



**Wednesday, February 15, 2023**  
**Executive Session – 4:30pm**  
**Regular Session – 5:30pm**

## **AGENDA**

**Town Council Meeting Minturn Town Hall / Council Chambers**  
**302 Pine St Minturn, CO**

The agenda is subject to change, including the addition of items 24 hours in advance or the deletion of items at any time. The order of agenda items listed are approximate. This agenda and meetings can be viewed at [www.minturn.org](http://www.minturn.org).

### **MEETING ACCESS INFORMATION AND PUBLIC PARTICIPATION**

This will be an in-person meeting with access for the public to attend in person or via the Zoom link included. Zoom Link: <https://us02web.zoom.us/j/82992393906>

Zoom Call-In Information: **1 651 372 8299 or 1 301 715 8592 Webinar ID: 829 9239 3906**

Please note: all virtual participants are muted. In order to be called upon an unmuted, you will need to use the “raise hand” feature in the Zoom platform. When it’s your turn to speak, the moderator will unmute your line and you will have five (5) minutes for public comment.

**PUBLIC COMMENTS:** If you are unable to attend, public comments regarding any items on the agenda can be submitted to Jay Brunvand, Town Clerk, prior to the meeting and will be included as part of the record.

#### **1. CALL TO ORDER**

**The Minturn Town Council will open the Regular Meeting at 4:30pm for the purpose of convening into Executive Session. At (approximately) 5:30pm the Council will convene into a Regular Session.**

#### **2. EXECUTIVE SESSION**

- 2.1 An Executive Session for the purposes of receiving legal advice on specific legal questions pursuant to C.R.S. 24-6-402(4)(b) and for the purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and/or instructing negotiators pursuant to C.R.S. 24-6-402(4)(e)

- Waiver Request – Holland and Hart

**3. CALL TO ORDER**

**4. ROLL CALL & PLEDGE OF ALLEGIANCE**

- 5. APPROVAL OF CONSENT AGENDA** Consent agenda items are routine Town business, items that have received clear direction previously from the council, final land-use file documents after the public hearing has been closed, or which do not require council deliberation.

5.1 February 1, 2023, Meeting Minutes Pg 4

5.2 Resolution 06 – Series 2023 a Resolution in support of the RAISE Grant application –  
Metteer Pg 15

5.3 Revised Conflict Waiver – Holland and Hart Pg 20

- 6. APPROVAL OF REGULAR AGENDA** Opportunity for amendment or deletions to the agenda.

**7. DECLARATION OF CONFLICTS OF INTEREST**

- 8. PUBLIC COMMENT** Citizens are invited to comment on any item on the Consent Agenda, or not on the regular Agenda subject to a public hearing. Please limit your comments to five (5) minutes per person unless arrangements have been made for a presentation with the Town Clerk. Those who are speaking are requested to state their name and address for the record.

**9. COUNCIL COMMENTS & COMMITTEE REPORTS**

**10. STAFF REPORTS**

10.1 Manager Report Pg 22

10.2 2022 Q4 Update Pg 24

- 11. SPECIAL PRESENTATIONS** Presentations are limited to 5 minutes. Invited presentations are limited to 10 minutes if prior arrangements are made with the Town Clerk.

- 12. BUSINESS ITEMS** Items and/or Public Hearings are listed under Business may be old or new and may require review or action by the Council

12.1 Ordinance 03 – Series 2023 (First Reading) an Ordinance approving Bolts Reservoir  
IGA –Sawyer Pg 34

12.2 One Book One Valley Proclamation – Lori Ann Barns, Vail Public Library Pg 83

12.3 Ordinance 02 – Series 2023 (Second Reading) An Ordinance Renewing the Minturn  
Water Moratorium – Metteer/Sawyer Pg 86

**13. DISCUSSION / DIRECTION ITEMS**

**14. FUTURE AGENDA ITEMS** Pg 100

**15. ADJOURN**

**INFORMATIONAL ONLY ITEMS**

Town Hall Closed:

- February 20, 2023 – President’s Day

Upcoming Council Meetings:

- March 1, 2023
- March 15, 2023
- April 5, 2023



**Wednesday, February 1, 2023**  
**Executive Session – 4:30pm**  
**Work Session – 5:30pm**  
**Regular Session – 6:30pm**

**OFFICIAL MINUTES**

**Town Council Meeting Minturn Town Hall / Council Chambers  
302 Pine St Minturn, CO**

The agenda is subject to change, including the addition of items 24 hours in advance or the deletion of items at any time. The order of agenda items listed are approximate. This agenda and meetings can be viewed at [www.minturn.org](http://www.minturn.org).

**MEETING ACCESS INFORMATION AND PUBLIC PARTICIPATION**

This will be an in-person meeting with access for the public to attend in person or via the Zoom link included. Zoom Link: <https://us02web.zoom.us/j/85795998650>

Zoom Call-In Information: **1 651 372 8299 or 1 301 715 8592 Webinar ID: 857 9599 8650**

Please note: all virtual participants are muted. In order to be called upon an unmuted, you will need to use the “raise hand” feature in the Zoom platform. When it’s your turn to speak, the moderator will unmute your line and you will have five (5) minutes for public comment.

**PUBLIC COMMENTS:** If you are unable to attend, public comments regarding any items on the agenda can be submitted to Jay Brunvand, Town Clerk, prior to the meeting and will be included as part of the record.

**1. CALL TO ORDER**

**The Minturn Town Council will open the Regular Meeting at 4:30pm for the purpose of convening into Executive Session. At (approximately) 5:30pm the Council will convene into a Work Session.**

Mayor Earle Bidez Mayor called the meeting to order at 4:30pm.

Those present included: Mayor Earle Bidez (zoom), Mayor Pro Tem Terry Armistead, Town Council members George Brodin (zoom), Lynn Feiger, Gusty Kanakis, Kate Schifani (zoom), and Tom Sullivan.

Staff present: Attorneys Michael Sawyer (zoom), Hayley Siltanen (zoom), Susan Ryan (zoom), and Town Manager Michelle Metteer.

## **2. EXECUTIVE SESSION**

2.1 An Executive Session for the purposes of receiving legal advice on specific legal questions pursuant to C.R.S. 24-6-402(4)(b) and for the purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and/or instructing negotiators pursuant to C.R.S. 24-6-402(4)(e)

- Holland & Hart Revised Waiver Request – Ryan

Motion by Tom S., second by Gusty K., to convene in Executive Session for the purposes of receiving legal advice on specific legal questions pursuant to C.R.S. 24-6-402(4)(b) and for the purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and/or instructing negotiators pursuant to C.R.S. 24-6-402(4)(e) – Holland & Hart revised waiver request. Motion passed 5-0.

Those present included: Mayor Earle Bidez (zoom), Town Council members George Brodin (zoom), Lynn Feiger, Gusty Kanakis, Kate Schifani (zoom), and Tom Sullivan.

Staff present: Attorneys Michael Sawyer (zoom), Hayley Siltanen (zoom), Susan Ryan (zoom), Lucy Stark (zoom), and Town Manager Michelle Metteer.

Note: Terry A. recused herself from the Holland and Hart Waiver Request portion of the Executive Session due to a conflict of interest and Kate S. was absent for the executive session.

No direction was given as a result of the Executive Session.

**The Minturn Town Council will open the Regular Meeting at 4:30pm for the purpose of convening into Executive Session. At (approximately) 5:30pm the Council will convene into a Work Session. At (approximately) 6:30pm the Council will begin the Regular Session.**

3. **WORK SESSION** The Council will suspend the Regular meeting to discuss the following Item(s)

Note: Due to Earle B.'s physical absence, Terry A. chaired the meeting.

3.1 Code Cohort Update

## **4. CALL TO ORDER**

Mayor Pro Tem Terry Armistead called the meeting to order at 6:58pm.

## **5. ROLL CALL & PLEDGE OF ALLEGIANCE**

Those present included: Mayor Pro Tem Terry Armistead, Town Council members George Brodin (zoom), Lynn Feiger, Gusty Kanakis, Kate Schifani (zoom), and Tom Sullivan.

Note: Earle B. was excused absent from the meeting.

Staff present: Attorney Michael Sawyer (zoom), Planner Scot Hunn (zoom), Town Manager Michelle Metteer, Planner Madison Harris, and Town Clerk/Treasurer Jay Brunvand (zoom).

**6. APPROVAL OF CONSENT AGENDA** Consent agenda items are routine Town business, items that have received clear direction previously from the council, final land-use file documents after the public hearing has been closed, or which do not require council deliberation.

6.1 January 18, 2023, Meeting Minutes

6.2 382 Taylor Avenue – New Single Family Residence and Accessory Dwelling Unit

Motion by Tom S., second by Gusty K., to approve the Consent Agenda of February 1, 2023 as presented. Motion passed 6-0.

Note: Earle B. was excused absent from the meeting.

**7. APPROVAL OF REGULAR AGENDA** Opportunity for amendment or deletions to the agenda.

Motion by Tom S., second by Gusty K., to approve the Agenda of February 1, 2023 as presented. Motion passed 6-0.

Note: Earle B. was excused absent from the meeting.

**8. DECLARATION OF CONFLICTS OF INTEREST**

Terry A. advised she had a Conflict of Interest with the Water Moratorium matters and would recuse herself.

**9. PUBLIC COMMENT** Citizens are invited to comment on any item on the Consent Agenda, or not on the regular Agenda subject to a public hearing. Please limit your comments to five (5) minutes per person unless arrangements have been made for a presentation with the Town Clerk. Those who are speaking are requested to state their name and address for the record.

**10. SPECIAL PRESENTATIONS** Presentations are limited to 5 minutes. Invited presentations are limited to 10 minutes if prior arrangements are made with the Town Clerk.

**11. BUSINESS ITEMS** Items and/or Public Hearings are listed under Business may be old or new and may require review or action by the Council

Note: Terry A. stepped down from the dies as a conflict of interest. Gusty K. chaired the meeting.

11.1 Extension of Ordinance No. 05 – Series 2020; An Ordinance of the Town of Minturn, Colorado Enacting a Moratorium on the Allocation of Water Taps for New Building Construction Projects Requiring More than Three Single Family Equivalent Units

Mike S. updated on the extension to Ord 05-2020, it was last updated in February 2022 and he stressed the importance of the extension. He stated this needed only a voice vote to extend.

George B. confirmed this first vote is to keep the existing moratorium in place and Ord 02-2023 would supersede once and if it is finalized.

Public Comment Opened

Mr. Bill Hobilitz, 262 Taylor, spoke to remove the Minturn North project exemption from the moratorium as it is identified in the Ordinance because the project no longer represents the original concepts presented and that it no longer provides affordable and workforce housing.

Mike S. stated these comments should be placed under the next section as this is only to extend the moratorium the next item is to modify for the future needs, I have placed this comment below as well.

Public Comment Closed

Motion by Tom S., second by Lynn F., to extend the moratorium approved under Ordinance 05-2020 for one year as presented. Motion passed 5-0. Note: Earle B. was absent and Terry A. was recused.

11.2 Ordinance 02 – Series 2023 (First Reading) An Ordinance Renewing the Minturn Water Moratorium – Metteer/Sawyer

In May 2020, the Council passed Ordinance No. 5, Series 2020 enacting a moratorium on the allocation of new SFEs of water service from the Town's water system. The moratorium has been in place since 2020 having been renewed in February 2022. The 2020 water moratorium was in reaction to analyses of the Town's capacity to supply water undertaken as part of the 2019 Capital Improvement Plan. The bases for the moratorium were both limitations on the Town's ability to treat water (the aging water treatment plant) and limitations on the Town's senior water rights (legal ability to divert water for use within the Town).

In the three years since the moratorium was enacted, additional data has been gathered and new circumstances arisen which require the Town to re-evaluate the water supply limitations in the 2020 moratorium. Specifically, the Town has hired the HDR Engineering to provide a more detailed analysis of the ability of the Town's existing water treatment plant to meet current and future service needs. Further, the Town has continued to obtain guidance from water rights engineers Martin & Wood as to the Town's capacity to provide water under the Town's water rights. Updated information from both technical consultants is provided with this memorandum.

The Town faces two significant obstacles to increasing water service beyond the current levels. These obstacles are legal limits on the Town's ability to divert water from Cross Creek and limitations on the existing water treatment plant's ability to deliver potable water to users.

The Town's senior water rights – the surface diversion and two wells – are subject to consumptive use limitations imposed by the Water Court in Case No. 07CW225. The consumptive use limitations restrict the Town's ability to divert water from the senior water rights: (a) in annual amounts, (b) in monthly amounts, and (c) by individual structure. As discussed in the Martin & Wood memorandum, the Town historically derived approximately 30% of its source water from the two wells and consumptive use limitations were imposed based on that. Now, the Town is relying more heavily on the wells and is currently using them to provide at least 50% of the water supply each month. As a result, the Town has reached the annual consumptive use limitation for one of the wells twice in the last 7 years.

The consumptive use limitations imposed by the Water Court create a material constraint on the Town's ability to serve additional growth in Minturn with Cross Creek water. While the Town has junior water rights, including for wells, which are not subject to the consumptive use limitations, these junior water rights require augmentation which is most likely needed in the summer and fall months (when Town water service is most in demand). The Town does not have infrastructure in place to deliver augmentation water to its points of diversion on Cross Creek. As such, the use of the Town's junior water rights to supply additional growth is unreliable.

HDR Engineering has undertaken an analysis of the Town's ability to meet service needs, including growth, under "constrained" and "worst case" conditions. See Memorandum of HDR dated January 24, 2023. Consideration of restricted conditions at the Town's water treatment plant are critical due to the age of the infrastructure. HDR's "constrained" and "worst case" scenarios look at treatment capacity if Filter 3 is off-line (due to turbidity in the source water) and one of the Town's two wells cannot operate due to the consumptive use limitations imposed by Case No. 07CW225. HDR concludes that under the "worst case" scenario, the Town is able to meet the existing average daily demand and the maximum daily demand (assuming no growth). Under the "constrained" scenario, the Town can meet the average daily demand (including limited growth) but not the projected maximum daily demand. Maximum daily demands can be managed by imposing outdoor watering restrictions (maximum daily demands occur during the summer when irrigation is occurring) during temporary periods until the additional treatment capacity is brought back on-line.

The Town believes that a "worst case" scenario would be limited to a few weeks and short term water supply shortages can be addressed by irrigation limitations. The "constrained" scenario is an occurrence that could last for longer durations and therefore imposes a greater limitation on water service for additional growth. The limitations proposed in the proposed ordinance fall within the supply conditions of the constrained scenario.

Mike S. outlined the proposed Ordinance and identified the salient changes between the existing moratorium and the proposed modified moratorium. He also noted that Minturn North has submitted a preliminary plan application for their development and identified the use of their reserved taps.



George B. asked if the Ordinance was ready. Mike S. stated the one question that will be raised is the Minturn North 70sfe's. He felt this would be fleshed out over the next few months but it would not preclude the Ordinance from advancing.

Lynn F. confirmed that it is an option to change the Ordinance to require a Final Plat vs Preliminary Plan by August 2023; correct. This could be done by approving on first reading and directing staff to make this change for second reading.

Tom S. confirmed how a new home could have one tap and then an ADU; correct.

Discussion ensued as to how current infill development looks using the new moratorium over the existing moratorium.

Discussion ensued to our limitations of treatment capacity and water rights constraints. It was discussed that water supply of our senior water rights have consumptive use limitations. A better capacity to filter water would alleviate a portion of our need for more water.

#### Public Hearing Opened

Mr. Bill Hoblitz, 262 Taylor, spoke to remove the Minturn North project exemption from the moratorium as it is identified in the Ordinance because it no longer represents the original concepts presented and that it no longer provides affordable and workforce housing. Note: this was a restatement from the above agenda item.

Mr. Brian Bevan, Miners Base Camp LLC (Belden Place), requested a modification of the moratorium be modified to allow Belden Place a portion of those identified Minturn North 70SFE's. He outlined his groups reasoning for this request. In essence, because Minturn North has not proceeded, Belden Place has leapfrogged Minturn North and should have access to 20.5 sfe's of the 70 sfe's and then decrease Minturn North's allocation 49.5 sfe's.

Ms. Ruth Borne, representing Midtown Lofts, discussed the need to modify the proposed ordinance by requiring a Final Plat rather than a Preliminary Plan by the set deadline to meet the set conditions. She also asked the moratorium be extended and continue to be continued until the water issues are resolved and to provide periodic updates to the public on how the water upgrades are proceeding. Ms. Borne also submitted a letter which is attached to these minutes for the record.

Mr. Rick Hermes, from Resort Concepts/Minturn North, discussed the pressure a Final Plat condition would put on his project. He stated they have submitted over 1000 pages of required documentation on their project. This is not a resort neighborhood, 90% will be locally owned. He noted the lot sizes are on average are smaller than the Taylor St lots. He stated they have not had any discussion on ADU's or no, he stated all the lots are reserved at this point.

Lynn F. asked the average size of the buildings, the majority are approximately 3000sf.

Tom S. asked when a time for the Final Plat would be, it was stated they hoped that August was sufficient. He stated that it should be based on due diligence and that the plan is moving forward

and not stalled unreasonably. Tom S. was clear he wanted this to be the final deadline and if it isn't done this year it should be shut down.

