

Item # 13B

**City of Carson City
Agenda Report**

Date Submitted: June 12, 2007

Agenda Date Requested: June 21, 2007

Time Requested: 10 minutes

To: Mayor and Supervisors

From: Linda Ritter, City Manager

Subject Title: Action to approve an agreement between Carson City and Brewery Arts Center to provide public, education and governmental access programming and services from July 1, 2007 through June 30, 2010.

Staff Summary: The current agreement with Brewery Arts Center (BAC) expires on June 30, 2007. This agreement provides for continued operation of our community access television stations within the limits of funding that has been negotiated with Charter Communications and is set out in extension of their franchise agreement.

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 an agreement between Carson City and Brewery Arts Center to provide public, education and governmental access programming and services from July 1, 2007 through June 30, 2010 with a fiscal impact of \$140,000 annually to be paid from the general fund.

Explanation for Recommended Board Action: The Brewery Arts Center currently operates our community access stations. Without this agreement, the City would have to seek out another operator to insure continuation of service.

Fiscal Impact: \$140,000

Funding Source: General Fund.

Supporting Material: Proposed agreement.

Prepared By: L. Ritter

Reviewed By:

(City Manager)

(District Attorney)

(Finance Director)

[Handwritten signatures]

Date:

6-13-07

Date:

6-12-07

Date:

6/12/07

Board Action Taken:

Motion:

1)

2)

Aye/Nay

(Vote Recorded By)

AGREEMENT TO PROVIDE PUBLIC, EDUCATIONAL AND
GOVERNMENT ACCESS PROGRAMMING 2007-2010

This Agreement is made this _____ day of _____, 2007, by
and between the City of Carson City, a consolidated municipality ("City"), and the
Brewery Arts Center, a Nevada non-profit corporation ("BAC"), who agree as follows:

R E C I T A L S:

1. The City desires to provide support for the use of cable access channels provided pursuant to federal law.
2. The Carson City Code 5.02.020 indicates that the City may designate a separate non-profit access corporation as the management entity of community/public educational and government access.
3. City has granted to Charter Communications, Inc., ("Charter"), a franchise to provide cable television service in the City.
4. The franchise with Charter provides that certain channel capacity be provided for public, educational and governmental access.
5. BAC has indicated to City its interest in serving the public by providing Public, Educational and Government (PEG) access programming.
6. The duties of BAC, as set forth in this Agreement, are believed by the parties to involve labor, skill, education and special knowledge which are more intellectual and mental than they are physical or manual and that this contract is therefore one for professional services.

7. The duties and responsibilities required by this agreement are considered to be professional services. Additionally, it has been determined that BAC is the sole source provider of this service due to the existence of a video arts section within their facility.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the parties agree as follows:

Section 1. *Scope of Services.* In exchange for the funding provided by the City to BAC pursuant to this Agreement, BAC shall operate PEG access cable channels with the primary purpose being to administer, coordinate and assist those requesting access on a non-discriminatory basis. BAC shall:

A. Operate a Community Access Center. Staff and operate a video production facility and equipment which shall be available for public use at such hours and times as are determined by BAC and approved by the City. Access to equipment and facilities shall be open to all those who receive training from BAC or who receive a certification from the BAC, identifying said user as having satisfied the training requirements through means other than BAC's training classes.

B. Provide Equal Access. Provide access to the use of the equipment and facilities provided hereunder and the PEG access cable channels on an equal basis to all members of the community for non-commercial programming purposes, whether individuals, groups or organizations, on a first-come, first-served, non-discriminatory basis, pursuant to operating rules promulgated by BAC and approved by the City.

C. Develop Operating Policies and Procedures.

1. Maintain rules, guidelines and fee schedules (if applicable) for the use and operation of the access equipment, facilities and channels.

2. Maintain personnel manual, including job descriptions, for use in personnel practices. The manual shall embrace and enhance the City objectives outlined in Section 8 of this Agreement and it is understood that employees of BAC are not for any purposes employees of the City.

3. A final draft of any major revisions to the rules and guidelines mandated by paragraph 1, above, shall be filed with the City for approval within sixty (60) days of their adoption by BAC. The City shall approve or disapprove within sixty (60) days.

D. Compliance with Laws, Rules and Regulations. Administer the PEG access channel(s) and facilities in compliance with applicable laws, rules, and regulations and in compliance with the Carson City Cable Franchise Ordinance and the franchise agreement between the City and Charter.

