

16-6

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

Date Submitted: April 2, 2010

Agenda Date Requested : April 15, 2010

Time Requested: Consent Agenda

To: Mayor and Supervisors

From: Public Works Department

Subject Title: Action to approve and authorize the Mayor to sign an Agreement between Joost Land and Cattle Company, LLC and Carson City regarding a purchase of water rights for a sum not to exceed \$170,100.00 and a donation of land of approximately 6.17 acres. (Ken Arnold)

Staff Summary: This agreement is for the City's purchase of a portion of Ash Canyon Creek that is owned and controlled by Joost Land and Cattle Company, LLC, (Joost) and the donation, by Joost, of 6.17± acres to Carson City.

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 an Agreement between Joost Land and Cattle Company, LLC and Carson City regarding a purchase of water rights for a sum not to exceed \$170,100.00 and a donation of land of approximately 6.17 acres.

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 owns 4.09%. Joost agrees to sell forty-eight point nine percent (48.9%) of their Ash Canyon Creek surface water rights to Carson City. Carson City and Joost agree that these surface water rights are equal to two percent (2.0000%) of the annual flow from Ash Canyon Creek or forty-eight point six (48.60) acre feet of surface water. Joost has accepted the city's offer of \$3,500 per acre foot. This water will increase the Ash Creek flow that is currently treated at the Quill Water Treatment Plant.

The 6.17± acres proposed to be donated to the City by Joost, as described in the Agreement, is a tremendous opportunity for the City to provide additional upstream flood mitigation for the protection of the community.

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: \$170,100.00

Explanation of Impact: Upon approval of transfer of water right by the State engineer there will be a reduction of the water budget in the amount of \$170,100.00. The approval process by the State may take up to a year or more to complete.


Funding Source: Water Fund

Alternatives: Do Not Approve

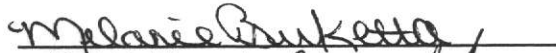
Prepared by: Ken Arnold, Deputy Public Works Director

Reviewed By: 
(Department Head)


Date: 4/11/10

Concurrences: 
(City Manager)

Date: 4/16/2010


(District Attorney)

Date: 4/16/10


(Finance Director)

Date: 4/16/10

Board Action Taken:

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

(Vote Recorded By)

AGREEMENT

This Agreement dated this _____ day of _____, 2010 is made by and between JOOST LAND & CATTLE COMPANY, INC., a Nevada corporation (hereinafter referred to as "JOOST") and CARSON CITY, a consolidated municipality and political subdivision of the State of Nevada (hereinafter referred to as "CITY").

WITNESSETH:

WHEREAS, JOOST owns or controls title to four point zero nine percent (4.09%) of Ash Canyon Creek surface water (equivalent to ninety-nine point three nine [99.39] acre feet of surface water) pursuant to the Gregory Canyon Creek decree (hereinafter referred to as "water rights"); and

WHEREAS, the water rights are free of any liens or encumbrances; and

WHEREAS, JOOST wishes to sell a portion of the water rights owned or controlled by JOOST to CITY; and

WHEREAS, CITY is authorized pursuant to NRS 244.275 to purchase any real or personal property necessary for the use of CITY; and

WHEREAS, CITY wishes to purchase the water rights after determining that the water rights are necessary for the use of CITY in order to operate its municipal water system; and

WHEREAS, JOOST owns title to six point one seven (6.17±) acres that adjoins the northeast corner of CITY property, commonly know as the Quill Ranch, more particularly described in Exhibit A, attached hereto and incorporated herein by this reference (hereinafter referred to as "real property"); and

WHEREAS, the real property is free of any liens or encumbrances; and

WHEREAS, JOOST wishes to donate the real property to CITY; and

WHEREAS, CITY is authorized pursuant to NRS 244.270 to receive by donation property for the use and benefit of the CITY; and

WHEREAS, CITY desires to accept the donation of said real property from JOOST after determining that said real property would be for the use and benefit of the CITY.

