

OFFICIAL RECORD

Requested By:

DC/DISTRICT ATTORNEY

Assessor's Parcel Number:       N/A      

Date:       MAY 12, 2008      

Recording Requested By:

Douglas County - NV  
Werner Christen - Recorder

Page: 1 Of 10 Fee: 0.00  
BK-0508 PG- 2709 RPTT: 0.00



Name:       ROBERT MORRIS, DA'S OFFICE      

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Real Property Transfer Tax: \$       N/A      

      AGREEMENT #2008.099      

(Title of Document)

FILED

NO. 2008.099

2008 MAY 12 PM 2:31

**INTERLOCAL AGREEMENT TO PROVIDE WATER SERVICE**

This Agreement is made by and between Douglas County (County), a political subdivision of the State of Nevada, and the Town of Minden (Town), an unincorporated town and a political subdivision of the state.

SARUNDA J. GRIFFIN  
CLERK

BY *[Signature]*

**RECITALS**

The County and the Town are public agencies under NRS 277.100.

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.

The County and the Town both own and administer water rights and are authorized by the laws of Nevada to construct, improve, maintain, provide capital improvements and related services for and operate water supply and distribution systems capable of supplying public drinking water to federal and state standards.

The County and the Town have available groundwater capacity, pumping capability, and water rights to meet the existing and reasonably foreseeable future needs of the County's and the Town's water systems and the County and the Town are authorized by the laws of Nevada to purchase from and deliver water to each other.

The County wants to purchase a supply of groundwater from the Town that meets or exceeds all currently applicable federal and state standards for public drinking water supplies.

The Town may want to purchase a supply of groundwater from the County that meets or exceeds all currently applicable federal and state standards for public drinking water supplies.

The Town has defined the area of beneficial use of its water rights as the Carson Valley, and the Nevada State Engineer has authorized the Town to purvey water within the entire Carson Valley.

The County and the Town by entering into this contract will be able to provide more effective and efficient services to meet the health, comfort, safety, life welfare, and property needs of the residents and guests of the County and the Town.

In consideration of the mutual covenants set forth, the County and the Town (the Parties) agree as follows:

1. **Required Approval.** This Agreement will only become effective after it is approved by the governing body of each party, and, unless it is terminated as provided in this Agreement, it will run perpetually from that date.

2. **Term of Agreement.** This Agreement is to provide a means of 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 water systems.

3. **The Town's Responsibilities.**

**A. Construction of Water Line.** The Town agrees to construct a 24 inch diameter water line and all necessary appurtenant facilities, including pumping and telemetry controls for the system, and connecting the Town's water system to the southerly terminus of the County's East Valley water system on Heybourne Road, as shown on Exhibit A. The alignment of the water line will be within a public utility easement to be obtained by the Parties from the owners of property containing the easement alignment shown on Exhibit A. The connection requires the Town to construct approximately 10,500 feet of new waterline, including a metering station at a mutually agreeable location near the south boundary of the Minden-Tahoe Airport. The Town will pay all costs to construct and connect the water system to the County water system. No interest will accrue on the Town's cost to create the water line extension and all appurtenant facilities.

**B. Town Ownership of Water Line.** Including pipe already installed by the Town, the Town will own and maintain a 24 inch waterline beginning at the point at which Heybourne Road intersects Buckeye Road and terminating at the County 24 inch main that currently exists at the southwest corner of the Minden-Tahoe Airport in the Heybourne alignment, as shown on Exhibit A.

**C. Service Area.** Services benefiting from this main include all new connections to the existing and future Town water system served by the new 24 inch water line as well as all new connections to the existing and future County water system served by water from the new 24 inch line.

**D. Connection Fee.** The Town agrees to charge a connection fee at the current rate for Town connections per EDU of water service for all new connections in its system to be served by the new 24 inch water line. These connection fees will be used to reduce the cost of the waterline to be paid by the County.



#### **4. County's responsibilities**

**A. Connection.** The County agrees to allow the facilities constructed by Town pursuant to paragraph 3A of this Agreement to be connected to the County's water system at the south end of the Minden-Tahoe Airport within the Heybourne alignment.

