

Item # 17c

**City of Carson City
Agenda Report**

Date Submitted: September 20, 2009

Agenda Date Requested: October 1, 2009
Time Requested: 10 Minutes

To: Mayor and Supervisors
From: Purchasing and Contracts

Subject Title: Action to approve a Settlement Agreement Between John C. Serpa and Carson City Regarding Existence of Waste at Old Landfill.

Staff Summary: This agreement provides for John Serpa to dispose of waste from the old Carson City municipal landfill site located off of Deer Run Road to the current landfill site located off of Flint Drive. The old landfill was closed in the 1960's and in order to develop the property for new commercial and residential uses the old landfill waste will be transported to the current landfill for final disposal.

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 a Settlement Agreement Between John C. Serpa and Carson City Regarding Existence of Waste at Old Landfill.

Explanation for Recommended Board Action: The agreement provides for John Serpa to dispose of waste from the old Carson City municipal landfill site located off of Deer Run Road to the current landfill site located off of Flint Drive at his cost. The old landfill was closed in the 1960's and in order to develop the property for new commercial and residential uses the old landfill waste will be transported to the current landfill for final disposal. As consideration for the costs to Serpa, which are anticipated to be in excess of \$3 million, Carson City will provide 100 water and sewer connections or equivalent consideration.

Applicable Statute, Code, Policy, Rule or Regulation: (RCRA, 42U.S.C. SS 6901 et seq.)

Fiscal Impact: 100 Water and Sewer Connection Fee Waivers or equivalent consideration

Explanation of Impact: Connections would be paid by the Landfill Fund

Funding Source: Future Landfill Revenues

Alternatives: Not approve and provide direction to staff.

Supporting Material: Proposed Agreement

Prepared By: Andrew Burnham, Public Works Director.

Reviewed By:

(Public Works)

(City Manager)

(District Attorney)

(Finance Director)

Date:

Date:

Date:

Date:

9/22/09

9/22/09

9/22/09

9/22/09

Board Action Taken:

Motion: _____

1) _____

2) _____

Aye/Nay

(Vote Recorded By)

LAW OFFICES
HEATON, LTD.

SCOTT J. HEATON

716 NORTH CARSON STREET, SUITE E
POST OFFICE BOX 605
CARSON CITY, NEVADA 89702-0605

TELEPHONE: (775) 882-2164
FAX: (775) 882-2248

August 25, 2009

Joel C. Benton
Senior Deputy District Attorney
Carson City District Attorney's Office
885 East Musser Street, Suite 2030
Carson City, Nevada 89701

Re: Settlement Agreement Between John C. Serpa and Carson City
Regarding Existence of Waste at Old Landfill Site

Dear Mr. Benton:

Pursuant to your letter dated August 25, 2009, please
find enclosed the substitute page for inclusion into the Settlement
Agreement which contains the revised language in Paragraph 5.

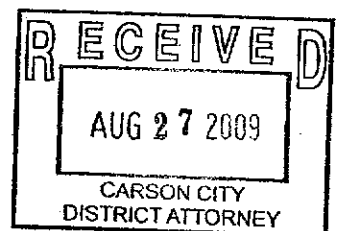
Kindest regards.

Sincerely,

HEATON, LTD.

By *Wendy A. McMartin*
Wendy A. McMartin, Secretary
to Scott J. Heaton

Enclosure.



SETTLEMENT AGREEMENT BETWEEN
JOHN C. SERPA AND CARSON CITY
REGARDING EXISTANCE OF
WASTE AT OLD LANDFILL SITE

THIS AGREEMENT is made and entered into this 12th day of Aug, 2009, by and between John C. Serpa, (hereinafter referred to as "SERPA"), and CARSON CITY, a consolidated municipality and political subdivision of the State of Nevada (hereinafter referred to as "CITY"), as follows:

WHEREAS, CITY owned and operated certain real property located in Carson City, Nevada as a municipal landfill, APNs 08-521-54, 08-521-55, 08-521-89, 08-521-90, 08-522-16, 08-522-17, 08-522-18, 08-531-59 and 08-531-60 and more thoroughly described as set forth in Exhibit A (hereinafter referred to as "Old Landfill Site"); and

WHEREAS, CITY closed the Old Landfill Site in accordance with all applicable laws and regulations in effect at the time of closure; and

WHEREAS, after closing the Old Landfill Site, CITY transferred ownership through sale of the Old Landfill Site to SERPA; and

