

**City of Carson City
Agenda Report**

Date Submitted: April 4, 2014

Agenda Date Requested: April 17, 2014

Time Requested: 5 Minutes

To: Mayor and Supervisors

From: Public Works

Subject Title: For Possible Action: Action to approve and authorize the Mayor to sign an Agreement by and between Carson City and North Carson Street LLC which provides for dedicating and banking certain water rights with Carson City. (Schulz).

Staff Summary: This agreement provides for North Carson Street LLC to dedicate water rights to Carson City and be banked for future use and in the interim Carson City can utilize the water rights at no cost. All costs will be reimbursed by North Carson Street LLC.

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

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

Recommended Board Action: I move to approve and authorize the Mayor to sign an Agreement by and between Carson City and North Carson Street LLC which provides for dedicating and banking certain water rights with Carson City.

Explanation for Recommended Board Action: North Carson Street LLC currently owns water rights within Carson City. This agreement provides for banking water rights with Carson City for future use and in the interim Carson City can utilize the water rights for its own purposes at no cost. This is the second banking agreement for Carson City, the first having been done in 2012 with Vidler Water Company.

A banking agreement is a tool for managing water rights and/or preserving water rights for a period of time before being put to a final use. It provides for the water right holder to temporarily transfer the water rights to an entity to hold the water entitlement, maintain its beneficial use, and then transfer or use the water rights for its final place and manner of use. The bank accounts for the water rights during the time of holding the entitlement. The use of water banking is primarily used in the western United States and is used in Nevada in three locations we are aware of; Washoe County, City of Fernley, and southern Nevada.

North Carson Street LLC is the owner of certain water rights, which may be from time to time be expanded to include additional water rights and which have the characteristics to satisfy agricultural, recreation, open space, commercial, wildlife, in-stream flow, conservation, municipal and industrial uses within the Carson City service area, subject to permitting requirements.

This agreement provides for dedication of water rights to Carson City to accommodate the interrelated benefits available from the uses of the dedicated water rights for benefits to the river flows, open space, agriculture and community betterment, and for growth and development within the service areas.

North Carson Street LLC, in conjunction with Carson City, has obtained or may obtain the requisite approvals of the Nevada State Engineer in order to utilize the dedicated water rights for agricultural, industrial, wildlife, recreational, commercial and municipal purposes in the service areas; and the banking provisions provided for are intended to facilitate the compliance with the procedural requirements of the Nevada State Engineer's office for permit issuance and maintenance in good standing and for the efficiency in the provision of water resources to the service area..

North Carson Street LLC and Carson City acknowledge that the dedicated water rights and North Carson Street LLC's subsequent transfers and assignments of the beneficial interest are interests in real property and that the utilization of this agreement and the transfer of the ownership of the dedicated water rights to Carson City are for convenience and for the ease in the administration of the water rights among North Carson Street LLC and its assignees, Carson City, and the Nevada State Engineer's Office.

This agreement provides that additional water can be deeded to Carson City over time by North Carson Street LLC. Also, the agreement allows North Carson Street LLC to request reconveyance of the water rights back to North Carson Street LLC as long as the rights are not committed to a will-serve. Staff will be authorized to process such additional dedications.

Carson City intends to accept the dedicated water rights for the purpose of providing water service to community, recreational, agricultural, commercial, wildlife, industrial and residential uses and development in Carson City. North Carson Street LLC intends to transfer legal title to the dedicated water rights by Water Rights Deed to Carson City, which may serve as the basis for the Nevada State Engineer to issue, at appropriate times, any required Permits, which for purposes of convenience and ease of administration of Carson City's will-serve commitment process, shall be held by Carson City for the exclusive benefit of North Carson Street LLC. Carson City and North Carson Street LLC's assignees and will be credited against the water rights dedication requirements, if any, in connection with requests for will-serve commitments or other mutually agreeable uses requested from time to time by North Carson Street LLC or its assignees.