**B. Payment of Water Line Construction Costs.** The County agrees to pay the cost of construction of the 24 inch water line to the Town with a combination of connection fees and service fees. The final cost to the Town for the construction of the water line and appurtenances must be approved by the County. The County will not unreasonably withhold approval. The County agrees to charge and pay the Town the current County rate set by resolution of the County Board for connections per EDU (or meter equivalent) of water service to any portion of the Town's or County's water delivery system that receives water directly or indirectly through any portion of the water line that is the subject of this Agreement. The County will also collect and pay to the Town a service rate per thousand gallons set by resolution of the County board in addition to the water rate set out in paragraph 5C.

**C. Extraordinary expenses.** The County agrees to consider in good faith any requests that the Town may make for payment of a portion of the costs for extraordinary expenses not covered by this Agreement incurred by the Town to provide water to the County.

#### **5. Mutual responsibilities**

**A. Water Quality.** The quality of water delivered by the Town to the County and the County to the Town under this Agreement must meet or exceed all currently applicable federal and state standards for public drinking water supplies.

**B. Point of Delivery.** The point at which the Town will deliver and the County will receive, and the County will deliver and the Town will receive, the water will be at the south end of the Minden-Tahoe Airport at a Town-installed meter connection point, as shown on Exhibit A. Before the water line is connected and becomes operational, the staffs of the County and Town agree to develop, and if necessary amend, operating parameters for the water line that will be in writing and executed by the Town board chair and the County's public works director.

**C. Methodology for calculating rates.** The County and Town agree that the methodology for charging for the cost for water delivered through this Agreement is based on all the items necessary, but not limited to, operation and maintenance costs for pumps, motors, pipelines, and water treatment, if any, including but not limited to replacement costs for all such infrastructure, power, and labor.

The rates will be based on the prior calendar year's actual expenditures in the Town's operating statement of expenses in operating its water system, "Services & Supplies" category, less 50% of actual depreciation; less 100% of all pass-through



charges; then add 50% of the cost of salaries and benefits; this amount will be divided by the total gallons pumped during the prior calendar year; this quotient will be multiplied by 1000 to establish the price for the base year per thousand gallons of water delivered.

Based on this methodology the cost to deliver water to County from Town, or from Town to County, has been jointly determined by the Parties to be \$.60 per thousand gallons delivered for the twelve-month fiscal year beginning July 1, 2008, after both governing boards approve this Agreement.

Thereafter the cost to deliver water and water lease fees will be calculated between January 2 and February 28 and billed beginning on July 1 of each year, beginning January 2, 2009.

**D. Billing.** When water is delivered by the Town to the County or by the County to the Town, the Town will read the meter and either bill or reimburse the County, as the meter indicates, and the County will remit to the Town the billed amount or the Town will remit to the County the reimbursed amount within 30 days of the date of billing.

**E. Annual Meetings.** The costs to deliver water (set forth in paragraph 5C) will be evaluated for appropriateness at least on an annual basis by the staffs of each party. They will hold an annual joint board meeting if necessary to discuss, and where necessary amend, this Agreement. If a cost difference is determined appropriate by the bodies, any revised rates from the base year figures must be approved by the governing boards of both Parties. The Parties agree to ensure that the rates accurately reflect the actual costs to the respective Parties. Where costs have been inaccurately estimated, retroactive adjustments may be made at least annually, and more often as needs dictate.

**F. Repayment of Waterline Construction Costs.** The County agrees to pay to the water line construction costs for a term of 25 years or until fully paid, whichever occurs first. The Town and County may reevaluate the rate of payment of these costs at least every 5 years during the Parties' annual meeting to determine if there needs to be an adjustment to the amount being paid.

**6. Exemption from Connection Fee.** In consideration of the Bently Biofuels, LLC granting of an easement for the water line at no cost to the Town or the County, no connection fee reimbursement will be paid for the connection to the Bently facilities at the southwest corner of Buckeye Road and Heybourne Road, which will be connected to the 24" main with a single large-diameter service.

**7. Limited Liability; Indemnification.** Each Party agrees to indemnify and hold harmless the other Party, to the extent provided by law, including, but not limited to, NRS chapter 41, from and against any liability arising out of the performance of this Agreement proximately caused by any act or omission of its officers, agents, and employees. The Parties will not waive and intend to assert available NRS chapter 41

liability limitations in all cases. Contract liability of both Parties does not include punitive damages.

