

City of Carson City  
Agenda Report

Item #9-4

**Date Submitted:** March 9, 2010

**Agenda Date Requested:** March 18, 2010  
**Time Requested:** Consent

**To:** Mayor and Supervisors

**From:** Parks and Recreation Department - Open Space Division

**Subject Title:** Action to approve and authorize the Open Space Manager to execute a Question-1 State Conservation Program funding agreement and deed restriction, and other matters properly related thereto, in order to obtain approximately \$1,596,347 in reimbursement for the fee title acquisition and conservation easement for the Horsecreek Ranch open space transactions. (Juan F. Guzman)

**Staff Summary:** On February 19, 2009, the Board of Supervisors conceptually approved a deed restriction and funding agreement template previously negotiated with the help of Supervisors Williamson and Aldean, and the Question-1 State Conservation Bonds Program. These documents reflect the language negotiated and will result in reimbursement of funds to be deposited in the Question-18 Open Space account. These two transactions were completed solely with Question-18 Open Space funds. This action will result in a refund of approximately 40% of the expended funds.

**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 and authorize the Open Space Manager to execute a Question-1 State Conservation Program funding agreement and deed restriction, and other matters properly related thereto, in order to obtain approximately \$1,596,347 in reimbursement for the fee title acquisition and conservation easement for the Horsecreek Ranch open space transactions.

**Explanation for Recommended Board Action:** Through prior actions of the Board of Supervisors, these two transactions were completed with Open Space funds. Concurrently, we were awarded grant monies by the Question-1 State Conservation Program. Board action is required in order to execute each of the documents that will result in the collection by Carson City of funds awarded by the state grants.

**Applicable Statute, Code, Policy, Rule or Regulation:**

C.C.M.C. 13.06 Open Space

Carson City Charter - Article 8A

AB9, Statutes of Nevada, 17<sup>th</sup> Special Session of the 2001 Nevada State Legislature, Chapter 104

**Fiscal Impact:** The Open Space Acquisition account will receive \$1,596,347 from the Question-1 State Conservation Program.

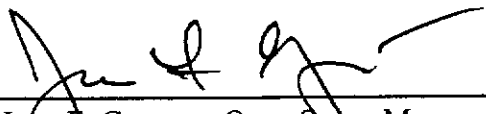
**Explanation of Impact:** The Question-18 Open Space Acquisition account will be positively impacted by having an infusion of income. The present balance is for \$3.3 million.


**Funding Source:** Question-1 State Conservation Program Land and Water grants.

**Alternatives:** Not to authorize the Open Space Manager to execute the agreements.

**Supporting Material:**

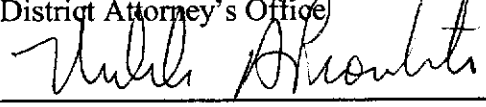
- Horsecreek Ranch deed restriction for fee title portion of Horsecreek Ranch

**Prepared By:**  **Date:** 3/9/10  
Juan F. Guzman, Open Space Manager

**Reviewed By:**  **Date:** 3/10/10  
Roger Moellendorf, Parks & Recreation Director

 **Date:** 3/10/10  
Larry Werner, City Manager

 **Date:** 3/10/10  
District Attorney's Office

 **Date:** 3/10/10  
Finance Department

**Board Action Taken:**

Motion: \_\_\_\_\_ 1: \_\_\_\_\_ Aye/Nay  
2: \_\_\_\_\_ \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Vote Recorded By)

A.P.N. 7-051-76 <sup>80</sup> ~~7-051-78~~ 7-031-33

**RECORDING REQUESTED BY:**  
Juan Guzman, Open Space Manager  
3303 Butti Way, Building No. 9  
Carson City, NV 89701

**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 \_\_\_\_\_, 20\_\_, 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) 7-051-76 / 7-051-~~78~~ / 7-031-33, (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 17<sup>th</sup> 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 "Horsecreek Ranch Fee Title" and which has been assigned Question 1 Program Project ID No. CA-LW-04050.

DEED RESTRICTION

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.

- 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.

///



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

**GRANTEE:**

CARSON CITY

By: \_\_\_\_\_  
JUAN F. GUZMAN  
Open Space Manager

Date: \_\_\_\_\_

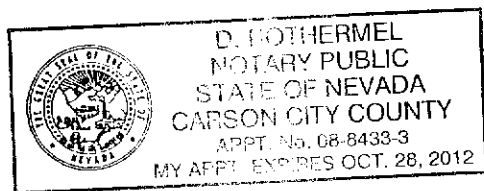
STATE OF NEVADA            )  
  :SS  
CITY OF CARSON CITY    )

On February 18, 2011  
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.

*D. Rothermel*

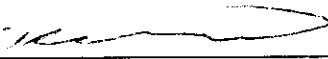
STATE OF NEVADA            )  
  :SS  
COUNTY OF CARSON    )

On \_\_\_\_\_, \_\_\_\_\_,  
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.



