

Item # 18 B

**City of Carson City
Agenda Report**

Date Submitted: December 23, 2009

Agenda Date Requested: January 7, 2010

Time Requested: 15 minutes

To: Mayor and Supervisors

From: Public Works

Subject Title: Action to adopt Resolution No. _____ a resolution approving and authorizing the Mayor to sign an Interlocal Agreement by and between the Town of Minden and Carson City for the sale and transfer of water rights and the delivery of water. (Burnham)

Staff Summary: This agreement provides for the purchase of 1,250 acre feet of water rights from the Town of Minden and the transfer of up to 2,000 acre-feet of Carson City water rights to the Town of Minden and for all of the above water rights to be pumped from Minden wells and delivered to Carson City via the "Douglas County and Carson City Water Line Inertie Project".

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

Does This Action Require A Business Impact Statement: () Yes (XXX) No

Recommended Board Action: I move adopt Resolution No. _____ a resolution approving and authorizing the Mayor to sign an Interlocal Agreement by and between the Town of Minden and Carson City for the sale and transfer of water rights and the delivery of water.

Explanation for Recommended Board Action: This agreement provides for the purchase of 1,250 acre feet of water rights from the Town of Minden and the transfer of up to 2,000 acre-feet of Carson City water rights to the Town of Minden and for all of the above water rights to be pumped from Minden wells and delivered to Carson City via the "Douglas County and Carson City Water Line Inertie Project".

The cost to purchase the water rights is \$8,000 per acre-foot, which is the appraised value. This water will be used to complete the water rights necessary for the final build-out of the City based on the current master plan. It additionally allows the City to acquire water rights that produce actual water rather than just paper rights which has been a problem with water rights in the Eagle Valley. The City within Eagle Valley is quite restricted in its ability to obtain water in an efficient cost effective manner.

This agreement accompanies the Douglas County Intertie agreement.

Applicable Statue, Code, Policy, Rule or Regulation: N/A

Fiscal Impact: \$10 million

Explanation of Impact: Will require bonding to support the capital costs and water rate increase.

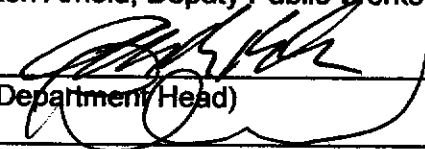
Funding Source: Water Fund

Alternatives: Do not approve and direct staff otherwise.

Supporting Material: Interlocal Agreement between the Town of Minden and Carson City.

Prepared By: Ken Arnold, Deputy Public Works Director - Operations

Reviewed By:


(Department Head)

Date: 12/29/09


(City Manager)

Date: 12/29/09


(District Attorney)

Date: 12-29-09


(Finance Director)

Date: 12-29-09

Board Action Taken:

Motion: _____

- 1) _____
- 2) _____

Aye/Nay

(Vote Recorded By)

RESOLUTION NO. _____

**RESOLUTION APPROVING AN INTERLOCAL AGREEMENT BY AND
BETWEEN THE TOWN OF MINDEN AND CARSON CITY FOR THE SALE
AND TRANSFER OF WATER RIGHTS AND THE DELIVERY OF WATER**

WHEREAS, any two or more political subdivisions of the State of Nevada may enter into cooperative agreements for the performance of any governmental function, including the exchange of property and facilities and the payment of money, pursuant to NRS 277.045; and

WHEREAS, Carson City and the Town of Minden are both political subdivisions of the State of Nevada; and

WHEREAS, NRS 277.045 provides that every such agreement must be by formal resolution or ordinance of the governing body of each political subdivision 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 by and between the Town of Minden and Carson City for the sale and transfer of water rights and the delivery of water desire to adopt and approve such agreement as required by NRS 277.045. A copy of the agreement is attached to this Resolution as Exhibit "A"; and

WHEREAS, NRS 244.281 authorizes the sale of real property to another governmental entity if the sale restricts the use of the real property to a public use and the Board of Supervisors finds that the sale will be in the best interests of Carson City; and

NOW, THEREFORE, BE IT RESOLVED, that the terms and conditions of the Interlocal Agreement by and between the Town of Minden and Carson City for the sale and transfer of water rights and the delivery of water are hereby adopted and approved; and

BE IT FURTHER RESOLVED, that the Carson City Board of Supervisors finds that the Interlocal Agreement by and between the Town of Minden and Carson City for the sale and transfer of water rights and the delivery of water will be in the best interests of Carson City; and

BE IT FURTHER RESOLVED, that the Interlocal Agreement by and between the Town of Minden and Carson City for the sale and transfer of water rights and the delivery of water 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 Town of Minden.

