

**City of Carson City
Agenda Report**

Date Submitted: April 27, 2012

Agenda Date Requested: May 3, 2012

Time Requested: 15 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 Vidler Water Company, Inc which provides for dedicating and banking certain water rights with Carson City. (Burnham).

Staff Summary: This agreement provides for Vidler Water Company to dedicate water rights to Carson City and be banked for future use within Lyon County or Carson City and in the interim Carson City can utilize the water rights at no cost.

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 Vidler Water Company, Inc which provides for dedicating and banking certain water rights with Carson City.

Explanation for Recommended Board Action. Vidler Water Company currently owns both land and water rights within Carson City and Lyon County. Vidler also has agreements related to water service in both Carson City and Lyon County. Carson City and Lyon County entered into an Interlocal Agreement dated January 13, 2007, providing for delivery of potable water between the jurisdictions in certain situations, by means of an intertie of water supply and delivery systems. Vidler constructed a substantial portion of the intertie and dedicated it to Lyon County. This agreement provides for banking water rights with Carson City for future service to Lyon County or Carson City and in the interim Carson City can utilize the water rights for its own purposes at no cost.

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.

Vidler 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 and Lyon County service areas, subject to the permitting requirements. For instance, Carson City may elect to use some of the banked water for irrigation of the open space lands along the Carson River that the city recently acquired.

This would allow delay of a capital project costing several million dollars by many years for irrigation of the open space lands.

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.

Vidler, 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 areas pursuant to the Interlocal Agreement between Carson City and Lyon County.

Vidler and Carson City acknowledge that the dedicated water rights and Vidler'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 Vidler and its assignees, Carson City and Lyon County, and the Nevada State Engineer's Office.

This agreement provides that additional water can be deeded to Carson City over time by Vidler. Also, the agreement allows Vidler to request reconveyance of the water rights back to Vidler 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 and Lyon County. Vidler 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 Vidler, Carson City and Vidler'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 Vidler or its assignees.

Carson City agrees to accept the dedicated water rights in accordance with this Agreement for the benefit of Vidler which retains equitable title for future water rights dedication requirements within Carson City and/or Lyon County, on the condition that Vidler, or its assignees, be responsible for all costs associated with the transfer by Vidler 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, Vidler 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 Vidler 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. Carson City is not obligated to make these water rights credits available for will-serves in Lyon County until an agreement between Carson City and Lyon County is executed to establish the procedure by

which these banked water rights will be credited toward will-serves in Lyon County. Lyon County staff have reviewed this agreement and understand the necessity of revising the existing water service agreement between Lyon County and Carson City.

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

Fiscal Impact: None

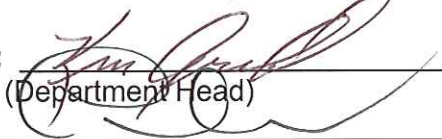


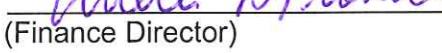
Explanation of Impact: All costs will be reimbursed by Vidler and upon will-serve commitment fees will accrue to Carson City.

Funding Source: NA

Alternatives: Direct staff otherwise.

Supporting Material: Water Banking Agreement

Prepared By: Andrew Burnham, Public Works Director

Reviewed By:		Date: <u>4/24/12</u>
	(Department Head)	
		Date: <u>4/24/12</u>
	(City Manager)	
		Date: <u>4/24/12</u>
	(District Attorney)	
		Date: <u>4/24/12</u>
	(Finance Director)	

Board Action Taken:

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

(Vote Recorded By)

WATER RIGHTS BANKING AND DEDICATION AGREEMENT

This Water Rights Banking and Dedication Agreement (this "Agreement") is executed and effective _____, 2012, by and between Carson City, A Consolidated Municipality ("Carson City") and Vidler Water Company, Inc., a Nevada corporation ("Vidler"), for the purpose of dedicating and banking certain water rights.