Mr. Jeff Armistead, 1618 Main St representing Midtown Lofts LLC. Agreed with Mr. Bill Hoblitz comments. Discussed that the Minturn North plan is not what was originally presented, it has taken way too long, and should no longer be allowed to reserve all 70 taps. He asked why does the town need to continue to hold back the 70 sfe's for that project? His concern was to treat all developments the same since this developer has tied up the last remaining taps for three years. He expressed all developments should be judged based on the project and when they are approved for Final Plat and built as opposed to first come first served. He asked that Section 6 of Ordinance 02-2023 be removed from the draft ordinance.

Ms. Ruth Borne, Midtown Lofts, asked why the town guaranteed the 70sfe's for a concept? Mike S. stated they had a pending application submitted prior to the original moratorium and members of the council at that time felt it to be fair to provide the allowance.

Public Hearing Closed

Mike S. noted:

- The proposed time frame in the Ord should be Final Plat not Preliminary Approval.
- He stated in the future the Town should not be reserving rights prior and should further review how we allocate resources.
- For Minturn North there does need to be a set timeframe, a date set for Final Plat and the reservations.

Kate S. asked if the 3 years that has already passed was not sufficient and why we should yet again extend to August 31, 2023. Mike S. stated previously there was not a drop date and that the proposed Ordinance sets this date, it affords the developer time to resolve their issues, etc. He stated the submitted plan is currently at staff review and will be provided by Feb 22 and then the applicant has a set period to respond, the plan then goes to referral agencies such as CDOT, Eagle County, etc, which would take another couple months, then set hearings for Planning Commission. In consideration of our process, August would provide reasonable and sufficient time.

Lynn F. felt the time frame for the required Final Plat approvals far exceeded the August deadline, Scot H. felt it was feasible and discussed.

Motion by Tom S., second by Lynn F., to approve Ordinance 02 – Series 2023 (First Reading) An Ordinance Renewing the Minturn Water Moratorium as amended by conditions. Motion failed 2-3. (Nay: George B., Kate S., Gusty K.) Note: Earle B. was absent and Terry A. was recused.

Conditions:

- Change Section 6 reference Final Plat in place of Preliminary Approval
- August 31, 2023 is changed to Nov 30, 2023

Motion by George B., second by Tom S., to approve Ordinance 02 – Series 2023 (First Reading) An Ordinance Renewing the Minturn Water Moratorium as amended by conditions. Motion passed 4-1. (Nay: Kate S.) Note: Earle B. was absent and Terry A. was recused.

Conditions:

- Change Section 6 reference Final Plat in place of Preliminary Approval
- August 31, 2023 is changed to September 30, 2023

Terry A. resumed her seat at the dais and assumed the meeting Chair.

11.3 Certificate of Appropriateness -146 N Main St; Minturn Saloon

Madison H. presented for Staff.

Review of Historic Preservation Commission (HPC) actions from the regular meeting of January 24, 2023. Additionally, add as a condition of approval the requirement for the execution of an Encroachment Agreement. The following actions were recently taken by the HPC which has been put on the agenda for review by the Minturn Town Council:

**146 North Main Street, Minturn Saloon – Certificate of Appropriateness Approval**

At their regular meeting of January 24, 2023, the HPC reviewed the plans for the reconstruction of an awning that had to be removed due to integrity issues while replacing the roof, as well as the addition of two penetrations in the roof for a grease fan and a bathroom fan. Plans call for the replacement of the awning as similarly as possible to the original construction. A staff report and exterior elevation renderings are attached for reference.

The HPC discussed the proposed reconstruction in context to the Secretary of the Interior's *Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings*, as adopted by the Town of Minturn Municipal Code Section 19-5-30. The HPC unanimously supported the proposed project as meeting the objectives and requirements of the MMC and the Secretary of Interior's Guidelines.

Ultimately, the HPC voted 4-0 to issue a Certificate of Appropriateness to the Applicant, choosing Option 1 of the two given options describing methods of construction of the awning. Option 1 was represented as the sturdier option of construction of the two.

In reviewing the application, the HPC considered the criteria and findings required by the Minturn Municipal Code, as well as the testimony of staff, the Applicant, and Lynn Teach of Pine Street who provided testimony.

Discussion by the HPC focused on the proposal's overall conformance with the requirements of Chapter 19 – *Historic Preservation* of the Town of Minturn Municipal Code, and the Secretary of the Interior's *Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings*.

An encroachment agreement is required as part of this project is occurring within the public right of way. Staff recommends approving the certificate of appropriateness upon condition of a completed encroachment agreement. The encroachment fee is set at \$16.00/sf. The encroachment area is 241.01 sq. ft., therefore the encroachment fee per year would be \$3,856.16. Staff

recommends this fee be waived annually so long as the public value of an accessible, covered walkway remains for the extent of the encroachment.

Michelle M. requested an encroachment agreement be signed but due to the public benefit of the covered sidewalk we would request no fee be assessed for the encroachment.

Public Hearing Opened  
No Public Comment  
Public Hearing Closed

Motion by Gusty K., second by Tom S., to approve Certificate of Appropriateness for 146 North Main presented with the inclusion of the encroachment agreement. Motion passed 6-0.

## **12. DISCUSSION / DIRECTION ITEMS**

### 12.1 Location of Council Comments on Agenda

George B. asked it be moved to the front of the agenda after public comments and cited his reasoning.

Direction was to adjust the agenda as proposed.

## **13. STAFF REPORTS**

### 13.1 Manager Report

#### **Water Service Line Leak & Remediation**

A primary goal for staff is for uninterrupted, safe, quality water service to the residents and businesses of Minturn. Unfortunately, that goal was recently not met, and water service was turned off for most of the day on Thursday, January 19<sup>th</sup>. The culprit was an improperly abandoned service line from decades ago. Additionally, it was difficult to locate the line as it had not been capped at the corporation valve and thus the leak detection system was less efficient than usual. More of these “ghost service lines” exist. Minturn staff will work this summer to proactively locate these lines, where possible, and cap in advance of additional leaks.

#### **Additional Water Service Line Leak Location Efforts**

An additional waterline leak has been detected within the system and the team is currently working to determine the leak’s location.

#### **Eagle River Community Watershed Plan (ERCWP) & NWCCOG Water Efficiency**

The ERCWP is nearing its final stages of completion. Community members have been working on this plan since 2018 and the Eagle River Watershed Council will be presenting this plan to Minturn with the request of adopting the aspirational goals outlined therein. As part of the plan, a request is identified to recognize the [NWCCOG Model Water Quality Protection Standards for Local Governments](#).

### **Christmas Tree Bonfire**

Special thanks to Gusty and Jill Kanakis for volunteering to help with the Christmas Tree Bonfire this year, it was a success!

### **Business License Renewal – Date Extension Reminder**

Online business license management software is being incorporated into the [www.minturn.org](http://www.minturn.org) website. We anticipate this online service to be operable by March, 2023. For all business holders in Minturn the deadline for business license renewals is being extended to May 1, 2023, for use of the new system.

### **Snow Removal – Free Snow Dump Available to Residents**

It's been a great year for snow, but things are getting a little crowded. So where should everyone put all that snow? As a reminder, the town of Minturn offers a **free snow dump to residents** (not to plow companies). All residents are welcome to haul any additional snow to the upper parking lot at Little Beach Park for legal snow dumping. Give it a try! It's far better than shoving all that snow onto Main Street!

### **Maloit Park Road**

Maloit Park Road is maintained by the Eagle County School District (ECSD). For questions or concerns regarding road maintenance please contact ECSD at: 970-328-1324 between 6am and 2:30pm.

Michelle M. discussed the previous meeting and asked if the cemetery fence should be addressed as a nuisance. It was also noted that both Michelle M. and Terry A would be attending the February 14 Cemetery District Board meeting. Direction was to proceed as a nuisance.

Michelle M. noted the heavy snow year and encouraged patients for the citizens and that citizens NOT push snow into the right of way it should be put in the on-site snow storage.

#### 13.2 2022 Q3 Update

George B. noted all the work being accomplished by Michelle M. and town staff.

#### 13.3 January 2023 Newsletter

## **14. COUNCIL COMMENTS & COMMITTEE REPORTS**

Kate S. updated on the recent meeting of the Eagle County Housing Authority.

Terry A. updated on the Minturn Fitness Center Board Meeting. The MFC is seeing a profit this year, the MFC is looking at a maintenance plan, a maintenance plan for equipment, membership and attendance is up, all good news.

## **15. FUTURE AGENDA ITEMS**

**16. ADJOURN**

Motion by Tom S., second by Gusty K., to adjourn the meeting at 8:50pm.

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Earle Bidez, Mayor

ATTEST:

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Jay Brunvand, Town Clerk

**INFORMATIONAL ONLY ITEMS**

Town Hall Closed:

- February 20, 2023 – President’s Day

Upcoming Council Meetings:

- February 15, 2023
- March 1, 2023
- March 15, 2023
- April 5, 2023

**TOWN OF MINTURN, COLORADO  
RESOLUTION NO. 06 - SERIES 2023**

**A RESOLUTION IN SUPPORT OF THE US DEPARTMENT  
OF TRANSPORTATION (DOT) RAISE GRANT FOR  
PLANNING FUNDS TO COMPLETE DESIGN AND  
ENGINEERING TO THE 100% LEVEL FOR PHASE III OF  
THE MINTURN MAIN STREET PEDESTRIAN  
IMPROVEMENTS PROJECT WITHIN THE TOWN OF  
MINTURN, COLORADO**

WHEREAS, The Town of Minturn is committed to a DOT Grant submittal request for the purpose of updating the Town of Minturn's design and engineering to the 100% level for Phase III of the Minturn Main Street Pedestrian Improvements Project; and,

WHEREAS, The DOT, grant administrator, requests notice of support of any such grant prior to receipt; and,

WHEREAS, The Town of Minturn desires such grant in the amount of \$477,225; and,

WHEREAS, Minturn meets the program definition of "rural," and as such, does not need to provide a non-federal cost share commitment.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MINTURN, COLORADO:

1. The Minturn Town Council supports any potential grant awarded by the US Department of Transportation to the Town of Minturn and
2. The Town of Minturn has the capacity and expertise to execute this project upon grant award.

**INTRODUCED, READ, APPROVED, ADOPTED AND RESOLVED this 15<sup>th</sup> day of February 2023.**

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Earle Bidez, Mayor

ATTESTS:

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Jay Brunvand, Town Clerk





## MINTURN COLORADO

### Minturn Main Street (US 24) Pedestrian Improvements Phase III Planning Project

The Town of Minturn seeks US Department of Transportation (DOT) RAISE grant planning funds to complete design and engineering to the 100% level for Phase III of the Minturn Main Street (US 24) Pedestrian Improvements project.

The Town of Minturn, CO, (population 1,101) is underway with a major redesign and reconstruction of its main street corridor to establish pedestrian facilities, improve the roadway surface, and advance safety enhancements. Nestled between the resort towns of Vail and Beaver Creek, Minturn is a charming town with historic architecture and a unique mix of restaurants, shops, and outdoor adventure opportunities concentrated around its Main Street. State Highway U.S. Route 24 (US 24) serves as Main Street in Minturn, extending from Interstate 70 (I-70) and US 6 in Minturn east to the Kansas state line where it continues concurrent with I-70. The segment of US 24 through Minturn was designed to serve only vehicles and lacked adequate pedestrian and bicycle facilities to safely allow residents and visitors to access businesses and residences on Main Street without a car.



Since 2010, Minturn has been working to re-envision its Main Street as an eclectic, walkable downtown corridor with thriving small businesses that can also support that many cyclists who pass through to ride the popular Tennessee Pass. The Minturn Mainstreet (US 24) Pedestrian Improvements are proceeding in three phases:

- Phase 1 – Toledo Avenue to Cemetery Road (MP 145.24 to MP 146.13) – With funding from the Colorado Department of Transportation (CDOT) Transportation Alternatives Program, the Colorado Department of Local Affairs, and local match, new curbs, Minturn replaced curbs, gutters, and storm sewers, repaved, and extended ADA-compliant sidewalks on Main Street through the south part of Minturn, providing a safe connection for pedestrians from the downtown area to South Minturn. Due to funding constraints, the project concluded half-way through South Minturn. Construction of this segment was completed in Spring 2020.
- Phase 2 –South Minturn to the Boneyard Open Space (MP 146.13 to MP 146.5) – Minturn has a pending application for CDOT Revitalizing Mainstreet Large Safety grant funds to maintain



parking throughout Segment 2 and extend the Segment 1 cross-section through this segment to provide consistency throughout town. Sidewalk facilities did not previously exist along this portion of US 24. Proposed curb, gutter, and storm sewer will control highway drainage consistent with the Town's Master Drainage Plan. Minturn expects to complete construct on this segment by Fall 2023.

- Phase 3- Boneyard Open Space to Maloit Park Road (MP 146.5 to 147.1) – Minturn seeks US DOT RAISE grant funds to complete design and engineering for widening the highway to provide 6' shoulders that can serve bicycles, as well as providing a pedestrian facility to connect the rest of the Town to this segment.

The Minturn Boneyard Open Space is open to all for walking, picnicking, wildlife viewing, snowshoeing, and river access throughout its meadows and woodlands adjacent to the Eagle River and National Forest Lands. The Open Space is adjacent to Minturn Bike Park, which offers pump tracks, dirt jumps, and trails that are free and open to the public. This planning project will design and engineer the widening and sidewalk extensions for the segment connecting the Open Space and Bike Park down to Maloit Park Road, which offers access to the Vail Ski and Snowboard Academy – an Eagle County Public School – and Minturn Fitness Center. This Minturn Main Street (US 24) Pedestrian Improvements Phase III Planning project will advance efforts to:

- Improve safety for cyclists and pedestrians, who walk and bike along this narrow, shoulderless section of Main Street alongside cars traveling at speeds over the 45mph speed limit.
- Decrease pollution and greenhouse gas emission by encouraging mode shift from single-occupancy vehicles (SOVs) to active transportation modes for short trips in town.
- Enhance economic competitiveness by promoting Minturn as a tourism destination with a walkable downtown and safe, outdoor cycling opportunities.

The Town of Minturn must demonstrate broad partnerships and community support to be competitive for US DOT RAISE grant funds. Please join us as an active partner and supporter of the Minturn Main Street (US 24) Pedestrian Improvements Phase III Planning project.

*For more information, please contact Michelle Metteer, Town Manager at 970-827-5645 e8 or [manager@minturn.org](mailto:manager@minturn.org), or Jenna Siegel, PE, PMP, Transportation Engineer, Stolfus & Associates, Inc. at 302-540-3262 or [jenna@stolfusandassociates.com](mailto:jenna@stolfusandassociates.com).*

Town Treasurer/Town Clerk  
P.O. Box 309 ♦ 302 Pine St  
Minturn, CO 81645  
970-827-5645

[www.minturn.org](http://www.minturn.org)



TOWN COUNCIL  
Mayor – Earle Bidez  
Mayor Pro Tem – Terry Armistead  
Council Members  
George Brodin  
Lynn Feiger  
Gusty Kanakis  
Kate Schifani  
Tom Sullivan

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February 15, 2023

The Honorable Pete Buttigieg  
Secretary, US Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, DC 20590

Re: Support for the Minturn Main Street (US 24) Pedestrian Improvements Phase III  
Planning project

Dear Secretary Buttigieg,

I write to express my strong support for the Town of Minturn's proposal for US Department of Transportation (DOT) RAISE grant funding for the Minturn Main Street (US 24) Pedestrian Improvements Phase III Planning project. The Town of Minturn, Colorado, (population 1,101) will complete planning, design, and engineering for the reconstruction of the southernmost segment of the Town's main thoroughfare to facilitate safe access by cyclists and pedestrians and improve mobility for residents of all incomes, ages, and abilities.

Town of Minturn is a legally incorporated municipal government within the State of Colorado. The Town of Minturn Council on behalf of its citizens support the Minturn Main Street Phase III project because the project will advance the Town of Minturn's efforts to re- envision Main Street as a walkable, vibrant, downtown corridor; this segment of Main Street/US 24 is on a popular route for cyclists, yet its current condition is narrow and unsafe; establishing safe pedestrian/bike facilities along Minturn's Main Street will help drive foot traffic to local businesses and promote Minturn as an eclectic, alternative tourism destination to the costly nearby Vail Resort; the project will provide active transportation connections to transit that will serve commuters to and from Minturn; the project will help establish a safe route to school for local students of Eagle County Schools' Vail Ski and Snowboard Academy located in Minturn; the project will help to reduce greenhouse gas emissions by enabling residents and visitors to make short local trips without relying on a vehicle; the project will help facilitate safe and reliable transportation options to and from new workforce housing developments in the project area; etc.

The Town of Minturn commits to participating in public engagement for the planning project; publicizing the project and its progress to my members or constituents; promoting

completion of the project to help reduce traffic, pollution, and greenhouse gas emissions; ensuring the planning process considers equity and needs for housing, accessibility, and affordability within the community; collaborating with Town to expand transportation options and multimodal connections; etc.

The Town of Minturn urges you to give the Minturn Main Street (US 24) Pedestrian Improvements Phase III Planning project the highest consideration for US DOT RAISE grant funds.

