

Item # 11A

City of Carson City
Agenda Report

Date Submitted: 2/8/2008

Agenda Date Requested: 2/21/2008
Time Requested: 5 Minutes

To: Mayor and Supervisors

From: Public Works Department

Subject Title: Action to adopt Resolution No. _____, a resolution approving and authorizing the Mayor to sign the Interlocal Agreement Relating to Water Service Between Lyon County and Carson City.

Staff Summary: Adoption of the Resolution approving this agreement will provide greater flexibility and availability within each county's water system for mutual assistance in emergencies as well as provide more effective and efficient water services, management of water rights, and will promote and protect health and welfare of residents in both counties.

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 adopt Resolution No. _____ a resolution approving and authorizing the Mayor to sign the Interlocal Agreement Relating to Water Service Between Lyon County and Carson City.

Explanation of Recommended Board Action: The agreement between Carson City and Lyon County, if approved by this Resolution, and approved by Lyon County, is integral to and the final step for implementation of Carson City's Development Agreement with Vidler Water Company, Inc. which was approved on December 20, 2007. This agreement benefits both counties by allowing better utilization and management of available water resources. Additional water available to Carson City through the agreement will allow additional time to implement the Water Capital Improvement Program.

Fiscal Impact: No immediate impact. Cost of \$50 per acre foot lease rate and/or \$0.48/1,000 gallons received. Revenue of \$0.48/1,000 gallons delivered to Lyon County.

Funding Source: Water Fund

Explanation of Impact: Minimal cost for purchase /lease of water from Lyon County or minimal revenue for delivery to Lyon County.

Alternatives: Do Not Approve

Supporting Material:

1. Interlocal Agreement Relating to Water Service Between Lyon County and Carson City.(Exhibit A)

Prepared By: Ken Arnold, Public Works Operations Manager

Reviewed By:  Andrew Burnham Date: 2/12/08

Concurrences:  Date: 2/12/08

Melanie Baykotte
Mark Burnham Date: 2-12-08

Board Action Taken:

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

(Vote Recorded By)

INTERLOCAL AGREEMENT RELATING TO WATER SERVICE

This INTERLOCAL AGREEMENT is entered into this ____ day of _____, 2008, 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, provide capital improvements and related services for the delivery of water including, but not limited to, the purchase and administration of water rights.

4. LYON provides retail water service through Lyon County Utilities to certain areas of Lyon County currently located in the developed area surrounding Dayton and Moundhouse, Nevada within its service district boundaries. LYON owns, maintains and operates its own distribution system for the delivery of water to its retail service area including daily storage and fire protection capacity.

5. CARSON CITY provides retail water service to the residents of Carson City, Nevada within its service district boundaries. CARSON CITY owns, maintains and operates its own distribution system for the delivery of water to its retail service area including daily storage and fire protection capacity.

6. LYON has entered into a Development Agreement with Vidler Water Company for the design and construction of certain improvements to the LYON water utility system which will interconnect with improvements to be constructed by Vidler Water Company pursuant to an Improvement Agreement with CARSON CITY.

7. The Parties by entering into this INTERLOCAL AGREEMENT RELATING TO WATER SERVICE will each enjoy greater flexibility and availability within their water systems for mutual assistance in times of emergency and will be able to provide more effective and efficient water services, management of water rights and promotion and protection of the health, comfort, safety, life, welfare and property of the inhabitants of the CARSON CITY and LYON.

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.** This AGREEMENT relates to the providing of water resources by and between two utilities which shall be utilized for retail service to residents and customers within the respective service areas. The nature of this AGREEMENT and the underlying water resources requires that the Parties exercise their best efforts to keep this AGREEMENT in place as long as the customers of both communities are dependent on the interconnection of the utility systems for the purposes set forth herein.

In light of the foregoing, this AGREEMENT shall become effective upon approval by the respective governing bodies and shall remain in effect for an initial period ending on December 31, 2012. This AGREEMENT shall be renewed for successive five-year periods, subject to renegotiation of terms acceptable to the Parties, provided that a notice of cancellation has not been delivered in accordance with Paragraph 18 at least twelve months prior to the expiration date of the initial period or any subsequent five year extension. Any Party desiring to modify the terms of this AGREEMENT for the next successive term shall deliver written notice of such proposed modification to the other Party and the Parties shall negotiate in good faith regarding the proposed modification and will work to review and adjust terms as necessary to meet the current operating demands and conditions of the respective Parties. In the event that the Parties are unable to agree as to the modified terms, the Parties may agree to terminate this AGREEMENT or submit the issues to binding arbitration in accordance with Paragraph 15 hereof.