**APPROVED as to Form:**

**CATHERINE CORTEZ MASTO**  
Attorney General

By:   
Kerry Benson  
Deputy Attorney General

**APPROVED as to Form:**

**NEIL ROMBARDO**  
Carson City District Attorney

By: \_\_\_\_\_  
Thoran Towler  
Senior Deputy District Attorney

Exhibit A

LEGAL DESCRIPTION  
REMAINDER PARCEL 1A  
AFTER DEDICATION OF PUBLIC RIGHT-OF-WAY  
FOR KINGS CANYON ROAD

EXHIBIT "A"

December 9, 2004

A parcel of land located within a portion of the Northwest one-quarter of Section 27, Township 15 North, Range 19 East, MDM, Carson City, Nevada, being more particularly described as follows:

BEGINNING at the Northwest Section corner of said Section 27;

thence N. 89°50'23" E., along the North line of said Section 27, 2655.17 feet to the North one-quarter corner of said Section 27;

thence S. 00°55'11" W., along the East line of the Northwest one-quarter of said Section 27, 1090.70 feet to a point on the Northerly right-of-way line of Kings Canyon Road;

thence along said Northerly line the following 22 courses:

1. S. 61°48'32" W., 72.43 feet;
2. 14.04 feet along a curve to the right, having a radius of 75.00 feet, and an internal angle of 10°43'45", (chord bears S. 67°10'25" W., 14.02 feet);
3. S. 72°32'17" W., 154.57 feet;
4. 9.93 feet along a curve to the right, having a radius of 75.00 feet, and an internal angle of 7°35'02", (chord bears S. 76°19'48" W., 9.92 feet);
5. S. 80°07'19" W., 298.18 feet;
6. 34.50 feet along a curve to the left, having a radius of 225.00 feet, and an internal angle of 8°47'08", (chord bears S. 75°43'45" W., 34.47 feet);
7. S. 71°20'10" W., 135.04 feet;
8. 116.30 feet along a curve to the right, having a radius of 200.00 feet, and an internal angle of 33°19'08", (chord bears S. 87°59'44" W., 114.67 feet);
9. N. 75°20'42" W., 80.69 feet;
10. 56.42 feet along a curve to the left, having a radius of 125.00 feet, and an internal angle of 25°51'40", (chord bears N. 68°16'32" W., 55.94 feet);
11. S. 78°47'38" W., 99.71 feet;
12. 94.99 feet along a curve to the left, having a radius of 125.00 feet, and an internal angle of 43°32'32", (chord bears S. 57°01'22" W., 92.73 feet);
13. S. 33°15'05" W., 346.69 feet;
14. 174.50 feet along a curve to the right, having a radius of 275.00 feet, and an internal angle of 56°21'25", (chord bears S. 53°25'48" W., 171.59 feet);

338776

15. 65.32 feet along a curve to the right, having a radius of 69.00 feet, and an internal angle of  $54^{\circ}14'15''$ , (chord bears N.  $81^{\circ}16'22''$  W., 62.91 feet);
16. 182.60 feet along a curve to the left, having a radius of 525.00 feet, and an internal angle of  $19^{\circ}55'41''$ , (chord bears N.  $64^{\circ}07'05''$  W., 181.68 feet);
17. 134.52 feet along a curve to the left, having a radius of 100.00 feet, and an internal angle of  $77^{\circ}04'18''$ , (chord bears S.  $67^{\circ}22'56''$  W., 124.60 feet);
18. S.  $28^{\circ}50'47''$  W., 49.78 feet;
19. S.  $42^{\circ}33'40''$  W., 217.50 feet;
20. 44.74 feet along a curve to the right, having a radius of 37.50 feet, and an internal angle of  $68^{\circ}21'50''$ , (chord bears S.  $76^{\circ}44'36''$  W., 42.14 feet);
21. 555.69 feet along a curve to the left, having a radius of 600.00 feet, and an internal angle of  $53^{\circ}03'53''$ , (chord bears S.  $84^{\circ}23'34''$  W., 536.05 feet);
22. 127.84 feet along a curve to the right, having a radius of 119.40 feet, and an internal angle of  $61^{\circ}20'40''$ , (chord bears S.  $88^{\circ}31'57''$  W., 121.82 feet) to a point on the West line of said Section 27;

thence N.  $00^{\circ}37'58''$  E., along said West line, 1939.63 feet the POINT OF BEGINNING.

Containing 93.232 acres, more or less.

Basis of bearing:

The line between NDOT monument numbers 760004M and 760007M (N.  $88^{\circ}55'58''$  E.)

