Hem# 11B

City of Carson City Agenda Report

Date Submitted: 7/8/2008 Agenda Date Requested: 7/17/2008
Time Requested: 20 minutes

To: Mayor and Supervisors

From: City Manager

Subject Title: Action to approve the agreement between Carson City, the Nevada Rural Housing Authority and Carson Southgate Associates, LLC to provide for a payment in lieu of ad valorem property taxes on the property located at 2100 California Street, Carson City, NV, APNs 003-303-03 and 003-303-99.

Staff Summary: The Nevada Rural Housing Authority and Carson Southgate Associates, LLC are eligible for an exemption for taxes on real property and tangible personal property for the property located at 2100 California Street. The land (APN 003-303-03) is owned by the Nevada Rural Housing Authority. Pursuant to NRS 361.060, land owned by the Nevada Rural Housing Authority is exempt from taxation. The improvements on the land (APN 003-030-99) were owned by the Nevada Rural Housing Authority, but are now owned by Carson Southgate Associates, LLC. Pursuant to NRS 361.082, Carson Southgate Associates, LLC is eligible to apply for an exemption from taxes on real property and tangible personal property for the improvements. The Nevada Rural Housing Authority and Carson Southgate Associates, LLC wish to enter into an agreement with Carson City for a payment in lieu of the taxes on real property and tangible personal property for which there is an exemption. The payment in lieu will be equal to ten percent (10%) of the Sheltered Rent collected on the property. Sheltered Rent is defined as the total charges collected from all tenants minus the cost paid for utilities.

Type of Action Requested:	(check one)
() Resolution	()Ordinance
(X_) Formal Action/Motion	() Other (No action)

Does This Action Require A Business Impact Statement: () Yes (x) No

Recommended Board Action: I move to approve the agreement between Carson City, the Nevada Rural Housing Authority and Carson Southgate Associates, LLC to provide for a payment in lieu of ad valorem property taxes on the property located at 2100 California Street, Carson City, NV, APNs 003-303-03 and 003-303-99.

Explanation for Recommended Board Action: Approval of the agreement will provide for the collection of money that Carson City would not otherwise have been able to collect. This money will help defray the cost of providing City services to the property.

Applicable Statue, Code, Policy, Rule or Regulation: NRS 315.990, 361.060 and 361.082.

Fiscal Impact: NA.

Explanation of Impact: NA

Funding Source: NA			
Alternatives: Not approve the Agreement.			
Supporting Material:			
Copy of the Proposed Agreement.			
Prepared By: Joel C. Benton, Senior Deputy Dist	trict Attorr	ney	
Concurrences: (City Manager) (District Attorney) (Finance Director)	Dat	e:e:	8
Board Action Taken:			
Motion: 1) 		Aye/N

AGREEMENT

This Agreement entered into this ____ day of _____, 2008, by and between the Nevada Rural Housing Authority ("NRHA"), Carson Southgate Associates, LLC ("CSA") and Carson City, Nevada, a consolidated municipality and political subdivision of the State of Nevada ("Carson City").

WHEREAS, NRHA is the owner of real property known as APN 003-303-03 and located at 2100 California Street, Carson City, Nevada ("the Property");

WHEREAS, CSA is the owner of the improvements upon the Property which are used as housing and related facilities for persons with low income, such improvements are known as APN 003-303-99;

WHEREAS, pursuant to NRS 361.082, CSA and NRHA are eligible to apply for an exemption from ad valorem taxes on the real property and tangible person property for that portion of the real property and tangible person property used as housing and related facilities for persons with low income; and

WHEREAS, NRHA, CSA and Carson City wish to enter into an agreement for a payment from CSA to Carson City in lieu of the ad valorem property taxes in accordance with NRS 315.990 to which NRHA and CSA for which NRHA and CSA may apply for an exemption in recognition of the costs to Carson City of providing services to the Property and which would normally be paid for through the payment of the ad valorum property taxes assessed on the Property;

NOW, THEREFORE, in consideration of the aforesaid premises, the Parties mutually agree as follows:

- 1. <u>REQUIRED APPROVAL</u>. This Agreement shall not become effective until and unless approved by appropriate official action of the governing body of each Party.
- 2. <u>DEFINITIONS</u>. Whenever used in this Agreement:
- (a) The term "Project" shall mean the housing and related facilities for persons with low income located on the Property.
- (b) The term "Shelter Rent" shall mean the total charges to all tenants of the Project for rent of dwellings and non-dwellings (excluding any and all other income to the Project), less the cost to NRHA and CSA of all utilities for dwellings and non-dwellings.
- 3. <u>Payment in Lieu of Taxes</u>. CSA and NRHA agree to an annual payment to Carson City in lieu of taxes, after the end of the fiscal year, in an amount equal to ten percent (10%) of the Shelter Rent. The annual payment in lieu of taxes shall

be due on September 30 of each year, for the preceding fiscal year. Such in lieu of tax payments are consistent with the low rent character of the housing project and fulfill the policy concerning affordable housing in accordance with NRS 315.961.