E. Training. Establish and promote on-going training programs and provide technical assistance, equipment, studio time and channel time to City residents and groups, including youth.

F. Programming.

1. Comply with the programming requirements contained in the applicable paragraphs of the agreement between Charter and the City for public access television and as enhanced by this Agreement.

2. BAC agrees to keep the access channel(s) open to all potential users and free of censorship subject to FCC regulations, the Cable

Communication Policy Act of 1984 and other relevant laws. Neither the City, nor Charter, nor BAC shall have the authority to control the content of programming placed on the PEG access channel(s) so long as such programming is lawful. BAC shall be responsible for insuring the programming does not violate the U.S. or Nevada constitutions or any statute, ordinance provision or governmental regulation applicable to such programming.

3. a. BAC shall cablecast a minimum total of thirty (30) aired hours of first run programming per operating week, excluding character generation and the community bulletin board, on the first channel designated for non-commercial PEG access.

b. BAC shall cablecast a minimum of sixty (60) hours of total programming per week, excluding character generation and the community bulletin board, on the first channel designated for non-commercial PEG access.

c. First run programming for the first channel shall not count toward the minimum required for the second channel.

d. BAC shall cable cast a minimum total of fifteen (15) aired hours of first run programming per week, excluding character generation and the community bulletin board, on the second channel.

e. The first run programming for the second channel shall not count toward the minimum required for the first channel.

4. "First run programming" shall mean any programming produced, directed, submitted, sponsored or acquired by a Carson City resident for

cablecast on the access channel(s) on the Charter Communications system in Carson City.

5. Performance of programming minimums set forth in this section is predicated on City funding of BAC remaining at its current level, \$140,000 per year, paid in equal installments quarterly, in July, October, January, and March of each year, commencing July 1, 2007, subject to Section 13, Paragraph A.

6. The parties recognize that pursuant to NRS 354.626, to the extent that the term of this agreement extends beyond the current fiscal year of City, an annual appropriation of funds will be required in order for this agreement to continue. In the event the Board of Supervisors of City fails to appropriate money for this agreement for the ensuing fiscal year of the term hereof, then the obligations of City incurred under this agreement are extinguished with a minimum 120 days prior notification to BAC.

7. BAC shall have as a goal that a one-half (1/2) split of the total program aired hours between the public/education channel and the government channel is maintained. The "program aired hours" shall include the combined hours for both the first and second PEG channels.

8. BAC shall continue an award process to recognize and provide, at a minimum, annual acknowledgment and recognition for outstanding locally generated/produced programming. BAC shall promote variety and the highest level quality programming considering all resources.

9. BAC shall continue to cablecast the following government meetings, currently cablecast on channel 26:

- a. Board of Supervisors
- b. School Board
- c. The City, through the office of the City

Manager, shall identify and prioritize government meetings for cablecast on a best-efforts basis up to one-half (1/2) of available "program aired hours." At locations having usable facilities, a live cablecast shall be made. Otherwise, a delayed cablecast using videotape is permitted on a temporary basis. BAC will coordinate with the City for the use of its station for emergency broadcasting services. BAC will endeavor to provide continuity of service of all governmental programming on channel 26.

10. BAC and the City shall join in the creation and production of programs that are cablecast at regularly occurring intervals. The nature and frequency of those programs will be mutually agreed to through BAC's participation with the City, but shall include:

- a. Two monthly 30-minute programs on government/community issues
- b. Carson City regularly scheduled budget hearings
- c. Two one-hour special programs annually
- d. Up to one hundred (100) hours of additional production support per year for programming as determined by the City Manager's office or its designee.

11. In the absence of any video programming, BAC shall cablecast a community bulletin board. BAC shall be responsible for compliance with all bulletin board guidelines.

G. Maintenance of Equipment. BAC shall provide regular maintenance and repair of all video equipment purchased with monies received pursuant to this Agreement and/or donated, loaned or leased to by the City.

H. Special Needs Groups. BAC shall support special needs groups, including, but not limited to, the hearing impaired, in program production through training and other means.

I. Promotion. BAC shall actively promote the use and benefit of the PEG access channels and facilities to subscribers, the public, access users and Charter. A report on such activities shall be included in the annual report required by Section 11 of this Agreement.

J. Performance Review. In addition to obtaining City approval of BAC's Annual Access Activities Plan and Budget, the BAC shall, after each year of operation under this Agreement, hold a public meeting to provide access users, cable subscribers, and other interested parties an opportunity to provide input regarding access needs and interests.

