



STAFF REPORT

Report To: Board of Supervisors **Meeting Date:** January 16, 2020

Staff Contact: Darren Schulz, Public Works Director

Agenda Title: For Possible Action: Discussion and possible action regarding a proposed Covenant of Use, prohibiting explicitly religious activities in violation of federal law and discrimination in violation of federal law, for the Brewery Arts Center building (449 West King Street; APN 003-207-04) that the Economic Development Administration (EDA) requires to release its interest in the property, except as otherwise noted in the covenant, in order to finalize the reconveyance of the property to the Brewery Arts Center. (Darren Schulz, Dschulz@carson.org; Dan Stucky, DStucky@carson.org)

Staff Summary: On September 19, 2019, the Board of Supervisors adopted a resolution declaring it to be in the best interest of Carson City and its residents to offer the reconveyance of 449 West King Street, APN 003-207-04, to the entity that donated the property, the Brewery Arts Center, subject to written confirmation that the City has met the conditions of the holding period and other conditions of the original grant obtained by the City prior to reconveyance of the deed. Since this time, EDA has advised the City that in order to request a release of the property after the useful life of the project and without repayment of the Federal Share, the City must record a Covenant of Use on the property. The Covenant of Use states that the property will not be used for explicitly religious activities in violation of applicable Federal law and will not be used for any purpose that would violate the nondiscrimination requirements set forth in 13 CFR 302.20.

Agenda Action: Formal Action / Motion **Time Requested:** 10 minutes

Proposed Motion

I move to approve the Covenant of Use.

Board's Strategic Goal

Efficient Government

Previous Action

June 30, 1977: Carson City accepted a deed of dedication for 449 West King Street from the Carson City Art Alliance for the purpose of the property being used and maintained forever as a place to create, display, and contain works of art.

September 19, 2019: Board of Supervisor's adopted Resolution No. 2019-R-29, declaring it to be in the best interest of Carson City and its residents to offer the reconveyance of 449 West King Street, APN 003-207-04, to the person that donated the property, the Brewery Arts Center, subject to written confirmation that the City has met the conditions of the holding period and other conditions of the original grant obtained by the City prior to reconveyance of the deed.

Background/Issues & Analysis

The Carson City Arts Alliance, which was later renamed the Brewery Arts Center, was established at the beginning of the Bi-Centennial to find a permanent center for the arts in Carson City.

On June 22, 1977, with contributions from local individuals and businesses, the Carson City Fair and Recreation Board, the Nevada Artists Association, and Carson City, the Carson City Arts Alliance purchased 449 West King Street (APN 003-207-04) from the Nevada Appeal. The property was subsequently deeded to the City on June 30, 1977, as the City was able to pursue Federal Economic Development Administration Funds for the remodeling and construction of the arts center.

The Brewery Arts Center officially opened on June 9, 1979. Since this time, the property has been leased back to the Brewery Arts Center to conduct arts and crafts programs, workshops, theater performances, meetings, lectures, and educational classes. Because there is no municipal use needed for this property, on September 19, 2019, the Board of Supervisors adopted a resolution declaring it to be in the best interest of Carson City and its residents to offer the reconveyance of 449 West King Street, APN 003-207-04, to the person that donated the property, the Brewery Arts Center, subject to written confirmation that the City has met the conditions of the holding period and other conditions of the original grant obtained by the City prior to reconveyance of the deed.

Since this time, EDA has advised the City that in order to request a release of the property after the useful life of the project and without repayment of the Federal Share, the City must record a Covenant of Use on the property. The Covenant of Use states that the property will not be used for explicitly religious activities in violation of applicable Federal law and will not be used for any purpose that would violate the nondiscrimination requirements set forth in 13 CFR 302.20.

The Brewery Arts Center Board of Directors and their attorney have reviewed the conditions of the Covenant of Use and agree to the terms.

Applicable Statute, Code, Policy, Rule or Regulation

13 CFR 314.10

Financial Information

Is there a fiscal impact? No

If yes, account name/number: N/A

Is it currently budgeted? No

Explanation of Fiscal Impact: N/A

Alternatives

Do not approve Covenant of Use and provide alternative direction to staff.

Attachments:

[Covenant of Use - 449 West King Street.pdf](#)

Board Action Taken:

Motion: _____

1) _____

Aye/Nay

2) _____

(Vote Recorded By)

APN 003-207-04

Address: 449 West King Street, Carson City, Nevada 89703

AFTER RECORDING RETURN TO:
REAL PROPERTY MANAGER
CARSON CITY PUBLIC WORKS
3505 BUTTI WAY
CARSON CITY, NEVADA 89701

COVENANT OF USE

This COVENANT OF USE is made this ____ day _____, 20____, by CARSON CITY ("Owner") and in favor of the Economic Development Administration, United States of America ("EDA").

