

**City of Carson City
Agenda Report**

Item # 10

Date Submitted: 12/6/2007

Agenda Date Requested: 12/20/2007

Time Requested: 20 Minutes

To: Mayor and Supervisors

From: Public Works Department

Subject Title: Action to approve and authorize the Mayor to sign an Improvement Agreement between Vidler Water Company, Inc. and Carson City for the construction of a well and infrastructure to provide water to Carson City and Lyon County.

Staff Summary: Approval of this Improvement Agreement will enhance the quantity and flexibility of delivery of water for the region and will provide additional water to Carson City at no cost.

Type of Action Requested: (check one)
 Resolution Ordinance
 Formal Action/Motion Other (Status Report)

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

Recommended Board Action: I move to approve and authorize the Mayor to sign an Improvement Agreement between Vidler Water Company, Inc. and Carson City for the construction of a well and infrastructure to provide water to Carson City and Lyon County.

Explanation of Recommended Board Action: In approving this Improvement Agreement with Vidler Water Company, Inc (Vidler), Carson City will gain 50 acre feet of surface water rights that would otherwise not be available to the City. Vidler purchased surface water rights from the Anderson Ranch in Carson City and the State Engineer has approved Vidler to drill an infiltration well next to the Carson River to produce these rights for delivery to Carson City and Lyon County. Vidler proposes to provide and dedicate to Carson City the well and all related infrastructure to deliver this water in accordance with an approved agreement between Carson City and Lyon County. Vidler will provide Carson City with 50 acre feet of water annually for its peak season demand at no cost. Contingent upon this agreement, Carson City and Lyon County will have an agreement that provides the mechanism and method to reimburse each other for the deliver of water based on operational costs, including but not limited to maintenance, power, repair, rehabilitation, replacement, and depreciation.

The overlying benefit of this improvement agreement is the long range impact for flexibility and stability in water delivery for the region. As the precipitation rate in the west steady declines, this is the first step in the critical path towards managing our regions water resources. Water quality and quantity issues continually become more complex and costly. Having the availability of interconnecting infrastructure provides Carson City and its neighboring counties the flexibility to more fully utilize and manage surface water rights that are in common river segments and ground water rights that are in common basins.

Fiscal Impact: Positive impact in providing Carson City with additional water resources at no cost.

Funding Source: N/A

Explanation of Impact: N/A

Alternatives: Do not approve.

Supporting Material:

1. Original Development Agreement (Exhibit A)

Prepared By: Ken Arnold, Public Works Operations Manager

Reviewed By: Jim Arnold FOR Andrew Burnham Date: 12/11/07

Concurrences: Guida R. Bette Date: _____

Melanie Burketta Date: 12-11-07

Mark Shumaker Date: 12-11-07

Board Action Taken:

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

(Vote Recorded By)

IMPROVEMENT AGREEMENT

This Improvement Agreement is dated this ___ day of _____, 20___ by and between CARSON CITY, NEVADA, a consolidated municipality, hereinafter referred to as CARSON CITY and VIDLER WATER COMPANY, INC., a Nevada corporation, hereinafter referred to as VIDLER.

RECITALS:

1. Pursuant to CARSON CITY Charter, Section 2.275 (1), in part, the CARSON CITY Board of Supervisors may at any time, or from time to time, acquire, improve, operate and maintain a water project within or without CARSON CITY.

2. Pursuant to CARSON CITY Charter, Section 2.275(2), in part, "water project' means facilities pertaining to a municipal water system for the collection, transportation, treatment, purification and distribution of . . . untreated water or potable water for domestic, commercial, and industrial use and irrigation (or any combination thereof)."

3. CARSON CITY is currently the owner and operator of a municipal water system, providing water to users within CARSON CITY.

4. By entering into this agreement, CARSON CITY will be able to provide greater reliability of its municipal water systems during periods of planned critical work, operational difficulties, unanticipated reductions in supply and declared drought emergencies and would be enhanced by the construction and operation of an intertie between LYON COUNTY and CARSON CITY.

5. VIDLER is the owner of certain Carson River Decree water rights as set forth in Exhibit "A" attached hereto ("WATER RIGHTS"). VIDLER has or will have additional Carson River Decree water rights totaling as much as 5,000 acre feet that VIDLER has or is acquiring that will be treated as "WATER RIGHTS" within the intent of this Agreement and Exhibit "A" shall be amended accordingly from time to time.

6. VIDLER has specific professional expertise, including but not limited to legal and engineering expertise, in the planning, regulatory approval, development and improvement of various types of water resources. VIDLER has the demonstrated financial ability to fund the development and improvement activities necessary to undertake and complete such planning and regulatory approval related activities.