PREPARED BY:  
 Darryl M. Harris, P.L.S. # 6497  
 Resource Concepts, Inc.  
 P.O. Box 11796  
 212 Elks Point Road, Suite 443  
 Zephyr Cove, NV 89448



APN 7-051-76

338776

EXHIBIT "B"  
FAGEN  
LOT LINE ADJUSTMENT  
LEGAL DESCRIPTION

Presently  
APN 7-031-33

February 16, 2005

A parcel of land located within a portion of Sections 28 & 33, Township 15 North, Range 19 East, MDM, Carson City, Nevada, being more particularly described as follows:

**BEGINNING** at the Northeast corner of said Section 33;

thence S. 00°44'51" W., along East line said of Section 33, 2620.31 feet to the South line of the Northeast one-quarter of said Section 33;

thence S. 89°35'20" W., along said South line, 1321.54 feet to the West line of the East one-half of the Northeast one-quarter of said Section 33;

thence N. 01°03'13" E., along said West line, 2625.76 feet to the North line of said Section 33;

thence S. 89°48'48" W., along said North line, 1307.42 feet to the West line of the Southeast one-quarter of said Section 28;

thence N. 00°31'08" E., along said West line, 2650.42 feet to the North line of the Southeast one-quarter of said Section 28;

thence N. 89°41'59" E., along said North line, 2618.93 feet to the East line of said Section 28;

thence S. 00°36'19" W., along said East line, 1204.33 feet;

thence S. 50°18'02" W., 1253.56 feet;

thence S. 35°22'04" E., 493.86 feet;

thence N. 89°48'48" E., 665.95 feet to the East line of said Section 28;

thence S. 00°36'19" W., along said East line, 250.00 feet to the POINT OF BEGINNING.

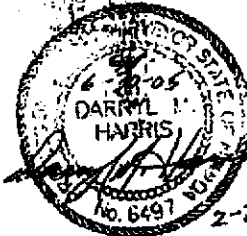
Containing 222.235 acres more or less.

Basis of Bearing:

The line between NDOT monument numbers 760004M and 760007M (N. 88°59'58" E.)

**PREPARED BY:**  
Darryl M. Harris, P.L.S. # 6497  
Resource Concepts, Inc.  
P.O. Box 11796  
212 Filts Point Road, Suite 443  
Zephyr Cove, NV 89448

APK 7-031-22



338776

Presently  
APN 7-051-80

EXHIBIT "C"

**FAGEN  
LOT LINE ADJUSTMENT  
LEGAL DESCRIPTION**

December 8, 2004

A parcel of land located within a portion of Section 34, Township 15 North, Range 19 East, MDM, Carson City, Nevada, being more particularly described as follows:

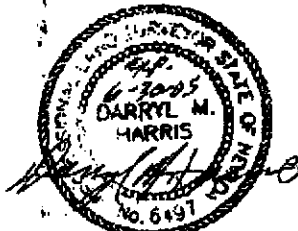
**BEGINNING** at the Northwest corner of said Section 34;  
thence S. 89°49'21" E., along said North line, 650.79 feet;  
thence S. 26°21'12" E., 1465.29 feet to the Southeast corner of the Northwest one-quarter of the Northwest one-quarter of said Section 34;  
thence S. 00°36'55" W., along East line of said Northwest one-quarter of the Northwest one-quarter, 948.10 feet to the Northerly right-of-way line of U.S. Highway 50;  
thence S. 43°33'57" E., along said Northerly right-of-way line, 51.92 feet;  
thence N. 89°44'41" W., 1285.23 feet to the West line of said Section 34;  
thence N. 00°44'51" E., along said West line, 2295.16 feet to the POINT OF BEGINNING.

Containing 59.452 acres more or less.

**Basis of Bearing:**

The line between NDOT monument numbers 760004M and 760007M (N. 88°55'58" E.)

**PREPARED BY:**  
Darryl M. Harris, P.L.S. # 6497  
Resource Concepts, Inc.  
P.O. Box 11796  
212 Blka Point Road, Suite 441  
Zephyr Cove, NV 89448



APN 7-051-11

338776

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)

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, 17<sup>th</sup> 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 March 31, 2010, 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 Reports/CLTA Policies Prepared by Northern Nevada Title Company on July 8, 2005 and April 15, 2009.
- ATTACHMENT G: Non-revocable Deed Restriction
- ATTACHMENT H: Conservation Easement
- ATTACHMENT I: DCNR General Requirements

6. COST: Grantor agrees to provide a maximum of 40.08 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 59.92 percent of the \$3,982,902.26 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, and as further specified herein. 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 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.

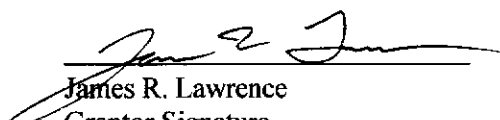
18. PUBLIC RECORDS. Pursuant to NRS 239.010, information or documents received from Grantee may be open to public inspection and copying. The State will have the duty to disclose unless a particular record is made confidential by law or a common law balancing of interests.

