



# STAFF REPORT

**Report To:** Board of Supervisors

**Meeting Date:** September 1, 2016

**Staff Contact:** Nancy Paulson, Chief Financial Officer

**Agenda Title:** For Possible Action: To approve an interlocal contract between Carson City and the Carson City OPEB Trust Fund for the investment of Trust assets on a short-term basis in the Carson City Investment Pool. (NPaulson@Carson.org)

**Staff Summary:** The Creation of the Carson City OPEB Trust Fund was approved by the Board of Supervisors on June 4, 2015. It was created for the purpose of saving funds in order to pay retiree health insurance premiums as well as minimal expenses of administering the Trust.

The Trust Agreement provides that the investment of the assets of the Trust Fund is limited to: (1) the Retirement Benefits Investment Fund (RBIF) provided in NRS 355.220; and (2) any investment authorized for a local government pursuant to NRS 355.170.

It is the intent of the Trust Fund's Board that the majority of the Fund assets will be invested in the RBIF, with the remainder invested in the Carson City Investment Pool (which is invested in accordance with NRS 355.170) for short-term cash flow purposes. The Finance Department will allocate and distribute monthly the Trust's pro-rata share of any gains, losses, and interest earnings in the Carson City Investment Pool, and the Trust will be charged a portion of the administrative costs, including custodial and investment management fees, associated with operation of the Pool.

**Agenda Action:** Formal Action/Motion

**Time Requested:** 5 Minutes

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## **Proposed Motion**

I move to approve the interlocal contract between Carson City and the Carson City OPEB Trust Fund for the investment of Trust Assets on a short-term basis in the Carson City Investment Pool.

## **Board's Strategic Goal**

Efficient Government

## **Previous Action**

June 4, 2015 - Creation of the OPEB Trust Fund

## **Background/Issues & Analysis**

## **Applicable Statute, Code, Policy, Rule or Regulation**

NRS 355.220, NRS 355.170, NRS 277.180 and NRS 287.017

## **Financial Information**

Is there a fiscal impact?  Yes  No

If yes, account name/number:

Is it currently budgeted?  Yes  No

Explanation of Fiscal Impact:

**Alternatives**

**Board Action Taken:**

Motion: \_\_\_\_\_

1) \_\_\_\_\_

2) \_\_\_\_\_

Aye/Nay

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
(Vote Recorded By)

**INTERLOCAL CONTRACT  
BETWEEN CARSON CITY AND CARSON CITY OPEB TRUST FUND FOR THE  
INVESTMENT OF CERTAIN MONIES IN CARSON CITY INVESTMENT POOL**

**THIS CONTRACT** is between the Carson City Other Post-Employment Benefits Trust Fund, a governmental trust pursuant to NRS Chapter 287 (hereinafter “OPEB”, “Trust”), and Carson City, a Nevada Consolidated Municipality (hereinafter “City”).

**WITNESSETH:**

**WHEREAS**, NRS 277.180 provides that any one or more public agencies may 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**, the OPEB Trust was created by the City under the authority of NRS 287.017, and was established to provide the means to fund certain post-retirement benefits provided the employee, benefit plans described in the Trust Agreement for Carson City, Nevada OPEB Trust Fund; and

**WHEREAS**, the members of the Carson City Other Post-Employment Benefits (“OPEB”) Board of Trustees were appointed by the City’s Board of Supervisors; and

**WHEREAS**, NRS 287.017 establishes that assets of the OPEB Trust may, as directed by the Trustees of the OPEB Trust, be invested in any investment which is authorized for a local government pursuant to NRS 355.170;

**WHEREAS**, pursuant to NRS 355.175, the City’s Board of Supervisors has delegated investment authority to the City’s Treasurer (“Treasurer”); and

**WHEREAS**, NRS 355.168 and 355.175 authorize the Treasurer to invest by pooling any money held by the Treasurer for public agencies/local government; and

**WHEREAS**, the Treasurer has been investing OPEB money in the Carson City Investment Pool with Carson City’s knowledge and acquiescence since July 1, 2015 when OPEB was first created; and

**WHEREAS**, the Trust desires to have certain monies it holds, and intended for ultimate deposit to the Nevada Retirement Benefits Investment Fund established pursuant to NRS 355.220 (“RBIF”), temporarily deposited with the Treasurer to be pooled with monies of City and other local governments/agencies for investment in the City’s Investment Pool (“Pool”); and

**WHEREAS**, the City and the Trust desire to enter into a written pooling agreement to set forth the terms and conditions upon which said monies are to be pooled and invested in the Pool.

**NOW THEREFORE**, in consideration of the premises of the mutual covenants herein contained it is agreed as follows:

## **A. CITY RESPONSIBILITIES**

The City agrees to provide the services listed below to the Trust in the same manner as such services are provided to any other city department, agency, district, or other governmental entity.

1. Treasurer shall invest the Trust's monies in such securities as authorized by NRS 355.170 and in accordance with the City's Investment Policy (a copy of which the Trust acknowledges it has received) without compensation.
2. The Finance Department will allocate and distribute monthly the Trust's pro rata share of any gains, losses and interest earnings in the Pool based upon the proportion of the Trust's monies in the Pool to the total value of the Pool and also based on the average cash balance in the Pool over the applicable accounting period. Any related third party and administrative charges shall likewise be allocated to the OPEB Trust. The OPEB Trust acknowledges that City and Treasurer utilize the service of a professional fund manager as well as a statutorily required third party custody agent and that the OPEB Trust's pro rata share of expenses will include the fees to pay these professional managers/agents.
3. Upon the express written request of the OPEB Trust, the Treasurer will deposit the Trust's monies into the Retirement Benefits Investment Fund.
4. The Finance Department will deliver upon request of the OPEB Trustees as soon as practical following the end of each month and of each fiscal year a report revealing the Pool's balances, earnings, losses and pro rata allocations thereof to the OPEB Trust.

