



## STAFF REPORT

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

**Staff Contact:** Darren Schulz, Public Works Director

**Agenda Title:** For Possible Action: Discussion and possible action regarding a Watershed and Wetlands Agreement ("Agreement") between Carson City and Carson Tahoe Regional Healthcare ("CTH") for Carson City to execute and record a declaration of restrictions on Carson City detention basins (APNs 007-531-35 and 007-531-36) in exchange for CTH paying \$24,650 to Carson City for mitigation of stormwater erosion upstream of the detention basins. (Darren Schulz, DSchulz@carson.org; and Dan Stucky, DStucky@carson.org)

Staff Summary: The proposed Agreement between Carson City and the CTH is a result of the current building expansion from the main hospital to the surgical center via an enclosed building crossing over Eagle Creek. The addition of the new structure and associated channel improvements in Eagle Creek triggered an U.S. Army Corps of Engineers ("USACE") permit which requires a deed restriction to protect existing wetlands within the City's detention basins. In exchange for the deed restriction placed on City-owned property, CTH will provide funds to the City to construct upstream stormwater and erosion control improvements within the Lakeview Watershed to reduce sediment transport to the basins.

**Agenda Action:** Formal Action / Motion                      **Time Requested:** 10 minutes

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### **Proposed Motion**

I move to approve, and authorize the Mayor to sign, the Agreement.

### **Board's Strategic Goal**

Sustainable Infrastructure

### **Previous Action**

N/A

### **Background/Issues & Analysis**

CTH is currently undergoing a building expansion project from the main hospital to the surgical center via an enclosed building crossing over Eagle Creek. The project includes major channel improvements that will increase the conveyance capacity of the channel and provide erosion control measures along the project reach of Eagle Creek. These channel improvements will provide a regional benefit to Carson City in regards to flood control and water quality. During the progression of this project, it was discovered that some of the previous conditions outlined in the USACE's permit (Permit Number: 200325013), established in 2003 during the construction of the main hospital and three detention basins, were not satisfied by CTH. Specifically, the existing permit is in non-compliance because as-built drawings and monitoring reports for the detention basins were not submitted to the USACE as required by the permit. As a result, the USACE is requesting to place a deed restriction to protect existing wetlands within two detention basins on City property (APNs 007-531-35 and 007-531-36) to serve as mitigation for both the current CTH project and associated channel improvements in Eagle Creek and the past basin improvements constructed in 2003.

CTH representatives and City staff have been in communication for the last six months to determine a solution and develop an agreement. In the proposed Agreement, CTH agrees to provide funds to the City to construct stormwater and erosion control improvements in the upper watershed in order to limit the amount of sediment reaching the basins, ultimately reducing maintenance needs in the basin and helping to maintain the wetlands and enhance water quality. The mitigation structures included in these future improvements would include rock-lined channels and/or rock-check structures to stabilize drainage channels in the Lakeview Watershed. The proposed funds would allow these improvements to happen.

**Applicable Statute, Code, Policy, Rule or Regulation**

NRS 244.270

**Financial Information**

**Is there a fiscal impact?** Yes

**If yes, account name/number:** Revenue will be placed in Refunds and Reimbursements Account 5057580-466050.

**Is it currently budgeted?** No

**Explanation of Fiscal Impact:** If approved, \$24,650 would be added to the Stormwater Utility Fund to be spent on future Stormwater projects (erosion control improvements project in the Lakeview Watershed upstream of the detention basins).

**Alternatives**

Do not accept the agreement and propose a modified motion or alternate direction to staff.

**Attachments:**

[1\\_Watershed and Wetlands Agreement.pdf](#)

**Board Action Taken:**

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

\_\_\_\_\_  
(Vote Recorded By)

APNs: 007-531-35, 007-531-36,  
007-531-46 & 007-531-96

Recording Requested by and Mail to:

Tim Russell, P.E.  
Lumos & Associates  
308 N. Curry Street, Suite 200  
Carson City, NV 89703

The undersigned hereby affirms that this document, including any exhibits, submitted for recording does not contain the social security number of any person or persons. (NRS 239B.030)

## WATERSHED AND WETLANDS AGREEMENT

This Watershed and Wetlands Agreement (“Agreement”) is made by and between Carson Tahoe Regional Healthcare, a Nevada nonprofit corporation (“CTH”), and Carson City, a Consolidated Municipality (“CITY”). CTH and CITY may be individually referred to as “Party” and together referred to as the “Parties.”