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.

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

 _____ James R. Lawrence Grantor Signature	<u>2/18/10</u> _____ Date	_____ Administrator/State Lands Registrar Grantor's Title
--	---------------------------------	---

_____ Grantee Signature	_____ Date	_____ Grantee's Title
----------------------------	---------------	--------------------------

**ATTACHMENT A**  
**Question 1 Adopted Regulations**

(See 17 Page PDF Document Attached)

**ATTACHMENT B**  
**Project Summary & Special Conditions**

**Project Summary:**

<b>Project Title and Identification Number:</b> <b>Horse Creek Ranch Fee Title and Conservation Easement Acquisitions,</b> <b>CA-LW-04050</b>
---

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 March 31, 2010

**Project Cost Sharing (Match Amount)**

Estimated Total Project Cost*		\$3,982,902.26
Grantee's (Carson City) Share of Project Cost	59.92% of Project Cost	\$2,386,555.26
Grantor's (State Lands) Share of Project Cost	40.08% of Project Cost	\$1,596,347.00

\*See Attachment D, Project Budget for details.

**GRANTEE is responsible for 59.92% of the ACTUAL costs of the project.** This is currently estimated to be \$2,386,555.26.

**GRANTOR is responsible for 40.08% of the ACTUAL costs of acquisition.** This is currently estimated to be \$1,596,347.00. However, the 40.08% 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 3 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 175.33 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.

### **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 07-051-76, 07-051-80, and 07-031-33).
3. A Conservation Easement acceptable to the State Lands Administrator shall have been granted on the adjoining parcels (APN 07-051-82, and portions of APN's 07-051-83 & 07-051-84) 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

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.

17. Termination

This agreement shall be terminated:

- a. March 31, 2010 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**

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 3 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 175.33 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.

*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.*



**ATTACHMENT D  
Project Budget**

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

**Horse Creek Ranch Acquisitions**

**Question 1 Project Budget**

Project Task/Item	Question 1 Request	Match, Cash	Match, Inkind	Other Non-Qualifying Costs	Subtotal
<b>Fee Title Acquisition:</b>					
Fee Title	\$1,000,000.00	\$1,846,250.00		\$0.00	\$2,846,250.00
Phase I Environmental Assessment		\$4,627.00			\$4,627.00
Title Insurance		\$5,715.25			\$5,715.25
Escrow Fee		\$1,581.00			\$1,581.00
Legal Documents		\$8,382.61			\$8,382.61
Appraisal		\$6,500.00			\$6,500.00
<b>Conservation Easement Acquisition:</b>					
Conservation Easement	\$596,347.00	\$503,653.00			\$1,100,000.00
Title Insurance		\$2,146.40			\$2,146.40
Escrow Fee		\$1,200.00			\$1,200.00
Appraisal		\$6,500.00			\$6,500.00
Subtotal	\$1,596,347.00	\$2,386,555.26	\$0.00	\$0.00	\$3,982,902.26

Percent of Total, Qualifying Costs **40.0799433** 59.9200567 0  
 Total Match Percentage 59.9200567  
 Percentage Total (100?) 100  
 Total Match \$2,386,555.26  
 Total Q1 Request \$1,596,347.00  
 Total Qualifying Project Cost **\$3,982,902.26**

**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 Documents Attached prepared by William G. Kimmel, Daniel A. Leck, and John S. Wright)

**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 Documents prepared by Northern Nevada Title Company attached)

**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)

**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)

**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.

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, 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. Grant administrative costs in excess of 5 percent of the total project cost, and any undocumented administrative costs.



**ADOPTED REGULATION OF THE ADMINISTRATOR  
OF THE DIVISION OF STATE LANDS OF THE STATE  
DEPARTMENT OF CONSERVATION  
AND NATURAL RESOURCES**

**LCB File No. R186-03**

Effective April 22, 2004

EXPLANATION – Matter in *italics* is new; matter in brackets [~~omitted matter~~] is material to be omitted.

AUTHORITY: §§1-35, section 2 of chapter 6, Statutes of Nevada 2001 Special Session.

A REGULATION relating to natural resources; providing a program for persons to apply for and receive proceeds from the sale of general obligation bonds to protect, preserve and obtain the benefits of the property and natural resources of this state; and providing other matters properly relating thereto.

