

City of Carson City
Agenda Report

Item # 9-2

Date Submitted: March 24, 2009

Agenda Date Requested: April 2, 2009
Time Requested: Consent Agenda

To: Mayor and Supervisors

From: Parks and Recreation Department

Subject Title: Action to adopt Resolution No. _____, A Resolution Adopting and Approving an Intrastate Interlocal Contract Between Carson City Board of Supervisors, Carson City, Nevada and State of Nevada-Department of Conservation and Natural Resources; Division of Environmental Protection for the Urban Fishing Pond Project located at the Carson City Fairgrounds/Fuji Park which resolution will allow the State to give a grant to the City to support the installation and implementation of Best Management Practices (BMP's) associated with the Urban Fishing Pond and action to authorize Roger Moellendorf, Parks and Recreation Director, to sign the Nevada Division of Environmental Protection's work plan for the project.

Staff Summary: Carson City has been awarded a \$92,665 grant from the State of Nevada-Department of Conservation and Natural Resources; Division of Environmental Protection (NDEP), for the Carson City Fairgrounds/Fuji Park. This grant is to support the installation and implementation of Best Management Practices (BMP's) designed to reduce the amount of storm water and non-point source pollution discharge from the Urban Fishing Pond project area into Clear Creek. Along with accepting the grant and signing an Intrastate Interlocal Contract, NDEP requires a work plan for project implementation and monitoring. As a result, City staff is requesting that Roger Moellendorf, Parks and Recreation Director be authorized to review, approve, and sign the project's work plan on the City's behalf (Vern L. Krahn, Park Planner).

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 adopt Resolution No. _____, A Resolution Adopting and Approving an Intrastate Interlocal Contract Between Carson City Board of Supervisors, Carson City, Nevada and State of Nevada-Department of Conservation and Natural Resources; Division of Environmental Protection for the Urban Fishing Pond Project located at the Carson City Fairgrounds/Fuji Park which resolution will allow the State to give a grant to the City to support the installation and implementation of Best Management Practices (BMP's) associated with the Urban Fishing Pond and I move to authorize Roger Moellendorf, Parks and Recreation Director, to sign the Nevada Division of Environmental Protection's work plan for the project.

Explanation for Recommended Board Action: The Parks and Recreation Department has been seeking a variety of funding and donation opportunities, including grants, to complete the Urban Fishing Pond Project. This project is one of many phased improvements planned for and identified on the adopted Carson City Fairgrounds/Fuji Park Conceptual Plan. This conceptual plan is being implemented in phases as grant funding, such as the State of Nevada-Department of Conservation and Natural Resources; Division of Environmental Protection (NDEP), becomes available. In addition to accepting the grant, NDEP requires a work plan for project implementation and monitoring. City staff is currently working with an NDEP representative to complete the work plan in a timely fashion and has attached the draft work plan document for the Board of Supervisors as background information.

Applicable Statute, Code, Policy, Rule or Regulation:

Carson City Fairgrounds/Fuji Park Conceptual Site Plan

Carson City Parks and Recreation Master Plan

N.R.S. 244.195 / N.R.S. 277.180

Fiscal Impact: The project's available design and construction budget will increase by \$92,665. This NDEP grant requires a 50% non-federal match. This non-federal match requirement will be provided by a recently awarded Carson Water Subconservancy District grant.

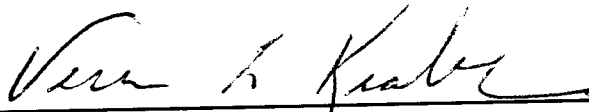
Explanation of Impact: There will be a positive impact to project's design and construction budget.

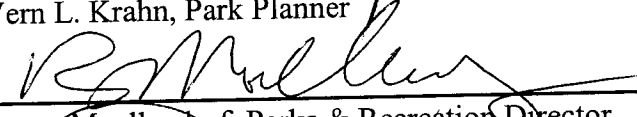
Funding Source: Not applicable at this time

- Alternatives:**
- 1) Reject the State of Nevada-Department of Conservation and Natural Resources; Division of Environmental Protection 319(h) grant
 - 2) Request modifications to the Intrastate Interlocal Contract and Attachment B

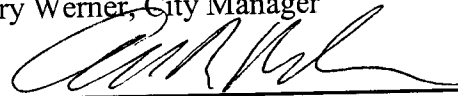
Supporting Material:

- 1) Exhibit A - Carson City Fairgrounds/Fuji Park Conceptual Plan
- 2) Exhibit B - Resolution
- 2) Exhibit C - NDEP's Intrastate Interlocal Contract and Attachments B and C
- 3) Exhibit D - Project's work plan (Scope of Work - Attachment A)

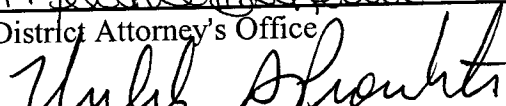
Prepared By:  **Date:** 3/24/09
 Vern L. Krahn, Park Planner

Reviewed By:  **Date:** 3/24/09
 Roger Moellendorf, Parks & Recreation Director

 **Date:** 3/24/09
 Larry Werner, City Manager

 **Date:** 3/24/09
 Andy Burnham, Public Works Director

 **Date:** 3/24/09
 District Attorney's Office

 **Date:** 3/24/09
 Finance Department

Board Action Taken:

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

(Vote Recorded By)

