

Item # 10

**City of Carson City
Agenda Report**

Date Submitted: November 27, 2006

Agenda Date Requested: December 7, 2006

Time Requested: 20 Minutes

To: Mayor and Supervisors

From: Andrew Burnham, Public Works Director

Subject Title: Action to approve a Water Resources Teaming Agreement with the Vidler Water Company, Inc. to develop water resource projects.

Staff Summary: This agreement provides for a public/private partnership in the development of water resources for Carson City. With the large capital cost projected for future water and wastewater projects a selection process was conducted to find a possible private partner for development of water resources to offset a portion of the capital costs through sale or lease of wastewater effluent, and/or development of other water resources.

Type of Action Requested: (check one)
☐ Resolution ☐ Ordinance
☒ Formal Action/Motion ☐ Other (Specify)

Does This Action Require A Business Impact Statement: ☐ Yes ☒ No

Recommended Board Action: I move to approve a Water Resources Teaming Agreement with the Vidler Water Company, Inc. to develop water resource projects..

Explanation for Recommended Board Action: Approving this agreement will provide for Vidler Water Company to begin identification of possible water resource projects for development as a public/private partnership with Carson City. The Capital Improvement Plans presented to the Board in October indicated that there were more than \$60 million in wastewater and water projects planned over the next ten years. Staff conducted an extensive selection process over the summer to find qualified firms to become a partner with the City for development of water resource projects. Significant interest was expressed by a number of national firms but in the end only Vidler Water Company proposed on the project. We believe this was because the issues are complex, the risk of investment is high, and the cost is large. Vidler Water Company clearly has the expertise and the financial capability to undertake such a program and is doing similar projects with other agencies throughout the western US and in Nevada.. There is no cost to the City for the Teaming Agreement. All costs are to be borne by Vidler. Project specific agreements will be brought back to the Board for future consideration. The agreement sets forth provisions for repayment of project costs and distribution of revenues to the City and Vidler.

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

Fiscal Impact: None

Explanation of Impact: NA

Funding Source: NA

Alternatives: Not approve the agreement.

Supporting Material: Teaming Agreement

Prepared By: Andrew Burnham, Public Works Director

Reviewed By:


(Public Works Director)

Date:

11/28/06

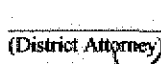

(Finance Director)

11/28/06


(City Manager)

Date:

11/28/06


(District Attorney)

Date:

11/28/06

Board Action Taken:

Motion: _____

- 1) _____
- 2) _____

Aye/Nay

(Vote Recorded By)

WATER RESOURCES TEAMING AGREEMENT

This Water Resources Teaming Agreement entered into this _____ day of _____, 2006, by and between CARSON CITY, a consolidated municipality, hereinafter "CARSON CITY," and VIDLER WATER COMPANY, INC., hereinafter "VIDLER".

RECITALS

1. CARSON CITY is the owner of water, wastewater, and re-use systems operated by the Public Works Department and which manages water resources and, among other things, a reclaimed water storage reservoir located in the Brunswick Canyon within Carson City, Nevada.
2. VIDLER has particular professional expertise, including but not limited to legal and engineering expertise, in the planning, regulatory approval, development and improvement of various types of water resources. VIDLER has the demonstrated financial ability to fund the development and improvement activities necessary to undertake and complete such planning and regulatory approval related activities.
3. Pursuant to CARSON CITY' Request for Proposal VIDLER submitted a proposal dated July 31, 2006 offering to work with CARSON CITY to develop water resources within the jurisdiction of CARSON CITY.
4. Pursuant to VIDLER's July 31, 2006 proposal and based upon VIDLER's particular expertise and financial ability, CARSON CITY desires to enter into an agreement with VIDLER in an effort to develop water resource projects through the improvement, expansion and development of existing production, distribution, treatment, storage and reclamation activities regarding CARSON CITY water resources, which may result in additional water rights credits

resulting from water resource related activities both within and outside CARSON CITY boundaries.

5. In an effort to develop and acquire water rights that can be conveyed to third parties for use in accordance with the rules and regulations of the Nevada State Engineer, CARSON CITY and VIDLER desire to enter into this Agreement.

6. By the terms of this Agreement, CARSON CITY and VIDLER intend to provide for the development and approval of water rights that can be utilized as means of expanding CARSON CITY's water resource inventory and/or economic base.

7. It is expressly understood and acknowledged that VIDLER is in the business of water resource development throughout the western United States and that nothing in this Agreement is intended to prevent, impair or impede VIDLER from acting in its normal course of business outside of the boundaries of Carson City unless it is expressly the subject of a Project Agreement with Carson City.

