



STAFF REPORT

Report To: Board of Supervisors **Meeting Date:** February 16, 2023

Staff Contact: Nancy Paulson, City Manager

Agenda Title: For Possible Action: Discussion and possible action regarding a settlement agreement between Carson City and the Kilpatrick Family Trust (the "Trust") resolving claims concerning 3590 N. Carson Street, Assessor's Parcel Number ("APN") 007-462-03, (the "Property") and a billboard on the Property, permitting installation of a new billboard structure and providing for a grant of a drainage easement to the City. (Nancy Paulson, npaulson@carson.org)

Staff Summary: This agenda item concerns a proposed settlement agreement with the Trust, which has threatened to bring legal action against Carson City involving state law claims regarding the Property, a billboard on the Property and an April 2, 1999 Agreement For Grant of Easement ("Easement Agreement") between the prior owner and the City concerning commercial use of the Property. The proposed settlement, if approved, releases the City from the asserted claims, permits installation of a new billboard structure, provides for a grant of a drainage easement to the City and terminates the April 2, 1999 Agreement.

Agenda Action: Formal Action / Motion **Time Requested:** Consent

Proposed Motion

I move to approve the settlement agreement as presented and authorize the District Attorney's Office to proceed with all necessary action to finalize the settlement.

Board's Strategic Goal

Efficient Government

Previous Action

N/A

Background/Issues & Analysis

A billboard has existed on the Property for at least the past 30 years. In April 2, 1999, the City and the prior owner of the Property entered into the Easement Agreement regarding the Property, requiring, among other things, Carson City to permit construction of a commercially viable project on Property and the owner of the Property to grant to Carson City a drainage easement.

The Trust acquired the Property in 2022 and sought to replace the billboard and the billboard structure with a new billboard. However, through mutual misunderstandings and differing interpretations on the correct application of Title 18 Appendix, Division 4, Section 4.8 of the Carson City Municipal Code ("CCMC"), the Trust ultimately presented to Carson City state law claims regarding the Easement Agreement, the billboard and the Property.

The settlement agreement and drainage easement resolve the claims, release the City from the claims, permits installation of a new billboard structure on the Property, provides for a grant of a drainage easement to the City and terminates the April 2, 1999 Agreement.

Applicable Statute, Code, Policy, Rule or Regulation

NRS 241.0357; NRS Chapter 244; Section 1.020 of the Carson City Charter; Article 2 of the Carson City Charter.

Financial Information

Is there a fiscal impact? No

If yes, account name/number:

Is it currently budgeted? No

Explanation of Fiscal Impact:

Alternatives

Do not approve the settlement agreement and/or provide alternative direction to staff.

Attachments:

[Settlement Agreement and Release.pdf](#)

[Agreement to Grant Easement.pdf](#)

Board Action Taken:

Motion: _____

- 1) _____
- 2) _____

Aye/Nay

(Vote Recorded By)

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Settlement Agreement”), is made by and between Charles M. Kilpatrick III and Josephine K. Kilpatrick, trustees of the Kilpatrick Family Trust, dated July 25, 2005, (“Kilpatrick”) and Carson City, a consolidated municipality and a political subdivision of the State of Nevada (“Carson City”). Carson City and Kilpatrick may be individually referred to as a “Party” and collectively referred to as the “Parties.”

WHEREAS, Kilpatrick owns 3590 N. Carson Street, Assessor’s Parcel Number (“APN”) 007-462-03 (“Property”) and desires to replace the entirety of a pre-existing billboard, including the sign face and the billboard structure;

WHEREAS, Carson City and the Holmes Family Limited Partnership, the predecessor-in-interest of Kilpatrick, entered into that certain Agreement for Grant of Easement, dated April 2, 1999, (“Easement Agreement”) which required Carson City to permit construction of a commercially viable project on Property and required the Holmes Family Limited Partnership to grant to Carson City an easement for drainage and water detention purposes upon Carson City’s compliance with the agreement;

WHEREAS, Kilpatrick has requested settlement of alleged claims, including breach of contract, negligent misrepresentation and eminent domain (inverse condemnation); and