Sincerely,

Earle Bidez, Mayor



***M E M O R A N D U M***

February 14, 2023

TO: Town Council

FROM: Holland and Hart LLP (Susan M. Ryan)

CC: Michael J. Sawyer, Karp Neu Hanlon, P.C.

RE: Summary of Revised Conflict Waiver Request

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Holland & Hart LLP (“Holland & Hart”) would like to pursue opportunities to represent the Vail Corporation and its various affiliates/subsidiaries (“Vail Corporation”) in connection with various litigation, transactional, environmental, and regulatory matters not directly adverse to the Town of Minturn (“Minturn”). Holland & Hart’s proposed representation of the Vail Corporation would not include water rights, water court litigation, or water supply planning matters in the Eagle River watershed or any representation directly adverse to Minturn. In addition, Holland & Hart’s proposed representation would not include, without further consultation with and consent from Minturn, zoning, land use entitlements, federal or state land permitting, or annexations within Eagle County, Colorado; any property or other project location that is within Minturn’s municipal boundaries; or any proposed resort development that would be accessed from Colorado State Highway 24 instead of via the I-70 corridor.

20893489\_v1



To: Minturn Town Council  
From: Michelle Metteer  
Date: February 2, 2023  
RE: Town Manager Update



### **Water Leak – Railyard Service Line**

A .6" service line leak in the railyard was found and turned off. This leak was losing approximately 70,000 gallons/day. Since the leak has been repaired, the town's tank has recovered and is running at full capacity.

### **Water Service Lines**

The Town asks property owners to please be cognizant of their service lines. A service line, if compromised in the wintertime, can be expensive to repair. These lines should be upgraded in advance of breaks. The Town is committed to reducing water loss, if private service lines break, either the private property is required to make the repair within five days, or the town will make the repair and bill the property owner.

### **Snow Removal 700-1000 Blocks Main Street**

Public works removed snow, much of which was illegally dumped from the private properties adjoining HWY 24, between the 700 block and 1000 block of Main Street. **Moving forward, the Town will not allow any property moving snow onto the public right of way. The Town had previously tried to work with properties that had minimal snow storage due to small lot size, however that will no longer be the case.** Photos of the illegally dumped snow are included for review.







# TOWN OF MINTURN QUARTERLY REPORT Q4 2022

January 31, 2023

Photo by Kevin Banker

@bankercinefotoco







# QUARTERLY REPORT ADMINISTRATION



## TOWN MANAGER

- Awarded \$2M in Congressionally Directed Spending (State and Tribal Assistance Fund) toward the construction of a new water treatment plant.
- Coordinated the ongoing effort to improve system processes for the metering and billing of Minturn's water system.
- Participated in the creation of the Minturn Market visioning committee.
- Represented Minturn in the region-wide affordable housing discussion hosted by the Vail Valley Foundation and attended by all Eagle County municipalities.
- Supported staff efforts in the passing of Minturn's first historic designation of the town's original water tank.
- Worked with the internal team for the quiet titling of a parcel of land immediately to the north of the Riverview Cemetery.
- Participated in Northwest Colorado Council of Governments Water Quality Planning Assessment
- Met with Eagle County Sheriff's Office representatives to review current Minturn operations and potential improvements.
- Continued Downtown Colorado Inc. efforts to assess opportunities for increased business engagement in Minturn's downtown area.
- Participated on the Colorado City and County Manager's Association conference committee (conference to be held Apr 26-28 in Glenwood Springs)
- Attended the Eagle County Watershed Council Annual Monitoring and Assessment Program Update.





# QUARTERLY REPORT TABLE OF CONTENTS



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## TOWN OF MINTURN QUARTERLY REPORT\* Q4 2022

*\*The Quarterly Report is created to provide the Minturn community with an update of Town operations and the execution of the Strategic Plan.*

## Strategic Plan Summary

Since its inception in 1904, Minturn has been a resilient and proud mountain town that full-time, working-class residents call home. With the closing of the Gilman mine and the decommissioning of the rail-lines, **Minturn has new opportunity within the mountain resort economy.** Today, **having an ideal location as a valley-wide intersection,** Minturn embraces the “basecamp position” geographically within the Eagle County region.

Core to Minturn’s values is its **strong identity as a small mountain-town community.** In the Colorado Rockies, sandwiched between two world-class resorts, this value requires maintaining **principles** and a **desire to lead by example.** Through a **willingness to confront issues while maintaining high standards in following the public process,** Minturn will work to stay true to this core value.

The Town is committed to providing a respectful and responsive government that follows a solutions-based approach rooted in the municipal code. To sustain community **trust,** we strive to follow a consistent **public process** in all areas of municipal government.

Town of Minturn staff and elected officials will **support activities outlined in this strategic plan and work toward sustaining a great mountain town** by taking a **proactive approach** to municipal government. With an **engaged community** and a **safe, family-friendly environment,** Minturn endeavors to remain one of the **last great mountain towns.**

### Mission:

“In collaboration with our community, foster the authentic small town character that is Minturn.”

### Vision:

“Lead Minturn to long-term viability while preserving its unique character and genuine mountain town community.”

### True North:

“Leverage Minturn’s assets to benefit and maintain our funky, proud, uniquely classic mountain town where people grow roots through creating opportunities and community engagement.”\* \*Keeping in mind we are Minturn



# QUARTERLY REPORT PLANNING



## DEVELOPMENT PROJECTS:

- NONE

## LONG RANGE PLANNING / OTHER PROJECTS:

- The draft Community Plan chapters were taken to the Planning Commission for their feedback. They were reviewed by the Planning Commission at a second meeting with that feedback address before Planning Commission recommended approval of the document to the Town Council with some final feedback to incorporate. The consultant team and staff took time to properly incorporate that feedback, as well as ensuring that the information provided in the document was as accurate and up-to-date as possible. The review of the Community Plan is slated to take place at Council at the beginning of the year.
- Ordinance 17 – 2022 amending Chapter 16 of the Minturn Municipal Code to provide for the addition and inclusion of waterwise landscaping regulations and standards
- Ordinance 11 – 2022 amending and replacing zoning, land use, development, and design regulations and standards applicable to the Old Town 100 Block Commercial Zone District

## MORATORIUMS:

Due to design standards being adopted, the moratorium on the processing of permits and business licenses for the street level of 100 Block was allowed to expire.

## HISTORIC PRESERVATION UPDATE

- The HPC held a joint session with the Town Council on October 5, 2022
- HPC and Town staff draft a Historic Preservation Plan which is adopted by the Town Council via Resolution 38 – 2022
- Resolution 39 – 2022 was passed by the Town Council supporting the Town of Minturn to apply to become a Certified Local Government
- The Town of Minturn initiated the nomination for Historic Landmark status for the Minturn Water Tank that is located on the hillside above the 100 Block. The Historic Preservation Commission recommended approval of this to the Town Council at their November 8, 2022 meeting, and the Town Council designated the Water Tank as a Historic Landmark via Ordinance 22 – Series 2022 making this structure the first to be added to the Town’s Historic Register.
- The HPC reviewed a nomination for Historic Landmark status for the Saloon at 146 N Main Street at their December meeting and forwarded a recommendation of approval to the Town Council. The Council are in the process of reviewing the application.

# BUILDING DEPARTMENT STATISTICS

### PERMITS

# 15

### FEEES COLLECTED

# \$23,898

### VALUATION

# \$694,751

### INSPECTIONS

# 29



# QUARTERLY REPORT FINANCE

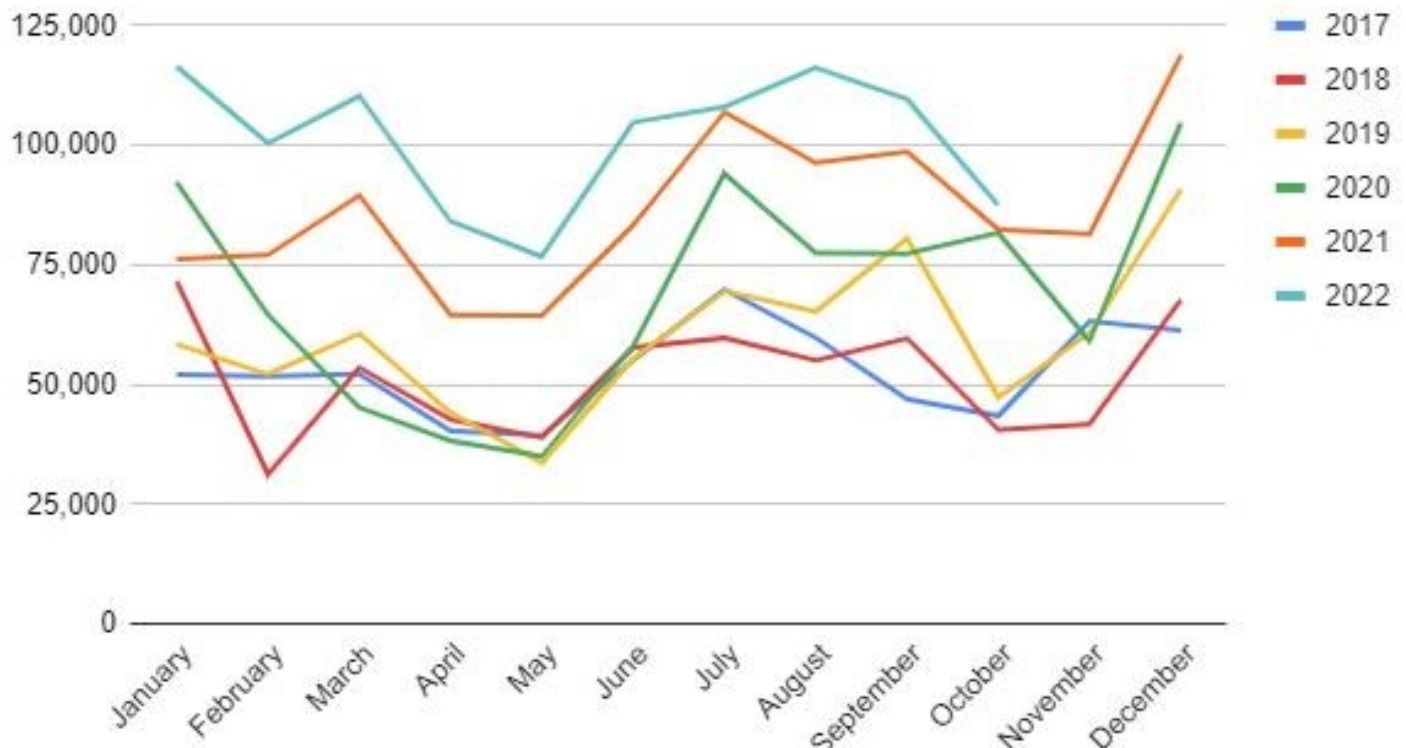


## FUND BALANCES AT NOV 30, 2022

| FUND                       | AUDITED FUND BALANCE<br>DECEMBER 31, 2021 | FUND ACTIVITY<br>JAN-NOV 2022 | FUND BALANCE<br>NOV 30, 2022 |
|----------------------------|---|-------------------------------|------------------------------|
| Gen Fund (01)              | 1,970,490                                 | 257,937.00                    | 2,228,427                    |
| Ent Fund (02)              | 1,293,243                                 | -191,732                      | 1,101,510                    |
| CTF Fund (03)              | 48,801                                    | 10,402                        | 59,203                       |
| Debt Service Fund (04)     | 11,249                                    | 1148                          | 12,397                       |
| Market Fund (05)           | 25,237                                    | 5120                          | 30,357                       |
| Capital Projects Fund (06) | 493,756                                   | -144,027                      | 349,728                      |
| Gen Imp Dist Fund (07)     | 2,959.00                                  | 0.00                          | 2,959.00                     |
| Scholarship Fund (08)      | 348,640                                   | -86,386                       | 262,254                      |
| Battle Mtn Resort Fund     | 105,154                                   | 1450                          | 106,604                      |

## SALES TAX ANALYSIS

2017 - 2022





# QUARTERLY REPORT TOWN CLERK



## ELECTIONS:

In November Eagle County passed the Eagle County Regional Transit Authority. This is a .5% sales tax that will go toward funding the new regional transit system which will replace ECO Transit. The tax is effective 1/1/23.

As a result of the state wide November general election, the town has had two laws that were voted and approved. A fee on plastic bags and the RTA tax passed in Eagle County and Minturn. There is now a mandatory 10cent bag fee that is charged. This is mandatory for stores that have 4 or more of which Minturn has none. Further, the bag fee does not include:

- \* Any Colorado business with three or less locations.      \* Does not apply to retail food establishments
- \* Does not apply to customers participating in Fed or State food assistance programs
- \* Does not apply to plastic bags that are used for inside store, loose or bulk items such as fruits and vegetables, or items that are a contaminant such as meats, seafood, and frozen foods.

## BUSINESS LICENSES

# 101

## STR LICENSES

# 24

## CONTRACTOR LICENSES

# 53 Active, 3 New

## SUSTAINABILITY



- The installation of the new public areas wildlife-proof dual trash / recycling containers had to be postponed as the bins all arrived damaged. The replacement bins arrived in late November. So far, bins have been placed only at Town Hall. We will place bins downtown later this winter, and in the spring we will place the bins designated for the parks. These bins were purchased as part of the CDPHE RREO (Recycling Resources Economic Opportunity) Grant Program.

### EV Charging Station:

- Usage of the Town Hall charging station continues to increase. So far, we've avoided 1301 kg in greenhouse gas emissions. That's like planting 33 trees and letting them grow for 10 years.





## QUARTERLY REPORT PUBLIC WORKS



### WATER / OPERATIONS

- Currently operating at half staff (2 guys out due to injury, return dates still TBD. Will be on light duty upon return).
- Newly constructed water tank awaiting chlorination in spring, 2023, for project completion and bringing the new infrastructure fully operational.
- Installation of radio tower on metal water tank for use in the WaterSmart continuous water metering program.
- Water leak detections ongoing. Deteriorating abandoned service lines causing higher than desired water loss in the distribution system.
- Installation of new water mixer in metal water tank
- Meters:
  - As of November, the Town is doing manual reads of non-read meters.
  - New meters installs: 491 complete, 30—35 estimated remaining
- Winter prep – closing down of Town parks, parking signage for snow removal operations
- Snow Plowing :
  - Snow plowing is the daily priority, especially with working at half staff (2 guys)
  - Using 3rd party contractors as needed to help with hauling snow and with sidewalk snow removal.



## QUARTERLY REPORT MINTURN FITNESS CENTER



### MINTURN FITNESS CENTER

- Q3 to Q4 2022 Membership Increase = 17% increase in paid memberships
- Q4 2021 to Q4 2022 (YOY) Membership Increase = 89% increase in paid memberships
- Current Classes:
  - Performance Circuit Monday and Friday 9am, Free Weight Fundamentals Wednesday 9 am, Yoga Saturday 8:30 am, Spin Circuit Monday and Thursday 6:30am
- Digital entry system is working well, member feedback has been very positive
- Currently working on some heating system repairs / upgrades





# QUARTERLY REPORT GRANTS & TECHNOLOGY UPDATES



## GRANTS

### Colorado Tourism Office Reimagine Destinations Program

Minturn and Red Cliff recently participated in collaboration, in the CTO Restart Destinations Program. The Reimagine Destinations Program is a continuation of this, and Minturn and Red Cliff are both currently participating in this program. The grant award includes 100 hours of free consulting from the CTO, and a one-day in person workshop with the CTO (held in November 2022) and a core team of local participants / tourism stakeholders. Once the Town completes the program – it also includes \$20,000 for marketing asset creation (photo shoot). Between this award, and the asset creation dollars from the Restart Program, Minturn and Red Cliff will have a total of \$30,000 to be used for a photo (and possibly video) shoot to help with tourism promotion. The Reimagine Destinations Program runs through June 2023.

The consulting hours and workshop have been focused on generating content ideas for an outdoor recreation guide / visitor guide, with a focus on responsible outdoor recreation.

**Pending**—The Towns have applied for a Colorado State Outdoor Recreation Grant (OREC), to help offset the costs of the actual creation (design and print) of said recreation guide. If that grant does not come through, there are other options such as the CTO Tourism Marketing and Tourism Management Grants. OREC grant award decisions will be made in mid-February.

### DOLA Grant for DCI Community Challenge Program

The Town was awarded \$25,000 to be used for participation in the DCI (Downtown Colorado, Inc) Community Challenge Program in the spring of 2022, as well as the downtown planning to come out of that workshop. So far, half of the funds have been utilized, and the remainder is scheduled to be utilized in 2023, depending on the future of the project. Currently, the Town is working with DCI to gauge interest from the business community in the creation of a downtown development organization such as a DDA. Meetings are scheduled for January and February of 2023 to determine our path forward.

## WEBSITE / TECHNOLOGY UPDATES:

In the process of implementing a business licensing software via Civic Plus (our website provider). This will allow for more efficiency, and will allow business owners to create an account and do everything online.

