



STAFF REPORT

Report To: Board of Supervisors **Meeting Date:** February 6, 2020

Staff Contact: Darren Schulz, Public Works Director

Agenda Title: For Possible Action: Discussion and possible action regarding a water exchange agreement between Carson City and Andersen-Colard Ranch Enterprises, LLC concerning Kings Canyon Creek, Ash Canyon Creek, and municipal water use wherein the parties' water use will be offset and Carson City will pay 75 cents per thousand gallons if it uses more water and Andersen-Colard Ranch Enterprises, LLC will pay then existing municipal water rates if it uses more water. (Darren Schulz; DSchulz@carson.org)

Staff Summary: This agreement replaces the separate Ash Creek and Kings Creek agreements last renewed and approved by the Board on November 6, 2014. This new agreement, which combines both Ash and Kings Creek, has been modified to set the price for leased water at 75 cents per thousand gallons, along with additional terms on exchanges for domestic supply water.

Agenda Action: Formal Action / Motion **Time Requested:** 5 minutes

Proposed Motion

I move to approve the Agreement.

Board's Strategic Goal

Sustainable Infrastructure

Previous Action

November 6, 2014: The Board of Supervisors approved the prior Ash Creek and Kings Creek agreements with Andersen-Colard Ranch Enterprises, LLC.

Background/Issues & Analysis

This agreement allows the City to better manage water resources while working cooperatively with Andersen-Colard Ranch Enterprises, LLC ("Andersen"). The City owns approximately 66.9% of the annual Ash Canyon flows and Andersen owns approximately 23.6%. The City owns 63.9% of the annual Kings Canyon flows and Andersen owns 31% of the annual flow.

This user's agreement replaces the 2014 agreements that were approved by the Board on November 6, 2014. Andersen is now being served and metered by the City for domestic water service through a newly installed (2019) metered service connection. Under this new agreement, the City's and Andersen's water use will be offset. If the City uses more water from Ash Canyon Creek and Kings Canyon Creek than Andersen uses from the City's municipal water service, City will pay Andersen for the difference at the rate of 75 cents per thousand gallons. If the City uses less water from the creeks than Andersen uses from the municipal water service, then Andersen will pay for that difference at the standard municipal water rates then in effect. The exception to this offset is if Andersen uses more than 60,000 gallons in a month from the City's municipal water supply, in which

case Andersen will pay the standard municipal water rates then in effect for the amounts it uses over 60,000 gallons.

Applicable Statute, Code, Policy, Rule or Regulation

NRS 332.115(1)(a)

Financial Information

Is there a fiscal impact? Yes

If yes, account name/number: Water Purchase 5203502-500454

Is it currently budgeted? Yes

Explanation of Fiscal Impact: Approximately \$30,000 annually, depending on creek flows.

Alternatives

Do not approve the agreement and provide alternate direction to staff.

Attachments:

[Andersen Water Rotation 2020.pdf](#)

Board Action Taken:

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

(Vote Recorded By)

ANDERSEN RANCH WATER EXCHANGE AGREEMENT

THIS AGREEMENT for the exchange of water (“Agreement”) is made this 7th day of January, 2020, by and between CARSON CITY, a consolidated municipality and political subdivision of the State of Nevada (the “City”), and Andersen-Colard Ranch Enterprises LLC, a Nevada limited-liability company (“Andersen”), individually referred to as “Party” and together referred to as the “Parties.”

RECITALS

WHEREAS, the City and Andersen have enjoyed a mutually beneficial relationship based on exchanges of water, water rights and other consideration that exist in relation to certain real property located in Carson City, Nevada, including but not limited to surface water rights to the waters of Kings Canyon Creek (“Kings Canyon”) and Ash Canyon Creek (“Ash Canyon”); and

WHEREAS, the City and Andersen have in the past executed multiple water exchange agreements, denominated “rotation agreements,” governing the exchange of and payment for the waters from Kings Canyon and Ash Canyon; and

WHEREAS, all previously executed water exchange agreements between the Parties have expired; and

WHEREAS, the City and Andersen have enjoyed a mutually beneficial relationship since 1914 through an agreement under which the City provided water service free of charge to Andersen in exchange for a pipeline easement across certain real property owned in fee by Andersen (the “Easement Agreement”); and

WHEREAS, the City and Andersen agreed to terms allowing the City to bury a 12” water pipeline under, on and through the Andersen property pursuant to the Easement Agreement, which water pipe remains in place at the time of the execution of this Agreement though the pipeline is not used by the City; and

WHEREAS, the City asserts that the Easement Agreement is no longer necessary or beneficial to the City and it desires to terminate its rights and obligations under the Easement Agreement; and

