

Item # 9

**City of Carson City
Agenda Report**

Date Submitted: August 26, 2008

Agenda Date Requested: September 4, 2008

Time Requested: 10 minutes

To: Mayor and Board of Supervisors

From: Development Services Director

Subject Title: Action to accept a letter of intent from the Bank of the West to abate the nuisance at 1200, 1210, 1220, 1230, 1240, and 1300 Race Track Road, Carson City, Nevada 89701 (APN 009-311-64) and authorize the mayor to sign the letter of intent.

Staff Summary: By this action, the Board will enter into an agreement with Bank of the West to abate the nuisance at the Schulz Ranch/Race Track.

Type of Action Requested:

☐ Resolution

☐ Ordinance

☒ Formal Action/Motion

☐ Other (Specify)

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

Recommended Board Action: I move to accept a letter of intent from the Bank of the West to abate the nuisance at the Schulz Ranch/Race Track (APN 009-311-64) and authorize the mayor to sign the letter of intent.

Explanation for Recommended Board Action: The Board has the authority to approve.

Applicable Statute, Code, Policy, Rule or Regulation: CCMC Title 8.09

Fiscal Impact: N/A

Explanation of Impact: N/A

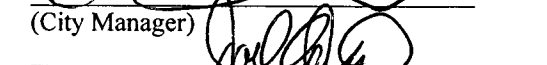
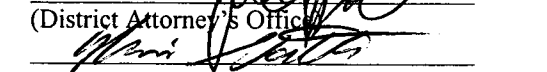
Funding Source: N/A

Alternatives: 1) Refer back to staff or
2) Deny

Supporting Material: 1) The Bank of the West Letter of Intent

Prepared By: Lena Tripp, Senior Permit Technician

Reviewed By:


(Development Services Director)

(City Manager)

(District Attorney's Office)

Date: 8/26/08
Date: 8/26/08
Date: 8/26/08
8-26-08

Board Action Taken:

Motion: _____

1) _____ Aye/Nay
2) _____

(Vote Recorded By)

August 27, 2008

Carson City, Nevada
Consolidated Municipality and State Capital
Development Services Department
2621 Northgate Lane, Suite 6
Carson City, Nevada 89706
Attention: Walter A. Sullivan, AICP
Development Services Director

Re: Racetrack Nuisance Abatement - Letter of Intent

Dear Mr. Sullivan:

As you know, Bank of the West ("**Bank**"), made a loan in the amount of \$3,055,000 ("**Loan**") to Reynan & Bardis (Carson), LLC as Borrower ("**Borrower**") to fund costs of development of the land ("**Land**") encumbered by that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Nevada) ("**Deed of Trust**") recorded on September 26, 2005 as file number 343318 in the Official Records of Carson City ("**City**"). The obligations of Borrower to repay the Loan, and certain other obligations of Borrower to Bank, are secured by the Deed of Trust. The Loan is in default, is due in full, and has not been repaid. Bank has been evaluating its remedies under the Loan, the Deed of Trust and other security documents (collectively "**Loan Documents**"), and in furtherance of that, Bank officers and their counsel conferred with you and Mayor Marv Teixeira and Supervisor Pete Livermore by telephone on July 31, 2008 regarding the existing tentative map for the Land, which unless extended, will expire on August 21, 2008. While Bank has made no decision on whether or when to foreclose on the Land, you made clear that the abandoned raceway located on the Land is a nuisance and that the City requires that the nuisance be abated without further delay. You have proposed that if Bank can commit to fund cost of abatement of the nuisance in accordance with the bid and scope of work by Canyon Creek Construction, Inc. dated August 14, 2008 ("**Canyon Bid**") attached hereto as Exhibit A, the City will in exchange extend the existing tentative map for the Land ("**Map**") for one additional year and will waive landfill fees and bonding requirements for the debris removal from the Land under the Canyon Bid. Bank is willing to enter into an agreement with the City pursuant to this letter, pursuant to which Bank will make a protective advance under the loan documents governing the Loan in an amount sufficient to pay the Canyon Bid, on the following terms and conditions, which shall be deemed acceptable by the City when approved by the relevant governing body of the City:

1. The City has examined the Canyon Bid, is aware of its scope and conditions, and City acknowledges by its acceptance of the terms contained in this letter, that the scope of the Canyon Bid constitutes the full extent of the required abatement ("**Abatement Work**"), and no other additional work will be required by City as a condition to extending the Map. There are no other conditions that will be required to be satisfied by Borrower or Bank as a condition to extension of the Map. The Bank's monetary obligation to pay for the Abatement Work shall not exceed the bid amount in the Canyon Bid, viz., \$76,872.00 plus the City demolition permit fee of 1% of the contract amount except at Bank's sole discretion.

