

Item #5C

**City of Carson City
Agenda Report**

Date Submitted: March 1, 2007

Agenda Date Requested: 3/15/2007

Time Requested: 5 minutes

To: Board of Supervisors

From: Linda Ritter, City Manager

Subject Title: Action to approve a cooperative agreement between the State of Nevada, Division of State Lands, Division of Building, Public Works Board and Carson City whereby property will be provided by the State of Nevada for a public plaza adjacent to the Laxalt Building.

Staff Summary: Staff has been working with representatives of the Carson Nugget in establishing a public plaza on public property between the Carson Nugget and the Laxalt Building. This effort will provide a demonstration of the vision recently adopted by the Board for downtown Carson City. Details of the actual design of the site along with funding plan for the project will come to the Board under a separate agreement. This interlocal agreement provides that the State will provide the property and Carson City will build and maintain the improvements.

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 a cooperative agreement between the State of Nevada, Division of State Lands, Division of Building, Public Works Board and Carson City whereby property will be provided by the State of Nevada for a public plaza adjacent to the Laxalt Building.

Explanation for Recommended Board Action: This agreement gives Carson City the ability to go forward with a project. Should the design and funding plan not be approved, we will be able to cancel this interlocal. Thus, approval of this interlocal agreement does not bind Carson City to going forward with the project.

Applicable Statute, Code, Policy, Rule or Regulation: n/a

Fiscal Impact: n/a

Explanation of Impact: n/a

Funding Source: n/a

Alternatives: Do not approve.

Supporting Material: Interlocal Agreement

Prepared By: Linda Ritter

Reviewed By: _____

(Department Head)

Date: _____

(City Manager)

Date: 3-6-07

(District Attorney)

Date: 3-6-07

Board Action Taken:

Motion: _____

1) _____

Aye/Nay

2) _____

(Vote Recorded By)

COOPERATIVE AGREEMENT

This Agreement is made and entered into this ____ day of _____, 2007, by and between the STATE OF NEVADA, acting by and through its Division of State Lands, for and on behalf of the Division of Building and Grounds, and the State Public Works Board, hereinafter called STATE, and Carson City, Nevada, a consolidated municipality under the Nevada Revised Statutes, hereinafter called the CITY.

WITNESSETH:

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, hereinafter called an Agreement; and

WHEREAS, the CITY desires to develop its downtown consistent with an overall downtown plan prepared in 2006 and which includes construction of improvements on State lands; and

WHEREAS, the CITY desires to develop a Public Plaza for the residents of the city, tourists, and State employees on the site of the Department of Tourism located at 401 North Carson Street (Laxalt Building); and

WHEREAS, the Plaza will consist of paving, landscape planters, small retaining walls, lighting, street furniture, including tables and benches; and

WHEREAS, the STATE wishes to cooperate with the CITY and believes that the construction of the Plaza will improve the downtown area and benefit residents, tourists, and State employees; and

WHEREAS, the purpose of this Agreement is to identify STATE and CITY responsibilities associated with the improvements for the Plaza and on-going maintenance of the Plaza; and

WHEREAS, the CITY is willing and able to perform the services described herein and has agreed to pay for the cost of improvements and on-going maintenance of the improvements.

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

ARTICLE I – CITY AGREES:

1. To provide to STATE, including the Division of Buildings and Grounds, the Public Works Board and Nevada State Historic Preservation Office, detailed plans for construction of the Plaza for review and approval.
2. To obtain a Right-of-Entry Authorization before actually proceeding with the construction.

3. To construct, either through CITY'S own forces or by contract, Plaza improvements solely at CITY cost.
4. To perform all inspections and testing to insure improvements are constructed according to the approved plans.
5. To provide written verification that all work was performed in accordance with plans and specifications. All inspections and testing reports will be submitted to the Public Works Board at the completion of the project.
6. To maintain improvements, including, but not necessarily limited to, cleaning Plaza of trash, debris, dirt, grime, graffiti and emptying of trash receptacles on a regular basis.
7. To pay any utility costs associated with Plaza.
8. Upon State's request, to remove improvements upon termination of the Agreement and to restore the area to its original condition.

ARTICLE II - STATE AGREES:

1. To allow construction of Plaza improvements in accordance with approved plans.
2. The State Public Works Board will review plans for the Plaza Improvements and provide comments within thirty (30) days of submittal by CITY.

ARTICLE III - IT IS MUTUALLY AGREED

1. The State may file a Notice of Non-compliance should the City not construct the project according to approved plan and state may, if not corrected within 90 days, make corrections to the project and invoice the City for the cost of such corrections.
2. The term of this Agreement shall be from the date first written above continuing until any party terminates the Agreement pursuant to Paragraph 2 below.
3. This Agreement may be terminated by mutual consent of all parties or unilaterally by any party without cause with 30 days notice.
4. This Agreement does not transfer ownership of real property.
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 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 STATE:

Pamela B. Wilcox, Administrator
Nevada Division of State Lands
901 South Stewart Street
Carson City, NV 89701
(775) 684- 2720

pwilcox@lands.nv.gov

WITH COPY TO:

Division of Buildings and Grounds
406 E. Second Street, Suite 1
Carson City, NV 89701
(775) 684-1800

FOR CITY:

Linda Ritter, City Manager
City of Carson City
201 North Carson Street, #2
Carson City, Nevada 89706
(775) 887-2355 Ext 1001
lrutter@ci.carson-city.nv.us

6. 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 the party, its officers, employees and agents within the course and scope of their public duty or their employment and performed or omitted in good faith. 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 actual or pending claim, within 30 days of the indemnified party's notice of 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.
7. The parties do not waive and intend to assert available NRS Chapter 41 liability limitations in all cases. The parties shall not be subject to punitive damages.
8. Failure to declare a breach or the actual waiver of any particular breach of the Agreement or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.
9. This Agreement and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada. The parties consent to the jurisdiction of the Nevada State Court for enforcement of this Agreement.
10. 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.
11. 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.
12. It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of the 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.
13. Each party agrees to keep and maintain under generally accepted accounting principles full, true and complete records and documents pertaining to this Agreement and present, at any reasonable time, such information for inspection, examination, review, audit and copying at any office where such records and documentation is maintained.

14. 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.
15. 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.
16. Neither party shall assign, transfer or delegate any rights, obligations or duties under this Agreement without the prior written consent of the other party.
17. 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.
18. 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 confidential by law or a common law balancing of interests.
19. 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.
20. This Agreement shall not become effective until and unless approved by appropriate official action of the governing body of each party.
21. 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.

CARSON CITY

State of Nevada, acting by and through its

Marv Teixeira, Mayor

Department of Conservation and Natural
Resources – Division of State Lands

Alan Glover, Clerk

Department of Administration – Division of
Buildings and Grounds

Recommended:

Linda Ritter, City Manager

Department of Administration - Public
Works Board

Approved as to Form:

Approved as to Form:

Chief Deputy District Attorney

Deputy Attorney General