

City of Carson City
Agenda Report

Item # 5-2

Date Submitted: February 10, 2009

Agenda Date Requested: February 19, 2009
Time Requested: Consent

To: Mayor and Supervisors

From: Parks and Recreation Department

Subject Title: Action to appoint and authorize the Mayor, the City Clerk Recorder, or designee to swear Mr. John Wright, MAI, as the review-appraiser for Carson City with regards to the self-contained appraisal prepared by Mr. William G. Kimmel for the Horse Creek Ranch conservation easement located in Carson City, APN 7-051-78.

Staff Summary: Appraisals are required by state law in order to determine the value of property to be purchased. This action is for appointment of Mr. John Wright, MAI, as the review-appraiser for the property, as required by N.R.S. 244.275. The approximate cost of the review-appraisal is \$4,000 which will be paid from the Open Space Question 18 fund.

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 appoint and authorize the Mayor, the City Clerk Recorder, or designee to swear Mr. John Wright, MAI, as the review-appraiser for Carson City with regards to the self-contained appraisal prepared by Mr. William G. Kimmel for the Horse Creek Ranch conservation easement located in Carson City, APN 7-051-78.

Explanation for Recommended Board Action: State law requires the appointment of an appraiser who shall be sworn to make a true appraisal of the subject property according to the best of his knowledge and ability. The appraisal is required in order to determine the value of properties in question. On January 15, 2009, the Board of Supervisors took action to appoint Lee Smith and Lyn Norberg as the review appraisers for this transaction. Due to prior commitments, Mr. Smith and Mr. Norberg will not be able to complete this job until April or May of 2009. They recommended that we find another person if a shorter time frame was needed. Mr. Wright will be able to do our job by March 6, 2009. For clarification, this action does not require compliance with the list of appraisers that the Board approved as part of AB 312 as codified in N.R.S. 244.2795. This list is used only when the City wishes to sell or lease City property. The provisions of N.R.S. 244.275 are used in this case where the City is considering buying property.

Applicable Statute, Code, Policy, Rule or Regulation: N.R.S. 244.275

Fiscal Impact: Approximately \$4,000

Explanation of Impact: This action is required by N.R.S. 244.275. An appraisal is required in order to establish the fair market value of the property, and in this specific case our appointed appraisers will determine compliance with adopted standards and will determine if the value is reasonable.

Funding Source: Open Space Professional Services 254-5047-452-03-09

Alternatives:

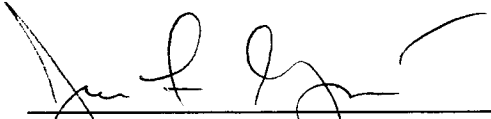
Not to approve and swear Mr. John Wright, MAI, as the review-appraiser for the Carson City Open Space Program for this appraisal.

Supporting Material:

Copy of N.R.S. 244.275

Proposal prepared by John S. Wright, MAI

Prepared By:

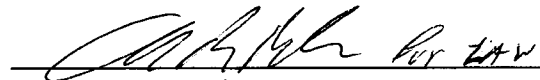

Juan F. Guzman, Open Space Manager

Date: 2/9/09

Reviewed By:


Roger Moellendorf, Parks & Recreation Director

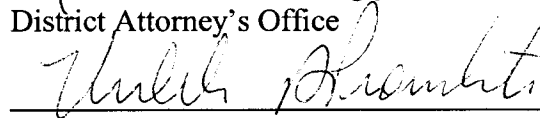
Date: 2/10/09


Larry Werner, City Manager

Date: 2/10/09


District Attorney's Office

Date: 2/10/09


Finance Department

Date: 2/10/09

Board Action Taken:

Motion: _____

1: _____

Aye/Nay

2: _____

(Vote Recorded By)

NRS 244.275 Purchase or lease of property for use of county; appraisal.

1. 1. The boards of county commissioners shall have power and jurisdiction in their respective counties:

(a) To purchase any real or personal property necessary for the use of the county.

(b) To lease any real or personal property necessary for the use of the county.

2. No purchase of real property shall be made unless the value of the same has been previously appraised and fixed by one or more competent real estate appraisers to be appointed for that purpose by the county commissioners. The person or persons so appointed shall be sworn to make a true appraisalment thereof according to the best of their knowledge and ability. Purchases of real property from other federal, state or local governments are exempt from such requirement of appraisalment.