K. Other Activities. BAC shall undertake other PEG access programming activities as deemed appropriate by BAC and undertake other PEG access activities as may be requested by the City, and mutually agreed to by BAC and the City, subject to the availability of funding.

L. Management. BAC shall establish and maintain financial policies and procedures and provide for the management of the station.

M. With the prior approval of the City Manager, BAC shall be entitled to use the City's Sierra Room for production of public affairs programming, provided such use shall not conflict with other meetings or use of the Sierra Room, and such use shall be free of rent, provided, however, that the Sierra Room shall not be used to promote a political party or candidate.

N. BAC shall cooperate with the City in the event of an emergency or disaster to assist in the dissemination of official information and to preempt regular programming to accomplish such a purpose.

Section 2. Indemnification. BAC shall indemnify, defend and hold harmless City, its officers, agents and employees and volunteers from and against any and all claims, suits, actions, causes of action, losses, damages or liabilities of any kind, nature or description, including, without limitation, payment of litigation costs and attorneys' fees, brought by any person or persons for or on account of any loss, damage or injury to person, property or any other interest, tangible or intangible, sustained by or accruing to any person or persons, howsoever the same may be caused, directly or indirectly arising or resulting from any alleged acts or omission of BAC, its officers, employees, agents or subcontractors arising out of or resulting from the performance of this Agreement.

BAC shall indemnify and hold harmless City, its officers, agents, employees and volunteers from and against any and all claims or other injury, including, without limitation, costs of litigation and attorneys' fees, arising from or in connection

with claims or loss or damage to person or property arising out of the failure to comply with any applicable laws, rules, regulations or other requirements of local, state or federal authorities, for claims of libel, slander, invasions of privacy or infringement of common law or at equity, which claims result from BAC's use of channels, funds, equipment, facilities or staff funded under this Agreement.

City shall indemnify, defend, and hold harmless BAC, its officers, agents and employees from and against any and all claims, losses, liabilities or damage, including payment of reasonable attorneys' fees arising out of or resulting from the performance of this Agreement, by any act or omission of the City.

Section 3. Copyright Clearance. Before cablecasting video transmissions, BAC shall require all users to agree in writing that they shall make all appropriate arrangements to obtain all rights to all material cablecast and clearances from broadcast stations, networks, sponsors, music licensing organizations' representatives, and without limitation from the foregoing, any and all other persons as may be necessary to transmit its or their program material over BAC's authorized channel. BAC shall maintain for the applicable statute of limitations for City's inspection, upon reasonable notice by City and for the term of the applicable statute of limitations, copies of all such user agreements.

Section 4. Copyright and Ownership. BAC shall own the copyright of any programs which it may choose from time to time to produce to the extent such rights do not interfere with state public records law. Copyright of programming produced by the public shall be held by such person(s) who produces said programming.

Section 5. Distribution Rights.

A. BAC shall require that all programs produced with funds, equipment, facilities or staff granted under this Agreement shall be distributed on the channels whose use is authorized by this Agreement. This subparagraph shall not be interpreted to restrict other distribution (beyond that distribution on channels authorized by this Agreement), so long as such other distribution is consistent with the rules and procedures governing such which shall be promulgated by BAC and filed with the City.

B. Payments required to obtain cable television distribution rights for programs acquired primarily for cablecast use may be made by BAC from funds granted under this Agreement.

C. At the beginning and end of each day that video programming is cablecast on the channels whose use is authorized by this Agreement, BAC shall display a credit stating "Partial funding for the operation of this channel is provided by the City of Carson City."

Section 6. Equipment and Facilities.

A. BAC shall be responsible for maintenance of all equipment and facilities owned, leased or loaned to BAC under this Agreement or purchased with funds provided pursuant to this Agreement.

B. BAC recognizes that this Agreement, or property purchased pursuant to this Agreement may create a possessory interest subject to property taxation and that BAC may be subject to the payment of property taxes levied on such interest. BAC agrees to pay all lawful taxes, assessments, fees or charges from which it is not exempt which at any time may be levied by the state, city or any tax or assessment levying body upon any interest in this Agreement or on any possessor right

which BAC may have in property, improvements, fixtures or equipment purchased pursuant to this Agreement.

