

Item # 8

**City of Carson City
Agenda Report**

Date Submitted: Sept 19, 2008

Agenda Date Requested: October 2, 2008

Time Requested: 15 Minutes

To: Mayor and Supervisors

From: Andrew Burnham, Public Works Director

Subject Title: Action to approve a Resolution to authorize entering into an Interlocal Agreement between Carson City and Douglas County to provide for Carson City to accept and treat sewer flows for an interim period of time not to exceed 10 years for the existing commercial center in northern Douglas County just south of Fuji Park.

Staff Summary: This action will allow Carson City to accept and treat sewer flows from the existing commercial area while giving Douglas County time to expand the North Valley Wastewater Treatment Plant. The sewer flows represent less than 1% of total Carson City flows.

Type of Action Requested: (check one)
 Resolution Ordinance
 Formal Action/Motion Other (Specify)

Does This Action Require A Business Impact Statement: Yes No

Recommended Board Action: I move to approve Resolution _____ to authorize entering into an Interlocal Agreement between Carson City and Douglas County to provide for Carson City to accept and treat sewer flows for an interim period of time not to exceed 10 years for the existing commercial center in northern Douglas County just south of Fuji Park.

Explanation for Recommended Board Action:

Douglas County and Carson City each own, operate, and maintain wastewater collection and treatment systems for the benefit of their citizens and each entity in operating their respective wastewater systems desire to maximize the efficiency of each to achieve the least costs for their citizens. Douglas County provides wastewater service to a commercial area in northern Douglas County which is currently and temporarily served by the Indian Hills General Improvement District and which will ultimately be served by Douglas County's North Valley Wastewater Treatment Plant. Douglas County has plans to expand the North Valley Wastewater Treatment Plant at a time in the future when revenues are able to justify a sufficiently sized and economical phased project which would accommodate the wastewater flows from the commercial area. Douglas County has been informed by the Indian Hills General Improvement District that Douglas County must discontinue wastewater flows to the District due to the District needing the wastewater capacity for its own use. Carson City currently has excess wastewater treatment capacity

and is immediately proximate to the Douglas County commercial area which would allow for cost effective connection to the Carson City collection system. The City is permitted for 6.9 million gallons per day and currently treats 5.1 million gallons per day. Carson City could provide wastewater treatment of the commercial area flows, which are very minor compared to Carson City's total flows, and could do so on a temporary basis until such time as Douglas County expands their North Valley Wastewater Treatment Plant. Douglas County will pay Carson City for all costs for treatment.

Applicable Statute, Code, Policy, Rule or Regulation: NRS 277.100

Fiscal Impact: Revenue of approximately \$50,000 to offset operations expenses of approximately \$50,000.

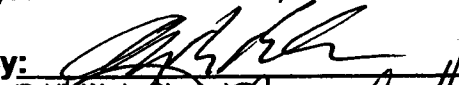



Explanation of Impact: The impact is revenue neutral.

Funding Source: From Douglas County.

Alternatives: Not approve the agreement.

Supporting Material: Resolution Agreement
Map of Sewer Contribution Area

Prepared By: Andrew Burnham, Public Works Director

Reviewed By:  Date: 9/23/08
(Public Works Director)
 Date: 9-23-08
(Finance Director)
 Date: 9/23/08
(City Manager)
 Date: 9-23-08
(District Attorney)

Board Action Taken:

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

(Vote Recorded By)

RESOLUTION NO. _____

RESOLUTION ADOPTING AND APPROVING AN INTERLOCAL AGREEMENT FOR SEWER SERVICE BETWEEN CARSON CITY AND DOUGLAS COUNTY

WHEREAS, any two or more public agencies may enter into cooperative agreements for the performance of any governmental function pursuant to NRS 277.080 to 277.180, inclusive; and

WHEREAS, NRS 277.110 provides that every such agreement must be by formal resolution or ordinance of the governing body of each public agency included and must be spread at large upon the minutes, or attached in full thereto as an exhibit, of each governing body; and