RESOLUTION NO. _____

A RESOLUTION ADOPTING AND APPROVING AN
INTRASTATE INTERLOCAL CONTRACT BETWEEN
CARSON CITY BOARD OF SUPERVISORS, CARSON CITY, NEVADA,
AND
STATE OF NEVADA - DEPARTMENT OF CONSERVATION AND NATURAL
RESOURCES, DIVISION OF ENVIRONMENTAL PROTECTION
FOR THE URBAN FISHING POND PROJECT LOCATED
AT THE CARSON CITY FAIRGROUNDS / FUJI PARK

WHEREAS, any two or more public agencies may enter into a contract for the performance of any governmental function pursuant to NRS 277.180; and

WHEREAS, NRS 277.180 provides that every such contract must be ratified by formal action of the governing body of each public agency included; and

WHEREAS, the parties contract to construct water quality treatment facilities to support the installation and implementation of Best Management Practices (BMP's) associated with the Urban Fishing Pond Project entered into and between Carson City Board of Supervisors, Carson City, Nevada, and State of Nevada - Department of Conservation and Natural Resources, Division of Environmental Protection with the desire to adopt and approve such contract as required by NRS 277.180. **A copy of the agreement (Intrastate Interlocal Contract Between Public Agencies) is attached to this Resolution;** and

WHEREAS, all parties contract to construct water quality treatment facilities to support the installation and implementation of Best Management Practices (BMP's) associated with the Urban Fishing Pond Project entered into and between Carson City Board of Supervisors, Carson City, Nevada, and State of Nevada - Department of Conservation and Natural Resources, Division of Environmental Protection are public agencies of the State of Nevada.

NOW, THEREFORE, BE IT RESOLVED that the terms and conditions of the contract to construct water quality treatment facilities to support the installation and implementation of Best Management Practices (BMP's) associated with the Urban Fishing Pond Project entered into and between Carson City Board of Supervisors, Carson City, Nevada, and State of Nevada - Department of Conservation and Natural Resources, Division of Environmental Protection are hereby adopted and approved; and

BE IT FURTHER RESOLVED that the contract to construct water quality treatment facilities to support the installation and implementation of Best Management Practices (BMP's) associated with the Urban Fishing Pond Project entered into and between Carson City Board of Supervisors, Carson City, Nevada, and State of Nevada - Department of Conservation and Natural Resources, Division of Environmental Protection shall be spread at large upon the minutes or attached in full thereto as an exhibit, and a copy of this Resolution shall be sent to Carson City, Nevada and the State of Nevada - Department of Conservation and Natural Resources, Division of Environmental Protection.

Upon motion by Board of Supervisor member _____,
seconded by Board of Supervisor member _____, the foregoing
Resolution was passed and adopted this _____ day of _____, 2009, by the
following vote:

AYES: _____

NAYES: _____

AYES: _____

NAYES: _____

AYES: _____

NAYES: _____

AYES: _____

AYES: _____

ABSENT: _____

ABSTAIN: _____

ABSENT: _____

ABSTAIN: _____

Bob Crowell, Mayor
Board of Supervisors
Carson City, Nevada

ATTEST:

Alan Glover, Clerk/Recorder
Carson City, Nevada

INTRASTATE INTERLOCAL CONTRACT BETWEEN PUBLIC AGENCIES

A Contract Between the State of Nevada
Acting By and Through Its

Department of Conservation and Natural Resources, Division of Environmental Protection
901 S. Stewart Street, Carson City, NV 89701-5249
Phone: (775) 687-4670 Fax: (775) 687-5856

and

Carson City
hereinafter the "Public Agency"
201 N. Carson Street, Suite 2
Carson City, NV 89701
Phone: (775) 887-2100 Fax: (775) 887-2286

WHEREAS, NRS 277.180 authorizes any one or more public agencies to contract with any one or more other public agencies to perform any governmental service, activity or undertaking which any of the public agencies entering into the contract is authorized by law to perform; and

WHEREAS, it is deemed that the services hereinafter set forth are 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 Contract shall not become effective until and unless approved by appropriate official action of the governing body of each party.
2. DEFINITIONS. "State" means the State of Nevada and any state agency identified herein, its officers, employees and immune contractors as defined in NRS 41.0307.
3. CONTRACT TERM. This Contract shall be effective from Board of Examiners approval (anticipated date, May 12, 2009) to December 31, 2011, unless sooner terminated by either party as set forth in this Contract.
4. TERMINATION. This Contract may be terminated by either party prior to the date set forth in paragraph (3), provided that a termination shall not be effective until thirty (30) days after a party has served written notice upon the other party. This Contract may be terminated by mutual consent of both parties or unilaterally by either party without cause. The parties expressly agree that this Contract shall be terminated immediately if for any reason State and/or federal funding ability to satisfy this Contract is withdrawn, limited, or impaired.
5. NOTICE. All notices or other communications required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by telephonic facsimile with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address set forth above.
6. INCORPORATED DOCUMENTS. The parties agree that the services to be performed shall be specifically described; this Contract incorporates the following attachments in descending order of constructive precedence:

ATTACHMENT A: SCOPE OF WORK (consisting of 8 pages)

ATTACHMENT B: ADDITIONAL AGENCY TERMS & CONDITIONS (consisting of 3 pages)

ATTACHMENT C: THIRD PARTY MATCH RECORD-KEEPING REQUIREMENTS (consisting of 1 page)

7. CONSIDERATION. Public Agency agrees to provide the services set forth in paragraph (6) at a cost of \$N/A per N/A with the total Contract or installments payable: upon completion of construction not exceeding \$92,665.00. In addition, the State does not agree to reimburse contractor for expenses unless otherwise specified in the incorporated documents. Any intervening end to an annual or biennial appropriation period shall be deemed an automatic renewal (not changing the overall Contract term) or a termination as the results of legislative appropriation may require.