Carson City agrees to accept the dedicated water rights in accordance with this Agreement for the benefit of North Carson Street LLC which retains equitable title for future water rights dedication requirements within Carson City, on the condition that North Carson Street LLC, or its assignees, be responsible for all costs associated with the transfer by North Carson Street LLC to Carson City, and all costs associated with the maintenance of the Dedicated Water Rights. After the dedicated water rights are deeded to Carson City, North Carson Street LLC may assign its equitable title or its beneficial interest in the dedicated water rights and resulting water rights credits to future water service requirements for dedication of water rights in connection with requests for will-serve commitments or such other water demands that may be satisfied by the water rights credits. Carson City's acceptance of the dedicated water rights will not, in and of itself, create an obligation to provide water service to North Carson Street LLC or its assignees, because such water service obligation will arise only after a will-serve commitment request is made to Carson City and/or Lyon County and all conditions for such service have been satisfied.

Applicable Statue, Code, Policy, Rule or Regulation: NA

Fiscal Impact: None

Explanation of Impact: All costs will be reimbursed by North Carson Street LLC and upon will-serve commitment fees will accrue to Carson City.

Funding Source: NA

Alternatives: Direct staff otherwise.

Supporting Material: Water Banking Agreement

Prepared By: Andrew Burnham, Deputy Public Works Director

Reviewed By: *Al M Brubaker* Date: 4/8/14
(Department Head)

Maree A Works Date: 4/8/14
(City Manager)

[Signature] Date: 4/8/14
(District Attorney)

Michael White Date: 4/8/14
(Finance Director)

Board Action Taken:

Motion: _____

1) _____

Aye/Nay

2) _____

(Vote Recorded By)

WATER RIGHTS DEDICATION AGREEMENT

This Water Rights Dedication Agreement (this “Agreement”) is executed and effective _____, 2013, by and between Carson City, A Consolidated Municipality (“Carson City”) and North Carson Street LLC (“Dedicator”), for the purpose of dedicating certain water rights.

RECITALS

WHEREAS, Carson City owns and operates a water distribution system located within the municipal water service area boundaries of Carson City, Nevada (the “Service Area”); and

WHEREAS, Carson City desires to have additional water rights available for municipal uses within the Service Area; and

WHEREAS, the Eagle Valley Hydrographic Area - Basin 104 is over appropriated and this Agreement will allow Carson City to protect water resources in the basin; and

WHEREAS, Dedicator desires to transfer the water rights described in Exhibit A attached hereto (the “Water Rights”) to Carson City for the purpose of ensuring that the Water Rights are put to beneficial use and remain in good standing pursuant to Nevada law; and

WHEREAS, copies of the permit(s) and certificate(s) evidencing the Water Rights are attached hereto as Exhibit B; and

WHEREAS, Carson City agrees to accept the Water Rights on the condition that Dedicator shall be responsible for all legal, administrative and engineering costs associated with the dedication, transfer and maintenance of the Water Rights; and

NOW, THEREFORE, Carson City and Dedicator hereby agree as follows:

1. WATER RIGHTS

1.1 Carson City has reviewed and approved the Water Rights. Dedicator represents and warrants that Dedicator is the sole owner of the Water Rights and that Dedicator is the owner of record with the Nevada State Engineer.

1.2 Dedicator shall convey the Water Rights to Carson City by delivering a fully executed water rights deed to Carson City within ten (10) days after execution of this

Agreement. The deed shall be in the form attached hereto as Exhibit C. Carson City shall record the executed deed with the Carson City Clerk Recorder.

1.3 Carson City shall prepare and file a report of conveyance with the Nevada State Engineer, and shall attach all deeds necessary to reflect Carson City as the owner of record.

1.4 Carson City shall prepare and file applications with the Nevada State Engineer, including any required maps, seeking to change the place of use of the Water Rights to the Service Area and seeking to change the manner of use of the Water Rights to municipal use. Carson City shall be listed as the record owner and applicant on those applications.

1.5 Carson City will place the Water Rights to beneficial use for general municipal purposes within the Service Area, including agricultural, recreation, open space, commercial, wildlife, in-stream flow, municipal and industrial uses. Any use by Carson City for general municipal purposes is limited to uses that will not diminish or adversely affect the rights of Dedicator. Carson City will file applications for extensions of time, proofs, and all other documents required by the Nevada State Engineer for the purpose of maintaining the validity of the Water Rights and for obtaining the maximum use of the Water Rights.