## **B. TRUST RESPONSIBILITIES**

1. The Trust will deposit certain monies with Treasurer from time to time for the purpose set forth herein.
2. The Trust will provide specific written instruction to the Treasurer to deposit the Trust's monies held in the Pool in the Retirement Benefits Investment Fund.
3. The Trust shall promptly advise Treasurer in writing of the name(s) and the address(es) of its employee(s)/agent(s) who is/are authorized to advise and instruct Treasurer concerning the matters of this Pooling Agreement. The Trust will also provide to Treasurer specimen signatures of the authorized employee(s)/agent(s). Treasurer shall not suffer any liability whatsoever with respect to any action taken in reliance upon any written instructions or notices which Treasurer shall, in good faith, believe to be genuine and to have been signed by the Trust's authorized employee(s)/agent(s).
4. The OPEB Trust is entitled to make partial withdrawals of its monies out of the Fund provided the OPEB Trust delivers to Treasurer written notice and specific instructions regarding said withdrawals. Treasurer shall comply therewith at the first reasonable opportunity presented by the markets and in consideration of the type of investments used in the Fund.

## **C. MUTUALLY AGREED**

1. This Contract is effective upon execution and may be amended or superseded by written interlocal Contract duly noticed and approved at a regular meeting of the governing bodies of both parties.
2. This Contract may be terminated by either party upon thirty days (30) written notice or upon the enactment of any law inconsistent herewith.

#### **D. MISCELLANEOUS**

1. The Parties agree that each will be responsible for any liability or loss that may be incurred as a result of any claim, demand, cost, or judgement made against that party arising from any negligent act or negligent failure to act by any of that party's employees, agents, or servants in connection with the performance of obligations assumed pursuant to this Contract.
2. The Trust agrees that it is investing at its own risk and that past performances is no guarantee for future performance. The Trust knowingly and intentionally waives any right to assert all claims, suits, actions, costs, losses, penalties, taxes and liabilities, including court costs and attorney's fees, which are alleged to arise from or are related to investment performance under this Contract.
3. This Contract is binding upon and inures to the benefit of the Parties and their respective successors and assigns.
4. This Contract constitutes the entire understanding and agreement of the Parties with respect to the subject matter hereof, and supersedes and replaces all prior understandings and agreements, whether verbal or in writing, with respect to the subject matter hereof.
5. This Contract may not be modified, amended, assigned, transferred, nor may any rights, obligations or duties hereunder be delegated in any respect without the written consent of the other party hereto.
6. In the event either party brings any legal action or other proceedings with respect to the breach, interpretation, or enforcement of this Contract, or with respect to any dispute relating to any transaction covered by this Contract, the parties in such action or proceeding hereby agree that neither party is entitled to an award of attorney's fees whether or not a party is deemed to be a prevailing party and that reimbursement to the prevailing party or parties therein for all reasonable costs of litigation will be in accordance with Nevada law as may be determined by the Court.
7. This Interlocal Contract is made in, and shall be governed, enforced, and construed under the laws of Carson City and the State of Nevada. The Parties consent to the personal jurisdiction of any state court in Carson City, Nevada and to the service of process by any means authorized by any such state court under the laws of the State of Nevada. The exclusive venue of any action, proceeding or counterclaim arising out of or in connection with this Contract shall be Carson City, Nevada.
8. No delay or omission by either party in exercising any right or power hereunder shall impair any such right or power or be construed to be a waiver thereof, unless this Contract specifies a time limit for the exercise of such right or power or unless such waiver is set forth in a written instrument duly executed by the person granting such waiver. A waiver of any person of any of the covenants, conditions, or agreements hereof to be performed by any other party shall not be construed as a waiver of any succeeding breach of the same or any other covenants, agreement, restrictions or conditions hereof.

9. All notices, demands or other communications required or permitted to be given in connection with this Contract, shall be in writing, and shall be deemed delivered when personally delivered to a party (by personal delivery to an officer or authorized representative of an agency party) or, if mailed, three (3) business days after deposit in the United States mail, postage prepaid, certified or registered mail, addressed to the Parties as follows:

Carson City Finance  
Attn: Sheri Russell, Deputy Chief Financial Officer  
201 N. Carson Street, Suite 3  
Carson City, NV 89701

Carson City Nevada OPEB Trust Fund  
Chair, OPEB Board of Trustees  
201 N. Carson Street, Suite 3  
Carson City, NV 89701

10. Either party may change its designated representative or its address for notice by written notice given in accordance with the foregoing provisions.
11. The Contract may be executed in one or more counterpart copies, and each of which so executed, irrespective of the date of execution and delivery, shall be deemed to be an original, and all such counterparts together shall constitute one and the same instrument. This Contract may be recorded.

**THIS INTERLOCAL CONTRACT** is effective upon the date the last signing party signs this Contract (“Effective Date”).

IN WITNESS WHEREOF, the Parties have executed this Agreement..

CARSON CITY:

\_\_\_\_\_  
BY: Robert L. Crowell, Mayor  
Board of Supervisors

\_\_\_\_\_  
Date

CARSON CITY NEVADA OPEB TRUST FUND:

\_\_\_\_\_  
OPEB Trustee, Chair

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Sue Merriwether, Clerk Recorder

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

\_\_\_\_\_  
Jason Woodberry,  
Carson City District Attorney

\_\_\_\_\_  
Date