WHEREAS, the City and Andersen have agreed in principle to new rotation agreements permitting the City's use of Andersen's water from Kings Canyon and Ash Canyon and to permit Andersen to exchange that water for an equal volume of treated water from the City's municipal water system to be supplied to Andersen by the City as more fully described below; and

WHEREAS the Parties agree that, to avoid litigation and expense in this matter, it is in the best interest of both Parties to agree to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the promises and conditions contained in this Agreement and other good and valuable consideration, the City and Andersen agree as follows:

TERMS

1. **SETTLEMENT OF CLAIMS.** This Agreement supersedes all previous agreements made between the Parties and the City and Andersen release and discharge one another, and their present or future attorneys, agents, officers, employees, and principals, from any and all rights, damages, duties, obligations, costs, and claims arising from or related to all previous agreements concerning the delivery of water or water services, and any related infrastructure that either Party owed or owes to the other under any prior agreement or past practice described hereinabove, regardless of whether this Agreement is terminated by either Party as set forth herein.

2. **REQUIRED APPROVAL.** This Agreement shall become effective upon execution by Andersen and approval by the appropriate official action of the Board of Supervisors of Carson City.

3. **FIRST RIGHT OF REFUSAL.** Andersen hereby grants the City first right of refusal to put to beneficial use a portion of Andersen's Kings Canyon and Ash Canyon water rights, as may be determined on an annual basis pursuant to the terms outlined herein.

4. BIANNUAL MEETINGS. The City and Andersen shall meet, unless such a meeting is waived in writing by both Parties, in person or by teleconference twice each year at a time, place and location mutually acceptable to the Parties to discuss the operational schedule of water use from Kings Canyon and Ash Canyon. Items of discussion may include, but are not limited to, the Parties' anticipated water needs, water exchange or rotation, water conservation techniques, and issues pertaining to water delivery structures.

5. WATER EXCHANGE AGREEMENT. The City may choose, at its sole discretion, to use or decline to use a portion of Andersen's Kings Canyon and Ash Canyon water. The Parties agree to the following method of measuring and accounting for water use.

a. The City and Andersen will work cooperatively to measure and confirm the amount of all water diverted and put to beneficial use by the City from Andersen's Kings Canyon and Ash Canyon water. Water delivery volumes must be measured at the United States Geological Survey Ash Canyon Gauging Station and Kings Canyon Gauge Station and recorded and confirmed each month.

b. The City and Andersen will work cooperatively to measure and confirm the amount of all water used by Andersen through the City's municipal water lines currently utilized by Andersen, and the measurements must be recorded and confirmed each month.

c. If in total the City utilizes a larger volume of water from Andersen's Kings Canyon and Ash Canyon water than Andersen uses from the City's municipal supply on an annual basis, the difference in volume shall be calculated by the City and as to the difference the City shall pay Andersen 75 cents per 1,000 gallons for water taken from Kings Canyon and 75 cents per 1,000 gallons for water taken from Ash Canyon.

d. If in total the City utilizes a lesser volume of water from Andersen's Kings Canyon and Ash Canyon water than Andersen uses from the City's municipal supply on an annual basis, the difference in volume shall be calculated by the City and Andersen

shall to pay the City the standard municipal water rates then in effect and normally charged by the City for the difference.

e. If Andersen utilizes more than 60,000 gallons of water in a month from the City's municipal supply, Andersen shall pay to the City the standard rates charged by the City and then in effect and duly implemented for that portion of Andersen's monthly water use that exceeds 60,000 gallons, regardless of the amount of Kings Canyon and Ash Canyon water utilized by the City, and the City shall not include the portion of Andersen's monthly water use that exceeds 60,000 gallons in the annual calculations under paragraphs 5(c) and (d).

f. Beginning on the first day of January in 2020 and until the expiration or termination of this Agreement, water rates charged by the City shall be the same as those charged to other users of municipal water who are similarly situated.

6. EXISTING INFRASTRUCTURE. The City has abandoned an existing 12" water pipeline formerly serving Andersen property. The City will not remove the 12" water pipeline and shall leave it in situ on the property. Andersen, or any successor in interest, may, in its sole discretion but subject to any applicable City permitting requirements, take any action concerning the abandoned 12" water pipeline, including, but not limited to, leaving the 12" water pipeline to remain in situ in perpetuity, regardless of when this Agreement expires or is terminated. City shall not bear any further costs or liability for the 12" water pipeline.

7. TERMINATION. Either Party may unilaterally terminate this Agreement without cause at any time by providing written notification, signed by an authorized representative, not less than 180 days prior to the date of the proposed termination. The City's unilateral termination must be authorized by the Board of Supervisors of Carson City. The Parties may mutually agree in writing to terminate this Agreement any time. Termination of this Agreement will not act to revive any previous obligations or agreements between the parties that are terminated by this Agreement.