C. City shall own all equipment and facilities acquired by and/or purchased with funds received pursuant to this Agreement, and any equipment transferred by City to BAC. Upon termination or non-renewal of this Agreement, all such equipment or facilities purchased with funds received pursuant to this Agreement from City shall become the property of the City. BAC shall own all equipment and facilities donated to grantee or acquired by and/or purchased with funds received by BAC from sources other than the City pursuant to this Agreement, and other than any equipment transferred by City to BAC. BAC shall maintain separate lists of equipment owned by the City and that owned by BAC. Upon termination or non-renewal of this Agreement, all such equipment or facilities donated to BAC or purchased with funds received by BAC, other than pursuant to this Agreement, shall remain the property of BAC. The lists of equipment owned by the City shall be updated and delivered to the City in accordance with Section 11, paragraph 7 and Section 11, paragraph 8 of this Agreement.

D. Upon the dissolution of BAC, BAC shall, subject to the approval of the City, transfer all assets of BAC representing funded equipment, funded facilities and/or the proceeds of either to City, or dispose of the same to any non-profit organization created for religious, charitable or educational purposes or to another governmental entity, to be used for any purpose which will provide a substantial benefit to the inhabitants of Carson City. The City must provide for the donation by resolution pursuant to NRS 244.1505.

E. BAC shall not sell or transfer any equipment, inventory, real property or fixtures obtained with funds received pursuant to this Agreement without complying with state law relating to public entities. Any funds received by BAC as a result of such an approved sale or transfer shall be used for future equipment purchases.

Section 7. Insurance. BAC shall maintain in full force and effect at all times during the term of this Agreement insurance as required by this Section. The cost of such insurance shall be borne by BAC and shall be included in BAC's annual budget.

A. Comprehensive Liability Insurance. BAC shall maintain comprehensive liability insurance, including protective, completed operations and broad form contractual liability, property damage and personal injury coverage, and comprehensive automobile liability including owned, hired and non-owned automobile coverage. The limits of such coverage shall be: 1) bodily injury including death, \$1,000,000 for each person, each occurrence and aggregate; 2) property damage, \$1,000,000 for each occurrence and aggregate.

B. Equipment Insurance. Insurance shall be maintained on all equipment and facilities, including fixtures, funded in whole or in part under this Agreement, to a value of, at a minimum, the lesser of fair market value or replacement cost. The insurance shall include, at a minimum, insurance against loss or damage beyond the user's control, theft, fire or natural catastrophe. City shall be shown as an additional insured on all policies.

C. Workers' Compensation. BAC shall provide full Worker's Compensation Insurance and Employer's Liability with limits as required by Nevada law with an insurance carrier satisfactory to the City.

D. City as Co-Insured or Additional Insured. The City shall be named as co-insured or additional insured on all aforementioned insurance coverages. The policies shall provide that no cancellation, major change in coverage or expiration may be affected by the insurance company or BAC without first giving the City thirty (30) days written notice prior to the effective date of such cancellation or change in coverage. Any insurance of self-insurance maintained by the City, its officers, agents, employees or volunteers shall be in excess of BAC's insurance and shall not contribute to it.

E. Notification of Coverage. BAC shall file with the City proof of the aforementioned insurance coverage prior to commencement of operations under this Agreement.

Section 8. Non-Discrimination in Employment and Service.

A. BAC shall not discriminate against any person, employee or applicant for employment or subcontractor on the basis of race, color, creed, religion, gender, marital status, ancestry, national origin or disability.

B. BAC shall not discriminate in the delivery of services on the basis of race, color, creed, religion, gender, marital status, ancestry, national origin or disability.

C. This Section shall not create a right of review by the City of the content of programming or program services produced under this Agreement, nor shall it create a right in any person to have any program distributed over the channels.

Section 9. Independent Contractor. It is understood and agreed that BAC is an independent contractor and that no relationship of principal/agent or employer/employee exists between City and BAC. If in the performance of this Agreement any third persons are employed by BAC, such persons shall be entirely and exclusively under the control, direction and supervision of BAC. All terms of employment, including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment shall be determined by BAC and City shall have no right or authority over such persons or terms of employment. There are no third-parties who are intended to be beneficiaries of this Agreement.

Section 10. Assignment and Subletting. Neither this Agreement nor any interest herein shall be assigned or transferred by BAC, except as expressly authorized in writing by City.

Section 11. Reports.

A. Prior to May 1 of each year, BAC shall submit to City an annual report. This report shall contain, at a minimum, the following information:

1. A description of key activities in the past year.
2. Year-end financial statements containing information on income and expenditures as reviewed by an independent certified public accountant and audited at least once during the term of this Agreement.

