



REGIONAL TRANSPORTATION COMMISSION

Metropolitan Planning • Public Transportation & Operations • Engineering & Construction

Metropolitan Planning Organization of Washoe County, Nevada

MEETING DATE: July 16, 2021

AGENDA ITEM 4.9

From: Mark Maloney, Director of Public Transportation and Operations

RECOMMENDED ACTION

Approve an Interlocal Cooperative Agreement with the Nevada Department of Transportation to receive and use Congestion Mitigation and Air Quality (CMAQ) and Surface Transportation Block Grant (STBG) federal funds in the amount of \$1,250,000.00 for the RTC Trip Reduction Program.

BACKGROUND AND DISCUSSION

Since 1996, the RTC has operated a program aimed at reducing the number of trips made by single occupancy vehicles. Major components of the trip reduction program, marketed under the name RTC SMART TRIPS, include web-based and App trip matching services, subsidized vanpool and bus pass programs, and bicycle and pedestrian promotion. This new agreement provides funds to the RTC for the implementation of a Comprehensive Trip Reduction/Regional Rideshare Program in Washoe County for one year. Further, it authorizes the state to utilize up to \$1,250,000 in CMAQ and STBG funds to reimburse the RTC for 95% of eligible trip reduction program expenses. The remaining 5% of the expenses is paid by the RTC as the required local match for the federal funds in the amount of \$62,500. The project is included in the current Regional Transportation Improvement Program (RTIP).

FISCAL IMPACT

Funding for the trip reduction program is included in the FY 2022 Board approved budget.

PREVIOUS ACTIONS BY BOARD

Aug 21, 2020 Approved the cooperative agreement with the Nevada Department of Transportation to receive and use Congestion Mitigation and Air Quality (CMAQ) and Surface Transportation Block Grant (STBG) federal funds in the amount of \$1,250,000.00 for the RTC Trip Reduction Program; authorized the Executive Director to execute the agreement.

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, 1105 Terminal Way, Reno, NV 8952, hereinafter called the "RTCWA".

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 RTCWA for the implementation of the Travel Demand Management Program (TDMP), hereinafter called the "PROJECT;" and

WHEREAS, the Fixing America's Surface Transportation Act (FAST 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 TDMP services to be provided by the RTCWA will be of benefit to the DEPARTMENT, the RTCWA, 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 - RTCWA AGREES

1. To provide the DEPARTMENT with a PROJECT, which promotes and assists the public and local businesses in the use of alternative modes of transportation, such as public transit, carpooling/vanpooling, bicycling, walking, telecommuting, and flexible work schedules. The goal of the program is to reduce the overall number of single occupant trips with emphasis on commuter work trips, thus improving air quality and mobility in Washoe County and the surrounding areas of the county. The PROJECT will be accomplished through the use of various

marketing tools, such as brochures, advertisements, and employee/ employer incentives focused on increasing awareness of public transportation options, fuel conservation, and the long-term benefits of improved air quality and associated environmental factors.

2. To provide the DEPARTMENT with an analysis of employee commuting needs; employer program design and implementation; ongoing program evaluation and consulting; bus pass subsidy program; carpool/vanpool program; biking promotions; newsletters and mass mailings; print/radio/TV promotion; community education programs; student and university target marketing; flex-fare transit programs; and coordinated transportation programs.

3. All services and incentives provided under the PROJECT shall be in accordance with the 23 CFR Part 420(A) Sections 420.103 through 420.121, inclusive. All costs applied against the grant must be necessary and justifiable for the proper and efficient accomplishment of project objectives and meet the other criteria for allowable costs in the applicable cost principles cited in 2 CFR part 200, Subpart E.