WHEREAS, the parties to the Interlocal Agreement for Sewer Service to be provided by Carson City to Douglas County, desire to adopt and approve such agreement as required by NRS 277.110. A copy of the agreement is attached to this Resolution as Exhibit "A;" and

WHEREAS, both parties to the Interlocal Agreement for providing sewer service from Carson City to Douglas County are public agencies as defined by NRS 277.100; and

NOW, THEREFORE, BE IT RESOLVED that the terms and conditions of the Interlocal Agreement for Sewer Service between Carson City and Douglas County are hereby adopted and approved; and

BE IT FURTHER RESOLVED that the Interlocal Agreement for Sewer Service between Carson City and Douglas County shall be spread at large upon the minutes or attached in full thereto as an exhibit, and that a copy of this Resolution shall be sent to Douglas County.

Upon motion by Supervisor _____, seconded by Supervisor _____, the foregoing Resolution was passed and adopted this _____ day of _____, 2007 by the following vote:

AYES: _____ NAYS: _____

ABSENT: _____ ABSTAIN: _____

Resolution No. _____

Marv Teixeira, Mayor
Carson City, Nevada

ATTEST:

Alan Glover, Clerk
Carson City, Nevada

INTERLOCAL AGREEMENT

THIS Agreement, made and entered into this _____ day of ____, 2008, between DOUGLAS COUNTY Nevada, a political subdivision of the State of Nevada, hereinafter referred to as DOUGLAS, and CARSON CITY, Nevada, a consolidated municipality under the Nevada Revised Statutes, hereinafter referred to as "CARSON".

WITNESSETH:

WHEREAS, the Parties are authorized by Chapter 277 of the Nevada Revised Statutes to enter into agreements to perform any governmental service, activity or undertaking which any one or more of the agencies are authorized by law to perform; and

WHEREAS, the Parties DOUGLAS and CARSON each own, operate, and maintain wastewater collection and treatment systems for the benefit of their citizens; and

WHEREAS, each Party, in operating its respective wastewater system, desires to maximize the efficiency of such systems to achieve the least costs for their citizens; and

WHEREAS, DOUGLAS provides wastewater service to a commercial area in northern Douglas County and which is currently and temporarily served by the Indian Hills General Improvement District and which will ultimately be served by DOUGLAS's North Valley Wastewater Treatment Plant; and

WHEREAS, DOUGLAS has plans to expand the North Valley Wastewater Treatment Plant at a time in the future when revenues are sufficient to justify a sufficiently sized and economical phased project which would accommodate the wastewater flows from the commercial area; and

WHEREAS, DOUGLAS has been informed by the Indian Hills General Improvement District that DOUGLAS must discontinue wastewater flows to the District due to the District needing the wastewater capacity for its own use; and

WHEREAS, CARSON currently has excess wastewater treatment capacity and is immediately proximate to the DOUGLAS commercial area which would allow for cost effective connection to the CARSON collection system; and

WHEREAS, CARSON could provide wastewater treatment of the commercial area flows, which are relatively small compared to CARSON's total flows, and could do so on a temporary basis until such time as DOUGLAS expands their North Valley Wastewater Treatment Plant; and

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein, it is hereby agreed by and between the Parties as follows:

ARTICLE I

The Parties agree as follows:

- 1. CARSON will accept, for an interim period of time of not longer than 10 years, sewage in an amount not to exceed 50,000 gallons per day, generated within the northern area of Douglas County as shown in Exhibit "A" attached, to allow DOUGLAS time to construct improvements at their North Valley Wastewater Treatment Facility to accommodate their sewage flows.**
- 2. Costs for the transmission and treatment of sewage by CARSON will be at DOUGLAS's sole cost. DOUGLAS will pay to CARSON an annual payment for the treatment of the wastewater derived from the following formula: the annual CARSON wastewater operating budget divided by the total average annual daily CARSON wastewater flows times the average annual daily flows from the DOUGLAS commercial area. For example $\$8,000,000 / 5,000,000 \text{ gallons} \times 35,000 \text{ gallons} = \$56,000$ annual payment. The payment will be due and payable by July 31 each year for the preceding fiscal year or prorated for a partial year. Flows from DOUGLAS will be metered and provided to CARSON on a monthly basis.**
- 3. Connection to CARSON's collection system will be made by crossing under Fuji Park to the Old Clear Creek Road sewer by boring under existing improved portions of the park so as to limit disturbance to the park. Plans will be reviewed and approved by CARSON and all necessary permits will be obtained by DOUGLAS prior to start of construction. CARSON grants by this Agreement permission to construct, own, operate, and maintain a sewage force main across Fuji Park to CARSON's sewer main in Old Clear Creek Road for the term of the Agreement.**
- 4. DOUGLAS, upon abandonment of the sewage force main, will disconnect the main from CARSON's collection system and fill the force main with a slurry cement as approved by CARSON.**
- 5. DOUGLAS may discontinue wastewater flows at any time and disconnect the line in accordance with paragraph 4 above. DOUGLAS's payment will be prorated accordingly for the portion of the year wastewater is actually treated by CARSON.**
- 6. DOUGLAS shall provide not less than semi-annually, certified analysis of the sewage transmitted to CARSON for treatment, documenting compliance with discharge limits as found in Carson City Municipal Code 12.06.410, "Prohibited Discharges". If the test results are outside normal sewage parameters, CARSON may institute a surcharge in addition to the annual payment for the treatment of the sewage. DOUGLAS shall maintain a Wastewater Discharge Pretreatment Monitoring program within the area contributing sewage to the CARSON sewer.**
- 7. This Agreement shall not become effective until and unless approved by appropriate official action of the governing body of each Party.**

8. NOTICES.

- a) All written notices under this Agreement shall be delivered to the following officials at the addresses stated:

Carl Ruschmeyer, Public Works Director
P.O. Box 218
Minden, NV 89423
CRuschmeyer@douglas.co.nv.us

Andrew Burnham, Public Works Director
3505 Butti Way
Carson City, NV 89701
Aburnham@ci.carson-city.nv.us

9. **LIMITED LIABILITY.** The Parties will not waive and intend to assert available NRS Chapter 41 liability limitations in all cases. Contract liability of both Parties shall not be subject to punitive damages.

10. INDEMNIFICATION.

- a) To the fullest extent of limited liability 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, arising out of any alleged negligent or willful acts or omissions of the Party, its 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 person or entity described in this paragraph.
- b) The indemnification obligation under this paragraph is conditioned upon receipt of written notice by the indemnifying Party within 30 days of the indemnified Party's actual notice of any actual or pending claim or cause of action. The indemnifying Party shall not be liable to hold harmless any attorneys' fees and costs for the indemnified Party's chosen right to participate with legal counsel.

11. **OWNERSHIP OF FACILITIES.** Each Party maintains ownership of its own facilities and no transfer of ownership is implied as part of this Agreement.

12. **REASONABLE CARE.** Each Party shall exercise reasonable care in the performance of its obligations and rights under this Agreement to ensure that the other Party's facilities and operations are not impaired or damaged.

13. **PROTECTION OF A PARTY'S SEPARATE FACILITIES.** If any occurrence or condition during operation or maintenance of the connection between the Parties' facilities threatens the physical integrity or operational capability of a Party's separate facilities, upon notification to the other Party the affected Party may stop operation or maintenance of the connection and/or take any action that the affected Party determines to be necessary to protect its own separate facilities. Any Party may remove part of the connection if required, for emergency repair of its separate facilities provided that such affected connection facilities are restored as soon as possible by the removing Party.

14. **RESPONSIBILITY FOR DAMAGES TO FACILITIES.** If damages occur to connected facilities during the operation of connection under this Agreement, then responsibility to pay for any necessary repairs of said damaged facilities shall be as follows:
 - a) If damages occur when the connection is being operated within typical Operating Standards, then responsibility to pay for any necessary repairs to said damaged facilities shall be allocated based on ownership.
 - b) If damages occur when the connection is being maintained and/or is being operated beyond typical Operating Standards, then responsibility to pay for any necessary repairs to said damaged facilities shall be allocated to the Party responsible for the nonstandard operations.