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

9. INSPECTION & AUDIT.

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

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

c. Period of Retention. All books, records, reports, and statements relevant to this Contract must be retained by each party for a minimum of three years from the date of final payment by the State to the Public Agency, and all other pending matters are closed. 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.

10. BREACH; REMEDIES. Failure of either party to perform any obligation of this Contract shall be deemed a breach. Except as otherwise provided for by law or this Contract, 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 but not limited to actual damages. If the court awards reasonable attorney's fees to the prevailing party, reasonable shall be deemed \$125 per hour.

11. LIMITED LIABILITY. The parties will not waive and intend to assert available NRS chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. To the extent applicable, actual contract damages for any breach shall be limited by NRS 353.260 and NRS 354.626.

12. FORCE MAJEURE. Neither party shall be deemed to be in violation of this Contract 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 Contract after the intervening cause ceases.

13. INDEMNIFICATION. Neither party waives any right or defense to indemnification that may exist in law or equity.

14. INDEPENDENT PUBLIC AGENCIES. The parties are associated with each other only for the purposes and to the extent set forth in this Contract, and in respect to performance of services pursuant to this Contract, each party is and shall be a public agency separate and distinct from the other party and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for one agency whatsoever with respect to the indebtedness, liabilities, and obligations of the other agency or any other party.

15. WAIVER OF BREACH. Failure to declare a breach or the actual waiver of any particular breach of the Contract 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 Contract is held to be unenforceable by a court of law or equity, this Contract 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 Contract unenforceable.

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

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

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

20. CONFIDENTIALITY. Each party shall keep confidential all information, in whatever form, produced, prepared, observed or received by that party to the extent that such information is confidential by law or otherwise required by this Contract.

21. PROPER AUTHORITY. The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract and that the parties are authorized by law to perform the services set forth in paragraph (6).

22. GOVERNING LAW; JURISDICTION. This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada. The parties consent to the jurisdiction of the Nevada district courts for enforcement of this Contract.

23. ENTIRE AGREEMENT AND MODIFICATION. This Contract 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 Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistent with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto, approved by the State of Nevada Office of the Attorney General.

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

PUBLIC AGENCY

By: _____
Signature

Name: Bob Crowell

Title: Mayor Date: 4-2-2009

DIVISION

By: _____
Signature

Name: Leo Drozdoff

Title: Administrator Date: _____

BUREAU

By: _____
Signature

Name: Sondra L. Neudauer

Title: Contract Manager Date: _____

APPROVED AS TO FORM ONLY:

Deputy Attorney General for Attorney General

Date: _____

APPROVED BY BOARD OF EXAMINERS

Signature – Board of Examiners

Date: _____

Contract Control Number: DEP 09-022
Grant Number: C9-67690809
Division Number: 35
Grant Expiration Date: 09/30/13
CFDA Number: 66.460

**ATTACHMENT B:
ADDITIONAL AGENCY TERMS & CONDITIONS
TO CONTRACT FOR SERVICES OF PUBLIC AGENCY
CONTRACT CONTROL # DEP 09-022**

1. For contracts utilizing federal funds, the Nevada Division of Environmental Protection shall pay no more compensation than the federal Executive Service Level 4 (U.S. Code) daily rate (exclusive of fringe benefits) for individual consultants retained by the Public Agency or by the Public Agency's contractors or subcontractors. This limitation applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. The current Level 4 rate is **\$73.40** per hour.

2. **NDEP shall only reimburse the Public Agency for actual cash disbursed.** Original invoices (facsimiles are not acceptable) must be received by NDEP no later than forty (40) calendar days after the end of a month or quarter except at the end of the fiscal year of the State of Nevada (June 30th), at the expiration date of the grant, or the effective date of the revocation of the contract, at which times original invoices must be received by NDEP no later than thirty-five (35) calendar days after this date. Failure of the Public Agency to submit billings according to the prescribed timeframes authorizes NDEP, in its sole discretion, to collect or withhold a penalty of ten percent (10%) of the amount being requested for each week or portion of a week that the billing is late. The Public Agency shall provide with each invoice a detailed fiscal summary that includes the approved contract budget, expenditures for the current period, cumulative expenditures to date, and balance remaining for each budget category. If match is required pursuant to paragraph 3 below, a similar fiscal summary of match expenditures must accompany each invoice. The Public Agency shall obtain prior approval to transfer funds between budget categories if the funds to be transferred are greater than ten percent (10%) cumulative of the total Contract amount.

3. The Public Agency shall, as part of its approved scope of work and budget under this Contract, provide third party match funds of not less than: **\$92,665.00**. If match funds are required, the Public Agency shall comply with additional record-keeping requirements as specified in 40 CFR 31.24 and Attachment **C** (Third Party Match Record-Keeping Requirements) which is attached hereto and by this reference is incorporated herein and made part of this Contract.

4. Unless otherwise provided in Attachment A (Scope of Work), the Public Agency shall submit quarterly reports or other deliverables within ten (10) calendar days after the end of each quarter.

5. All payments under this Contract are contingent upon the receipt by NDEP of sufficient funds, necessary to carry out the purposes of this Contract, from either the Nevada Legislature or an agency of the United States. NDEP shall determine if it has received the specific funding necessary for this Contract. If funds are not received from either source for the specific purposes of this Contract, NDEP is under no obligation to supply funding for this Contract. The receipt of sufficient funds as determined by NDEP is a condition precedent to NDEP's obligation to make payments under this Contract. Nothing in this Contract shall be construed to provide the Public Agency with a right of payment over any other entity. If any payments that are otherwise due to the Public Agency under this Contract are deferred because of the unavailability of sufficient funds, such payments will promptly be made to the Public Agency if sufficient funds later become available.