**8. Ownership of Facilities.** Each entity maintains ownership of its own facilities and no transfer of ownership is implied as part of this Agreement.

**9. Reasonable Care.** Each party must 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.

**10. Protection of a Party's Separate Facilities.** If any occurrence or conditions during operation or maintenance of the interconnection threaten the physical integrity or operational capability of a party's separate facilities, upon notification to the other party the affected party may stop operation or maintenance of the interconnection or take any action that the affected party determines to be necessary to protect its own separate facilities. Any party may remove part of the interconnection, if required, for emergency repair of its separate facilities provided that such affected interconnection facilities are restored as soon as possible by the removing party.

**11. Severability.** If any provision contained in this Agreement is held to be unenforceable by a court of law or equity, this Agreement will be construed as if the provision did not exist and the non-enforceability of the provision will not be held to render any other provision or provisions of this Agreement unenforceable.

**12. 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 by one or the Parties to this Agreement absent an opportunity to resolve the alleged breach or have its position on the claimed breach heard before a qualified arbitrator.

This Agreement may be terminated only by the mutual consent and agreement of the Parties. If a Party is in breach of a portion of this Agreement, then the Party alleging 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 18. Additionally, the Parties expressly agree that this Agreement may be terminated by mutual consent if for any reason if funding ability to satisfy this Agreement is withdrawn, limited, or impaired.

**13. Nevada Law.** The laws of the State of Nevada apply in interpreting and construing this Agreement.

**14. Notices.** All written notices under this Agreement must be delivered to the following officials at the addresses set forth below:

County Manager, Douglas County  
P. O. Box 218  
Minden, NV 89423

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

Changes may be made in the names and addresses of the persons to whom notices are to be given pursuant to this paragraph.

**15. Entire Agreement; Amendment.** This Agreement constitutes the full and final agreement between the Parties. This Agreement may not be amended or assigned except by an agreement in writing signed by both Parties and it shall be binding upon and inure to the benefit of the Parties' respective successors and assigns.

**16. Further Cooperation Between the Parties.** Each Party agrees that the County and the Town will further investigate the feasibility of connecting water systems in other locations in the Carson Valley area with the water system, including system operational issues and cost implications.

**17. Force Majeure.** 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 strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, 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.

**18. Dispute Resolution.** 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. If mediation is unsuccessful, litigation may proceed before the other department of the Ninth Judicial District Court of the State of Nevada in and for the County of Douglas.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the 3rd day of April, 2008.

Douglas County Board of Commissioners

By: Kelly D. Kite  
Kelly D. Kite, Chair  
Douglas County Commission

Town of Minden

By: Raymond G. Wilson  
Raymond G. Wilson  
Chairman, Minden Town Board

Approved as to form:

By: Robert J. Manin  
District Attorney

Approved as to form:

By: George M. Keele  
George M. Keele, Esq.  
Town Counsel

Attest:

