City of Carson City Agenda Report

Date S	submitted: June 21, 2013	Agenda Date Requested: July 3, 2013 Time Requested: 5 minutes
To:	Mayor and Supervisors	
From:	Public Works Department	
approv AGREI SALE / amend	et Title: For Possible Action: Action to adopting and authorizing the Mayor to sign the "FEMENT BY AND BETWEEN CARSON CIT" AND TRANSFER OF WATER RIGHTS AND is an interlocal agreement by and between tights and service.	PIRST AMENDMENT TO INTERLOCAL Y AND THE TOWN OF MINDEN FOR THE D THE DELIVERY OF WATER" which
Minder being o	n, through Douglas County, to Carson City. I	cilitate the delivery of water from the Town of It sets forth the provisions to pay for the water referred to as the "North Douglas County and oject).
Туре о	of Action Requested: (check one) (XXX) Resolution () Ordina () Pormal Action/Motion () Other	ance
Does 1	This Action Require A Business Impact S	tatement: () Yes (XX) No
approv AGREI	nmended Board Action: I move to adopt Ring and authorizing the Mayor to sign the "FEMENT BY AND BETWEEN CARSON CIT" AND TRANSFER OF WATER RIGHTS AND	IRST AMENDMENT TO INTERLOCAL Y AND THE TOWN OF MINDEN FOR THE
	nation for Recommended Board Action: n City receiving water from Town of Minden	This amendment will facilitate the means for with regards to payment.
the war to bring County majorit	ter was estimated based on estimates of co g water from Minden, through Douglas Cour g and Carson City Water Line Intertie Projec y of actual costs have been realized. This a on the actual costs of construction and the	t is now substantially complete and the mended interim wholesale water rate is

It is anticipated by all parties that a wholesale water rate will be further developed once sufficient operating/maintenance data is collected. It is estimated that this would take place no later than the Spring of 2016.

As staff was anticipating this current adjustment, these costs have already been factored into the City financial model for the water fund.

This amended agreement accompanies the Douglas County Water amended agreement being presented at the July 3, 2013 Board of Supervisors meeting.

Applicable Stat	ue, Code, Policy, Rule or Regul	ation: N	N/A		
Fiscal Impact:	Increases cost for wholesale water	r delive	red to Cars	son City.	
Explanation of	Impact: Water costs are budgete	d for the	e increase.		
Funding Sourc	e: Water Fund.				
Alternatives: Pr	rovide other direction to staff.				
Supporting Mar Agreement	terial: First Amendment to Interlo	cal Agr	eement), R	Resolution, a	nd Original
Prepared By: [Darren L Schulz, PE – Deputy Pub	lic Worl	ks Director		
Concurrences:	(Department Head) Thursday Work) (City Manager)			6-24-6/25-	13
Board Action T	aken:				
Motion:		1)			Aye/Nay
(Vote Record	ed Rv)				

FIRST AMENDMENT

TO

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

THE TOWN OF MINDEN

This First Amendment to Interlocal Agreement for the Sale and Transfer of Water Rights and the Delivery of Water ("Amendment") is made by and between Carson City, a consolidated municipality and political subdivision of the State of Nevada ("Carson City"), and the Town of Minden ("Town"), an unincorporated town and a political subdivision of the State of Nevada.

RECITALS

WHEREAS, Carson City and the Town entered an Interlocal Agreement for the Sale and Transfer of Water Rights and the Delivery of Water ("Agreement"), on February 5, 2010. The Agreement was recorded in the office of the County Recorder of Douglas County, State of Nevada on February 19, 2010, in Book 0210, at Page 4034, as Document No. 0759004, Official Records.

WHEREAS, Carson City and the Town desire to amend the Agreement as set forth herein.