6. Notwithstanding the terms of paragraph 5, at the sole discretion of NDEP, payments will not be made by NDEP unless all required reports or deliverables have been submitted to and approved by NDEP within the schedule stated in Attachment A.

7. Any funds obligated by NDEP under this Contract that are not expended by the Public Agency shall automatically revert back to NDEP upon the completion, termination or cancellation of this Contract. NDEP shall not have any obligation to re-award or to provide, in any manner, such unexpended funds to the Public Agency. The Public Agency shall have no claim of any sort to such unexpended funds.

8. For contracts utilizing federal funds, the Public Agency shall ensure, to the fullest extent possible, that at least the "fair share" percentages as stated below for prime contracts for construction, services, supplies or equipment are made available to organizations owned or controlled by socially and economically disadvantaged individuals (Minority Business Enterprise (MBE) or Small Business Enterprise (SBE)), women (Women Business Enterprise (WBE)) and historically black colleges and universities.

	MBE/SBE	WBE
Construction	12%	10%
Services	07%	25%
Supplies	13%	28%
Equipment	11%	23%

The Public Agency agrees and is required to utilize the following seven affirmative steps:

- a. Include in its bid documents applicable "fair share" percentages as stated above and require all of its prime contractors to include in their bid documents for subcontracts the "fair share" percentages;
- b. Include qualified Small Business Enterprises (SBEs) Minority Business Enterprises (MBEs), and Women Business Enterprises (WBEs) on solicitation lists;
- c. Assure that SBEs, MBEs, and WBEs are solicited whenever they are potential sources;
- d. Divide total requirements, when economically feasible, into small tasks or quantities to e. permit maximum participation of SBEs, MBEs, and WBEs;
- e. Establish delivery schedules, where the requirements of the work permit, which will encourage participation by SBEs, MBEs, and WBEs;
- f. Use the services and assistance of the Small Business Administration and the Minority Business Development Agency, U.S. Department of commerce as appropriate; and
- g. If a subcontractor awards contracts/procurements, require the subcontractor to take the affirmative steps in subparagraphs a. through e. of this condition.

9. The Public Agency shall complete and submit to NDEP a Minority Business Enterprise/Woman Business Enterprise (MBE/WBE) Utilization Report (Standard Form 334) within fifteen (15) calendar days after the end of each federal fiscal year (September 30th) for each year this Contract is in effect and within fifteen (15) calendar days after the termination date of this Contract.

10. The books, records, documents and accounting procedures and practices of the Public Agency or any subcontractor relevant to this Contract shall be subject to inspection, examination and audit by the State of Nevada, the Division of Environmental Protection, the Attorney General of Nevada, the Nevada State Legislative Auditor, the federal or other funding agency, the Comptroller General of the United States or any authorized representative of those entities.

11. All books, reports, studies, photographs, negatives, annual reports or other documents, data, materials or drawings prepared by or supplied to the Public Agency in the performance of its obligations under this Contract shall be the joint property of both parties. Such items must be retained by the Public Agency for a minimum of three years from the date of final payment by NDEP to the Public Agency, and all other pending matters are closed. If requested by NDEP at any time within the retention period, any such materials shall be remitted and delivered by the Public Agency, at the Public Agency's expense, to NDEP. NDEP does not warrant or assume any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, report or product of any kind that the Public Agency may disclose or use for purposes other than the performance of the Public Agency's obligations under this Contract. For any work outside the obligations of this Contract, the Public Agency must include a disclaimer that the information, report or products are the views and opinions of the Public Agency and do not necessarily state or reflect those of NDEP nor bind NDEP.

12. Unless otherwise provided in Attachment A, when issuing statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with funds provided under this Contract, the Public Agency shall clearly state that funding for the project or program was provided by the Nevada Division of Environmental Protection and, if applicable, the U.S. Environmental Protection Agency. The Public Agency will insure that NDEP is given credit in all official publications relative to this specific project and that the content of such publications will be coordinated with NDEP prior to being published.

13. Unless otherwise provided in Attachment A, all property purchased with funds provided pursuant to this Contract is the property of NDEP and shall, if NDEP elects within four (4) years after the completion, termination or cancellation of this Contract or after the conclusion of the use of the property for the purposes of this Contract during its term, be returned to NDEP at the Public Agency's expense.

Such property includes but is not limited to vehicles, computers, software, modems, calculators, radios, and analytical and safety equipment. The Public Agency shall use all purchased property in accordance with local, state and federal law, and shall use the property only for Contract purposes unless otherwise agreed to in writing by NDEP.

For any unauthorized use of such property by the Public Agency, NDEP may elect to terminate the Contract and to have the property immediately returned to NDEP by the Public Agency at the Public Agency's expense. To the extent authorized by law, the Public Agency shall indemnify and save and hold the State of Nevada and NDEP harmless from any and all claims, causes of action or liability arising from any use or custody of the property by the Public Agency or the Public Agency's agents or employees or any subcontractor or their agents or employees.

14. The Public Agency shall use recycled paper for all reports that are prepared as part of this Contract and delivered to NDEP. This requirement does not apply to standard forms.

15. The Public Agency, to the extent provided by Nevada law, shall indemnify and save and hold the State of Nevada, its agents and employees harmless from any and all claims, causes of action or liability arising from the performance of this Contract by the Public Agency or the Public Agency's agents or employees or any subcontractor or their agents or employees. NDEP, to the extent provided by Nevada law, shall indemnify and save and hold the Public Agency, its agents and employees harmless from any and all claims, causes of action or liability arising from the performance of this Contract by NDEP or NDEP's agents or employees.