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: _____

Robert L. Crowell, Mayor
Carson City, Nevada

ATTEST:

Alan Glover, Clerk
Carson City, Nevada

**INTERLOCAL AGREEMENT BY AND BETWEEN CARSON CITY
AND THE TOWN OF MINDEN FOR THE SALE AND
TRANSFER OF WATER RIGHTS AND THE DELIVERY OF WATER**

This INTERLOCAL AGREEMENT ("Agreement") is entered into this ____ day of January, 2010, by and between the Town of Minden, an unincorporated town and political subdivision of the State of Nevada (hereinafter referred to as "MINDEN") 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

WHEREAS, 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 MINDEN are public agencies under that definition;

WHEREAS, 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; and

WHEREAS, CARSON CITY and MINDEN are authorized by the laws of Nevada to construct, improve, maintain, and provide capital improvements and related services for the delivery of water; and

WHEREAS, CARSON CITY is authorized pursuant to NRS 244.275 to purchase any real or personal property necessary for the use of CARSON CITY; and

WHEREAS, MINDEN owns or controls title to 1,250 acre-feet of Carson Valley ground water with a priority date of not later than December 6, 1971 ("Minden water rights"); and

WHEREAS, the Minden water rights are free of any lien or encumbrance; and

WHEREAS, CARSON CITY wishes to purchase a beneficial interest in the Minden water rights; and

WHEREAS, CARSON CITY wishes to purchase the beneficial interest in the Minden water rights after determining that purchasing the beneficial interest in the Minden water rights is necessary for the use of CARSON CITY in order to operate in its municipal water system; and

WHEREAS, MINDEN owns, operates and maintains a distribution system for the delivery of water to its retail service area including well production and fire protection capacity ("Minden distribution system"); and

WHEREAS, 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 ("Carson distribution system"); and

WHEREAS, an intertie project, the subject of an Interlocal Agreement by and between CARSON CITY and Douglas County to connect the Carson distribution system to the water distribution system operated by Douglas County ("Douglas distribution system"), will have the effect of connecting the Minden distribution system and the Carson distribution system through the Douglas distribution system, allowing for the delivery of water from the Minden distribution system to the Carson distribution system; and

WHEREAS, the Parties wish to delivery the Minden water rights, and any additional water rights CARSON CITY may have in the Carson Valley to the Carson distribution system through the intertie project.

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

1. REQUIRED APPROVAL AND CONTINGENCIES.

a) This Agreement will only become effective after it is approved by the governing body of each Party, and upon the effective dates of 6 agreements integral to the Project: 1. "INTERLOCAL AGREEMENT RELATING TO WATER SERVICE" between Douglas County and Indian Hills General Improvement District (IHGID); 2. "INTERLOCAL AGREEMENT RELATING TO WATER SERVICE" between Douglas County and CARSON CITY; 3. "INTERLOCAL CONTRACT between Douglas County and the Carson Water Subconservancy District Addressing Funding for the Construction of Phase 1 of the North Douglas County and Carson City Water Line Intertie;" 4. INTERLOCAL AGREEMENT TO PROVIDE WHOLESALE WATER SERVICE between Douglas County and MINDEN; 5. INTERLOCAL AGREEMENT RELATING TO THE PURCHASE OF WATER between IHGID and MINDEN; 6. "INTERLOCAL CONTRACT between CARSON CITY and the Carson Water Subconservancy District Addressing Funding for the Construction of Phase 1 of the North Douglas County and Carson City Water Line Intertie." Unless this Agreement is terminated as provided herein, it will run perpetually from its effective date.

b) This Agreement shall not become effective until CARSON CITY has issued bonds backed by the revenue generated from the operation of the Carson distribution system in the amount of SIXTEEN MILLION DOLLARS (\$16,000,000.00) for the purpose of paying for CARSON CITY's obligations under this Agreement.

2. TERM OF AGREEMENT. This Agreement is to provide a means of delivering and sharing water resources between the Parties. The nature of the Agreement requires that the Parties use their best efforts to keep it in place as long as customers of both entities are dependent on the interconnection of the Parties' water systems.

Unless this Agreement is terminated as provided herein, it will run perpetually from its effective date.

