

**WATER RIGHTS BANKING
AND DEDICATION AGREEMENT**

This Water Rights Banking and Dedication Agreement made as of the 2nd day of August, 2017 (this "Agreement"), by and between the Robert C. Herrera, Inc. (the "Dedicator"), and the City of Fernley, a political subdivision of the State of Nevada (the "City"), for the purpose of dedicating and banking certain water rights.

RECITALS

WHEREAS, the City owns and operates a water distribution system located in the City of Fernley, Lyon County; and

WHEREAS, the Dedicator desires to transfer certain water rights to the City as described in Section 2 of this Agreement (the "Water Rights"), to be reserved and credited towards future water utility service requirements; and

WHEREAS, the City is willing to accept the Water Rights to be utilized by the Dedicator for future development requirements within the City's water utility service area, as it may change from time to time; and

WHEREAS, the Dedicator may desire to assign its rights to apply the Water Rights towards future water utility service requirements to an assignee (the "Assignee"); and

WHEREAS, the City will accept the Water Rights in lieu of the provision of new water rights when an application for water utility service is made in the future by the Dedicator or the Assignee, thereby satisfying one of the pre-conditions for water utility service (i.e. the provision of a water right).

NOW, THEREFORE, it is hereby agreed between the Dedicator and City as follows:

1. **Dedication of Water Rights and Facilities.** The Dedicator hereby agrees to dedicate the Water Rights to the City. The Dedicator and the Assignee agree and understand that dedication of the Water Rights is a condition precedent to receiving a will-serve commitment for water utility service from the City. The parties further agree that:
 - (a) The quantity of surface or ground water rights reasonably necessary to insure an adequate water supply to the subject property is independently determined by the City. The Dedicator and Assignee understand and agree that the determination of the quantity of surface or ground water rights necessary to serve any proposed development will be made at such time as the Dedicator or Assignee request a will serve commitment for the development in accordance with the ordinances, resolutions, statutes, standards, and policies in effect at the time the request for a

will serve commitment is made. In addition, the parties agree and understand that the City has no obligation to independently obtain the necessary water rights to fulfill a will-serve commitment;

- (b) Any facilities for water treatment, supply, storage, transmission and distribution, treatment and disposal, and appurtenances (such as wells, pipelines, pumps and storage tanks), located within or outside of the property for which future will-serve commitments are sought, that are requested and which are reasonably necessary to insure an adequate water supply to the property, will be constructed by the Dedicator or the Assignee, and dedicated to the City; and
- (c) Any easement or legal access reasonably necessary to insure an adequate water supply to the property will also be dedicated from the Dedicator or the Assignee to the City as part of the grant of will-serve commitments.

2. **Dedicated Water Rights.** The Water Rights dedicated by this Agreement are described as follows:

TCID Serial Nos.: 1002-3-B
APN: 021-051-08
Acre-Feet: 17.46
Current Owner: Robert C. Herrera, Inc.

3. **Revegetation Requirements.** As a condition of receiving water right dedications in exchange for utility service, any lands which are being irrigated within the existing place of use of the Dedicated Water Rights, and which will no longer be a place of use of the Dedicated Water Rights, must be re-vegetated pursuant to a re-vegetation plan approved by the City. The intent of this requirement is to prevent formerly irrigated lands from becoming dust and erosion hazards when the land is no longer irrigated. This requirement does not apply to land which is the existing place of use if that land will become a subdivision, or other use that will maintain ground cover.

- (a) As part of any dedication, the City will determine whether revegetation of formerly irrigated land is required, and if re-vegetation is required, the Dedicator of the water rights, or its assignee, will submit a plan for re-vegetation that will be reviewed and approved by the City.
- (b) A re-vegetation plan must be prepared by a qualified agricultural engineer or the equivalent, and must outline the method by which permanent ground cover will be established. The re-vegetation plan shall provide for the application of a suitable seed mixture susceptible to natural germination in the climatic conditions existing on the formerly irrigated land. The re-vegetation plan shall be deemed fully performed upon the first to occur of the following:

- (i) The City's written confirmation that the re-vegetation plan has been fully performed or
 - (ii) The Dedicator or its assignee, as the case may be, diligently and in compliance with the re-vegetation plan causes not less than two applications of the approved seed mixture to be placed upon the formerly irrigated land without success during a period of thirty (30) months following the date of dedication of the applicable water rights.
- (c) The goal of a re-vegetation plan is to establish natural ground cover that will limit dust and erosion and can be sustained in Fernley's climatic conditions without human assistance.
- (d) For each water right that is dedicated to the City of Fernley from land that it is determined by the City to require re-vegetation, the City of Fernley will hold back a portion of the water right, in an amount equal to ten (10) percent of the total water right, from the issuance of will serve commitments until the City of Fernley has approved the actual re-vegetation of the property at issue. Once the City of Fernley has approved the actual re-vegetation on a former place of use for a dedicated water right, the ten (10) percent portion of the Water Right held back pursuant to this section will be made available for future will serve commitments.
4. **Annexation.** If water utility service is requested by the Dedicator or the Assignee from the City outside the city limits of the City, and the Dedicator or the Assignee desires to use the Water Rights to satisfy the water right dedication requirements for water utility service, the City will determine whether it is appropriate to annex that property, and will only provide water utility service if the area is annexed into the City.
- (a) If annexation is necessary, the Dedicator or the Assignee is responsible for any and all annexation costs and fees in the same manner as any other person or entity requesting that property be annexed to the City.
 - (b) If annexation is necessary, all line extensions, water distribution systems and upgrades shall be constructed to the standard required by the City, and the Dedicator or Assignee shall pay all hook-up fees and complete all required improvements that the City determines are reasonably necessary to service the property.
5. **Banking.** The Water Rights dedicated to the City under this Agreement shall be available for use in the satisfaction of the water right dedication requirement that is a pre-condition to receiving water utility service from the City. Once the water rights have been dedicated to the City, the City will maintain those rights in an account as a credit for the Dedicator for the term of this agreement, including any renewal period.

- (a) During the term of this agreement, including any renewal period, the Dedicator and the Assignee may request will-serve commitments for water utility service from the City. The Water Rights that are held by the City pursuant to this Agreement may be used to satisfy the water dedication requirement that exists at the time of the request for the will-serve commitments.
 - (b) **Place of Will-Serve Commitments.** The Dedicator and the Assignee may request will-serve commitments for water utility service from the City anywhere within the City's water utility service area. Will-serve commitments may be requested for property to which the Water Rights are not appurtenant.
 - (c) **Assignment of Banked Credits.** The Dedicator's banked credits that are held in an account with the City may be assigned to an Assignee. Upon the execution of an assignment agreement with the Assignee, the City will allow the Assignee to receive the credits as satisfaction of the water right dedication requirement in existence when the Assignee applies for will-serve commitments from the City for water utility service.
 - (d) **City Consent to Assignment.** The assignment of banked credits includes the assignment of all rights and obligations under this Agreement, and requires the consent of the City. An assignment of banked credits created by this Agreement is invalid without the City's consent. Consent may only be withheld by the City if the Assignee does not agree to comply with the terms of this Agreement. All fees and costs assessed against banked water rights, if any, shall be paid to the City prior to any assignment of banked credits. No assignment agreement will be valid unless and until such costs are reimbursed.
 - (e) **Reduction in Banked Credits.** The City will file an application to change the manner of use and place of use of the Water Rights to municipal uses in the City's water utility service area. If the State Engineer determines, or if appeal from such a ruling by the State Engineer determines, that the total number of acre-feet that can be used by the City for municipal uses in its water utility service area is less than the amount of Water Rights that are dedicated under this Agreement, the City will reduce the credits that are accounted to the Dedicator by the amount of the reduction in the State Engineer's ruling, or in the appeal from such a ruling.
6. **Change Applications.** Dedicator recognizes that the manner of use and place of use of the Water Rights must be changed to allow for municipal use in the City. Change applications that change the points of diversion, manner and place of use of the Water Rights will be prepared so that the Water Rights may be utilized for municipal purposes within the City's water utility service area as its boundaries are currently set and as they may be expanded through annexation.
- (a) At the option of the Dedicator, the City may prepare all required change applications.

