

**City of Carson City
Agenda Report**

Date Submitted: November 19, 2010

Agenda Date Requested: December 2, 2010

Time Requested: 10 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 Carson City and the State of Nevada, Department of Administration, Division of Buildings and Grounds Addressing Funding for Engineering Design and Construction of Improvements to the Marlette Lake Water System. (Burnham).

Staff Summary: This agreement provides for Carson City and the State to proceed jointly with engineering design and construction of improvements for several components to the Marlette Water System including replacement and upgrade of 3800 feet of water line, a new water tank, and valves in addition to the environmental review necessary for the project. Overall costs are approximately \$3.1 million.

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 to adopt Resolution No. _____ a resolution approving and authorizing the Mayor to sign an Interlocal Agreement by and between Carson City and the State of Nevada, Department of Administration, Division of Buildings and Grounds Addressing Funding for Engineering Design and Construction of Improvements to the Marlette Lake Water System.

Explanation for Recommended Board Action: This agreement provides for Carson City and the State to proceed jointly with engineering design and construction of improvements for several components to the Marlette Water System including replacement and upgrade of 3800 feet of water line, a new water tank, and valves in addition to the environmental review necessary for the project. Engineering costs are approximately \$616,364 with \$339,000 being provided through a grant from USEPA. Construction costs are currently estimated to be approximately \$2,800,000 and the state will fund up to \$2,500,000 with the City providing any funding over the state contribution.

Applicable Statute, Code, Policy, Rule or Regulation: NA

Fiscal Impact: Approximately \$3,100,000 with City funding of approximately \$577,364.

Explanation of Impact: The project funding is contained in the City water capital budget.

Funding Source: Water Fund

Alternatives: Do not approve and direct staff otherwise.

Supporting Material: Interlocal Agreement between Carson City and the State of Nevada,
Department of Administration, Division of Buildings and Grounds.

Prepared By: Andrew Burnham, Public Works Director

Reviewed By: _____

(Department Head)

Date: _____

11/22/10

Date: _____

11/22/10

(City Manager)

Date: _____

11/22/10

(District Attorney)

Date: _____

11/22/10

(Finance Director)

Board Action Taken:

Motion: _____

1) _____

2) _____

Aye/Nay

(Vote Recorded By)

**RESOLUTION ADOPTING AND APPROVING AN INTERLOCAL AGREEMENT
BETWEEN THE STATE OF NEVADA, DEPARTMENT OF ADMINISTRATION,
DIVISION OF BUILDINGS AND GROUNDS AND CARSON CITY, A CONSOLIDATED
MUNICIPALITY ADDRESSING FUNDING FOR ENGINEERING DESIGN AND
CONSTRUCTION OF IMPROVEMENTS TO THE MARLETTE LAKE WATER
SYSTEM**

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

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

WHEREAS, the parties to the Interlocal Agreement between the State of Nevada, Department of Administration, Division of Buildings and Grounds and Carson City, a Consolidated Municipality Addressing Funding for Engineering Design and Construction of Improvements to the Marlette Lake Water System, desire to adopt and approve such agreement as required by NRS 277.110. A copy of the agreement is attached to this Resolution as Exhibit "B"; and

WHEREAS, both parties to the Interlocal Agreement between the State of Nevada, Department of Administration, Division of Buildings and Grounds and Carson City, a Consolidated Municipality Addressing Funding for Engineering Design and Construction of Improvements to the Marlette Lake Water System are public agencies as defined by NRS 277.100; and

NOW, THEREFORE, BE IT RESOLVED that the terms and conditions of the Interlocal Agreement between the State of Nevada, Department of Administration, Division of Buildings and Grounds and Carson City, a Consolidated Municipality Addressing Funding for Engineering Design and Construction of Improvements to the Marlette Lake Water System are hereby adopted and approved; and

BE IT FURTHER RESOLVED that the Interlocal Agreement between the State of Nevada, Department of Administration, Division of Buildings and Grounds and Carson City, a Consolidated Municipality Addressing Funding for Engineering Design and Construction of Improvements to the Marlette Lake Water System 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 U.S. Department of the Interior U.S. Geological Survey.

Marlette Resolution, continued;

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

AYES: _____ NAYS: _____

ABSENT: _____ ABSTAIN: _____

Resolution No. _____

Robert L. Crowell, Mayor
Carson City, Nevada

ATTEST:

Alan Glover, Clerk
Carson City, Nevada

COOPERATIVE AGREEMENT BETWEEN PUBLIC AGENCIES

**State of Nevada, Department of Administration, Division of Buildings
and Grounds & Carson City, A consolidated Municipality**

Addressing Funding For Engineering Design and Construction of Improvements to the
Marlette Lake Water System

THIS AGREEMENT (hereinafter the Agreement) is entered into this ____ day of _____, 2010, (the Effective Date), by and between STATE OF NEVADA, by and through its Department of Administration, Buildings and Grounds Division (hereinafter "STATE"), and CARSON CITY, A Consolidated Municipality (hereinafter "CARSON").