3. PURCHASE OF MINDEN WATER RIGHTS

a) MINDEN agrees to sell a beneficiary interest in the Minden water rights to CARSON CITY.

b) The Parties agree that the reasonable total value of the beneficiary interest in the Minden water rights is TEN MILLION DOLLARS (\$10,000,000.00), or the equivalent of EIGHT THOUSAND DOLLARS (\$8,000) per acre foot for the Minden water rights. CARSON CITY agrees to pay MINDEN as follows:

- 1) Within 30 days of issuance by CARSON CITY of bonds backed by the revenue generated from the operation of the Carson distribution system, TWO MILLION DOLLARS (\$2,000,000.00).
- 2) Within 30 days of issuance by CARSON CITY of bonds backed by the revenue generated from the operation of the Carson distribution system or upon the issuance of a permit or other documentation permanently establishing the beneficiary interest of CARSON CITY in the Minden water rights, whichever occurs later, EIGHT MILLION DOLLARS (\$8,000,000.00).

c) The Parties agree that MINDEN shall hold the Minden water rights in trust for the sole benefit of CARSON CITY.

d) MINDEN agrees to prepare and file any and all necessary documents with the State of Nevada Division of Water Resources, State Engineer's Office, Department of Conservation and Natural Resources, (hereinafter referred as "State Engineer") required to secure the beneficiary interest of CARSON CITY to the Minden water rights. CARSON CITY agrees to cooperate and assist in the preparation and filing of the necessary documents to the extent reasonably required by MINDEN. CARSON CITY agrees to pay any and all fees incident to the expense of the securing the beneficiary interest of CARSON CITY in the Minden water rights.

e) MINDEN agrees to prepare and file the application and any supporting map which may be required by the State Engineer to change the point of diversion, place of use, and manner of use of the Minden water rights, as required by Chapter 533 and 534 of Nevada Revised Statutes. CARSON CITY agrees to pay any and all costs incident to filing the application(s) to change the point of diversion, preparation of the supporting map, and possible administrative hearing and judicial appeals. CARSON CITY and MINDEN agree to execute the necessary documents and, to the extent necessary, meet any and all conditions or requirements of the State Engineer.

f) MINDEN agrees to prepare and file any and all documents required by the State Engineer for the ongoing protection and security of the beneficiary interest of CARSON CITY in the Minden water rights for so long as CARSON CITY hold the beneficiary interest in the Minden water rights, including, but not limited to, submission of proof of beneficial use of the Minden water rights when so ever required by the State Engineer. CARSON CITY agrees to pay any and all fees incident to the expense of protecting and securing the beneficiary interest of CARSON CITY in the Minden water rights.

g) Unless otherwise agreed to in writing by both Parties, in the event the State Engineer denies any of the documents or applications required pursuant to paragraphs d) and e) of this Section, this Agreement shall terminate without further liability on behalf of either party hereto and any money paid by CARSON CITY to MINDEN shall be refunded within ten (10) days.

4. TRANSFER OF WATER RIGHTS OWNED BY CARSON CITY TO MINDEN

a) The Parties agree that CARSON CITY may transfer up to 2,000 acre-feet of water rights owned by CARSON CITY and located in the Carson Valley ("Carson water rights") to MINDEN.

b) The Parties agree that MINDEN shall hold the Carson water rights in trust for the sole benefit of CARSON CITY.

c) CARSON CITY agrees to prepare and file the necessary documents with the State Engineer required for the transfer and assignment of the Carson water rights to MINDEN. MINDEN agrees to cooperate and assist in the preparation and filing of the necessary documents to the extent reasonably required by CARSON CITY. CARSON CITY agrees to pay any and all fees incident to the expense of the transfer of the Carson water rights to MINDEN.

d) MINDEN agrees to prepare and file the application and any supporting map which may be required by the State Engineer to change the point of diversion, place of use, and manner of use of the Carson water rights, as required by Chapter 533 and 534 of Nevada Revised Statutes. CARSON CITY agrees to pay any and all costs incident to filing the application(s) to change the point of diversion, preparation of the supporting map, and possible administrative hearing and judicial appeals. CARSON CITY and MINDEN agree to execute the necessary documents and, to the extent necessary, meet any and all conditions or requirements of the State Engineer.

e) MINDEN agrees to prepare and file any and all documents required by the State Engineer for the ongoing protection and security of the beneficiary interest of CARSON CITY in the Carson water rights for so long as CARSON CITY holds the beneficiary interest in the Carson water rights, including, but not limited to, submission of proof of beneficial use of the Carson water rights when so ever required by the State Engineer. CARSON CITY agrees to pay any and all fees incident to the expense of protecting and securing the beneficiary interest of CARSON CITY in the Carson water rights.

