

**CITY OF CARSON CITY
REQUEST FOR BOARD ACTION**

Date Submitted: January 20, 2011

Agenda Date Requested : February 3, 2011

Time Requested: Consent Agenda

To: Mayor and Supervisors

From: Public Works Department

Subject Title: Action to approve and authorize the Mayor to sign the Joost Ash Canyon Creek Lease Agreement. (Ken Arnold)

Staff Summary: This agreement is for the lease of all or a portion of Ash Canyon Creek that is owned and controlled by Joost Land and Cattle Company, Inc., for calendar year 2011, for the sum of \$1.00.

Type of Action Requested:

(Check one)

Resolution

Ordinance

Formal Action/Motion

Other (Informational)

Does This Action Require A Business Impact Statement: Yes No

Recommended Board Action: I move to approve and authorize the Mayor to sign the Joost Ash Canyon Creek Lease Agreement.

Explanation for Recommended Board Action: Currently, Carson City utilizes Ash Canyon Creek Water Rights. Carson City owns 66.8841% of the annual Ash Canyon flows and Joost Land and Cattle Company, Inc., owns 4.09%.

Carson City enjoys an admirable working relationship with Joost Land and Cattle Company, Inc., and appreciates this offer. Public Works recommends approval of this agreement.

Applicable Statue, Code, Policy, Rule or Regulation: N/A

Fiscal Impact: N/A

Explanation of Impact: N/A

Funding Source: Water Fund

Alternatives: Do Not Approve

Prepared by: Ken Arnold, Deputy Public Works Director

Reviewed By: [Signature]
(Department Head)

Date: 1/29/11

Concurrences: [Signature]
(City Manager)

Date: 1/29/11

[Signature]
(District Attorney)

Date: 1/25/11

[Signature]
(Finance Director)

Date: 1/25/11

Board Action Taken:

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

(Vote Recorded By)

JOOST ASH CANYON CREEK LEASE AGREEMENT

THIS AGREEMENT made this _____ day of _____, 2011 by and between CARSON CITY, a consolidated municipality and political subdivision of the State of Nevada, hereinafter referred to as CITY, and Joost Land and Cattle Company, Inc., a Nevada corporation, hereinafter referred to as JOOST.

WHEREAS, the CITY holds a right to use approximately 66.485% of the annual Ash Canyon Creek flows as recognized by the State of Nevada Division of Water Resources as evidenced by the entitled Ash Canyon Decree, and

WHEREAS, JOOST holds a right to use 4.09% of the annual Ash Canyon Creek flows as recognized by the State of Nevada Division of Water Resources as evidenced by Decree, and

WHEREAS, both the CITY and JOOST recognize that coordinated management of Ash Canyon Creek water is mutually beneficial to both parties, and

WHEREAS, both the CITY and JOOST recognize that Ash Canyon Creek, a natural resource, is vital to agricultural, municipal and industrial uses, and

WHEREAS, JOOST wishes to lease all or a portion of their apportioned Ash Canyon Creek water to CITY; and

WHEREAS, CITY is authorized pursuant to NRS 244.275 to lease real property necessary for the use of the CITY; and

WHEREAS, CITY has determined that all or a portion of JOOST's apportioned Ash Canyon Creek water is necessary for the use of the CITY.

NOW, THEREFORE, CITY AND JOOST agree as follows:

1. REQUIRED APPROVAL. This Agreement shall not become effective until and unless approved by appropriate official action of the Carson City Board of Supervisors.
2. FIRST RIGHT OF REFUSAL. CITY shall have first right of refusal to use some or all of that Ash Canyon Creek water apportioned to JOOST pursuant to the terms outlined herein.
3. COMPENSATION. JOOST offers to lease some or all of JOOST's portion of Ash Canyon Creek water to CITY for calendar year 2011. If CITY exercises its first right of refusal and decides to lease that portion of JOOST's available Ash Canyon Creek water offered by JOOST to CITY, CITY and JOOST agree that CITY shall pay to JOOST ONE DOLLAR (\$1.00) for calendar year 2011 for any and all of JOOST's available apportioned Ash Canyon Creek water leased by the CITY.
4. MUTUAL REPRESENTATION/NON-WAIVER. By signing this Agreement, CITY and JOOST agree that the CITY or JOOST is not bound by the decreed percentages set out in this Agreement, if the State Division of Water Resources or a Court with competent jurisdiction changes the decreed allocation. In the event that the State Division of Water Resources, or a Court of competent jurisdiction, changes the allocation, the revised percentages will be applied for the remainder of this Agreement.
5. TERMINATION. The CITY and JOOST agree that JOOST may agree to terminate this Agreement at any time by providing written notification, signed by an authorized representative of JOOST not less than 90 days prior to the date of the proposed

termination. CITY may terminate this Agreement at any time by providing written notification to JOOST not less than 90 days prior to the date of the proposed termination. In addition, the parties may mutually agree to terminate by a date certain put in writing.

6. RECORDATION. The CITY and JOOST agree that this Agreement shall be recorded in the office of the County Recorder of Carson City, Nevada.

7. TERM OF THE AGREEMENT. This Agreement shall be effective from the date of execution by both parties until December 31, 2011, unless terminated sooner pursuant to Section 5.

8. NOTICE. All written notices under this Agreement shall be delivered to the following officials at the addresses stated:

CARSON CITY:
Andrew Burnham
3505 Butti Way
Carson City, NV 89701

JOOST:
Karen Joost
P.O. Box 25
Carson City, NV 89702

9. LIMITED LIABILITY. CITY will not waive and intends to assert available NRS Chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. CITY agrees to hold harmless and indemnify JOOST against third party liability claims arising from CITY's distribution or use of water.

10. FORCE MAJEURE. No party to this Agreement shall be considered to be in default in the performance of any obligations under this Agreement when a failure of performance shall be due to uncontrollable forces. The term "uncontrollable force" shall mean any cause beyond the control of the Party unable to perform such obligation, including but not limited