

City of Carson City
Agenda Report

Item # 10

Date Submitted: February 10, 2009

Agenda Date Requested: February 19, 2009

Time Requested: 10 Minutes

To: Mayor and Supervisors

From: Parks and Recreation Department

Subject Title: Action to approve templates for a "Funding Agreement" and "Deed Restriction" to be used for the reimbursement of grant awards through the State of Nevada Question-1 Conservation and Resource Protection Grant Program.

Staff Summary: The attached documents are to be used as part of the funding agreement to obtain funds that were awarded for the fee title acquisitions already completed by the Open Space Program. The "Deed Restriction Template" was negotiated by staff with the help of Supervisors Aldean and Williamson. The Open Space Advisory Committee has reviewed preliminary versions of these documents and recommends their approval by the Board of Supervisors.

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 templates for a "Funding Agreement" and "Deed Restriction" to be used for the reimbursement of grant awards through the State of Nevada Question-1 Conservation and Resource Protection Grant Program.

Explanation for Recommended Board Action: Monies have already been awarded for land acquisition purchases conducted by the Open Space Program. These documents are necessary for the State of Nevada to ensure compliance with the regulations of the Conservation and Resource Protection Question-1 Program. This request was withdrawn from the February 5, 2009, Board of Supervisors agenda at the request of staff in order to resolve issues with the State of Nevada Question-1 Program.

Applicable Statute, Code, Policy, Rule or Regulation: State of Nevada, Conservation and Resource Protection Grant Program.

Fiscal Impact: The approval of this document will facilitate Carson City in obtaining \$2.7 million on projects already completed and approximately \$4.75 million on future projects located by the Carson River.

Explanation of Impact: The Open Space acquisition account will be positively impacted by \$2.7 million.

Funding Source: State of Nevada, Conservation and Resource Protection grants (Question-1)

Alternatives: Not to accept the agreement.

Supporting Material:

Staff report from the December 15, 2008, Open Space Advisory Committee meeting
Deed Restriction template
Minutes from the December 15, 2008, Open Space Advisory Committee meeting
Funding Agreement template

Prepared By: Juan F. Guzman **Date:** 2, 9, 09
Juan F. Guzman, Open Space Manager

Reviewed By: Roger Moellendorf **Date:** 2, 10, 09
Roger Moellendorf, Parks & Recreation Director

Larry Werner **Date:** 2/10/09
Larry Werner, City Manager

Melanie Rubetta **Date:** 2/10/09
District Attorney's Office

Melanie Rubetta **Date:** 2, 10, 09
Finance Department

Board Action Taken:

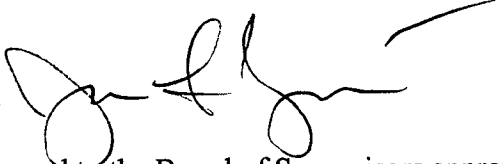
Motion: _____ 1: _____ Aye/Nay
2: _____

(Vote Recorded By)

**OPEN SPACE ADVISORY COMMITTEE
STAFF REPORT**

MEETING DATE: December ¹⁵~~16~~, 2008

AGENDA ITEM NUMBER: 3C

STAFF: Juan F. Guzman 

REQUEST: Action to recommend to the Board of Supervisors approval and use of the revised template for the funding agreement and deed conservation easement by which the State of Nevada will transfer funds to Carson City for the purchase of open space properties.

GENERAL DISCUSSION: Staff received approval from the Open Space Advisory Committee for the funding agreement and deed restriction template to be used for the funding of acquisition of properties that have received grant awards through the Question-1 Program. Supervisors Williamson and Aldean joined Joel Benton and staff in discussions with Jim Lawrence, the State Lands Director, which resulted in a more agreeable deed restriction and funding agreement template to be used by Carson City and others throughout the State of Nevada. The template is attached for your use. This template will be presented to the Board of Supervisors at their meeting in January 2009.

RECOMMENDED ACTION: Move to recommend to the Board of Supervisors approval and use of the revised template for the funding agreement and deed conservation easement by which the State of Nevada will transfer funds to Carson City for the purchase of open space properties.

A.P.N. ____ - ____ - ____

RECORDING REQUESTED BY:

Juan Guzman, Open Space Manager
3303 Butti Way, Building No. 9
Carson City, NV 89701

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WHEN RECORDED MAIL TO:

Nevada Division of State Lands
Question 1 Program
901 S. Stewart St., Suite 5003
Carson City, Nevada 89701

NONREVOCABLE AGREEMENT TO RESTRICT PROPERTY

This NONREVOCABLE AGREEMENT TO RESTRICT PROPERTY (“Agreement”) is made and entered into this ____ day of February, 2009, by and between the Consolidated Municipality of Carson City (“Grantee”), and the State of Nevada (“State”). Grantee and State are sometimes hereinafter referred to collectively as the “Parties.”

Recitals

WHEREAS, Grantee is the owner of that certain real property located in Carson City, State of Nevada, described as follows:

Carson City Assessor Parcel Number(s) 000-00-000, (hereinafter “Property”). For a complete legal description of the Property see “Exhibit A” attached hereto and incorporated herein by this reference.

WHEREAS, This Agreement is given to insure that the Property is maintained and used in a manner consistent with the regulations (NAC Section 321) adopted by the State for the Conservation and Resource Protection Grant Program, hereinafter referred to as “Question 1 Program.” Regulatory authority is provided by Subsection 1-35, Section 2 of Assembly Bill No. 9 of the 17th Special Session of the Nevada Legislature, Chapter 6, Statutes of Nevada 2001. The referenced regulations require the Nevada Division of State Lands, (hereinafter “State Lands,” an agency of the State), when entering into a Funding Agreement, to include pertinent nonrevocable deed restrictions and appropriate reversionary clauses to ensure that at all times the land is maintained in a manner consistent with the purpose of the Question 1 Program.