7. VIDLER and CARSON CITY desire to provide for the construction of certain water production and delivery infrastructure as provided for by the terms of this Improvement Agreement.

8. In addition, VIDLER and CARSON CITY desire to provide water resources to augment the peaking capacity of CARSON CITY pursuant to the terms of this Improvement Agreement.

NOW THEREFORE, IN CONSIDERATION of the mutual covenants and conditions herein contained and other good and valuable consideration receipt of which is hereby acknowledged, the parties do agree as follows:

ARTICLE 1. INFRASTRUCTURE IMPROVMENTS AND MAINTENANCE:

1.01 VIDLER, at its sole cost, will drill, construct, install, equip and improve a municipal infiltration well(s), well-houses and related infrastructure on certain real property owned by CARSON CITY identified generally as Assessor's parcel Number 010-581-17 and known as Well Site #56 and on certain real property owned by VIDLER identified generally as Assessor's Parcel Numbers 010-581-05, 010-581-06 and 010-582-06 and known as Well Site #57. VIDLER will obtain, at VIDLER's sole cost, all required easements for CARSON CITY for repair and maintenance of said improvements.

1.02 VIDLER will construct, install, equip and improve a sixteen inch (16") water pipeline, and related infrastructure as necessary, from the well described above to CARSON CITY's existing water pipeline located in or adjacent to Morgan Mill Road. The length of the connecting "intertie" pipeline will be approximately 4,200 lineal feet, and shall be installed pursuant to the plans and design approved by CARSON CITY.

1.03 VIDLER will construct, install, equip and improve a sixteen inch (16") water pipeline, and related infrastructure as necessary, from CARSON CITY'S existing water pipeline to LYON COUNTY's water system in the vicinity of the township of Dayton, Nevada, pursuant to an agreement between LYON COUNTY and VIDLER. Said pipeline and related infrastructure shall be installed pursuant to the plans and specifications of LYON COUNTY.

1.04 All infrastructure and improvements located within Carson and provided for herein will be constructed in accordance with the current requirements and standards of CARSON CITY.

1.05 Upon completion of the construction of the improvements VIDLER will dedicate to CARSON CITY and thereafter CARSON CITY will be the owner and operator of the infrastructure located in CARSON CITY as described in Sections 1.01, 1.02, and 1.03 and shall be responsible for all costs related to the operation and maintenance of such improvements.

ARTICLE 2. WATER TO CARSON CITY:

2.01 VIDLER agrees to transfer, deed and convey the ownership of 50 acre-feet of WATER RIGHTS to CARSON CITY. The 50 acre-feet of WATER RIGHTS to be conveyed to CARSON CITY pursuant to this paragraph shall be the most senior WATER RIGHTS owned or otherwise held by VIDLER at the time of this Agreement

2.02 Subject to the terms of this Agreement, CARSON CITY and VIDLER agree to cooperate in allocating water rights owned by CARSON CITY to Well # 56 and/or other wells and infrastructure developed and constructed by VIDLER for the benefit of CARSON CITY, as the capacity of such wells and infrastructure will allow.

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ARTICLE 3. COOPERATION WITH LYON COUNTY:

3.01 CARSON CITY, in consideration for the improvements described and to be dedicated as set forth in Article 1 and the 50 acre-feet of water in Article 2, agrees to transmit, pass through and convey the remaining WATER RIGHTS through CARSON CITY'S municipal water system and through the intertie infrastructure to LYON COUNTY subject to an Operating Agreement between CARSON CITY and LYON COUNTY, which allows CARSON CITY and LYON COUNTY to be reimbursed for operating, maintenance and replacement costs.

3.02 It is acknowledged and understood that the water served to LYON COUNTY may be water from any and all CARSON CITY sources, but shall not exceed the amount of WATER RIGHTS defined in RECITAL 5 of this agreement.

3.03 CARSON CITY will use its best efforts to convey the WATER RIGHTS through the intertie infrastructure to LYON COUNTY, and VIDLER understands and acknowledges that CARSON CITY will operate its municipal water system pursuant to applicable CARSON CITY regulations, municipal standards as well as any applicable state and federal regulations. CARSON CITY is not responsible to provide any quantity of water to Lyon County that exceeds the capability and capacity of the well(s) and infrastructure provided by VIDLER, and described in Article 1 above, for this purpose.

3.04 VIDLER and CARSON CITY agree to work cooperatively with LYON COUNTY to provide for the interconnection of CARSON CITY'S municipal water supply system with the water supply system of LYON COUNTY that serves the Dayton area of LYON COUNTY.

