

Item # 5-3A

**City of Carson City
Agenda Report**

Date Submitted: 6-26-07

Agenda Date Requested: 7-5-07

Time Requested: Consent

To: Mayor and Supervisors

From: Fire Department

Subject Title: Action to approve an agreement to allow the State of Nevada to keep the U.S. Dept. of Homeland Security, Homeland Security Grant Program funds which will be used to achieve communications interoperability within the State of Nevada.

Staff Summary: Carson City, along with all other Nevada counties, is being asked by the State of Nevada - Department of Public Safety, Division of Emergency Management, to sign an agreement allowing the State to utilize U.S. Department of Homeland Security grant funds to perform various projects aimed at improving state-wide radio interoperability.

Type of Action Requested: (check one)
☐ Resolution ☐ Ordinance
☒ Formal Action/Motion ☐ Other (Specify)

Does This Action Require A Business Impact Statement: ☐ Yes ☒ No

Recommended Board Action: I move to approve an agreement to allow the State of Nevada to keep the U.S. Dept. of Homeland Security, Homeland Security Grant Program funds which will be used to achieve communications interoperability within the State of Nevada

Explanation for Recommended Board Action: The U.S. Department of Homeland Security (DHS) provides grant money to states and local governments for various homeland security projects. These grants are passed through the states to local governments. DHS requires 80% of the money to pass to local governments. In the case of radio interoperability, the magnitude of projects is so great that combining resources and performing high-level radio work at a state-wide level is more beneficial to all of the citizens of Nevada.

Applicable Statute, Code, Policy, Rule or Regulation: NRS 277.110

Fiscal Impact: No fiscal impact

Explanation of Impact: While grant money may be available to local governments, the State isn't required to provide money to each local government for each project listed. It is possible that we could get a small portion of the grant money if we don't sign this agreement, but we are not guaranteed to get enough money, specifically for radio projects, to carry out any meaningful projects.

Funding Source: N/A

Alternatives: As noted in the explanation of fiscal impact, we could refuse to sign the agreement, but still not be guaranteed of receiving any money. In addition, refusing to sign the agreement would not be in the best interest of developing state-wide coalitions to combat homeland security issues.

Supporting Material: Cooperative Agreement

Prepared By: R. Stacey Giomi, Fire Chief

Reviewed By: Randy S. Giomi
(Fire Chief)

Date: 6/26/07

[Signature]
(City Manager)

Date: 6/26/07

Melanie B. Baskette
(District Attorney)

Date: 6-26-07

[Signature]
(Finance Director)

Date: 6/26/07

Board Action Taken:

Motion: _____

1) _____

Aye/Nay

2) _____

(Vote Recorded By)

COOPERATIVE AGREEMENT BETWEEN PUBLIC AGENCIES

An Agreement Between the State of Nevada
Acting By and Through Its
State of Nevada

Department of Information Technology
400 West King Street, Suite 300
Carson City, Nevada 89701
(775) 684-4333, Fax (775) 684-5846

and

Department of Public Safety
Division of Emergency Management
2478 Fairview Drive
Carson City, Nevada 89701
(775) 687-0300, Fax (775) 687-0322

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

WHEREAS, it is deemed that the cooperative action as hereinafter set forth between the parties is in the best interests of the State of Nevada;

NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

1. REQUIRED APPROVAL. This Agreement shall not become effective until and unless approved by appropriate official action of the governing body of each party.
2. DEFINITIONS. "State" means the State of Nevada and any state agency identified herein, its officers, employees and *immune contractors* as defined in NRS 41.0307.
3. AGREEMENT TERM. This Agreement shall be effective upon approval to June 30, 2008, unless sooner terminated by either party as set forth in this Agreement.
4. TERMINATION. This Agreement may be terminated by either party prior to the date set forth in paragraph (3), provided that a termination shall not be effective until 30 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. NOTICE. 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 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 above.
6. INCORPORATED DOCUMENTS. The parties agree that the scope of the cooperative action shall be specifically described in accordance with State Administrative Manual § 0308.0; this Agreement incorporates the following attachments in descending order of constructive precedence:

ATTACHMENT AA: SCOPE OF COOPERATIVE AGREEMENT AND ACTION

7. ASSENT. The parties agree that the terms and conditions listed on incorporated attachments of this Agreement are also specifically a part of this Agreement and are limited only by their respective order of precedence and any limitations expressly provided.