WHEREAS, Kilpatrick and Carson City desire to resolve all of their differences relating to the Property, give effect to the April 2, 1999 agreement, and effect a complete and final settlement;

NOW, THEREFORE, in consideration of the mutual provisions contained herein, and for the good and sufficient consideration set forth below, it is agreed as follows:

1. Purpose of Settlement Agreement. The Parties have entered into this Settlement Agreement for the sole purpose of resolving their differences relating to the Property and to avoid the burden, expense, delay and uncertainties of litigation. Neither this Settlement Agreement itself, nor the furnishing of consideration thereof, shall be deemed or construed at any time for any purpose as an admission of either Party’s liability or responsibility from wrongdoing of any kind.

2. Release. By entering into this Settlement Agreement, Carson City and Kilpatrick release and forever discharge the other, and their respective agents, principals, officers, employees, attorneys, representatives, successors and assigns, of and from any and all liability in any type or manner of suits, claims, demands, charges or causes of action of any and every kind whatsoever in law or in equity, whether known or unknown, which Carson City or Kilpatrick had or now has (including, but not limited to, any actions for costs, interest or attorney’s fees) against the other relating to the Property.

3. Consideration Due Kilpatrick. Carson City and Kilpatrick agree to the following:
 - a. Kilpatrick may reinstall the billboard on the Property, subject to completing the steps in subparagraph 3(d) before installation.
 - b. Carson City will treat the billboard as an existing billboard under Title 18 Appendix (the Carson City Development Standards ("CCDS")), Division 4, Section 4.8.4.
 - c. The billboard must comply with CCDS 4.8.3, except for the sections exempted by CCDS 4.8.4 (CCDS 4.8.3(e, f, h and i)).
 - d. Before installation, Kilpatrick must obtain (1) a pre-clearance from Hope Sullivan, Community Development Director, that the proposed billboard will comply with the non-exempt portions of CCDS 4.8.3, and (2) a building permit after the pre-clearance has been obtained.
 - e. After the building permit is obtained, Kilpatrick may reinstall the billboard.
 - f. The billboard is still subject to CCDS 4.8.4(a), and through that section subject to CCDS 4.8.3(a)(1 and 2), which requires the owner of a billboard to obtain a special use permit ("SUP") for a billboard and to renew the SUP every five (5) years. The newly constructed billboard will be treated as the recently removed billboard and the SUP treated as if the use never ceased. The billboard is subject to the provisions requiring an SUP and the billboard SUP must be renewed every five (5) years. The existing billboard SUP expires in March 2023. Kilpatrick agrees to submit an application for a renewal of the SUP by February 10, 2023, the application deadline for SUP applications to be processed and placed on the March 29, 2023 Planning Commission agenda.
 - g. Kilpatrick must comply with CCDS 4.8.5, which specifies when a building permit is needed, or not needed, for changes to a billboard, and any other applicable Carson City Municipal Code ("CCMC") or Nevada Revised Statutes ("NRS") provision regarding building permits.
 - h. Except as otherwise stated in Paragraph 3 of this Settlement Agreement, Kilpatrick is not exempted from complying with any other applicable CCMC, NRS, or other statute, regulation, ordinance or other law.
 - i. Consistent with non-conforming uses under CCMC 18.04.030(3 and 4), should the billboard on the Property be voluntarily abandoned or removed in its entirety by the property owner and no use of a billboard is made on the property for a period of one-year, Carson City's agreement to treat the billboard as a pre-existing billboard shall lapse. In that event, Kilpatrick or any subsequent owner must comply with CCDS 4.8.3, as may be amended, for new billboards if the then current owner desires to install or use a billboard on the property.
4. Consideration Due Carson City. Kilpatrick agrees to execute a grant of a drainage easement to Carson City. Carson City will record this Settlement Agreement and, separately, the drainage easement when both are fully executed.

5. The Easement Agreement. The Parties agree that, though this Settlement Agreement, their respective obligations under the Easement Agreement are satisfied and that upon the reinstallation of the billboard and grant of easement the Easement Agreement is terminated and places no further obligations upon either Party.

6. Attorney's Fees. The parties agree that they each shall be responsible for their own attorneys' fees and costs that may have been incurred in connection with the Settlement Agreement or otherwise.