1.6 Carson City shall not be responsible for any act, omission, condition, event or Nevada State Engineer decision that affects the validity of the Water Rights if such act, omission, condition, event or Nevada State Engineer decision is not reasonably foreseeable at the time of execution of this Agreement or is otherwise outside of the control of Carson City.

2. OPTIONAL EXPANSION OR RECONVEYANCE OF WATER RIGHTS

2.1 Dedicator may convey additional Water Rights to Carson City by requesting an amendment to Exhibit A. The City Manager or his designee is authorized to approve or reject the conveyance of additional water rights.

2.2 Dedicator may request a reconveyance of Water Rights by requesting an amendment to Exhibit A. If Dedicator does not owe outstanding funds to Carson City, as described in Section 3, the City Manager or his designee shall approve the reconveyance of Water Rights.

2.3 In the event that Water Rights are reconveyed at the request of Dedicator, Carson City shall reconvey those Water Rights to Dedicator by delivering a water rights deed to Dedicator. The deed shall be in the form attached hereto as Exhibit D. Dedicator shall record the executed deed with the Carson City Clerk Recorder. Within thirty (30) days after the recording of the reconveyance deed, the Dedicator shall file a report of conveyance with the Nevada State Engineer, and shall file a change application to change the point of diversion of the Water Rights to a point of diversion that is controlled by the Dedicator.

3. MANDATORY RECONVEYANCE OF WATER RIGHTS

3.1 The Water Rights are pledged by deed of trust as part of the collateral securing a purchase money promissory note dated on or about March 24, 2005. Dedicator shall notify the holder of that deed of trust, and any trustee, that the Water Rights have been transferred pursuant to this Agreement and shall request that notice be sent to Carson City in the event that there is any attempt to enforce that security interest.

3.2 In the event that there is any attempt to enforce that security interest, or any other security interest in the Water Rights, Dedicator shall immediately notify Carson City in writing and Carson City shall immediately reconvey all of the Water Rights to Dedicator.

3.3 In the event that Water Rights are reconveyed because of an attempt to enforce a security interest, Carson City shall reconvey all of the Water Rights to Dedicator by delivering a water rights deed to Dedicator in the form attached hereto as Exhibit D and recording the executed deed with the Carson City Clerk Recorder. Carson City shall then file a report of conveyance with the Nevada State Engineer. Dedicator shall be responsible for filing a change application to change the point of diversion of the Water Rights to a point of diversion that is controlled by the Dedicator.

4. COSTS AND FEES

4.1 Dedicator shall pay Carson City a one-time payment of \$30 per acre-foot of dedicated Water Rights at the time of the execution of this Agreement or any amendment hereto that expands the amount of dedicated Water Rights.

4.2 Dedicator shall be responsible for the payment to Carson City of all administrative and engineering costs and fees, including the water right application and permit fees, associated with the initial dedication of the Water Rights, and the recording of the deed of reconveyance, filing of change applications, and filing of the report of conveyance after any reconveyance.

4.3 Dedicator shall be responsible for the payment to Carson City of all legal, administrative and engineering costs and fees, including water right application and permit fees, associated with maintenance of the Water Rights after the initial dedication, including all actions described in Section 1. In the event that extraordinary actions, such as an administrative hearing or appeal, are necessary to maintain the validity of the Water Rights and to obtain the maximum use of the Water Rights, Dedicator shall be responsible for all costs and fees associated with such actions.

4.4 Carson City shall submit an invoice to Dedicator within thirty (30) days of incurring costs or fees. Dedicator shall reimburse Carson City for such costs and fees within thirty (30) days of the date of the invoice. Interest shall accrue on all costs and fees that are not reimbursed within ninety (90) days of the date of the invoice, at a rate equal to the prime rate at the largest bank in Nevada, as ascertained by the Commissioner of Financial Institutions, on January 1 and July 1, as the case may be, immediately preceding the date the payment was due, plus 2%.

4.5 Dedicator shall be responsible for all legal, administrative and engineering costs and fees, including water right application and permit fees, associated with any reconveyance of the Water Rights, including recording of the deed of conveyance, filing of change applications, and filing of the report of conveyance.