15. **ARBITRATION OF DISPUTES.** Any controversy or claim arising out of or relating to this Agreement, or the claimed breach or interpretation thereof, including, but not limited to, any impasse reached by the Parties after negotiating in good faith, shall be resolved by binding arbitration, subject to the following provisions:
 - a) The Party seeking arbitration (the "Demanding Party") shall deliver a written notice of demand to resolve dispute (the "Demand") to the other Party (the "Non-Demanding Party"). The Demand shall include a brief statement of the Demanding Party's claim or controversy, the amount or other nature thereof, and the name of the proposed arbitrator to decide the dispute. Within ten (10) days after receipt of the Demand, the Non-Demanding Party against whom the Demand is made shall deliver a written response to the Demanding Party. Such response shall include a short and plain statement of the Non-Demanding Party's defenses to the claim and shall also state whether such Party agrees to the arbitrator chosen by the Demanding Party. If the Non-Demanding Party fails to agree to the arbitrator chosen by the Demanding Party, then such Non-Demanding Party shall state in its response the name of a proposed arbitrator chosen by such Non-Demanding Party as the proposed arbitrator. If the Non-Demanding Party fails to deliver its written response to the Demanding Party within ten (10) days after receipt of the demand, or if the Non-Demanding Party fails to select in its written

response a proposed arbitrator, then the arbitrator selected by the Demanding Party shall serve as the arbitrator. An arbitrator shall not be employed by any Party or any affiliate of any Party, directly, indirectly or as an agent, except in connection with an arbitration proceeding. Any person appointed as an arbitrator shall be knowledgeable and experienced in the matter(s) sought to be arbitrated.

- b) The locale of any arbitration shall be in Reno, Nevada.
- c) If the Non-Demanding Party selects a proposed arbitrator different than the arbitrator selected by the Demanding Party, and such selection is indicated by the Non-Demanding Party in its written response to the Demanding Party made within ten (10) days after receipt of the demand, then the Parties shall, for ten (10) days after the Demanding Party's receipt of the Non-Demanding Party's written response to the demand, attempt to agree upon an arbitrator. If the Parties cannot agree upon an arbitrator within such ten (10) day period, then upon request of the Demanding Party, a single neutral arbitrator shall be appointed by the two arbitrators selected by the Parties.
- d) The arbitrator shall apply the substantive laws of the State of Nevada and the Rules of Evidence of Nevada, the arbitration shall be conducted in accordance with the Nevada Arbitration Rules as set forth in Subpart B of the Nevada Rules Governing Alternative Dispute Resolution and the arbitrator's decision shall only be subject to review as set forth in Chapter 38 of the Nevada Revised Statutes.
- e) The costs of resolution (including reporter costs) shall be split between the Parties pro rata, provided, however, that such costs, along with all other costs and expenses, including attorneys' fees, shall be subject to award, in full or in part, by the arbitrator, in his or her discretion, to the prevailing Party. Unless the arbitrator so awards attorneys' fees, each Party shall be responsible for its own attorneys' fees.
- f) To the extent possible, the arbitration hearings shall be conducted on consecutive days, excluding Saturdays, Sundays and holidays, until the completion of the hearings.
- g) In connection with any arbitration proceedings commenced hereunder, any Party shall have the right to join any third Parties in such proceedings in order to resolve any other disputes, the facts of which are related to the matters submitted for arbitration hereunder.
- h) The arbitrator shall render his or her decision(s) concerning the substantive issues in dispute in writing. The written decision shall be sent to the Parties no later than thirty (30) days following the last hearing date.

