

Item # 6

**City of Carson City
Agenda Report**

Date Submitted: September 29, 2006

Agenda Date Requested: October 19, 2006

Time Requested: 10 minutes

To: Mayor and Supervisors

From: Public Works Department

Subject Title: Action to approve an agreement by and between Carson City and the Washoe Tribe of Nevada and California whereby Carson City provides sewer operation, maintenance and related services.

Staff Summary: This agreement replaces the one between the above stated parties, dated August 20, 1987. By approving this agreement, Carson City will provide sewer system maintenance, operation, and replacement for the Carson Colony and accept nitrate ion exchange brine waste from the Colony's water treatment system. Additionally, Carson City will provide maintenance and operation of the sewer system for the Stewart Indian Community.

Type of Action Requested: (check one)
☐ Resolution ☐ Ordinance
☒ Formal Action/Motion ☐ Other (Status Report)

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

Recommended Board Action: I move to approve an agreement by and between Carson City and the Washoe Tribe of Nevada and California whereby Carson City provides sewer operation, maintenance and related services.

Discussion: On January 5, 1971, Carson City signed an agreement whereby Carson City became the owner of the Carson Colony Community Sewer Facilities and became responsible for the maintenance, operation, and replacement of that sewer system. The Washoe Tribe of Nevada and California (TRIBE) is also requesting that Carson City continue to provide maintenance and operation of the sewer system for the Stewart Indian Colony. The TRIBE agrees to provide their own water and not require water or water related services from Carson City.

This agreement is to provide services for the agreed upon number of units currently connected to the system. The TRIBE is to provide Carson City with a list of additions or deletions of connections for the purpose of adjusting billing. Annually, representatives of the Tribe and Carson City will review and agree on the number of connections. The TRIBE shall pay to Carson City one collective monthly bill for services, calculated based on 7,000 gallons per unit per month at the current rate in effect, which includes winter averaging.

Fiscal Impact: Approximately \$5,000.00

Funding Source: N/A

Explanation of Impact: Increase in revenues

Alternatives: Do not approve; provide additional direction to staff.

Prepared By: Ken Arnold, Senior Public Works Operations Chief

Reviewed By: Andrew Burnham Date: 10/9/06

Concurrences: W. B. B. B. Date: 10-10-06

Michael T. Singh Date: 10-10-06

Michael B. B. B. Date: 10/10/06

Board Action Taken:

Motion: _____

1) _____	Aye/Nay
2) _____	_____

(Vote Recorded By)

AGREEMENT FOR PROVISION OF SEWER SERVICES

THIS AGREEMENT to supply sewer system services, made and entered into this ____ day of _____, 2006, by and between CARSON CITY, a consolidated municipality of the State of Nevada, hereinafter referred to as "CITY", and the WASHOE TRIBE OF NEVADA AND CALIFORNIA, hereinafter referred to as "TRIBE" and.

WITNESSETH

WHEREAS, the TRIBE is recognized by CITY as a governmental entity with the authority vested in its governing body; and

WHEREAS, NRS 277.180 authorizes any one or more public agencies to contract with any one or more other public agencies to perform any governmental service, activity or undertaking which any of the public agencies entering into the contract is authorized by law to perform; and

WHEREAS, it is deemed that the services of CITY hereinafter set forth are both necessary to TRIBE and in the best interests of both parties; and

WHEREAS, the TRIBE has activated the WASHOE UTILITY MANAGEMENT AUTHORITY, which is responsible for water and sewer services at the Carson Colony and at the Stewart Indian Community; and

WHEREAS, pursuant to the Transfer Agreement between the United States of America, Dresslerville Housing Authority, Carson Indian Colony, and the City of Carson City, executed by Carson City on May 24, 1974, and the Memorandum of Agreement between the United States of America, the Carson Indian Colony, the Dresslerville Housing Authority, and the City of Carson City, signed by Carson City on January 5, 1971, CITY owns the Carson Colony Community Sewer Facilities and is responsible for the maintenance, operation, and replacement of said facilities; and

WHEREAS, water is provided by the TRIBE's own wells and is not delivered from the CITY's water system; and

WHEREAS, both CITY and the TRIBE, recognize the benefits of cooperative action between themselves and are entering into this Agreement on matters of mutual concern between said parties; and

WHEREAS, the TRIBE desires to have sewer services provided at the Carson Indian Colony and at the Stewart Indian Community by CITY.