The Laserfiche public documents portal was recently moved to a Cloud-based version. This will provide several benefits, including:

- Significantly more concurrent users (previously we only have 5 licenses so only 5 users could view public documents at one time)
- Significantly less backup server costs / server replacement costs
- Increased security and bandwidth



# QUARTERLY REPORT EVENTS



## Q4 EVENTS

- Hometown Throwdown
- Minturn Halloween
- Town Tree Lighting

## PROPOSED 2023 EVENTS

- Christmas Tree Bonfire (January)
- Hovland Snowskates Rail Jam (March)
- Town Cleanup Day (June)
- GoPro Mountain Games Dual Slalom Race (June)
- Minturn Market (June 17—September 9)
- Minturn Summer Concert Series (Dates TBD)
- Independence Day Celebration
- The Greatest Show in Minturn (Aerial Circus by The Barn) - July
- Bravo! Vail Family Concert (July)
- PrimalFest (Music Festival) - July
- Courage Classic Bike Race (July)
- Copper Triangle Bike Race (August)
- EFEC School of Rock (August)
- Hometown Throwdown (October)
- Halloween – October 30th
- Town Tree Lighting – Friday, December 1st
- VRD Summer / Fall Partnership Events (See below)

## VAIL RECREATION EVENTS IN MINTURN (In partnership with the Town of Minturn)

- VAIL RECREATION EVENTS IN MINTURN (In partnership with the Town of Minturn)
- Meadow Mountain Skimo (February)
- Maloit Park Short Track MTB Race (May)
- Minturn Downriver Whitewater Race (June)
- Kids Minturn Mini MTB Race (July)
- Dynafit Town of Minturn Meadowgold 5K and 10K (September)
- Mighty Marmot kids trail running race at the Mini Mile (September)
- Looking to add a Dynafit Vail to Minturn 26K Trail Run (Date TBD)



# QUARTERLY REPORT

## EAGLE COUNTY SHERIFF'S OFFICE

### 2022 YEAR-END REPORTING



#### Officer-initiated Calls for Service:

|                             |          |
|-----------------------------|----------|
| Abandoned Vehicle           | 7        |
| Animal Complaint            | 2        |
| Assist                      | 30       |
| Attempt to Locate           | 3        |
| Attempt to Serve            | 48       |
| Bar Check                   | 16       |
| Bear Call                   | 2        |
| Business Check              | 79       |
| Civil Standby/Matters       | 2        |
| COPS                        | 7        |
| Contact                     | 8        |
| Damage                      | 39       |
| Directed Patrol             | 56       |
| Follow up                   | 24       |
| Foot Patrol                 | 15       |
| Found Property              | 1        |
| Juvenile Problem            | 1        |
| Motor Vehicle Accident      | 7        |
| Parking Problem             | 182      |
| Patrol/Radar                | 100      |
| Registered Sex Offender     | 4        |
| Reports                     | 28       |
| Restraining Order Violation | 1        |
| Road Debris                 | 9        |
| School Resource Officer     | 10       |
| Special Assignment          | 3        |
| Suspicious Occurrence       | 13       |
| Traffic Control             | 6        |
| Traffic Stop                | 208      |
| Training                    | 1        |
| Trespassing                 | 2        |
| Unknown Nature              | 1        |
| <u>VIN Check</u>            | <u>1</u> |
| Annual Total =              | 879      |

#### Dispatched Calls for Service:

|                             |          |
|-----------------------------|----------|
| Abandoned Vehicle           | 11       |
| Alarm                       | 28       |
| Animal Complaint            | 39       |
| Assault                     | 3        |
| Assist                      | 80       |
| Bear Call                   | 2        |
| Civil Standby/Matters       | 14       |
| Damage                      | 6        |
| Disturbance                 | 8        |
| Fire                        | 17       |
| Follow up                   | 54       |
| Fraud                       | 2        |
| Found Property              | 5        |
| Harassment                  | 11       |
| Intoxicated Party           | 5        |
| Juvenile Problem            | 3        |
| Lost Property               | 11       |
| Medical                     | 11       |
| Mental Health               | 1        |
| Missing/Overdue Party       | 4        |
| Motor Vehicle Accident      | 39       |
| Mud/Rock Snow Slide         | 2        |
| Noise Complaint             | 8        |
| Open Door/Windows           | 1        |
| Parking Problem             | 66       |
| REDDI Report                | 13       |
| Road Debris                 | 7        |
| Restraining Order Violation | 2        |
| Search and Rescue           | 4        |
| Shooting/Shots Fired        | 1        |
| Suicidal Party              | 5        |
| Suspicious Occurrence       | 52       |
| Theft                       | 14       |
| Towed Vehicle               | 3        |
| Traffic Complaint           | 19       |
| Travelers Aid               | 2        |
| Trespassing                 | 11       |
| Unknown 911                 | 4        |
| Unknown Nature              | 3        |
| VIN Check                   | 9        |
| <u>Welfare Check</u>        | <u>9</u> |
| Annual Total =              | 589      |



Glenwood Springs – Main Office

201 14<sup>th</sup> Street, Suite 200  
P. O. Drawer 2030  
Glenwood Springs, CO 81602

Aspen

0133 Prospector Rd.  
Suite 4102J  
Aspen, CO 81611

Montrose

1544 Oxbow Drive  
Suite 224  
Montrose, CO 81402

Office: 970.945.2261

Fax: 970.945.7336

[\*\\*Direct Mail to Glenwood Springs\*](#)

DATE: February 10, 2023

TO: Minturn Mayor and Council

FROM: Karp Neu Hanlon, P.C.

RE: Second IGA with Eagle River Water and Sanitation District and Upper Eagle Regional Water Authority

---

In February 2022, the Council passed Ordinance No. 03 – Series 2022 approving an intergovernmental agreement between the Town, the Eagle River Water and Sanitation District (“District”) and the Upper Eagle Regional Water Authority (“Authority”). (Ordinance attached) The February 2022 IGA contemplated that the parties would enter into a second intergovernmental agreement “outlining and satisfying how the requirements under Article 25 of the Minturn Municipal Code (the “1041 Regulations”) will be implemented as further information is generated for the Bolts Lake project.”

Representatives of the Town and the District and Authority have worked on terms for the second IGA. Presented for Council’s consideration is the Intergovernmental Agreement Among the Town of Minturn, the Eagle River Water & Sanitation District and the Upper Eagle Regional Water Authority for the Permitting of Bolts Lake Reservoir (“Second IGA”). The major provisions in Second IGA are:

Section 2 – The District and Authority will submit drafts of federal permit applications to Minturn for comments prior to submitting to the federal agencies. Minturn may participate in federal permitting processes and submit comments (albeit after communicating those comments to the District and Authority in an attempt to resolve concerns). Federal permits received by the District and Authority will satisfy similar provisions in the Town’s 1041 Regulations (e.g. a Federal wetlands permit would satisfy requirements related to wetlands under the 1041 Regulations).

Section 3 – The District and Authority anticipate that a 1041 Permit application will be submitted when the design is approximately 80% complete. Once a 1041 Permit is approved, it will be good for 10 years. The District and Authority can request an extension for an additional 5 year period (although updated impacts to health, safety and welfare can be considered).

Section 4 – This section identifies those provisions in the Town’s 1041 Regulations that will apply to a future application by the District and Authority. The Town’s 1041 Regulations contemplate many types of large-scale projects – not just reservoirs. As such, Town staff reviewed the numerous

provisions in the 1041 Regulations and identified those that were applicable to a reservoir construction project.

Section 5 – This section notes that the District and Authority will reimburse Minturn for its out of pocket legal and expert consulting costs associated with reviewing a future 1041 Permit application.

Section 6 – This section discusses the process under which a future 1041 Permit application will proceed. This process is governed by the Town’s 1041 Regulations. It will include a public hearing on the District and Authority’s application.

Section 7 – This section clarifies that building permits will only be required for structures contemplated under the International Building Code (“IBC”) and that building permits will not be required for things such as the dam, intake, pipelines and outlet (which are not IBC structures).

Section 9 – This section memorializes a provision in the first IGA that exempted the District and Authority from posting financial security with the Town for the Reservoir’s construction costs.

Staff believes that the Second IGA provides the additional context for processing a future 1041 Permit application contemplated by the initial IGA with the District and Authority.

**TOWN OF MINTURN, COLORADO  
ORDINANCE NO. 03 – SERIES 2023**

**AN ORDINANCE OF THE TOWN OF MINTURN,  
COLORADO APPROVING AN INTERGOVERNMENTAL  
AGREEMENT AMONG THE TOWN OF MINTURN, THE  
EAGLE RIVER WATER AND SANITATION DISTRICT,  
AND THE UPPER EAGLE REGIONAL WATER  
AUTHORITY FOR PERMITTING OF BOLTS LAKE  
RESERVOIR.**

**WHEREAS**, the Town of Minturn (“Town”) is a Colorado home rule municipality organized pursuant to Article XX of the Colorado Constitution and with the authority of the Town of Minturn Home Rule Charter for which the Minturn Town Council (“Town Council”) is authorized to act; and

**WHEREAS**, C.R.S. section 29-20-105 authorizes and encourages local governments to cooperate and contract with other units of government for such purposes as joint planning, land use regulation, zoning, development and other related regulations; and

**WHEREAS**, the Eagle River Water and Sanitation District (“District”) and the Upper Eagle Regional Water Authority (“Authority”) have acquired property in the Town of Minturn for the purposes of constructing the Bolts Lake Reservoir; and

**WHEREAS**, the Town has enacted certain regulations exercising powers over land use matters that pertain to areas and activities of statewide interest (“1041 Regulations”); and

**WHEREAS**, the Town, the District and the Authority entered into an intergovernmental agreement related to Bolts Lake Reservoir in February 2022 which contemplated a second intergovernmental agreement specifically addressing the 1041 Regulations; and

**WHEREAS**, the Town Council finds and determines that adoption of this Ordinance is necessary for the best interests of the Town and the preservation of the public peace, health, safety and its property.

**NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MINTURN, COLORADO:**

**SECTION 1.** The foregoing recitals are incorporated herein as if set forth in full.

**SECTION 2.** The Town of Minturn Town Council hereby approves and authorizes the Mayor to sign the Intergovernmental Agreement Among the Town of Minturn, the Eagle River Water and Sanitation District, and the Upper Eagle Regional Water Authority for Permitting of Bolts Lake Reservoir.

\* \* \*

INTRODUCED, READ BY TITLE, APPROVED ON THE FIRST READING AND ORDERED PUBLISHED BY TITLE ONLY AND POSTED IN FULL ON THE OFFICIAL TOWN WEBSITE THE 15<sup>th</sup> DAY OF FEBRUARY 2023. A PUBLIC HEARING ON THIS ORDINANCE SHALL BE HELD AT THE REGULAR MEETING OF THE TOWN COUNCIL OF THE TOWN OF MINTURN, COLORADO ON THE 1ST DAY OF MARCH 2023 AT 5:30 p.m. AT THE MINTURN TOWN HALL 302 PINE STREET, MINTURN COLORADO 81645.

TOWN OF MINTURN, COLORADO

\_\_\_\_\_  
Earle Bidez, Mayor

ATTEST:

By: \_\_\_\_\_  
Jay Brunvand, Town Clerk

THE TOWN OF MINTURN, COLORADO, ORDAINS THIS ORDINANCE ENACTED ON SECOND READING AND ORDERED PUBLISHED BY TITLE ONLY AND POSTED IN FULL ON THE OFFICIAL TOWN WEB SITE THIS 1<sup>ST</sup> DAY OF MARCH 2023.

TOWN OF MINTURN, COLORADO

\_\_\_\_\_  
Earle Bidez, Mayor

ATTEST:

By: \_\_\_\_\_  
Jay Brunvand, Town Clerk

**INTERGOVERNMENTAL AGREEMENT AMONG THE TOWN OF MINTURN, THE  
EAGLE RIVER WATER & SANITATION DISTRICT AND THE UPPER EAGLE  
REGIONAL WATER AUTHORITY FOR PERMITTING OF  
BOLTS LAKE RESERVOIR**

This Agreement dated March 1, 2023 is among the Town of Minturn (“Minturn”), Eagle River Water & Sanitation District (“District”) and the Upper Eagle Regional Water Authority (“Authority”) (referred to individually as a “Party” and collectively as the “Parties”).

**RECITALS**

A. The Parties entered into that Intergovernmental Agreement dated February 2, 2022 (the “**February IGA**”), which, among other matters, required the Parties to enter into this Agreement.

B. The District is the owner of an historical reservoir property located within Minturn’s municipal boundaries which the District and Authority intend to construct into a storage reservoir (the “**Reservoir**”).

C. WHEREAS, The Town has, set forth in Article 25 of the Minturn Municipal Code (“MMC”) (the “**1041 Regulations**”), certain requirements and criteria related to the construction of major facilities of public utilities, such as the Bolts Lake Reservoir (MMC Sec. 16-25-30(3)). The formal permitting process under the 1041 Regulations can be fulfilled by entering into an intergovernmental agreement with an implementing governmental entity addressing the various requirements of the 1041 Regulations (MMC Sec. 16-25-40(8)). A copy of the 1041 Regulations as they existed at the time of the IGA are attached as **Exhibit B**.

D. The February **IGA** set forth certain terms related to the application of the 1041 Regulations to the Reservoir and required that the Parties enter into this Agreement.

E. This Agreement constitutes an intergovernmental agreement entered into to implement the 1041 Regulation requirements.

F. The Parties anticipate that compliance with the 1041 Regulations will be split into two segments, with Tier 1 to address outside agency compliance, and Tier 2 to address local construction impacts. In addition, the Project is subject to certain state and federal permitting requirements, which permits will satisfy a significant portion of the requirements pursuant to the 1041 Regulations.

## AGREEMENT

1. Term of IGA Incorporated. The Parties hereby incorporate the terms of Section 9, Land Use Approvals, of the IGA into this Agreement.
2. Federal, State and Local Permits. The District and Authority will submit applications for, and must receive various federal, state and local permits as listed on **Exhibit A** (the “Agency Permits”). Receipt of the Agency Permits shall satisfy the 1041 Regulations including but not limited the review criteria set forth in Section 16-25-340 of the 1041 Regulations, except as specifically set forth herein.
  - a. Prior to submitting applications for any Agency Permit, the District and Authority will provide to Minturn copies of the Agency Permit application for review and comment. Minturn shall have 30 days from receipt of the application materials to submit comments to the District and Authority. If Minturn does not provide any comments within such time period, Minturn shall be deemed to have consented to the District and Authority submitting the application as presented. The District and Authority will incorporate Minturn’s comments, unless such comments create unreasonable delay or cost increases, as determined by the District and Authority in their sole discretion.
  - b. Minturn may participate in the National Environmental Policy Act (“NEPA”) process as a cooperating entity.
  - c. Minturn may independently submit comments and participate in any permit review process undertaken by a federal, state or local agency. Minturn will provide a minimum of 14 days’ notice to the District and Authority before submitting such comments. Minturn agrees to work in good faith with the District and Authority to address the substance of the Town’s comments and if a resolution is reached Minturn agrees to withdraw the comments, in whole or in part, from the permitting agency’s consideration.
  - d. Subject to receipt and Minturn’s review of applicable Federal permits, Minturn will submit a letter of support for the District and Authority’s application for a 1041 Permit from Eagle County for Bolts Ditch.
3. 1041 Permit.
  - a. The Parties anticipate that the District and Authority will submit a permit application pursuant to Section 16-25-250 of the 1041 Regulations (the “1041

Permit”) when the design for the Reservoir is approximately 80% completed, and prior to beginning construction of the Reservoir. Modification of the timeline for submittal of the application is in the District and Authority’s sole discretion, construction of the Reservoir will not be undertaken until a 1041 Permit has been issued by Minturn. Minturn agrees that the Agency Permits satisfy meaningful portions of the 1041 Permit requirements, and agree that the submission requirements are set forth in Section 4 herein.