RECITALS

WHEREAS, Carson City owns and operates a water distribution system located within the boundaries of Carson City, Nevada and Vidler owns certain water rights which may be put to use within Carson City and/or Lyon County; and

WHEREAS, Carson City and Lyon County entered into an Interlocal Contract, dated January 13, 2007, providing for delivery of potable water between the jurisdictions in certain situations, by means of an intertie of water supply and delivery systems ("Interlocal Contract"); and

WHEREAS, Vidler is the owner or approximately 1000 acres of undeveloped real property in the Dayton area of Lyon County; and

WHEREAS, Vidler is the owner of certain water rights, more particularly described on Exhibit "A" which is incorporated by this reference as if fully set forth herein and which may be from time to time expanded to include additional water rights (collectively, the "Dedicated Water Rights") which have the characteristics to satisfy agricultural, recreation, open space, commercial, wildlife, in-stream flow, conservation, municipal and industrial uses within the Carson City and Lyon County service areas as those boundaries may be amended in the future (the "Service Areas"); and

WHEREAS, the parties intend that the Dedicated Water Rights, subject to the appropriate permitting requirements, provide the requisite water resource consistent with the community and environmental needs and demands of the Service Areas; and

WHEREAS, the parties hereto desire to consider and 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 growth and development within the Service Areas; and

WHEREAS, Vidler, 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

WHEREAS, the banking provisions provided for herein 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 Areas pursuant to the Interlocal Contract and such further agreements as the parties may enter into; and

WHEREAS, Vidler and Carson City acknowledge that the Dedicated Water Rights and Vidler's subsequent transfers and assignments of the beneficial interest therein as provided hereunder 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 in trust for Vidler as provided hereunder are for convenience and for the ease in the administration of the water rights as among Vidler and its assignees, Carson City and Lyon County and the Nevada State Engineer's Office; and

WHEREAS, 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 development in Carson City and Lyon County; and

WHEREAS, Vidler intends to transfer legal title to the Dedicated Water Rights by Water Rights Deed to Carson City, which shall 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 in trust for the exclusive benefit of Vidler and its assignees and 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 Vidler or its assignees; and

WHEREAS, Carson City agrees to accept the Dedicated Water Rights in accordance with this Agreement for the exclusive benefit of Vidler which retains equitable title and its assignees, for future water rights dedication requirements within Carson City and/or Lyon County, on the condition that Vidler, or its assignees, be responsible for all costs associated with the transfer by Vidler to Carson City, and all costs associated with the maintenance of the Dedicated Water Rights, as provided in Section 4 below; and

WHEREAS, after the Dedicated Water Rights are deeded to Carson City, as provided hereunder, Vidler may assign its equitable title from time to time all or a portion of its beneficial interest in the Dedicated Water Rights and resulting Water Rights Credits, as defined below, 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; and

WHEREAS, Carson City's acceptance of the Dedicated Water Rights will not, in and of itself, create an obligation to provide water service to Vidler 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.

NOW, THEREFORE, in consideration of the following terms, conditions, and covenants it is hereby agreed between Vidler and Carson City as follows:

1. DEDICATED WATER RIGHTS

1.1 Subject and pursuant to the following terms and conditions of this Agreement, and any terms, conditions and restrictions imposed by the State Engineer or the Water Master on the Carson River, Vidler hereby agrees to convey the Dedicated Water Rights to Carson City free and clear of all liens and encumbrances by execution

and delivery of a Water Rights Deed in a form acceptable to Carson City. Carson City has reviewed and approved the type and quantity of the Dedicated Water Rights and agrees to accept the dedication of the Dedicated Water Rights. Carson City agrees to accept future additional dedicated water rights, subject to approval by Carson City staff. Carson City will seek such additional and required permits under all applicable State Engineer procedures and rulings, and hold and reserve, exclusively for the account of Vidler or its assignees (including Carson City), a quantity of water rights credits (the "Water Rights Credits") equal to the amount of the municipal permits issued by the State Engineer, for credit against will-serve commitments and dedication requirements, if any, or other water right demands and/or commitments requested by Vidler or its assignees.