5. ABANDONMENT OF WELLS: Upon the State Engineer's approval of an application to change the point of diversion of the Water Rights, Dedicator shall be responsible for all action necessary under NRS chapter 534 to abandon any well(s) associated with the Water Rights.

6. FUTURE AGREEMENTS: The parties may enter into agreement(s) in the future for use of the Water Rights to satisfy will-serve requirements and/or for use of the water in municipalities that are connected to the Carson City water distribution system, including Lyon County.

7. ASSIGNMENT OF AGREEMENT

7.1 So long as no amounts described in Section 3 remain due to Carson City, Dedicator may assign its rights and obligations under this Agreement by executing an assignment in the form attached hereto as Exhibit E. The assignment must be signed by Dedicator, the assignee and Carson City.

7.2 Carson City may assign its rights and obligations under this Agreement to one or more wholly owned subsidiaries. Carson City may not assign its rights and obligations under this Agreement to any other assignee without the prior written consent of Dedicator which consent shall not be unreasonably withheld.

7.3 The rights and obligations under this Agreement shall be binding upon and shall inure to the benefit of Carson City and Dedicator and to their respective successors and assignees.

7.4 In the case of an assignment, the references in this Agreement to Carson City or Dedicator shall include such assignee, provided that such assignee assumes all of the obligations under this Agreement by written instrument.

8. TERMINATION: This Agreement will terminate of its own accord when all of the Water Rights have been reconveyed to Dedicator, unless otherwise terminated by written agreement of the parties.

9. ARBITRATION OF DISPUTES

9.1 Any controversy or claim arising out of or relating to this Agreement, or the claimed breach or interpretation thereof, including, but not limited to, any impasse reached by the parties after negotiating in good faith, shall be resolved by binding arbitration, subject to the following provisions.

9.2 The party seeking arbitration (the “Demanding Party”) shall deliver a written notice of demand to resolve dispute (the “Demand”) to the other party (the “Non-Demanding Party”). The Demand shall include a brief statement of the Demanding Party's claim or controversy, the amount or other nature thereof, and the name of the proposed arbitrator to decide the dispute. Within ten (10) days after receipt of the Demand, the Non-Demanding Party against whom the Demand is made shall deliver a written response to the Demanding Party. Such response shall include a short and plain statement of the Non-Demanding Party's defenses to the claim and shall also state whether such party agrees to the arbitrator chosen by the Demanding Party. If the Non-Demanding Party fails to agree to the arbitrator chosen by the Demanding Party, then such Non-Demanding Party shall state in its response the name of a proposed arbitrator chosen by such Non-Demanding Party as the proposed arbitrator. If the Non-Demanding Party fails to deliver its written response to the Demanding Party within ten (10) days after receipt of the demand, or if the Non-Demanding Party fails to select in its written response a proposed arbitrator, then the arbitrator selected by the Demanding Party shall serve as the arbitrator. An arbitrator shall not be employed by any party or any affiliate of any party, directly, indirectly or as an agent, except in connection with an arbitration proceeding. Any person appointed as an arbitrator shall be knowledgeable and experienced in the matter(s) sought to be arbitrated.

9.3 If the Non-Demanding Party selects a proposed arbitrator different than the arbitrator selected by the Demanding Party, and such selection is indicated by the Non-Demanding Party in its written response to the Demanding Party made within ten (10) days after receipt of the demand, then the parties shall attempt to agree upon an arbitrator. If the parties cannot agree upon an arbitrator within a ten (10) day period, then upon request of the Demanding Party, a single neutral arbitrator shall be appointed by the two arbitrators selected by the parties.

9.4 The locale of any arbitration shall be in Carson City, Nevada.

9.5 The arbitrator shall apply the substantive laws of the State of Nevada and the Rules of Evidence of Nevada. The arbitration shall be conducted in accordance with the Nevada Arbitration Rules as set forth in Subpart B of the Nevada Rules Governing Alternative Dispute Resolution and the arbitrator's decision shall only be subject to review as set forth in Chapter 38 of the Nevada Revised Statutes.