8. INSPECTION & AUDIT.

a. Books and Records. Each party agrees to keep and maintain under general accepted accounting principles full, true and complete records, agreements, books, and documents as are necessary to fully disclose to the State or United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with all state and federal regulations and statutes.

b. Inspection & Audit. Each party agrees that the relevant books, records (written, electronic, computer related or otherwise), including but not limited to relevant accounting procedures and practices of the party, financial statements and supporting documentation, and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location where such records may be found, with or without notice by the State Auditor, Employment Security, the Department of Administration, Budget Division, the Nevada State Attorney General's Office or its Fraud Control Units, the State Legislative Auditor, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives.

c. Period of Retention. All books, records, reports, and statements relevant to this Agreement must be retained a minimum three years and for five years if any federal funds are used in this Agreement. The retention period runs from the date of termination of this Agreement. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.

9. INDEMNIFICATION.

a. 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, arising out of any alleged negligent or willful acts or omissions of the party, its 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 in this paragraph.

b. The indemnification obligation under this paragraph is conditioned upon receipt of written notice by the indemnifying party within 30 days of the indemnified party's actual notice of any actual or pending claim or cause of action. The indemnifying party shall not be liable to hold harmless any attorneys' fees and costs for the indemnified party's chosen right to participate with legal counsel.

10. INDEPENDENT PUBLIC AGENCIES. The parties are associated with each other only for the purposes and to the extent set forth in this Agreement, and in respect to performance of services pursuant to this Agreement, each party is and shall be a public agency separate and distinct from the other party and, subject only to the terms of this Agreement, shall have the sole 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.

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

12. OWNERSHIP OF PROPRIETARY INFORMATION. Unless otherwise provided by law any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code (which is intended to be consideration under this Agreement), or any other documents or drawings, prepared or in the course of preparation by either party in performance of its obligations under this Agreement shall be the joint property of both parties.

13. PUBLIC RECORDS. Pursuant to NRS 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 made confidential by law or a common law balancing of interests.

14. CONFIDENTIALITY. 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.

15. PROPER AUTHORITY. 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 in paragraph (6).

16. GOVERNING LAW; JURISDICTION. 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.

17. SEVERABILITY. If any provision contained in this Cooperative Agreement between public agencies is held to be unenforceable by a court of law or equity, this Cooperative Agreement between public agencies shall be construed as if such provision did not exist and the nonenforceability of such provision shall not be held to render any other provision or provisions of this Cooperative Agreement between public agencies unenforceable.

18. ENTIRE AGREEMENT AND MODIFICATION. This Agreement constitutes the entire agreement of the parties and such are 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, approved by the Office of the Attorney General.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed and intend to be legally bound thereby.

Daniel Stockwell, Director, Dept. Information Technology

Date

Frank Siracusa, Chief, Div. of Emergency Management

Date

Approved as to form by:

DEM Senior Deputy Attorney General

On _____
(Date)



Department of Public Safety
Division of Emergency Management

SCOPE OF COOPERATIVE AGREEMENT AND ACTION

STATEWIDE INTEROPERABLE COMMUNICATIONS INVESTMENT

as partially funded through the

**FFY06 U.S. Department of Homeland Security (DHS),
Homeland Security Grant Program (HSGP)**

Definitions:

Homeland Security Grant Program (HSGP), as defined: The HSGP is a grant program that is provided by the U.S. Department of Homeland Security and contains five funding sources as follows: State Homeland Security Program (SHSP); Urban Area Security Initiative (UASI) which is solely dedicated for use by Clark County; Law Enforcement Terrorism Prevention Program (LETPP); Citizen Corps Program (CCP); and Metropolitan Medical Response System (MMRS) which is solely dedicated for use by the City of Las Vegas.