WHEREAS, Owner is the owner of certain real property (the "Property") situated in Carson City, Nevada, commonly known as the Brewery Arts Center, and more particularly described in Exhibit A;

WHEREAS, EDA made a Financial Assistance Award dated September 12, 1977 in the amount of \$205,514 in EDA funds, EDA Project No. 07-15-23241 ("Award"); as shown in Exhibit B;

WHEREAS, the EDA holds a reversionary Federal Interest in property acquired or improved with EDA funding ("EDA's Property Interests");

WHEREAS, pursuant to 13 CFR § 314.10, Owner has requested to release the Property from EDA's Property Interests, except those stated in 13 CFR § 314.10(e) and EDA has approved of the request for release, as more particularly described in Exhibit C.

NOW, THEREFORE, in order to comply with 13 CFR § 314.10 and induce EDA to release the Property from the EDA's Property Interests, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Owner covenants and agrees as follows:

1. Pursuant to 13 CFR § 314.10(e), the Property is and shall henceforth be subject to and encumbered by the following covenants: (a) at no time shall the Property be used for explicitly religious activities in violation of applicable Federal law; and (b) at no time shall the Property be used for any purpose that would violate the nondiscrimination requirements set forth in 13 CFR § 302.20, as may be amended from time to time.

2. Owner stipulates and agrees that the foregoing restrictive covenants constitute a reasonable restraint on alienation of use, control, and possession of or title to the Property given the federal interest expressed herein.

3. The foregoing restrictive covenants shall run with the land and shall bind Owner

Exhibit "A"

I. Description of Premises

Lessor leases to lessee the premises located at southwest corner of Division and King Street, Carson City, State of Nevada, and described more particularly as follows:

All of Lots 1, 2, 3, 4, 5, 6, 7, and 8, and the North Twenty-Five Feet (25 ft.) of Lots 9 and 10, all in Block 9 of Sears, Thompson and Sears Division, Carson City, Nevada, together with that certain parcel of land located in the aforesaid Block 9 of said Sears, Thompson and Sears Division of Carson City, Nevada, which parcel is particularly described as follows, to wit:

Beginning at a point on the easterly line of Block 9, Sears, Thompson and Sears Division to Carson City, Nevada, which point is southerly Eighty Feet (80 ft.) from the northeast corner of said Block 9; running thence southerly along said easterly line of said Block 9, a distance of Ten Feet (10 ft.); thence, a right angle westerly, One Hundred Seventy Feet (170 ft.), more or less, to the westerly line of said Block 9; thence northerly along said westerly line, Ten Feet (10 ft.); thence, at a right angle easterly, One Hundred Seventy Feet (170 ft.), more or less, to the point of beginning; said parcel being shown on the Original Plat of said Sears, Thompson and Sears Division to Carson City, as an alley Ten Feet (10 ft.) in width, running easterly and westerly through said Block 9.

Filed for Record at Request of
Carson City

AUG 26 1977 at 40

Min. Past 3 o'clock P.M.

Recorded in Book 214

of official Records

Page 696

Carson City, Nevada

By *[Signature]*
Carson City Recorder

By _____

File No. 73228

Fee m/c



UNITED STATES DEPARTMENT OF COMMERCE
The Assistant Secretary for Economic Development
Washington, D.C. 20230

In reply refer to:
Project No.: 07-51-23241

SEP 12 1977

EXHIBIT B

Mr. John Hancock
Planning Director
City of Carson City
1711 North Ross Street
Carson City, Nevada 89701

Dear Mr. Hancock:

We are pleased to enclose two signed copies of an Offer of Grant issued pursuant to your application for Federal assistance under the provisions of the Local Public Works Capital Development and Investment Act of 1976, as amended by the Public Works Employment Act of 1977. The total project cost is based on the line item estimates contained in Attachment No. 1 hereto.

Your acceptance of the Offer of Grant shall be indicated by the signature of your principal official on one of the signed copies. The official's signature shall be certified by an authorized official other than your principal official. Send the accepted copy to the Director, Western Regional Office, Federal Building, Room 1406, 915 2nd Avenue, Seattle, Washington 98174.

Also, enclosed are two copies each of Form ED-1004, "Designation of Depository for Direct Deposit of Grant and/or Loan Funds," and Form SF-1194, "Authorized Signature Card for Payment Vouchers on Letter of Credit," which must be completed and forwarded to the Regional Office in order for you to be issued a letter of credit. (The issuance of a letter of credit may not be necessary if you have an existing letter of credit from this agency, or if your total grant funding under this legislation is less than \$120,000; in such cases please contact the LPW Letter of Credit Designee at the Regional Office before completing these forms.)

You are cautioned not to make any commitments in reliance on this grant, nor to enter into negotiations relative hereto, until you have carefully reviewed the terms and conditions and have determined that you are in compliance or that you can comply therewith. Any commitments or undertakings entered into prior to obtaining the approval of the Government in accordance with its terms and conditions will be at your own risk.

We would like to remind you that on-site labor must commence within 90 days of the date of your receipt of this Offer of Grant.