**Section 1.** Chapter 321 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 35, inclusive, of this regulation.

**Sec. 2.** *As used in sections 2 to 35, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 28, inclusive, of this regulation have the meanings ascribed to them in those sections.*

**Sec. 3.** *“Acquisition” means the securing of the right of public use of real property by the purchase or donation of an interest in that real property.*

**Sec. 4.** *“Administrator” means the Administrator of the Division.*

Sec. 5. *“Carson River corridor” includes, without limitation, the 100-year floodplain of the Carson River, land adjacent to the 100-year floodplain of the Carson River, sloughs or ponds of the Carson River and old meanders and oxbows of the Carson River.*

Sec. 6. *“Conservation and Resource Protection Grant Program” or “Program” means the conservation initiative that was created by chapter 6, Statutes of Nevada 2001 Special Session, and approved by the voters.*

Sec. 7. *“Construction” means those activities directly related to the creation of a new recreational trail or to improvements made to an existing recreational trail that cause the trail to comply with a desired standard as determined by the Administrator.*

Sec. 8. *“Division” means the Division of State Lands of the State Department of Conservation and Natural Resources.*

Sec. 9. *“Easement for conservation” has the meaning ascribed to it in NRS 111.410.*

Sec. 10. *“Greenbelt” means an open area of real property that is cultivated or maintained in a natural or seminatural state and used:*

1. *As a buffer between land uses;*
2. *To mark the edge of an urban or developed area, or a natural feature, such as a stream or lake; or*
3. *To create a linear corridor for the provision of trails or other amenities.*

Sec. 11. *“Habitat conservation plan” means a plan to protect or enhance a wildlife habitat for an endangered species or other species that needs special protection, or a plan to protect or enhance essential habitat for biodiversity. The plan may include a procedure for compliance with the Endangered Species Act of 1973, 16 U.S.C. §§ 1531 et seq.*

Sec. 12. *“Historic or cultural resources” means any surviving evidence that relates to the history of the use of the land from the earliest human occupation to recent historical activities. Surviving evidence may include, without limitation, sites, structures, districts, objects, artifacts and historic documents associated with or representative of peoples, cultures, and human activities and events from any period of time, including, without limitation, the present.*

Sec. 13. *“Matching contribution” includes money or anything of value, including, without limitation, the use of personnel, materials or equipment that is expended on a project.*

Sec. 14. *“Municipality” means an incorporated city, an unincorporated town created pursuant to chapter 269 of NRS or a general improvement district created pursuant to chapter 318 of NRS.*

Sec. 15. *“Nonprofit conservation organization” means a nonprofit organization that has as part of the mission of the organization the acquisition of property for conservation purposes.*

Sec. 16. *“Nonprofit organization” means an entity or organization that is exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3).*

Sec. 17. *“Open-space plan” means an inventory of undeveloped and semideveloped land or resources with a plan for the long-term preservation and conservation of that land. The plan may include a provision for dispersed recreational opportunities on the land.*

Sec. 18. *“Project” includes, without limitation, preparation of an open-space plan, preparation of a habitat conservation plan, acquisition of an interest in land or water for the purposes of protection or enhancement of a wildlife habitat, protection of sensitive or unique vegetation, protection of historic or cultural resources, protection of riparian corridors or*

*wetlands, construction of a recreational trail, enhancement and restoration of the Carson River corridor, development of the path system in the Lake Tahoe area and other environmental activities.*

Sec. 19. *“Public benefit” means the outcome of a project or acquisition that obtains, protects or preserves the benefits of property or natural resources within the State of Nevada for the public.*

Sec. 20. *“Recreational facility” means a facility for the use and enjoyment of an outdoor recreation area that provides an opportunity for the observation, interpretation or enjoyment of natural resources.*

Sec. 21. *“Recreational trail” means a trail, pathway or similar area for walking, hiking, bicycling, horseback riding, exercising, paddling, swimming or any other recreational activity if the activity does not have an adverse impact on a threatened or endangered species, wetland, riparian corridor, wildlife habitat, sensitive or unique vegetation or other important natural resource.*

Sec. 22. *“Riparian corridor” means land related to or located on the bank of or adjacent to a natural or artificial waterway, including, without limitation, a river, an intermittent or permanent creek or stream, a gully where surface water collects, a wetland, a lake or a ditch, if the land exhibits plant types unique to areas with periodic or perennial water sources of a magnitude greater than the surrounding uplands.*

Sec. 23. *“Sensitive or unique vegetation” means any species, cluster of species or type of habitat designated as sensitive or unique vegetation by an appropriate federal or state agency, any species of vegetation in a declining trend, any species of vegetation that has*

*characteristics that have been identified as worthy of special consideration or any species of vegetation that is highly restricted in distribution or that occurs only in a very specialized habitat.*

**Sec. 24.** *“State agency” means any agency, department or division of the Executive Department of this state and includes the University and Community College System of Nevada.*

**Sec. 25.** *“Urban park” means land located in a community of any size that provides an opportunity for casual recreational activity and includes, without limitation, any natural area, area of scenic value, area of physical or biological importance, wildlife area, land that provides outdoor community space and land that provides a connection to another public area.*

**Sec. 26.** *“Wetland” means land having a water table at, near or above the land surface, or land that has been saturated with water for a period of time long enough to promote wetland or aquatic processes indicated by hydric soil, hydrophytic vegetation and other biological activity adapted to a wet environment.*