9.6 The costs of the proceedings (including reporter costs) shall be split between the parties equally, provided, however, that such costs, along with all other costs and expenses, including attorneys' fees, shall be subject to award, in full or in part, by the arbitrator, in his or her discretion, to the prevailing party. Unless the arbitrator so awards attorneys' fees, each party shall be responsible for its own attorneys' fees.

9.7 In connection with any arbitration proceedings commenced hereunder, any party shall have the right to join any third parties in such proceedings in order to resolve any other disputes, the facts of which are related to the matters submitted for arbitration hereunder.

9.8 The arbitrator shall render his or her decision(s) concerning the substantive issues in dispute in writing. The written decision shall be sent to the parties no later than thirty (30) days following the last hearing date.

9.9 All hearings shall be concluded within ninety (90) days from the day the arbitrator is selected or appointed, unless the arbitrator determines that this deadline is impractical.

9.10 If any of the provisions relating to arbitration are not adhered to or complied with, either party may petition the First Judicial District Court of the State of Nevada for appropriate relief.

9.11 The award of the arbitrator may be entered as a judgment in a court of competent jurisdiction. To the extent permitted by law, compliance with this article is a condition precedent to the commencement by any party of a judicial proceeding arising out of any dispute relating directly or indirectly to this Agreement, and any judgment or award rendered by the arbitrator shall be final, binding and non-appealable, and judgment may be entered by any court having jurisdiction thereof. The parties hereto intend that the provisions to arbitrate set forth herein be valid, enforceable and irrevocable. In his or her award the arbitrator shall allocate, in his discretion, among the parties to the arbitration, all costs of the arbitration, including the fees and expenses of the arbitrator and reasonable attorney's fees, costs and expert witness expense of the parties. The parties hereto agree to comply with any award made in any such arbitration proceedings that has become final in accordance with Nevada law and agree to the entry of a judgment in any jurisdiction. The arbitrator shall be entitled, if appropriate, to award any remedy in such proceedings, including monetary damages, specific performance, temporary restraining order, preliminary injunction, injunction and all other forms of legal and equitable relief, including punitive damages.

10. NOTICE: No notice, request, demand, instruction or other document to be given hereunder to any Party shall be effective for any purpose unless personally delivered to the person at the appropriate address set forth below (in which event such notice shall be deemed effective only upon such delivery) delivered by air courier next-day delivery (e.g., Federal Express), or delivered by U.S. mail, sent by registered or certified mail, return receipt requested as follows:

If to Dedicator:	North Carson Street LLC	and	John Uhart Comm. Real Estate Serv.
	Attention: Jerad Chao		Attention: John Uhart
	2527 Brickfield Court		301 West Washington Street
	Thousand Oaks, CA 91362		Carson City, NV 89703

If to Carson City: Carson City
Attention: Darren Schulz, Public Works Director
3505 Butti Way
Carson City, Nevada, 89701

Notices delivered by courier shall be deemed to have been given the next business day after deposit with the courier and notices mailed shall be deemed to have been given on the second day following deposit of same in any United States Post Office mailbox in the state to which the notice is addressed or on the third day following deposit in any such post office box other than in the state to which the notice is addressed, postage prepaid, addressed as set forth above. The addresses and addressees, for the purpose of this Paragraph, may be changed by giving written notice of such change in the manner herein provided for giving notice. Unless and until such written notice of change is received, the last address and addressee stated by written notice, or provided herein if no such written notice of change has been received, shall be deemed to continue in effect for all purposes hereunder.

11. ENTIRE AGREEMENT: This Agreement, together with any exhibits and other matters attached hereto and/or incorporated herein by reference, constitutes the entire agreement between the parties relating to the matters set forth herein. All terms, conditions, representations, warranties, understandings and interpretations contained in any other written or oral communications between the parties are superseded. In executing this Agreement, the parties acknowledge that they are relying solely on the matters set forth herein and not on any other inducements, written or oral, by the other party or any agent, employee or representative thereof.

12. SEVERABILITY: 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.

13. GOVERNING LAW: This Agreement, and the rights and obligations of the parties hereto, shall be governed by and construed in accordance with the laws of the State of Nevada.

14. TIME: Any time period to be computed pursuant to this Agreement shall be computed by excluding the first day and including the last day. If the last day falls on a Saturday, Sunday or holiday, the last day must be extended until the next business day, but in no case will the extension be for more than three days.

