

**City of Carson City
Agenda Report**

Date Submitted: December 3, 2010 **Agenda Date Requested:** December 16, 2010
Time Requested: Consent Agenda

To: Mayor and Supervisors

From: Public Works Department

Subject Title: Action to adopt Resolution No. _____ a resolution approving and authorizing the Mayor to sign an Interlocal Agreement Relating to Disposal of Processed Wastewater Solids, between Carson City and Lyon County.
(Andy Burnham)

Staff Summary: Lyon County needs to dispose of approximately 4,000 to 5,000 tons of processed wastewater solids every 4 to 5 years. This Resolution approving the agreement will allow Lyon County to dispose of the solids at the Carson City Sanitary Landfill. This is a cost saving to Lyon County and Lyon County will reimburse Carson City \$10.00 per ton for the processed wastewater solids disposed at the landfill which is the estimated direct cost to the City.

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

Does This Action Require A Business Impact Statement: Yes No

Recommended Board Action: I move to adopt Resolution No. _____ a resolution approving and authorizing the Mayor to sign an Interlocal Agreement Relating to Disposal of Processed Wastewater Solids, between Carson City and Lyon County.

Explanation of Recommended Board Action: Under this Interlocal Agreement, Lyon County will dispose of approximately 4,000 to 5,000 tons of processed wastewater solids every 4 to 5 years at the landfill and pay Carson City \$10.00 per ton for disposal. Prior to disposal at the landfill, Lyon County must provide documentation that the solids meet the Federal and State NDEP regulatory requirements for landfill disposal. The amounts brought in overtime will not disrupt activities at the landfill and will have little or minimal impact on the landfill's life span.

Fiscal Impact: Direct costs to the City will be reimbursed.

Funding Source: Minor revenue to off-set costs.


Explanation of Impact: N/A

Alternatives: Do Not Approve

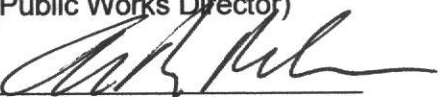
Supporting Material:

1. Resolution (Exhibit A)
2. Interlocal Agreement (Exhibit B)

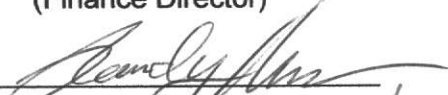
Prepared By: Ken Arnold, Deputy Public Works Director

Reviewed By: 
(Public Works Director)

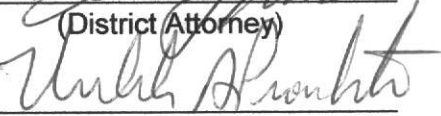
Date: 12/7/10

Concurrences: 
(Finance Director)

Date: 12-7-10


(District Attorney)

Date: 12/7/10


(City Manager)

Date: 12/7/10

Board Action Taken:

Motion: _____ 1) _____ Aye/Nay
2) _____ _____

(Vote Recorded By)

RESOLUTION NO. _____

**RESOLUTION ADOPTING AND APPROVING AN INTERLOCAL AGREEMENT
RELATING TO DISPOSAL OF PROCESSED WASTEWATER SOLIDS**

WHEREAS, any two or more public agencies may enter into cooperative agreements for the performance of any governmental function pursuant to NRS 277.080 to 277.180, inclusive; and

WHEREAS, NRS 277.110 provides that every such agreement must be by formal resolution or ordinance of the governing body of each public agency included and must be spread at large upon the minutes, or attached in full thereto as an exhibit, of each governing body; and

WHEREAS, the parties to the Interlocal Agreement Relating to Disposal of Processed Wastewater Solids, Carson City and Lyon County, desire to adopt and approve such agreement as required by NRS 277.110. A copy of the agreement is attached to this Resolution as Exhibit "A;" and

WHEREAS, both parties to the Interlocal Agreement Relating to Disposal of Processed Wastewater Solids, Carson City and Lyon County, are public agencies as defined by NRS 277.100; and

NOW, THEREFORE, BE IT RESOLVED that the terms and conditions of the Interlocal Agreement Relating to Disposal of Processed Wastewater Solids, Carson City and Lyon County, are hereby adopted and approved; and

BE IT FURTHER RESOLVED that the Interlocal Agreement Relating to Disposal of Processed Wastewater Solids, Carson City and Lyon County, 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 Lyon County.