5. FUTURE PURCHASE AND DELIVERY OF WATER RIGHTS

MINDEN and CARSON CITY agree that if, in the future, CARSON CITY wishes to purchase water rights from MINDEN, in addition to the Minden water rights, the Parties shall meet and negotiate in good faith for the purchase of additional water rights owned by MINDEN and the delivery of the water produced by those additional water rights from MINDEN to CARSON CITY.

6. DELIVERY OF WATER BETWEEN MINDEN DISTRIBUTION SYSTEM AND CARSON DISTRIBUTION SYSTEM

a) After the beneficial interest in the Minden water rights purchased by CARSON CITY pursuant to section 3 of this Agreement, MINDEN agrees to deliver the water generated by those water rights to the point of delivery.

b) After the Carson water rights have been transferred to MINDEN pursuant to section 4 of this Agreement, MINDEN agrees to deliver the water generated by those water rights to the point of delivery.

c) The Parties agree that the point of delivery for the water to be delivered pursuant to this section shall be inside the MINDEN town boundary line. It is the point of delivery at which MINDEN will deliver and Douglas County will receive the water to be delivered to the Carson distribution system through the interconnection of the Douglas distribution system and the Carson distribution system.

d) CARSON CITY agrees to pay the expenses including, but not limited to, operation and maintenance costs for pumps, wells, well houses, motors, pipelines, tanks, and water treatment, if any, incurred by MINDEN for the delivery of the water pursuant to this section. The initial charges are set forth in the schedule of rates attached as Exhibit A to this Agreement.

e) The quality of water delivered by MINDEN to the point of delivery must meet or exceed all current and future applicable federal and state standards for public drinking water supplies.

f) In the event that MINDEN delivers more water to CARSON CITY, on an annual basis, than the water rights in which CARSON CITY has a beneficial interest in, based on the water rights dedicated to MINDEN by CARSON CITY, MINDEN will charge CARSON CITY an annual fee per excess acre-foot utilized of 0.25% of the current water right sale price as set by the Town of Minden Board. This additional water usage may not be utilized for future development or growth. Douglas County will share its measurements of the water used by CARSON CITY by way of the Project with MINDEN to facilitate implementation of this provision and billings in accordance herewith.

g) If this Agreement is terminated or the delivery of the water rights pursuant to this section becomes impractical or impossible, the Parties agree that:

- 1) MINDEN shall prepare and file any and all necessary documents with the State of Nevada Division of Water Resources, State Engineer's Office, Department of Conservation and Natural Resources, (hereinafter referred as "State Engineer") required to transfer or assign the Minden water rights and the Carson water rights to CARSON CITY. CARSON CITY agrees to cooperate and assist in the preparation and filing of the necessary documents to the extent reasonably required by MINDEN. CARSON CITY agrees to pay any and all fees incident to the expense of the transfer of the Minden water rights and the Carson water rights to CARSON CITY.

- 2) CARSON CITY shall prepare and file an application and any supporting map which may be required by the State Engineer to change the point of diversion, place of use, and manner of use of the Minden water rights and the Carson water rights, as required by Chapter 533 and 534 of Nevada Revised Statutes. CARSON CITY agrees to pay any and all costs incident to filing the application(s) to change the point of diversion, preparation of the supporting map, and possible administrative hearing and judicial appeals. CARSON CITY and MINDEN agree to execute the necessary documents and, to the extent necessary, meet any and all conditions or requirements of the State Engineer.