WHEREAS, Grantee has entered into a State Lands Question 1 Program Funding Agreement that provides funding to implement the project entitled the “_____” and which has been assigned Question 1 Program Project ID No. CA-LW-04050

WHEREAS, State Lands has authority to award grants of money from the sale of general obligation bonds to a county, or a municipality within a county for the acquisition of land and water or interests in land and water for the public benefit to protect and enhance wildlife habitat, sensitive or unique vegetation, historic or cultural resources, riparian corridors, floodplains, wetlands and other environmental resources pursuant to an adopted plan for open spaces.

Declarations

NOW, THEREFORE, in consideration of the grant funds received and the covenants and agreements contained herein, the Parties hereto agree as follows:

1. Recitals. The foregoing recitals are true and correct.
2. Authorized Uses. Pursuant to this Nonrevocable Agreement to Restrict Property, Grantee agrees that the Property will be used only for open space purposes that are consistent with the objectives for which the Property is acquired and the local jurisdictions' adopted open space plan. The Grantee further agrees that the property will be used for purposes that are consistent with the protection or enhancement of wildlife habitat, protection of sensitive or unique vegetation, protection of historic or cultural resources, protection of riparian corridors, floodplains, or wetlands, and/or to protect or preserve the benefits of the Property or natural resources within the State for the public.
3. In Event of Unauthorized Uses. If at any time the Property, or any portion of it, is used for some purpose other than that stated in Paragraph 2 above, the following actions shall be taken:
 - A. In the event of a violation or infringement, or threatened violation or infringement, of any provision of this Agreement, the State, or any person, shall give written notice to Grantee and request that the Grantee take corrective action sufficient to cure the violation or prevent the threatened violation. Grantee shall have 30 days to comply with the request. If Grantee is unable to cure the violation within the time allotted but is pursuing corrective measures with due diligence, the State may permit the Grantee a reasonable extension of time. If the State, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the permitted use of the property as described in Paragraph 2 of this Agreement, the State may pursue its remedies under this section without prior notice to Grantee or without waiting for the period provided for cure to expire. Nothing in this Agreement shall be construed to impair the State's, or any person's right to seek temporary or permanent injunctive or other relief to enforce the terms of this Agreement against a violation or threatened violation hereof.

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- B. If the Grantee fails to take corrective action to cure the violation or prevent the threatened violation pursuant to subparagraph A., the Grantee shall offer to convey the Property, for no consideration, to the State for the purposes stated in paragraph 2 above; or, if said offer is rejected by the State or if the State fails to respond to the offer within ninety (90) days of the date of the offer, then Grantee shall offer to convey the Property, for no consideration, to each reasonably identifiable Nonprofit Conservation Organization active in Nevada. For purposes of this Agreement, the term "Nonprofit Conservation Organization" means a nonprofit organization, qualified in the State, that has as one of its primary purposes the acquisition of property for the protection, preservation and/or conservation of land, water, open space and/or the natural communities, resources and wildlife located thereon.

Any offer made herein by Grantee must be made: (a) by delivering a written offer to the party to whom the offer is being made via certified U.S. Mail or hand delivery, and (b) by providing public notice of the offer, which public notice shall include, without limitation, notice of such offer by publication no less than three (3) times at one-week intervals in a newspaper of general circulation in Carson City. Both the written offer and the public notice described herein shall state that in the event multiple Parties are interested in accepting the offer and are otherwise qualified to accept the offer, the party to whom the Property will be conveyed will be determined promptly by the Grantee in its sole and absolute discretion. The written offer and public notice shall also include the date by which a qualified party must accept the offer in writing, which date shall be not less than sixty (60) days nor more than ninety (90) days after the date of third publication, and shall identify the representative to whom the written acceptance must be made and the place where such written acceptance must be delivered. The Grantee shall bear all costs for any offer required to be made by it hereunder.

Should an offer described herein be accepted, Grantee shall, at its sole cost and expense, promptly deliver to the qualified party accepting said offer, a duly executed warranty, grant bargain sale, or quitclaim deed capable of being recorded in order to convey clear title to the Property to said party subject to encumbrances imposed by the State.

If neither the State nor a qualified Nonprofit Conservation Organization has accepted Grantee's offer, Grantee shall, at the sole discretion of the State, promptly take one of the following actions (either sub-subparagraph i or sub-subparagraph ii):

- i. Sell said Property or a portion of the property as determined by the State to any other person or entity for fair market value. Upon such sale, Grantee shall promptly transmit to the State its pro rata share of the sale price of the portion of the Property sold, or the amount of the grant, whichever is greater. Upon receipt of said payment, the State shall release the Grantee from any further obligations or liabilities under this Agreement.
- ii. Remit to the State a sum equivalent to the amount of the Grant, together with interest thereon at the rate of 10% per annum, commencing from the date of the Grantee's acquisition of the Property until the date paid. Upon receipt of said payment, the State shall release the Grantee from any further obligations or liabilities under this Agreement and shall remove any deed restrictions or

other encumbrances on the Property imposed by this Agreement.