NOW, THEREFORE, in consideration of the mutual promises herein recited, the parties agree as follows:

1. Definitions:

- a. "CITY" means Carson City, a consolidated municipality of the State of Nevada, its agents, servants and employees.
- b. "TRIBE" means the Washoe Tribe of Nevada and California, its agents, servants and employees.
- c. "AUTHORITY" means the Washoe Utility Management Authority, its agents, servants and employees.
- d. "COLONY" means the Carson Colony.
- e. "STEWART" means the Stewart Indian Community located on Washoe Tribal owned lands at or near the former Stewart Indian School.
- f. "SYSTEM" means the Sanitary Sewer Facility and Services furnished pursuant to said facilities by CITY.
- g. "SEWER CONNECTION FEE" means the usual and customary fee, as set forth in the municipal code, charged by Carson City in making a physical connection to the sewer system for residential and commercial use.

h. "SEWER SERVICE RATES" means the usual and customary fee, as set forth in the municipal code, charged by CITY to customers of CITY for the provision of sewer system services.

i. "Units" means any residential, commercial, or industrial unit seeking a sewer connection.

j. "Community Sewer Facilities" means all sewer mains, manholes, and all necessary appurtenances thereto, but does not include the sewer facilities for individual residential or business connections or the appurtenances thereto.

2. Services provided:

a. AUTHORITY shall provide sewer system service at the COLONY and at STEWART.

b. CITY, shall provide maintenance, operation, and replacement the Community Sewer Facilities located within the COLONY, and the City agrees to accept nitrate ion exchange brine waste from the COLONY into the SYSTEM, provided such release does not exceed 1 gpm.

c. AUTHORITY shall provide maintenance and operation the TRIBE'S Community Sewer Facilities located within STEWART.

3. Units connected to the system:

At the time this Agreement is entered into there are _____ units currently connected to the system. A list of said units, identifying the address of each unit, is attached hereto and incorporated herein as Exhibit "1". TRIBE shall notify CITY of any changes in the number of units receiving sewer system services from the CITY, and shall provide a list of those units either being added to or deleted from the said service. One designee from CITY's Public Works Department and one designee from the AUTHORITY shall meet annually and agree on the

number of units and on the address of each unit receiving sewer system services for billing purposes.

4. **Monthly Billing:** In accordance with the effective monthly sewer service rate schedule, CITY shall submit one collective bill per month for sewer service to the TRIBE who shall be responsible for paying said bill. The bill is calculated based upon 7,000 gallons per unit per month at the current rate, which includes winter averaging. If the AUTHORITY and CITY determine, through water meter readings, that the yearly average is higher or lower than 7,000 gallons per unit per month, the bill will be adjusted accordingly. The AUTHORITY shall thereafter collect, pursuant to its own policies, rates and procedures, from the residents living in the units at the COLONY and STEWART.
5. **Waiver of Service Charge:** CITY shall waive the monthly service charge of \$4.91 per connection and charge the AUTHORITY one service charge per month for STEWART with the collective monthly bill as set forth above. Additionally, taxes or other charges having no application to Indian lands shall not be charged.
6. **Sewer Connections:** To apply for additional sewer capacity from the CITY, the TRIBE shall request additional capacity in writing, provide a sewer system analysis when required under the Carson City Development Standards, provide sewer collection system upgrades when required under the Carson City Development Standards, provide the number of units requested for connection, the address(s) of the units, and a site map identifying the location of the address(s). Upon the CITY's approval of the TRIBE's request, the TRIBE shall pay the Standard Connection Fee and the CITY shall provide sewer service for the additional units, subject to CITY's Growth Management Ordinance.
7. **Rate and Fee Increases:** CITY may increase the monthly Sewer Service Rates and Connection Fees should City's adopted Sewer Service Rates and Connection Fees increase in future Carson City Municipal Code ordinance amendments. The CITY shall not charge TRIBE a

Sewer Service Rate or Connection Fee in excess of the Sewer Service Rate or Connection Fee charged to other like customers.

8. Connection Inspections: Typical field inspections of all hook-ups will be conducted by the CITY and the AUTHORITY bi-annually. In addition, CITY, through its Public Works Department, shall inspect all new *connections and hook-ups* before the connection is buried, with the notification and concurrence of the AUTHORITY.

9. Indemnification: TRIBE shall indemnify, hold harmless and defend, not excluding CITY's right to participate, the CITY 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 TRIBE, its officers, employees, agents, and its members. 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 part or person described in this paragraph.

CITY shall indemnify, hold harmless and defend, not excluding TRIBE's right to participate, the TRIBE 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 CITY, its officers, employees, agents, and its members. 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 part or person described in this paragraph.