1.2 So long as no amounts described in Sections 1.4, 1.5 or 4 remain due to Carson City, Vidler may remove Dedicated Water Rights provided that such Dedicated Water Rights have not been credited against will-serve commitments or dedication requirements, if any, or other water right demands and/or commitments by Vidler or its assignees. If these conditions are satisfied, Carson City staff shall approve the removal of the Dedicated Water Rights and shall cooperate with Vidler or its assignee in filing all State Engineer change applications and other documents necessary to effectuate a reconveyance of the Dedicated Water Rights to Vidler or its assignee. Carson City agrees to review and advise Vidler of any limitations or regulations on future and additional Dedicated Water Rights and Vidler agrees to comply with such limitations and regulations as uniformly applied by Carson City.

1.3 The parties agree that, subject to approval by Carson City staff, Vidler may dedicate water rights to Carson City either to substitute for Dedicated Water Rights or as additional Dedicated Water Rights. Carson City staff shall have the discretion to approve or reject any such water rights based upon a review of title and ownership of the water rights, representations and warranties that the water rights are free and clear of all liens and encumbrances, the type and quantity of the water rights, and any other

factors bearing on the ability of Carson City to use the water rights within the Service Areas.

1.4 In order to offset certain infrastructure and facility costs incurred by Carson City, Vidler or its assignee shall pay a one-time fee of \$500.00 per acre-foot of Water Right Credits that is requested for will-serve commitments in Lyon County or in Carson City, if a dedication requirement is imposed in Carson City in the future. The fee shall be payable to Carson City at the time of the request for the will-serve commitment and shall be in addition to any other fees necessary to receive water utility service, including connection fees. The fee shall be adjusted every 5 years by ten percent (10%), so that in October of the year 2016 the fee shall be \$550.00 per acre-foot. Vidler shall have the right to receive will-serve commitments for the first one hundred (100) acre-feet of Water Right Credits without the payment of this fee based upon and in consideration for certain dedications and cooperative measures made to the Carson City Utilities system by Vidler, including, but not limited to, the connection with the Lyon County water system.

1.5 Water Rights Credits available as the result of the issuance of permits will be placed to beneficial use within the Service Areas. Carson City will file, as necessary, applications for extensions of time, proofs and other appropriate documents for the purpose of maintaining the validity of the Dedicated Water Rights and for obtaining the maximum use of the Dedicated Water Rights. Carson City shall not be responsible for any act, omission, condition, event or State Engineer decision that affects the validity of the Dedicated Water Rights if such act, omission, event or State Engineer decision is not reasonably foreseeable or outside of the control of Carson City. In the event that extraordinary actions, including an administrative hearing or appeal, are necessary to maintain the validity of the Dedicated Water Rights and to obtain the maximum use of the Dedicated Water Rights, Vidler shall be responsible for the costs associated with such actions as provided for in Section 2.5 below. During the time the

Water Rights Credits remain uncommitted and unallocated to an approved project, all direct costs and filing fees, including permit fees, paid by Carson City shall be reimbursed to Carson City by Vidler or its assignees, as provided in Section 4 below.

1.6 This Agreement does not create a legal trust relationship between the parties. The use of the term "in trust" in the recitals of this Agreement is intended to clarify that Vidler maintains a beneficial interest in the Dedicated Water Rights, and is in no way meant to create or refer to any fiduciary or other special relationship between the parties that would require a higher standard of care, or any duty of loyalty, on the part of Carson City.

2. TRANSFER AND ASSIGNMENT

2.1 So long as no amounts described in Sections 1.4, 1.5 or 4 remain due to Carson City, Vidler may, at any time following issuance of the permits, transfer and assign its right to uncommitted and unallocated Water Rights Credits by the execution and delivery to Carson City or Lyon County of an Assignment of Water Rights Credits ("Assignment" or "Assignments") as provided for herein. The Assignments shall be in the form attached hereto as Exhibit B and signed by Vidler, the assignee, and Carson City. The Assignment must be signed and approved by Carson City in order to be effective, but approval may only be withheld due to (i) a failure by Vidler to pay all amounts due to Carson City, or (ii) a refusal by the assignee to accept the obligations imposed under the Agreement.