Sincerely,



Assistant Secretary
for Economic Development

Enclosure

LOCAL PUBLIC WORKS PROJECT LINE ITEM ESTIMATED COSTS

EDA Project No. 07-51-23241 State Nevada

<u>Line Items</u>	<u>Approved</u>
Administrative Expense	\$ <u>-0-</u>
Architectural/Engineering (Updating and/or completion of Plans and Specifications)	<u>15,200</u>
Other Architectural Engineering Fees	<u>-0-</u>
Project Inspection Fees	<u>-0-</u>
Relocation Expenses	<u>-0-</u>
Relocation Payments to Individuals and Businesses	<u>-0-</u>
Demolition and Removal	
(a) Labor	<u>5,000</u>
(b) non-Labor	<u>1,000</u>
Construction and Project Improvement	
(a) Labor	<u>125,914</u>
(b) non-Labor	<u>49,000</u>
Equipment	<u>-0-</u>
Contingencies	<u>9,400</u>
Total Estimated Costs (Eligible Costs Only)	\$ <u><u>205,514</u></u>

Remarks:

- () Figures rounded.
- (★) Figures adjusted to a more realistic estimate according to established standards or transferred to proper line item(s).



UNITED STATES DEPARTMENT OF COMMERCE
The Assistant Secretary for Economic Development
 Washington, D.C. 20230

Project No.: 07-51-23241

Offer Date: **SEP 12 1977**

OFFER OF GRANT

Pursuant to its authority under the Local Public Works Capital Development and Investment Act of 1976, as amended by the Public Works Employment Act of 1977 and subject to the Special Conditions (Exhibit "A") and the Standard Terms and Conditions (Exhibit "B-LPW") which are herein incorporated by reference, the Economic Development Administration, U. S. Department of Commerce (Government) offers a Grant not to exceed \$205,514 to the City of Carson City, Nevada, (Grantee) to provide financial assistance for remodeling a building for use as an arts center, (Project) presently estimated to cost \$205,514.

This Offer, the Acceptance, the Special Conditions, and the Standard Terms and Conditions shall constitute the Grant Agreement. Acceptance of this Offer must be returned to the Economic Development Administration prior to **SEP 27 1977**

ECONOMIC DEVELOPMENT ADMINISTRATION

By: Robert J. Hall
 Assistant Secretary
 for Economic Development

The above Offer of Grant is hereby accepted.

Date: _____ Legal Name of Grantee _____

By: _____ Title of Accepting Official _____
 Signature and Printed Name

CERTIFICATION (by authorized Official other than Accepting Official)

The person signing this acceptance was so authorized by the Governing Body or Board of the Recipient.

 Signature Title of Certifying Official

 Printed Name Date

U.S. DEPARTMENT OF COMMERCE
Economic Development Administration

EXHIBIT "A"

Local Public Works Program

Project No.: 07-51-23241

SPECIAL CONDITIONS

Prior to the start of construction, the Grantee will present evidence to the Regional Director, WRO, '9A, that the State Historic Preservation Officer and the Advisory Council on Historic Preservation have reviewed and approved the final project plans and specifications.



U. S. DEPARTMENT OF COMMERCE
Economic Development Administration
915 Second Avenue, Room 1890
Seattle, WA 98174
Fax: 206.220.7669
Voice: 206.220.7660

September 16, 2019

EXHIBIT C

Stephanie Hicks
Real Property manager
Carson City Public Works
3505 Butti Way
Carson City, NV 89701

RE: EDA Grant Project No: 07-51-23241

Dear Ms. Hicks:

EDA approves your request for release of the Federal interest and permission to transfer the property contingent upon recording a continuing covenant acceptable to EDA and substantially similar to the attached. The EDA Seattle Regional Counsel, Katherine Chekouras, can work directly with your counsel to ensure the recorded covenant meets EDA's purposes. She can be reached at kchekouras@eda.gov or 206-220-7663.

Once the covenant is recorded in accordance with applicable local law, please return the original recorded copy or a certified recorded copy to EDA within a reasonable time after execution.

Sincerely,

A handwritten signature in blue ink that reads "A. Leonard Smith".

A. Leonard Smith
Regional Director

*[Remove this text before executing the Covenant: This is an example “Covenant of Use” being provided to Owner as a courtesy. The Owner still bears **full responsibility** to ensure the executed Covenant complies with all applicable federal, state and local laws to implement an effective covenant that runs with the land as required by 13 CFR § 314.10(e). Most jurisdictions have specific margin and heading requirements.]*

This Covenant of Use is for use when owner is requesting a release after the useful life of the EDA Project (or after 20 years for projects with a useful life of 20+ years) and without repayment of the Federal share. Repayment of the Federal Share may be required if the intended future use is for explicitly religious activities. Should the Federal share as determined by EDA in writing be re-paid in full, then 1.(a) in the below may be removed.

The owner has the option to provide its own draft Covenant of Use. This example Covenant of Use was last updated on September 13, 2019.]

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3. The foregoing restrictive covenants shall run with the land and shall bind Owner and its successors in title in and to the Property.

IN WITNESS WHEREOF, Owner has caused this instrument to be executed by its official(s) duly authorized to take such actions on behalf of and binding upon the Owner.

[Insert owner name]

By: _____

[signer's name and position]

[Insert notary signature and stamp required for owner's signature]

[Insert Exhibit A, Property Description]