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FILED FOR RECORDING
AT THE REQUEST OF
Lincoln County
Grant Administrator
2004 DEC 20 PM 4 35

LINCOLN COUNTY RECORDED
FEE
LESLIE BOWCHER

DEP *aw*

COMMISSION FOR CULTURAL AFFAIRS FUNDING AGREEMENT

2004 and 2005

THOMPSON OPERA HOUSE REHABILITATION

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COMMISSION FOR CULTURAL AFFAIRS FUNDING AGREEMENT

This Agreement is made and entered into between the State of Nevada, acting by and through the State Historic Preservation Office, hereinafter referred to as "STATE" and LINCOLN COUNTY, Hereinafter referred to as "APPLICANT". This Agreement is entered into pursuant to the authority contained in NRS 233C.200.

Affixed to and made a part hereof are the following attachments.

- ATTACHMENT A – Scope of Work/Budget
- ATTACHMENT B – Covenants
- ATTACHMENT C – Assurances

WHEREAS, the STATE will administer a State Bond grant-in-aid in an amount of \$110,000.00 to assist in the THOMPSON OPERA HOUSE REHABILITATION. NOW, THEREFORE, the APPLICANT in undertaking this project agrees to:

1. Duly and faithfully comply with the terms and conditions of this Agreement, all applicable federal and State laws.
2. At all times during regular business hours or at an agreed to time and as often as the STATE requires, permit authorized representatives of the STATE full and free access to the project and to the accounts, records, and books of the APPLICANT relative hereto, including the right to make transcripts from such accounts, records, and books. Such accounts, records, and books must be retained for three (3) years after the completion of the project.
3. Indemnify and save and hold the State of Nevada, its agents and employees harmless from any and all claims, causes of action or liability arising from the performance of this Agreement, subject to NRS Chapter 41.

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1 4. Provide the STATE with progress reports in a format prescribed by the STATE during
2 the term of the grant QUARTERLY and during the term of this Agreement and any
3 amendments thereto. A final completion report shall be submitted by the APPLICANT
4 in a format prescribed by the STATE within SIXTY (60) days of the completion of the
5 project named herein.

6 5. Maintain:

7 a. An accurate record of all expenditures related to the project. Records must be
8 supported by source documentation. Audits may be required by the STATE. Such
9 audits shall be at the expense of the applicant and are considered an allowable
10 project cost.

11 b. A special account for the project so that an exact itemization of project
12 expenditures can be submitted by check number along with copies of canceled
13 checks and itemized invoices.

14 c. A comparison of actual expenditures with budgeted amounts for the Agreement.

15 6. Notify the STATE immediately in writing of problems or changes in scope of work,
16 budget, product, and performance reporting. No changes can be made without prior
17 written approval from the STATE.

18 7. Following the notification of the grant award and before work begins, the APPLICANT
19 will attend a project conference held by the STATE. It is the responsibility of the
20 APPLICANT to coordinate the conference date and time.

21 THEREFORE, the parties to this Agreement acknowledge and will comply with the
22 following general terms:

23 1. Payment of the grant shall be made upon compliance with the terms of this Agreement
24 which include:

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- a. An inspection by the STATE to ensure that work has been completed satisfactorily in accordance with the terms of this Agreement.
 - b. The submission of satisfactory progress reports as referred to above.
 - c. The submission of a Certificate of Eligible Actual Costs/Request for Reimbursement which must be executed by the person in charge of the project. The request shall be accompanied by copies of all original bills from contractors, suppliers, and vendors. Proof of payment of those bills will be required at the close of the grant period. A progress report must accompany all requests for reimbursements.
 - d. The STATE may, at its discretion, retain ten percent (10%) of the STATE'S Contribution to the project. When the final completion report and proof of payment of all bills and canceled checks has been received and approved in writing by the STATE, the funds retained will be paid to the APPLICANT.
 - e. Progress payments may be made at the discretion of the STATE upon the completion of distinct phases of work provided that the above-mentioned conditions have been met for each phase of work.
 - f. The making of the STATE of any progress payment shall not constitute nor be construed as a waiver by the STATE of any breach of covenants or any default which may exist on the part of the APPLICANT, nor shall any such breach or default impair or prejudice any right or remedy available to the STATE.
2. In any news release or printed material describing or promoting the project or any material produced as a result of the grant, appropriate credit shall be given to the STATE by including the phrase "this project has been funded with the assistance of the State of Nevada Commission for Cultural Affairs."