NOW, THEREFORE, in consideration of the recitals set forth above and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the CARSON CITY and VIDLER mutually agree as follows:

A. VIDLER OBLIGATIONS. During the term of this Agreement, VIDLER, based upon its expertise and experience, will take actions in an effort to obtain water right permits on behalf of CARSON CITY and VIDLER ("Project") based upon the treatment, development, expansion and refinement of water resource actions relating to water resources currently held by CARSON CITY. Such actions to be taken by VIDLER, in consultation and cooperation with CARSON CITY's professional staff, may include, but shall not be limited to the following:

- 1) Implementation of additional collection, distribution, transmission or treatment processes or procedures to the water resources of CARSON CITY ;
- 2) Filing of applications on behalf of CARSON CITY and VIDLER with the Nevada State Engineer for the appropriation of water rights within areas containing water resources of CARSON CITY;
- 3) Accumulating and developing data in support of applications for the appropriation of water rights within areas containing water resources of CARSON CITY;
- 4) Participation in administrative processes, including public hearings, with regard to the applications for the appropriation of water rights within areas containing water resources of CARSON CITY.

On a project by project basis, as approved by CARSON CITY, VIDLER shall undertake to be responsible for the construction of all infrastructure and capital improvements contemplated by this Agreement. VIDLER shall provide to CARSON CITY periodic status reports concerning the expenditures made pursuant to this Agreement on a not less than semi-annual basis. VIDLER shall provide verification of all expenditures on a project by project basis, which verification shall be prepared in accordance with generally accepted accounting principles and executed by VIDLER in affidavit form. All records relating to this Agreement shall be available for inspection by either party.

VIDLER shall be solely responsible for any and all cost associated with this Agreement and any approved specific Project and shall receive reimbursement of those actual costs only in accordance with the terms of this Agreement. Neither management fees nor overhead shall be included as a reimbursable VIDLER cost of the Project.

B. SALE OR LEASE OF WATER. At such time as the Nevada State Engineer issues water right permits to CARSON CITY and VIDLER pursuant to the Project, VIDLER will take reasonable steps in its discretion to make the resulting water resources available for lease or purchase, at no less than market value, to be utilized within Carson River watershed. Prior to consummation of any sale or lease of water rights acquired as a result of the Project, said sale or lease shall be reviewed and approved by CARSON CITY.

C. RETURN OF CAPITAL ALLOCATION OF NET REVENUES. Upon the sale or lease of water or water rights obtained as a result of the Project, VIDLER shall provide to CARSON CITY verification of the capital expenditures related to the Project, which verification shall be prepared in accordance with generally accepted accounting principles and executed by VIDLER in affidavit form.

Upon review and approval by CARSON CITY of VIDLER's capital expenditures related to the Project, VIDLER shall be reimbursed for such capital expenditures from the proceeds of the sale or lease of water obtained as a result of the Project. The balance of the proceeds shall then be evenly divided between CARSON CITY and VIDLER as payment for each party's relative interest in the water rights acquired as a result of the Project. CARSON CITY is not, and shall not be responsible for any monetary appropriation for the Project under the terms of this Agreement. Reimbursement of capital expenditures made by VIDLER shall ONLY occur from proceeds of the conveyance of water rights obtained as a result of the Project. In the event proceeds from the sale or lease of water rights acquired as a result of the Project are insufficient to cover VIDLER's expenditures related to the Project, CARSON CITY shall have no responsibility to reimburse VIDLER for those capital expenditures that exceed the Project revenues. This Agreement and its terms are not intended to and do not constitute a delegation or

assignment of any governmental authority, essential government function or "police power" of CARSON CITY.

During the term of this Agreement and not later than March 31 or July 31 of each year, VIDLER shall provide to CARSON CITY the paid invoices, bills and accounting for the prior six (6) month period of water resource development activity in Carson City pursuant to this Agreement or any Project Agreement approved and adopted by the parties. CARSON CITY shall audit and prepare a report to the Carson City Board of Supervisors ("Board") not later than forty-five (45) days after receipt of paid invoices and bills for the prior six months expenses. On or before July 15 of each year the Board will review, approve, reject or request additional information on the expenses and audit so submitted. All expenses so approved shall be subject to reimbursement in accordance with the terms of this Agreement and any applicable Project Agreement.

D. TERM. Unless extended by the parties, the term of this Agreement and the parties' obligations hereunder shall be for a period of five (5) years with the ability to renew in five (5) year increments. If for whatever reason, water rights permits are not issued to CARSON CITY and VIDLER by the Nevada State Engineer as a result of the Project prior to the expiration of the term of this Agreement, this Agreement shall continue as to the pending matters but as to all other matters the parties shall have no further obligations or responsibilities pursuant to this Agreement.