- b. The Parties agree that once issued, the 1041 Permit shall be for a period of 10 years, as further set forth below.
    - i. If construction has not commenced within such 10-year period, the District and Authority may request an extension of the 1041 Permit for an additional 5 years. Any such extension will be brought before the Minturn Town Council for consideration and approval, denial, or approval with conditions; however, the Parties agree that the extension will not require a new public hearing. As part of the extension, the Parties will evaluate whether there are any new impacts to public health, safety and welfare that need to be addressed in the 1041 Permit.
    - ii. Once construction has commenced, the 1041 Permit shall be extended so long the planning, design, and construction of the Reservoir proceed diligently (“Construction Period”). Construction of the Reservoir shall be deemed to be diligent so long as there is not more than a 150 consecutive day period where no on-the-ground construction activities occur.
    - iii. Once the Reservoir is substantially complete, the 1041 Permit shall be valid for the life of the Reservoir. During the Construction Period, Minturn waives the ability to revoke or suspend the permit solely due to the time to start, take substantial steps to initiate the permitted activity, or complete the design, construction, or other work on the Reservoir. In addition, Minturn shall not require amendments to the 1041 Permit for changes that are consistent with the original intended scope and use of the Reservoir pursuant to Section 16-25-380(b) of the 1041 Regulations”.
  - c. Minturn consents to future transfers of the 1041 Permit to government successors of the District and/or Authority (as described in paragraph 14(a)). The District and/or Authority will provide notice of any such transfer to Minturn as soon as practicable.
4. 1041 Permit Submission Requirements. The District and Authority are subject to the permitting requirements per MMC Sec. 16-25-30(3) and 16-25-220(a) and will obtain a

permit from the Permit Authority. The application for the 1041 Permit shall encompass the following requirements of the 1041 Regulations:

- a. The District and Authority shall address the requirements contained in MMC Sections: 16-25-270 (1); (2) a., b., c.; (3) a., b., c., d., e., g., i., k.; (4)a.1 and 7.; (6); (8); (9) a., b., h.; (12); (17); (18); (19); (20); (21); (22); (23); (24); (25); (26); (27) and (28).
  - b. The District and Authority shall not address the requirements contained in MMC Sections: 16-25-270 (2) d and e; (3) f, h and j; (4) a. 2.-6.; (4) b and c; (5); (7); (9) c through g, i and j; (10); (13); (14); (15); and (16).
5. Application and Review Fees. In recognition of the significant regional benefit and specific benefits to Minturn from the Reservoir, Application fees for the 1041 Permit are waived. The District and Authority will reimburse the Town for its cost of outside legal, consultant or expert review of information submitted under provisions of the IGA and as part of the 1041 Permit application as provided in MMC Sec. 16-25-260(b), unless waived per MMC Sec. 16-25-260(c). However, as much of the review process will be satisfied by the Agency Permits, the Parties agree that the scope of the items to be reviewed by Minturn are those listed in Section 4(a) herein.
6. Permit Review and Processing.
- a. Prior to submitting a 1041 Permit application, the District and Authority will complete a pre-application conference as described in MMC Sec. 16-25-240.
  - b. Minturn may send the application out for referral comments as described in MMC Sec. 16-25-290. The Parties agree that appropriate outside review agencies could include the Colorado Division of Transportation, utility providers, and the Colorado Division of Wildlife. Homeowner's associations, and local governments such as municipalities and special districts are not intended to be identified as referral agencies.
  - c. In satisfaction of MMC 16-25-270(11), as part of its application materials the District and Authority shall submit a title commitment evidencing that there are no severed mineral rights associated with the property subject to receiving a 1041 Permit.
  - d. The Minturn Town Council shall conduct a public hearing to consider the 1041 Permit application. Minturn shall notice the public hearing on a Town Council agenda and shall publish once in a newspaper of general circulation at least 30 days prior to the public hearing. No notice by mailing nor posting shall be required.
  - e. The public hearing shall be conducted in accordance with the requirements of MMC Sec. 16-25-310 and 16-25-320 and approved only in accordance with the criteria identified in MMC Sec. 16-25-340.



- f. Once approved, the 1041 Permit shall be issued in accordance with MMC Sec. 16-25-350.
7. Building Permits. The District and Authority shall obtain building permits for structures as defined under the version of the International Building Code adopted by Minturn. Building permit fees for structures that are subject to building permit, if any, shall be assessed solely on the value of the structure requiring a building permit and not on the value of the Reservoir project as a whole. The District and Authority shall not be required to obtain design review approval as described in MMC 16-21-615. Furthermore, the Parties agree that construction of the following structures shall not be subject to building permits: dam, intake structure, pipelines, spillway, and outlet.
8. Agreement is All-Inclusive. 1041 Regulations not identified herein are agreed by the Parties to not be applicable. The Parties further agree that any changes to the 1041 Regulations adopted by Minturn after February 2, 2022 shall not apply to construction of the Reservoir.
9. No Financial Security. As part of issuing a 1041 Permit, Minturn shall not require that the District and Authority post any financial security for the construction of the Reservoir.
10. Remedies.
  - a. The terms of this Agreement shall be specifically enforceable.
  - b. Prior to enforcing in Court any remedy for breach of this Agreement, the party asserting that such a breach has occurred shall give the other party written notice thereof including a description of the alleged breach and citation to the relevant provisions in this Agreement. The party against whom a breach is asserted shall have fourteen (14) days after such notice is sent in which to cure the breach.
11. Defense of Permits. The parties agree to cooperate in the event of a legal challenge to a 1041 permit that has been issued. In the event of a legal challenge to a 1041 Permit, the provisions of MMC Sec. 16-25-260(d) shall control; however, nothing in MMC Section 16-25-260(d) or this Agreement shall be construed as a waiver of the District or Authority's right to recover attorney's fees and costs from any third party.
12. Recording. This Agreement and all exhibits attached to this Agreement shall be recorded in the records of Eagle County, Colorado.

13. No Waiver. Nothing contained herein shall constitute a waiver by Minturn, the District or the Authority as against any third party of their respective rights of immunity under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 et seq., or a waiver of any rights these parties may have under the Colorado Recreational Use Act, C.R.S. § 33-44-101 et seq.

14. Assignment

- a. The District and Authority may assign its interests and obligations under this Agreement to each other or to a government successor of the District and/or Authority, such as a consolidated district or authority.
- b. The terms of this Agreement shall be binding on the parties' successors and assigns.

15. Counterparts. This Agreement may be executed in counterparts.

16. Governing Law and Venue. This Agreement shall be construed under the laws of the State of Colorado. In the event of a dispute involving this Agreement, such dispute shall be heard in the District Court for the State of Colorado in Eagle County.

17. Notice. Any notice or communication required pursuant to this Agreement shall be in writing and may be given either personally, or by email with a printed copy sent via First Class U.S. Mail. If given by email and U.S. Mail, notice shall be deemed to have been given and received on the date that the email was sent. If personally delivered, notice shall be deemed to have been given and received on the date delivered to the party to whom it is addressed. Any party may, by giving written notice, designate any other address or person in substitution of or in addition to the names and addresses contained herein. Such notice and communication shall be given to the parties at the addresses set forth below:

If to Town:                      Town of Minturn  
    Town Manager  
    302 Pine Street  
    P.O. Box 309  
    Minturn, CO 81645  
    [manager@minturn.org](mailto:manager@minturn.org)

With Copy To:                      Michael Sawyer, Esq.  
    Karp Neu Hanlon  
    P.O. Drawer 2030

Glenwood Springs, CO 81602  
[mjs@mountainlawfirm.com](mailto:mjs@mountainlawfirm.com)

With Copy To: Holland & Hart  
600 Main Street #104  
Aspen, CO 81611

If to District/Authority:

Eagle River Water and Sanitation District  
Upper Eagle Regional Water Authority  
Attn: General Manager and Director of Engineering & Water  
Resources  
846 Forest Road,  
Vail, CO 81657  
[sroman@erwsd.org](mailto:sroman@erwsd.org)  
[jcowles@erwsd.org](mailto:jcowles@erwsd.org)

With Copy To: Kathryn Winn, Esq.  
Collins, Cole, Flynn, Winn & Ulmer  
165 South Union Blvd., Suite 785  
Lakewood, CO 80228  
[kwinn@cogovlaw.com](mailto:kwinn@cogovlaw.com)

With Copy To: Kristin Moseley, Esq  
Somach Simmons Dunn  
2033 11<sup>th</sup> Street, Suite 5  
Boulder, CO 80302  
[kmoseley@somachlaw.com](mailto:kmoseley@somachlaw.com)

18. Construction. The parties represent that they have been represented by legal counsel in the drafting of this Agreement and that the parties have each had the full opportunity to participate in the drafting and review of the document. The parties agree that this Agreement shall not be interpreted or construed in favor of, or against, any party based upon such party being characterized as the “drafting party.”

Executed as of the date first set forth above.

**EAGLE RIVER WATER &  
SANITATION DISTRICT**

**UPPER EAGLE REGIONAL WATER  
AUTHORITY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF COLORADO     )  
  ) ss.  
COUNTY OF EAGLE     )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_ as \_\_\_\_\_ of the Eagle River Water & Sanitation District.

Witness my hand and official seal.

My commission expires \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

STATE OF COLORADO     )  
  ) ss.  
COUNTY OF EAGLE     )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_ as \_\_\_\_\_ of the Upper Eagle Regional Water Authority.

Witness my hand and official seal.

My commission expires \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

**TOWN OF MINTURN**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF COLORADO     )

) ss.

COUNTY OF EAGLE     )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2023, by \_\_\_\_\_ as \_\_\_\_\_ of the Town of Minturn.

Witness my hand and official seal.

My commission expires \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

**Exhibit A**

| <b>FEDERAL PERMITS</b>  |  |
|---|--|
| <b><u>TIER 1</u></b>  | <b><u>TIER 2</u></b>   |
| 404 Permit (USACOE/USFS/USEPA)  | Work Plan Approval (USEPA)   |
| Section 7 Consultation for Endangered Fish Recovery Program (US Fish & Wildlife Service, CPW) |  |
| Historic Preservation Act/Cultural Clearance (USACOE)   |  |
| <b>State Permits</b>  |  |
| <b><u>TIER 1</u></b>  | <b><u>TIER 2</u></b>   |
| Section 401 Clean Water Act Permit (Colorado Water Quality Control Commission)                | Construction Dewatering Permit (CDPHE)                                   |
|   | Construction Stormwater Management Permit (CDPHE)                        |
|   | Air Pollution Control Permit (CDPHE)                                     |
|   | State Hwy Access Permit (CDOT)   |
|   | Dam Safety Division Design Review (Colorado Division of Water Resources) |
| <b>LOCAL PERMITS</b>  |  |
| <b><u>TIER 1</u></b>  | <b><u>TIER 2</u></b>   |
| Eagle County 1041 Permit (Eagle County)   | Floodplain Permit (Town of Minturn)                                      |
|   | Union Pacific Railroad Right-of-Way Crossing Permit (UPRR)               |

**TOWN OF MINTURN, COLORADO  
ORDINANCE NO. 03 – SERIES 2022**

**AN ORDINANCE OF THE TOWN OF MINTURN,  
COLORADO APPROVING AN INTERGOVERNMENTAL  
AGREEMENT BETWEEN THE TOWN OF MINTURN AND  
THE EAGLE RIVER WATER AND SANITATION  
DISTRICT AND THE UPPER EAGLE RIVER WATER  
AUTHORITY**

**WHEREAS**, the Town of Minturn (“Town”) is a Colorado home rule municipality organized pursuant to Article XX of the Colorado Constitution and with the authority of the Town of Minturn Home Rule Charter for which the Minturn Town Council (“Town Council”) is authorized to act; and

**WHEREAS**, C.R.S. § 29-20-105 authorizes and encourages local governments to cooperate and contract with other units of government for such purposes as joint planning, land use regulation, zoning, development, and other related regulations; and

**WHEREAS**, the Eagle River Water and Sanitation District (“District”) and Upper Eagle River Water Authority (“Authority”) have contracted to purchase various property interests from Battle North in order to construct Bolts Lake reservoir; and

**WHEREAS**, the Town owns various real property and water rights interests associated with Bolts Lake; and

**WHEREAS**, various entities associated with the Battle Mountain development, including Battle North, are obligated under agreements with the Town to construct Bolts Lake and provide the Town with 160 acre-feet of storage in the reservoir; and

**WHEREAS**, the entities associated with Battle Mountain have defaulted on their Bolts Lake obligations; and

**WHEREAS**, the Town desires to have Bolts Lake constructed by the District and Authority and cooperate in the development of Bolts Lake with respect to the real property and water rights interests the Town possesses; and

**WHEREAS**, the Town will receive various benefits identified in the Intergovernmental Agreement; and

**WHEREAS**, by entering into the Intergovernmental Agreement the Town will partially mitigate the damages flowing from the breaches of agreements by the entities associated with the Battle Mountain development related to the failure to construct the Bolts Lake reservoir; and

WHEREAS, the Town Council finds and determines that adoption of this Ordinance is necessary for the best interests of the Town and the preservation of the public peace, health, safety and property.

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MINTURN, COLORADO:

SECTION 1. The foregoing recitals are incorporated herein as if set forth in full.


SECTION 2. The Town of Minturn Town Council hereby approves and authorizes the Mayor to sign the Intergovernmental Agreement between the Town of Minturn and the District and Authority regarding Bolts Lake.

INTRODUCED, READ BY TITLE, APPROVED ON THE FIRST READING AND ORDERED PUBLISHED BY TITLE ONLY AND POSTED IN FULL ON THE OFFICIAL TOWN WEBSITE THE 25<sup>th</sup> DAY OF JANUARY, 2022. A PUBLIC HEARING ON THIS ORDINANCE SHALL BE HELD AT THE REGULAR MEETING OF THE TOWN COUNCIL OF THE TOWN OF MINTURN, COLORADO ON THE 2<sup>ND</sup> DAY OF FEBRUARY, 2022 AT 5:30 p.m. AT THE MINTURN TOWN HALL 302 PINE STREET, MINTURN COLORADO 81645.

TOWN OF MINTURN, COLORADO

  
\_\_\_\_\_  
Earle Bidez, Mayor

ATTEST:

By:   
\_\_\_\_\_  
Jay Brunvand, Town Clerk




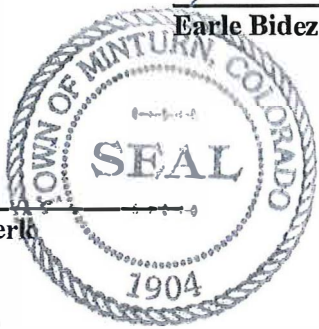
THE TOWN OF MINTURN, COLORADO, ORDAINS THIS ORDINANCE ENACTED ON SECOND READING AND ORDERED PUBLISHED BY TITLE ONLY AND POSTED IN FULL ON THE OFFICIAL TOWN WEB SITE THIS 2<sup>ND</sup> DAY OF FEBRUARY, 2022.

TOWN OF MINTURN, COLORADO

  
\_\_\_\_\_  
Earle Bidez, Mayor

ATTEST:

By:   
\_\_\_\_\_  
Jay Brunvand, Town Clerk





**INTERGOVERNMENTAL AGREEMENT AMONG THE TOWN OF MINTURN, THE  
EAGLE RIVER WATER & SANITATION DISTRICT AND THE UPPER EAGLE  
REGIONAL WATER AUTHORITY**

This Agreement dated February 2, 2022 (“Effective Date”), is among the Town of Minturn (“Minturn”), Eagle River Water & Sanitation District (“District”) and the Upper Eagle Regional Water Authority (“Authority”) (the “Agreement”).

A. Whereas, the District and Authority have an integrated water system that provides municipal water service from the Town of Vail to Wolcott.

B. Whereas, the District provides sanitation service from Vail to Wolcott, including Minturn.

C. Whereas, Minturn’s jurisdictional boundaries are included within the District for sanitation purposes, but not for water purposes, and Minturn operates its own independent water system within its municipal boundaries.

D. Whereas, Minturn has requested that the District provide Minturn with augmentation water to serve needs within Minturn’s jurisdictional boundaries.

E. Whereas, the District has an available augmentation water supply which has a current cash-in-lieu price of \$43,000 per acre-foot.

F. Whereas, the District and Authority have contracted with Battle North, LLC (“Battle North”) to purchase land within Minturn’s municipal boundaries for construction of Bolts Lake storage reservoir, conditional water rights, easements and additional commitments (the “Battle North Agreement”).

G. Whereas, the Battle North Agreement provides for conveyance of Battle North’s conditional water rights in Bolts Lake and Bolts Ditch as well as the real property underlying the Bolts Lake location to the District and Authority;

H. Whereas, the Battle North Agreement commits the District and Authority to provide a series of augmentation credit options for Battle North to develop its property (the “Battle North Augmentation Options”) and be served with domestic water supplies by Minturn, should Minturn be willing to provide physical water service, or alternatively for the District and Authority to provide physical water service if Minturn declines water service.

I. Whereas, the District and Authority desire to own, construct and operate Bolts Lake to meet existing and future water service obligations for the region.

J. Whereas, the District and Authority have filed an application for water rights, augmentation and exchange for Bolts Lake in Case No. 21CW3029 in the Water Court in and for Water Division No. 5 (the “Water Court”).

K. Whereas, the District and Authority have filed an application for water rights, augmentation and exchange for various augmentation options in Case No. 21CW3030 in the Water Court.

L. Whereas, Minturn has filed Statements of Opposition to the applications in Case Nos. 21CW3029 and 21CW3030.

M. Whereas, Minturn also owns conditional water storage rights in Bolts Lake which list Bolts Ditch as a source of fill.

N. Whereas, Minturn and multiple entities called the “Ginn Entities”, a prior owner and developer of the Bolts Lake property, entered into a Water Service Agreement on February 27, 2008 (the “WSA”), which provided for conveyance to Minturn of conditional water rights, included an easement for constructed storage capacity in Bolts Lake (the “Easement”), and required the Ginn Entities to provide replacement storage and capacity to the Town if Bolts Lake was not constructed within a five-year period.

O. Whereas, Minturn recorded the WSA on March 27, 2008 in the real property records of the Eagle County Clerk and Recorder at Reception No. 200806743.

P. Whereas, almost fourteen (14) years have passed since the WSA was executed and recorded and the District and Authority estimate that it will take a minimum of ten (10) years to construct Bolts Lake following acquisition of the Bolts Lake reservoir property.

Q. Whereas, the District and Authority have offered to Minturn use of augmentation water supplies as defined herein.

R. Whereas, Minturn recorded the Easement on October 7, 2021 in the real property records of Eagle County Clerk & Recorder at Reception No. 202122820.