16. The Public Agency and its subcontractors shall obtain any necessary permission needed, before entering private or public property, to conduct activities related to the work plan (Attachment A). The property owner will be informed of the program, the type of data to be gathered, and the reason for the requested access to the property.

17. This Contract shall be construed and interpreted according to the laws of the State of Nevada and conditions established in OMB Circular A-102. Nothing in this Contract shall be construed as a waiver of sovereign immunity by the State of Nevada. Any action brought to enforce this contract shall be brought in the First Judicial District Court of the State of Nevada. The Public Agency and any of its subcontractors shall comply with all applicable local, state and federal laws in carrying out the obligations of this Contract, including all federal and state accounting procedures and requirements established in OMB Circular A-87 and A-133. The Public Agency and any of its subcontractors shall also comply with the following:

- a. 40 CFR Part 7 - Nondiscrimination In Programs Receiving Federal Assistance From EPA
- b. 40 CFR Part 29 - Intergovernmental Review Of EPA Programs And Activities.
- c. 40 CFR Part 31 - Uniform Administrative Requirements For Grants And Cooperative Agreements To State and Local Governments;
- d. 40 CFR Part 32 - Governmentwide Debarment And Suspension (Nonprocurement) And Governmentwide Requirements For Drug-Free Workplace (Grants);
- e. 40 CFR Part 34 - Lobbying Activities;
- f. 40 CFR Part 35, Subpart O - Cooperative Agreements And Superfund State Contracts For Superfund Response Actions (Superfund Only); and
- g. The Hotel And Motel Fire Safety Act of 1990.

18. The Public Agency shall neither assign, transfer nor delegate any rights, obligations or duties under this Contract without the prior written consent of NDEP.

ATTACHMENT C
To the contract between
the Division of Environmental Protection
and
Carson City
DEP # 09-022

THIRD PARTY MATCH RECORD-KEEPING REQUIREMENTS

- A. If not included in the budget submitted in Attachment A of the contract, the Public Agency or Independent Contractor shall provide to the Nevada Division of Environmental Protection (NDEP) a detailed match budget clearly distinguishing between cash and non-cash (in-kind) contributions, prior to submittal of the first invoice.
- B. With each invoice, the Public Agency or Independent Contractor shall submit a detailed match schedule that includes: (1) the total match budget; (2) match expenditures for the current period; (3) cumulative match expenditures; and (4) balance remaining. Cash and in-kind expenditures must be identified separately
- C. The Public Agency or Independent Contractor shall establish a file dedicated to this contract that includes the following:
1. For any declared in-kind contributions:
 - (a) An itemized listing of each employee's hourly rate, including the justification for the rate such as the current "Prevailing Wage Rates for Nevada Counties", NRCS cost-share rates, etc. .
 - (b) A Fringe Benefit detail and explanation.
 - (c) A copy of an approved Overhead/Indirect Cost Allocation Plan.
 - (d) An itemization of per diem rates, equipment rental/usage rates, etc.
 - (e) Copies (or originals) of timesheets, with employee's and supervisor's signature, noting dates, hours, and projects worked.
 - (f) Copies (or originals) of logs/schedules for equipment usage.
 - (g) Signed statements noting fair market value for in-kind donations of materials or supplies.
 2. For any declared cash contributions,
 - (a) An itemization of each employee's hourly rate including fringe benefits, overhead, and indirect cost.
 - (b) An itemization of per diem rates, equipment rental/usage rates, etc.
 - (c) Copies (or originals) of timesheets, with employee's and supervisor's signature, noting dates, hours, and projects worked.
 - (d) Copies (or originals) of logs/schedules for equipment usage.
 - (e) Copies (or originals) of invoices for materials, supplies, equipment, etc.
- D. The Contractor agrees and acknowledge that:
1. Neither the costs nor the values of third party match contributions being used to satisfy the match requirements of the attached contract have been or will be used to satisfy a cost share or match requirement of another federal grant agreement, federal procurement contract, or any other award of federal funds.
 2. Third-party match contributions or expenditures must be made within the effective dates of:
May 8, 2008 through December 31, 2010.
 3. All financial records, including match documentation, relevant to this project shall be retained by the Public Agency or Independent Contractor for three years from the date of final payment by NDEP to the Public Agency or Independent Contractor, and all other pending matters are closed.
 4. Reported match contributions deemed inappropriate or unreasonable during the invoice review process may be disallowed.
 5. NDEP may, at any time, audit the Public Agency or Independent Contractor contract files to ensure compliance with the Third Party Match Record-Keeping Requirements. Reported match contributions deemed inappropriate or unreasonable during an audit may be disallowed.
 6. NDEP may require the Public Agency or Independent Contractor to repay any funds provided to the Public Agency or Independent Contractor under the attached contract that the Public Agency or Independent Contractor is unable to match or provide adequate documentation for the reported match.

Attachment A**Work Plan****Nevada Nonpoint Source Program 319 (h) Project**

Project Title: Urban Fishing Pond Project Area – BMPs and Water Quality Treatment

Lead Agency: Carson City Parks and Recreation Department

Primary Contact: Vern L. Krahn, Park Planner
3303 Butti Way, Building #9
Carson City, NV 89701
VKrahn@ci.carson-city.nv.us
(775) 887-2262 ext. 30343

Project Implementation: Ann Bollinger
address same as above
ABollinger@ci.carson-city.nv.us
(775) 887-2262 ext. 30337

Project Location: Carson City Fairgrounds, adjacent to and south of Clear Creek, tributary to Carson River

HUC: 16050201, 16050202

Project Summary: The goal of this grant is to support the installation and implementation of BMPs designed to reduce the amount of stormwater and nonpoint source pollution discharged from the project area into Clear Creek.