NOW, THEREFORE, the parties to this Agreement, in consideration of the provisions herein contained and other good and valuable consideration, do hereby agree as follows:

SECTION I. Water

a. JOOST agrees to sell forty-eight point nine percent (48.9%) of the Ash Canyon Creek surface water rights owned or controlled by JOOST to CITY. CITY and JOOST agree that these surface water rights are equal to two percent (2.0000%) of the annual flow from Ash Canyon Creek or forty-eight point six (48.60) acre feet of surface water.

b. CITY agrees to prepare and file all necessary documents required for the transfer and assignment of the water rights to the CITY with the State of Nevada Division of Water Resources, State Engineer's Office, Department of Conservation and Natural Resources (hereinafter referred to as "State Engineer"). CITY agrees to pay any and all fees incident to the expense of the transfer and assignment of the water rights.

c. CITY agrees to prepare and file the application and any supporting map which may be required by the State Engineer to change the point of diversion, place of use, and manner of use of the water rights, as required by Chapters 533 and 534 of Nevada Revised Statutes. CITY shall determine the precise location of the point(s) of diversion which is (are) the subject of the application(s) to change. CITY agrees to pay any and all costs incident to filing the application(s) to change the point of diversion, preparation of the supporting map, and possible administrative hearing and judicial appeals. CITY and JOOST agree to execute the necessary documents and, to the extent necessary, to meet any and all conditions or requirements of the State Engineer.

d. CITY and JOOST agree that the reasonable value of the water rights which are the subject of this Agreement is One Hundred Seventy Thousand One Hundred Dollars (\$170,100.00), or the equivalent of Thirty-Five Hundred Dollars (\$3,500.00) per acre foot for the transferred water rights. CITY and JOOST agree CITY shall pay JOOST upon the issuance of a permit from the State Engineer approving the transfer of the water rights to CITY. CITY and JOOST agree that if the State Engineer approves the application for transfer and assignment or the application to change the diversion point for only a portion of the water rights to be transferred to the CITY, the CITY shall only pay to JOOST \$3,500.00 for each acre foot of water rights approved by the State Engineer.

e. CITY agrees to accept and develop the water at the CITY point of diversion in Ash Canyon, and shall be responsible for the pumping, storing, treating, and distribution of the water in its present distribution system. It is expressly understood that the application(s), when granted by the State Engineer or made final through judicial order, shall be conveyed to the CITY along with the associated water rights.

f. In the event the State Engineer denies the entire application to transfer and assign the water rights or the entire application to change the point of diversion or the approval of the State Engineer is not upheld upon final administrative or judicial appeal, this Agreement shall terminate without further liability on behalf of either party hereto and any money paid by CITY to JOOST shall be refunded within ten (10) days. In the event the State Engineer only approves a portion of the application to transfer and assign the water rights or a portion of the application to change the point of diversion or the full approval of the State Engineer is not upheld upon final administrative or judicial appeal, CITY and JOOST agree that this Agreement shall only require JOOST to transfer and assign to CITY and CITY to purchase from JOOST the portion of the water rights approved by the State Engineer or approved upon final administrative or judicial appeal.

SECTION II. Land

a. JOOST agrees to donate in fee simple title the real property to CITY only if the State Engineer approves the entire application to transfer and assign the water rights referenced in

Section I above. In the event the State Engineer denies the entire application to transfer and assign the water rights or denies the entire application to change the point of diversion or the approval of the State Engineer is not upheld upon final administrative or judicial appeal, or the State Engineer only approves a portion of the application to transfer and assign the water rights or a portion of the application to change the point of diversion, the real property will not be transferred.

The fee simple title in the real property is transferred to CITY on the condition that, subsequent to the transfer of the real property, CITY will, for a period of fifty (50) years from the date the State Engineer approves the transfer of water rights from JOOST to CITY pursuant to Section I of this Agreement, only use the real property or allow the real property to be used for such purposes as storm water or flood water mitigation, erosion control, Ash Canyon Creek channel maintenance or any other purpose directly benefiting the water and storm water management programs of the Carson City Public Works Department. If, anytime within a period of fifty (50) years from the date the State Engineer approves the transfer of water rights from JOOST to CITY pursuant to Section I of this Agreement, CITY uses property for any other purposes, including but not limited to, the use of the real property as part of a municipal trail system or any other form of open space with public access to the real property or attempts to sell, donate or transfer the fee simple title to the real property to a third party, the fee simple title to the real property shall revert to JOOST, its heirs or assigns. After the period of fifty (50) years from the date the State Engineer approves the transfer of water rights from JOOST to CITY pursuant to Section I of this Agreement has expired, the CITY shall be permitted to use the property for any legal purpose and may lease, sell, donate or transfer the real property without the fee simple title to the real property reverting to JOOST, its heirs or assigns.