WHEREAS, except as amended by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

NOW, THEREFORE, Carson City and the Town, in consideration of the promises and provisions contained in this Amendment and other good and valuable consideration, do amend the Agreement as follows:

AMENDMENTS

1. The Recitals of the Agreement shall be amended to include, in addition to the current Recitals, the following:

WHEREAS the Town will create a treatment reserve account within its Water Enterprise Fund ("Treatment Reserve Account") for the construction of required water treatment improvements for the treatment of Town water supplied to the Town's wholesale customers.¹ As set forth in Paragraph 6(d)(4) below, the Parties will periodically review the potential future necessity of additional water treatment and, in the event a study is obtained that reasonably indicates additional water treatment will not be necessary, the water treatment component of the wholesale water rate will be eliminated. The Treatment Reserve Account will consist of any money collected by the Town related to the treatment component of the wholesale water rate the Town charges to all of its wholesale water customers, as shown in the wholesale rate structure, revised Appendix "A," attached hereto and incorporated herein by this reference. If the Town's Treatment Reserve Account does not contain sufficient funds to fully cover future required water treatment costs as the treatment costs are incurred, then all wholesale customers shall be responsible for covering their proportionate cost for water treatment based on the methodology described in Paragraph 6(e) below.

2. Paragraph 6(c) of the Agreement shall be amended to read as follows:

The point of delivery shall be the meter to be installed on the discharge side of the Heybourne Booster Station. That is the point at which the Town will deliver and Douglas County will receive the water to be delivered to the Carson City distribution system through the interconnection of the Douglas County distribution system and the Carson City distribution system.

3. Paragraph 6(d) of the Agreement shall be amended to read as follows:

CARSON CITY agrees to pay the rates, charges or fees, as set forth in the Revised Exhibit "A" attached hereto, which are based on the following:

1. The calculations in Revised Exhibit "A" address proportional share based on annual water deliveries to the Town's wholesale customers, the total annual Town pumping volume, and the estimated system expenses for operations and maintenance. These costs reflected in Revised Exhibit "A" are included in the Minden Wholesale Water Fund operating statement of expenses in the Salaries, Benefits, and "Services & Supplies" categories (collectively the "Operations and Maintenance Costs"). Any power and chlorination costs associated with the Heybourne Booster Station will be excluded for the purpose of calculating the Operations and Maintenance Costs component of the wholesale water rate. Operations and Maintenance Costs for the Minden Wholesale Water Fund shall be divided by the total estimated annual water usage for each full fiscal year to develop a rate per 1000 gallons. Estimated future costs and usage shall be based on actual values from the prior fiscal year.

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¹ As noted in the Agreement, the Town delivers wholesale water to several customers, including the Town of Minden, Douglas County, Carson City and Indian Hills General Improvement District ("IHGID").

- 2. The calculations in Revised Exhibit "A" address an increment per thousand gallons for the power and chlorination costs associated with the operation of the Heybourne Booster Station based upon wholesale water deliveries to the Town's wholesale customers on the discharge side of the Heybourne Booster Station meter.
- 3. The calculations in Revised Exhibit "A" address an increment per thousand gallons, based upon wholesale water deliveries to all wholesale customers, reasonably required to fund the repair and replacement of wholesale water system components and infrastructure. Such funds shall be deposited in the Minden Wholesale Water Fund.
- 4. The calculations in Revised Exhibit "A" address an increment per thousand gallons for future treatment. Any funds collected pursuant to this provision shall remain in the Minden Wholesale Water Fund for the benefit of the wholesale water customers. The Parties will periodically review the existing or potential necessity of treatment and, in the event a study is obtained that reasonably indicates additional water treatment will not be necessary, the water treatment component of the water rate will be eliminated.
- 5. The calculations in Revised Exhibit "A" address an increment per thousand gallons as a service charge to be phased in during a ten (10) year period, for the direct benefit of the Minden Wholesale Water Fund and the Town's wholesale water customers.
- 4. Paragraph 6(e) of the Agreement shall be amended to include, in addition to its current language, the following:

In the event that additional water treatment becomes necessary, the Town and Carson City agree to work together with all the Town's wholesale customers to develop the best water treatment solution. The costs to construct and provide any additional water treatment facilities will be taken first from the monies held in the Town's Treatment Reserve Account supported by all purchasers of water from the Town. The net difference in costs between available funds and the final costs for constructing and providing such additional water treatment shall be mutually established by all of the Town's wholesale customers. Each of the Town's wholesale customers shall be responsible for contributing a pro rata share of the funds required for additional water treatment based on an average of the customer's actual water use during the previous three (3) fiscal years. The Town's wholesale customers shall each determine the best manner in which it will finance its respective share of such water treatment costs.