Anticipated Project Term: Start Date: Board of Examiners approval (anticipated May 12, 2009)
Completion Date: December 31, 2011

Fiscal Summary: Total project cost: \$185,330
319 (h) funds: \$92,665
Non-federal match: \$92,665

Project Partners: Nevada Department of Wildlife, Nevada Division of State Parks, National Park Service, Sierra Pacific Resources Foundation, Nevada Bighorns Limited, Inc., Raglan Systems Balance, Western Nevada Supply, Washoe Tribe of Nevada and California, Carson City's Fuji Park Users Coalition, Carson Fly Fishing Club, Carson Valley Conservation District, Clear Creek Watershed Council, High Sierra Flycasters, Ormsby Sportsman Association, Truckee River Flyfishers, Western Nevada RC&D Inc., Natural Resources Conservation Service, Carson City Parks and Recreation Commission, and Carson City Board of Supervisors

Scope of Work

a. Introduction and Problem Statement

The Carson City Parks and Recreation Department (CCPRD) will install permanent Best Management Practices (BMPs) at the Carson City Fairgrounds as part of a project to construct an urban fishing pond and an events staging area. The one-acre, 15 foot deep fishing pond will be co-managed by CCPRD and the Nevada Department of Wildlife as a put and take fishery stocked with rainbow and brown trout. The fishing pond water supply sources will be groundwater seepage and a diversion from Clear Creek. The re-graded staging area will be used during events for loading, unloading and holding stock animals and for parking vehicles and trailers, as well as parking and recreation access to the fishing pond. The existing access road crosses the creek over a pair of culverts. The CCPRD will maintain the surface of the staging area as bare soil for the well being of stock animals and their riders and handlers.

The project area, three to four acres in size, is located in the Clear Creek floodplain and is bounded on the north by Clear Creek, a vegetated riparian zone, and an irrigation diversion ditch owned by the Washoe Tribe of Nevada and California. The land surface is predominantly bare soil. The channel, riparian wetland, and floodplain have been altered and constrained, the result of historic land uses. Recent grading done to prepare the site for the project deflects stormwater away from the riparian zone and creek. Notably, the project drainage modifications are designed to convey stormwater runoff to the Washoe Tribe's irrigation diversion, thereby eliminating stormwater discharges to Clear Creek.

This reach of Clear Creek is identified in the *State of Nevada's 2006 303(d) List of Impaired Waters, Revised Draft* prepared by Nevada Division of Environmental Protection, Bureau of Water Quality Planning. The causes of use impairment are temperature, dissolved oxygen, iron, and fecal coliform. Post-construction, the pollution sources areas of concern are the fishing pond and the event staging area. Pollutants of concern are suspended solids, nutrients, fecal coliform bacteria and also dissolved solids, oil and grease, biochemical oxygen demand, and elevated water temperature.

b. Goals and Objectives

The goal of the project is to improve the water quality of Clear Creek and will be achieved by installing and implementing BMPs capable of reducing nonpoint source pollution discharged in stormwater and in the overflow from the fishing pond. Objectives are:

1. Reduce stormwater volume and pollutant loads by constructing a stormwater conveyance system and sedimentation basin.
2. Filter and moderate the temperature of stormwater and fishing pond discharges with the establishment of two vegetated wetlands, one located at the pool elevation of the fishing pond and another located to receive overflow from the fishing pond and sedimentation basin.
3. Control soil erosion by re-establishing natural vegetation on disturbed, bare, and graded areas (excluding the staging and parking areas) and by fencing or otherwise protecting existing and established vegetation around the staging area.

4. Control sources of nonpoint source pollution after construction by implementing standard operating procedures for the inspection and maintenance of BMPs and establishing good housekeeping practices in the staging area.

c. Tasks and Deliverables

Task 1. Project Construction Management and Administration

- 1.1 **Project Oversight:** The CCPRD (Contractor) shall provide all technical and administrative services as needed for contract completion; monitor, supervise and review work performed; and coordinate budgeting and scheduling to assure that the contract is completed within budget, on schedule, and in accordance with approved contract documents, applicable laws, and regulations. The Contractor is responsible for obtaining required permits and ensuring compliance with conditions. A copy of all required permits shall be provided to the NDEP Contract Coordinator. The Contractor shall promptly notify the NDEP Contract Coordinator of events or proposed changes that could affect the scope, budget or schedule of work performed under this agreement.
- 1.2 **Progress Reporting:** The Contractor shall ensure that the contract requirements are met through regular communication with NDEP Contract Coordinator and through submittals of progress reports. Progress reporting will occur on a quarterly basis. Progress reports shall describe activities undertaken, accomplishments of tasks, and problems encountered in the performance of the work under this contract. The description of activities and accomplishments of each task during the quarter shall be sufficiently detailed to provide a basis for payment of invoices. *If progress reports are not satisfactory to meet these requirements, additional information as requested by NDEP will be provided before payment of the invoice.*
- 1.3 **Invoicing:** Contractor shall submit invoices to the NDEP Contract Coordinator after completion of construction. Appropriate documentation of expenses (including match documentation) shall be provided. Documentation must be of sufficient detail to provide a basis for payment and ensure NDEP accountability to the U.S. Environmental Protection Agency.

Deliverables:

- ◆ Progress reports due quarterly until completion of construction
- ◆ Invoices due after the completion of construction
- ◆ Copy of required permits

Task 2. Project Design and Construction

Draft design plans and the bid and specifications documents will be provided to NDEP, including details for the areas and methods of revegetation, at the 90% and 100% design milestones. The NDEP Contract Coordinator will provide review comments to the Contractor within an agreed upon timeframe. The Contractor will formulate a response to review comments and relevant comments will be incorporated into the design plans and the bid and specifications

documents to the extent possible. One set of final, engineer-stamped design plans and bid and specification documents will be submitted to NDEP prior to the start of construction.

