

Item # 8-2A

**City of Carson City
Agenda Report**

Date Submitted: 05/06/10

Agenda Date Requested: 05/20/2010

Time Requested: Consent Agenda

To: Board of Supervisors

From: Jennifer Schultz, Human Resources Director

Subject Title: Action to adopt Resolution No. _____, A Resolution Adopting and Approving a contract between the State of Nevada, acting by and through its State of Nevada Employees' Deferred Compensation Committee and Carson City, a Consolidated Municipality and political subdivision of the State of Nevada, on Behalf of the Carson City Employees, to participate in the deferred compensation program and other matters properly related thereto.

Staff Summary: This action is to approve the interlocal agreement between The Deferred Compensation Committee and Carson City.

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 Adopt Resolution No. _____, a Resolution Adopting and Approving an Agreement between the State of Nevada, acting by and through its Deferred Compensation Committee and Carson City, a Consolidated Municipality and political subdivision of the State of Nevada, on Behalf of Carson City Employees to participate in the deferred compensation program and other matters properly related thereto.

Explanation for Recommended Board Action: Carson City employees currently participate in the State of Nevada's Employees Deferred Compensation Plan. This agreement is a continuation of this voluntary tax deferred retirement plan.

Applicable Statue, Code, Policy, Rule or Regulation: NRS 277.180

Fiscal Impact: N/A

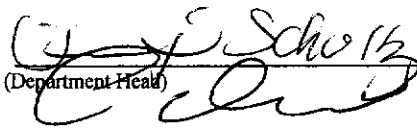
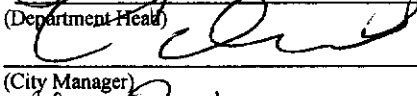
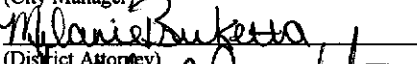
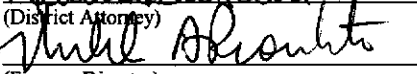
Explanation of Impact: N/A

Funding Source: N/A

Alternatives: Do Not Adopt.

Supporting Material: Resolution & Contract

Prepared By: Zee McClintock, Benefits Manager

Reviewed By: 
(Department Head)

(City Manager)

(District Attorney)

(Finance Director)

Date: 5-7-10

Date: 5/11/10

Date: 5.11.10

Date: 5/11/10

Board Action Taken:

Motion: _____

1) _____

Aye/Nay

2) _____

(Vote Recorded By)

INTERLOCAL CONTRACT BETWEEN PUBLIC AGENCIES

A Contract Between the State of Nevada
Acting By and Through Its

State of Nevada Employees' Deferred Compensation Committee
(Committee)
1207 S. Carson Street, Suite E
Carson City, NV 89701

and

Carson City
(Political Subdivision)
201 N. Carson St., #2
Carson City, NV 89706

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;

WHEREAS, NRS 287.250 to 287.370, inclusive, authorize the Committee to create a program for deferred compensation, and whereas NRS 287.381 to 287.480, inclusive, authorize the political subdivision to create a program for deferred compensation;

WHEREAS, The Committee has created a deferred compensation program and pursuant to that program has entered into contracts with two investment providers, the Hartford and ING, with whom participants in the program may invest their deferred compensation;

WHEREAS, The investment options and fee and rate structure of the two investment providers in their contracts with the Committee are considered by the Political Subdivision to be generally more favorable than that which would be available to the Political Subdivision if the Political Subdivision were to independently contract with the investment providers;

WHEREAS, the Political Subdivision desires to join the program created by the Committee in order to obtain the more favorable investment options, fees and rates;

WHEREAS, the Committee desires to have the Political Subdivision participate in the Committee's program subject to the same terms and conditions as apply to state employee participants, except for limitations expressly provided below;

WHEREAS, the Committee has secured the consent of the investment providers to enroll the Political Subdivision's employees as participants in the Committee's program subject to the same terms and conditions as apply to state employee participants, except for limitations expressly provided below;

NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

1. REQUIRED APPROVAL. This Contract shall not become effective until and unless approved by appropriate official action of the governing body of each party.
2. DEFINITIONS. "State" means the State of Nevada and any state agency identified herein (the Committee), its officers, employees and immune contractors as defined in NRS 41.0307.