### RECITALS:

WHEREAS, CTH is in the process of constructing certain improvements on its properties located at 1600 Medical Parkway and 1400 Medical Parkway, in Carson City, Nevada, known as Carson City Assessor’s Parcel Nos. (“APNs”) 007-531-46 and 007-531-96, respectively, which improvements impact Eagle Valley Creek and the Lakeview Watershed in Carson City, Nevada; and

WHEREAS, the CITY will execute a Declaration of Restrictions designed to protect a Preserve Area as a wetlands preserve area in perpetuity in accordance with the provisions of a Section 404 Permit Identification issued to CTH by the U.S. Army Corps of Engineers and related Mitigation and Monitoring Plans (collectively, the “Restrictions”); and

WHEREAS, the improvements to be made by CTH will require CTH to utilize the CITY’s existing storm water detention basins located on Carson City APNs 007-531-35 and 007-531-36, for wetlands mitigation (“CITY’s storm water detention basins”); and

WHEREAS, in exchange for the use of CITY’s storm water detention basins for wetlands mitigation, CTH is willing to pay CITY the sum of TWENTY-FOUR THOUSAND SIX HUNDRED AND FIFTY and NO/100ths DOLLARS (\$24,650.00), to be used to fund the cost of future upstream storm water drainage improvements upstream from the CTH parcels referenced above, which will be designed and constructed in a manner to reduce sediment transport in the Lakeview Watershed which impacts Eagle Valley Creek (the “PROJECT”); and

WHEREAS, CITY recognizes the importance of the Restrictions and is willing to accept the Restrictions and to consent to the use of CITY's existing storm water detention basins for wetlands mitigation; and

WHEREAS, the parties desire and intend to memorialize their agreement and understanding in writing.

NOW, THEREFORE, in consideration of the foregoing Recitals and of the mutual covenants herein contained, it is agreed as follows:

**1. Use of Wetlands.**

A. CTH may use the CITY's storm water detention basins for wetlands mitigation in accordance with the Restrictions and the improvements to be made by CTH on its properties.

B. This Agreement does not grant CTH any right to enter onto CITY's storm water detention basins, or impose any requirement on CTH to maintain CITY's storm water detention basins. This Agreement does not disturb any existing rights or maintenance agreements between CTH and CITY regarding CITY's storm water detention basins.

C. CTH shall pay to CITY the sum of TWENTY-FOUR THOUSAND SIX HUNDRED AND FIFTY and NO/100ths DOLLARS (\$24,650.00), within sixty (60) days of the execution of this Agreement by all Parties.

D. CITY shall use the funds solely for the PROJECT.

E. Upon completion of CITY's PROJECT, CITY will provide CTH with a letter, with proof of expenditures, accounting for the use of the funds on the PROJECT.

F. If the PROJECT is not completed by CITY within ten (10) years from the date of execution of this Agreement, CITY will return to CTH any unused funds, without interest.

G. Except for the stated payment, CITY shall not seek reimbursement from CTH for work performed for the PROJECT or for the use of CITY's storm water detention basins required by the Restrictions.

**2. Term and Termination.** The term of this Agreement shall commence on the date of execution by all parties. Paragraphs 1(C), (D), (E), and (F) shall continue for a period of ten (10) years from that date, or until construction of the PROJECT has been completed and accepted by CITY, whichever occurs first. Paragraphs 1(A), (B), and (G), and the remainder of this Agreement, shall continue until the Restrictions are no longer required or are released.

**3. Required Approvals.** This Agreement shall not become effective until and unless approved by appropriate official action of the governing body of CITY.

**4. Recording.** When fully executed, CITY shall record this Agreement in the Office of the Clerk-Recorder of Carson City, Nevada.

5. **Release.** CITY, for itself, its governing body, its managers, administrators, successors, agents, representatives, and assigns, does hereby waive, release, and forever discharge CTH, its governing body, parent, subsidiaries, affiliates, officers, directors, agents, representatives, and assigns, from any and all costs, claims, demands, liens, liability, actions, causes of action, and suits for damages, at law and in equity, in any way connected with or arising from CITY's PROJECT, unless such costs, claims, demands, liens, liability, actions, causes of action, or suits for damages are caused by or arise out of the negligent, intentional, or other acts of CTH, its governing body, parent, subsidiaries, affiliates, officers, directors, agents, representatives, or assigns.