5. Paragraph 6(f) shall be amended to read as follows:

On January 1st of each year, in the event that Carson City utilizes, on average, more water from the Town during the prior year than the water rights transferred to and held by the Town for the benefit of Carson City, IHGID, and Douglas County, the Town may charge Carson City a fee equal to 0.25% of the price of a water right then in effect as set by the Town of Minden Board for each excess acre-foot, or portion thereof, utilized by Carson City, IHGID, or Douglas County. This additional water usage may not be utilized by Carson City for future development or growth. Any such over utilization that continues for more than two consecutive years must be approved by the Town of Minden Board. Carson City will share measurements of the water used by Carson City, IHGID, and Douglas County, by way of the Project, to facilitate implementation of similar 0.25% penalty provisions contained in the Town's agreements with IHGID and Douglas County, and the Town's billings in accordance therewith.

6. Paragraph 6 shall be amended to include the addition of Paragraph 6(h), which shall read as follows:

The cost to deliver water to Carson City from the Town shall be as set forth in the attached revised Appendix "A," effective upon the recording of this The scheduled increase in rates, charges or fees is subject to Amendment. change in the event that power costs, operation and maintenance costs, or water flows increase or decrease significantly during the 10-year period beginning July 1, 2013, and the water rates, charges or fees no longer cover the required expenses. The current water rates reflected in Appendix "A" are based on the assumption that Carson City will begin accepting water from Douglas County by April 1, 2014. In the event Carson City fails to begin taking delivery of water by July 1, 2014, the Town and Carson City agree to meet and confer with all the Town's wholesale customers to mutually reach the best solution to address any issues caused by Carson City's failure to take delivery of water. If the Town and Carson City are unable to reach a resolution with all of the Town's wholesale water customers within ninety (90) days of such a meeting, the Town and Carson City mutually agree to submit the matter to mediation and, if necessary, through litigation as provided in Paragraph 13 of the Agreement.

7. Paragraph 6 shall be amended to include the addition of Paragraph 6(i), which shall read as follows:

By February of 2016, the Town will conduct a formal rate review based on actual costs and deliveries for the completed and operating regional system to review and, if necessary, adjust the wholesale water rates and projections for all future water rates shown in the revised Appendix "A" attached hereto.

of the, 20	ties have caused this Amendment to be executed a 13.
Carson City Board of Supervisors	Town of Minden
By:Robert L. Crowell, Mayor	By: Charles Condron, Chairman Minden Town Board
Attest:	Attest:
By:Alan Glover Clerk Recorder	By:
Approved as to form:	Approved as to form:
By:	By:

Exhibit "A," Douglas County Wholesale Water Rates to Carson City

Fiscal Year	Depreciation	O&M and Power	Douglas Total Rate per 1,000 gal.	Minden Total Rate per 1,000 gal.	Douglas Wholesale Rate to Carson City per 1,000 gal.
FY 2013-14	\$ 0.050	\$ 0.081	\$ 0.131	\$ 0.540	\$ 0.671
FY 2014-15	\$ 0.050	\$ 0.081	\$ 0.131	\$ 0.555	\$ 0.686
FY 2015-16	\$ 0.050	\$ 0.081	\$ 0.131	\$ 0.563	\$ 0.694
FY 2016-17	\$ 0.101	\$ 0.081	\$ 0.182	\$ 0.595	\$ 0.777
FY 2017-18	\$ 0.101	\$ 0.081	\$ 0.182	\$ 0.625	\$ 0.807
FY 2018-19	\$ 0.151	\$ 0.081	\$ 0.232	\$ 0.720	\$ 0.952
FY 2019-20	\$ 0.151	\$ 0.081	\$ 0.232	\$ 0.750	\$ 0.982
FY 2020-21	\$ 0.202	\$ 0.081	\$ 0.283	\$ 0.780	\$ 1.063
FY 2021-22	\$ 0.202	\$ 0.081	\$ 0.283	\$ 0.800	\$ 1.083
FY 2022-23	\$ 0.252	\$ 0.081	\$ 0.333	\$ 0.810	\$ 1.143