- (b) If the Dedicator elects to prepare the required change applications, they must be completed, along with appropriate maps and documentation, to the City's satisfaction and delivered to the City for submittal to the State Engineer by and on behalf of the City.
 - (c) The City shall pay all associated statutory fees relating to the filing and approval of the Change Application, including but not limited to the application filing fees, permit fees, and certificate fees.
7. **Use of Dedicated Water Rights.** Dedicator and Assignee agree and acknowledge that the City receives the dedication of Water Rights that are the subject of this agreement free and clear of any encumbrances or liens and that as a result of such dedication the City shall be the sole holder of legal title to such Water Rights. Accordingly, the City may perform any action that a holder of such Water Rights is legally allowed to perform including, without limitation, hypothecation, rental, or lease of the dedicated Water Rights to a third party; and any revenue collected pursuant to such agreements may be utilized by the City at its sole and complete discretion. The parties agree that the City may, by contract or written agreement, permit the use of the Water Rights by other governmental entities, public or private utilities, or any other person or entity, including those engaged in providing water, storm drainage or sewer service. The Parties agree that in exchange for the dedication of Water Rights pursuant to this Agreement, the Dedicator or Assignee shall have the ability, pursuant to Section 5, to use the dedicated Water Rights to satisfy the water right dedication requirement that is a pre-condition to receiving water utility service from the City, however, nothing in this agreement shall be construed as creating an encumbrance or lien on the title of the dedicated Water Rights in favor of Dedicator or Assignee. The Parties further agree that the City reserves the right to satisfy its obligation to provide water service to Dedicator or Assignee in any manner that the City, at its sole discretion and consistent with Nevada Law and the Fernley Municipal Code, determines best serves the interests of the City water system.
8. **Facilities Standards.** Any facilities that are subject to this Agreement shall be designed and constructed in accordance with standards and other requirements prescribed by the City as a condition to provision of water utility service.
9. **Approval of Service Conditional.** Every will-serve notification and administrative approval of applications for water utility service is conditioned upon the acceptance of the dedication, and the satisfaction of all other service requirements that are established by local ordinance or state law. Any application or renewal, including applications for extension of will-serve commitments is subject to the provisions herein. The parties agree that:
- (a) The City is the final authority in determining the number of will-serve commitments which may be granted by the City; and

(b) The City is the final authority regarding the number of will serves that may be serviced by the Water Rights for any development. Such determination shall be based on the criteria established by the City and further established by the State Engineer.

10. **Term of Agreement.** The term of this Agreement shall be for a period of twenty-five (25) years and shall be renewable for one successive twenty-five (25) year period upon application of the Dedicator or the Assignee, and the approval of the City.

(a) It is further understood and agreed between the City and the Dedicator that the Parties must agree to renew this agreement for the subsequent twenty-five year period. The City's decision to approve or reject a renewal of this agreement must be made pursuant to a vote by the Fernley City Council.

(b) The City may reject approval of a renewal of this Agreement **only if**:

(i) The City sends notice of the expiration of the initial twenty-five year term to the record owner of the Water Rights and receives no response within thirty (30) days of such notice; and

(ii) The Dedicator has not complied with the obligations included in this Agreement or does not agree to comply with the obligations of this Agreement during the renewal term of this Agreement.

(c) In the event that this Agreement is terminated, or expires pursuant to the provisions of this section, the City shall retain the title to the Water Rights, regardless of whether the Water Rights have been credited to an existing will-serve commitment.

11. **Notice.** Any notice required pursuant to this Agreement shall be sent via certified mail to the address listed below. Each Party is responsible for informing the other Party of any change in address. Notices from the City, including but not limited to notice of expiration of the 25-year term of this Agreement, shall be made to the address listed below, or to an updated address provided by the Dedicator or Assignee.

Dedicator

Robert C. Herrera
President, Robert C. Herrera, Inc.