WITNESSETH:

WHEREAS, NRS 277.110 authorizes any two or more public agencies to enter into agreements for joint or cooperative action; and

WHEREAS, STATE owns and otherwise controls the rights to water generated in the Marlette Lake, Hobart Reservoir, and east slope drainage areas and owns, operates, and maintains the Marlette Water System and appurtenances necessary to collect, convey, store, and distribute such raw water (the "Marlette Water System"); and

WHEREAS, the Marlette Water System is generally relied upon by STATE, CARSON, Virginia City, Gold Hill and Silver City as a source of water for municipal and other beneficial purposes; and

WHEREAS, many of the components of the Marlette Water System are antiquated and the system generally is in need of upgrading to meet current and future needs; and

WHEREAS, one such component of the Marlette Water System is the Marlette Lake Pumping System which historically has been utilized to convey Marlette Lake water to Hobart Reservoir and the east side drainage for which the parties previously entered into an agreement and have completed upgrade of improvements to the system; and

WHEREAS, additional components which are in need of immediate upgrade and replacement include the 18 inch diameter raw water line for approximately 3800 feet up gradient from the Tanks, installation of a larger capacity tank at the Tanks site including flow meter/control valve repairs, inspection of valves at the Marlette and Hobart dams and addition of redundant valves; and

WHEREAS, CARSON and STATE also desire to investigate maximizing the water yield from the Marlette Water System to the benefit of all parties to the water system; and

WHEREAS, CARSON and STATE desire to continue to work cooperatively to improve the Marlette Water System; and

WHEREAS, CARSON will directly benefit from the upgrade of the Marlette Lake Water System, and accordingly is willing to contract for engineering design and necessary environmental assessments and permitting for the additional Marlette Lake Water System improvements; and

WHEREAS, CARSON has received grant funding from US EPA for a portion of the funding for design and construction of the contemplated improvements; and

WHEREAS, STATE collects from CARSON CITY fees from sale of raw water to the City which are utilized to pay for maintenance and capital improvements to the water system and which can be used to pay for the costs attributable to STATE water system components.

NOW, THEREFORE in consideration of the foregoing and other covenants contained herein, the parties mutually agree as follows:

1. PROJECT DESCRIPTION. The Marlette Lake Water System Improvement Project will generally include environmental review as required by US EPA, engineering design and construction of new redundant valves for the Hobart Lake and Marlette Lake Dams, engineering design and construction for replacement and upgrade of the 18 inch

diameter raw water transmission main from the Lakeview Tanks Meter House up gradient approximately 3800 feet to Saw Mill Creek, engineering design and construction of additional storage including flow meter/control valve repairs at the Lakeview Tank Meter House to accommodate operational transients in flow and to prevent spillage, and investigation of maximizing the water yield from Marlette Lake.

2. CARSON'S RESPONSIBILITIES. The cost of Phase 2 engineering for the project components is estimated to be approximately Six Hundred Sixteen Thousand Dollars (\$616,000.00) which will be contracted and paid by CARSON CITY with Black and Veatch, an engineering firm selected by CARSON CITY through a Request for Proposal process conducted in accordance with NRS 625.530. State will bid and construct the improvements currently estimated to cost approximately Two Million Eight Hundred Thousand Dollars (\$2,800,000.00) in accordance with NRS bidding and contracting requirements. CARSON will be responsible for any construction costs in excess of \$2,500,000.00.

3. STATE RESPONSILBILITIES. STATE and Carson will review and approve all engineering and construction documents prior to State going to bid for improvements. STATE will fund, up to \$2,500,000 for construction of the improvements. All costs in excess of \$2,500,000 will be the responsibility of CARSON and State will submit invoices monthly to Carson for the excess costs incurred for construction of the project and Carson will reimburse State within 30 days of submittal.

4. MANAGEMENT AND ADMINISTRATIVE DUTIES. State shall be responsible for the management and other administrative duties and requirements for the construction contracts. Carson shall be responsible for the management and other administrative duties and requirements for engineering design and necessary environmental assessments and permitting for the project.

5. REQUIRED APPROVAL. This Agreement does not become effective unless and until approved by appropriate action of the governing body of each party.

6. TERM. This Agreement shall be effective for a period of three (3) years from the Effective Date or upon completion of the project, whichever comes first, unless sooner terminated as set forth herein.

7. TERMINATION. The parties expressly agree that this Agreement shall be terminated immediately if for any reason the Executive Branch of the State of Nevada, the Nevada State Legislature and/or City funding ability to satisfy this Agreement is withdrawn, substantially limited or impaired.

8. LIMITED LIABILITY. The parties do not waive and intend to assert available NRS Chapter 41 liability limitations should it become necessary in implementing this Agreement.