2. The City will waive and/or pay all waste disposal fees for the refuse materials that City has required to be removed from the Land pursuant to the Canyon Bid. In this connection, the City will be responsible for the cost, if any, of testing the refuse materials for contamination if required by the landfill dump site, and the City accepts any risk of additional disposal costs if such materials prove to be contaminated by hazardous materials.

3. The City will waive or pay all fees for any permits required for the Abatement Work to be performed pursuant to the Canyon Bid, other than the demolition permit fee of 1% of the contract amount of \$768.72. The Bank intends to arrange for the start of the Abatement Work forthwith after this letter is accepted by the City and a formal agreement is signed by the parties, and any necessary permits are issued, and will arrange for the Abatement Work to proceed with diligence thereafter. City shall allow up to six (6) months from the start date for completion of the Abatement Work, and shall promptly certify to Bank when the Abatement Work has been completed in accordance with the Canyon Bid.

4. As conditions precedent to the Bank's obligation to pay and perform the Abatement Work pursuant to this letter, which are conditions for Bank's sole benefit and may be waived by Bank in Bank's sole discretion, (a) Bank will require that Borrower provide to Bank a written waiver in form and content acceptable to Bank releasing all claims against Bank arising from or relating to any entry on the Land by Bank, by or through its agents, in order to perform the Abatement Work, and acknowledging that by such action Bank has not taken possession of the Land and has not agreed to accept a deed-in-lieu of the Land in exchange for the Loan, but is instead making a protective advance to protect the value of the collateral for the Loan, as authorized by the Loan Documents; and (b) Bank will require an endorsement to the Title Policy insuring the lien of the Deed of Trust, assuring Bank that there are no intervening liens or other exceptions to title to the Land that are not permitted exceptions under the Loan Documents.

5. For the sake of clarity, Bank does not intend to foreclose on the Land immediately and is under no obligation to do so. Accordingly, by its agreement to pay and perform the Abatement Work, Bank shall be under no obligation to develop the Land, or to provide further funds to develop the Land to Borrower or anyone else, including without limitation, any purchaser at a foreclosure sale for the Land, should that occur.

6. In exchange for the Bank agreeing to undertake payment and performance of the Abatement Work pursuant to the Canyon Bid in accordance with this letter, City shall extend the tentative map for the Land for one (1) year to expire August 21, 2009. In addition, City will cooperate with Bank or any third party purchaser at a foreclosure sale of the Land (collectively, "New Owner") and permit any such New Owner full enjoyment of the rights under the existing tentative map without additional conditions or modifications by the City.

7. This letter agreement is to be superseded by a formal agreement. Said agreement is to be drafted by Bank's attorney and approved by both Bank's and City's attorneys in their sole and absolute discretion.

Walter Sullivan
August 27, 2008
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8. This letter summarizes our negotiations to date and is not a contract for the Abatement Work. It shall constitute a Letter of Intent by the Bank only upon Bank's receipt of written acceptance by City together with notice from the City that the tentative map for the Land has been extended as set forth above, subject only to entering into a formal written agreement with the Bank. The parties may be legally bound only by the formal agreement. This letter shall be null and void unless Bank has received a counterpart of this letter signed by City or City's agent by noon on August 22, 2008. Time is of the essence in this proposal.

BANK OF THE WEST,
a California banking corporation

ALICIA ANDERSON,
Vice President

AGREED AND ACCEPTED this _4th_____
day of September, 2008

Carson City, Nevada
Consolidated Municipality and State Capital

By _____
Mayor Marv Teixeira

Attest: _____
Alan Glover, Clerk

Walter Sullivan
August 27, 2008
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EXHIBIT A

Canyon Bid dated August 14, 2008



Canyon Creek Construction, Inc.

A General Engineering Contractor

NV Lic. #29210 CA Lic. #788203

August 14, 2008

Robert B. Kaplan
Jeffer, Mangles, Butler & Marmaro, LLP
Two Embarcadero Center, 5th Floor
San Francisco, California 94111-3824

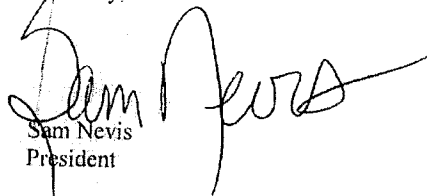
**Re: City of Carson Race Track
Abatement—Canyon Creek
Proposal**

Dear Mr. Kaplan:

Enclosed you will find Canyon Creek Constructions Inc. quote for the above referenced project, along with a map (Exhibit A) to define the scope of work.