4. Voluntary Transfer of Property. In the event the Grantee desires to sell or otherwise transfer the Property, prior to any such sale or transfer of the Property by Grantee, Grantee shall offer to convey the Property, for no consideration, to the entities described in sub-subparagraph 3(B) above, subject to the same terms and conditions, and according to the same procedures, set forth therein. If, after complying with the provisions of sub-subparagraph 3(B), neither the State nor a qualified Nonprofit Conservation Organization has accepted Grantee's offer, Grantee may, at the sole discretion of the State, promptly take one of the following actions (either subparagraph A or subparagraph B):
 - A. Sell the Property to any other person or entity for fair market value, based on an appraisal of the property at the time of transfer. Upon such sale, other than to the State or a qualified Nonprofit Conservation Organization, Grantee shall promptly transmit to the State its pro rata share of the sale price of the portion of the Property sold, or the amount of the grant, whichever is greater. Upon receipt of said payment, the State shall release the Grantee from any further obligations or liabilities under this Agreement.
 - B. Promptly transmit to the State the amount of the Grant, together with interest thereon at the rate of 10% per annum, commencing from the date of the Grantee's acquisition of the Property until the date paid. Upon receipt of said payment, the State shall release the Grantee from any further obligations or liabilities under this Agreement and shall remove any deed restrictions or other encumbrances on the Property imposed by this Agreement.
5. Condemnation. Any and all funds received by Grantee in connection with any portion of the Property taken by right of eminent domain or by condemnation shall be delivered pro rata promptly to the State as reimbursement, in whole or part, for the amount of the Grant. If only a portion of the Property is taken by right of eminent domain or by condemnation, and if Grantee thereafter desires to dispose of that portion of the Property not taken by right of eminent domain or condemnation (hereinafter "the Remainder Portion"), Grantee shall offer to convey the Remainder Portion for no consideration, to the entities described in sub-subparagraph 3(B) above, subject to the same terms and conditions, and according to the same procedures, set forth therein.

If, after complying with the provisions of the preceding paragraph, neither the State nor a qualified Nonprofit Conservation Organization has accepted Grantee's offer, Grantee may sell said Remainder Portion to any other person or entity for fair market value. Upon such sale, Grantee shall promptly transmit to the State the State's pro rata share of the sale price of the Remainder Portion sold, or the amount of the grant attributable to the Remainder Portion, whichever is greater.

6. Enforcement. The State, or any person, has the right to prevent any activity or use on this property that is inconsistent with the permitted use as described in paragraph 2 of this Agreement. The terms and conditions in this Agreement may be enforced as follows:
 - A. Enforcement of the provisions of this Agreement shall be at the discretion of the enforcing party. Any forbearance in the enforcement of rights and interest under this Agreement in the event of a violation or infringement, or threatened violation or infringement, of any provision of this Agreement shall not be deemed or construed to be a waiver of such provision or of any subsequent violation or threatened violation of the same or any other provision of this Agreement, and any failure to act shall not be deemed a waiver or forfeiture of the right to enforce the provisions of this Agreement in the future.
 - B. Grantee will not be responsible for injury to or change in the property subject to this Agreement resulting from natural causes or environmental catastrophe beyond Grantee's control, such as fire, flood, storm and earth movement, or from any prudent action taken by Grantee under emergency conditions to prevent, abate, or mitigate significant injury to the property resulting from such causes.
 - C. If Grantee fails to cure a violation or threatened violation of the terms and conditions as expressed herein after receiving written notice of the violation or threatened violation, the State or any person may institute a suit to enjoin the violation or infringement and/or to require the restoration to the condition that existed prior to the violation or infringement; in addition, the State or any person enforcing this Agreement may seek damages to which they may be entitled including reimbursement to the State of all or a portion of the grant funding provided to Grantee for acquisition of the property herein. The enforcement rights under this subparagraph shall apply equally in the event of either actual or threatened violations of the provisions of this Agreement. The Grantee agrees and acknowledges that the remedies at law for any violation of the provisions of this Agreement are inadequate and that any person enforcing this Agreement shall be entitled to the injunctive relief described in this subparagraph, both prohibitive and mandatory, in addition to such other relief, including damages, to which the enforcing person may be entitled, including specific performance of the provisions of this Agreement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.
 - D. If a court determines that this Agreement has been breached Grantee will reimburse the State or any other person bringing suit for relief under this section, for reasonable costs of enforcement, including court costs, reasonable attorney's fees, and any other payments ordered by the court.
7. Recordation. This Agreement shall be recorded in the Office of the Carson City Recorder and shall run with the land.
8. Amendments. This Agreement shall not be amended except upon the written agreement of the Parties after public notice by publication no less than three (3) times at one-week intervals in a newspaper of general circulation in Carson City.

9. Entire Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the specific matters contained herein and supersedes all previous discussions, understandings and agreements.
10. Further Assurances. Additional Documents. The Parties agree to execute any and all further documents, deeds and other writings, and to undertake any further action necessary to consummate the transactions contemplated herein.
11. Authority. Grantee and State, respectively, represent and warrant that, as of the date of this Agreement, each has the full right, power and authority to enter into this Agreement and to consummate the transaction contemplated herein, and that each has duly and properly taken all action required of it, to authorize the execution, delivery and performance by it of this Agreement.
12. Binding Effect. This Agreement is binding upon the representatives, successors, and assigns of the Parties hereto.
13. Captions. The captions and headings of the sections of this Agreement are for convenience of reference only and shall not be construed in interpreting the provisions hereof.
14. Severability. If any term or provision of this Agreement is deemed unenforceable by a court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect so long as the purpose and intent of this Agreement may be achieved.
15. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the state of Nevada.
16. Attorneys Fees. In the event of any controversy, claim, or dispute relating to this Agreement or to the violation or infringement thereof, the prevailing party shall be entitled to recover from the losing party reasonable attorneys' fees and costs.

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IN WITNESS WHEREOF, the parties hereto have entered into this agreement as of
the date first written above.