**Sec. 27.** *“Wildlife habitat” means a diverse area with a combination of necessary resources and environmental conditions that promotes a population of at least one wildlife species and allows that species to flourish and reproduce.*

**Sec. 28.** *“Wildlife species” means any species of animal, including, without limitation, insects, amphibians, reptiles, and other vertebrates and invertebrates.*

**Sec. 29. 1.** *The Division will award grants of money from the sale of general obligation bonds of this state to counties, municipalities, state agencies or nonprofit organizations, or any combination thereof. The money will be distributed as follows:*

*(a) Not more than \$7,250,000 to a state agency, county, municipality or nonprofit organization, or any combination thereof, for the construction of recreational trails. A recreational trail constructed with money awarded pursuant to this paragraph may include signs, markings, access points, staging areas, trailheads and directly related improvements such as restrooms and shade structures. Such a recreational trail may also include landscaping or revegetation with any associated irrigation equipment but only in an area around an improvement that requires landscaping or revegetation for slope stabilization as a direct result of the construction of the improvement.*

*(b) Not more than \$5,000,000 to a state agency, county, municipality or nonprofit organization, or any combination thereof, for the acquisition of land and water or interests in land and water for urban parks or greenbelts.*

*(c) Not more than \$3,000,000 to a state agency, a county whose population is less than 100,000 or a municipality within a county whose population is less than 100,000, or any combination thereof, for the development of habitat conservation plans.*

*(d) Not more than \$250,000 to a county whose population is less than 100,000 or a municipality within a county whose population is less than 100,000, or any combination thereof, for the development and adoption of open-space plans.*

*(e) Not more than \$20,000,000 to a county or a municipality within a county, or any combination thereof, for 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.*

*(f) Not more than \$10,000,000 to Churchill County, Douglas County, Lyon County, Carson City or a municipality located within those counties, or any combination thereof, to enhance and restore the Carson River corridor. Money awarded pursuant to this paragraph must be used to:*

*(1) Acquire and develop land and water rights;*

*(2) Provide recreational facilities;*

*(3) Provide access to and along the Carson River, including, without limitation, parking areas; or*

*(4) Restore the Carson River corridor.*

*(g) Not more than \$5,000,000 to Douglas County, Washoe County, Carson City or a municipality located within those counties, or any combination thereof, to enhance and develop the path system in the Lake Tahoe area.*

*2. The Division may enter into contracts or agreements with nonprofit conservation organizations in an amount not to exceed \$15,000,000 to acquire 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 and wetlands and other environmental resources.*

*3. The Administrator may use advisory committees to make recommendations for grants awarded pursuant to subsection 1 or contracts or agreements entered into pursuant to subsection 2.*

4. *The Administrator will coordinate with the Division of State Parks of the State Department of Conservation and Natural Resources for any grant awarded pursuant to paragraph (b) of subsection 1.*

5. *The Administrator will coordinate with the Department of Wildlife and the Nevada Natural Heritage Program for any grant awarded pursuant to paragraph (c) of subsection 1.*

6. *The Administrator will determine the boundaries of the Carson River corridor for any grant awarded pursuant to paragraph (f) of subsection 1.*

7. *An urban park for which land and water or an interest in land and water was acquired pursuant to paragraph (b) of subsection 1 must be open to the public.*

**Sec. 30. 1. *The Administrator will periodically:***

*(a) Solicit applications from counties, municipalities, state agencies and nonprofit organizations for grants of money from the sale of general obligation bonds issued pursuant to chapter 349 of NRS;*

*(b) Solicit applications from nonprofit conservation organizations to carry out contracts or agreements; and*

*(c) Establish deadlines for the submission of applications solicited pursuant to paragraphs (a) and (b).*

2. *An application for a grant, contract or agreement pursuant to subsection 1 or 2 of section 29 of this regulation must be submitted to the Administrator and must include, without limitation:*

*(a) A completed application on a form provided by the Administrator;*



*(b) The total projected cost of the project, including, without limitation, as appropriate, the estimated costs for planning, design, acquisition and construction, and a description of the manner in which each estimated cost was calculated;*

*(c) The amount of money requested for the project;*

*(d) A detailed description of the project and the manner in which the project meets the intent of the Program;*

*(e) Documentation that the project was commenced on or after July 1, 2000;*

*(f) A proposed schedule for the project that must include the planned phasing and implementation of the project;*

*(g) Documentation of the qualifications of the nonprofit organization, if applicable;*

*(h) A detailed description of matching contributions that will be provided by the applicant;*

*(i) Proof that the applicant has title to, or a lease or easement on, land that is required to carry out the project or a letter of intent between the property owner and the applicant concerning the acquisition of the property by the applicant;*