3.05 VIDLER and CARSON CITY agree and acknowledge that VIDLER'S obligations pursuant to Articles 1 and 2 above are contingent upon VIDLER and CARSON CITY each entering into agreements with LYON COUNTY that provide for construction of infrastructure improvements in LYON COUNTY and allow water from the infiltration well(s) described in Article 1 above to be utilized for municipal and industrial purposes in the Dayton area of LYON COUNTY.

3.06 VIDLER acknowledges that it will use its best efforts to enter into a Development Agreement with LYON COUNTY to provide for construction of infrastructure improvements within LYON COUNTY that will allow WATER RIGHTS appropriated from the infiltration well(s) described in Article 1 above to be utilized for municipal purposes in the Dayton area of LYON COUNTY subject to a Water Banking Agreement between LYON COUNTY and VIDLER.

ARTICLE 4. PERMITTING:

4.01 VIDLER agrees that it will undertake and pay for such action as may be necessary for the permitting of any and all water rights related or necessary under the terms of this Improvement Agreement. Such permitting may include but not be limited to any filings, hearings, litigation and related matters as are necessary to secure a final permit to fully permit the water for municipal use within LYON COUNTY.

4.02 VIDLER agrees that it will undertake and pay for such action as may be necessary to obtain and permit from any state, local or federal agencies required for rights of way, well sites, tank sites or other infrastructure that is required or necessary under the terms of this Improvement Agreement.

4.03 For facilities within CARSON CITY, VIDLER will contract with all necessary engineers and other professionals as are required to develop plans and specifications for the infrastructure to be installed and constructed and in order to obtain all building permits for the improvements contemplated by the terms of this Improvement Agreement. All plans and specifications shall be subject to the approval of CARSON CITY. VIDLER shall pay all plan check fees and building permit fees necessary to obtain such construction permits.

ARTICLE 5. RESERVATION OF CAPACITY:

5.01 The parties acknowledge and agree that all of the capacity of the well, pipeline, pumps and related "intertie" infrastructure improvements constructed by VIDLER, and described in Article 1 above, except for the 50-acre feet of WATER RIGHTS in Article 2, shall be reserved by VIDLER subject to the terms of this Agreement and the LYON COUNTY Water Banking Agreement. VIDLER may utilize all of such capacity, except for CARSON CITY'S ARTICLE 2 WATER RIGHTS and in accordance with the terms of this Agreement and the uniformly applied standards and regulations of CARSON CITY.

5.02 During times of emergency or system failure or as otherwise determined by LYON COUNTY and CARSON CITY VIDLER acknowledges and agrees that CARSON CITY and LYON COUNTY shall use the "intertie" infrastructure described in ARTICLE 1 to serve the needs of both or either community.

ARTICLE 6. MISCELLANEOUS:

6.01 TERM. Unless extended by the parties, the term of this Improvement Agreement and the parties' obligations hereunder shall be as long as there are WATER RIGHTS held by VIDLER pursuant to the terms of the LYON COUNTY Water Banking Agreement.

6.02 ASSIGNABILITY. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors in interest. This Agreement may be assigned by either party with the written consent of the other party which consent will not be unreasonably withheld except that VIDLER may assign this Agreement and the rights hereunder to an affiliated or parent company.

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6.03 INDEMNIFICATION. To the fullest extent permitted by law, VIDLER shall indemnify, hold harmless and defend, at CARSON CITY'S option, not excluding the CARSON CITY'S right to participate, CARSON CITY from and against all liability, claims, actions, damages, losses and expenses, including, without limitation, reasonable attorney's fees and costs, arising out of any alleged negligent, willful or unlawful acts or omissions of VIDLER or VIDLER'S officers, employees, contractors, agents, representatives, volunteers or any other performing work for VIDLER during construction of the wells and related infrastructure construction on CARSON CITY property.

6.04 SURVIVAL. This Agreement and the covenants, warranties and representations contained herein shall survive the execution of this Agreement.

6.05 ENTIRE AGREEMENT. This Agreement contains the complete and entire agreement between the parties, and no modification, alteration or change of this Agreement shall be binding upon the parties unless evidenced by an agreement in writing, signed by the parties, after the date of this Agreement.

6.06 NOTICES. Any notice, request, demand, statement or payment related to this Agreement shall be made to the Parties as follows:

CARSON CITY:

Address: 201 N. Carson Street, Suite 2
CARSON CITY, NV 89701
Attn: Linda Ritter, City Manager
Phone: 775-887-2100 x 202
Fax: 775-887-2286

VIDLER:

Address: 3480 GS Richards Blvd, Suite 101
CARSON CITY, NV 89703
Attn: Dorothy Timian-Palmer
Phone 775-885-5000 x 101
Fax: 775-885-5005

6.07 CHOICE OF LAW. This Agreement shall be construed and interpreted under, governed and enforced according to the laws of the State of Nevada.