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3. The STATE or the Applicant may terminate this Agreement in whole, or in part, when both parties agree that the continuation of the project will not produce beneficial results commensurate with the further expenditure of funds. The two parties must both agree in writing upon the termination condition, including the effective date, and in the case of partial termination, the portion to be terminated.
4. If the APPLICANT fails to comply with any of the terms of this Agreement, the STATE shall have the right to cancel this Agreement without the consent of the APPLICANT and to file suit, in law or equity. The purpose of the suit shall be to cause the APPLICANT to cure said violations or to obtain the return of funds granted to the APPLICANT by the STATE. Such suit may be brought in the District Court of the county in which the property is located.
5. The commencement date for all work to be performed under this Agreement is **NOVEMBER 01, 2004**. The termination or end date is **DECEMBER 31, 2005**. No work performed at any time other than described in this paragraph shall be considered as an eligible activity for reimbursement purposes. All requests for reimbursement must be submitted to the STATE no later than **JANUARY 31, 2006**. Requests that have not been received at the office of the STATE by this date shall not be paid pursuant to this funding Agreement.
6. This funding Agreement shall be construed and interpreted according to the laws of the State of Nevada.

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- 7. All work conducted by the APPLICANT shall be assessed by the staff of the Commission for Cultural Affairs for adequacy of performance. If work does not meet the terms of this Agreement, the APPLICANT shall remedy the work even if that requires the expenditure of funds other than those contributed to the project by the Commission for Cultural Affairs.
- 8. The APPLICANT agrees to revert to the STATE all funds contributed to the project by the Commission for Cultural Affairs if the terms of this Agreement are not met by the APPLICANT or if the APPLICANT violates any section of NRS.

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9. Under the terms of this Agreement, the APPLICANT warrants that it shall not discriminate nor allow discrimination against any employee based on race, color, religion, ancestry, gender, national origin or disability. The APPLICANT shall permit the STATE access to its records of employment, advertisements and other pertinent data relative to this provision.

IN WITNESS WHEREOF, the parties hereto have caused this 2004 Commission for Cultural Affairs (CCA) Funding Agreement to be signed and intend to be legally bound thereby entered into this 20th day of December, 2004.

APPLICANT-LINCOLN COUNTY

By: *Spencer Hafen*

Name (print): Spencer Hafen

Title (print): Chair, Lincoln County Commission

Date (print): December 20, 2004

STATE-DEPT. OF CULTURAL AFFAIRS, HISTORIC PRESERVATION OFFICE

By: _____

Ronald M. James

State Historic Preservation Officer

Date (print): _____

REVIEWED AS TO FORM ONLY:

Brian Sandoval, Attorney General

By: _____

Deputy Attorney General

_____ Date

**ATTACHMENT A-1
SCOPE OF WORK**

Project Scope: **REHABILITATION OF THOMPSON OPERA HOUSE USING
COMMISSION FOR CULTURAL AFFAIRS (CCA) FUNDS (CCA 04-11).**

This project will support the following:

- Complete the installation of a fire sprinkler system;
- Install HVAC;
- Install new electrical wiring and fixtures;
- Complete rough and finish plumbing;
- Install insulation and dry wall, and paint.

State Historic Preservation Office (SHPO) and CCA Project Stipulations:

1. All work will conform with the Secretary of the Interior's Standards for Rehabilitation unless otherwise approved by the SHPO.
2. If any changes are made to the project, the applicant/grantee must submit updated visual and/or written specifications for the proposed rehabilitation work before any work commences and for written approval from the SHPO.
3. All completed work must conform with visual and/or written specifications submitted to and approved by the SHPO before work begins.
4. The applicant/grantee will provide the SHPO with quarterly updates on project progress.
5. The applicant/grantee will provide the SHPO with full access to all documents necessary for a comprehensive audit. Should the SHPO find costs that are not allowed by state accounting practices or that are outside the terms of this agreement, the applicant/grantee will refund the amount to the SHPO.
6. The grant recipient agrees to notify the Commission when there are fundamental changes to its programming, to its structure as an organization, or to its leadership, and the Commission may consider these changes in future funding decisions.