WHEREAS, SERPA is the current holder of the entire ownership interest in the Old Landfill Site and claims to have suffered certain injuries and damages as a result of the nature of the waste material located on the Old Landfill Site; and

WHEREAS, the waste material was most likely placed onto the Old Landfill Site when the Old Landfill Site was owned by CITY and operated as a municipal landfill; and

WHEREAS, CITY may have potential liability for the cost of the remediation of the waste located on the Old Landfill Site pursuant to the Resource Conservation and Recovery Act (RCRA, 42 U.S.C. §§ 6901 et seq.), the Comprehensive Environmental

Response, Compensation and Liability Act (CERCLA, 42 U.S.C. §§ 9601 et seq.) and Nevada state common law as the CITY was the owner and operator of the Old Landfill Site when the waste was most likely placed onto the Old Landfill Site; and

WHEREAS, the Parties have entered into negotiations and have arrived at a mutually satisfactory resolution of their dispute and any and all potential claims of every character whatsoever which were or could have been brought as a result of the CITY's ownership and operation of the Old Landfill Site, subsequent transfer of ownership to SERPA and the nature of the waste material located on the Old Landfill Site; and

WHEREAS, SERPA and the CITY are desirous of setting forth the specific and complete terms, conditions and provisions of the resolution in this written Agreement;

NOW, THEREFORE, upon execution of this Agreement by SERPA and the CITY, the parties agree and contract as follows:

1. SERPA, in exchange for the considerations set forth herein, hereby does release, acquit and forever discharge CITY and each, every and all of its insurers, agents, employees, trustees, partners, affiliates and representatives, of and from any and all actions, causes of action, whether statutory, contractual, tortuous or otherwise, claims, including claims for attorneys' fees and costs pursuant to any statute, or constitutional violations, counterclaims, demands, costs or expenses, and without limitation to any of the foregoing, any or all claims or causes of action of whatever character existing, arising or resulting from the CITY's ownership and operation of the Old Landfill Site, subsequent transfer of ownership to SERPA and the nature of the waste material located on the Old Landfill Site.

2. CITY, in exchange for the considerations set forth herein, hereby does release, acquit and forever discharge SERPA and each, every and all of its insurers, agents, employees, trustees, partners, affiliates and representatives, of and from any and all actions, causes of action, whether statutory, contractual, tortuous or otherwise, claims, including claims for attorneys' fees and costs pursuant to any statute or constitutional violations, counterclaims, demands, costs or expenses, and without limitation to any of the foregoing, any or all claims or causes of action of whatever character existing, arising or resulting from the CITY's ownership and operation of the Old Landfill Site, subsequent transfer of ownership to SERPA and the nature of the waste material located on the Old Landfill Site.

3. This Agreement is meant to cover any and all claims arising out of the CITY's ownership and operation of the Old Landfill Site, subsequent transfer of ownership to SERPA and the nature of the waste material located on the Old Landfill Site, and is not meant to address claims SERPA has or may have against CITY or claims CITY has or may have against SERPA arising from other activities unrelated to these claims.

4. In exchange for the consideration described in this paragraph and elsewhere in this Agreement, SERPA will:

(a) Remove waste material from the Old Landfill Site, transport that removed
waste material to the Carson City Landfill located at 3600 Flint Drive, Carson City, Nevada (hereinafter referred to as "Carson City Landfill") and deposit that removed waste material at the Carson City Landfill. SERPA further agrees that depositing that removed waste material at the Carson City Landfill shall include all activities customarily

and traditionally related to the final placement of waste material at a landfill including, but not limited to:

- (i) Dumping the removed waste material from the trucks used to transport the waste material to the Carson City Landfill,
- (ii) Moving and placing the removed and dumped waste material in the manner and into the location as directed by the CITY,
- (iii) Compacting the removed, dumped and placed waste material as directed by the CITY once the removed, dumped and placed waste material has been placed and taking any other action as directed by the CITY for the final placement of the removed waste material at the Carson City Landfill, and
- (iv) Providing for the control of dust caused by either the removed waste material or the trucks or other vehicles transporting, dumping, moving, placing or compacting the removed waste material until the removed waste material is compacted into the final placement of the removed waste material and the trucks or other vehicles involved in the transportation, dumping, moving, placing or compacting of the removed waste material have left the premises of the Carson City Landfill. City agrees to provide construction water at the Carson City Landfill in connection with the above, at no cost to Serpa.