If you have any questions please contact me at the number below.

Thank you for your time
Sincerely,


Sam Nevis
President

CC: Jeff Hartman

P.O. Box 21270
Carson City, NV 89721
Office (775) 882-6622
Fax (775) 882-6621



Canyon Creek Construction, Inc.

A General Engineering Contractor

NV Lic. #29210 CA Lic. #788203

P.O. Box 21270, Carson City, NV 89721

Office (775)882-6622 Fax (775)882-6621

To:	Robert B. Kaplan	Contact:	
Address:	San Francisco, CA	Phone:	
Project Name:	City Of Carson Race Track Abatement	Fax:	
Project Location:		Bid Number:	
		Bid Date:	

Item #	Item Description	Estimated Quantity	Unit	Unit Price	Total Price
01-1010	Demolition & Beautification Of Existing Carson City Race Track	1.00	LS	\$76,872.00	\$76,872.00
Total Bid Price:					\$76,872.00

Notes:

- Proposal Conditions based on normal working shifts, availability of materials and Equipment, weather and ground conditions permitting.
- Price excludes fees, bonds, permits, engineering, surveying, soil testing, topsoil, landscaping ALL trees to remain, concrete or form work, cold weather protection/blanketing, electrical, telephone, tv or gas trenching/installation, footing excavation or backfill, any items not specifically included above.
- Bid items listed are approximate quantities for plans and/or information provided to CANYON CREEK CONSTRUCTION, INC.
- All work done by CANYON CREEK CONSTRUCTION, INC. will be in accordance with "Orange Book" standards.
- Prices subject to award within (30) Days.
- Price includes dust control for CANYON CREEK, INC. operations only.
- Bid excludes removal and disposal of contaminated or hazardous materials
- Price reflects scope of work as defined on document hereon forward referred to as Exhibit A

Payment Terms:

Payment is to be made upon receipt of billing. A 1 1/2% per month late charge will be charged on all thirty day past due accounts.

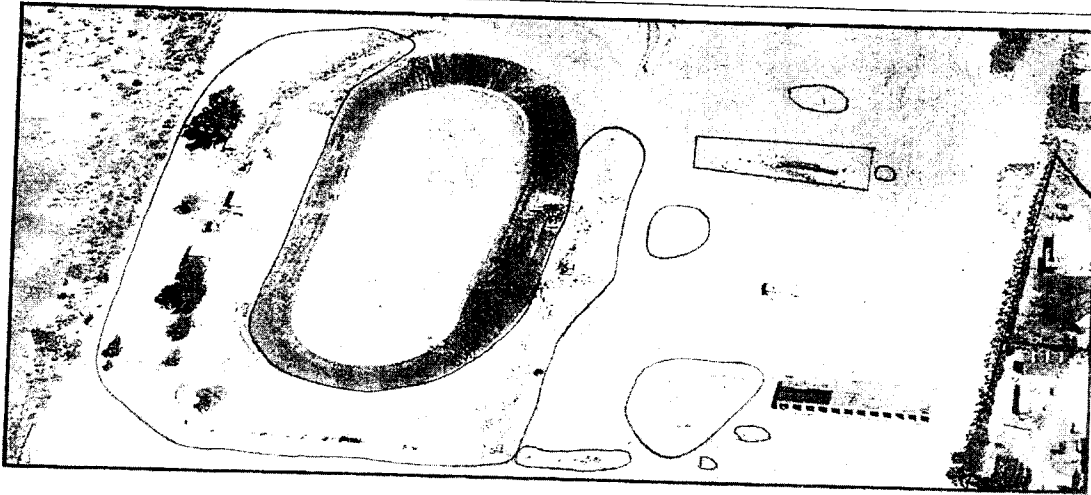
ACCEPTED: The above prices, specifications and conditions are satisfactory and are hereby accepted. Buyer: _____ Signature: _____ Date of Acceptance: _____	CONFIRMED: Canyon Creek Construction Inc. Authorized Signature: _____ Estimator: _____
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Live Search Maps

****Exhibit A****

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For the best possible print results, click the printer icon on the Live Search Maps page.



- TREES TO REMAIN
- ITEMS CIRCLED IN RED TO BE REMOVED

<http://maps.live.com/Default.aspx?MSID=b50b9a2469e94c4c8cf26e7d71491dae>

7/31/2008