- i) All hearings shall be concluded within ninety (90) days from the day the arbitrator is selected or appointed, unless the arbitrator demands that this deadline is impractical.
- j) If any of the provisions relating to arbitration are not adhered to or complied with, either Party may petition the Second Judicial District Court of the State of Nevada for appropriate relief.
- k) The award of the arbitrator may be entered as a judgment in a court of competent jurisdiction. All arbitration conducted under this Article shall be in accordance with the Nevada Arbitration Rules as set forth in Subpart B of the Nevada Rules Governing Alternative Dispute Resolution and Chapter 38 of the Nevada Revised Statutes. To the extent permitted by law, compliance with this Article is a condition precedent to the commencement by any Party of a judicial proceeding arising out of any dispute relating directly or indirectly to this Agreement in accordance with the Nevada Arbitration Rules as set forth in Subpart B of the Nevada Rules Governing Alternative Dispute Resolution and Chapter 38 of the Nevada Revised Statutes, and any judgment or award rendered by the arbitrator shall be final, binding and unappealable, and judgment may be entered by any court having jurisdiction thereof. The Parties hereto intend that the provisions to arbitrate set forth herein be valid, enforceable and irrevocable. In his or her award the arbitrator shall allocate, in his discretion, among the Parties to the arbitration at all costs of the arbitration, including the fees and expenses of the arbitrator and reasonable attorney's fees, costs and expert witness expense of the Parties. The Parties hereto agree to comply with any award made in any such arbitration proceedings that has become final in accordance with the Nevada law and agree to the entry of a judgment in any jurisdiction upon any award rendered in such proceedings becoming final. The arbitrator shall be entitled, if appropriate, to award any remedy in such proceedings, including monetary damages, specific performance, temporary restraining order, preliminary injunction, injunction and all other forms of legal and equitable relief.

16. **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 shall be due to uncontrollable forces. The Term "uncontrollable force" shall mean any cause beyond the control of the Party unable to perform such 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.

17. **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.

18. **TERMINATION.** This Agreement deals with wastewater resources and the providing of utility service by two retail community wastewater utility systems. As such, the public interest is not served by the termination by one of the Parties to this Agreement absent an opportunity to resolve the alleged breach and/or have its position on the claimed breach heard before a qualified arbitrator.

This Agreement may be terminated only by the mutual consent and agreement of the Parties. If a Party is in breach of a portion of this Agreement, then the Party alleging such breach shall provide written notice to the other Party specifying the nature of the violation and allowing thirty (30) days for the Party in breach to correct the violation. If the breach is not corrected within the thirty (30) day period then the matter shall be submitted to binding arbitration as set forth in Paragraph 15 above and the Parties agree to be bound by the determination of the Arbitrator.

19. **PUBLIC RECORDS.** 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.

20. **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 by this Agreement.

21. **PROPER AUTHORITY.**

a) The Parties hereto present 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 perform the services set forth in this Agreement.

b) The Parties are associated with each other only for the purpose and to the extent set forth in this Agreement, and in respect to performance of services and payment of costs pursuant to this Agreement, each Party is and shall be a public agency separate and distinct from the other Party and, subject only to the terms of this Agreement, shall have the sole 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.

22. **GOVERNING LAW: 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 Nevada district courts for enforcement of this Agreement.
23. **ENTIRE CONTRACT AND MODIFICATION.** This Agreement constitutes the entire contract of the Parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other contracts or 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.

IN WITNESS WHEREOF, the Parties have executed this Agreement.

"Douglas"
DOUGLAS COUNTY

Attest: _____
Theodore K Thran
Douglas County Clerk

By: _____
Kelly D Kite, Chairman

"CARSON"
CARSON CITY

Attest: _____
Alan Glover
Carson City Clerk

By: _____
Marv Teixeira, Mayor

Exhibit A

CARSON CITY

DOUGLAS COUNTY

NORTH COUNTY
COMMERCIAL
SEWER AREA

1420-06-502-001

1420-06-502-009

1420-06-502-008

1420-06-502-010

1420-06-502-011

1420-06-502-013

1420-06-502-012

1420-06-602-023

1420-06-602-026

1420-06-602-015

1420-06-602-027

1420-06-602-018

1420-06-602-019

1420-06-602-020

1420-06-602-030

1420-06-602-028

1420-06-602-031

1420-06-702-001

1420-06-702-002

1420-06-702-003

1420-06-702-004



NTS

TOPSY LN

US HIGHWAY 395

JACKS VALLEY RD