**ATTACHMENT A-2
BUDGET**

Participant:	Lincoln County	
	Lincoln County	
Project Title:	Rehabilitation of the Thompson Opera House	
Termination Date:	12/31/2005	
Project ID#	04-11	
Itemized Budget:	Contractors	\$ 110,000.00
	Total CCA Budget Amount	\$ 110,000.00
	Administration-Project Director	\$ 5,000.00
	Administration-Grants Manager	\$ 3,800.00
	Travel-Project Director and Grants Manager	\$ 952.32
	Supplies	\$ 400.00
	Total non-CCA Budget Amount	\$ 10,152.32
	Total Project Budget	\$ 120,152.32
	Total CCA Award:	\$ 110,000.00

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ATTACHMENT B

COMMISSION FOR CULTURAL AFFAIRS (CCA) COVENANTS

These covenants are made and entered into between the State of Nevada, acting by and through the State Historic Preservation Office (SHPO), hereinafter referred to as "STATE" and the LINCOLN COUNTY hereinafter referred to as "APPLICANT", for the purpose of the property known as the THOMPSON OPERA HOUSE, which is owned in fee simple by the APPLICANT.

The property is comprised essentially of grounds, collateral, appurtenances, and improvements. The property is more particularly described as follows:

BEGINNING AT A POINT S 38° 42' 56" W, 22.01 FT. ALONG THE S.E. R/W LINE OF MAIN STREET FROM THE N.W. CORNER OF LOT 7, BLOCK 18, PIOCHE TOWN PLAT, LINCOLN COUNTY, NEVADA; THENCE S 55° 15' 00" E, 83.05 FT ALONG THE NORTHWEST WALL LINE OF THE PIOCHE OPERA HOUSE; THENCE S. 19° 20' 17" W, 29.65 FT ALONG THE WEST LINE OF CORNWALL ROW AND EAST LINE OF BLOCK 18; THENCE N 55° 07' 03" W, 92.90 FT ALONG A LINE BETWEEN THE GEM THEATER AND OPERA HOUSE; THENCE N 38° 42' 56" E, 28.44 FT ALONG THE SOUTHEAST RIGHT-OF-WAY LINE OF MAIN STREET TO THE POINT OF BEGINNING. CONTAINING 0.058 ACRES OF LAND.

1 In consideration of the sum \$110,000.00 received in grant-in-aid assistance from the
2 STATE, the APPLICANT hereby agrees to the following for a period of time ending .

- 3 1. The APPLICANT agrees to assume the cost of the continued maintenance and repair
4 of said Property so as to preserve the architectural, historical, cultural or
5 archaeological integrity of the same, in order to protect and enhance those qualities
6 which make it historically significant as determined by the STATE.
- 7 2. The APPLICANT agrees that no visual or structural alterations will be made to the
8 property without prior written permission of the STATE.
- 9 3. The APPLICANT agrees that the STATE, its agents and designees, shall have the
10 right to inspect the property at all reasonable times, in order to ascertain whether or
11 not the conditions of these Covenants are being observed.
- 12 4. The APPLICANT agrees that when the property is not clearly visible from a public
13 right-of-way or includes interior work assisted with State of Nevada, Commission for
14 Cultural Affairs grant funds, the property will be open to the public not less than
15 twelve (12) days a year on an equitable spaced basis and at other times by
16 appointment. Nothing in these covenants will prohibit the APPLICANT from
17 charging a reasonable, non-discriminatory admission fee, comparable to fees charged
18 at similar facilities in the area.
- 19 5. The APPLICANT further agrees that when the property is not open to the public on a
20 continuing basis, and when the improvements assisted with State of Nevada
21 Commission for Cultural Affairs grant funds are not visible from the public right-of-
22 way, notification will be published for three consecutive working days, no less than
23 one week prior to the opening date in one newspaper of general circulation in the
24 community area in which the property is located. The advertisement shall give the

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dates and times when the property will be open. Documentation of such notice will be furnished annually to the STATE during the term of these Covenants.

6. The APPLICANT agrees to comply with Title VI of the Civil Rights Act of 1964 (U.S.C. 2000 (d)), the Americans with Disabilities Act (42 U.S.C. 12204), and with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). These laws prohibit discrimination on the basis of race, religion, national origin, or disability. In implementing public access, reasonable accommodation to qualified disabled persons shall be made in consultation with the STATE.

7. The agreement shall be enforceable in specific performance by a court of competent jurisdiction.

8. SEVERABILITY CLAUSE - It is understood and agreed by the parties hereto that if any part, term, or provision of this agreement is held to be illegal by the courts, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular part, term, or provision held to be invalid.