S. Whereas there is disagreement between Minturn and the current owner and developer of the Bolts Lake property, Battle North, regarding the obligations set forth in the WSA.

T. Whereas, the District and Authority intend to close on the purchase outlined in the Battle North Agreement by February 9, 2022.

U. Whereas, the District and Authority desire to obtain clear title to the Bolts Lake property without a formal condemnation proceeding, and in connection therewith have requested that Minturn release the Easement and WSA from the Bolts Lake property.

V. Whereas, the District and Authority desire to obtain the right to divert water from Bolts Ditch to fill Bolts Lake and in connection therewith have requested that Minturn take certain actions to support the District's and Authority's efforts to obtain necessary approvals to operate Bolts Ditch.

W. Whereas, the parties desire to enter into an intergovernmental agreement in satisfaction of the formal permitting process under Article 25 of the Minturn Municipal Code.

X. Whereas, the District and Authority desire to secure Minturn's cooperation on the operation and filling of Bolts Lake.

Y. Whereas, Minturn is entering into this Agreement, in part, to mitigate damages it believes arise from Ginn's and/or Battle North's failure to construct Bolts Lake pursuant to the WSA.

Z. Whereas, Minturn is a permitting authority for the construction and operation of Bolts Lake.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Water Service Agreement and Easement. Minturn agrees that for purposes of the WSA and Easement, neither the District nor the Authority shall be treated as a "successor" or "assign" of the Ginn Entities or Battle North; nor shall the WSA or the Easement be deemed to have been assigned to the District or Authority; and Minturn will not look to the District and/or Authority for enforcement of outstanding obligations, if any, under the WSA or Easement. No later than March 16, 2022, Minturn will record a Release of the Easement and WSA in the form attached hereto as **Exhibit A** (the "Release"). The District and Authority agree not to interfere with any enforcement of the WSA or Easement or any claims that Minturn may have against Battle North under the WSA or Easement, however, if the District and/or Authority (or a successor entity of either) construct Bolts Lake, Minturn shall not claim rights to any storage capacity, including enforcement of the Easement or WSA, in Bolts Lake.

2. Provision of Supplemental Augmentation Water to Minturn. (a) As consideration to Minturn for effecting clear title through the release of the Easement and WSA as set forth in Section 1 herein, the District and Authority shall provide without charge of cash-in-lieu fees to Minturn a source of augmentation water in the amount of 20 acre feet to shore up augmentation supplies for Minturn's water rights ("Supplemental Augmentation Supply"). The present cash-in-lieu price of the Supplemental Augmentation Supply is \$860,000. The Supplemental Augmentation Supply shall be a use right, and not a title conveyance, and shall consist of a mix of storage water and historic consumptive use credits chosen annually by the District/Authority in their sole discretion.

(b) The Supplemental Augmentation Supply shall be legally available to augment depletions associated with Minturn's points of diversion on Cross Creek and the Eagle River (at or above Dowd Junction).

(c) The Supplemental Augmentation Supply shall be provided to Minturn upon entry of a full and final judgement and decree in Case No. 21CW3030.

(d) Until such time as a full and final judgement and decree is entered in Case No. 21CW3030, upon Minturn's request the District shall provide to Minturn the Supplemental Augmentation Supply (up to 20 acre feet) from its Eagle Park Reservoir Project supply, for augmentation of out-of-priority depletions under Minturn's plan for augmentation decreed in Case No. 07CW225.

3. Provision of Augmentation Options. The District/Authority shall reserve and grant to Minturn an option to obtain the right to the perpetual deliveries and use of water to augment the municipal diversions in Minturn up to a maximum of 55 acre feet of augmentation water (the “Minturn Option”). The water provided pursuant to the Minturn Option shall be a use right, and not a title conveyance, and shall consist of a mix of storage water and historic consumptive use credits chosen annually by the District/Authority in their sole discretion (the “Option Water”). The Option Water shall be legally available to augment depletions associated with Minturn’s points of diversion on Cross Creek and the Eagle River (at or above Dowd Junction). The Minturn Option may be exercised in an amount of up to 30 acre feet upon entry of a full and final judgement and decree in Case No. 21CW3030, and the option period shall extend for 30 years from the Effective Date of this Agreement. The remaining 25 acre feet of the Option Water may only be exercised after such time as Bolts Lake Reservoir is constructed and operational, and shall extend for (i) 30 years from the Effective Date of this Agreement, or (ii) 15 years from the date upon which Bolts Lake Reservoir is constructed and operational, whichever occurs later. Such option period may be extended upon mutual agreement of the parties. The District and Authority shall provide notice to Minturn at such time as Bolts Lake Reservoir is constructed and operational in accordance with paragraph 26 below. The Minturn Option shall not be subject to the “first come, first serve” policy of the District/Authority. The price for the Option Water shall be the cash in lieu fee of the District/Authority then in effect (for in-district rates) at the time Minturn exercises any portion of the Minturn Option. It is anticipated that the Option Water shall be paid for by developers of future residential and commercial properties within Minturn’s service area, however, Minturn may also pay applicable cash in lieu fees in order exercise the Minturn Option directly for usage within its municipal water system. If Minturn wishes to request additional augmentation supplies from the District and Authority after the Minturn Option has been fully exercised or has expired, the District and Authority will evaluate Minturn’s request for additional water at that time.



4. Annual OM&R. (a) The District shall also assess Minturn an annual operations, maintenance and capital replacement fee (“OM&R”) associated with the Supplemental Augmentation Supply and the volume of Option Water exercised pursuant to the Minturn Option based on a pro-rata share of costs based on the percentage of single family equivalents in Minturn compared to the percentage of single family equivalents in the District’s service area. Operations, maintenance and capital replacement fees unrelated to the Supplemental Augmentation Supply and the Option Water shall not be included in the OM&R fee assessed to Minturn. A description of the OM&R fee and the component costs as would be assessed in 2022 is attached as **Exhibit B**. This Exhibit is attached to give an example of the types of operations, maintenance, and capital replacement items that are associated with the Supplemental Augmentation Supply and will be associated with the Option Water upon any exercise of the Minturn Option; but recognizing that the exact OM&R components and costs may change over time as the District develops and changes the elements of its augmentation water supplies. The District will provide Minturn with a breakdown of the OM&R fee associated with the Supplemental Augmentation Supply and the Minturn Option on an annual basis.

(b) Minturn shall commence payment of OM&R fees on the Supplemental Augmentation Supply upon entry of a full and final decree in Case No. 21CW3030. If Minturn requests the District to provide the Supplemental Augmentation Supply for augmentation under Case No. 07CW225 (as described above in paragraph 2(d)) prior to entry of a full and final judgement and decree in Case No. 21CW3030, then Minturn shall commence payment of OM&R fees on that portion of the Supplemental Augmentation Supply made available at such time.

(c) Minturn shall commence payment of OM&R fees on the Option Water on such amounts and at such time as the cash in lieu fee is paid to the District and Authority. For the first year that OM&R fees are paid by Minturn, OM&R fees shall be pro-rated based upon the day of the year on which the final decrees are entered or the cash in lieu fee is paid divided by the total number of days in the year.

5. Subsequent Water Augmentation Agreements. The parties will enter into subsequent water augmentation agreements that set forth detailed terms for the provision of Supplemental Augmentation Supply and the Option Water purchased pursuant to the Minturn Option, in the form attached hereto as **Exhibit C**. In recognition that Minturn released its rights in its permanent Easement, the Supplemental Augmentation Supply and Option Water purchased pursuant to the Minturn Option shall be made available by the District and Authority on a permanent basis. However, the subsequent water augmentation agreements shall have set terms (99 years) with an automatic renewal provision, to avoid concerns with the rule against perpetuities. The subsequent water augmentation agreements will be recorded in the public records of Eagle County. The parties will also prepare and record an annual joint statement

identifying Option Water secured by Minturn in the public records of Eagle County on an annual basis.

6. Obligation to purchase Option Water. During the option period described in Paragraph 3, Minturn shall require that all Town water users shall secure a perpetual use right to Option Water to fulfill any cash in lieu payment obligations provided for under the Minturn Town Code. Any water use made by the Town of Minturn or the Eagle County School District (up to 120 SFEs and irrigation of lands owned by the Eagle County School District with water rights owned by the School District) shall be exempt from this obligation. If Minturn collects cash-in-lieu payments prior to entry of a full and final judgement and decree in Case No. 21CW3030, Minturn will hold such payments in escrow and then transfer such funds to the District and Authority within 30 days of entry of such decree in satisfaction of the obligation to purchase Option Water. Minturn shall assess cash-in-lieu fees no less than the cash-in-lieu fees that are charged by the District and Authority at the time the payment is collected. Within six months of entry of full and final judgements and decrees in Case No. 21CW3030, the Town shall amend its Code to implement the requirement that new water uses shall require the purchase Option Water.

7. Process of Case Nos. 21CW3029 and 21CW3030. Obtaining water rights for Bolts Lake in Case No. 21CW3029 and augmentation supplies for Minturn and Battle North in Case No. 21CW3030 are crucial priorities for the District and Authority in order to provide essential water supplies for all of its customers within its service area as well as be in compliance with the terms of this Agreement and the Battle North Agreement. Accordingly, the District and Authority will pursue the cases through completion of final judgments and decrees as quickly as possible, and, if necessary, through trials and appeals. The District and Authority shall file amended applications within 30 days of the recording of the Release to effectuate the commitments set forth in this Agreement.

8. Minturn's Conditional Water Right in Bolts Lake. (a) Minturn owns a conditional water right for Bolts Lake and associated rights to divert water into Bolts Lake through the Bolts Ditch. If Minturn desires to exercise its conditional water storage right in Bolts Lake, Minturn may do so only pursuant to a decree entered by the Water Court that changes the place of storage of the water right to a location outside of the land underlying Bolts Lake that the District and Authority have contracted to acquire from Battle North and shall not fill from the Bolts Ditch. Any such change of water right application shall be filed by Minturn no later than one month prior to Minturn's first deadline to file an application seeking a finding of diligence on its Bolts Lake water right after Bolts Lake is constructed and operational.

(b) Minturn shall not file an action against the District or Authority to condemn the real

property underlying Bolts Lake. Nor shall Minturn file an action against the District or Authority to condemn water storage capacity in the Bolts Lake Reservoir.

9. Land Use Approvals.

(a) The District and the Authority intend to develop, construct, and operate Bolts Lake and the associated diversion, pipelines, ditches, and outlet facilities for all decreed beneficial uses to meet the water requirements of their existing and future service areas. The Town has, set forth in Article 25 of the Minturn Municipal Code (the “**1041 Regulations**”), certain requirements and criteria related to the construction of major facilities of public utilities, such as the Bolts Lake Reservoir. The formal permitting process under the 1041 Regulations can be fulfilled by entering into an intergovernmental agreement with an implementing governmental entity addressing the various requirements of the 1041 Regulations. This Agreement constitutes, in part, an intergovernmental agreement entered into to partially fulfill the 1041 Regulations requirements. The Parties hereby agree as follows that for purposes of the Town’s 1041 Regulations:

- i. The Town will not require security for the construction of Bolts Lake.
- ii. Any changes to Article 25 of the Code adopted after February 2, 2022 will not apply to construction of Bolts Lake without the District’s and Authority’s consent.
- iii. In lieu of public hearings contemplated under Section 16-25-110 of the Town Code, the Town will conduct public hearings as part of the adoption of this Agreement and any subsequent intergovernmental agreements related to Bolts Lake.
- iv. The District and Authority, through prior presentations to the Town and the additional provisions of water contemplated by this Agreement, have met the “demonstration of need” requirement of Section 16-25-270 of the Code.
- v. The District and Authority anticipate purchasing title insurance upon taking title to the Bolts Lake property, which title commitment does not show any mineral owners required to be notified pursuant to Section 16-25-270(11) of the Town Code and Section 24-65.5-101, *et seq.*, of the Colorado Revised Statutes. The District and Authority will present a copy of the title commitment to the Town, which will satisfy the mineral owners’ notice requirement.
- vi. The Parties agree that once completed, the impacts of the Reservoir on utilities, water supply, emergency services, transportation, infrastructure, etc. will be de minimus.



- vii. The recreational use covenant set forth in Section 10 of this Agreement satisfies the requirement to describe impacts and net effect of the project on recreational opportunities as set forth in Section 16-25-270(15) of the Code.
  - viii. The requirement to provide a description of social impacts as set forth in Section 16-25-270(16) of the Code is inapplicable to further land use actions involving Bolts Lake.
  - ix. The District's provision of water to the Town pursuant to this Agreement satisfies the water quantity provisions of Section 16.25-270(23) of the Code.
- (b) The staging and placement of excavated material on the Old Tailings Pile area are components of the CERCLA remedy for Operable Unit 3 of the Eagle Mine Superfund Site, as set forth in the United States Environmental Protection Agency's 2017 Record of Decision. Accordingly, so long as the activities are conducted entirely on-site and in compliance with section 121 of CERCLA, 42 U.S.C. § 9621, the Town will not apply the 1041 permitting process or requirements to those specific activities.
- (c) The Town's land use code applies to the area where Bolts Lake will be constructed. For purposes of zoning compliance, the parties agree:
- i. Section 16-10-20(6) of the Code allows for lands within the Bolt's Lake Character Area to be used, as a matter of right, for: Operation, maintenance and use of water rights, water resources, water diversion structures, ditches, pipeline structures, ponds, water impoundments and associated facilities consistent with the decreed uses but subject to these restrictions. The parties agree that the current zoning allows for the use by right for construction of the Bolts Lake Reservoir and the associated points of diversion, ditches, and pipelines associated with Bolts Lake. The Town agrees not to modify the zoning for the Bolt's Lake Character Area in any manner that would alter the use by right nature of the Bolts Lake project.
  - ii. The Bolts Lake project is subject to Minturn Code provisions of general applicability.
- (d) No later than April 30, 2022, the Parties will enter into a separate intergovernmental agreement, pursuant to Section 16-25-40(8) of the Town of Minturn Municipal Code, outlining and satisfying how the requirements under

Article 25 of the Minturn Municipal Code (the “1041 Regulations”) will be implemented as further information is generated for the Bolts Lake project. The Parties agree to address the following within the intergovernmental agreement:

- i. As part of the construction of Bolts Lake, the District and Authority must obtain numerous state and federal permits. The Town, following review of the applications for such permits and participation as a cooperating agency where applicable and permitted by the state or relevant federal agency, agrees to consider such state and federal permits as satisfactory of relevant provisions of the 1041 Regulations.
- ii. As further construction plans and construction phasing for the Bolts Lake project are generated, the Town will review such documents and pursuant to a process to be identified in the intergovernmental agreement impose reasonable restrictions to effectuate compliance with the 1041 Regulations.
- iii. The Parties intend to minimize duplication of efforts and outside consultations related to the processing and review of the project under the 1041 Regulations so that the ultimate cost to the taxpayers and customers is minimized.

10. Bolts Ditch. (a) Minturn shall execute and deliver to the District and Authority the assignment attached hereto as **Exhibit D** which assigns to the District and the Authority all of Minturn’s interest in and to the physical headgate and ditch structure of the Bolts Ditch, together with any special use permit to the Bolts Ditch which it may obtain. Minturn shall pass a resolution in support of the District’s and Authority’s efforts to obtain the approval of the U.S. Forest Service to the assignment of any special use permit to the Bolts Ditch that it may obtain, or to have the District and Authority substituted for Minturn as the permittee of the special use permit for the Bolts Ditch.

(b) Minturn shall support the amendment of the Bolts Ditch federal legislation passed as part of S.47 entitled the John D. Dingell, Jr. Conservation, Management and Recreation Act to include the District and the Authority as permittees of the U.S. Forest Service special use permit for the Bolts Ditch. Minturn’s support shall be limited to passing a resolution in support of such amendment and tendering the same to the Colorado congressional delegation.

(c) Minturn shall support any application filed by the District and Authority to obtain a special use permit from the U.S. Forest Service for a structure that diverts water from Cross Creek and the associated diversion facilities that transport the Cross Creek water to Bolts Lake. Minturn’s support shall be limited to passing a resolution in support of the application and tendering the same to the United States Forest Service.

11. Recreational Use. Certain terms and conditions contained in Article X of the Battle North Agreement provide for allowed public recreational uses of the Bolts Lake reservoir including: (i) non-motorized boating, (ii) fishing from shores, boats, or float tubes (i.e. belly boats), (iii) paddle boarding, (iv) picnicking, (v) hiking around lake, and (vi) other future uses approved by the District and Authority. The District and Authority confirm that Article X of the Battle North Agreement is strictly a type of use limitation and that the granting of authority to use or operate the Bolts Lake reservoir remains at the discretion of the District and Authority, as further acknowledged in Section 10.1(k) of the Battle North Agreement. The District and Authority hereby authorize Minturn the right to provide recreational services and facilities to the general public as follows:

(a) Any recreational use of Bolts Lake shall be secondary and subordinate to the primary use of Bolts Lake by the District and the Authority for the existing and future decreed uses.