A RESOLUTION ADOPTING THE "FIRST AMENDMENT TO INTERLOCAL AGREEMENT BY AND BETWEEN CARSON CITY AND TOWN OF MINDEN FOR THE SALE AND TRANSFER OF WATER RIGHTS AND THE DELIVERY OF WATER"

WHEREAS, 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 pursuant to NRS 277.180; and

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

WHEREAS, NRS 277.180 provides that every such agreement must be ratified by formal action of the governing body of each public agency; and

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

WHEREAS, the parties to the "First Amendment to Interlocal Agreement by and between Carson City and Town of Minden for the Sale and Transfer of Water Rights and the Delivery of Water" desire to adopt and approve such amendment as required by NRS 277.180. A copy of the amended agreement is attached to this Resolution as Exhibit "A".

NOW, THEREFORE, BE IT RESOLVED, that the terms and conditions of the "First Amendment to Interlocal Agreement by and between Carson City and Town of Minden 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 "First Amendment to Interlocal Agreement by and between Carson City and Town of Minden 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 "First Amendment to Interlocal Agreement by and between Carson City and Town of Minden 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 Town of Minden.

Upon r	notion	by	Supervisor	, seconded	by
Supervisor			, th	e foregoing Resolution was passed and adopted t	his
day of	f			013 by the following vote:	

AYES:	NAYS:	
ABSENT:	ABSTAIN:	
Robert L. Crowell, Mayor Carson City, Nevada		
ATTEST:		
Alan Glover, Clerk Carson City, Nevada		

OFFICIAL RECORD Requested By: TOWN OF MINDEN Assessor's Parcel Number: _N/A Douglas County - NV Karen Ellison - Recorder Date: FEBRUARY 19, 2010 Page: Of 15 BK-0210 PG- 4034 RPTT: Recording Requested By: Name: TOWN OF MINDEN Address: City/State/Zip: ____ Real Property Transfer Tax: \$ N/A INTERLOCAL AGREEMENT #2010.040 (Title of Document)

DOC # 0759004 02/19/2010 11:23 AM Deputy: PK

0.00

0.00

FILED

NO. 2010.040

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 TED THRAN

This INTERLOCAL AGREEMENT ("Agreement") is entered into this 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 Mereinafter sometimes referred to individually as "Party" and collectively as "Parties".

RECITALS

WHEREAS, subsection 1 of Nevada Revised Statutes ("NRS") section 277.100 defines a public agency eligible to enter into an interiocal contract to include counties, consolidated municipalities and unincorporated towns, and CARSON CITY and MINDEN are public agencies under that definition; and

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 rights 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 referenced beneficial interest in the Minden water rights based on CARSON CITY's finding that purchasing the beneficial interest in the Minden water rights is necessary or prudent for CARSON CITY 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 deliver 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 Rarty, and upon the effective dates of the following 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 AGREEMENT 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 WATER RIGHTS AND WATER DELIVERY" between IHGID and Minden; 6. "INTERLOCAL AGREEMENT 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."
- (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) for the purpose of paying for CARSON CITY's obligations under this Agreement. Such money will be used only for capital expenditures, not maintenance or operation costs.

2. <u>TERM OF AGREEMENT</u>. 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 beneficial interest in the Minden water rights to CARSON CITY.
- (b) The Parties agree that the reasonable total value of the beneficial interest in the Minden water rights is TEN MILLION DOLLARS (\$10,000,000), 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) cash.
 - (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 beneficial interest of CARSON CITY in the Minden water rights, whichever occurs later, EIGHT MILLION DOLLARS (\$8,000,000) cash.
- (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 beneficial 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 securing the beneficial interest of CARSON CITY in the Minden water rights.
- (e) MINDEN agrees to prepare and file the application(s) and any supporting map(s) which may be required by the State Engineer to change the point(s) of diversion, place(s) of use, and manner of use of the Minden water rights, as required by chapters 533 and 534 of NRS. CARSON CITY agrees to pay any and all costs incident to filing the application(s) to change the point(s) of diversion, preparation of the supporting map(s), and possible administrative hearing(s), judicial review, other judicial remedies

or 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 to change the point(s) of diversion, place(s) of use, and manner of use of the Minden water rights.