Once LYON or CARSON CITY commence the purchase of water under this Agreement, all water resource commitments shall remain under the terms and conditions of this contract and any operating parameters agreed to subsequent to the date of approval of this AGREEMENT.

3. **CARSON CITY'S RESPONSIBILITIES**

a) CARSON CITY will make its best effort in good faith to deliver through the interconnection of CARSON CITY's and LYON's water delivery system up to the agreed upon quantity of water, that is banked by LYON on behalf of Vidler Water Company, as available in accordance with the Alpine Decree and all applicable Federal, State and local laws and regulations governing the delivery of water and produced from the well or wells and related infrastructure provided by Vidler in accordance with the Improvement Agreement between Carson City and Vidler, dated December 20,2007.

b) CARSON CITY agrees to be bound by the terms of this Agreement developed within the parameters of the terms of Paragraph 5 of this AGREEMENT including the obligation to pay any and all expenses related to the operation of the LYON water delivery system as those expenses are related to the delivery of water from LYON to CARSON CITY pursuant to this AGREEMENT.

4. LYON'S RESPONSIBILITIES

a) LYON has approved the Agreements for construction by VILDER, pursuant to the terms of the Development Agreement between LYON and VIDLER dated November 29, 2007, of an interconnection between the LYON's water delivery system and the CARSON CITY's water delivery system located at the Carson City/Lyon County line.

b) LYON agrees to be bound by the terms of this Agreement developed pursuant to the terms of Paragraph 5 of this Contract including, without limitation, the obligation to pay any and all expenses related to the operation of the CARSON CITY's water delivery system as those expenses are related to the delivery of water pursuant to Paragraph 3 (a) of this AGREEMENT.

5. MUTUAL RESPONSIBILITIES

a) Each party agrees that any and all duties required of either party pursuant to the terms of this Contract are contingent upon each party entering into separate AGREEMENTS with VIDLER for the purpose of constructing infrastructure to allow for delivering water banked by LYON for Vidler through CARSON CITY's water delivery system.

b) 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 for exchange of water, reimbursement of operating costs, and such other matters necessary as determined by staff.

c) Each party agrees that, in the event of any failure of any existing or future infrastructure of either party's water delivery system or of the water delivery system constructed by VILDER pursuant to the terms of the IMPROVEMENT AGREEMENT between CARSON CITY and VIDLER dated December 20, 2007 that is required to meet the obligations of this AGREEMENT, which interrupts, restricts or impairs the delivery of water, necessary repairs, rehabilitation or replacements will be addressed promptly and in conformance with all applicable industry and water utility standards.

d) Each party agrees that any and all well(s) or any other infrastructure located within LYON is owned and operated by LYON and any and all well(s) or any other infrastructure located within the CARSON CITY is owned and operated by the CARSON CITY.

e) The Parties agrees that each respective Party shall be responsible for the maintenance repair or reconstruction of any and all well(s) or any other infrastructure owned by that respective Party.

f) That all water being provided by CARSON CITY to LYON or from LYON to CARSON CITY shall be in compliance with all Federal and State water quality standards,

g) Each Party agrees that the terms and conditions of the Interlocal Contract between LYON and CARSON CITY dated January 31, 2007 are not amended or affected by the terms of this Contract.

h) To promote the efficient use of water resources which are the subject of this Agreement, both Parties agree to adopt and enforce conservation programs consistent with their respective community master plans.

i) To meet not less than every six months to review the operations of the respective utilities and to discuss operational issues and forecasting for future activities that may impact the operations of the interconnection or the costs and expenses associated therewith. The Parties agree to be proactive in dealing with both operational and financial aspects of their respective operations and the associated impacts on the interconnection.

6. POINT OF DELIVERY

a). LYON and CARSON CITY agree that the point of delivery for transferring water from either LYON to CARSON CITY or from CARSON CITY to LYON shall be the meter interconnection facilities identified in Exhibit "A" attached hereto and generally described as the Highway 50 water tank.