(b) Prior to removing, transporting and depositing waste material from the Old Landfill Site pursuant to paragraph (a), submit to the CITY for the approval of the CITY an operational plan for the removal, transport and deposit at the Carson City Landfill of the waste material removed from the Old Landfill Site. Said operational plan shall specifically provide for the transport of the waste material from the Old Landfill Site to

the Carson City Landfill across real property owned by the Bureau of Land Management and City shall be responsible, in accordance with the provisions of Paragraph 5.(a) to obtain permission from the Bureau of Land Management in connection with the transport of said waste material. The operational plan shall further specifically address that SERPA, and the contractor retained by him to remove, transport and deposit the waste material, shall be under no obligation to have the waste material inspected as part of any operational plan, either at the time of the removal of the material from the Old Landfill Site or at the time of the deposit of the material at the Carson City Landfill, the parties previously having been advised that the material from the Old Landfill Site can be appropriately handled as non hazardous, solid waste capable of disposal at the Carson City Landfill.

(c) To the extent permitted by law, indemnify, hold harmless and defend, not excluding the CITY's right to participate, CITY from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of the negligent or willful acts or omissions of SERPA, his contractors, employees, and agents, arising out of the performance or nonperformance of this Agreement. This indemnification obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to CITY. This indemnification obligation is conditioned upon receipt of written notice by SERPA within thirty (30) days of the CITY's notice of actual or pending claim or cause of action. SERPA shall not be liable to hold harmless any attorney's fees and costs for the CITY's chosen right to participate with legal counsel.

(d) Warrant that the work performed by SERPA pursuant to paragraph (a), and any of his employees, contractors or agents, will be done in a workmanlike manner consistent with all relevant industry standards and customs.

5. In exchange for the consideration described in this paragraph and elsewhere in this Agreement, CITY will:

(a) Obtain from the Bureau of Land Management any and all necessary permission and permits to allow transportation of the waste material from the Old Landfill Site to the Carson City Landfill. Serpa shall be consulted in connection with the location of the specific route and shall cooperate with City in connection with the facilitation of City in obtaining said permission and permits.

(b) Waive for SERPA any and all customary fees or charges charged for the depositing of waste material at the Carson City Landfill for any waste material removed from the Old Landfill Site, transported to the Carson City Landfill and deposited at the Carson City Landfill pursuant to this Agreement.

(c) Pay the usual and customary water and sewer connection fees charged pursuant to chapters 12.01 and 12.03 of the Carson City Municipal Code, or its successor ordinance, for 100 water and sewer connections at the rate charged for a single family residence water and sewer connection. The obligation of the CITY to pay any water and sewer connection fee on behalf of SERPA or entities in which he has an interest pursuant to this AGREEMENT shall:

(i) Not include any obligation to pay more than the usual and customary water and sewer connection fees for a single family residence on behalf of SERPA

pursuant to this Agreement for more than a total of 20 water and sewer connections for a single family residence in any calendar year.

(ii) Terminate on December 31, 2024.

In the event the water and sewer connection fees in effect on August 12, 2009 are materially reduced, City and Serpa shall agree to other compensation or credits to be paid or granted to Serpa of comparable value.

6. It is understood that in exchange for the consideration described in this Agreement, this settlement is a compromise of a disputed claim, and that payment is not to be construed as any admission or acknowledgment of liability or responsibility whatsoever on the part of the CITY or any agent, servant, employee or representative thereof hereby released, by each of whom all liability or responsibility is expressly denied. In making this Agreement, it is understood and agreed that the undersigned specifically warrant and represent that in so doing they have been fully advised and represented by legal counsel of their own selection, and are fully familiar with all of the circumstances surrounding the claims set forth in the above Action, and in executing this Agreement they do so relying wholly upon their own judgment, and advice of counsel of their own independent selection, and that they have in no way been influenced whatsoever in making this Agreement by any representation or statement whatsoever, regarding the matters set forth herein, or any other matter made by any person, individual, corporation or any agent, employee, officer or representative thereof, who is hereby released, or by an attorney by them employed.

7. The undersigned further declare that each of them has carefully read this Agreement, and that the contents thereof are fully known by each of them, and that they have signed freely and voluntarily.

8. All parties agree to undertake all appropriate supplemental steps and agree to execute all documents necessary to effectuate this Agreement.