8. RECORDATION. When fully executed, the City shall record this Agreement in the office of the Clerk-Recorder of Carson City, Nevada.

9. TERMINATION OF PREVIOUS AGREEMENTS. Any and all previous obligations and agreements between the Parties regarding the subject matter of this Agreement, whether oral or in writing, are hereby terminated.

10. TERM OF THE AGREEMENT. This Agreement is effective from the date of execution through January 1, 2025, unless terminated earlier in accordance with this Agreement.

11. NOTICE. All written notices required or permitted to be given under this Agreement shall be deemed to have been duly given if delivered personally by hand, by telephonic facsimile with simultaneous regular mail, or mailed certified mail, return receipt requested with postage prepaid on the date posted, and addressed to the other Party at the addresses set forth below:

CARSON CITY:

Attn: Darren Schulz
Public Works Director
3505 Butti Way
Carson City, NV 89701

ANDERSEN-COLARD RANCH
ENTERPRISES LLC

Attn: Kim Colard
P.O. Box 1746
Carson City, NV 89702

12. LIMITED LIABILITY. The City will not waive and intends to assert available Nevada Revised Statutes (NRS) Chapter 41 liability limitations in all cases. The contract liability of both Parties will not be subject to punitive or liquidated damages.

13. 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 is due to a force majeure. The term “force majeure” means any cause beyond the control of the Party unable to perform any 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. In any event the intervening cause must not be through the fault of the Party asserting such an excuse, and the excused Party is obligated to promptly perform in accordance with the terms of this Agreement after the intervening cause ceases.

14. 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.

15. PUBLIC RECORDS. Pursuant to NRS 239.010, information or documents may be open to public inspecting and copying. Andersen recognizes that the 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.

16. CONFIDENTIALITY. Subject to the preceding paragraph, 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.

17. PROPER AUTHORITY. The Parties hereto represent and warrant that the person executing this Agreement on behalf of each Party has the 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.

18. SEPARATE ENTITIES; INDEPENDENT CONTRACTOR. The Parties are associated with each other only for the purposes and to the extent set forth in this Agreement. Nothing contained in this Agreement may 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 Party whatsoever with respect to the indebtedness, liabilities, and obligations of the other Party. Each Party is and continues to be separate and distinct from the other Party, and each Party shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Agreement. The Parties' respective employees, agents, attorneys, principals, or representatives shall not be considered employees, agents, attorneys, principals, or representatives of the other Party.

19. GOVERNING LAW AND 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 in and for Carson City for enforcement of this Agreement.

20. BREACH. The failure of either Party to perform any obligation of this Agreement within 30 days after being given written notice by the non-breaching Party of the failure to perform shall be deemed a breach. Except as otherwise provided for by law or this Agreement, the rights and remedies of the Parties are not exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages. In any action brought to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to its attorney's fees and costs, whether such a result was achieved by settlement, alternative dispute resolution or litigation.

21. WAIVER. No waiver of any right or remedy shall be effective unless in writing. A waiver of any right or a party's failure to insist on strict compliance with the terms of this Agreement shall not operate as a waiver of any other right or remedy.

22. NO THIRD-PARTY BENEFICIARY. It is specifically agreed between the Parties that none of the provisions this Agreement create in the public or any member thereof a third-party beneficiary, or grant anyone not a Party to this Agreement any right to maintain a suit for personal injuries or property damage under the terms or provisions of this Agreement.

23. ENTIRE AGREEMENT; MODIFICATION. This Agreement constitutes the entire Agreement of the Parties and as 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 herein. 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. No modification or amendment to this Agreement shall be binding upon the Parties unless the same is in writing and signed by the Parties hereto.

24. SUCCESSORS; ASSIGNMENT. This Agreement shall bind and inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties. Neither Party may assign, transfer or delegate any rights, obligations or duties under this Agreement without the prior written consent of the other Party.

25. COUNTERPARTS. This Agreement may be executed in counterparts, each of which shall be deemed to be an original but all of which, taken together, shall constitute one and the same Agreement.

(The rest of this page is left intentionally blank; signatures to follow on the next page)

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and to become effective on the 7th day of January, 2020.

CARSON CITY
A Consolidated Municipality

ANDERSEN-COLARD RANCH
ENTERPRISES, LLC

By: _____
Robert L. Crowell, Mayor

By:  _____
Kim Colard, Member

ATTEST: _____
Aubrey Rowlatt, Clerk-Recorder

APPROVED AS TO FORM AND
CONTENT:

By: _____
Deputy District Attorney