7. MUTUAL RESPONSIBILITIES

a) Each Party agrees that the staff of MINDEN 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 and depreciation costs, and such other matters necessary as determined by staff.

b) Each Party agrees that in the event of any failure of any existing or future infrastructure of either Party's distribution system, the Douglas distribution system or the intertie of the Carson distribution system and the Douglas distribution system, which interrupts, restricts or impairs the delivery of water, necessary repairs, rehabilitation or replacements, such failure will be addressed promptly and in conformance with all applicable industry and water utility standards.

c) Each Party agrees that any and all well(s) and infrastructure located within existing MINDEN water systems are owned and operated by MINDEN and any and all well(s) and infrastructure located within the existing CARSON CITY water systems are owned and operated by CARSON CITY. The Parties agree that any future wells or infrastructures which expand the existing CARSON CITY water system, including connection to the pipeline project, shall be owned and operated by CARSON CITY. The Parties agree that any future wells or infrastructures which expand the existing MINDEN water systems shall be owned and operated by MINDEN.

d) The Parties agree 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.

e) The Parties agree that all water being provided by MINDEN to CARSON CITY shall be in compliance with all Federal and State water quality standards.

f) 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.

g) The Parties agree 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 duties required of the Parties pursuant to this Agreement.

8. NOTICES

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

Chairman. Minden Town Board
1604 Esmeralda Ave, Suite 101
Minden, NV 89423

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

Bruce Scott, RCI
340 N. Minnesota St.
Carson City, NV 89703
bruce@rci-nv.com

b) All emergency notifications regarding delivery of water or water quality will be delivered via telephone to the respective 24 hour Dispatch Centers below:

MINDEN – Water Emergency Pager 775-782-0604

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.

To the fullest extent of limited liability as set forth in Section 9 of this Agreement, 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 Section 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.

Exhibit "A"

Minden Wholesale Water Rates for North County Water Deliveries to Douglas County, IHGID, and Carson City
11/24/2009

All Rates based on Dollars per 1000 gallons pumped by the Town of Minden for water rights transfer to the Town or allocated by the Town through a sales agreement.

	1. Treatment Phase	2. Depreciation Phase In	3. O&M Base	4. Town Admin	Minden TOTAL Rate per 1000 gal.
Year 1	\$ 0.0100	\$ 0.0860	\$ 0.305	\$ 0.0500	\$ 0.451
Year 2	\$ 0.0100	\$ 0.0920	\$ 0.305	\$ 0.0500	\$ 0.457
Year 3	\$ 0.0125	\$ 0.0930	\$ 0.305	\$ 0.0500	\$ 0.461
Year 4	\$ 0.0150	\$ 0.0950	\$ 0.305	\$ 0.0500	\$ 0.465
Year 5	\$ 0.0150	\$ 0.1050	\$ 0.305	\$ 0.0500	\$ 0.475
Year 6	\$ 0.0200	\$ 0.1200	\$ 0.305	\$ 0.0550	\$ 0.500
Year 7	\$ 0.0300	\$ 0.1440	\$ 0.305	\$ 0.0600	\$ 0.539
Year 8	\$ 0.0500	\$ 0.1601	\$ 0.305	\$ 0.0645	\$ 0.580
Year 9	\$ 0.0500	\$ 0.1972	\$ 0.305	\$ 0.0700	\$ 0.622
Year 10	\$ 0.0500	\$ 0.2120	\$ 0.305	\$ 0.0750	\$ 0.642

- 1 Treatment phase in over 10 years from 1 to 5 cents per 1000 gallons agreed to with all users. These funds will be placed in restricted account in the event of future requirements utilized for treatment to meet Federal and State drinking water standards. In the event of future treatment requirements this rate will be subject to change to provide funding necessary to construct the necessary treatment facilities.
- 2 Depreciation Phase In over 10 years. These funds will be placed in a restricted account to be utilized solely for the replacement of existing infrastructure, wells, pumps, tanks, water lines, generators, controls equipment, etc as the equipment becomes necessary to replace. These numbers are for Town of Minden improvements and water infrastructure and are based on the replacement costs for all tanks, wells, booster stations, controls, telemetry, and 16" and greater lines used in the production and delivery of wholesale water.
This rate may change as actual costs are developed upon completion of the construction of the improvements necessary to deliver water to the north valley, IHGID, and Carson City areas.
This is apportioned based on water pumped from Minden to the north compared to total water pumped by Minden.
- 3 O&M base set based on a prorated usage of 6550 acre-ft and expenses of \$650,000
This rate may change as power and other O&M costs increase over time.
This is apportioned based on water pumped from Minden to the north compared to total water pumped by Minden.
- 4 Town Administration is phased in over a 10 year period. This is to cover unexpected expenses and other costs to the Town of Minden including unexpected replacement costs prior to full depreciation funding, payment of rising costs and expenses for operation and maintenance prior to their being incorporated into the next annual O&M base rate adjustment, water rights administration and maintenance for Minden water rights delivered to wholesale customers.