6.08 ENFORCEABILITY. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions, and provisions shall remain in full force and effect, and shall in no way be affected, impaired or invalidated. In the event the Agreement as a whole is held by a court of competent jurisdiction to be invalid, void or unenforceable, the parties agree to work cooperatively to insure that all of VIDLER'S WATER RIGHTS except the ARTICLE 2 CARSON CITY water rights are confirmed to be owned solely by VIDLER.

6.09 FORCE MAJEURE. In the event either party is rendered unable by an event of Force Majeure to carry out wholly or in part its obligations under this Agreement and if such Party gives notice and full particulars of such event of Force Majeure to the other Party as soon as practicable after the occurrence of the event relied on, then, the obligations of the Party affected by such event of Force Majeure shall be suspended, but only to the extent of such claiming Party's inability to perform under this Agreement caused by such Force Majeure from inception and throughout the period of continuance of any such inability so caused, but for no longer period. Such Force Majeure event shall, so far as practicable, be remedied with all reasonable dispatch by the claiming of the party.

6.10 RELATIONSHIP OF PARTIES. The relationship between the parties created by this Agreement shall be limited to the performance of this Agreement and does not concern any other activities or business of either party. Nothing herein shall be construed to authorize either party to act as a general agent for the other party. This Agreement shall not be construed as a partnership or joint venture, and neither party shall be liable or responsible for any obligation, liability or claim incurred by the other, except as specifically provided for herein. By the terms of this Agreement, CARSON CITY does not abdicate, delegate or waive any of its statutory authority and/or police powers as a political subdivision of the State of Nevada nor does CARSON CITY in any manner or form incur any liability whether contingent or absolute for the work that is envisioned to be performed under the terms of this Agreement. CARSON CITY and VIDLER agree to cooperate to insure that all permitting, construction and operation of the WATER RIGHTS, intertie infrastructure which are the subject of this Agreement are completed in the most responsible and efficient manner.

6.11 DISPUTE RESOLUTION: If a dispute between the parties arises with respect to the rights or obligations under this Agreement, or as a result of this Agreement, and such dispute cannot be resolved in an informal fashion, the parties shall submit their dispute to arbitration before a single arbitrator in accordance with the Nevada Arbitration Rules. The parties agree that such arbitration shall be held in CARSON CITY, Nevada. The decision of the Arbitrator shall be final and binding upon the parties, and may be enforced by any court having jurisdiction therefor. Each party shall bear its own costs, including attorney's fees, and shall share equally in the arbitration costs and fees, unless otherwise assessed by the arbitrator. The prevailing party in any dispute shall be entitled to an award of reasonable attorney's fees and costs in addition to any other relief awarded. The parties hereby specifically waive their right to file any action at law or in equity arising from any implementation, interpretation or performance of this agreement or the subject of this agreement except as specifically provided herein. This provision requiring arbitration constitutes a specific waiver of the right to trial by jury or to proceed in any Nevada or Federal District Court or in the courts of any other state, except (a) a party does not waive trial by jury or the right to proceed before a court of competent jurisdiction if a party necessary to the adjudication of the dispute refuses to or cannot by legal process be compelled to participate in arbitration or; (b) with respect to the right to seek enforcement of or compliance with this agreement to submit to arbitration.

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6.12 COUNTERPART: This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year first above written.

VIDLER WATER COMPANY, INC.,
a Nevada corporation

CARSON CITY,
a Consolidated Municipality

By: _____
Dorothy A. Timian-Palmer
President

By: _____
Marv Texeira
Mayor

Attest: _____
Clerk

Approved as to content and form:

Neil A. Rombardo, Esq.
Carson City District Attorney

Exhibit "A"

Carson River Decree Claim Number	Irrigated Acres	Year of Priority	Consumptive Use Total (2.5 Acre-Feet per Acre)
Jarrard Water Rights			
691	39.44	1911	98.600
	30.22		75.550
694 *	9.00	1860	22.500
695 **	30.66	1869	76.650
	6.31		15.775
	10.23		25.575
	3.79		9.475
696	15.50	1911	38.750
	21.75		54.375
	86.19		215.475
	7.25		18.125
	51.75		129.375
709	31.25	1899	78.125
	18.75		46.875
710	1.92	1905	4.800
	3.20		8.000
701	32.30	1884	80.750
	4.78		11.950
702	5.00	1897	12.500
TOTALS	409.29		1,023.225

* 22.5 Acre-Feet of Consumptive Use to be conveyed to Carson City from DCR 694

** 27.5 Acre-Feet of Consumptive Use to be conveyed to Carson City from DCR 695