- 4. <u>Furnishing of Services</u>. Carson City agrees to furnish or cause to be furnished to NRHA, CSA and the tenants of the Project public services and facilities of the same character and to the same extent as are furnished from time to time without cost or charge to other dwellings or inhabitants of Carson City.
- 5. <u>AGREEMENT TERM</u>. This Agreement shall be effective upon approval until terminated by any Party as set forth in this Agreement.
- 6. <u>TERMINATION</u>. This Agreement may be terminated by any Party <u>30</u> days after a Party has served written notice upon the other Party. This Agreement may be terminated by mutual consent of all Parties or unilaterally by any Party without cause. The Parties expressly agree that this Agreement shall be terminated immediately if for any reason City, State and/or federal funding ability to satisfy this Agreement is withdrawn, limited, or impaired.
- 7. <u>NOTICE</u>. 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 with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other Parties at the addresses set forth below:

Carson City
Office of the City Manager
201 N. Carson Street
Carson City, NV 89703

Executive Director Nevada Rural Housing Authority 3695 Desatoya Drive. Carson City, NV 89701

8. INSPECTION & AUDIT.

- a. <u>Books and Records</u>. Each Party agrees to keep and maintain under general accepted accounting principles full, true and complete records, agreements, books, and documents as are necessary to fully disclose to the other Party, the State or United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with any applicable regulations and statutes.
- b. <u>Inspection & Audit</u>. Each Party agrees that the relevant books, records (written, electronic, computer related or otherwise), including but not limited to relevant accounting procedures and practices of the Party, financial statements and supporting documentation, and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, and

copying at any office or location where such records may be found, with or without notice by the other Party, the State Auditor, Employment Security, the Department of Administration, Budget Division, the Nevada State Attorney General's Office or its Fraud Control Units, the State Legislative Auditor, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives.

- c. <u>Period of Retention</u>. All books, records, reports, and statements relevant to this Agreement must be retained by each Party for a minimum of three years and for five years if any federal funds are used in this Agreement. The retention period runs from the date of termination of this Agreement. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.
- 9. <u>LIMITED LIABILITY</u>. The Parties will not waive and intend to assert available NRS chapter 41 liability limitations in all cases. Agreement liability of both Parties shall not be subject to punitive damages. To the extent applicable, actual Agreement damages for any breach shall be limited by NRS 353.260 and NRS 354.626.
- 10. <u>FORCE MAJEURE</u>. No 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, act of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, earth-quakes, 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.

11. INDEMNIFICATION.

- a. To the extent permitted by law, including, but not limited to, the provisions of Nevada Revised Statutes Chapter 41, each Party shall indemnify, hold harmless and defend, not excluding the other's right to participate, the other Party from and against all liability, claims, actions, damages, losses, and expenses, including but not limited to reasonable attorney's fees and costs, arising out of any alleged negligent or willful acts or omissions of the indemnifying Party, its officers, employees and agents. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of the indemnity which would otherwise exist as to any Party or person described in this paragraph.
- b. Except as otherwise provided in Subsection 11(d) below, the indemnifying Party shall not be obligated to provide a legal defense to the indemnified Party, nor reimburse the indemnified Party for the same, for any period occurring before the

indemnified Party provides written notice of the pending claim(s) or cause(s) of action to the indemnifying Party, along with:

- 1. a written request for a legal defense for such pending claim(s) or cause(s) of action; and
- 2. a detailed explanation of the basis upon which the indemnified Party believes that the claim or cause of action asserted against the indemnified Party implicates the culpable conduct of the indemnifying Party, its officers, employees, and/or agents.
- c. After the indemnifying Party has begun to provide a legal defense for the indemnified Party, the indemnifying Party shall not be obligated to fund or reimburse any fees or costs provided by any additional counsel for the indemnified Party, including counsel through which the indemnified Party might voluntarily choose to participate in its defense of the same matter.
- d. After the indemnifying Party has begun to provide a legal defense for the indemnified Party, the indemnifying Party shall be obligated to reimburse the reasonable attorney's fees and costs incurred by the indemnified Party during the initial thirty (30) day period of the claim or cause of action, if any, incurred by separate counsel.
- 12. <u>BINDING ON SUCCESSORS AND ASSIGNS</u>. The terms and conditions of this Agreement shall inure to the benefit or and be binding upon the respective successors and assigns of the Parties hereto; provided, however that this Agreement may not be assigned by any Party hereto without the prior written consent of the other Parties.
- 13. <u>WAIVER OF BREACH</u>. Failure to declare a breach or the actual waiver of any particular breach of the Agreement or its material or nonmaterial terms by any Party shall not operate as a waiver by such Party of any of its rights or remedies as to any other breach.
- 14. <u>SEVERABILITY</u>. 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 nonenforceability of such provision shall not be held to render any other provision or provisions of this Agreement unenforceable.
- 17. <u>PUBLIC RECORDS</u>. Pursuant to NRS 239.010, information or documents may be open to public inspection and copying. The Parties will have the duty to disclose unless a particular record is made confidential by law or a common law balancing of interests.
- 18. <u>CONFIDENTIALITY</u>. 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.

- 19. <u>PROPER AUTHORITY</u>. The Parties hereto represent and warrant that the person 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 enter into this Agreement.
- 20. <u>GOVERNING LAW; JURISDICTION</u>. 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 State of Nevada First Judicial District Court for enforcement of this Agreement.
- 21. <u>ENTIRE AGREEMENT AND MODIFICATION</u>. This Agreement and its integrated attachment(s) constitute the entire agreement of the Parties and such are 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.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed and intend to be legally bound thereby.

CARSON CITY	
Marv Teixeira, Mayor	Date
ATTEST:	
Alan Glover, Clerk/Recorder	Date
MEVADA RURAL HOUSING AUTHOR	ITY
D. Gary Longaker, Executive Director Carson Southgate Associates, LLC	Date
Thomas J. Cook, Member	Date

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