9. These restraints shall run with the property and are binding upon the APPLICANT and any and all successors, heirs, assignees, or lessees.

10. The STATE shall have the right to file suit in law or equity, if the APPLICANT violates any of the restraints of these Covenants. The purpose of the suit shall be to cause the APPLICANT to cure said violations or to obtain the return of funds granted to the APPLICANT by the STATE.

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11. The APPLICANT shall record these Covenants in the Recorder's Office of the County in which the subject property is located. The STATE'S obligations with regard to the subject property shall not become effective until the APPLICANT has furnished the STATE satisfactory proof of the aforementioned recordation.

These CCA Covenants are entered into this _____ day of _____, 2004.

APPLICANT - LINCOLN COUNTY

[Handwritten Signature]

~~December 20, 2004~~

Signature

Name and Title (print)

STATE-DEPT. OF CULTURAL AFFAIRS, HISTORIC PRESERVATION OFFICE

Ronald M. James, State Historic Preservation Officer

Date

REVIEWED AS TO FORM ONLY:

Brian Sandoval

Attorney General

By: _____

Ed Irvin, Deputy Attorney General

Date

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1 Witnessed by Notary Public

2 State of Nevada

3 County of LINCOLN

4 On December 20, 2004, personally appeared before me, a Notary

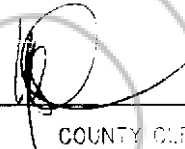
5 Public in and for said County and State, Spencer W. Hafen

6 Known to me to be the person described in and who executed the foregoing instrument, who
7 acknowledged to me that he executed the same freely and voluntarily and for the uses
8 and purposes therein mentioned.

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Notary Public COUNTY CLERK & Ex-Officio Clerk
of the Seventh Judicial District
Court of the State of Nevada, in
and for the County of Lincoln

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13 ACKNOWLEDGEMENT

14 State of Nevada

15 County of CARSON

16 On _____, personally appeared before me, Notary Public in

17 and for said County and State, RONALD M. JAMES, known to me to be the person

18 described in and who executed the foregoing instrument, who acknowledged to me that he executed
19 the same and freely and voluntarily and for the uses and purposes therein mentioned.

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Notary Public

ATTACHMENT C

CIVIL RIGHTS ASSURANCE

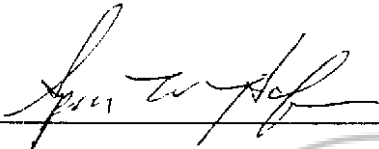
As the authorized representative of the applicant, I certify that the applicant agrees that, as a condition to receiving any public financial assistance from the State of Nevada, it will comply with all Federal laws relating to nondiscrimination. These laws include, but are not limited to: (a) Title VI of Civil Rights Act of 1964 (42 U.S.C. 2000d-1), which prohibits discrimination on the basis of race, color or national origin; (b) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicap; (c) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101et. seq.), which prohibits discrimination on the basis of age; and applicable regulatory requirements to the end that no person in the United States shall, on the grounds of race, color, national origin, handicap or age, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity conducted by the applicant. THE APPLICANT HEREBY GIVES ASSURANCE that it will immediately take any measures necessary to effectuate this agreement.

THIS ASSURANCE shall apply to all aspects of the applicant's operations including those parts that have not received or benefited from Federal financial assistance.

If any real property or structure thereon is provided or improved with the aid of public financial assistance extended to the Applicant by the Commission for Cultural Affairs, this assurance shall obligate the Applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is so provided, this assurance shall obligate the Applicant for the period during which it retains ownership or possession of the property. In all other cases, this assurance shall obligate the Applicant for the period during which the public financial assistance is extended to it by the State of Nevada.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all publicly funded grants, loans, contracts, property, discounts or other federal financial assistance extended after the date hereof to the Applicant by the State of Nevada, including installment payments after such date on account of applicants for Federal financial assistance which were approved before such date.

The Applicant recognizes and agrees that such public financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the State shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant, its successors, transferees, assignees, and sub recipients and the person whose signature appears below who is authorized to sign this assurance on behalf of the Applicant.



Signature of Authorized Certifying Official

Chair, Lincoln County Commission

Title

Spencer W. Hafen

Authorized Certifying Official (*print name*)

December 20, 2004

Date Submitted

LINCOLN COUNTY

Applicant/Organization

P. O. BOX 539, PIOCHE, NV 89043

Applicant/Organization Mailing Address