7. Entire Agreement. This Settlement Agreement constitutes the entire agreement of the Parties and is the 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. No modification or amendment to this Settlement Agreement is binding upon the Parties unless the same is in writing and signed by the Parties.

8. Breach. In the event that it shall be necessary for any Party to institute legal action to enforce any of the terms and conditions or provisions contained herein, or for any breach thereof, the prevailing party in such actions shall be entitled to costs and reasonable attorney's fees. The Parties agree that, in the event a lawsuit is filed and a Party is awarded attorney's fees under this Settlement Agreement or by a court or arbitrator, for any reason, the rate applied to recoverable attorney's fees shall not exceed the rate of \$125 per hour.

9. Governing Law; Venue. This Settlement Agreement shall be construed, enforced, and governed by the laws of the State of Nevada. The Parties consent to the jurisdiction of, and agree that disputes will be resolved by, the courts of the First Judicial District Court of the State of Nevada in Carson City.

10. Mutual Drafting. The language of all parts of this Settlement Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of its parties; however, all numbered paragraphs and paragraph headings are for reference only and shall not be used in construing the Settlement Agreement.

11. Non-Assignment or Transfer of Claims. The parties represent that they have not heretofore assigned or transferred, or purported to assign or transfer, to any person or entity, any claim against the other relating to the Property, or any portion thereof, or any interest therein.

12. Counterparts. This Settlement 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 Settlement Agreement.

13. Severability. In the event any of the provisions, or applications thereof, of this Settlement Agreement are held to be unenforceable or invalid by any court of

competent jurisdiction, the validity and enforceability of the remaining provisions, or applications thereof, shall not be affected.

14. Public Records Requests. Pursuant to NRS 239.010, Carson City's documents may be open to public inspection and copying. Carson City will have the duty to disclose particular documents, including this Settlement Agreement, unless they are made confidential by law or a common law balancing of interest.

15. Ownership of Real Property. This Settlement Agreement does not contemplate a transfer of any real property or ownership interest between the Parties. Any and all real property presently owned by any Party will remain owned by that Party upon completion or termination of this Settlement Agreement.

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

17. Assignment; Covenant. No Party may assign, transfer or delegate any rights, obligations or duties under this Settlement Agreement, except that this Settlement Agreement shall run with the land and be binding upon and inure to the successors, assigns, tenants, and personal representatives of the Parties hereto unless and until the obligations under this Settlement Agreement are terminated under paragraph 3(i) of this Settlement Agreement.

18. Authority to Sign. The Parties represent and warrant that the person executing this Settlement Agreement on behalf of each respective Party has full power and authority to enter into this Settlement Agreement and that the Parties are authorized by law to perform the services set forth herein.

19. Separate Entities. Nothing contained in this Settlement Agreement may be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, to convey ownership of any asset, or to otherwise create any liability for one Party whatsoever with respect to the indebtedness, liabilities, and obligations of any other Party. No Party nor its employees, agents, or representatives shall be considered employees, agents, or representatives of any other Party.

20. Force Majeure. No Party shall be deemed to be in violation of this Settlement 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 Settlement Agreement after the intervening cause ceases.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties now voluntarily and knowingly execute this Settlement Agreement as of the date of the last required signature.

Kilpatrick Family Trust, dated July 25, 2005,

Carson City, a consolidated municipality and political subdivision of the State of Nevada

By: Charles M. Kilpatrick III 2/3/23
Charles M. Kilpatrick III, Trustee

By: _____
Lori Bagwell, Mayor

By: Josephine K. Kilpatrick
Josephine K. Kilpatrick, Trustee

Attest:
By: _____
William Scott Hoen, Clerk-Recorder

Approved as to form:

By: _____
Deputy District Attorney

AGREEMENT FOR GRANT OF EASEMENT

THIS AGREEMENT is made and entered into this 2nd day of April, 1999, by and between the Holmes Family Limited Partnership ("Grantor"), and Carson City, State of Nevada ("Grantee"), in consideration of the covenants and agreements as set forth herein.