*(j) Proof that the applicant is willing to sell or donate land and proof that there is a person who is willing to purchase or receive the land, if applicable;*

*(k) If the application is submitted by a nonprofit conservation organization and includes the acquisition of land or water or an interest in land or water, the most current financial statement of the organization and specific details concerning the manner in which the money of the State will be secured by an interest in the property;*

*(l) A map of the location and a plan of the site of the project indicated in an appropriate scale;*

*(m) A statement from an appropriate local, regional, state or federal agency that the project conforms to all applicable local, regional, state and federal plans;*

*(n) Documentation and a statement by the applicant that the applicant notified all property owners within a 1-mile radius of the subject property boundary or the closest 10 property owners, whichever number of property owners is less, about the proposal before the submission of the proposal to the Division, unless the Administrator requires different information on a case-by-case basis;*

*(o) A statement from any local jurisdiction affected by the proposal that details any issues or concerns about the proposal and whether the local jurisdiction supports or opposes the proposal;*

*(p) A completed Environmental Impacts Checklist on the form provided by the Division and, if applicable as a result of a potential adverse impact to the environment, a summary of a proposed plan to mitigate the potential impact of the project on the environment; and*

*(q) A summary of the proposed plan for operation and maintenance of the project for a period of not less than 20 years, including, without limitation, the identity of the person who will operate the project and provide the maintenance.*

**Sec. 31.** *Before a county, municipality, state agency or nonprofit organization submits an application for a proposed project, the county, municipality, state agency or nonprofit organization may submit a preapplication to the Division for an initial determination of the eligibility of the project for a grant under the Program. In making a determination of the eligibility of a project, the Administrator will consider, without limitation, the following criteria:*

*1. Whether the county, municipality, state agency or nonprofit organization is eligible to apply for a grant;*

*2. Whether the proposed project is eligible pursuant to section 29 of this regulation; and*

*3. Whether the proposed project provides a public benefit as determined by the Administrator.*

*Sec. 32. 1. The Administrator will rank applications made pursuant to section 30 of this regulation in order of their importance. The Administrator will award grants for projects or acquisitions that, based on the application, are most appropriate for the receipt of a grant within the overall purpose of the Program. The Administrator will use a point system as outlined in the Administrative Guidelines of the Division to rank each application. The Administrator will award points based on the following factors:*

*(a) The extent of environmental significance of the project and the degree of conservation and protection of natural resources, including, without limitation, the preservation of a natural, scientific, cultural, archaeological, agricultural, paleontological or historical site, or a wetland or riparian resource;*

*(b) The extent of the public benefit, including, without limitation, an overall advancement in the conservation and protection of the natural resources of the State, an enhancement to recreational opportunities, increased public access to lands and waters and the achievement of goals identified in adopted open-space plans;*

*(c) The objectives of the project are clearly stated in the proposal, and the applicant has the ability to carry out those objectives;*

*(d) The detail and design of the project is adequate and includes a detailed plan for management of the project that specifies the manner in which the project will be maintained and the manner in which the project will remain consistent with the purpose of the Program;*

*(e) The projected budget and associated costs of the project are reasonable and detailed, the amount and sources of matching contributions are listed and the project will meet the stated objectives in a cost-effective manner;*

*(f) The fact that the project is a cooperative effort with other agencies, organizations or persons and the extent of the support for the project from counties, municipalities and other public entities; and*

*(g) Any other factor that the Administrator considers to be important in the ranking process, including, without limitation:*

*(1) The urgency of the need for the project;*

*(2) That the applicant provides for matching contributions that exceed the matching contributions required in section 33 of this regulation;*

*(3) The application for acquisition of land includes the acquisition of water rights or another interest that will remain with the land in perpetuity;*

*(4) The existence of a local need for the project that warrants special attention for the project due to a lack of similar opportunities in the local area; and*

*(5) If the project does not include the acquisition of fee simple title to land, the applicant proposes an easement for conservation or a remainder after a life estate.*

2. *The factors of environmental significance, as described in paragraph (a) of subsection 1, and public benefit, as described in paragraph (b) of subsection 1, are worth more points than the other factors in subsection 1.*

3. *The Administrator may use an advisory committee to review applications and make recommendations to the Administrator. The Administrator may consider a recommendation by an advisory committee when awarding points pursuant to subsection 1.*

4. *The decision of the Administrator is final. An application that is not selected by the Administrator to receive a grant may be resubmitted for a grant to be awarded at a future date.*

Sec. 33. 1. *To receive a grant pursuant to the Program, an applicant must provide for an eligible matching contribution as follows:*

*(a) For a grant awarded pursuant to paragraph (a) or (b) of subsection 1 of section 29 of this regulation, not less than 25 percent of the total cost of the project;*

*(b) For a grant awarded pursuant to paragraph (c) or (d) of subsection 1 of section 29 of this regulation, not less than 5 percent of the total cost of the project;*