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

AYES: _____ NAYS: _____

ABSENT: _____ ABSTAIN: _____

Resolution No. _____

Resolution for Interlocal Agreement Related to Disposal of Processed Wastewater Solids,
Between Carson City and Lyon County; continued,

Robert L. Crowell, Mayor
Carson City, Nevada

ATTEST:

Alan Glover, Clerk
Carson City, Nevada

INTERLOCAL AGREEMENT RELATING TO WASTEWATER SERVICE
Agreement For the Disposal of Wastewater Solids

This INTERLOCAL AGREEMENT is entered into this ___ day of _____, 2010, by and between Lyon County, a political subdivision of the State of Nevada (hereinafter referred to as "LYON") and Carson City, a consolidated municipality and political subdivision of the State of Nevada (hereinafter referred to as "CARSON CITY") and hereinafter sometimes referred to individually as "Party" and collectively as "Parties".

RECITALS

1. NRS 277.100(1) defines a public agency eligible to enter into an interlocal contract to include counties and consolidated municipalities, and CARSON CITY and LYON are public agencies under that definition.

2. NRS 277.180(1) 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 contracting agencies is authorized by law to perform.

3. CARSON CITY and LYON are authorized by the laws of Nevada to construct, improve, maintain, and provide capital improvements and related services for the treatment of wastewater which includes generation of solids from the treatment process.

4. LYON provides wastewater services through Lyon County Utilities to certain areas of Lyon County currently located in the developed area surrounding Dayton, Mound House and Silver Springs Nevada. LYON owns, maintains and operates several wastewater treatment facilities which generate solids requiring disposal.

5. CARSON CITY provides wastewater services to the residents of Carson City, Nevada. CARSON CITY owns, maintains and operates a wastewater treatment facility which generates solids requiring disposal.

6. CARSON CITY disposes of its generated wastewater solids at its landfill located at 3600 Flint Drive in eastern Carson City which is just west of Lyon County.

7. LYON desires to also dispose of its generated wastewater solids at CARSON CITY's landfill.

CARSON CITY is permitted by the State of Nevada Division of Environmental Protection to receive wastewater solids at its landfill .

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

1. REQUIRED APPROVAL. This AGREEMENT shall not become effective until and unless approved by appropriate official action of the governing body of each Party.

2. TERM OF AGREEMENT. The term of this agreement shall be for an initial ten (10) years commencing on the effective date. The agreement may be renewed thereafter for successive ten (10) year terms as long as both Parties to the agreement concur in writing.

3. CARSON CITY'S RESPONSIBILITIES

a) CARSON CITY will accept wastewater solids from LYON which meet Federal and State of Nevada Division of Environmental Protection requirements for disposal at the CARSON CITY landfill.

b) CARSON CITY staff will coordinate with LYON staff related to operational issues for disposal of LYON wastewater solids. CARSON CITY staff may restrict the volume or amount of wastewater solids received over time at the landfill to allow for incorporation of the wastewater solids into the overall waste stream of the landfill in order to accommodate the wastewater solids within the daily operation of the landfill.

c) CARSON CITY will submit an invoice to LYON for the cost of disposing of wastewater solids the month immediately following the month during which the wastewater solids were accepted for disposal at the CARSON CITY landfill.

4. LYON'S RESPONSIBILITIES

a) LYON agrees to pay CARSON CITY the operating cost to dispose of wastewater solids from LYON. Those costs have been jointly determined by the parties and shall be set at \$10.00 per ton delivered to the CARSON CITY landfill for a twelve month period after both governing boards approve this Agreement.

b) LYON agrees to pay CARSON CITY no later than 30 days after receiving the invoice pursuant to subparagraph (c) of paragraph 3 of this AGREEMENT.

5. MUTUAL RESPONSIBILITIES

a) Each party agrees that the staff of LYON and the staff of CARSON CITY will mutually develop the operational guidelines of this AGREEMENT and will address such issues as notification, operating parameters, timeframes, amount or volume of receipt of wastewater solids over time, and such other matters necessary as determined by staff.

b). The costs noted in 4a above will be evaluated for appropriateness on an annual basis by the staff of each county. If a cost difference is determined any revised reimbursement cost must be approved by the governing boards of both bodies.