The Contractor's engineering consultant will assist Contractor in the administration and oversight of construction and will conduct regular monitoring to ensure the project is implemented according to design. Minor changes or modifications to the original construction design will be recorded and noted on the record drawings (as-built plans), which will be submitted after completion of construction.

Deliverables:

- ◆ 90%, 100%, and final design plans & the bid and specifications documents due prior to construction
- ◆ As built plans are due the quarter following completion of construction

Task 3. Wetland Design

Draft wetland design plans and specifications document shall be provided to NDEP for comment at the 90%, and 100% design milestones. The NDEP Contract Coordinator will provide review comments to the Contractor within an agreed upon timeframe. The Contractor will formulate a response to comments and relevant comments will be incorporated into the design plans and the specifications document to the extent possible. One set of final plans and specifications document will be submitted to NDEP prior to the start of work on the wetlands. The Contractor's wetland consultant will assist Contractor with oversight of implementation of the wetland vegetation establishment plan and will regularly monitor plan implementation.

Deliverables:

- ◆ 90%, 100% and final wetland design plan and specification document, due prior to working on the wetlands.

Project Evaluation and Deliverables

a. Measures of Success

Currently, stormwater sheet flows from the project area through the riparian vegetation into Clear Creek and the irrigation ditch with minimal treatment. The CCPRD measures project success as the installation and maintenance of BMPs including establishment and protection of native vegetation sufficient to minimize nonpoint source pollution in stormwater and in the fishing pond overflow to Clear Creek and the irrigation diversion.

b. Monitoring and Maintenance Program

1. Implementation Monitoring: See Task 1, Scope of Work.

2. Effectiveness Monitoring: At the request of the Washoe Tribe, the CCPRD has agreed to a water quality monitoring program. The purpose of monitoring for this project is to determine the

effectiveness of BMPs by comparing the quality of treated water (i.e., discharged from the wetland swale) to the quality of pre-treated water (i.e., stormwater prior to entering the sedimentation basin, and fishing pond water prior to overflowing into the wetland swale) and to the quality of Clear Creek. At a minimum, samples shall be analyzed for these water quality indicators: total suspended solids, turbidity, total nitrogen, dissolved ammonia, total phosphorous, total dissolved solids, fecal coliform, conductivity, dissolved oxygen, pH, and temperature. Prior to monitoring, the Contractor shall submit a Sampling and Analysis Plan (SAP) to the NDEP. Laboratory analysis shall be performed by a State of Nevada certified laboratory and test procedures shall conform to Clean Water Act regulations. Monitoring data shall be provided to NDEP quarterly. At the termination of the monitoring program, a summary of the data (tabulated and graphed) shall be provided in the final project report with a discussion on the relationship between water quality monitoring results and the effectiveness of the BMPs.

Deliverables:

- ◆ Water quality monitoring Sampling and Analysis Plan due prior to monitoring water quality
- ◆ Initial (background condition) and quarterly water quality monitoring data reported for two years or until the agreement with the Washoe Tribe for monitoring program has been terminated, whichever occurs later.

3. Vegetation Monitoring:

Monitoring Wetland Vegetation Establishment: The purpose for wetland monitoring is to ensure survival of plantings (short term) and comparatively rapid establishment of wetland vegetation. The objective is establishment of a vigorously growing and reproducing wetland plant community composed of a variety of native species, and capable of filtering nonpoint source pollutants. A plan for monitoring wetland vegetation establishment shall be provided to NDEP as part of the wetland design plan identified in Task 3, Scope of Work. At a minimum, the monitoring plan shall include observations of: species composition (plantings and volunteers); percent cover of wetland and non-wetland vegetation; qualitative description of vegetation vigor, growth, and reproduction; qualitative description of substrate stability and retention of suspended solids; and, the presence/absence of non-wetland, invasive, or noxious species. Indicator conditions will be documented with photographs of representative sites and with appropriate survey methods. Observation data shall be reported semiannually beginning with the quarter during which planting is initiated and continuing for two years or until the establishment of wetland vegetation is successful.

Deliverables:

- ◆ Wetland vegetation monitoring plan
- ◆ Initial (background condition) and semiannual (beginning and end of growing season) monitoring observations reported for two years or until the wetland vegetation establishment objective is met, whichever occurs later.

Monitoring Revegetation of Bare and Disturbed Areas: The purpose for monitoring areas of revegetation is to ensure the seeding treatments are durable, dominated by perennial species, and progressing toward natural vegetation conditions in terms of vegetation cover, structure, and composition. At a minimum, monitoring shall include photos of representative sites with

observations of species composition, density of plants/square foot, and presence/absence of invasive or noxious weeds. The results of monitoring revegetation areas shall be reported semiannually for two years or until revegetation is successful. The revegetation objective shall be deemed met when the density of seeded and/or native plants approximates 0.5 to 2.0 plants/square foot.

Deliverables:

- ◆ Initial (background condition) and semiannual (beginning and end of growing season) monitoring reports for two years or until the plant density objective is met, whichever occurs later.