*(c) For a grant awarded pursuant to paragraph (e) of subsection 1 of section 29 of this regulation:*

*(1) In a county whose population is 100,000 or more, not less than 50 percent of the total cost of the project; or*

*(2) In a county whose population is less than 100,000, not less than 25 percent of the total cost of the project;*

*(d) For a grant awarded pursuant to paragraph (f) or (g) of subsection 1 of section 29 of this regulation, not less than 50 percent of the total cost of the project; and*

*(e) For a grant awarded pursuant to subsection 2 of section 29 of this regulation, not less than 50 percent of the cost of the acquisition.*

*2. A matching contribution is eligible for the purposes of this section if the matching contribution is for a project initiated on or after July 1, 2000, if it is directly related to the project or acquisition and if it includes:*

- (a) Cash;*
- (b) Planning, labor, including volunteer labor, appraisals, equipment rental and material costs;*
- (c) Federal contributions;*
- (d) Any costs associated with required environmental information for the project or acquisition, the documentation of which must be submitted with the application;*
- (e) Costs incurred for the establishment of a monitoring program to monitor the success of a project;*
- (f) Any other matching contribution not listed in subsection 3, subject to the approval of the contribution by the Administrator; or*
- (g) Any combination of paragraphs (a) to (f), inclusive.*

*3. The following matching contributions, without limitation, do not qualify as eligible matching contributions for the purposes of this section:*

- (a) Costs associated with the preparation of the application;*
- (b) In-kind services that do not relate to the project or the purpose of the Program;*
- (c) Money expended before the initiation of the project, or July 1, 2000, whichever is later;*
- (d) Other money granted pursuant to the Program; and*

*(e) Any other matching contribution that the Administrator determines is an inappropriate matching contribution.*

*Sec. 34. The Division and the recipient of any money pursuant to a grant, contract or agreement made pursuant to section 29 of this regulation shall enter into an agreement that:*

*1. Authorizes the recipient to use the money from the grant, contract or agreement to pay for:*

*(a) All expenses related directly to the project or acquisition, including, without limitation, expenses related to the planning, design and construction of the project which must be calculated based on actual costs; and*

*(b) The documented administrative costs of the project, not to exceed 5 percent of the total cost of the project.*

*2. Prohibits the recipient from using the money from the grant, contract or agreement to pay for:*

*(a) Any planning activity that is not directly related to the design and engineering of the project;*

*(b) The purchase of new equipment, unless the Administrator has determined that the new equipment is necessary as a one-time purchase specific to the project;*

*(c) Any work required by a public agency as mitigation or as a condition of the approval of any other project;*

*(d) Any component of the project that the Administrator determines does not benefit the public;*

*(e) Any project or portion of a project that has already been completed; or*

*(f) Any other expenses that the Administrator determines are not necessary to carry out the purposes of sections 2 to 35, inclusive, of this regulation, or that are not in compliance with the intent of the Program.*

*Sec. 35. The Division and the recipient of any money pursuant to a grant, contract or agreement pursuant to section 29 of this regulation shall enter into an agreement that requires the recipient to:*

*1. Provide a matching contribution of not less than the amount specified in section 33 of this regulation.*

*2. Provide a plan for the operation and maintenance of the project for not less than 20 years after the project is completed.*

*3. Agree to:*

*(a) Ownership of a full or partial interest in any property that is necessary for the project;*

*(b) 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 Program; and*

*(c) Include a stewardship statement that addresses maintenance, monitoring and enforcement of weed control, dust control and other related issues.*

*4. Agree to any additional conditions that the Administrator determines are necessary to carry out the purposes of sections 2 to 35, inclusive, of this regulation or the intent of the Program, including, without limitation, the posting of a performance bond by the recipient.*

*5. Obtain such easements for conservation or other interests in land in perpetuity, or as otherwise approved by the Administrator, as are necessary to carry out the project. The*



*Administrator must approve the easements. The Administrator may require that the easement for conservation or other interest in land be held by the State.*

*6. Acknowledge that any interest in land or water acquired by the State or a nonprofit organization pursuant to the Program must:*

- (a) Be acquired and held by the Division pursuant to chapter 321 of NRS; and*
- (b) Not be acquired by condemnation or the power of eminent domain.*

*7. Maintain an accurate accounting of all expenditures made from money received pursuant to the Program and allow the Division to review the accounting upon request.*

*8. If the recipient requests that the entire amount of the grant or a portion thereof be provided in advance, demonstrate an extraordinary need and enter into an agreement with the Division that delineates the specific reporting methods that will be used, including, without limitation, quarterly expenditure reports and a project status report that details the timeliness of the project.*

*9. Provide the Division with detailed invoices on a consistent basis as agreed upon by the Division and the recipient to ensure timely and accurate disbursement of grant money.*