6. NOTICES

a) All written notices under this Contract shall be delivered to the following officials at the addresses stated:

Michael Workman, Utilities Director
P.O. Box 1699, Dayton, NV 89403
Mworkman@lyon-county.org

Andrew Burnham, Public Works Director
3505 Butti Way, Carson City, NV 89701
Aburnham@ci.carson-city.nv.us

b) All emergency notifications will be delivered via telephone to the respective 24 hour Dispatch Centers below:

LYON – Lyon County Dispatch Center at (775) 463-6620
CARSON CITY – Carson City Dispatch Center at (775) 887-2007

7. 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.

8. INDEMNIFICATION.

a) To the fullest extent of limited liability as set forth in paragraph (6) 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.

9. ARBITRATION OF DISPUTES

Any controversy or claim arising out of or relating to this Agreement, or the claimed breach or interpretation thereof, including, but not limited to, any impasse reached by the parties after negotiating in good faith, shall be resolved by binding arbitration, subject to the following provisions:

a) The party seeking arbitration (the "Demanding Party") shall deliver a written notice of demand to resolve dispute (the "Demand") to the other party (the "Non-Demanding Party"). The Demand shall include a brief statement of the Demanding

Party's claim or controversy, the amount or other nature thereof, and the name of the proposed arbitrator to decide the dispute. Within ten (10) days after receipt of the Demand, the Non-Demanding Party against whom the Demand is made shall deliver a written response to the Demanding Party. Such response shall include a short and plain statement of the Non-Demanding Party's defenses to the claim and shall also state whether such party agrees to the arbitrator chosen by the Demanding Party. If the Non-Demanding Party fails to agree to the arbitrator chosen by the Demanding Party, then such Non-Demanding Party shall state in its response the name of a proposed arbitrator chosen by such Non-Demanding Party as the proposed arbitrator. If the Non-Demanding Party fails to deliver its written response to the Demanding Party within ten (10) days after receipt of the demand, or if the Non-Demanding Party fails to select in its written response a proposed arbitrator, then the arbitrator selected by the Demanding Party shall serve as the arbitrator. An arbitrator shall not be employed by any party or any affiliate of any party, directly, indirectly or as an agent, except in connection with an arbitration proceeding. Any person appointed as an arbitrator shall be knowledgeable and experienced in the matter(s) sought to be arbitrated.

b) The locale of any arbitration shall be in Reno, Nevada.

c) If the Non-Demanding Party selects a proposed arbitrator different than the arbitrator selected by the Demanding Party, and such selection is indicated by the Non-Demanding Party in its written response to the Demanding Party made within ten (10) days after receipt of the demand, then the parties shall, for ten (10) days after the Demanding Party's receipt of the Non-Demanding Party's written response to the demand, attempt to agree upon an arbitrator. If the parties cannot agree upon an arbitrator within such ten (10) day period, then upon request of the Demanding Party, a single neutral arbitrator shall be appointed by the two arbitrators selected by the parties.

d) The arbitrator shall apply the substantive laws of the State of Nevada and the Rules of Evidence of Nevada, the arbitration shall be conducted in accordance with the Nevada Arbitration Rules as set forth in Subpart B of the Nevada Rules Governing Alternative Dispute Resolution and the arbitrator's decision shall only be subject to review as set forth in Chapter 38 of the Nevada Revised Statutes.

e) The costs of resolution (including reporter costs) shall be split between the parties pro rata, provided, however, that such costs, along with all other costs and expenses, including attorneys' fees, shall be subject to award, in full or in part, by the arbitrator, in his or her discretion, to the prevailing party. Unless the arbitrator so awards attorneys' fees, each party shall be responsible for its own attorneys' fees.

f) To the extent possible, the arbitration hearings shall be conducted on consecutive days, excluding Saturdays, Sundays and holidays, until the completion of the hearings.

g) In connection with any arbitration proceedings commenced hereunder, any party shall have the right to join any third parties in such proceedings in order to resolve any other disputes, the facts of which are related to the matters submitted for arbitration hereunder.