4. To bill the DEPARTMENT upon completion of the PROJECT for actual PROJECT costs (with supporting documentation) of which ninety-five percent (95%) in CMAQ funds of the eligible PROJECT costs will be reimbursed not to exceed One Million Two Hundred Thousand Fifty Thousand and No/100 Dollars (\$1,250,000.00). The RTCWA is responsible for the five percent (5%) match of Sixty-Five Thousand Seven Hundred Ninety and No/100 Dollars (\$65,790.00) per year. The RTCWA will provide supporting documentation to be audited to confirm that work performed conforms to DEPARTMENT and Federal Highway Administration guidelines.

5. In accordance with 2 CFR Subpart 200.328, the RTCWA will provide the DEPARTMENT with quarterly reports describing how the RTC has promoted the PROJECT in Washoe County. The quarterly reports shall identify the program's established goals and clearly identify a description of work accomplished. Accurate, current, and complete disclosure of financially assisted activities must be made in accordance with DEPARTMENT's financial reporting requirements. The RTCWA must maintain records, which adequately identify the source and application of funds provided for financially assisted activities. Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contracts, and sub-grant award documents. The report (narrative) must be submitted quarterly with the RTCWA's request for reimbursement. This report shall include samples of any promotional materials and/or incentive/marketing materials proposed for the program. Any change of work must be approved through an updated work program amendment prior to work being done.

ARTICLE II - DEPARTMENT AGREES

1. To fund ninety-five percent (95%) of the PROJECT with CMAQ funds and STBG funds, estimated to be and not to exceed One Million Two Hundred Thousand Fifty Thousand and No/100 Dollars (\$1,250,000.00) per year.

2. To establish and maintain a budget for the TDMP. This budget will be maintained by the Transportation Multimodal Planning Division of the DEPARTMENT, and all invoices shall be submitted to the Transportation Multimodal Planning 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. In the event that the RTCWA performs or causes to be performed any work after: (a) the Agreement's expiration date as set forth within this Agreement, as it may be amended from time to time through written amendment signed by the parties hereto and approved by appropriate official action of the DEPARTMENT's governing body, prior to such expiration date; or (b) termination of this Agreement prior to the expiration date set forth within this Agreement; then the DEPARTMENT shall make no payment for work performed following the expiration or termination dates, and the RTCWA shall forfeit any and all right to payment for such work.

4. Neither the State of Nevada, the DEPARTMENT, nor any of their departments, divisions, agencies, officers, directors, agents, contractors, and employees, shall have authority to extend this Agreement beyond the expiration date set forth within this Agreement, unless such extension is set forth within a written amendment signed by the parties hereto and approved by appropriate official action of the DEPARTMENT's governing body prior to such expiration date. The RTCWA shall not rely upon any oral or written representations expressed extrinsic to a written amendment signed by the parties hereto and approved by appropriate official action of the DEPARTMENT's governing body prior to such expiration date, purporting to alter or amend this Agreement, including, but not limited to, representations relating to the extension of the Agreement's expiration date.

5. Paragraphs 1 through 5 of this Article III - It is Mutually Agreed, shall survive the termination and expiration of this Agreement.

6. 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.

7. 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
Program Development Division
1263 South Stewart Street
Carson City, Nevada 89712
Phone: (775) 888-7440
Fax: (775) 888-7202
E-mail: srosenberg@dot.nv.gov

FOR RTCWA:

William A. Thomas, Executive Director
Attn: Amy Cummings, Director of Planning
Regional Transportation Commission of Washoe County
1105 Terminal Way, Suite 300
Reno, NV 89502
Phone: (775) 348-0400

Fax: (775) 348-0450
E-mail: acummings@rtcwashoe.com

8. Should this Agreement be terminated by the RTCWA prior to completion of the PROJECT, the RTCWA 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.

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

10. The RTCWA 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 RTCWA and the DEPARTMENT. The RTCWA 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 RTCWA and the DEPARTMENT. The RTCWA 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 RTCWA (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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

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

23. 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.

24. 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.

25. 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.

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

27. 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

William A. Thomas, AICP, Executive Director

Director

Approved as to Legality and Form:

Deputy Attorney General