15. COUNTERPARTS: 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.

Dated this _____ day of _____, 2014.

NORTH CARSON STREET LLC

CARSON CITY

By: _____
JERAD CHAO, Manager

By: _____

By: JERAD CHAO TRUST
DATED 08/23/2001, Manager

By: _____
JERAD CHAO, Trustee

Attest:

Carson City Clerk

EXHIBIT A

Water Rights

EXHIBIT B

Permit(s) and Certificate(s)

EXHIBIT C

Water Rights Deed of Conveyance

This Water Rights Deed of Conveyance is made this ____ day of _____, 20__, by and between North Carson Street LLC (“Grantor”) and Carson City, a Consolidated Municipality (“Grantee”).

WITNESSETH:

WHEREAS, Grantor is the owner of certain water rights as evidenced by Permit _____, Certificate _____, which is appurtenant to Parcel No. _____ (the “Water Rights”); and

WHEREAS, it is the desire and intent of Grantor to dedicate, grant and convey the Water Rights for public use in accordance a water dedication agreement between Grantor and Grantee; and

NOW, THEREFORE, Grantor does hereby dedicate, grant and convey the Water Rights to public use, in accordance with the statutes made and provided therefor.

WITNESS the following signatures and seals:

NORTH CARSON STREET LLC

[NAME]
[TITLE]

The foregoing conveyance is hereby accepted by Carson City, as evidenced by the signature of the undersigned, which is authorized to accept this conveyance on behalf of Carson City, as evidenced by _____, adopted by the Carson City Board of Supervisors.

WITNESS the following signature:

CARSON CITY

[NAME]
[TITLE]

EXHIBIT D

Water Rights Deed of Reconveyance

This Water Rights Deed of Reconveyance is made this ____ day of _____, 20__, by and between Carson City, a Consolidated Municipality (“Grantor”) and North Carson Street LLC (“Grantee”) and

WITNESSETH:

WHEREAS, Grantor is the owner of water rights evidenced by Permit _____, Certificate _____, which was previously appurtenant to Parcel No. _____ (the “Water Rights”), subject to the terms of a water dedication agreement between Grantor and Grantee; and

WHEREAS, it is the desire and intent of Grantor to grant and reconvey the Water Rights to Grantee pursuant to the terms of the water dedication agreement between Grantor and Grantee; and

NOW, THEREFORE, Grantor does hereby grant and reconvey the Water Rights to Grantee. This dedication is made in accordance with the statutes made and provided therefor.

WITNESS the following signature of the undersigned official who is authorized to approve this reconveyance on behalf of Grantor pursuant to the water dedication agreement:

CARSON CITY

[NAME]
[TITLE]

WITNESS the following signature:

NORTH CARSON STREET LLC

[NAME]
[TITLE]

EXHIBIT E

ASSIGNMENT

This Assignment (“Assignment”) is entered into by and between _____ (“Assignor”) and _____ (“Assignee”).

RECITALS:

1. Assignor entered into a Water Rights Dedication Agreement (the “Agreement”) with Carson City, A Consolidated Municipality, dated _____, 2013, a copy of which is attached hereto as Exhibit “A”.

2. Pursuant to the Dedication Agreement, Assignor has conveyed certain water rights to Carson City for use within its municipal service area boundaries as may be amended.

3. Assignor has paid, or reimbursed, Carson City for all costs and fees under the Dedication Agreement.

4. Carson City may rely upon the face value representations of the validity of this Assignment without the duty to inquire beyond the face of this Assignment.

5. This Assignment must be signed and approved by Carson City in order to be effective.

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, Assignor hereby grants, assigns, and transfers to Assignee all of Assignor’s rights, title and interest under the Dedication Agreement.

Assignee hereby assumes Assignor's obligations, duties, responsibilities and liabilities with respect to the Dedication Agreement and agrees to be bound by each and all of the terms and provisions of the Dedication Agreement.

DATED this ___ day of _____, 20__.

Assignor:

[ASSIGNOR]

[NAME]

[TITLE]

Assignee:

[ASSIGNEE]

[NAME]

[TITLE]

CARSON CITY

[NAME]

[TITLE]