- (f) MINDEN agrees to prepare and file any and all documents required by the State Engineer for the ongoing protection and security of the beneficial interest of CARSON CITY in the Minden water rights for so long as CARSON CITY holds the beneficial interest in the Minden water rights, including, but not limited to, submission of proof of beneficial use of the Minden water rights whenever required by the State Engineer. CARSON CITY agrees to pay any and all fees incident to the expense of protecting and securing the beneficial 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 documente 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 or as soon thereafter as possible.

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 presently 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(s) and any supporting map(s) which may be required by the State Engineer to change the point(s) of diversion, place(s) of use, and manner of use of the Carson water rights, as required by chapters 533 and 534 of NRS. CARSON CITY agrees to pay any and all costs incident to filing the application(s) to change the point(s) of diversion, preparation of the supporting map(s), and possible administrative hearing(s) and judicial review or 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 beneficial interest of CARSON CITY in the Carson water rights for so long as CARSON CITY holds the beneficial interest in the Carson water rights, including, but not limited to, submission of proof of beneficial use of the Carson water rights whenever required by the State Engineer. CARSON CITY agrees to pay any and all fees incident to the expense of protecting and securing the beneficial 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. <u>DELIVERY OF WATER BETWEEN MINDEN DISTRIBUTION SYSTEM</u> AND CARSON DISTRIBUTION SYSTEM.

- (a) After the beneficial interest in the Minden water rights are purchased by CARSON CITY pursuant to Paragraph 3 on 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 Paragraph 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 the point 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

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 Minden Town 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 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 chapters 533 and 534 of NR3. 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 other matters necessary to the proper function of this Agreement 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 shall be owned and operated by CARSON CITY. The Parties agree that any future wells or infrastructures which expand the existing MINDEN water system 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 Party.
- (e) The Parties agree that all water being provided by MINDEN to CARSON CITY shall comply 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 or 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

Greg Hill, Superintendent of Public Works Town of Minden 1604 Esmeralda Ave., #101 Minden, NV 89423 Email: GHILLTom@verizon.net

Phone: (775) 721-8350

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

Phone: (775) 887-2000

Bruce Scott, RCI 340 N. Minnesota St. Carson City, NV 89703 Email: <u>bruce@rci-nv.com</u> Phone: (775) 883-1600

George M. Keele, Esq. 1692 County Road, Ste. A Minden, NV 89423 Email: marybaldecchi@hotmail.com

Phone: (775) 782-9781

(b) All emergency notifications regarding defivery 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. <u>LIMITED LIABILITY</u>. 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 Paragraph 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 from the indemnified 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 the other Party as to any attorneys' fees and costs for the indemnified Party's elective right to participate with legal counsel.

11. <u>OWNERSHIP OF FACILITIES</u>. Each entity maintains ownership of its own facilities and no transfer of ownership is implied as part of this Agreement.