STATE:

STATE OF NEVADA
Division of State Lands

By:

JAMES R. LAWRENCE
Administrator and Ex-Officio
State Land Registrar

STATE OF NEVADA)
 :SS
CITY OF CARSON CITY)

On _____, 2008
personally appeared before me, a
Notary Public, JAMES R.
LAWRENCE, Administrator and
Ex-Officio State Land Registrar,
Division of State Lands, who
acknowledged that he executed
the above document on this date.

GRANTEE:

CARSON CITY

By:

Date:

STATE OF NEVADA)
 :SS
COUNTY OF CARSON)

On _____, 2008
personally appeared before me,
a Notary Public, _____
_____, known to
me to be authorized to sign on
behalf of the above
GRANTEE, who
acknowledged that (s)he
executed the above document
on this date.

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APPROVED as to Form:

CATHERINE CORTEZ MASTO
Attorney General

By:
Douglas E. Walther
Chief Deputy Attorney General

APPROVED as to Form:

NEIL ROMBARDO
Carson City District Attorney

By:
Thoran Towler
Senior Deputy District Attorney

Exhibit A

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CARSON CITY OPEN SPACE ADVISORY COMMITTEE

Minutes of the December 15, 2008 Meeting

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Management Act earmarked through the White Pine County federal lands bill. In response to a further question, he advised that no match was required. Member Lincoln commended Mr. Guzman and Open Space Coordinator Ann Bollinger on presentation of the work program. Vice Chairperson Jacquet commended Mr. Guzman on the concise demonstration of priorities and funding. He expressed general agreement with the listed priorities, and with Member Scott's preference to emphasize acquisition of the Jarrard property with the understanding of the requirement for a willing seller.

Vice Chairperson Jacquet entertained a motion. **Member Riedl moved to recommend to the Board of Supervisors for staff to continue to work on the land transactions, capital improvements / projects, planning activities, and management activities, as presented in the staff report. Member Scott seconded the motion.** Vice Chairperson Jacquet called for public comment and, when none was forthcoming, a vote on the pending motion. **Motion carried 5-0.**

3-C. ACTION TO RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL AND USE OF THE REVISED TEMPLATE FOR THE FUNDING AGREEMENT AND DEED CONSERVATION EASEMENT BY WHICH THE STATE OF NEVADA WILL TRANSFER FUNDS TO CARSON CITY FOR THE PURCHASE OF OPEN SPACE PROPERTIES (6:44:29) - Mr. Guzman introduced this item, and reviewed the most recent revisions to the funding agreement template, in conjunction with the staff report. Member Scott expressed appreciation for the involvement of Supervisors Shelly Aldean and Robin Williamson in getting the funding agreement template approved by Division of State Lands representatives. **Member Scott moved to recommend approval of the funding agreement template by the Board of Supervisors. Member Riedl seconded the motion.** Vice Chairperson Jacquet called for public comment; however, none was forthcoming. Mr. Guzman acknowledged that approval of the funding agreement by the Board of Supervisors would result in allocation of Question #1 funding. Vice Chairperson Jacquet called for a vote on the pending motion. **Motion carried 5-0.**

3-D. DISCUSSION ONLY REGARDING THE ENVIRONMENTAL PHASE I REPORTS FOR THE WILSON, SCHULZ, LONG, AND DARLING PROPERTIES LOCATED AT THE CARSON RANGE BETWEEN ASH CANYON AND KINGS CANYON - Deferred.

4. NON-ACTION ITEMS:

STATUS REPORTS AND ANNOUNCEMENTS FROM STAFF (6:48:55) - Mr. Guzman referred to the "FYI" items included in the agenda materials. In response to a question, he provided an overview of discussion which took place between Parks Department staff and members of the Advisory Board to Manage Wildlife, as reflected in the November 10, 2008 minutes included in the agenda materials, regarding the possibility of creating an additional public access point near the Harrison Bridge at the Carson River. (6:51:48) Mr. Guzman wished the committee members Merry Christmas, and advised that this would likely be Member Perock's last meeting. He advised that both Chairperson Hartman and Member Scott had requested reappointment, and that the application period had been extended until early January.

MEMBERS' ANNOUNCEMENTS AND REQUESTS FOR INFORMATION - None.

5. FUTURE AGENDA ITEMS (6:51:28) - None.

A Funding Agreement Between the State of Nevada
Acting By and Through Its Division of State Lands and the
Conservation and Resource Protection Grant Program
(Grantor)

901 S. Stewart St., Suite 5003, Carson City, NV 89701

phone: (775) 684-2720

fax: (775) 684-2721

And

Carson City
(Grantee)

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3303 Butti Way, Building #9, Carson City, NV 89701

phone: (775) 887-2262

fax: (775) 887-2145

FOR THE PURPOSES OF acquiring a Conservation Easement and fee title land on properties collectively known as Horse Creek Ranch;

WHEREAS, at the general election on November 5, 2002 Nevada's voters approved a conservation initiative generated by Assembly Bill 9, Statutes of Nevada, 17th Special Session of the 2001 Nevada State Legislature, Chapter 104, referred to as Question 1, and authorized the issuance of general obligation bonds in the face amount of \$200,000,000 to carry out this program; and

WHEREAS, the Nevada legislature authorized the State Land Registrar to establish a conservation and resource protection grant program and administer the issuance of general obligation bonds in the face amount of \$65,500,000; and

WHEREAS, \$20,000,000 of the above \$65,500,000 is allocated to the acquisition of land and water, or interests in land and water to protect and enhance wildlife habitat, sensitive or unique vegetation, historic or cultural resources, riparian corridors, wetlands and other environmental resources pursuant to an adopted open-space plan.