9. INDEMNIFICATION.

a. To the fullest extent of NRS Chapter 41 liability limitations, each party shall indemnify, hold harmless and defend, not excluding the other's right to participate, the other from and against all liability, claims, actions, damages, losses and expenses, including, but not limited to, reasonable attorney's fees and costs, arising out of any alleged negligent or willful acts or omissions of the indemnifying party, its officers, employees and agents. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity, which would otherwise exist as to any party or person, described in this paragraph.

b. The indemnification obligation under this paragraph is conditioned upon receipt of written notice by the indemnifying party within thirty (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 attorney's fees and costs of the indemnified party's chosen right to participate with legal counsel.

10. INDEPENDENT PUBLIC AGENCIES. The parties are associated with each other only for the purposes and to the extent set forth in this Agreement, and in respect to performance of services pursuant to this Agreement, each party is and shall be a public agency separate and distinct from the other party and, subject only to the terms of this Agreement, shall have the sole right to supervise, manage, operate, control and direct performance of the details incident to its duties under this Agreement. Nothing contained in this Agreement shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for one agency whatsoever with respect to the indebtedness, liabilities, and obligations of the other agency or any other party.

11. ASSIGNMENT. None of the parties shall assign, transfer or delegate any rights, obligations or duties under this Agreement,

12. 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

13. INSPECTION & AUDIT.

a. Books and records. Each party agrees to keep and maintain under generally accepted accounting principles full, true and complete records, agreements, books and documents as are necessary to fully disclose to the State or United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with all state and federal regulations and statutes.

b. Inspection & Audit. Each party agrees that the relevant books, records (written, electronic, computer related or otherwise), including, but not limited to, relevant accounting procedures and practices of the party, financial statements and supporting documentations and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit and copying at any office or location where such records may be found, with or without notice, by the State Auditor, Employment Security, the Department of Administration Budget Division, the Nevada State Attorney General's Office or its Fraud Control Units, the State legislative Auditor, and, with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, Carson City Internal Auditor or any of their authorized representatives.

c. Period of Retention. All books, records, reports, and statements relevant to this Agreement must be retained a minimum of three (3) years and for five (5) years if any federal funds are used in this Agreement. The retention period runs from the date of termination of this Agreement. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.

14. OWNERSHIP.

a. Proprietary Information. For the purpose of this agreement which pertains to Phase 2 of the Project set forth in paragraph (1), unless otherwise provided by law any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code (which is intended to be considered under this Agreement), or any other documents or drawings, prepared or in the course of preparation by

either party in performance of its obligations under this Agreement shall be the joint property of the parties.

b. Marlette Water System. It is expressly understood that this Agreement does not provide any lien holder, ownership interest or any other rights to the Marlette Water System to CARSON CITY.

15. 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.

16. PROPER AUTHORITY. The parties hereto represent 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 engage in the cooperative action set forth in paragraph (1).

17. GOVERNING LAW; JURISDICTION. This Agreement and the rights and obligations of the parties hereto shall be governed by and construed according to the laws of the State of Nevada. If by action of the Nevada State Legislature this Agreement or a portion thereof becomes inconsistent with Nevada law or otherwise becomes unenforceable, the parties agree to renegotiate this Agreement to conform with the law.

18. For notice purposes, the address of each party is as follows:

STATE OF NEVADA
Department of Administration, Division of Buildings and Grounds
406 E. Second Street, Suite #1
Carson City, Nevada 89701
(775) 684-1800

CARSON CITY, CONSOLIDATED MUNICIPALITY
201 North Carson Street, Suite #2
Carson City, Nevada 89701
(775) 887-2100

19. PRIOR CONTRACTS. It is understood by all parties that this agreement does not supersede or change any rights or obligations of any prior contract with respect to the Marlette Water System.

20. ENTIRE AGREEMENT 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 agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Agreement specifically displays a mutual intent to amend a particular part of this Agreement, general conflicts in language between any such attachment and this Agreement shall be construed consistent with the terms of this Agreement. Unless otherwise expressly authorized by the terms of this Agreement, no modification or amendment to this Agreement shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto, approved by the Office of the Attorney General, Carson City District Attorney.

(space left blank intentionally)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed and intend to be legally bound thereby.

STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
BUILDINGS AND GROUNDS DIVISION

CINDY EDWARDS, Administrator

ATTEST:

CARSON CITY

ROBERT CROWELL, Carson City
Mayor

ATTEST:

ANDREW K. KLINGER, Director
Department of Administration

**NEVADA STATE
BOARD OF EXAMINERS**

ANDREW K. KLINGER, Clerk

APPROVED AS TO FORM:

Deputy Attorney General for
Nevada Attorney General

ALAN GLOVER, Carson City Clerk/
Recorder

APPROVED AS TO FORM:

Carson City District Attorney