(b) Any recreational use shall be limited to: (i) non-motorized boating, (ii) fishing from shores, boats, or float tubes (i.e. belly boats), (iii) paddle boarding, (iv) picnicking, (v) hiking around lake, and (vi) other future uses approved by the District and Authority. Minturn shall be allowed to stock Bolts Lake with fish subject to the provisions of paragraph 11 of this Covenant. Except for the above permitted uses, no other recreational uses shall be allowed on Bolts Lake. Moreover, no recreation use of Bolts Lake by a commercial operator shall be permitted.

(c) There shall be no right to maintenance of water levels in Bolts Lake for the purpose of supporting the permitted recreational use. No surface recreational use shall be allowed during the months of December through April, or when it would jeopardize the health, safety and welfare of users.

(d) One dock may be installed at Bolts Lake at no cost to the District and Authority to facilitate the above-described recreational uses. The design of the dock shall be subject to review and approval by the District and Authority; provided that such approval may be withheld at their sole discretion.

(e) Should new water quality regulations be adopted in Colorado that would subject Bolts Lake to increased water quality testing as a result of body contact with the water stored in Bolts Lake, the body contact recreational use shall be discontinued to ensure that the recreational use of Bolts Lake does not result in the District and Authority being subjected to increased testing and treatment costs; provided, however, if Minturn pays for all costs and agrees to

assume all liabilities associated with testing and treatment costs, recreational uses involving body contact will be allowed to continue.

(f) To the extent permitted by law, Minturn shall indemnify the District and Authority against any claims, demands and liabilities arising out of, resulting from or related to the recreational use of Bolts Lake. The District and Authority will notify Minturn of any such claim or demand, when and if made, and Minturn shall defend against or participate in the defense against such claims and the District and Authority shall cooperate fully in the defense of such claims.

(g) Minturn must obtain and maintain appropriate insurance coverage related to the recreational use of Bolts Lake and name the District and Authority as additional insureds. If necessary, to obtain such insurance, the District and Authority shall grant at no charge a recreational use lease to Minturn for Bolts Lake in a form mutually agreeable to the District, Authority and Minturn.

(h) The District and Authority may prohibit any and all recreation use of Bolts Lake if they determine in their sole discretion, following notice to Minturn, that such recreation use (i) interferes with or in any manner restricts the use of Bolts Lake as a water storage facility for its decreed uses; and/or (ii) increases the cost of operating Bolts Lake. In the event the District and Authority have made the decision to prohibit any or all recreation use of Bolts Lake pursuant to this provision, the District and Authority shall provide written notice to Minturn specifically describing the recreational use at issue and the reasons for prohibiting such recreational use. Minturn shall have 60 days from receipt of such notice to cure the cause of such recreation use prohibition identified by the District and Authority, or such other amount of time as the parties mutually agree in writing is reasonably necessary to cure the cause of such recreation use prohibition: provided; however, that the District and Authority shall have sole discretion to determine whether to allow more than 60 days to achieve a cure. If Minturn is not able to achieve a cure to the satisfaction of the District and Authority within 60 days of receiving notice from the District and Authority, then the recreation use that is being prohibited shall cease in whole or part if required by the District and Authority.

(i) The District and Authority shall determine, in their sole discretion, the specific areas of Bolts Lake that will be open to public access and the Permitted Recreational Uses, including the locations of any access, parking areas, trails, and the dock.

(j) To implement the provisions set forth in this Paragraph 11, the parties will enter into a separate site-specific intergovernmental agreement in the future. The parties shall commence negotiations at such time as Minturn develops a conceptual recreation site plan for the reservoir that includes proposed access, parking areas, trails, and the dock subject to

subparagraph (i) above. The site-specific intergovernmental agreement shall be consistent with the terms set forth in this Paragraph 11.

12. Minturn Eagle River Diversion.

(a) The District and Authority have appropriated a 2 cubic foot per second (c.f.s.) conditional water right for the Minturn Eagle River Diversion pending in Case No. 21CW3030. Water from the Minturn Eagle River Diversion is anticipated to be utilized to provide physical water service to Battle North, by either Minturn or the District and Authority.

(b) Minturn would also like to utilize the Minturn Eagle River Diversion as a location to divert water to the Minturn municipal water system as augmented by the Supplemental Augmentation Supply and the Option Water for use in Minturn's municipal service area.

(c) The District and Authority agree to amend the pending application in Case No. 21CW3030 to increase the flow rate of the Minturn Eagle River Diversion to a rate of 6.0 c.f.s. and convey an undivided interest in an amount of 4.0 c.f.s. to Minturn. The District and Authority also agree to include Minturn's contract supplies from the Colorado River Water Conservation District as augmentation sources for the Minturn Eagle River Diversion in the amended application in Case No. 21CW3030.

(d) The District and Authority agree to convey an undivided interest in the Minturn Eagle River Diversion to Minturn in an amount of 4.0 c.f.s. within 60 days of entry of a full and final judgment and decree in Case No. 21CW3030. In the event that Minturn serves as the physical water provider to Battle North, the District and Authority will convey an additional 2.0 c.f.s. of the Minturn Eagle River Diversion to Minturn.

(e) Following the construction of the Minturn Eagle River Diversion, in the event that the District and Authority have not obtained a final judgment and decree in Case No. 21CW3030, Minturn may seek a substitute water supply plan in order to supply Minturn with the Supplemental Augmentation Supply while a final decree is pending in Case No. 21CW3030.

13. District/Authority and Minturn Water Rights Decreed at Same Locations.

Minturn has numerous decreed diversion points on Cross Creek at the same diversion points claimed by the District and Authority in Case No. 21CW3030. The parties agree to work together to eliminate duplicative points of diversion decreed to their respective water rights where appropriate. Each party will be responsible for developing its own physical infrastructure unless there is an agreement between the parties otherwise.



14. Settlement of Opposition.

(a) Minturn agrees that it will Stipulate to entry of a decree in the District and Authority's Case Nos. 21CW3029 and 21CW3030 within 30 days after the amended applications are filed in the cases. Such stipulations shall include the terms set forth on **Exhibit E**.

(b) Minturn has filed an Application for Water Right, Approval of Plan for Augmentation and Appropriative Rights of Exchange in Case No. 21CW3180. Minturn agrees to stay Case No. 21CW3180 upon execution of this Agreement, and to withdraw such application within 30 days of entry of full and final judgments and decrees in Case Nos. 21CW3030.

15. Cross Creek Diversions.

(a) The District/Authority acknowledge that Minturn's decreed water rights on Cross Creek are senior to the District/Authority's Cross Creek water rights pending in Case Nos. 21CW3029 and 21CW3030. Accordingly, if Minturn places a valid call for its senior water rights on Cross Creek, the District and Authority will be subject to that call.

(b) The District and Authority shall coordinate Bolts Lake operations, including operation of exchanges, with Minturn to ensure that flows at the USGS Gage at Cross Creek Near Minturn (Gage No. 09065100) do not drop below the Colorado Water Conservation Board instream flows decreed in Case No. 78W3795 as a result of diversion into Bolts Lake from Cross Creek.

(c) The District and Authority shall not seek diligence in Water Court on the conditional water rights acquired from Battle North (originally decreed in Case No. 06CW264) at such time as full and final judgments and decrees are entered in Case Nos. 21CW3029 and 21CW3030 and Bolts Lake is constructed and operational.

16. Environmental Considerations. The parties will work together on matters involving environmental protections in the Bolts Lake area. The District and Authority will provide Minturn with electronic copies of all non-confidential, non-privileged and non-draft records, reports, documents or other information (the "Documentation") provided to the District and Authority by Battle North or the District and Authority's consultants directly related to the Reservoir Project, including Documentation that will be or has been submitted to the Environmental Protection Agency and/or the Colorado Department of Public Health and Environment (together, the "Agencies"). The District and Authority will make best efforts to timely provide the Documentation.

17. Water Service to Battle North. The parties acknowledge that additional negotiations are required between Minturn and Battle North prior to finalizing any development plans and approvals. However, the parties prefer that Minturn be the physical water provider to whatever development is approved within Minturn's water service area, if appropriate arrangements can be

reached between Minturn and Battle North. If Minturn is the physical water provider to Battle North, the District and Authority consent to the Battle North Augmentation Options being assigned by Battle North to Minturn.

18. Dowd Junction Water Service Options.

(a) The District and Authority are open to exploring water service options to a future development at Dowd Junction via an interconnect line to the District and Authority's water system. In the event that an interconnect line is mutually agreed to, Minturn or a future developer would be solely responsible for all costs associated with infrastructure necessary to provide such service and for all applicable water rights dedication fees, impact fees, and monthly water service fees to the District and Authority. However, the parties acknowledge that water quality considerations of a smaller system exclusively to Dowd Junction may make an interconnect infeasible.

(b) The District and Authority will include in the amendment of the pending augmentation plan in Case No. 21CW3030 a Dowd Junction well or wells and surface diversion points, to be augmented by the augmentation sources listed in Case No. 21CW3030. If Minturn develops a well, wells or a surface diversion at Dowd Junction that are covered by the augmentation plan in Case No. 21CW3030, the augmentation supply would come from the exercise of the Minturn Option provided herein. Development of a well, wells or surface at Dowd Junction shall be at Minturn's sole expense.

19. Mutual Cooperation. The parties wish to provide mutual assurances on future cooperation in water cases to maximize water supplies for the region. The parties mutually agree that they will not object to movement of diversion points less than 1,500 feet from decreed diversion points; the parties mutually agree they will work together on nearby or coincident diversion structures. The parties shall not claim in any future judicial action that any party to this Agreement has abandoned any portion of any of its water rights. The District and Authority further agree that they will not object to a future downstream change in point of diversion for any of Minturn's water rights, provided that only a change in point of diversion is sought and the District and Authority do not divert water in the impacted reach.

20. Remedies. (a) The terms of this Agreement shall be specifically enforceable; provided, however, nothing contained herein shall obligate the District or the Authority to construct Bolts Lake. If Minturn fails to record the Release by March 16, 2022, the District and Authority may pursue condemnation of Minturn's interests in the Bolts Lake property and may delay prosecution of Case Nos. 21CW3029 and 21CW3030 until either such time as Minturn has recorded the Release, or the District and Authority elect to notify Minturn that this Agreement is null and void and of no further effect.

(b) Prior to enforcing in Court any remedy for breach of this Agreement, the party asserting that such a breach has occurred shall give the other party written notice thereof including a description of the alleged breach and citation to the relevant provisions in this Agreement. The party against whom a breach is asserted shall have fourteen (14) days after such notice is sent in which to cure the breach.

21. Recording. This Agreement and all exhibits attached to this Agreement shall be recorded in the records of Eagle County, Colorado.

22. No Waiver. Nothing contained herein shall constitute a waiver by Minturn, the District or the Authority as against any third party of their respective rights of immunity under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 et seq., or a waiver of any rights these parties may have under the Colorado Recreational Use Act, C.R.S. § 33-44-101 et seq.

23. Assignment

(a) The District and Authority may assign its interests and obligations under this Agreement to each other or to a successor consolidated district or authority.

(b) The terms of this Agreement shall be binding on the parties' successors and assigns.

24. Counterparts. This Agreement may be executed in counterparts.

25. Governing Law and Venue. This Agreement shall be construed under the laws of the State of Colorado. In the event of a dispute involving this Agreement, such dispute shall be heard in the District Court for the State of Colorado in Eagle County.

26. Notice. Any notice or communication required pursuant to this Agreement shall be in writing and may be given either personally, or by email with a printed copy sent via First Class U.S. Mail. If given by email and U.S. Mail, notice shall be deemed to have been given and received on the date that the email was sent. If personally delivered, notice shall be deemed to have been given and received on the date delivered to the party to whom it is addressed. Any party may, by giving written notice, designate any other address or person in substitution of or in addition to the names and addresses contained herein. Such notice and communication shall be given to the parties at the addresses set forth below:

If to Town:                      Town of Minturn  
    Town Manager  
    302 Pine Street



P.O. Box 309  
Minturn, CO 81645  
manager@minturn.org

With Copy To: Michael Sawyer, Esq.  
Karp Neu Hanlon  
P.O. Drawer 2030  
Glenwood Springs, CO 81602  
mjs@mountainlawfirm.com

With Copy To: Meghan Winokur, Esq.  
Holland & Hart  
600 Main Street #104  
Aspen, CO 81611  
mwinokur@hollandhart.com

If to District/Authority:

Eagle River Water and Sanitation District  
Upper Eagle Regional Water Authority  
General Manager and Director of Engineering & Water  
Resources  
846 Forest Road,  
Vail, CO 81657  
lbrooks@erwsd.org  
jcowles@erwsd.org

With Copy To: Kathryn Winn, Esq.  
Collins, Cole, Flynn, Winn & Ulmer  
165 South Union Blvd., Suite 785  
Lakewood, CO 80228  
kwinn@cogovlaw.com

With Copy To: Kristin Moseley, Esq  
Somach Simmons Dunn  
2033 11<sup>th</sup> Street, Suite 5  
Boulder, CO 80302  
kmoseley@somachlaw.com

27. Construction. The parties represent that they have been represented by legal counsel in the drafting of this Agreement and that the parties have each had the full opportunity to

participate in the drafting and review of the document. The parties agree that this Agreement shall not be interpreted or construed in favor of, or against, any party based upon such party being characterized as the "drafting party."

Executed as of the date first set forth above.

**EAGLE RIVER WATER & SANITATION DISTRICT**

**UPPER EAGLE REGIONAL WATER AUTHORITY**

By: Bill Simmons  
Name: Bill Simmons  
Title: Chairperson

By: George Gregory  
Name: George Gregory  
Title: Chairperson

**TOWN OF MINTURN**

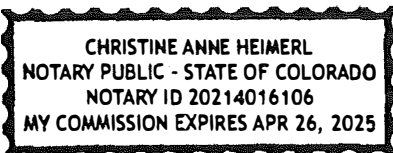
By: Earle Bidez  
Name: Earle Bidez  
Title: Mayor

STATE OF COLORADO )  
 ) ss.  
COUNTY OF EAGLE )

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of February 2022, by Bill Simmons as Chairperson of the Eagle River Water & Sanitation District.

Witness my hand and official seal.

My commission expires 4-26-25



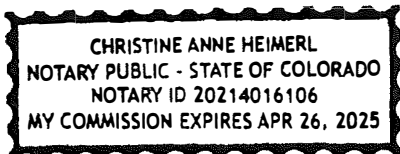
Christine Heimerl  
Notary Public

STATE OF COLORADO )  
 ) ss.  
COUNTY OF EAGLE )

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of February 2022, by George Gregory as Chairman of the Upper Eagle Regional Water Authority.

Witness my hand and official seal.

My commission expires 4/26/25.



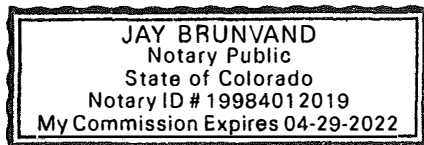
Christine A. Heimerl  
Notary Public

STATE OF COLORADO )  
 ) ss.  
COUNTY OF EAGLE )

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of February, 2022, by Ecate Britez as Mayor of the Town of Minturn.

Witness my hand and official seal.

My commission expires 4/29/2022.



Jay Brunvand  
Notary Public

**EXHIBIT A**

**EASEMENT RELEASE AND VACATION**

**EXHIBIT A**

**EASEMENT RELEASE AND VACATION**

**KNOW ALL MEN BY THESE PRESENTS:**

**WHEREAS**, the Town of Minturn (“**Town**”) is the grantee of an Easement Grant and Agreement dated February 27, 2008 between the Town and Ginn Battle North, LLC, which was recorded by the Town in the real property records of the Clerk and Recorder of Eagle County, Colorado on October 7, 2021 at Reception No. 202122820 (the “**Easement**”), which is also attached as an exhibit to the Water Service Agreement dated February 27, 2008 and recorded on March 27, 2008 in the real property records of the Clerk and Recorder of Eagle County, Colorado, at Reception No. 200806743 (the “**WSA**”); and

WHEREAS, the District has purchased fee title and/or easement interests in real property described in Exhibit A which is encumbered by the Easement and WSA,; and

**WHEREAS**, the Town desires to vacate the Easement and release the District and Authority from the terms, conditions and obligations of the WSA pursuant to the terms of the Intergovernmental Agreement between the Town of Minturn, the Eagle River Water and Sanitation District (“District”) and the Upper Eagle Regional Water Authority (“Authority”), dated February 2, 2022 (“IGA”).

**THAT THE TOWN** hereby fully and finally releases, disclaims, vacates, abandons and quitclaims all of the Town’s interest in and rights pursuant to the Easement to the District and Authority.

Further, the Town does hereby grant a release to the District and Authority of the terms, conditions and obligations of the WSA . Nothing in this document shall be construed to further amend, modify, release or terminate the WSA in any way, other than as to the District and Authority.