Investment Justification (IJ), as defined: As required by the DHS, an "investment justification" is the method utilized for the purpose of establishing a statewide project for consideration in the application review process. This method of application includes a project scope, anticipated budget, milestones, impact statements, etc. An investment justification is required for all statewide projects that are priorities of the DHS and are therefore mandatory, as well as any that a state determines to be a priority and desires to implement. Currently, there are eight priorities that are federally mandated and four that the State of Nevada determined as priorities. These IJs are derived from the State's Enhancement Plan which is designed to improve the security of the State of Nevada, its citizens and visitors.

Nevada Communications Steering Committee (NCSC), as defined: Was established by Executive Order of the Governor of the State of Nevada and is a body of state and local representatives charged with overseeing Nevada's efforts to implement interoperable communications initiatives, as well as developing and maintaining the Nevada Interoperable Communications Plan.

State Administrative Agency (SAA), as defined: The SAA is the agency within each state that is designated as the single point of contact with the DHS relative to managing federal homeland security grant programs. The SAA is responsible for the financial, administrative and program management of the various grant programs provided to the State. The Department of Public Safety, Division of Emergency Management (DEM) has been designated as the SAA for the State of Nevada.

Purpose and Justification

Funding from the U.S. Department of Homeland Security (DHS) for Federal Fiscal Year 2006 (FFY06) was received by the Department of Public Safety, Division of Emergency Management (DEM). The DEM is the designated State Administrative Agency (SAA) with the DHS on behalf of the State of Nevada.

Beginning with FFY06, the DHS modified its requirements for the HSGP by requiring that the States prepare their applications with the concept of statewide projects versus jurisdiction/discipline specific needs. This required that the State develop team leaders and ultimately establish project lead agencies. The Nevada Department of Information Technology (DOIT) was identified by the HSGP Working Group as the project lead agency for the Interoperable Communications IJ.

All Investment Justifications (IJ's) for FFY06 were funded by one or a combination of the funding sources provided in the HSGP. For the purposes of the Interoperable Communications IJ, the funding sources supporting its implementation are the SHSP and UASI programs.

The Interoperable Communications IJ was developed for the purpose of improving communications capabilities between jurisdictions and various disciplines at the federal, state, local and tribal levels for response during an emergency or disaster and daily interaction. To further the Interoperable Communications IJ, the State of Nevada is entering into this agreement with the applicable governmental agencies of this State to seek agreement and cooperation in this statewide effort. This agreement is further required to satisfy the requirements of the DHS that no more than 20% of the SHSP grant funds may be retained by the State without agreement of the local governments.

This agreement is further developed based on the nature of interoperable communications and the necessity to provide for a practical means of coordination and implementation of project goals and objectives. While a jurisdiction has an obligation to provide for a basic communications operability for use by its public safety employees, providing

interoperable communications or extending operational links outside of the jurisdiction, is not a standard obligation of any specific jurisdiction. Theoretically, statewide communications interoperability is a shared responsibility of all jurisdictions and disciplines and must benefit the state in its entirety. However, the provision of this service or coordination is the assigned responsibility of no single governmental entity or agency. If interoperable communications is to be achieved, there must be an assignment of responsibility for the purpose of coordinating and implementing common components. That assignment, with DOIT as the primary lead agency, is the essence of this agreement.