[Part 8:80:1865; A 1871, 47; 1931, 52; 1933, 203; 1953, 681]—(NRS A 1957, 662; 1960, 374; 1965, 737; 1967, 126; 1969, 676, 1393; 1975, 570)

PROPOSAL FOR PROFESSIONAL VALUATION SERVICES

Appraisal Review Assignment

DATE OF PROPOSAL: 2/06/09

PARTIES TO PROPOSAL:

Client:

CARSON CITY
PARKS AND RECREATION DEPARTMENT
PARKS DIVISION
JUAN GUZMAN, OPEN SPACE MANAGER
3303 BUTTI WAY, BUILDING #9
CARSON CITY, NV 89701
PHONE: 775-887-2263, EXT. 1004
FAX: 775-887-2145
E-MAIL: JGUZMAN@CI.CARSON-CITY.NV.US

Appraiser:

John S. Wright, MAI
John S. Wright & Associates
1344 Disc Drive #460
Sparks, NV 89436
Phone 775-741-2823
Fax 775-453-2675
E-mail jswright@sbcglobal.net

Client hereby engages Appraiser to complete an appraisal review assignment as follows:

PROPERTY IDENTIFICATION

Assessors Parcel Number: 007-051-78
Property Owner: William Michael Fagen, Trustee

PROPERTY TYPE

The property being valued in the appraisal to be reviewed is a Conservation Easement encompassing approximately 175.30 acres of the 201 acre Horse Creek Ranch owned by the property owner listed above.

INTEREST VALUED

The value of a Conservation Easement.

INTENDED USERS

The appraisal review is intended to be used by the client and property owner

INTENDED USE

The review is intended to be used to support the acquisition of the easement.

Note: No other use is intended by Appraiser. The intended use as stated shall be used by Appraiser in determining the appropriate Scope of Work for the assignment.

TYPE OF VALUE

Market value as defined by Nevada Revised Statutes.

DATE OF VALUE

December 22, 2008, which was the date of value used by the appraiser.

ADDITIONAL PROPERTY TO BE VALUED

None

HYPOTHETICAL CONDITIONS, EXTRAORDINARY ASSUMPTIONS

These will be determined in consultation with the client through the course of developing the appraisal review.

APPLICABLE REQUIREMENTS OTHER THAN THE UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE (USPAP)

The Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute
Nevada State Law

ANTICIPATED SCOPE OF WORK

Comprehensive, involving a Standard 3 USPAP Review of an appraisal of the proposed conservation easement prepared by Mr. William G. Kimmel, MAI, SREA the results of which are set forth in a December 22, 2008 Summary Appraisal Report.

Site visit:

A site inspection of the subject is anticipated.

Valuation approaches:

In completing this assignment, I will analyze the valuation approaches used by the appraiser and will consider any other appropriate techniques.

APPRAISAL REPORT

Report option:

Summary report

Form or format:

Narrative

CONTACT FOR PROPERTY ACCESS, IF APPLICABLE

William Fagen: 775-849-0615

PROPOSED IMPROVEMENTS

None

PROPERTIES UNDER CONTRACT FOR SALE

If the subject property is currently under contract for sale, the client will use all reasonable efforts to provide the undersigned with a copy of any purchase or sale agreements.

ADDITIONAL DOCUMENTATION

Upon receiving notice of the Client's acceptance of this proposal, a formal request for additional documentation will be provided. I would anticipate that at a minimum I would require the lease with Western Nevada Materials, LLC, including any amendments, as well as documentation regarding the water rights to be valued.

DELIVERY DATE

MARCH 6, 2009, ASSUMING THAT I RECEIVE NOTICE TO PROCEED BY FEBRUARY 20, 2009

The delivery date set out above is based upon the undersigned's best estimate. The Client is advised that the completion of an appraisal assignment requires the cooperation of numerous parties that do not have a vested interest in completion of the appraisal assignment. As a result, unexpected delays can occur. If delays are experienced, the client would be notified as soon as reasonably possible with a revised delivery date.

DELIVERY METHOD

Hand delivery, e-mail or other method chosen by Client.

NUMBER OF COPIES

To be determined

PAYMENT TO APPRAISER

For Appraiser's performance of the services outlined in this Proposal, or any Appendices thereto, Client shall pay and reimburse appraiser as follows:

Proposal for Professional Valuation Services

Completion of review report: \$4,000

PAYMENT DUE DATE

The office policy of John S. Wright & Associates requires a 50% retaining prior to initiating work on an assignment, with the balance of the billing due concurrent with completion of the work. However, as the client is Carson City, I will waive the required retainer. It is expressly understood the fee for completion of this assignment is due and payable within 30 days of completion of the review and issuance of an invoice for the services rendered.

RETAINER

None required

WHEN APPRAISER'S OBLIGATIONS ARE COMPLETE

Appraiser's obligations pursuant to this Proposal are complete when the Appraisal Review Report in the form specified in this Proposal is delivered to Client pursuant to this Proposal. Appraiser agrees to be responsive to Client's legitimate inquiries regarding the contents of the appraisal report after delivery. However, work preparing for any trial, deposition time, etc., is not considered part of the appraisal review assignment and will be billed on the hourly rate of \$250.00. Included in the agreed upon fee for completion of the review is one post review meeting with the Carson City Board of Supervisors, if required to answer any questions regarding the review.