WITNESSETH:

WHEREAS Grantor is the record owner of all that real property known as APN 7-462-03, formerly APN 8-061-13, located in Carson City, State of Nevada, herein referred to as "the Property"; and

WHEREAS Grantee previously permitted and approved third parties to construct various improvements on the Property related to water drainage and detention (the "detention area"), without the prior knowledge or consent of Grantor; and

WHEREAS the Property is of an irregular shape and size; and

WHEREAS Grantor wishes to put the Property to a beneficial commercial use; and

WHEREAS Grantee, by and through its building department, has tentatively approved the construction of an office building on the Property, which will be constructed, in part, directly above and within the detention area; and

WHEREAS Grantee desires to obtain an easement over the Property for drainage and detention purposes; and

WHEREAS Grantor agrees to waive any and all causes of action it may have against Grantee for damages associated with the previous construction on the Property; and

WHEREAS both parties agree that it is to their mutual benefit and advantage to enter into this agreement as set forth herein.

NOW THEREFORE in consideration of the foregoing recitals, and other good and valuable considerations, receipt of which is hereby acknowledged, the parties hereby mutually covenant and agree as follows:

1. Except as otherwise provided for herein, the parties agree that upon issuance by Grantee to Grantor of building permits and other necessary approvals, Grantor will convey to Grantee an easement for drainage and water detention purposes over all that real property described in the attached Exhibit A. Any use prior to such conveyance shall be deemed permissive.

2. Said easement will be below the engineered high water mark, and will not prevent Grantor from utilizing those portions of the detention area to support its proposed improvements.

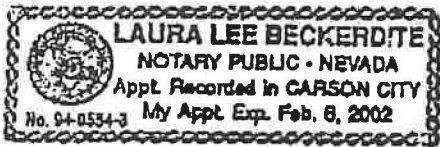
3. Grantee shall keep the easement area free of debris, rubbish, garbage and foreign material as may be necessary to ensure the proper use and operation of the easement, and to ensure the health and safety of the public and Grantor, its heirs, successors or assigns.

4. Grantee understands that due to the Property's irregular shape and size, strict compliance with Grantee's ordinances and regulations may be impossible. Grantee thus agrees to cooperate with Grantor in good faith toward the end of permitting the construction of a commercially viable project.

STATE OF Nevada)
City) ss.
COUNTY OF Carson City)

On June 25, 1999, before me, a notary public, personally appeared

Jay Ahrens, personally known (or proved) to me to be the person whose
name is subscribed to the above instrument who acknowledged that he executed the instrument.



Laura Lee Becker-Dite
Notary Public

DESCRIPTION OF A DRAINAGE EASEMENT, WITHIN A PORTION OF THE SE1/4 SECTION 6, T.15 n., R.20 E., M.D.B.&M., AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Commencing at the Southwest corner Section 6, T.15 N., R. 20 E., M.D.B.&M., Carson City, Nevada. Thence N. 61° 59' 17" E., 4213.22 feet to the West corner of APN 7-462-03, formerly A.P.N. 8-061-13, thence along the South property line of said parcel S. 89° 50' 25" E., 228.88 feet to the **TRUE POINT OF BEGINNING** thence running parallel with U.S. Hwy 395, N. 25° 13' 03" W., 83.90 feet to a point on the Southerly right-of-way line of West College Parkway, thence along said Southerly right-of-way line on a curve to the right with a delta of 00° 58' 19", a radius of 1160.00 feet and an arc length 19.68 feet (tangent bears N. 72° 58' 52" E.), thence along a curve to the right with a delta of 80° 49' 46", a radius of 30.00 feet and an arc length of 42.32 feet to a point on the westerly right-of-way line of U.S. Hwy 395, thence along said right-of-way line S. 25° 13' 03" E., 72.49 feet to the south property line of APN 7-462-03, formerly A.P.N. 8-061-13, thence along the south property line of said parcel N. 89° 50' 25" W., 49.42 feet to the **TRUE POINT OF BEGINNING**.

(Containing 3935 sq. ft. more or less) Basis of Bearings: The South line of APN 7-462-03; formerly A.P.N. 8-061-06 as shown on Parcel Map No. 2030 Carson City, Nevada (S. 89° 50' 25" e.).

EXHIBIT A

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