3. A current staffing chart, indicating both filled and vacant positions.
4. A statement describing the number of individuals using the access facilities by month, and the number of individuals trained in community production workshops.
5. A statement showing the total number of hours of programming aired; the number of hours of original, locally produced programming aired; the ratio of public, education and government programming aired; and the number of individuals trained pursuant to Section 1(E) of this Agreement.
6. Any other relevant information requested by the City.
7. A detailed listing of all equipment purchased with funds provided pursuant to this Agreement, including equipment purchased during the preceding year.
8. A detailed listing of all equipment acquired by BAC either by donation or purchased with funds from sources other than pursuant to the Agreement. The City shall have sixty (60) days from the date of receipt of said list in which to object to the inclusion of any items on said list. Failure of the City to object within said time shall constitute an acknowledgment by the City that items on the list are the property of BAC. In the event that the City shall object, BAC will provide documentation to support its claim of ownership. The resolution of any such objections shall be in writing signed by both parties.
9. A summary of all user complaints and/or comments.

10. The results of a local audience survey of the viewing public at least once during the contract. A minimum of 250 contacts by either telephone and/or mail shall be conducted.

11. A list showing the maintenance performed on the City owned, donated and loaned equipment.

B. In addition BAC shall provide other information reasonably requested by City.

Section 12. Records, Fiscal Audit.

A. BAC shall maintain all necessary books and records, including property, personnel and financial records, in accordance with generally accepted accounting principles. BAC shall document all expenditures under this Agreement with properly executed payroll, time records, invoices, contracts, vouchers or other official documentation evidencing in appropriate detail the nature and propriety of all expenditures. All checks, payroll, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible. All such documentation shall be maintained for a period of at least four years.

B. Upon request from City, BAC shall, at any time during normal business hours, make available all of its records with respect to all matters covered by this Agreement. BAC shall permit City to audit, examine and make excerpts of transcripts from these records.

C. BAC shall have a fiscal review prepared by a Certified Public Accountant and submit it to the City with the annual report required under Section 11

for the first and second years of the Agreement. BAC shall have a fiscal audit prepared by a Certified Public Accountant and submit it to the City with the annual report required under Section 11 of this Agreement for the third year of the Agreement.

Section 13. Funding.

A. BAC shall receive funding as a result of the Franchise Agreement between City and Charter Communications, Inc. Nothing in this Agreement shall obligate City to provide funding as provided for in Section 1(F)(5) from any source other than funds received as a result of the Franchise Agreement between City and Charter. In the event that Charter, for whatever reason, does not pay to City the funds outlined below, then City may terminate this Agreement with 120 days written notice and shall not preclude the BAC from receiving funds up to and through the final day of termination. Pursuant to the Franchise Agreement, capital funds will be made available to City and then to BAC as follows:

1. City will provide, from funds received from Charter as a result of Section 4 of the "Agreement To Extend Cable Franchise," dated December 21, 2006, \$100,000.00 during the first quarter of 2007 and an additional \$100,000.00 during the first quarter of 2008 for facilities, equipment and other related capital expenditures pursuant to a budget prepared by BAC. Such funds will be held in a special account by the City, designated "Cable Television Community Access Facilities, Equipment Account," available only for the support of community access programming, as designated under this Agreement. The amount is specified in the agreement to extend the franchise between Carson City, Nevada and Charter Communications, Inc., effective December 21, 2006.

Section 14. Activities Plan.

A. On or before March 15, of each year in which the Agreement is in effect, BAC shall present to the City an Access Activities Plan and Budget outlining activities and programs planned for the following fiscal year with funds and channels received from the City. Such plan shall contain: (1) a statement of anticipated number of hours of local original programming; (2) training classes to be offered and frequency of classes; (3) other access activities planned by BAC in response to public need; (4) an operating and capital equipment and facilities budget; and (5) the moneys received or projected to be received from Underwriting and Grants. As used herein, the fiscal year begins on July 1, and ends on the following June 30.

Section 15. Expenditure of Funds. BAC shall spend funds received from City solely for the purposes listed in its Annual Budget and Activities Plan. Funds not expended in the year covered by the Annual Budget and Activities Plan must be carried over into succeeding years. Upon termination of this Agreement, all funds of any kind received from City and not expended by BAC shall be returned to City. City need not bind itself to continue PEG programming after the term of this agreement. BAC shall provide for such fiscal control and funding accounting procedures as are necessary to assure proper disbursement and accounting for operating funds received from City.