7. METHODOLOGY AND RATES

a) LYON and CARSON CITY agree that the methodology for charging reimbursement costs for water delivered through this Agreement are based on the inclusion of the following items which include, but are not limited to, operation and maintenance costs for pumps, motors, pipelines, water treatment equipment, including replacement costs, based on a 50-year depreciation and costs for chemicals, power, and labor.

b) Based on the methodology and costing criteria in subsection a. above, the operating and maintenance cost to deliver water to Lyon County from Carson City or from Lyon County to Carson City, has been jointly determined by the parties and shall be set at \$0.48 per thousand (1,000) gallons delivered for a 12-month period after both governing boards approve this Agreement.

c) Water leased from Lyon County by Carson City on an acre-foot basis will be at an annual lease rate of \$50.00 per acre-foot. If the leased water originates in Lyon County, payment shall also include the annual operating rate of \$0.48 per thousand (1,000) gallons delivered, as provided in sub-section b above.

d) The costs in subsections a, b, and c, above will be evaluated for appropriateness on an annual basis by the Operators of each county. If a cost difference is determined, any revised rates must be approved by the governing boards of both bodies. The Parties agree to revisit the rates not less than every five (5) years to insure that the rates accurately reflect the costs to the respective utilities.

e) Billing for the cost to deliver water and water lease fees will be calculated and billed on December 1 of each year, beginning December 1, 2008.

8. 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 regarding delivery of water or water quality 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

9. 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.

10. INDEMNIFICATION.

a) To the fullest extent of limited liability as set forth in paragraph (5) 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.

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.

11. OWNERSHIP OF FACILITIES. Each entity maintains ownership of its own facilities and no transfer of ownership is implied as part of this Contract.

12. REASONABLE CARE. Each party shall exercise reasonable care in the performance of its obligations and rights under this Contract to ensure that the other parties' facilities and operations are not impaired or damaged.

13. PROTECTION OF A PARTY'S SEPARATE FACILITIES. If any occurrence or conditions during operation or maintenance of the interconnection threaten the physical integrity or operational capability of a party's separate facilities, upon notification to the other party the affected party may stop operation or maintenance of the interconnection and/or take any action that the affected party determines to be necessary to protect its own separate facilities. Any party may remove part of the interconnection if required, for emergency repair of its separate facilities provided that such affected interconnection facilities are restored as soon as possible by the removing party.

14. RESPONSIBILITY FOR DAMAGES TO FACILITIES. If damages occur to interconnection facilities during the operation of interconnection under this Contract, then responsibility to pay for any necessary repairs of said damaged facilities shall be as follows:

a) If damages occur when the interconnection is being operated within the Operating Standards (said Operating Standards to be agreed upon in writing by the parties subsequent to execution of this Contract as part of the design of the interconnection) then responsibility to pay for any necessary repairs to said damaged facilities shall be allocated based on ownership.

b) If damages occur when the interconnection is being maintained and/or is being operated beyond the Operating Standards, then responsibility to pay for any necessary repairs to said damaged facilities shall be allocated to the party responsible for the nonstandard operations.

c) If damages occur to either Party's separate facilities during operation of the interconnection facilities under this Contract, then responsibility to pay for any necessary repairs to the damaged separate facilities shall be as follows:

d) If damages occur when the interconnection is being operated within the Operating Standards, then responsibility to pay for any necessary repairs to said damaged separate facilities shall be allocated to the owner of said damaged facilities.

e) If damages occur when the interconnection is being maintained and/or is operated beyond the Operating Standards, then responsibility to pay for any necessary repairs to said damaged separate facilities shall be allocated to the party responsible for nonstandard operations.

15. **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.

16. **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.

17. **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.

18. **TERMINATION**. This Contract deals with water resources and the providing of utility service by two retail community water utility systems. As such, the public interest is not served by the termination by one or the Parties to this Agreement absent an opportunity to resolve the alleged breach and/or have its' position on the claimed breach heard before a qualified arbitrator.

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 15 hereof and the Parties agree to be bound by the determination of the Arbitrator.

19. **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.

20. 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.

21. 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.

22. 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.

23. 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

By: _____
Chairman

Date: _____

Approved as to form:

By: _____
George Benesch

ATTEST:

By: _____
County Clerk

CARSON CITY BOARD
OF SUPERVISORS

By: _____
Mayor

Date: _____

Approved as to form:

By: _____
District Attorney

ATTEST:

By: _____
Clerk Recorder