b. CITY agrees to prepare and file the application(s) and any supporting map(s) which may be required to achieve the boundary line adjustment(s) required to transfer the real property from JOOST to CITY. CITY agrees to pay any and all fees incident to the expense of the transfer and assignment of the real property including but not limited to surveying, legal descriptions, and recordation. CITY and JOOST agree to execute the necessary documents and, to the extent necessary, to meet any and all conditions or requirements for a boundary line adjustment.

c. CITY agrees to pay any and all costs incident to obtaining an appraisal of the real property and assist JOOST in obtaining a tax deduction for noncash charitable contributions as outlined in IRS Form 8283.

d. CITY agrees to pay any and all costs incident to the construction of approximately fifteen hundred feet (1500') of wire fence along the west and north boundaries of the real property, built to specifications approved by JOOST.

e. CITY agrees to accept the real property in "as is" condition in fee simple title subject to the conditions set forth in paragraphs a-d, above.

SECTION III. General Provisions.

a. The provisions of this Agreement shall be interpreted using Nevada law. The parties agree that any dispute or legal action to enforce the provisions of this Agreement must be brought in the First Judicial District Court for the State of Nevada.

b. JOOST shall pay CITY and/or CITY shall pay JOOST responsible attorney's fees and court costs incurred in any lawsuit or action instituted by CITY or JOOST to enforce the provisions of this Agreement upon determination of the prevailing party.

c. This Agreement may only be amended pursuant to a written agreement signed by both of the parties.

d. Except as otherwise provided, this Agreement shall bind and inure to the benefit of the parties and their respective successors, representatives, heirs, and assigns.

e. Any delay or stoppage of business due to acts of God, enemy or hostile action, fire or other casualty, shall excuse the performance by either party to this Agreement for a period equal to any such delay or stoppage.

f. This Agreement is conditioned upon approval of all local, state and federal governmental agencies as required by federal or state law and by the Carson City Board of Supervisors.

g. This Agreement along with any exhibits and attachments hereto constitutes the entire Agreement between the parties. It is understood that all previous negotiations, discussions, and previous agreements between the parties hereto affecting this Agreement are superseded by this Agreement.

IN WITNESS WHEREOF, the parties hereto have affixed their official signatures the day and year written below and intend to be legally bound thereby.

CARSON CITY

A Consolidated Municipality

BY: _____
Robert L. Crowell, Mayor

Date: _____

ATTEST: _____
Alan Glover, Clerk/Recorder

Date: _____

APPROVED AS TO FORM: Melania Buketta
District Attorney

Date: 4-6-10

JOOST LAND AND CATTLE COMPANY, INC.

BY: _____
Karen Joost, President

Date: _____



Existing Lot:
APN: 007-061-13
70.13Ac.