Background

- The funding and responsibility for interoperable communications is not ascribed to any one governmental jurisdiction, rather it is a cooperative function between jurisdictions, bridging together public safety communications systems that are otherwise independent and maintained separately. The goal is to ultimately bridge together different jurisdictions and public safety disciplines for the safety of the public.
- The need to strengthen interoperable communications has been identified by DHS as a National Priority, and has further been identified in the State Homeland Security Strategy and Enhancement Plan resulting in the creation of an IJ reflecting that it is a priority for Nevada.
- Representatives of state, local and tribal entities have worked collaboratively to address this issue and generate plans for interoperable communications in Nevada, including the Nevada Communications Interoperability Plan v.2, scheduled to be updated by December, 2007. (See: http://nitoc.nv.gov/IT_NCSC_DocsInterest.htm). This plan has been developed in compliance with the provisions of Nevada Revised Statutes, Chapter 239C.160(5) and has been approved by the Nevada Commission on Homeland Security.
- The Nevada Communications Interoperability Plan v.2 calls for application to DHS for grant funding assistance for interoperable communications. The application itself was subsequently approved by the Nevada Commission on Homeland Security pursuant to the provisions of Nevada Revised Statutes, Chapter 239C.300. Such application was generated by a working group on interoperable communications consisting of statewide representatives including members of the Nevada Communications Steering Committee (NCSC).
- The DEM, as the designated SAA, must distribute DHS grant funds according to applicable federal guidance and regulations.
- Pertinent HSGP federal regulations require that grant funds be split on an 80/20 basis, with at least 80% being provided to local government, and no more than 20% to be retained by the State unless the State and local government(s) have entered into an "MOU" (Agreement) allowing the State to retain the funds for projects that will benefit local government(s).
- DHS has required and encouraged the development of a multi-jurisdictional/multi-discipline cooperative methodology for the application

of grant funding and the creation of interoperable communications plans without regard to the aforementioned federal grant fund distribution requirements. Simply stated, DHS seeks to have state and local governments working in partnership to establish or enhance preparedness capabilities.

Roles and Responsibilities

- **Cooperation.** Cooperation among the governmental entities within the State of Nevada is the essence of this agreement. The signatories therefore pledge continuing cooperation to implement interoperable communications among the multiple governmental entities and public safety agencies within Nevada.
- **Oversight.** Oversight and overall direction of the implementation of interoperable communications within Nevada shall be performed by the NCSC in accordance with the Governor's Executive Order. The NCSC or its designated agent, as the responsible oversight body, shall report quarterly to the Nevada Commission on Homeland Security in its role representing Nevada's security interests. Further, the NCSC shall also report quarterly to the DEM in its role as the SAA representing the grantor interest of the DHS, and to the DOIT in its role as the project management administrator (subgrantee to the DEM).
- **Contract Administration.** Administrative services for procurement of goods and services may be performed by any competent and willing governmental entity within Nevada, as designated by the NCSC, on behalf of all of Nevada governmental entities for the purposes of fulfilling the terms of this agreement. Such contract administration service provider shall provide quarterly reports to the DEM in its role as the SAA representing the grantor interest of the DHS, and to the DOIT in its role as the project management administrator (subgrantee to the DEM).
- **80/20 Split Requirement.** To the extent federal grant funding requirements and regulations allow, the local government signatories hereby agree to allow the distribution of DHS, SHSP grant funds in excess of 20% to be retained by the State for purposes of funding the statewide IJ for interoperable communications as provided in this agreement only. The use of these funds are to be made in accordance with the Nevada Communications Interoperability Plan v.2 and the specifics of that plan as incorporated within the FFY06 HSGP IJ for Interoperable Communications as established by the HSGP Working Group and subsequently approved by the Nevada Commission on Homeland Security.
- **Fiduciary Agent.** The Nevada Department of Administration shall act as the fiduciary agent for the purpose of administering the majority of SHSP funds specifically identified for the procurement of gateways and interconnects resulting in the need for this agreement to address the 80/20 split requirements.
- **Tribal Nations and Federal Agency Relations.** The State of Nevada strongly encourages the 17 counties within Nevada to work with and invite participation from the tribal nations and federal agencies to achieve interoperability within their respective jurisdictions.

FFY06 HSGP Interoperable Communications Project and Budget Components

Reference is made to the Nevada Communications Interoperability Plan (NCIP) v.2. The complete NCIP is available at: http://nitoc.nv.gov/IT_NCSC_DocsInterest.htm.

Total FFY06 HSGP funding for the Interoperable Communications IJ: **\$6,075,000**

Total funding consists of the following:	\$3,650,000 SHSP
	<u>\$2,425,000 UASI</u>
	\$6,075,000

Note: UASI funds may only be subgranted to and utilized by a designated UASI jurisdiction, which in Nevada is Clark County.