WHEREAS, the State Land Registrar has determined this project is both necessary and 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 Funding Agreement shall not become effective until and unless approved by the State Land Registrar and the governing body of Carson City.
2. **DEFINITIONS.** "Grantor" means the State of Nevada and the Division of State Lands, its officers and employees. "Grantee" means Carson City. "Parties" means the Grantor and Grantee.
3. **FUNDING AGREEMENT TERM.** This Funding Agreement shall be effective from June 1, 2005 to June 30, 2007, unless sooner terminated by either party as specified in paragraph 10 herein.
4. **NOTICE.** All notices or other communications required or permitted to be given under this Funding 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 parties at the addresses specified above.

5. INCORPORATED DOCUMENTS. The parties agree that the responsibilities and duties of each party as well as the scope of the project shall be specifically described; this Funding Agreement incorporates the following attachments in descending order of constructive precedence;

- ATTACHMENT A: Question 1 Adopted Regulations
- ATTACHMENT B: Project Summary and Special Conditions
- ATTACHMENT C: Scope of Work
- ATTACHMENT D: Project Budget
- ATTACHMENT E: Appraisal
- ATTACHMENT F: Title Report Prepared by ___ on ____, 2006
- ATTACHMENT G: Non-revocable Deed Restriction
- ATTACHMENT H: Conservation Easement
- ATTACHMENT I: DCNR General Requirements

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6. COST: Grantor agrees to provide a maximum of 35.75 percent of the total project cost (the amount actually expended and necessary for completion of the described project), not to exceed a total grant amount of \$1,596,347.00, contingent upon Grantee's compliance with all of the terms and conditions herein. See Attachment B hereto, for description. Grantee is required to provide a minimum of 64.25 percent of the \$4,465,267.48 total project cost as its local share.

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

8. INSPECTION & AUDIT.

a. Books and Records. Grantee agrees to keep and maintain under general accepted accounting principles (GAAP) full, true and complete records, contracts, books, and documents as are necessary to fully disclose to Grantor, or its authorized representatives, upon audits or reviews, sufficient information to determine compliance with all state and federal regulations and statutes.

b. Inspection & Audit. Grantee agrees that the relevant books, records (written, electronic, computer related or otherwise), including, without limitation, relevant accounting procedures and practices, financial statements and supporting documentation shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of Grantee where such records may be found by Grantor's designated representative.

c. Period of Retention. All books, records, reports, and statements relevant to this Funding Agreement must be retained a minimum of six years. The retention period runs from the date of Grantor's last Funding Agreement payment, or from the date of termination of the Funding Agreement, whichever is later. 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. FUNDING DISTRIBUTION: Question 1 funding in an amount not to exceed \$1,596,347.00 shall be disbursed to Grantee in the form of an advance or reimbursement(s). Original invoices, or a request for an advance, shall be submitted by Grantee to the Grantor to receive funds. Grant funding allocated to the acquisitions in Fee Title shall not exceed \$1,000,000.00; grant funding allocated to the Conservation Easement shall not exceed \$596,347.00.

10. FUNDING AGREEMENT TERMINATION. Grantor may only terminate this project agreement as specified in section 17 of the incorporated Attachment B. If any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Grantee to provide the goods or services required by this Funding Agreement is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or if Grantee becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the bankruptcy court; or if it is found by the

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State that any quid pro quo or gratuities in the form of money, services, entertainment, gifts, or otherwise were offered or given by Grantee, or any agent or representative of Grantee, to any officer or employee of the State of Nevada with a view toward securing a Funding Agreement or securing favorable treatment with respect to awarding, extending, amending, or making any determination with respect to the performing of such Funding Agreement, then this Funding Agreement may be immediately terminated by the Grantor.

a. Time to Correct. Termination upon a declared default or breach may be exercised only after service of formal written notice as specified in paragraph 4 above, and the subsequent failure of the defaulting party within 30 calendar days of receipt of that notice to provide evidence, satisfactory to the aggrieved party, showing that the declared default or breach has been corrected.

b. Winding Up Affairs Upon Termination. In the event of termination of this Funding Agreement for any reason, the parties agree that the provisions of this paragraph survive termination:

i. The parties shall account for and properly present to each other all claims for fees and expenses and pay those which are undisputed and otherwise not subject to set off under this Funding Agreement. Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination;

ii. Grantee shall satisfactorily complete work in progress at the agreed rate (or a pro rata basis if necessary) if so requested by the Grantor;

iii. Grantee shall execute any documents and take any actions necessary to effectuate an assignment of this Funding Agreement if so requested by the Grantor;

11. REMEDIES. Except as otherwise provided for by law or this Funding Agreement, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages, and to a prevailing party reasonable attorneys' fees and costs. It is specifically agreed that reasonable attorneys' fees shall include without limitation \$125 per hour for State-employed and Carson City employed attorneys. The State may set off consideration against any unpaid obligation of Grantee to any State agency.

12. LIMITED LIABILITY. The State will not waive and intends to assert available NRS chapter 41 liability limitations in all cases

13. FORCE MAJEURE. No party shall be deemed to be in violation of this Funding 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 limitation, 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 Funding Agreement after the intervening cause ceases.

14. INDEMNIFICATION. To the fullest extent permitted by law, Grantee shall indemnify, hold harmless and defend, not excluding the State's right to participate, the State from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any alleged negligent or willful acts or omissions of Grantee, its officers, employees and agents for this Funding Agreement.

15. WAIVER OF BREACH. Failure to declare a breach or the actual waiver of any particular breach of the Funding 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.

16. SEVERABILITY. If any provision contained in this Funding Agreement is held to be unenforceable by a court of law or equity, this Funding Agreement 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 Funding Agreement unenforceable.

17. ASSIGNMENT. Grantee shall neither assign, transfer nor delegate any rights, obligations or

duties under this Funding Agreement without the prior written consent of the State.