Unless the context otherwise requires, "program" is synonymous with "plan" and "state of Nevada deferred compensation committee plan".

3. CONTRACT TERM. This Contract shall be effective upon approval through December 31, 2012, unless sooner terminated by either party as set forth in this Contract.

4. TERMINATION. This Contract may be terminated without cause by either party prior to the date set forth in paragraph (3), provided that a termination shall not be effective until 30 days after a party has served written notice upon the other party. This Contract may be terminated by mutual consent of both parties or unilaterally by either party without consent of the other. The parties expressly agree that this Contract shall be terminated immediately if for any reason federal and/or State Legislature funding ability to satisfy this Contract is withdrawn, limited, or impaired. Benefits accrued by participating employees of the Political Subdivision upon termination of participation in the plan shall remain in the plan until such are otherwise eligible for distribution under the terms of the plan.

5. NOTICE. All notices or other communications required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by telephonic facsimile with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address set forth above.

6. INCORPORATED DOCUMENTS. The parties agree that the services to be performed shall be specifically described; this Contract incorporates the following attachments in descending order of constructive precedence:

ATTACHMENT A: Independent contract between the State of Nevada Employees' Deferred Compensation Committee and Hartford Life Insurance Company, effective January 1, 2008 through December 31, 2012.

ATTACHMENT B: Independent contract between the State of Nevada Employees' Deferred Compensation Committee and ING Life Insurance and Annuity Company, effective January 1, 2008 through December 31, 2012.

ATTACHMENT C: The State of Nevada Deferred Compensation Committee Plan.

7. ASSENT.

a. The parties agree that the terms and conditions listed on incorporated attachments of this Contract are also specifically a part of this Contract and are limited only by their respective order of precedence and any limitations expressly provided.

b. Except as agreed otherwise in paragraphs 3) and 4), the Political Subdivision agrees:

1) to participate in the Committee's deferred compensation program subject to all contract terms and conditions as set forth between the State of Nevada Employees' Deferred Compensation Committee and Hartford Life Insurance Company, 200 Hopmeadow Street, Simsbury, Connecticut 06089, effective January 1, 2008 through December 31, 2012, and as set forth between the State of Nevada Employees' Deferred Compensation Committee and ING Life Insurance and Annuity Company, One Orange Way, Windsor, Connecticut 06096-4774, effective January 1, 2008 through December 31, 2012;

- 2) to be bound by all current and any future State of Nevada Employees' Deferred Compensation Committee "Plan Documents", and "Investment Policies and Procedures";
 - 3) to cooperate with the investment providers and to provide all necessary and appropriate administrative services to enable Political Subdivision employees to participate in the Committee's deferred compensation program; and
 - 4) to provide an appeal process to Political Subdivision employees for denials of requests by Political Subdivision employees to make unforeseen emergency withdrawals from the program and to abide by any guidelines established by the Committee for this purpose.
- c. The Political subdivision agrees that it has made its decision to participate in the program based on its own independent analysis and that neither the State of Nevada nor the Committee are fiduciaries with regard to its decision to participate in the program.
 - d. The Committee agrees to authorize the two investment providers to enroll employees of the Political Subdivision on terms and conditions consistent with this agreement. Execution of this agreement by the Committee constitutes such authorization.
8. INSPECTION & AUDIT.
- a. Books and Records. Each party agrees to keep and maintain under general accepted accounting principles full, true and complete records, agreements, books, and documents as are necessary to fully disclose to the State or United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with all state and federal regulations and statutes.
 - b. Inspection & Audit. Each party agrees that the relevant books, records (written, electronic, computer related or otherwise), including but not limited to relevant accounting procedures and practices of the party, financial statements and supporting documentation, and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location where such records may be found, with or without notice by the State Auditor, Employment Security, the Department of Administration, Budget Division, the Nevada State Attorney General's Office or its Fraud Control Units, the State Legislative Auditor, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives.
 - c. Period of Retention. All books, records, reports, and statements relevant to this Contract must be retained a minimum three years and for five years if any federal funds are used in this Contract. The retention period runs from the date of termination of this Contract. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.
9. BREACH; REMEDIES. Failure of either party to perform any obligation of this Contract shall be deemed a breach. Except as otherwise provided for by law or this Contract, 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 attorneys' fees and costs. It is specifically agreed that reasonable attorneys' fees shall include without limitation \$125 per hour for State-employed attorneys.