By: Barbara J. Griffin  
Barbara J. Griffin  
County Clerk

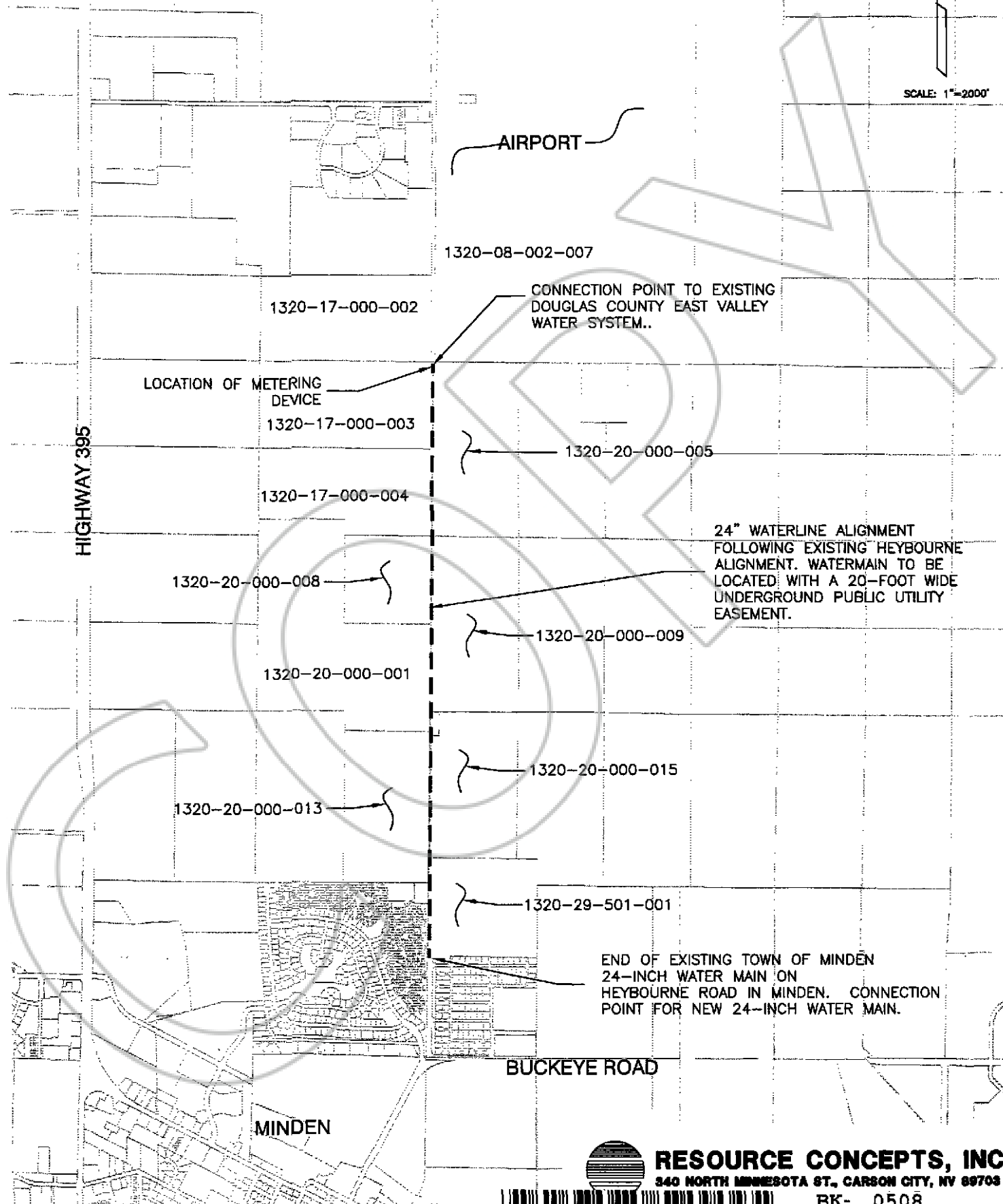
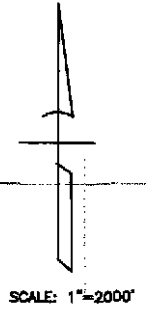
Attest:

By: Sheila Byington  
Sheila Byington  
Town Office Manager





EXHIBIT "A"  
 HEYBOURNE ROAD WATERLINE  
 ALIGNMENT AND FACILITIES  
 April 14th, 2008



HIGHWAY 395

AIRPORT

SCALE: 1"=2000'

1320-08-002-007

1320-17-000-002

CONNECTION POINT TO EXISTING DOUGLAS COUNTY EAST VALLEY WATER SYSTEM..

LOCATION OF METERING DEVICE

1320-17-000-003

1320-20-000-005

1320-17-000-004

24" WATERLINE ALIGNMENT FOLLOWING EXISTING HEYBOURNE ALIGNMENT. WATERMAIN TO BE LOCATED WITH A 20-FOOT WIDE UNDERGROUND PUBLIC UTILITY EASEMENT.

1320-20-000-008

1320-20-000-009

1320-20-000-001

1320-20-000-015

1320-20-000-013

1320-29-501-001

END OF EXISTING TOWN OF MINDEN 24-INCH WATER MAIN ON HEYBOURNE ROAD IN MINDEN. CONNECTION POINT FOR NEW 24-INCH WATER MAIN.

BUCKEYE ROAD

MINDEN



**RESOURCE CONCEPTS, INC.**  
 340 NORTH MINNESOTA ST., CARSON CITY, NV 89703



BK- 0508  
 PG- 2717

COPY

SEAL

**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: May 12, 2008

B. Griffin Clerk of the 9th Judicial District Court of the State of Nevada, in and for the County of Douglas.

By [Signature] Deputy