- 12. <u>REASONABLE CARE</u>. Each Party shall exercise reasonable care in the performance of its obligations and rights under this Agreement to ensure that the other Party's facilities and operations are not impaired or damaged.
- 13. <u>DISPUTE RESOLUTION</u>. The Parties agree to first meet and confer to resolve any dispute. If such "meet and confer" does not resolve the dispute, the Parties agree to mediate before a department of the Ninth Judicial District Court of the State of Nevada In and for the County of Douglas, selected by a flip of the coin, any dispute between them that cannot be resolved by negotiations between the Parties. The Parties may also agree to another independent mediator. The feet rate or charge of the mediator will be shared equally by the Parties, who will otherwise be responsible for their own attorney's fees and costs. If mediation is unsuccessful, litigation may proceed before a department of the Ninth Judicial Court of the State of Nevada in and for the County of Douglas that was not involved in the mediation process and attorney's fees and costs will be awarded to the prevailing party at the discretion of the Court.
- 14. <u>FORCE MAJEURE</u>. Neither Party shall be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations hereunder due to protests, strikes, legal impossibility, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, emergencies or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the Party asserting such an excuse, and the excused Party is obligated to promptly perform in accordance with the terms of this Agreement after the intervening cause ceases. In the event of an emergency, as defined at NRS 414.0345 or NRS 455.090, either Party may make use of available water to perform any function of emergency management.
- 15. 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.
- 16. TERMINATION. This Agreement deals with water resources and the provision of utility service by two retail community water utility systems. As such, the public interest is not served by the termination of this Agreement by one of the Parties to this Agreement absent an opportunity to resolve the alleged breach or have each Party's position on the claimed breach submitted to dispute resolution as set forth in paragraph 13 of this Agreement.

This Agreement may be terminated only by the mutual consent and agreement of the Parties or by the order of a court of competent jurisdiction. If a Party is in breach of a portion of this Agreement, then the Party alleging the breach must provide written notice to the other Party specifying the nature of the violation and allowing 30 days for the Party in breach to correct the violation. If the breach is not corrected within the 30-day period then the matter must be submitted to dispute resolution as set forth in Paragraph 13 of this Agreement.

- 17. <u>PUBLIC RECORDS</u>. 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, a common law balancing of interests or the order of a court of competent jurisdiction.
- 18. <u>CONFIDENTIALITY</u>. 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.

19. 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 sete 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.
- 20. GOVERNING LAW: JUBISDICTION. 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 agree that venue in any judicial action concerning this Agreement will be in a northern Nevada court having jurisdiction.
- 21. ENTIRE CONTRACT AND MODIFICATION. This Agreement constitutes the entire Agreement of the Parties and such is 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 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, approved by the Boards of both Parties, and executed by the respective Parties hereto.

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

TOWN BOARD OF MINDEN	CARSON CITY BOARD
	OF SUPERVISORS
By: Chair	By: Robert L. Crowell, Mayor
Date: January 15, 2010	Date: <u>2/5/10</u>
Approved as to form:	Approved as to form: By: Krut N. Luis
George M. Keele, Esq.	on: Neil A. Rombardo District Aftorney
	ATTEST:
	By: Slan Dlaven
	Clerk Recorder

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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.

		Treatment Phase Depreciation Phase In		Phase Depr		1. Treatment Depreciation O&M Base		Depreciation		Depreciation		Tov	4. vn 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	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.\$39						
Year 8	\$	0.0500	\$	0.1601	\$	0.305	\$	0.0645	\$	0.580						
Year 9	\$	0.0500	\$	0.1972	\$	0.305	\$	0.0700-	<u>.\$.</u>	. 0.622						
Year 10	\$	0.0500	\$	0.2120	\$	0.305	\$	0.0750	\$	0.642						

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.

Depreciation Phase in over 10 years. These funds will be placed in a restricted account to be utilized soley for the replacement of existing intrastructure, 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 wholesele 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.

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.

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 the 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.

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Exhibit "B"

Douglas Wholesale.Water Rates for IHGID and Carson City 11/24/2009

All Rates based on Dollars per 1000 gallons delivered by Douglas County to IHGID or Carson City

