

Item # 8-2A

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

Date Submitted: November 6, 2009 **Agenda Date Requested :** November 19, 2009
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, LLC, for calendar year 2010, for the sum of \$1.00.

Type of Action Requested: (Check one)

() Resolution () Ordinance

(X) Formal Action/Motion () Other (Informational)

Does This Action Require A Business Impact Statement: () Yes (XX) 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, LLC owns 4.09%.

Carson City enjoys an admirable working relationship with Joost Land and Cattle Company, LLC 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: 11/9/09

Concurrences: [Signature]
(City Manager)

Date: 11/5/09

[Signature]
(District Attorney)

Date: 11/9/09

[Signature]
(Finance Director)

Date: 11/9/09

Board Action Taken:

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

(Vote Recorded By)

JOOST ASH CANYON CREEK LEASE AGREEMENT

THIS AGREEMENT made this _____ day of _____, 2009 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 2010. 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 2010 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, 2010, 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

to failure or threat of failure of facilities, flood, earthquake, storm, fire, lightning, and other natural catastrophes, epidemic, war, civil disturbance or disobedience, strike, labor dispute, labor or material shortage, sabotage, restraint by order of a court or regulatory body or agency of competent jurisdiction, and any non-action by, or failure to obtain the necessary authorization or approvals from, a Federal governmental agency or authority, which by the exercise of due diligence and foresight such Party could not reasonably have been expected to overcome. Nothing contained herein shall be construed to require a Party to settle any strike or labor dispute in which it is involved or accede to claims or conditions which it believes to be adverse to its business or other interests.

11. SEVERABILITY. If any provision contained in this Agreement is held to be unenforceable by a court of law or equity, this Agreement shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Agreement unenforceable.

12. PUBLIC RECORDS. Pursuant to NRS 239.010, information or documents may be open to public inspection and copying. JOOST recognizes CITY will have the duty to disclose this Agreement unless a particular record is made confidential by law or a common law balancing of interests.

13. CONFIDENTIALITY. Each party shall keep confidential all information, in whatever form, produced, prepared, observed or received by that party to the extent that such information is confidential by law or otherwise required by this Agreement.

14. PROPER AUTHORITY.

a) The parties hereto present and warrant that the person executing this Agreement on behalf of each party has full power and authority to enter into this

Agreement and that the parties are authorized by law to perform the services set forth in this Agreement.

b) The parties are associated with each other only for the purpose and to the extent set forth in this Agreement, and in respect to performance of services and payment of costs pursuant to this Agreement, each party is and shall be an entity separate and distinct from the other party and, subject only to the terms of this Agreement, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Agreement. Nothing contained in this Agreement shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for one agency whatsoever with respect to the indebtedness, liabilities, and obligations of the other agency or any other party.

15. GOVERNING LAW: JURISDICTION. This Agreement and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada. The parties consent to the jurisdiction of the First Judicial District Court of the State of Nevada for enforcement of this Agreement.

16. ATTORNEY FEES. The prevailing party in any legal proceedings arising from the enforcement, contest, or performance of this agreement shall be entitled to reasonable attorney fees.

17. ENTIRE AGREEMENT. This Agreement constitutes the entire Agreement of the parties and such is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other Agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this

Agreement specifically displays a mutual intent to amend a particular part of this Agreement, general conflicts in language between any such attachment and this Agreement shall be construed consistent with the terms of this Agreement. Unless otherwise expressly authorized by the terms of this Agreement, no modification or amendment to this Agreement shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

CARSON CITY

A Consolidated Municipality

BY: _____ Date: _____
Robert L. Crowell, Mayor

ATTEST: _____ Date: _____
Alan Glover, Clerk/Recorder

APPROVED AS TO FORM: _____ Date: _____
District Attorney

Joost Land and Cattle Company, Inc.

BY: _____ Date: _____
Karen Joost, President

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CARSON CITY

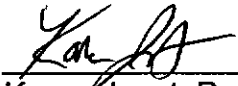
A Consolidated Municipality

BY: _____ Date: _____
Robert L. Crowell, Mayor

ATTEST: _____ Date: _____
Alan Glover, Clerk/Recorder

APPROVED AS TO FORM: _____ Date: _____
District Attorney

Joost Land and Cattle Company, Inc.

BY:  Date: November 3, 2009
Karen Joost, President