995 Winnie's Ln.

Fernley NV 89408

City of Fernley

Department of Public Works

595 Silver Lace Boulevard

Fernley, NV 89408

12. **General Conditions.**

- (a) **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute but one and the same instrument.
- (b) **Governing Law.** This Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of Nevada applicable to agreements made and to be performed wholly within the State of Nevada.
- (c) **Venue.** Any action or proceeding concerning the rights or responsibilities of the parties to this Agreement shall be heard and entertained in the State district court in Lyon County, Nevada.
- (d) **Entire Agreement.** This Agreement (including any exhibits attached hereto) constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior understandings with respect thereto, including without limitation, that certain memorandum of understanding between the parties. This Agreement may not be modified, changed or supplemented, nor may any obligations hereunder be waived, except by written instrument signed by the party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted herein. The parties do not intend to confer any benefit hereunder on any person, firm or corporation other than the parties hereto.
- (e) **Survivability.** The parties' rights and responsibilities under this Agreement shall survive the conveyance of the Water Rights by the Dedicator to the City.
- (f) **Waivers; Extensions.** No waiver of any breach of any agreement or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof or of any other agreement or provision herein contained. No extension of time for performance of any obligations or acts shall be deemed an extension of the time for performance of any other obligations or acts.
- (g) **Non-Waiver of Rights.** No failure or delay of either party in the exercise of any right given to such party hereunder shall constitute a waiver thereof unless the time specified herein for exercise of such right has expired, nor shall any single or partial exercise of any right preclude any other or further exercise thereof or of any other right. The waiver of any breach hereunder shall not be deemed to be a waiver of any other or any subsequent breach hereof.
- (h) **Further Assurances.** The parties agree to do such further acts and things and to execute and deliver such additional agreements and instruments as the other may reasonably require to consummate, evidence or confirm the dedication of the above reference water rights or any other agreement contained herein in the manner contemplated hereby.

- (i) **Successors and Assigns: Assignment.** This Agreement shall be binding upon and shall inure to the benefit of each of the City and the Dedicator and to their respective heirs, successors and assigns.
- (i) The City shall have the right to assign its interest in this Agreement in whole or in part to any successor agency, subsidiary, or entity with jurisdiction to supply water service to customers within the City of Fernley, in which case, the references to the City herein shall include such assignee, and provided that such assignee assumes all of the obligations of the City under this Agreement by written instrument.
- (ii) Any such assignment shall not relieve any party of its obligations under this Agreement. Any attempt to transfer, convey or assign this Agreement other than as provided herein shall be null and void.
- (j) **Time.** Time is of the essence in respect to each and every particular of this Agreement. Any time period to be computed pursuant to this Agreement shall be computed by excluding the first day and including the last. If the last day falls on a Saturday, Sunday or holiday, the last day shall be extended until the next business day that the City is open for business, but in no case will the extension be for more than four (4) days.
- (k) **Severability.** The determination that any covenant, agreement, condition or provision of this Agreement is invalid shall not affect the enforceability of the remaining covenants, agreements, conditions or provisions hereof and, in the event of such determination, this Agreement shall be construed as if such invalid covenant, agreement, condition or provision were not included herein.
- (l) **Delivery of Deed and Warranty.** The Dedicator shall deliver a Water Rights Grant Bargain and Sale Deed conveying and dedicating the Water Rights to the City at the time of the execution of this Agreement. Further, the Dedicator shall warrant that it is the legal owner of the Water Rights.
- (m) **Indemnification.** The Dedicator and the Assignee agree, jointly and severally, to indemnify the City at all times and hold the City harmless in respect of any claims, damages or losses (including, without limitation, attorney's fees and costs), whether known or unknown, disclosed or undisclosed, arising from, by reason of or in connection with any part or portion of this Agreement. Dedicator hereby represents and warrants it has not sold, assigned, transferred, conveyed, hypothecated, pledged, or otherwise disposed of or encumbered the water rights transferred herein except as provided in this Agreement. Dedicator acknowledges that in the event that any claim or dispute relating to the title of the water rights renders such water rights unusable within, or unavailable to, the City's water delivery system, the City may, at its sole discretion and in addition to any other

remedies provided for by law, rescind this Agreement and withhold the will-serve commitments provided for herein. In the event that such will-serve commitments have already been issued, the City, in addition to any other remedies provided by law, may require Dedicator or Assignee, jointly or severally, to immediately acquire and dedicate to the City the same quantity and quality of water rights as the water rights rendered unusable within, or unavailable to, the City's water delivery system and/or the City may assign any other banked or reserved water rights in which Dedicator or Assignee have a beneficial interest, and that remain uncommitted to will-serve commitments, to the will-serve commitments already issued pursuant to this Agreement.

- (n) **Attorney's Fees.** In the event of any litigation between the parties hereto arising out of this Agreement, or if one party seeks to judicially enforce the terms of this Agreement, the prevailing party shall be reimbursed for all reasonable costs, including, but not limited to, reasonable attorney's fees.

Agreed upon the date set forth above between the following parties:

City of Fernley

Mayor of Fernley

Date:

Attested:

City Clerk

Dedicator:



Robert C. Herrera, President
Robert C. Herrera, Inc.

7-19-17
Date:

Assignee, if any