2.2 The Water Rights Credits resulting from the permits shall be held by Carson City or Lyon County pursuant to the terms and conditions of this Agreement, and the assignment of Water Right Credits in excess of the Water Right Credits attributable to the Dedicated Water Rights described in Exhibit A shall not be made by Vidler until such time as additional dedicated water rights and all necessary permits have been obtained by Vidler and assigned to Carson City or Lyon County.

2.3 Carson City, Lyon County and Vidler and/or its assignees shall annually agree upon the accounting and reconciliation of the total Water Rights Credits transferred and assigned by means of an accounting presented by Vidler and/or its assignees in a format or schedule acceptable to Carson City or Lyon County. The termination, default or other action related to one assignee shall not affect the rights or obligations of any other assignee.

2.4 Carson City makes no representations or warranties with regard to the adequacy of the Dedicated Water Rights for use in Lyon County and the parties hereto acknowledge and agree that in order for the Dedicated Water Rights to be put to beneficial use in Lyon County, an agreement between Carson City and Lyon County may be necessary in addition to the Interlocal Contract described herein. Wherever this Agreement references Lyon County, that reference anticipates, and is dependent upon, the execution of such an agreement between Carson City and Lyon County.

2.5 The parties hereto acknowledge and agree that if any of the Dedicated Water Rights are protested in any proceedings before the State Engineer or Federal Water Master that Vidler shall pursue and prosecute any such protest, administrative hearing, and appeal as may be required to obtain the necessary entitlements and permits for the Dedicated Water Rights. Carson City agrees to support such activities of Vidler provided that Carson City incurs no costs in such activities.

3. WILL-SERVE COMMITMENTS AND TEMPORARY USE

3.1 At such time as the Dedicated Water Rights have been conveyed to Carson City as provided for in Section 1.1 above and the appropriate permits have been issued by the State Engineer, Vidler and/or its assignees, may request will-serve commitments for up to the total amount of acre-feet of Water Rights Credits then currently banked with Carson City, as provided in Section 1 above. Carson City is not required to allow Water Rights Credits to be credited against will-serve commitments until the State Engineer has approved all necessary change applications for the

underlying Dedicated Water Rights. Additional will-serve commitments are subject to the limitations of Section 1.3 above and the dedication of additional water rights or other agreement with Carson City. The Water Rights Credits will be held in an account as a credit for Vidler and/or its assignees as provided in this Agreement. The quantity of Water Rights Credits to be applied to and credited against any such will-serve commitments shall be consistent with the demonstrated average annual consumption for similarly sized parcels based upon existing metered users within the Service Areas. Carson City agrees that the Assignments will also be accepted in satisfaction of the requirements for dedication of water rights, if any, in connection with requests for will-serve commitments.

3.2 The parties agree that, subject to the provisions of Section 3.1, above, the respective service provider within the Service Areas will be the final authority in determining the number of will-serve commitments which may be granted.

3.3 Carson City, subject to the terms and conditions of the permits and the provisions of Sections 2.2 and 3.1, above, is also the final authority regarding the dedication rate, if any, associated with any will-serve commitments which may be issued in Carson City from the Water Rights Credits.

3.4 Prior to the time when all of the Water Rights Credits are in actual use for approved service, Carson City, at its sole cost and expense, may utilize some or all of the remaining uncommitted water rights associated with the Water Rights Credits that have not been called upon as the basis of will-serve commitments for its general municipal purposes, including groundwater recharge or conjunctive use management, irrigation, recreation, open space, commercial, wildlife, in-stream flow or conservation within the Service Areas. Any jurisdiction's use of the Water Rights Credits is strictly limited to temporary uses that will not diminish or have adverse quantitative effect on the rights of Vidler or its assignees to put the full amount of the Water Rights Credits hereunder to beneficial use, and is subject to the limitations of Section 2.2 above. All

use of the Water Rights Credits shall be subject to the Interlocal Contract and any future interlocal agreements between Carson City and Lyon County.