18. PUBLIC RECORDS. Pursuant to NRS 239.010, information or documents received from Grantee may be open to public inspection and copying. The State will have the duty to disclose unless a particular record is made confidential by law or a common law balancing of interests.

19. PROPER AUTHORITY. The parties hereto represent and warrant that the person executing this Funding Agreement on behalf of each party has full power and authority to enter into this Funding Agreement. Grantee acknowledges that as required by statute or regulation this Funding Agreement is effective only after approval by the Division of State Lands Administrator and only for the period of time specified in the Funding Agreement. Any services performed by Grantee before this Funding Agreement is effective or after it ceases to be effective are performed at the sole risk of Grantee.

20. GOVERNING LAW; JURISDICTION. This Funding 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. Grantee consents to the jurisdiction of the Nevada district courts for enforcement of this Funding Agreement.

21. ENTIRE FUNDING AGREEMENT AND MODIFICATION. This Funding Agreement and its integrated attachment(s) constitute 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 Funding Agreement specifically displays a mutual intent to amend a particular part of this Funding Agreement, general conflicts in language between any such attachment and this Funding Agreement shall be construed consistent with the terms of this Funding Agreement. Unless otherwise expressly authorized by the terms of this Funding Agreement, no modification or amendment to this Funding Agreement shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.

(Paragraph 19 - Federal Funding above Deleted)

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

_____	_____	<u>Administrator/State Lands Registrar</u>
Pamela B. Wilcox	Date	Grantor's Title
Grantor Signature		

_____	_____	_____
Grantee Signature	Date	Grantee's Title

ATTACHMENT A
Question 1 Adopted Regulations

(See 17 Page PDF Document Attached)

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ATTACHMENT B
Project Summary & Special Conditions

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Project Summary:

**Horse Creek Ranch Fee Title and Conservation Easement Acquisitions,
CA-LW-04050**

GRANTOR:.....Nevada Division of State Lands

GRANTEE:.....Carson City

GRANT PROGRAM:.....Question 1

Project Type: Land and Water Acquisition, County-Municipality

Question 1 Funding Source: Land and Water Acquisition, County-Municipality

Period Covered By This Funding Agreement (Term):

June 1, 2005 to June 30, 2007

Project Cost Sharing (Match Amount)

Estimated Total Project Cost*		\$4,465,267.48
Grantee's (Carson City) Share of Project Cost	64.25% of Project Cost	\$2,868,920.48
Grantor's (State Lands) Share of Project Cost	35.75% of Project Cost	\$1,596,347.00

*See Attachment D, Project Budget for details.

GRANTEE is responsible for 64.25% of the ACTUAL costs of the project. This is currently estimated to be \$2,868,920.48.

GRANTOR is responsible for 35.75% of the ACTUAL costs of acquisition. This is currently estimated to be \$1,596,347.00. However, the 35.75% will adjust to actual expenditures of the acquisition, not to exceed \$1,596,347.00 unless the funding agreement is amended by the State. The GRANTOR will reimburse GRANTEE for administrative costs of a maximum of 5% of the total project cost. Reimbursement of administrative and project costs together shall not exceed \$1,596,347.00.

Project Scope (Description of Project elements funded by this agreement).

See Attachment C for details:

Carson City proposes to be reimbursed for a portion of the proceeds necessary to acquire in fee title a portion of "Horse Creek Ranch" that includes 4 parcels located west of Carson City, NV. The parcels are located above and below Kings Canyon Road, on the north side of US Highway 50, directly north of the Clear Creek Youth Center. Approximately 379.5 acres have been acquired by Carson City. Note that these acquisitions occurred subsequent to a Grant Award Letter having been issued to Carson City by State Lands expressly for this acquisition.

In addition, a Conservation Easement is proposed to be acquired by Carson City on the adjoining parcels, on approximately (161 OR 201) acres, and recorded by the Carson City Assessor. State Lands has agreed to provided grant funding towards both project elements (the Fee Title acquisition and the granting of the Conservation Easement; these two transactions constitute the total project as described in this Funding Agreement) upon the successful recording of the Conservation Easement.

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Special Conditions:

In addition to the terms and conditions listed on pages 1-5 of this Funding Agreement, the GRANTOR and GRANTEE mutually agree to perform this Funding Agreement with the terms, promises, conditions, plans, specifications, estimates, procedures, project proposals, maps and assurances attached hereto and hereby made a part hereof.

1. The GRANTEE hereby promises, in consideration of the promises made by the GRANTOR herein, to execute the project described above in accordance with the terms of the Funding Agreement.
2. A Non-revocable Deed Restriction that runs with the land shall be recorded against the properties purchased in Fee Title in perpetuity (APN's 07-051-01, 07-051-11, 07-051-57, 07-031-22).
3. A Conservation Easement acceptable to the State Lands Administrator shall have been granted on the adjoining parcels (APNs 07-051-01, 07-051-11, & 07-051-22) and recorded by the Carson City Assessor prior to reimbursement of expenditures towards the Fee Title acquisitions. Grant funding towards the Conservation Easement shall not exceed \$596,347.00.
4. Work performed after July 1, 2000 may be eligible for matching contributions provided:
 - a. The applicant provides documentation detailing the work performed;
 - b. The applicant provides documentation that the work performed related directly towards project implementation;
 - c. The work performed is considered eligible for reimbursement per NAC regulations, Chapter 321, Sections 2 to 35, inclusive; and
 - d. The total State Share specified in the Funding Agreement does not increase.
5. The GRANTOR shall receive a site plan and other relevant project plans and specifications, completed by the GRANTEE, if applicable, showing all interests in land and water, and showing all facilities and structures acquired in fee title or placed under easement as part of the project including a summary report with information requested by the GRANTOR.
6. A request for funds exceeding \$1,596,347.00 requires an amendment to this agreement and must be approved by the State Lands Registrar.
7. Question 1 funding in an amount not to exceed \$1,596,347.00 shall be disbursed to the GRANTEE in the form of an advance or reimbursement(s). Original invoices, or a request for an advance, shall be submitted by GRANTEE to the GRANTOR to receive funds.
8. Payments are on a reimbursement basis and can be advanced in certain circumstances. Requests for reimbursements or advances must contain the necessary information identified in the "Outlay Report and Request for Reimbursement and/or Advance" form, or equivalent form provided by the GRANTOR. All reimbursements or advances must include supporting documentation, including, but not limited to, invoices, receipts and details outlining the basis for the expenditures, and the signature of the official responsible for approving the expenditures. The GRANTOR reserves the right to request any additional information, related to project expenses, or a request for an advance, that the GRANTOR determines is