10. 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. Actual damages for any State breach shall never exceed the amount of funds which have been appropriated for payment under this Contract, but not yet paid, for the fiscal year budget in existence at the time of the breach.

11. 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.

12. INDEMNIFICATION.

- a. To the fullest extent of limited liability as set forth in paragraph (10) of this Contract, 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 party or person 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.

13. INDEPENDENT PUBLIC AGENCIES. The parties are associated with each other only for the purposes and to the extent set forth in this Contract, and in respect to performance of services pursuant to this Contract, each party is and shall be a public agency separate and distinct from the other party and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract 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.

14. WAIVER OF BREACH. Failure to declare a breach or the actual waiver of any particular breach of the Contract 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.

15. SEVERABILITY. If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract 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 Contract unenforceable.

16. ASSIGNMENT. Neither party shall assign, transfer or delegate any rights, obligations or duties under this Contract without the prior written consent of the other party.

17. OWNERSHIP OF PROPRIETARY INFORMATION. Unless otherwise provided by law any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code (which is intended to be consideration under this Contract), or any other documents or drawings, prepared or in the course of preparation by either party in performance of its obligations under this Contract shall be the joint property of both parties.

18. 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.

19. 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 Contract.

20. PROPER AUTHORITY. The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract and that the parties are authorized by law to perform the services set forth in paragraph (6).

21. GOVERNING LAW; JURISDICTION. This Contract 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 Contract.

22. ENTIRE AGREEMENT AND MODIFICATION. This Contract and its integrated attachment(s) constitute the entire agreement of the parties and such are 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 Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistent with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto, approved by the Office of the Attorney General.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby.

Carson City

BY: _____
Signature Title Date

Attorney for Political subdivision (optional) Date

State of Nevada Employees' Deferred Compensation Program

BY: _____
Tara Hagan Executive Officer Date

Approved as to form by:

Deputy Attorney General for Attorney General Date

Amended 10-22-03

RESOLUTION NO. _____

A RESOLUTION ADOPTING AND APPROVING AN INTERLOCAL CONTRACT BETWEEN THE STATE OF NEVADA, ACTING BY AND THROUGH ITS STATE OF NEVADA EMPLOYEES' DEFERRED COMPENSATION COMMITTEE AND CARSON CITY, A CONSOLIDATED MUNICIPALITY AND POLITICAL SUBDIVISION OF THE STATE OF NEVADA, ON BEHALF OF THE CARSON CITY EMPLOYEES, TO PARTICIPATE IN THE DEFERRED COMPENSATION PROGRAM AND OTHER MATTERS PROPERLY RELATED THERETO.

WHEREAS, pursuant to NRS 277.180, any one or more public agencies may enter into interlocal contracts with any one or more other public agencies for the performance of any governmental service, activity or undertaking which any of the public agencies entering into the contract is authorized by law to perform; and

WHEREAS, Carson City is a political subdivision of the State of Nevada; and

WHEREAS, NRS 277.180 provides that every such contract must be ratified by appropriate official action of the governing body of each party to the contract as a condition precedent to its entry into force; and

WHEREAS, NRS 277.180 also provides that every such contract must set forth fully the purposes, powers, rights, objectives and responsibilities of the contracting parties; and

WHEREAS, the parties to the Interlocal Contract to participate in the deferred compensation program, desire to adopt and approve such contract as required by NRS 277.180. A copy of the contract is attached to this Resolution as Exhibit "A," and

NOW, THEREFORE, BE IT RESOLVED that the terms and conditions of the Interlocal Contract to participate in the deferred compensation program, is hereby adopted and approved; and

BE IT FURTHER RESOLVED that the Interlocal Contract to participate in the deferred compensation program, 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 the State of Nevada Employees' Deferred Compensation Committee.

Upon motion by Supervisor _____, seconded by
Supervisor _____, the foregoing Resolution was passed and
adopted this ____ day of May, 2010 by the following vote.

VOTE: AYES:

NAYS:

ABSENT:

ABTAIN:

Robert L. Crowell, Mayor
Carson City, Nevada

ATTEST

Alan Glover, Clerk
Carson City, Nevada