



STAFF REPORT

Report To: Board of Supervisors **Meeting Date:** June 4, 2020

Staff Contact: Darren Schulz, Public Works Director

Agenda Title: For Possible Action: Discussion and possible action regarding, and authorization for the Mayor to sign, an Interlocal Agreement relating to the disposal of processed wastewater solids between Carson City and Lyon County, to be effective December 16, 2020 through June 30, 2030 and generating an estimated \$48,000 to \$96,000 per year in revenue for the Carson City Sanitary Landfill. (Darren Schulz, Dschulz@carson.org; Rick Cooley, RCooley@carson.org)

Staff Summary: Lyon County owns and operates several wastewater treatment plants serving the citizens of Lyon County. The wastewater treatment plants generate and Lyon County needs to dispose of approximately 2,000 to 4,000 tons of processed wastewater solids annually. Lyon County and Carson City currently have an agreement permitting Lyon County to dispose of the solids at the Carson City Sanitary Landfill and this proposed agreement will continue that arrangement. Under the new agreement, Lyon County will reimburse Carson City \$24.00 per ton, the current in-county fee for municipal solid waste, for the processed wastewater solids disposed at the landfill.

Agenda Action: Formal Action / Motion **Time Requested:** 10 minutes

Proposed Motion

I move to authorize the Mayor to execute the Interlocal Agreement.

Board's Strategic Goal

Sustainable Infrastructure

Previous Action

None

Background/Issues & Analysis

A current 10-year interlocal agreement between Lyon County and Carson City for the disposal of processed wastewater solids is set to expire on 12/16/2020. This agreement is being brought before the Board of Supervisors at this time for fiscal year budgeting purposes. The current agreement sets the fee of \$10 per ton. This new agreement increases the fee per ton to \$24 per ton, which is the current in-county fee for municipal solid waste and allows for the fee to increase as the landfill fees increase over time. Either party may terminate the agreement at the end of any given fiscal year by providing one year's advance notice.

Lyon County will dispose of approximately 2,000 to 4,000 tons of processed wastewater solids annually at the landfill. 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 over time will not disrupt activities at the landfill and will have little or minimal impact on the landfill's life span.

Applicable Statute, Code, Policy, Rule or Regulation

NRS 277.110 and 277.180

Financial Information

Is there a fiscal impact? Yes

If yes, account name/number: Landfill Revenue Account - 1013980-444010

Is it currently budgeted? No

Explanation of Fiscal Impact: Direct costs to the City will be off-set and minor revenue will be generated from tipping fees.

Alternatives

Do not approve the Interlocal Agreement and provide alternate direction.

Attachments:

[LYON_CARSON_INTERLOCAL_Sludge_Acceptance_041820_FINAL_clean \(2\).doc](#)

Board Action Taken:

Motion: _____

1) _____

2) _____

Aye/Nay

(Vote Recorded By)

INTERLOCAL AGREEMENT
RELATING TO THE DISPOSAL OF WASTEWATER SOLIDS

This INTERLOCAL AGREEMENT is entered into 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.

8. 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 begin on December 16, 2020, and end June 30, 2030.

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. The cost shall initially be set at \$24.00 per ton for the wastewater solids delivered to the CARSON CITY landfill. The cost shall thereafter be automatically adjusted to the approved In-County MSW rate for the Carson City landfill upon any change of that rate.

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

5. MUTUAL RESPONSIBILITIES. 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.

6. NOTICES

a) All written notices under this AGREEMENT shall be delivered to the following officials at the addresses stated via email and via U.S. Mail:

Lyon County Utilities Director
P.O. Box 1699, Dayton, NV 89403
lyonutilities@lyon-county.org

Darren Schulz, Public Works Director
3505 Butti Way, Carson City, NV 89701
dschulz@carson.org

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

Either Party may from time to time, by notice in writing served upon the other as described above, designate a different address to which or a different person to whose attention all such notices or demands are thereafter to be addressed.

7. LIMITED LIABILITY. The parties will not waive and intend to assert all available NRS Chapter 41 liability limitations in all cases. AGREEMENT liability of both parties shall not be subject to liquidated damages or punitive damages. The Parties agree that, in the event one Party is awarded attorney's fees under this AGREEMENT for any reason, the rate applied to recoverable attorney's fees shall not exceed the rate of \$125 per hour.

8. INDEMNIFICATION.

a) To the fullest extent of NRS Chapter 41 liability limitations, 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 fourteen (14) 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 fourteen (14) 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, or at another location that the Parties mutually agree upon.

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 fourteen (14) days after receipt of the demand, then the parties shall, for fourteen (14) 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 fourteen (14) 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) Unless otherwise indicated by the text of this Paragraph 9, periods stated in days exclude the day of the event that triggers the period, but counts every day, including intermediate Saturdays, Sundays, and legal holidays, and includes the last day of the period, except if the last day is a Saturday, Sunday, or legal holiday, in which case the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

l) 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, lightning, 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 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 non-enforceability of such provision shall not be held to render any other provision or provisions of this AGREEMENT unenforceable.

12. TERMINATION; BREACH. The Parties may mutually agree to terminate this AGREEMENT at any time through a signed writing. Either Party may, unilaterally and without cause, terminate this AGREEMENT after June 30 of any given year by giving the other Party one (1) year advance, written notice. 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 and the Parties agree to be bound by the determination of the Arbitrator. Notwithstanding any other termination provision, the Parties acknowledge that annual appropriation of funds will be required in order for CARSON CITY to continue to operate the landfill and for LYON to continue to pay the costs associated with this AGREEMENT. In the event that CARSON CITY or LYON fail to appropriate money to continue their obligations under this AGREEMENT, the obligations of both Parties are extinguished.

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 AGREEMENT.

15. PROPER AUTHORITY

a) The parties hereto present 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.

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

16. GOVERNING LAW: JURISDICTION. 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 for enforcement of this AGREEMENT.

17. NO THIRD-PARTY BENEFICIARIES. It is specifically agreed between the Parties that none of the provisions this AGREEMENT create in the public or any member thereof a third-party beneficiary, or grant anyone not a Party to this AGREEMENT any right to maintain a suit for personal injuries or property damage under the terms or provisions of this AGREEMENT.

18. COUNTERPARTS. This AGREEMENT may be executed in counterparts, each of which shall be deemed to be an original but all of which, taken together, shall constitute one and the same AGREEMENT.

19. ENTIRE AGREEMENT AND MODIFICATION. This AGREEMENT constitutes 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 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. Unless otherwise expressly authorized by 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.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed as of the day and year of the last required signature set forth below.

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: _____
Deputy District Attorney

ATTEST:

ATTEST:

By: _____
County Clerk

By: _____
Clerk-Recorder

Date: _____

Date: _____