necessary to process a payment.

9. The GRANTOR may audit project records or its designee. All records must be retained a minimum of 6 (six) years (see Attachment I) after the completion of work on the Project. The GRANTOR reserves the right to require that the records be kept for a longer period of time.
10. The GRANTOR will be invited to attend all major project issue meetings.

Grantor: Nevada Division of State Lands
Attn: Kevin Hill, Question 1 Program Coordinator
901 S. Stewart Street, Suite 5003
Carson City, NV 89701
(775) 684-2747

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Grantee: Carson City
Attn: Juan F. Guzman, Open Space Manager
3303 Butti Way, Building #9
Carson City, NV 89701
(775) 887-2263 x 1004

11. The GRANTOR will be notified immediately of any changes regarding the cost of the project or the scope of work.
12. The GRANTEE is responsible for obtaining all permits, easements and other private and governmental agency approvals required for the project prior to the closing of all relevant acquisition transactions.
13. To the fullest extent permitted by law, the GRANTEE agree to indemnify, hold harmless and defend the State of Nevada, its officers, employees, agents and invitees from and against all liabilities, claims, actions, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of any alleged negligent or willful acts or omissions of the GRANTEE, its officers, employees and agents.
14. The failure of all parties to enforce any provision of the Funding Agreement shall not be construed as a waiver of limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Funding Agreement.
15. This Funding Agreement may be modified, amended, and/or the term of the agreement extended if the amendment is made in writing and is signed by all parties.
16. If any provision of this Funding Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of the Funding Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

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17. Termination

This agreement shall be terminated:

- a. June 30, 2007 unless extended by written agreement of the parties hereto; or
- b. Upon the expiration of 30 days after either party hereto shall give notice to the other party of its intention to terminate; or
- c. At the option of either party hereto in the event that the other party breaches any material obligation, covenant, condition or expressed or implied warranties hereunder and fails to remedy such breach within the 30 calendar days after being given notice to that effect.

The right of the GRANTOR to terminate this Funding Agreement shall not impair any other rights or remedies at law or equity the GRANTOR may have against the GRANTEE under this agreement or under the law. No waiver of any default by the GRANTOR under this contract shall be held to be a waiver of any other subsequent default by the GRANTEE. All remedies afforded under this Funding Agreement are cumulative; this is in addition to every other remedy provided therein or under the law.

GRANTOR SHALL NOT BE LIABLE TO THE GRANTEE FOR DAMAGES OF ANY KIND INCLUDING WITHOUT LIMITATION INCIDENTAL OR CONSEQUENTIAL DAMAGES ON ACCOUNT OF TERMINATION OF THIS AGREEMENT FOR ANY REASON WHATSOEVER.

The representations, warranties, covenants, and indemnities described in Attachment G, Non-Revocable Deed Restriction, shall continue in full force and effect whether recorded or not, notwithstanding the termination of this agreement, provided the Grantee successfully acquires the property described in Attachment B, Project Summary, with the assistance of the funds provided under this Funding Agreement.

18. The GRANTEE will furnish progress reports and such other information as the GRANTOR may require. The GRANTOR requires and an opportunity to review acquisition documents prior to closing: Five working days prior notification to review documents is required.
19. The Grantee shall post an appropriate sign at the project site acknowledging the project's funding source(s).
20. The laws of the State of Nevada shall govern this Agreement.

ATTACHMENT C
Scope of Work

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Project Name: Horse Creek Ranch Fee Title and Conservation Easement Acquisitions
Project Number CA-LW-04050

Grantor: Nevada Division of State Lands
Grantee: Carson City

Carson City proposes to be reimbursed for a portion of the proceeds necessary to acquire in fee title a portion of "Horse Creek Ranch" that includes 4 parcels located west of Carson City, NV. The parcels are located above and below Kings Canyon Road, on the north side of US Highway 50, directly north of the Clear Creek Youth Center. Approximately 379.5 acres have been acquired by Carson City. Note that these acquisitions occurred subsequent to a Grant Award Letter having been issued to Carson City by State Lands expressly for this acquisition.

In addition, a Conservation Easement is proposed to be acquired by Carson City on the adjoining parcels, on approximately (161 OR 201) acres, and recorded by the Carson City Assessor. State Lands has agreed to provide grant funding towards both project elements (the Fee Title acquisition and the granting of the Conservation Easement; these two transactions constitute the total project as described in this Funding Agreement) upon the successful recording of the Conservation Easement.

For a detailed description of the property and easement, the conservation values protected, and the property rights granted and retained, see Attachments E, F, G and H below.