4. Maintenance Monitoring: To ensure improvements in water quality are realized and sustained for the life of the project, it is essential to regularly inspect and maintain BMPs and wetland areas and to implement good housekeeping procedures for the staging area and fishing pond. Contractor shall prepare and implement a BMP inspection and maintenance program, including good housekeeping procedures for the project area. At a minimum, BMP inspections must be conducted before and after spring runoff and after precipitation events which produce significant stormwater. Good housekeeping procedures must be implemented following fairground events and prior to significant precipitation events. Contractor shall log inspection observations and maintenance activities and provide NDEP an annual report summarizing observations of BMP functionality, maintenance activities, the relative intensity of stormwater runoff event, and dates of inspection and maintenance activity.

Deliverables:

- ◆ BMP Inspection, Maintenance and Good Housekeeping Program procedures manual due after completion of construction
- ◆ Annual inspection and maintenance activity logs beginning with the completion of construction and continuing until two years after construction.

5. Final Project Report: A final project report will be submitted to the NDEP Contract Coordinator prior to contract expiration, December 31, 2011. The report shall include the following information, analysis, and documentation:

- 1) Before and after construction photographs - electronic files, actual photos, or color copies with good resolution
- 2) Results of wetland vegetation monitoring – summary of data, final photos, and discussion on level of success
- 3) Results of revegetation monitoring – summary of data and discussion on level of success
- 4) Inspection and Maintenance monitoring summary
- 5) Results of water quality monitoring – summary of data and discussion on effectiveness of BMPs treating stormwater and fishing pond overflow
- 6) Description of any project related public education activities during and proposed following project completion
- 7) Summary discussing overall operational effectiveness of project BMPs, extent to which the project goal and objectives were met, and proposed remedies, if applicable.

Project Schedule

The project schedule represents an approximation of the timing of construction and monitoring activities. Complications may arise that result in delays. The Contractor shall notify the NDEP Contract Coordinator of events or proposed changes that affect the scope of work or schedule.

Tasks and Monitoring	Spring 2009	Summer 2009	Fall 2009	Winter 2009	Spring 2010	Summer 2010	Fall 2010	Winter 2010	Spring 2011	Summer 2011	Fall 2011
Final Design Plans & Bid/Specifications Doc.	X	X									
Required Permits	X	X									
Construction		X	X								
Quarterly Reports and Invoices		X	X	X							
Water Quality Monitoring		X	X	X	X	X	X	X	X	X	X
Wetland Vegetation and Revegetation Monitoring			X		X		X		X		X
BMP Inspection and Maintenance Monitoring			X	X	X	X	X	X	X	X	X
Final Project Report											X

1. Contingency Plan

Establishment of wetlands along the interior perimeter of the fishing pond and in the wetland swale is a critical BMP component of the grant project. A contingency plan will be needed if the procurement, planting or establishment of wetland vegetation must be postponed to the 2010 growing season. If needed, the contingency plan should address corrective actions, including changes to scheduled activities and interim measures to control nonpoint source pollution.

2. Project Budget

Category	Rate	Cost	Reimbursable	Match
			NDEP 319 (h)	Carson City
BMP Construction	Actual Cost	\$152,330	\$76,165	\$76,165
Engineering/Design	Actual Cost	\$8,000	\$4,000	\$4,000
<i>Subtotal</i>		\$160,330	\$80,165	\$80,165
Wetlands Vegetation Subcontract	Actual Cost	\$25,000	\$12,500	\$12,500
TOTALS		\$185,330	\$92,665	\$92,665

Detailed information on salary rates, benefits, operating, travel, and indirect costs shall be provided to NDEP prior to construction. Operating expenses will be reimbursed at actual costs; receipts must be provided with invoice. Construction costs will be reimbursed at actual costs; receipts must be provided with invoice.

I have reviewed and approve this work plan.

 Roger Moellendorf
 Parks and Recreation Director

 Date

City of Carson City
Agenda Report

Item # 9-3

Date Submitted: 3/24/2009

Agenda Date Requested: 4/2/2009
Time Requested: Consent

To: Mayor and Supervisors

From: City Manager's Office

Subject Title: Action to authorize the Mayor to sign the Subordination Agreement required pursuant to the Amended and Restated Commitment Agreement for Continuing Business Operations by and between Carson City and Richard Campagni.

Staff Summary: Carson City and Richard Campagni entered into an Amended and Restated Commitment Agreement for Continuing Business Operations ("Commitment Agreement") by which Richard Campagni agreed to continue business operations of Carson City Toyota-Scion, Carson City Mazda-Hyundai and Capital Ford in Carson City for twenty (20) years and Carson City provided an incentive of Three Million and Six Hundred Thousand Dollars (\$3,600,000) to Mr. Campagni for the purpose of assisting Mr. Campagni in purchasing property for the construction of a new facility for the Carson Toyota dealership. In conjunction with the Commitment Agreement, a Deed of Trust in favor of Carson City was executed to secure the obligations of Mr. Campagni under the Commitment Agreement. Pursuant to the Commitment Agreement, Carson City has agreed to subordinate that Deed of Trust to a Deed of Trust used to secure construction financing for the new facility for the Carson Toyota dealership.

Type of Action Requested: (check one)
 Resolution Ordinance
 Formal Action/Motion Other (No action)

Does This Action Require A Business Impact Statement: () Yes (x) No

Recommended Board Action: I move to authorize the Mayor to sign the Subordination Agreement required pursuant to the Amended and Restated Commitment Agreement for Continuing Business Operations by and between Carson City and Richard Campagni.

Explanation for Recommended Board Action: Pursuant to the terms of the Commitment Agreement, Carson City has agreed to subordinate the Deed of Trust executed in its favor to a Deed of Trust used to secure construction financing for the new facility for the Carson Toyota dealership.

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

Fiscal Impact: NA.

Explanation of Impact: NA

Funding Source: NA

Alternatives: Not authorize the Mayor to execute the Subordination Agreement.