3.5 The parties have many and varied types and quantities of water rights, ranging from surface rights to underground rights and from agricultural uses to municipal uses. Nothing herein contained precludes the parties from substituting and /or exchanging rights between the parties for purposes of satisfying water demands within the Service Areas of Carson City and Lyon County as the same may arise in the future, from time to time.

4. COSTS AND FEES: Vidler shall be responsible for all legal, administrative and engineering costs and fees, including permit fees, associated with the dedication, transfer and continued maintenance of the Dedicated Water Rights. Carson City shall submit an invoice to Vidler within thirty (30) days of incurring costs or fees or within thirty (30) days of the execution or amendment of this Agreement, whichever is later. Vidler shall reimburse Carson City for costs and fees within thirty (30) days of receipt of the invoice.

Vidler shall be responsible for all legal, administrative and engineering costs and fees, including permit fees, associated with the removal and reconveyance of Dedicated Water Rights. Vidler shall not be entitled to reimbursement from Carson City for these costs and fees.

5. WATER RESOURCE ISSUES: The parties hereto agree to work and plan cooperatively to resolve issues which may arise relating to the nature and extent of water quality, distribution and water production limitations or inadequacies within the Service Areas which may benefit the parties and the use of the Dedicated Water Rights.

6. TERMINATION: This Agreement will terminate of its own accord at such time as the total amount of the Dedicated Water Rights Credits provided for herein have been put to beneficial use within the Service Areas unless terminated sooner by the written agreement of the parties.

7. MISCELLANEOUS

7.1 Assignment: So long as no amounts described in Section 1.4, 1.5 and 4 remain due to Carson City, Vidler may assign this Agreement and all rights and obligations hereunder upon receiving prior written approval from Carson City, which approval may only be withheld due to (i) a failure by Vidler to pay all amounts due to Carson City, or (ii) a refusal by the assignee to accept the obligations imposed under the Agreement. All of the parties' rights inure to, and the obligations are binding upon, the parties' successors in interest. Carson City may not assign this agreement without the express written consent of Vidler.

7.2 Survival: This Agreement and the covenants, warranties and representations contained herein shall survive the execution of this Agreement.

7.3 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 and relates to the water rights set forth on Exhibit "A" (as that may be amended and expanded in the future). Subject to the Agreements between the parties which are executed and in good standing as of the date of this Agreement, all other 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.

7.4 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. The rights and obligations of the parties hereto shall be governed by and construed in accordance with the laws of the State of Nevada.

7.5 Arbitration of Disputes: 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:

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.

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

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, for ten (10) days after the Demanding Party's receipt of the Non-Demanding Party's written response to the demand, attempt to agree upon an arbitrator. If the parties cannot agree upon an arbitrator within such 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.

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.

The costs of resolution (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.

To the extent possible, the arbitration hearings shall be conducted on consecutive days, excluding Saturdays, Sundays and holidays, until the completion of the hearings.

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.

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.

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.

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.

The award of the arbitrator may be entered as a judgment in a court of competent jurisdiction. All arbitration conducted under this Article shall be in accordance with the Nevada Arbitration Rules as set forth in Subpart B of the Nevada Rules Governing Alternative Dispute Resolution and Chapter 38 of the Nevada Revised Statutes. 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 in accordance with the Nevada Arbitration Rules as set forth in Subpart B of the Nevada Rules Governing Alternative Dispute Resolution and Chapter 38 of the Nevada Revised Statutes, and any judgment or award rendered by the arbitrator shall be final, binding and unappealable, 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 at 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 the Nevada law and agree to the entry of a judgment in any jurisdiction upon any award rendered in such proceedings becoming final. 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.

7.6 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 Vidler, to: Vidler Water Company, Inc.
Attention: Dorothy A. Timian-Palmer
3480 GS Richards Blvd., Suite 101
Carson City, NV 89703

If to Carson City, to: Carson City
Attention: Andy Burnham, Public Works Director
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.

7.7 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.

Dated this _____ day of _____, 2012.

VIDLER:
VIDLER WATER COMPANY, INC.