Proposed Lot:
6.17Ac. To Be Subtracted
from APN 007-061-13

Carson City
GIS Division
3505 Butti Way
Carson City, NV 89701
(775) 887-2355

Photos Flown:
2008

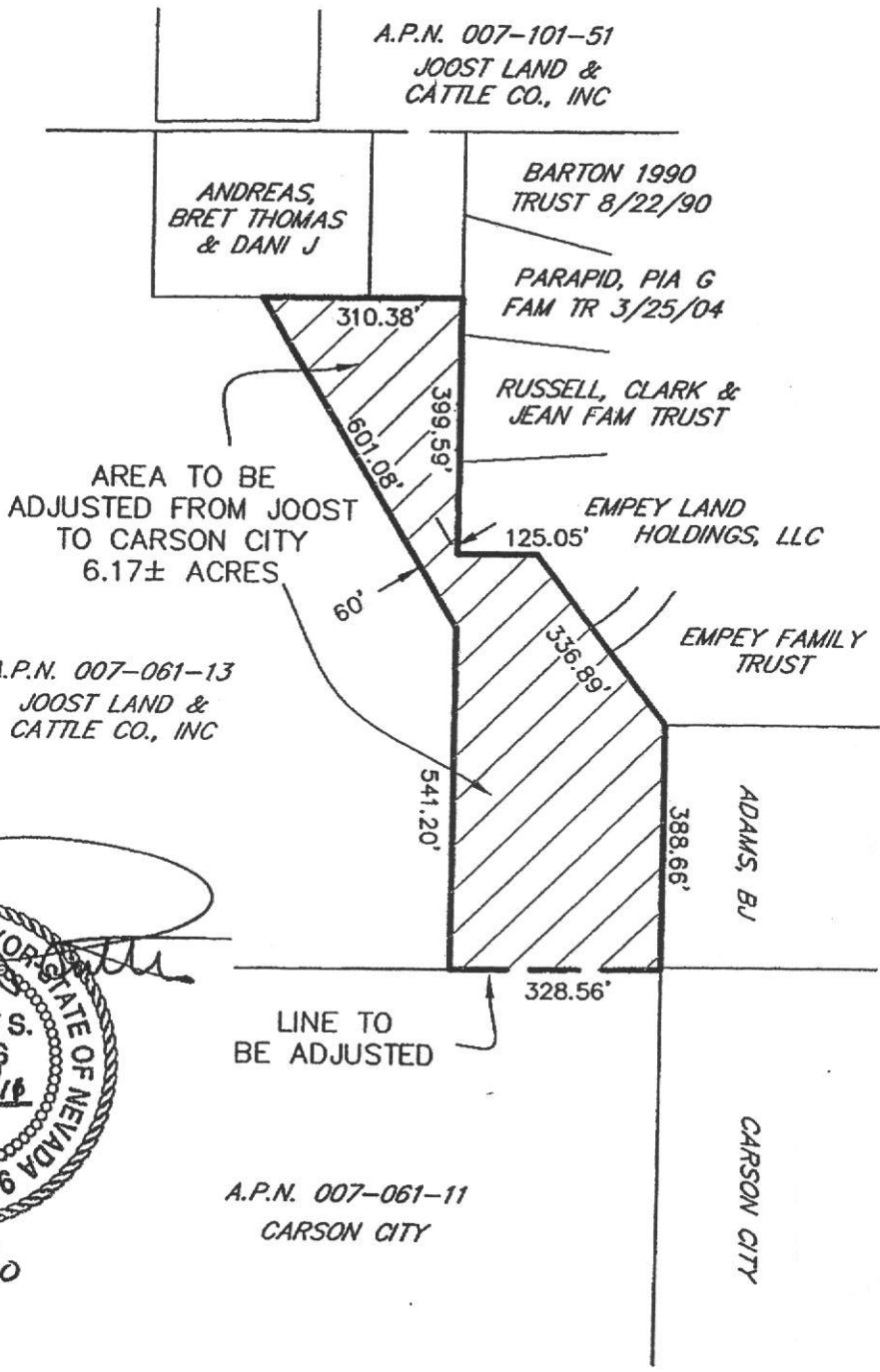
Proposed Lot From Joost to Carson City

N
1 Inch = 1,000 Feet





1" = 300'



[Signature]

PROFESSIONAL LAND SURVEYOR STATE OF NEVADA
No. 17616

GREGORY S. PHILLIPS
Exp: 12/31/18

3/25/10

EXHIBIT "A"

PROPOSED BOUNDARY LINE
ADJUSTMENT AREA
A.P.N.'S 007-061-11, 13
& 007-101-51
JOOST & CARSON CITY
CARSON CITY, NV



TRI STATE SURVEYING, LTD
425 E. Long Street
Carson City, Nevada 89706
(775) 887-9911
* FAX: (775) 887-9915

Land Information Solutions

JN 09050.01.CM