6. **Notice.** All notices or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by telephonic facsimile or electronic mail with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address set forth below:

FOR CTH: Michelle Joy, COO  
Carson Tahoe Regional Healthcare  
1600 Medical Parkway  
Carson City, Nevada 89703  
Phone: (775) 445-5437  
Fax: (775) 445-5451  
Email: michelle.joy@carsontahoe.org

FOR CITY: Darren Schulz  
Public Works Director  
3505 Butti Way  
Carson City, NV 89701  
Phone:(775) 887-2355  
Fax:(775) 887-2112  
DSchulz@Carson.org

7. **Limited Liability.** CITY does not waive and intends to assert any and all available Nevada Revised Statutes (NRS) Chapter 41 liability limitations in all cases. The contract liability of both Parties is not subject to punitive or liquidated damages.

8. **Indemnification.** To the fullest extent allowed by law, and in the case of CITY, NRS Chapter 41 in particular, each party shall indemnify, hold harmless, and defend, not excluding the other's right to participate, the other from and against all liability, claims, actions, damages, losses, and expenses, including, but not limited to, reasonable attorneys' fees and costs, caused by the negligence, errors, omissions, recklessness, or intentional misconduct of its own officers, employees, and agents. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described herein. This indemnification obligation is conditioned upon the performance of the duty of the party seeking indemnification (indemnified party) to serve the other party (indemnifying party) with written notice of an actual or pending claim, within thirty (30) calendar days of the indemnified party's notice of such actual or pending claim or cause of action. The indemnifying party shall not be liable for reimbursement of any

attorney's fees and costs incurred by the indemnified party due to said party exercising its right to participate with legal counsel.

9. **Waiver.** The parties agree that a failure to declare a breach or the actual waiver of any particular breach of this Agreement or any of its material or nonmaterial terms by a party on one or more occasions shall not operate as a waiver by such party of any of its rights or remedies as to any other breach, including a breach of the same term on a subsequent occasion.

10. **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 exclusive jurisdiction of the First Judicial District Court of Nevada in Carson City for enforcement of this Agreement.

11. **Severability.** The illegality or invalidity of any provision or portion of this Agreement shall not affect the validity of the remainder of the Agreement, and this Agreement shall be construed as if such provision did not exist. The unenforceability of such provision shall not be held to render any other provision or provisions of this Agreement unenforceable.

12. **Property.** Except as otherwise expressly provided within this Agreement, all or any property presently owned by either party shall remain in such ownership upon termination of this Agreement, and there shall be no transfer of property between the parties during the course of this Agreement.

13. **No Third-Party Beneficiary.** It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof a third party beneficiary status hereunder or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.

14. **Separate Entities; Independent Contractor.** The parties are associated with each other only for the purposes and to the extent set forth in this Agreement. Each party is, and shall be, a separate and distinct entity from the other party and shall have the right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Agreement. Nothing contained in this Agreement shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for one agency whatsoever with respect to the indebtedness, liabilities, and obligations of the other agency or any other party.

15. **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.

16. **Authority to Sign.** The parties hereto represent and warrant that the persons executing this Agreement on behalf of each party has full power and authority to enter into this Agreement and that the parties are authorized by law to engage in the cooperative action set forth herein.

17. **Public Records.** Pursuant to NRS Chapter 239, CITY information or documents may be open to public inspection and copying. CITY will have the duty to disclose unless a particular record is confidential by law or a common law balancing of interests.

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

19. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument.

20. **Force Majeure.** Neither Party shall be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, acts of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, pandemics, earthquakes, floods, winds or storms. In such an 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 the Agreement after the intervening cause ceases.

21. **Entire Agreement; Modification.** This Agreement constitutes the entire agreement of the parties and such is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Agreement specifically displays a mutual intent to amend a particular part of this Agreement, general conflicts in language between any such attachment and this Agreement shall be construed consistent with the terms of this Agreement. Unless otherwise expressly authorized by the terms of this Agreement, no modification or amendment to this Agreement shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.

**(The rest of this page is left intentionally blank; signature blocks follow on the next page)**

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year of the last required signature affixed below.

**CARSON CITY:**

**Carson Tahoe Regional Healthcare:**

By: \_\_\_\_\_  
Robert Crowell, Mayor

By: \_\_\_\_\_  
Michelle Joy, Vice-President and  
Chief Operations Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Approved as to Form:

\_\_\_\_\_  
Deputy District Attorney

Attest:

\_\_\_\_\_  
Aubrey Rowlett, Clerk-Recorder

\_\_\_\_\_  
Date