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ATTACHMENT E
Appraisal including Preparer's Qualifications and References

Project Name: Horse Creek Ranch Fee Title and Conservation Easement Acquisitions
Project Number CA-LW-04050

Grantor: Nevada Division of State Lands
Grantee: Carson City

(See Document Attached)

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ATTACHMENT F
Title Report

Project Name: Horse Creek Ranch Fee Title and Conservation Easement Acquisitions
Project Number CA-LW-04050

Grantor: Nevada Division of State Lands
Grantee: Carson City

(See Document Attached)

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ATTACHMENT G
Non-Revocable Deed Restriction

Project Name: Horse Creek Ranch Fee Title and Conservation Easement Acquisitions
Project Number CA-LW-04050

Grantor: Nevada Division of State Lands
Grantee: Carson City

(See Document Attached)

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ATTACHMENT H
Conservation Easement

Project Name: Horse Creek Ranch Fee Title and Conservation Easement Acquisitions
Project Number CA-LW-04050

Grantor: Nevada Division of State Lands
Grantee: Carson City

(See Document Attached)

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ATTACHMENT I
DCNR General Requirements

Project Name: Horse Creek Ranch Fee Title and Conservation Easement Acquisitions
Project Number CA-LW-04050

Grantor: Nevada Division of State Lands
Grantee: Carson City

Regarding the eligibility of in-kind services, materials, and equipment offered by the Recipient to meet its match requirement, as well as other matters necessary to administer funding, the parties mutually agree as follows:

Definitions:

Eligible expenses: Expenses that are directly related to the project.

Cash reimbursement: Direct payment to the recipient in cash for eligible expenses incurred after execution of the funding agreement.

Bond Cash on Hand: Bond proceeds held, as unexpended, by the Grantee during any stage of a covered project.

Terms and Conditions:

1. Grantee will bear the full responsibility of properly administering funds allocated under AB 9. This responsibility includes complete and accurate accounting of all funds, both bond and matching; ensuring expenditures and procurement activities are in compliance with the enabling legislation, Generally Accepted Accounting Principles, and all other applicable laws and regulations.
2. This requirement also applies to the Grantee's contractors and their subcontractors. Prevention of project overruns/shortfalls is the responsibility of the Grantee. The Grantor, its Department of Conservation and Natural Resources, and the AB 9 program administered under this agreement will not be obligated to supplement project funds, beyond the approved project budget, due to cost overruns, shortfalls, unforeseen circumstances, or any other reason.
3. Advances may be requested by the Grantee, but the requested advance amount must be based on realistic expenditure projections and must be liquidated within 90 days from receipt. The Administrator retains discretion to grant advances.
4. Cash reimbursements to the Grantee will be by payment to the Recipient for eligible expenses incurred after execution of the Funding Agreement.

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5. Advances and cash reimbursements are subject to the following conditions:
- a) If the Grantee requests an advance, the Outlay Report must be submitted on a quarterly basis until all advance amounts are spent;
 - b) Requests for reimbursements may not outpace currently available bond proceeds specifically designated for their project(s);
 - c) Requests for reimbursements/advance may not exceed the total amount approved (bond share) for the project(s);
 - d) Funds will not be disbursed to any entity for the purpose of simply accruing interest; and
 - e) Recipient should not commingle AB 9 expenditures/funds with non-AB 9 related expenditures and must separately account for these expenditures and revenue sources.

The above policies for cash management apply to not only the primary recipient of the bond funds, but also their contractors and subcontractors.

Bond Cash on Hand, Excess Balances:

1. Cash on hand, including amounts received as advances, must be spent within 90 days. The DCNR may require repayment of any unspent advance amount at the end of the 90-day period.
2. The above policies for cash management apply to not only the primary recipient of the bond funds, but also their contractors and subcontractors.

Retention and Record Keeping:

1. Grantee agrees to maintain all records relevant to its AB 9 project for which funds were allocated in accordance with NRS chapter 239; additionally, recipient must keep records at least six (6) years from the end of the state fiscal year (July-June) in which each project was completed.
2. If any litigation concerning the project is begun before the expiration of this six (6) year period, the individual file must be retained for six (6) calendar years from the date of resolution of the litigation; and
3. Before any files are destroyed, the Grantee must contact the Grantor to obtain and verify final disposition instructions. This requirement also applies to the Recipient's contractors and any subcontractors.
4. Examples of records subject to retention provisions are (list is not intended to be all inclusive): all fiscal/accounting records and reports; all drawings, blueprints, renderings, architect and/or engineering reports, financial estimates, fee schedules, site proposals,

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photos, maps, copies of easements, copies of building permits, copies of inspections, related correspondence; and all procurement activities, including contractors proposals and rates.

Other:

1. The Grantee may be subject to audit and must allow access to applicable AB 9 records, if so directed by the Grantor. If any audit finding reveals that either an overpayment was made, or ineligible costs were incurred (either match or bond proceeds), the overpayment or the ineligible expense must be repaid to the AB 9 Fund, DCNR, Carson City, Nevada.
2. It is the policy of the Board of Examiners and the DCNR to restrict contractors, as well as all other recipients of public funds, to the same (or less) travel rates and procedures allowed State employees. This requirement also applies to the Grantee's contractors and any subcontractors.

Certain disbursements will not be paid unless agreed to in advance. These include:

1. Secretarial or word processing services (normal, temporary, or overtime);
2. Any other staff charges, such as filing, proofreading, regardless of when incurred;
3. Photocopy expenses of more than 15 cents per page;
4. Photocopy expenses in excess of \$2,000.00 for a single job;
5. Computer time.
6. Equipment purchased for the project.

The State will not reimburse expenses for the following:

1. Local telephone expenses or office supply costs;
2. The costs of first-class travel;
3. Indirect and administrative overhead costs such as salaries and benefits in excess of 5 percent of the total project cost, and any undocumented administrative costs.