Section 16. Receipt of Approved Funding. In each year in which City has received from BAC an Annual Activities Plan and Budget, City shall make four (4) equal quarterly payments to BAC which in total shall equal the amount the City budgeted for BAC for the fiscal year. Said payments will be due and payable within twenty (20) days after the end of the quarter.

Section 17. Funding From Other Sources.

A. BAC may, during the course of the Agreement solicit supplemental funds from other sources, including, but not limited to, fund-raising activities, professional production, filming, editing activities.

B. BAC is strongly encouraged to seek financial participation agreements with other U.S. governments and government agencies, grants, donations, memberships, sponsorships and other sources of funding. Said funds shall be, and remain, the property of BAC.

Section 18. Term of Agreement. This Agreement shall be for a period of three (3) years commencing on July 1, 2007, and ending on June 30, 2010, unless terminated earlier, as provided in this Agreement. This Agreement may be extended, by mutual agreement of the City and BAC, in writing, for an additional period of three (3) years as set forth in Section 20 of this Agreement.

Section 19. Termination of Agreement; Transfer of Assets

A. Either party shall have the right to terminate this Agreement for breach of any provision of this Agreement, upon sixty (60) days written notice to the breaching party, provided that the breaching party may avoid termination by curing any such breach within sixty (60) days or within the time frame agreed to by City and BAC. Either party may also terminate this Agreement at the expiration of its term, or any extension thereof. City may also terminate this Agreement, in whole or in part, if for any reason, Charter fails to make designated payments to the City of the funds described in Section 13 of this Agreement or if City fails to appropriate funds, with 120 days written

notice and shall not preclude the BAC from receiving funds up to and through the final day of termination or if BAC is dissolved.

B. Except as provided herein, upon termination of the Agreement, BAC shall immediately transfer to City all equipment, real property, fixtures, contracts, leases, deposit accounts or other assets received by or purchased by BAC pursuant to this Agreement. BAC shall have no obligation to transfer any equipment, real property, fixtures, contracts, leases, deposit accounts or other assets donated to, received by, or purchased by BAC from sources of funds received other than from the City's Agreements with the cable operator.

Section 20. Renewal of Agreement. This Agreement may be renewed or extended for additional periods of three (3) years each, pursuant to the following process:

A. If BAC seeks a renewal of this Agreement it shall on or before January 1, 2010, submit to the City a letter of intent requesting renewal.

B. On or before February 1, 2010, the City shall respond to BAC's letter of intent to request renewal.

1. If the City indicates its desire to renew this Agreement, BAC shall, on or before March 1, 2010, submit to the City a letter outlining the content of the proposed new Agreement the items which may be pertinent to the renewal process. Further, BAC shall also provide to the City an Access Activities Plan and Budget outlining activities and programs planned for the following year as described in Section 14 (A) of this Agreement.

Section 21. Time. Time is of the essence in this Agreement and for the performance of all covenants and conditions of this Agreement.

Section 22. Cooperation. Each party agrees to execute all documents and do all things necessary and appropriate to carry out the provisions of this Agreement.

Section 23. Applicable Law. This Agreement shall be interpreted and enforced under the laws of the state of Nevada.

Section 24. Notices. All notices and other communication to be given by either party may be given in writing, by depositing the same in the United States mail, postage prepaid and addressed to the appropriate party as follows:

To BAC: 449 West King Street Carson City, NV 89703

To City: 201 North Carson Street, Suite 2
Carson City, NV 89701

Any party may change its address for notice by written notice to the other party at any time.

Section 25. Entire Agreement. This Agreement is the entire agreement of the parties and supersedes all prior negotiations and agreements whether written or oral. This Agreement may be amended only by written agreement and no purported oral amendment to this Agreement shall be valid.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date written above.

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Approved at a regular meeting of the Board of Trustees of the Brewery

Arts Center on the _____ day of _____, 2007.

Brewery Arts Center, a Nevada non-profit corporation.

By: _____
Susan Crowell, President

Approved at a regular meeting of the Board of Supervisors of Carson City,

Nevada, on the _____ day of _____, 2007.

City of Carson City, Nevada
201 N. Carson Street, Suite 2
Carson City, NV 89701

By: _____
Marv Teixeira, Mayor

Attest:

Alan Glover, Clerk/Recorder

Approved as to legal form:

Neil A. Rombardo, Esq.
Carson City District Attorney

By: _____
Melanie Bruketta, Esq. Chief Deputy District Attorney