The following is an itemization of the project components and associated funding:

- **Engineering - \$434,500 (\$334,500 SHSP and \$100,000 UASI):**

Purpose:

- Complete technical data collection
- Perform detailed engineering for interconnects and gateways
- Produce a comprehensive statewide interoperable frequency plan

NCIP Action Items Addressed: T1, T3, T5 and T6

Lead Administrative Agency: Nevada DOIT

- **Standard Operating Procedures (SOP's) and Training Materials/Program Development - \$694,800 SHSP**

Purpose:

- Develop Standard Operating Procedures for use statewide by all public safety communications users
- Develop common nomenclature, terms and definitions
- Develop training materials and syllabus
- Develop policy for jurisdictional adoption
- Facilitate jurisdictional adoption

NCIP Action Items Addressed: S1, S2, S3, E1 and E5

Lead Administrative Agency: Las Vegas Metropolitan Police Department

▪ **Microwave Engineering - \$180,200 (\$55,200 SHSP and \$125,000 UASI)**

Purpose:

- Complete detailed technical plans and engineering for the expansion of multiple-user microwave system within Clark County

NCIP Action Items Addressed: T5

Lead Administrative Agency: Clark County Department of Information Technology

▪ **Gateways and Interconnects - \$2,400,000 SHSP**

Purpose:

- Procure, install and implement interconnections between major radio systems and geographically distributed gateways between radio bands

NCIP Action Items Addressed: T3 and T4

Lead Administrative Agency: Nevada Department of Administration

▪ **Radio Cache - \$500,000 UASI**

Purpose:

- Procure, maintain and hold available for statewide use, a cache of portable radios

NCIP Action Items Addressed: T2

Lead Administrative Agency: Las Vegas Metropolitan Police Department

▪ **Southern Nevada Area Communications Council (SNACC) Simulcast - \$1,700,000 UASI**

Purpose:

- Engineer and implement a simulcast radio system for use within designated interoperable talk groups ("channels") in the Clark County urban area and is being matched by \$1,700,000 of local funds.

NCIP Action Items Addressed: T3

Lead Administrative Agency: SNACC/Clark County

▪ **Program Administration – \$165,500 SHSP**

- Program Management relative to implementation of the identified statewide Interoperable Communications IJ initiatives (not to exceed \$56,000.00).
- Management and Administrative costs (not to exceed \$109,500 or 3% of the subawarded amount) associated with the financial and administrative management of the grants funds provided for implementation of the Interoperable Communications IJ.

Lead Administrative Agency: Nevada Department of Information Technology

Note: Funds budgeted for the components listed above that are not fully utilized or required for their stated purpose may be redistributed to other project components within this agreement as deemed appropriate by the project lead agency and upon approval of the SAA (DEM) which is obtained through a "Project Change Request."

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The participant's signature below acknowledges and agrees to the provisions of this agreement as set forth above.

Nevada Communications Steering Committee
(NCSC) Authorized Signature

Date

Nevada Department of Information Technology
Authorized Signature

Date

Nevada Department of Administration
Authorized Signature

Date

Southern Nevada Area Communications Council
Authorized Signature

Date

Carson City Authorized Signature

Date

Churchill County Authorized Signature

Date

Clark County Authorized Signature

Date

Douglas County Authorized Signature

Date

Elko County Authorized Signature

Date

Esmeralda County Authorized Signature

Date

Eureka County Authorized Signature

Date

Humboldt County Authorized Signature

Date

Lander County Authorized Signature

Date

Lincoln County Authorized Signature

Date

Lyon County Authorized Signature

Date

Mineral County Authorized Signature

Date

Nye County Authorized Signature

Date

Pershing County Authorized Signature

Date

Storey County Authorized Signature

Date

Washoe County Authorized Signature

Date

White Pine County Authorized Signature

Date

.....

The Division of Emergency Management's signature below acknowledges and accepts the above agreement in its capacity as the SAA.

Frank Siracusa, Chief
Department of Public Safety, DEM

Date