,	1. Depreciation Phase In		08	2. iM Base	Ret	iglas TOTAL te per 1000 . To Carson City	Ra	inden Total te per 1000 From Exhibit 'A'	١.	tal Rate per 1000 gal.
Year 1	\$	0.050	\$.	0.100	\$	0.150	\$	0.451	\$	0.601
Year 2	\$	0.074	\$	0.100	\$	0.174	\$	0.457	\$	0.631
Year 3	\$	0.104	\$	0.100	\$	0.204	\$	0.461	\$	0.665
Year 4	\$	0.138	\$	0.100	\$	0.238	\$	0.465	\$	0.723
Year 5	\$	0.173	\$	0.100	\$	0.273	\$	0.475	\$	Ø .748
Year 6	\$	0.173	\$	0.100	\$	0.273	\$	0.500	\$	0,773
Year 7	\$	0.173	\$	0.100	\$	0.273	\$	0.539	\$	0,812
Year 8	\$	0.173	\$	0.100	\$	0.273	\$	0.588	\$	6,853
Year 9	\$	0.173	\$	0.100	\$	0.273	\$	0(522	\$	0.895
Year 10	\$	0.173	\$	0.100	\$	0.273	\$	0.642	35	0.915

		_						Z ·		
	'	3. reclation nase in	08	4. M Base	Rate	las TOTAL per 1090 To IHGID	R	Minden Total ate-per 1000 From Exhibit	4 I.	otal Rate per 1000 gal
Year 1	\$	0.022	\$	D-040	\$	0.062	\$	0,451	\$	0.513
Year 2	\$	0.033	\$	0.040		Q.073	\$	6,457	\$	0.530
Year 3	\$	0.046	\$	0.046	\$	0.086	\$	0.461	\$	0.546
Year 4	\$	0.061	\$	9:040	\$	0.101	\$	0.465	\$	0.566,
Year 5	\$	0.076	\$	0.040	15	0.116	\$	0.475	\$	- 0.591
Year 6	\$	0.076	\$	0.040	\$	Q.115	\$	8,500	\$	0.616
Year 7	\$	0.076	\$	0.040	\$	0.116	\$	0.539	\$	0.655
Year 8	\$	0.076	\$\	0.040	X	0/116	\$	0.580	\$	0.696
Year 9	\$	0.076	\$	0.040	\$	0.116	\$	0.622	\$	0.738
Year 10	\$	0.076	\$	0.840	\$	0.115	\$	0.542	\$	0.758

Depreciation Phase in over 5 years. These funds will be placed in a restricted account to be utilized solely for the replacement of the Phase 1 transmission mains, water tank, and North County booster station.

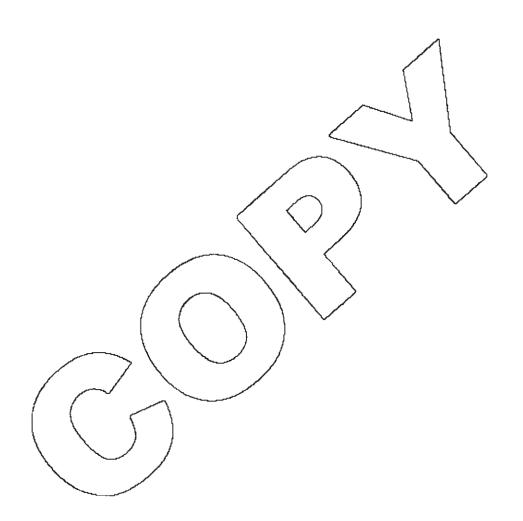
This rate may change as actual costs are developed upon completion of the construction of the improvements necessary to deliver water to the north valley, iHGID, and Carson City areas. This is apportioned based on water deliveries through the Phase 1 improvements to Carson City.

- 2 O&M base set on assumed maintenance and operational costs created by the County for the Phase 1 transmission mains, water tank, and North County booster station.
 This rate may change as power and other O&M costs change over time.
 This is apportioned based on water deliveries through the Phase 1 improvements to Carson City.
- 3 Depreciation Phase In over 5 years. These funds will be placed in a restricted account to be utilized soley for the replacement of the Phase 1 transmission mains and water tank. 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 deliveries through the Phase 1 improvements to IHGID.
- 4 O&M base set on assumed maintenance and operational costs created by the County for the Phase 1 transmission mains and water tank.

This rate may change as power and other O&M costs change over time.

This is apportioned based on water deliveries through the Phase 1 improvements to (HGID.)

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CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original on file and on record in my office.

DATE:

Judicial District Court
of the State of Neyada, in and target County of Douglas.

By

Deputy