first written above through and including September 30, 2022.

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

3. 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.

4. 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:

Kristina L. Swallow, P.E., Director
Attn.: Sondra Rosenberg, Assistant Director, Planning
Nevada Department of Transportation
Division: Multimodal and Program Development
1263 South Stewart Street
Carson City, Nevada 89712
Phone: 775-888-7440
Fax: 775-888-7202
Email: srosenberg@dot.nv.gov

FOR RTC:

Bill Thomas, Executive Director, RTC Washoe
Regional Transportation Commission of Washoe County
1105 Terminal Way
Reno, NV 89502
Phone: 775-328-2012
Email: bthomas@rtcwashoe.com

5. The RTC's match will be calculated as the applicable percentage of the total PROJECT costs eligible for Federal funding, plus all costs not eligible for Federal funding.

6. Should this Agreement be terminated by the RTC prior to completion of the PROJECT, the RTC will reimburse the DEPARTMENT for all improvement costs incurred up to the point of Agreement termination and all costs incurred by the DEPARTMENT because of this Agreement's termination.

7. The RTC agrees to pay actual PROJECT costs whether they be greater than or less than the estimates shown herein.

8. The RTC will ensure that any reports, materials, studies, photographs, negatives, drawings or other documents prepared in the performance obligations under this Agreement shall be the exclusive, joint property of the RTC and the DEPARTMENT. The RTC will ensure any subconsultant 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 subconsultant 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 subconsultant) 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.

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 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.

12. Failure to declare a breach or the actual waiver of any particular breach of this Agreement or any of 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 a breach of the same term.

13. An alteration ordered by the DEPARTMENT, which substantially changes the services provided for by the expressed intent of this Agreement will be considered extra work and shall be specified in a written 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.

14. 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.

15. 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.

16. Except as otherwise expressly provided within 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.

17. 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.

18. 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 are maintained. Such records and documentation shall be maintained for three (3) years after final payment is made.

19. 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.

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

21. 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.

22. Pursuant to NRS 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.

23. 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 to be kept confidential by this Agreement.

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

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.

Regional Transportation Commission of
Washoe County

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

Bill Thomas, AICP
Executive Director

Kristina Swallow
Director

Approved as to Legality and Form:

Deputy Attorney General