9. It is hereby further agreed and understood that the Agreement herein was made by all parties in good faith.

10. Each party has read and approved the language in this Agreement which shall be construed as a whole according to its fair meaning and not strictly for or against any party hereto. In the event that it should become necessary to interpret this Agreement or any other instrument executed in connection herewith, no adverse presumption shall apply to any party drafting or contributing to the drafting of this Agreement or any other instrument executed in connection therewith.

11. This Agreement effects a settlement of claims which are denied and contested. Nothing in this instrument nor any corollary instrument shall be construed as an admission by any party mentioned herein of any liability of any kind to the other party.

12. This Agreement shall inure to the benefit as well as be binding upon the heirs, successors and assigns of the undersigned.

13. This Agreement shall in all respects be interpreted, enforced and governed by and under the laws of the State of Nevada applicable to instruments, persons, and transactions which have legal contacts and relationships solely within the State of Nevada.

14. The parties executing this Agreement warrant and represent that they are authorized to do so on behalf of their respective parties.

15. Neither 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, earthquakes, floods, winds, or storms. In such an event, the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the Agreement after the intervening cause ceases.

16. The parties hereto agree that in the event of a dispute arising out of this Agreement which the parties cannot resolve, that said dispute shall be submitted for settlement by arbitration in accordance with the Rules of the American Arbitration Association, utilizing the services of a single arbitrator agreed to by the parties or in the event of failure to agree, selected by the American Arbitration Association. The decision of any such arbitrator shall be final and binding upon the parties. The parties further agree that the prevailing party in any such arbitration shall be awarded its reasonable attorney's fees and costs associated with the arbitration. The venue for any arbitration shall be in Carson City, Nevada.

17. This Agreement contains the entire agreement between the parties hereto and the terms of this Agreement are contractual and not a mere recital, and may not be modified, varied or explained except by mutual agreement of the parties in writing attached hereto.

CARSON CITY, NEVADA.

By: _____
Robert Crowell, Mayor

ATTEST: _____
ALAN GLOVER, Clerk/Recorder

JOHN C. SERPA

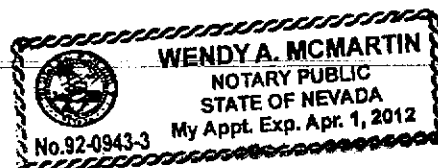
Date: Aug 12, 09

STATE OF NEVADA)
): ss.
~~COUNTY OF~~ CARSON CITY)

On this 12th day of August, 2009, _____, John C.

Serpa, personally appeared before me, a Notary Public, who acknowledged to me that they executed the foregoing Agreement.

Wendy A. McMARTIN
NOTARY PUBLIC





RANKIN ENGINEERING

150 MANZANITA
CARSON CITY, NEVADA 89701
TELEPHONE (702) 882-3983



JIM RANKIN, P.E.

REG. - CAL. - NEV.

LEGAL DESCRIPTION OF OLD CARSON CITY LAND FILL SITE

Parcel No. 1

A certain parcel of land within the SW 1/4 of Section 1, T.15N., R.20E., M.D.B.&M., Carson City, Nevada, particularly described as follows:

Commencing at the S.W. corner of said Section 1, thence N 0°37'40" E along the West line of Section 1 as established by and shown on that Record of Survey recorded in Bk. 4, pg. 833 of the Official Records of Carson City, 1110.99 ft. to a point which lies 50°37'40" W 720.42 ft. from the Southerly R/W line of U.S. Route 50, said point being the same S.W. corner of that parcel conveyed to Bumkowski and Lantrey by deed recorded in Book 86, page 250 of the Official Records of Carson City. Thence N 66°10'59" E parallel to an existing Sierra Pacific Power Co. pole line and running 25 ft. Northwesterly therefrom a distance of 2858.40 ft. to the East line of the S.W. 1/4 of Section 1, thence S 0°36'50" W along said East line of the SW 1/4 of Section 1 2277.07 ft. to the South 1/4 corner of Section 1, thence N. 89°44'28" W along the South line of Section 1, 2602.79 ft. to the point of beginning.

Parcel No. 2

The N 1/2 NW 1/4 Nw 1/4 of Section 12, T.15N., R.20E., M.D.B.&M., Carson City, Nevada.

FILED FOR RECORD
AT THE REQUEST OF

Lawyers Title Ins.

1980 NOV 24 PM 3:20

FILE NO. **399**
PETE SUPERA
CARSON CITY RECORDER
DEPUTY

[Handwritten signature]
\$4.00

CIVIL ENGINEERS
LAND PLANNING • SURVEYS • SUBDIVISIONS • WATER RIGHTS