E. JOINT EFFORTS ANTICIPATED. The parties agree to work cooperatively to accomplish the goals and purpose described in this Agreement. The City agrees to meet with VIDLER and any local, state or federal government entities in order to request and secure

required regulatory and other approvals or funding required to implement the Agreement but in no event will the failure to obtain such approvals trigger a violation of this Agreement.

F. ASSIGNABILITY. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors in interest. This Agreement may NOT be assigned by either party without the express written consent of the other party except that VIDLER may assign this Agreement and the rights hereunder to an affiliated or parent company.

G. SURVIVAL. This Agreement and the covenants, warranties and representations contained herein shall survive the execution of this Agreement.

H. TERMINATION. This Agreement may be terminated by either party upon a prior written sixty (60) day notice, provided however that any Project agreement that is the subject of joint activity and action by the parties shall continue until either an administrative action is either completed as evidenced by a permit of an approval or such action is terminated by a disapproval or rejection.

I. ENTIRE AGREEMENT. This Agreement contains the complete and entire agreement between the parties, and no modification, alteration or change of this Agreement shall be binding upon the parties unless evidenced by an agreement in writing, signed by the parties, after the date of this Agreement.

J. NOTICES. Any notice, request, demand, statement or payment related to this Agreement shall be made to the Parties as follows:

CARSON CITY:
Address: 201 N. Carson Street, Suite 2
Carson City, NV 89701
Attn: Linda Ritter, City Manager
Phone: 775-887-2100 x 202
Fax: 775-887-2286

VIDLER:
Address: 3480 GS Richards Blvd, Suite 101
Carson City, NV 89703
Attn: Dorothy Timian-Palmer
Phone 775-885-5000 x 101
Fax: 775-885-5005

K. CHOICE OF LAW. This Agreement shall be construed and interpreted under, governed and enforced according to the laws of the state of Nevada.

L. ENFORCEABILITY. 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. In the event the Agreement as a whole is held by a court of competent jurisdiction to be invalid, void or unenforceable, the parties agree to equitably divide or apportion the water right applications so each party holds one-half of the applications.

M. BIDDING PROCEDURES. Provided that work to be done under this Agreement or any approved Project Agreement is not for professional services or from sole source providers, the parties hereto agree that VIDLER shall advertise, open and conditionally award bids for such non-sole source or professional services for Project work in accordance with the applicable provisions of the Nevada Revised statutes. VIDLER shall provide informational copies to CARSON CITY of the minutes taken during the bid awarding process.

N. FORCE MAJEURE. In the event either party is rendered unable by an event of Force Majeure to carry out wholly or in part its obligations under this Agreement and if such Party gives notice and full particulars of such event of Force Majeure to the other Party as soon as practicable after the occurrence of the event relied on, then, the obligations of the Party

affected by such event of Force Majeure shall be suspended, but only to the extent of such claiming Party's inability to perform under this Agreement caused by such Force Majeure from inception and throughout the period of continuance of any such inability so caused, but for no longer period. Such Force Majeure event shall so far as practicable be remedied with all reasonable dispatch by the claiming Party.

O. RELATIONSHIP OF PARTIES. The relationship between the parties created by this Agreement shall be limited to the performance of this Agreement and does not concern any other activities or business of either party. Nothing herein shall be construed to authorize either party to act as a general agent for the other party. This Agreement shall not be construed as a partnership or joint venture, and neither party shall be liable or responsible for any obligation, liability or claim incurred by the other, except as specifically provided for herein. By the terms of this Agreement, CARSON CITY does not abdicate, delegate or waive any of its statutory authority and/or police powers as a political subdivision of the state of Nevada nor does CARSON CITY in any manner or form incur any liability whether contingent or absolute for the work that is envisioned to be performed under the terms of this Agreement.

Carson City shall have responsibility for the operation and maintenance of any constructed system improvements and the adherence to permit terms but Carson City shall have no responsibility for the financial obligations stemming from the system improvements except for the reimbursement of VIDLER for capital costs advanced as set forth herein.

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year first
above written.

VIDLER WATER COMPANY, INC.,
a Nevada corporation

By: _____
Dorothy A. Timian-Palmer
President

CARSON CITY,
a Consolidated Municipality

By: _____
Mayor

Attest: _____

Clerk

Approved as to content and form:

Noel Waters, Esq.
Carson City District Attorney