CARSON CITY:
CARSON CITY

By: _____
Dorothy A. Timian Palmer,
President

By: _____

Attest: _____
Carson City Clerk

STATE OF NEVADA)
) ss.
COUNTY OF _____)

On this _____ day of _____, 2012, personally appeared before me, a Notary Public, Dorothy A. Timian Palmer, personally known to me to be the person whose name is subscribed to the above instrument, who acknowledged to me that he/she executed the above instrument on behalf of Vidler Water Company, Inc.

NOTARY PUBLIC

STATE OF NEVADA)
) ss.
COUNTY OF _____)

On this _____ day of _____, 2012, personally appeared before me, a Notary Public, _____, personally known to me to be the person whose name is subscribed to the above instrument, who acknowledged to me that he/she executed the above instrument on behalf of Carson City.

NOTARY PUBLIC

EXHIBIT A

Dedicated Water Rights

App	Stat	Src	MOU	Priority	Irr Ac.	CO	Segment	Duty Approp	Mun AF	Basin	Basin Name
78371	PER	UG	MUN	9/4/1987		CC			13.78	104	EAGLE VALLEY
701DCR	DEC	STR	IRR	1884	37.08	CC	7 - Mexican Dt.	166.86		103	DATYON VALLEY
702DCR	DEC	STR	IRR	1897	5	CC	7 - Mexican Dt.	22.5		103	DATYON VALLEY

EXHIBIT B

Form Assignment of Water Rights Credits

ASSIGNMENT OF WATER RIGHTS CREDITS

This Assignment of Water Rights Credits ("Assignment") is entered into by and between Vidler Water Company, Inc., a Nevada corporation, ("Assignor") and _____, ("Assignee").

RECITALS:

1. Assignor entered into a Water Rights Banking and Dedication Agreement (the "Banking Agreement") with Carson City, A Consolidated Municipality, dated _____, 2012, a copy of which is attached hereto as Exhibit "A".

2. Pursuant to the Banking Agreement, Assignor has conveyed certain water rights to Carson City for use within the Service Area as defined in the Banking Agreement.

3. Pursuant to the Banking Agreement, Assignor owns and controls Water Rights Credits that may be utilized to satisfy the water rights portion of "will-serve" commitments within the Service Area.

4. Pursuant to the Banking Agreement, Assignor desires to assign and Assignee desires to acquire _____ acre-feet of Assignor's Water Rights Credits pursuant to the Banking Agreement.

5. Assignor has paid, or reimbursed, Carson City for all costs and fees required to date by the Water Rights Banking and Dedication Agreement.

6. 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.

7. 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 to ____ acre feet of Water Rights Credits under and pursuant to the Banking Agreement. The Water Rights Credits conveyed under this Assignment are further described as follows:

Assignee hereby assumes Assignor's obligations, duties, responsibilities and liabilities with respect to _____ acre feet of Water Rights Credits in order to satisfy the requirements for the dedication of water rights in connection with a request(s) for will-serve commitments under the terms of the Banking Agreement and agrees to be bound by each and all of the terms and provisions of the Banking Agreement and all other uniformly applied will-serve commitment requirements of Carson City with regard to _____ acre feet of Water Rights Credits.

DATED this ____ day of _____, 2012.

Assignor:

VIDLER WATER COMPANY, INC.
A Nevada corporation

By: _____
Dorothy Timian-Palmer
President

Assignee:

By: _____

CARSON CITY

By: _____

STATE OF NEVADA)
 : ss.
CARSON CITY)

On _____, 2012, DOROTHY A. TIMIAN-PALMER, personally appeared before me, a notary public, personally known to me to be the person whose name is subscribed to the foregoing instrument and who acknowledged to me that she is the President of Vidler Water Company, a Nevada corporation, and who acknowledged to me that she executed the foregoing Assignment on behalf of said company.

NOTARY PUBLIC

STATE OF NEVADA)
 : ss.
COUNTY OF)

On _____, 2012, _____, personally appeared before me, a notary public, personally known to me to be the person whose name is subscribed to the foregoing instrument and who acknowledged to me that _he is the _____ of _____, a _____, and who acknowledged to me that _he executed the foregoing Assignment on behalf of said company.

NOTARY PUBLIC