CONFIDENTIALITY

Appraiser will maintain the confidentiality of any Client information that is "Confidential Information" as defined in the Uniform Standards of Professional Appraisal Practice, using the same degree of care Appraiser uses in maintaining his or her own Confidential Information. Notwithstanding the foregoing, information or data will not be considered Client's "Confidential Information" unless such information or data is (1) first disclosed by Client in tangible form and is conspicuously marked "Confidential," "Proprietary" or words having similar meaning, or (2) first disclosed in intangible form and orally identified as "Confidential Information" at the time of disclosure and is subsequently summarized in tangible form conspicuously marked "Confidential" within 30 days of the original disclosure. "Confidential Information" shall not include (1) any information that is already in the possession of Appraiser and not subject to any duty of confidentiality; (2) information learned or deduced by Appraiser without any reference to Client's Confidential Information; (3) information in the public domain; or (4) information required to be disclosed by operation of law or judicial or administrative rule, regulation or subpoena.

USE OF EMPLOYEES OR INDEPENDENT CONTRACTORS

Appraiser may use employees or independent contractors at Appraiser's discretion to complete the assignment, unless otherwise agreed by the parties. Notwithstanding, Appraiser shall sign the written Appraisal Report and take full responsibility for the services provided as a result of this Proposal.

SERVICES NOT PROVIDED

The fees set forth in this Proposal apply to the appraisal services rendered by Appraiser as set forth in this Proposal. Unless otherwise specified herein, Appraiser's services for which the fees in this Proposal apply shall not include meetings with persons other than Client or Client's agents or professional advisors. Any additional services performed by Appraiser not set forth in this Proposal will be performed on terms and conditions set forth in an amendment to this Proposal, or in a separate Proposal.

CHANGES TO PROPOSAL

Any changes to the assignment as outlined in this Proposal shall necessitate a new Proposal. The identity of the Client, intended users, or intended use; the date of value; type of value; or property appraised cannot be changed without a new Proposal.

CANCELLATION

Client may cancel this Proposal at any time prior to Appraiser's delivery of the Appraisal Report upon written notification to Appraiser. Client shall pay Appraiser for work completed on assignment prior to Appraiser's receipt of written cancellation notice, unless otherwise agreed upon by Appraiser and Client in writing.

GOVERNING LAW AND JURISDICTION

This Proposal shall be governed by the law of the state in which Appraiser's office as specified in this Proposal is located, exclusive of that state's choice of law rules. The parties agree that any legal proceeding brought by either party to interpret or enforce this Proposal, or to enforce an arbitration award entered

Proposal for Professional Valuation Services

pursuant to this Proposal, shall be brought in a state or federal court having jurisdiction over the location of Appraiser's office as specified in this Proposal, and the parties hereby waive any objections to the personal jurisdiction of said court.

APPRAISER INDEPENDENCE

Appraiser cannot agree to provide a value opinion that is contingent on a predetermined amount. Appraiser cannot guarantee the outcome of the assignment in advance. Appraiser cannot ensure that the opinion of value developed as a result of this Assignment will serve to facilitate any specific objective of Client or others or advance any particular cause. Appraiser's opinion of value will be developed competently and with independence, impartiality and objectivity.

NOTICES

Any notice or request required or permitted to be given to any party shall be given in writing and shall be delivered to the receiving party by: a) registered or certified mail, postage prepaid; (b) overnight courier, such as Federal Express, United Parcel Service or equivalent; or (c) hand delivery. The address for delivery of any notice shall be the address for the party as specified in this Proposal, or at such other address as party may designate by written notice to the other party in conformance with this paragraph. Unless otherwise specified herein, notice shall be effective the date it is postmarked or given to a third party for delivery to the receiving party, whether or not the receiving party signs for or accepts delivery of such notice.

NO THIRD-PARTY BENEFICIARIES

Nothing in this Proposal shall create a contractual relationship between Appraiser or Client and any third party, or any cause of action in favor of any third party. This Proposal shall not be construed to render any person or entity a third party beneficiary of this Proposal, including, but not limited to, any third parties identified herein.

OWNERSHIP OF WORK PRODUCT

The possession of the Appraisal Report, or any copy or portion thereof, by Client or any third party does not include or confer any rights of publication or redistribution of the Appraisal Report other than to such persons or entities identified in this Proposal who shall be advised in writing of Appraiser's rights under this Proposal prior to their receipt of the Appraisal Report. All rights, title and interest in (1) any data gathered by Appraiser in the course of preparing the Appraisal Report (excluding any data furnished by or on behalf of Client) and (2) the content of the Appraisal Report prepared pursuant to this Proposal shall be vested in Appraiser. Subject to the foregoing, Client shall have the right to possess a copy of the Appraisal Report and to disclose the report to Client's attorneys, accountants or other professional advisors in the course of Client's business affairs relating to the property that is the object of the Appraisal Report, provided that such attorneys, accountants or advisors are advised in writing of Appraiser's rights under this Proposal prior to receipt of such Appraisal Report.