10. Limited Liability: The parties do not waive and intend to assert available liability limitations. Contract liability of CITY shall not be subject to punitive damages. Actual contract damages for any CITY breach shall never exceed the amount of funds which have been appropriated for payment under this Agreement, but not yet paid for the fiscal year budget in existence at the time of the breach.

Contract liability of TRIBE shall not be subject to punitive damages. Actual contract damages for any TRIBE breach shall never exceed the amount of funds which have been appropriated for payment under this Agreement, but not yet paid for the fiscal year budget in existence at the time of the breach.

11. Dispute Resolution: If a dispute arises between the parties as to their several rights and obligations under this agreement that are not settled by mutual agreement after thorough discussion, either party may by written notice demand that the dispute be submitted to arbitration. Within twenty (20) days of receipt of said notice, each party shall choose one arbitrator, and, should either fail to do so, the party choosing the first arbitrator may name the second arbitrator, and the two so chosen shall, within ten (10) days of the selection of the second arbitrator, select a third arbitrator who shall arbitrate the dispute. The award of any such arbitrator shall be made within twenty (20) days of hearing the matter and shall be binding upon the parties; judgment upon the award rendered may be entered in any court having jurisdiction.

12. Attorneys Fees: In case either of the parties shall bring suit to recover any monies due hereunder for breach of any covenant of this Agreement, or if any action for any relief, declaratory or otherwise, arising out of this Agreement is commenced, the prevailing party in such action may recover a reasonable attorney's fee which shall be assessed by the Arbitrator as part of the costs of such action.

13. Notices: Any and all formal notices and correspondence, or other process, shall be sent to the parties to this Agreement through the following persons and at the following addresses:

- | | | |
|----|----------------|---|
| 1. | For the CITY: | Public Works Director
3505 Butti Way
Carson City, Nevada 89701 |
| 2. | For the TRIBE: | Secretary/Treasurer
Washoe Tribal Council
919 Highway 395 South
Gardnerville, Nevada 89410 |

3. For the AUTHORITY: Washoe Utility Management Authority Manager
919 Highway 395 South
Gardnerville, Nevada 89410

14. Term: The term of this Agreement shall be from the date of execution hereof and shall terminate (10) ten years from this date.
15. Non-appropriation Clause: The parties expressly agree that this Agreement shall be terminated upon 60 days written notice, if for any reason CITY funding ability to satisfy this Agreement is withdrawn, limited, or impaired.
16. Independent Public Agencies: The parties are associated with each other only for the purposes and to the extent set forth in this agreement and in respect to performance of services 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 the 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.
17. Breach Remedies: Failure of either party to perform any obligation of this Agreement shall be deemed a breach. Except as otherwise provided for by law or this Agreement, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including but not limited to actual damages and to a prevailing party reasonable attorney's fees and costs.
18. Waiver of Breach: Failure to declare a breach or the actual waiver of any particular breach of the Agreement or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

19. **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 nonenforceability of such provision shall not be held to render any other provision or provisions of this Agreement unenforceable.
20. **Assignment:** Neither party shall assign, transfer or delegate any rights, obligations or duties under this Agreement without the prior written consent of the other party.
21. **Proper Authority:** 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 perform the services set forth in this Agreement.
22. **Governing Law:** 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 solely for enforcement of arbitration awards rendered in accordance with Section 11 of this Agreement.
23. **Entire Agreement and Modification:** This Agreement constitutes the entire agreement of the parties and such is 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. 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 and approved by the Carson City District Attorney's Office.
24. **Force Majeure:** Neither party shall be deemed to be in violation of this contract 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 Contract after the intervening cause ceases.

25. More than one original or photocopied counterpart of this agreement may be executed by the parties, in which event each executed original and each executed copy shall be equally enforceable.

IN WITNESS WHEREOF, the parties have hereunto caused their signatures to be subscribed on the day and year first above written.

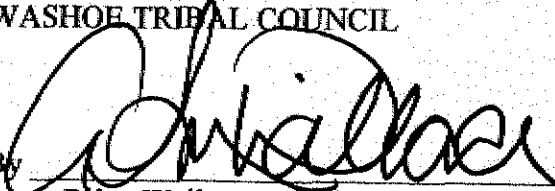
CARSON CITY

By _____
Marv Teixeira, Mayor

ATTEST:

Alan Glover, Clerk Recorder

WASHOE TRIBAL COUNCIL

By 
A. Brian Wallace, Tribal Chairman

ATTEST:


Carolyn Keaton, Secretary/Treasurer