h) The arbitrator shall render his or her decision(s) concerning the substantive issues in dispute in writing. The written decision shall be sent to the parties no later than thirty (30) days following the last hearing date.

i) All hearings shall be concluded within ninety (90) days from the day the arbitrator is selected or appointed, unless the arbitrator demands that this deadline is impractical.

j) If any of the provisions relating to arbitration are not adhered to or complied with, either party may petition the Second Judicial District Court of the State of Nevada for appropriate relief.

k) The award of the arbitrator may be entered as a judgment in a court of competent jurisdiction. All arbitration conducted under this Article shall be in accordance with the Nevada Arbitration Rules as set forth in Subpart B of the Nevada Rules Governing Alternative Dispute Resolution and Chapter 38 of the Nevada Revised Statutes. To the extent permitted by law, compliance with this Article is a condition precedent to the commencement by any party of a judicial proceeding arising out of any dispute relating directly or indirectly to this Agreement in accordance with the Nevada Arbitration Rules as set forth in Subpart B of the Nevada Rules Governing Alternative Dispute Resolution and Chapter 38 of the Nevada Revised Statutes, and any judgment or award rendered by the arbitrator shall be final, binding and unappealable, and judgment may be entered by any court having jurisdiction thereof. The parties hereto intend that the provisions to arbitrate set forth herein be valid, enforceable and irrevocable. In his or her award the arbitrator shall allocate, in his discretion, among the parties to the arbitration at all costs of the arbitration, including the fees and expenses of the arbitrator and reasonable attorney's fees, costs and expert witness expense of the parties. The parties hereto agree to comply with any award made in any such arbitration proceedings that has become final in accordance with the Nevada law and agree to the entry of a judgment in any jurisdiction upon any award rendered in such proceedings becoming final. The arbitrator shall be entitled, if appropriate, to award any remedy in such proceedings, including monetary damages, specific performance, temporary restraining order, preliminary injunction, injunction and all other forms of legal and equitable relief.

10. FORCE MAJEURE: No party to this Agreement shall be considered to be in default in the performance of any obligations under this Agreement when a failure of performance shall be due to uncontrollable forces. The Term "uncontrollable force" shall mean any cause beyond the control of the Party unable to perform such obligation, including but not limited to failure or threat of failure of facilities, flood, earthquake, storm, fire, lighting, and other natural catastrophes, epidemic, war, civil disturbance or disobedience, strike, labor dispute, labor or material shortage, sabotage, restraint by order of a court or regulatory body or agency of competent jurisdiction, and any non-action by, or failure to obtain the necessary authorization or approvals from, a Federal governmental agency or authority, which by the exercise of due diligence and foresight such Party could not reasonably have been expected to overcome. Nothing contained herein shall be construed to require a Party to settle any strike or labor dispute in which it is involved or accede to claims or conditions which it believes to be adverse to its business or other interests.

11. 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.

12. TERMINATION. This Contract may be terminated only by the mutual consent and agreement of the Parties. If a Party is in breach of a portion of this Agreement then the Party alleging such breach shall provide written notice to the other Party specifying the nature of the violation and allowing thirty (30) days for the party in breach to correct the violation. If the breach is not corrected within the thirty (30) day period then the matter shall be submitted to binding arbitration as set forth in Paragraph 9 hereof and the Parties agree to be bound by the determination of the Arbitrator.

13. 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.

14. 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.

15. PROPER AUTHORITY

a) The parties hereto present 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 this Contract.

b) The parties are associated with each other only for the purpose and to the extent set forth in this Contract, and in respect to performance of services and payment of costs 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.

16. 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.

17. ENTIRE CONTRACT AND MODIFICATION. This Contract constitutes the entire Contract of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other Contracts 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.

WITNESS WHEREOF, the parties hereto have caused this Contract to be executed as of the day and year first above written.

LYON COUNTY BOARD
OF COUNTY COMMISSIONERS

CARSON CITY BOARD
OF SUPERVISORS

By: _____
Chairman

By: _____
Mayor

Date: _____

Date: _____

Approved as to form:

Approved as to form:

By: _____
District Attorney

By: _____
District Attorney

ATTEST:

ATTEST:

By: _____
County Clerk

By: _____
Clerk Recorder