MEDIATION & ARBITRATION

In the event of a dispute concerning the subject matter of this Proposal, the parties shall in good faith attempt to resolve such dispute by negotiation between the parties' principals, or, if such negotiation is unsuccessful, by mediation conducted by a third-party mediator. If such mediation results in an impasse, the parties shall submit their dispute to binding arbitration. Such mediation or, if necessary, binding arbitration shall be conducted pursuant to the mediation procedures or the commercial arbitration rules of the American Arbitration Association. Any arbitration shall be conducted in the city in which Appraiser's office as specified herein is located. The parties shall share equally the costs of any mediation. In the event of binding arbitration, the arbitrators shall, in addition to any relief appropriate to be awarded to the prevailing party, enter an award in favor of the prevailing party for that party's costs of the arbitration, including the party's reasonable attorneys' fees and arbitration expenses incurred in prosecuting or defending the arbitration proceeding. Subject to the right of the prevailing party to recover its share of the costs of the arbitration services pursuant to the arbitrator's award, the costs of the arbitration services shall be borne equally by the parties. If the prevailing party seeks judicial confirmation of any arbitration award entered pursuant to this Proposal, the court shall, in addition to any other appropriate relief, enter an award to the prevailing party in such confirmation proceeding for its reasonable attorneys' fees and litigation expenses incurred in confirming or successfully opposing the confirmation of such an award.

SPECIAL OR CONSEQUENTIAL DAMAGES

Neither party shall under any circumstances be liable to the other party for special, exemplary, punitive or consequential damages, including, without limitation, loss of profits or damages proximately caused by loss of use of any property, whether arising from either party's negligence, breach of the Proposal or otherwise,

Proposal for Professional Valuation Services

whether or not a party was advised, or knew, of the possibility of such damages, or such possibility was foreseeable by that party. In no event shall Appraiser be liable to Client for any amounts that exceed the fees and costs paid by Client to Appraiser pursuant to this Proposal.

ASSIGNMENT

Neither party may assign this Proposal to a third party without the express written consent of the other party, which the non-assigning party may withhold in its sole discretion. In the event this Proposal is assigned by mutual consent of the parties, it shall become binding on the assigning party's permitted assigns.

SEVERABILITY

In the event any provision of this Proposal shall be determined to be void or unenforceable by any court of competent jurisdiction, then such determination shall not affect any other provision of this Proposal and all such other provisions shall remain in full force and effect.

CLIENT'S DUTY TO INDEMNIFY APPRAISER

Client agrees to defend, indemnify and hold harmless Appraiser from any damages, losses or expenses, including attorneys' fees and litigation expenses at trial or on appeal, arising from allegations asserted against Appraiser by any third party that if proven to be true would constitute a breach by Client of any of Client's obligations, representations or warranties made in this Proposal, or any violation by Client of any federal, state or local law, ordinance or regulation, or common law (a "Claim"). In the event of a Claim, Appraiser shall promptly notify Client of such Claim, and shall cooperate with Client in the defense or settlement of any Claim. Client shall have the right to select legal counsel to defend any Claim, provided that Appraiser shall have the right to engage independent counsel at Appraiser's expense to monitor the defense or settlement of any Claim. Client shall have the right to settle any Claim, provided that Appraiser shall have the right to approve any settlement that results in any modification of Appraiser's rights under this Proposal, which approval will not be unreasonably withheld, delayed or conditioned.

CLIENT'S REPRESENTATIONS AND WARRANTIES

Client represents and warrants to Appraiser that (1) Client has all right, power and authority to enter into this Proposal; (2) Client's duties and obligations under this Proposal do not conflict with any other duties or obligations assumed by Client under any Proposal between Client and any other party; and (3) Client has not engaged Appraiser, nor will Client use Appraiser's Appraisal Report, for any purposes that violate any federal, state or local law, regulation or ordinance or common law.

EXTENT OF PROPOSAL

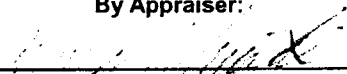
This Proposal represents the entire and integrated Proposal between the Client and Appraiser and supersedes all prior negotiations, representations or Proposals, either written or oral. This Proposal may be amended only by a written instrument signed by both Client and Appraiser.

Proposal for Professional Valuation Services

EXPIRATION OF PROPOSAL

This Proposal is valid only if signed by both Appraiser and Client within ten (10) days of the Date of Proposal specified.

By Appraiser:


(Signature)

John S. WRIGHT
(Printed name)

02/08/09
(date)

By Client:

(Signature)

(Printed name)

(date)