**SIGNED AND DELIVERED** this \_\_\_\_ day of \_\_\_\_\_, 2022.

**TOWN OF MINTURN**

By: \_\_\_\_\_

20

\_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

STATE OF COLORADO                    )  
  ) ss.  
COUNTY OF EAGLE                    )

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022 by  
\_\_\_\_\_ as Mayor of the Town of Minturn.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

## EXHIBIT B

### 2022 Operations Maintenance and Capital Replacement Fee

The 2022 Intergovernmental Agreement Among Minturn, the District and Authority provides that the District shall assess Minturn with an annual operations, maintenance and capital replacement fee (OM&R) associated with Minturn's Supplemental Augmentation Supply and Option Water exercised pursuant to the Minturn Option. The annual OM&R fee shall be based on a pro-rata share of costs associated with the sources of water that comprise Minturn's Supplemental Augmentation Supply and Minturn's Option Water multiplied by the percentage of single family equivalents served with water in Minturn compared to the percentage of single family equivalents served with water in the District's service area. The estimated OM&R fee for 2022 includes the following costs:

- Annual operating assessments charged by the Eagle Park Reservoir Company, which include but are not limited to, the District's pro rata share of costs for reservoir operations and maintenance, East Fork pump station operations and maintenance, water quality sampling, water rights accounting, reservoir company administration, and annual dam safety inspections.
- Annual water rights accounting and administration costs of the District for its augmentation supplies.
- General legal fees associated with augmentation supply water rights protection and the administration of Eagle Park Reservoir Company.
- Although the District's proposed augmentation plan pending in Case No. 21CW3030 includes Wolford Mountain Reservoir as a source of augmentation, the District's annual contract costs of \$193,500 was omitted from the 2022 OM&R fee calculation, as it is anticipated these contracts will be substantially reduced or eliminated upon construction of Bolts Lake.

The District's average annual OM&R costs in 2020 and 2021 were \$293,000. The District currently provides water service for 10,671 single family equivalents (SFEs). Minturn currently serves 751 SFEs. Thus, by way of example for 2022 OM&R fee purposes, Minturn's estimated pro rata share of costs is 6.6% of the District's annual OM&R costs. Thus, Minturn's OM&R fee if assessed in 2022 would be \$19,338.

**EXHIBIT C**

**WATER AUGMENTATION AGREEMENT**

This Water Augmentation Agreement is made between the Town of Minturn (“Minturn”), Eagle River Water & Sanitation District (the “District”) and the Upper Eagle Regional Water Authority (the “Authority”) (the District and Authority are referred to together as the “District/Authority”) (the “Agreement”), effective as of the date of the parties’ execution indicated below.

**RECITALS**

A. Minturn and the District/Authority are parties to that certain Intergovernmental Agreement dated February 2, 2022, recorded in the real property records of Eagle County on \_\_\_\_\_ at Reception No. \_\_\_\_\_ (“IGA”).

B. The District/Authority committed to provide without charge of cash-in-lieu fees to Minturn a perpetual source of augmentation water in the amount of 20 acre feet to shore up augmentation supplies for Minturn’s water rights (“Supplemental Augmentation Supply”) on the terms set forth in the IGA. The Supplemental Augmentation Supply shall be a use right, and not a title conveyance, and shall consist of a mix of storage water and historic consumptive use credits chosen annually by the District/Authority in their sole discretion.

C. Pursuant to the IGA, the Supplemental Augmentation Supply shall be provided to Minturn upon entry of a full and final judgement and decree in the District/Authority’s Case No. 21CW3030 (the Supplemental Augmentation Supply may also be provided prior to entry of such decree on the terms set forth in the IGA; such provision of water at Minturn’s request will be the subject of a separate agreement among the parties).

D. The District/Authority also reserved and granted to Minturn an option to obtain the right to the perpetual deliveries and use of water to augment the municipal diversions in Minturn up to a maximum of 55 acre feet of augmentation water (the “Minturn Option”) on the terms set forth in the IGA. The water provided pursuant to the Minturn Option shall be a use right, and not a title conveyance, and shall consist of a mix of storage water and historic consumptive use credits chosen annually by the District/Authority in their sole discretion (“Option Water”).

E. Pursuant to the IGA, the Minturn Option may be exercised in an amount of up to 30 acre feet upon entry of a full and final judgement and decree in Case No. 21CW3030, and the option period shall extend for 30 years from the Effective Date of the IGA. The remaining Option Water in an amount up to 25 acre feet under the Minturn Option may only be exercised after such time as Bolts Lake Reservoir is constructed and operational, and the option period shall extend for (i) 30 years from the Effective Date of the IGA, or (ii) 15 years from the date upon which Bolts Lake Reservoir is constructed and operational, whichever occurs later. Such option period may be extended upon mutual agreement of the parties in accordance with the IGA.

F. The parties desire to set forth the terms and conditions for the delivery of the following annual supply of water by the District/Authority:



- a. up to 20 acre feet of Supplemental Augmentation Supply; and
- b. up to 55 acre feet of Option Water (referred to together as the “Augmentation Supply”).

#### AGREEMENT

The foregoing Recitals are incorporated into this agreement between the Minturn and the District/Authority.

1. District/Authority Water Delivery Obligations and Responsibilities.
  - a. Delivery. Consistent with the IGA, and in accordance with the terms of this Agreement, the District/Authority will deliver the Augmentation Supply at the confluence of the Eagle River and Cross Creek up to the annual amounts shown above in Recital F each year. Unless otherwise agreed to among the parties, the District/Authority will make releases or request that releases be made for Minturn, based upon Minturn’s written schedule of anticipated augmentation need, adjusted based on communications between the parties.
  - b. Delivery Contingency. The District/Authority’s delivery of the Augmentation Supply shall be subject to Minturn’s payments of agreed-upon annual fees pursuant to paragraph 3 below.
  - c. Water Measurements. The District/Authority shall record in their accounting the sources of supply and daily quantities released or provided for augmentation under this Agreement and shall include this information in their accounting submittals to the Division Engineer’s Office of Colorado Water Division No. 5. Copies of such accounting records shall be provided to Minturn upon request.
  - d. Water Quality. The District/Authority shall have no obligation to Minturn regarding and make no warranties or representations to Minturn concerning the quality of the Augmentation Supply delivered pursuant to this Agreement by releases of raw water to natural streams.
  - e. Source. The District/Authority will deliver the Augmentation Supply from the sources of water identified and anticipated to be decreed in Case Nos. 21CW3029 and 21CW3030 to meet Minturn’s augmentation need.

2. Minturn's Water Use Obligations and Responsibilities.

- a. Scheduling of Use. Minturn shall provide the District/Authority a preliminary written schedule of its anticipated monthly demands for the Augmentation Supply for each project year, which shall be considered a calendared year ("Project Year"). The schedule provided by Minturn shall serve as the schedule to be used until it is modified in writing by Minturn's representatives to the District/Authority representatives.
- b. Use per Agreement and Law. Minturn's use of the Augmentation Supply shall be in accordance with the terms of this Agreement and the IGA. Minturn is not authorized to apply for or secure any change in the water rights for or associated with any of the sources of supply of the Augmentation Supply.
- c. Limitation on Disposition. Minturn shall not sublet, sell, donate, loan, assign or otherwise dispose of any of its rights to this Agreement or to the Augmentation Supply without prior written notice to, and the written approval of, the District/Authority.
- d. Minturn's Water Rates. Minturn may charge its water customers who are supplied water related to the Augmentation Supply such rates and charges as are permitted by Colorado law and determined by Minturn.
- e. Nondiscrimination. Minturn shall not discriminate in the availability of or charges for any water service or water supply made available pursuant to or based upon the Augmentation Supply on account of race, color, religion, or national origin or any other criteria prohibited under state or federal law.
- f. Accounting of Use. Minturn shall maintain accounting of its use of the Augmentation Supply. Minturn shall submit its accounting forms to the Division Engineer's Office of Colorado Water Division No. 5. Copies of such accounting records shall be provided to the District/Authority upon request.

3. Minturn's OM&R Fees.

- a. The District shall assess Minturn an annual operations, maintenance and capital replacement fee ("OM&R") associated with the Augmentation Supply based on a pro-rata share of costs based on the percentage of single family equivalents (SFEs) in Minturn compared to the percentage of SFEs in the District's service area. Operations, maintenance and capital replacement fees unrelated to the Augmentation Supply shall not be included in the OM&R fee assessed to Minturn.

- b. A description of the OM&R fee and the component costs as would be assessed in 2022 is attached as Exhibit B to the IGA. Such exhibit was attached to the IGA to give an example of the types of operations, maintenance, and capital replacement items that are associated with the Augmentation Supply; but the exact OM&R components and costs may change over time as the District develops and changes the elements of its augmentation water supplies.
  - c. The initial SFE count in Minturn will be determined by the District based on meter records for Minturn and will not exceed 750 SFEs. As rights are exercised under the Minturn Option or the Eagle County School District land is developed as previously approved by Minturn, the parties will execute and record a supplement to this agreement identifying the associated Augmentation Supply and the SFE count.
  - d. The District will provide Minturn with a breakdown of the OM&R fee associated with the Augmentation Supply on an annual basis.
  - e. The District shall invoice for the annual OM&R fee to Minturn no later than March 1 of each year. Such assessment shall be for the actual OM&R fees due for the previous Project Year. The parties shall agree in writing to the method and timing of Minturn's payment of the invoiced fees (at a minimum, Minturn shall have 30 days to pay such invoices).
  - f. In the event that the OM&R fees for a particular Project Year are anticipated to increase more than 10% over the fees for the preceding Project Year, the District will provide notice to Minturn upon making such determination, to allow Minturn time to plan for the increase in fees.
4. Cash-in-Lieu Fees when Option is Exercised.
- a. During the option period described above in Recital E, Minturn shall require that all Town water users shall secure a perpetual use right to Option Water to fulfill any cash in lieu payment obligations provided for under the Minturn Town Code. Any water use made by Minturn or the Eagle County School District (up to 120 SFEs and irrigation of lands owned by the Eagle County School District with water rights owned by the School District) shall be exempt from this obligation.
  - b. The price for the Option Water shall be the cash in lieu fee of the District/Authority then in effect (for in-district rates) at the time Minturn exercises any portion of the Minturn Option. Minturn shall assess and collect the fee, and then render payment to the District/Authority in satisfaction of the payment requirements established in the IGA and described herein.

- c. As rights are exercised under the Minturn Option to secure Option Water on the terms set forth in the IGA, the parties will execute and record a supplement to this Agreement identifying the associated Augmentation Supply and the SFE count.
- d. The parties shall also prepare and record an annual joint statement identifying Option Water secured by Minturn in the public records of Eagle County on an annual basis to ensure that the public records clearly reflect the total amount of the Minturn Option that has been exercised pursuant to this Agreement and supplements thereto.

5. Agreement Term.

- a. The term of this Agreement shall be 99 years from the date of execution.
- b. The Agreement shall automatically renew for subsequent 99-year periods unless Minturn provides notice to the District/Authority of termination of the Agreement.

6. Miscellaneous/Standard Provisions.

a. Notices.

- i. Any notice or communication required pursuant to this Agreement shall be in writing and may be given either personally, or by email with a printed copy sent via First Class U.S. Mail. If given by email and U.S. Mail, notice shall be deemed to have been given and received on the date that the email was sent. If personally delivered, notice shall be deemed to have been given and received on the date delivered to the party to whom it is addressed. Any party may, by giving written notice, designate any other address or person in substitution of or in addition to the names and addresses contained herein. Such notice and communication shall be given to the parties at the addresses set forth below:

|             |  |
|-------------|--|
| If to Town: | Town of Minturn<br>Town Manager<br>302 Pine Street<br>P.O. Box 309<br>Minturn, CO 81645<br>manager@minturn.org |
|-------------|--|

|               |  |
|---------------|--|
| With Copy To: | Meghan Winokur, Esq.<br>Holland & Hart LLP |
|---------------|--|

600 Main Street #104  
Aspen, CO 81611  
mwinokur@hollandhart.com

Cristy Radabaugh  
Martin and Wood Water Consultants  
538 Commons Dr  
Golden, CO 80401  
cradabaugh@martinandwood

If to District/Authority: Eagle River Water and Sanitation District  
Upper Eagle Regional Water Authority  
General Manager and Director of  
Engineering & Water Resources  
846 Forest Road  
Vail, CO 81657  
lbrooks@erwsd.org  
jcowles@erwsd.org

With Copy To: Kristin Moseley, Esq  
Somach Simmons Dunn  
2033 11<sup>th</sup> Street, Suite 5  
Boulder, CO 80302  
kmoseley@somachlaw.com

ii. Either party may, by written notice given in accordance with this provision, change the address to which notices to it shall be mailed or delivered.

b. Amendments. No amendment, modification, or novation of this contract or its provisions and implementation shall be effective unless documented in writing which is approved and executed by both parties with the same formality as they have approved and executed this Agreement.

**EAGLE RIVER WATER & SANITATION DISTRICT**

**UPPER EAGLE REGIONAL WATER AUTHORITY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



STATE OF COLORADO )  
 ) ss.  
COUNTY OF EAGLE )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of the Town of Minturn.

Witness my hand and official seal.

My commission expires \_\_\_\_\_.

\_\_\_\_\_  
Notary Public



**EXHIBIT D**  
**ASSIGNMENT**

This assignment (the "Assignment") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2022 by the Town of Minturn ("Assignor") to the Eagle River Water & Sanitation District and the Upper Eagle Regional Water Authority (Assignees").

**R E C I T A L S**

FOR VALUE RECEIVED, the receipt and sufficiency of which is hereby acknowledged, Assignor hereby grants, conveys, transfers and assigns to Assignees, their successors and assigns, all of Assignor's right, title and interest in and to the following:

Any and all interest that Assignor has in and to the physical headgate and ditch structure associated with Bolts Ditch, together with any prescriptive easement rights that Assignor may have acquired. Said Assignment is made without any warranties or representations as to the Town's ownership interests.

IN WITNESS WHEREOF, Assignor has executed this Assignment on the day first above written.

**TOWN OF MINTURN**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF EAGLE     )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022, by \_\_\_\_\_ as \_\_\_\_\_ of the Town of Minturn.

Witness my hand and official seal.

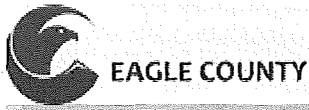
My commission expires \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

## **EXHIBIT E**

The following general concepts will be addressed in the stipulations between Minturn, the District and the Authority in Case Nos. 21CW3029 and 21CW3030.

- The terms of the stipulations will be consistent with the terms of this intergovernmental agreement.
  
- The parties will agree upon terms for future communication on accounting and other matters relating to the progress of the cases.
  
- The parties will agree upon terms for Minturn to review certain revised proposed rulings in the cases as they progress.
  
- The parties will agree upon the timing for conveyance of an undivided 4.0 cfs in the Minturn Eagle River Diversion to Minturn.
  
- The parties will agree upon language to be included in the proposed rulings and/or the stipulations relating to operations on Cross Creek.



Eagle County Clerk and Recorder
Regina O'Brien
PO Box 537
500 Broadway #101
Eagle, Colorado 81631

\*213278\*

CUSTOMER INFORMATION

TRANSACTION INFORMATION

PAYMENT SUMMARY

Transaction #: 213278
Receipt #: 202204290
Cashier Date: 3/18/22 11:29
Cashier By: jsalaz
Print Date: 3/18/2022 11:29:54

Total Fees: \$178.00
Total Payments: \$178.00
Balance Due: \$0.00

1 Payment

Over Counter Credit Card \$178.00

1 Official Record

ORDINANCE

Document #: 202204472 Pages: 34 Date: 3/18/2022 11:29:22

From: MINTURN TOWN OF To: EAGLE RIVER WATER AND SANITATION DISTRICT

Fees: Recording Fees \$178.00

*OFFICIAL PROCLAMATION*  
**ONE BOOK, ONE VALLEY, 2023**

A Valley-wide Community Read sponsored by the  
Towns of Avon, Eagle, Gypsum, Minturn, Red Cliff, and Vail

**WHEREAS**, Community Read programs have united and uplifted hundreds of cities and municipalities throughout the United States of America; and,

**WHEREAS**, the book “The Downstairs Girl” by Stacey Lee is a Young Adult title published in 2019 that is available in print, eBook & eAudiobook formats; and,

**WHEREAS**, New York Times best-selling and Young Adult Novelist, Stacey Lee, is an award-winning author of 5 historical and contemporary young adult fiction. A native of Southern California and fourth-generation Chinese American, she graduated from UCLA, then got her law degree from UC Davis King Hall. After practicing law in Silicon Valley for several years, she finally took up the pen because she wanted the perks of being able to nap during the day, and it was easier than moving to Spain; and,

**WHEREAS**, “The Downstairs Girl” is a powerful novel about identity, betrayal, and the meaning of family in the 1890’s. With prose that is witty, insightful, and at times heartbreaking, Stacey Lee masterfully crafts an extraordinary social drama set in the New South. “By day, seventeen-year-old Jo Kuan works as a lady’s maid for the cruel daughter of one of the wealthiest men in Atlanta. But by night, Jo moonlights as the pseudonymous author of a newspaper advice column for the genteel Southern lady, “Dear Miss Sweetie.” When her column becomes wildly popular, she uses the power of the pen to address some of society’s ills, but she’s not prepared for the backlash that follows when her column challenges fixed ideas about race and gender”; and,

**WHEREAS**, this Eagle Valley Community Read is the 12<sup>th</sup> Year of the One Book One Valley initiative. This year, for the first time in our history, we have selected a Young Adult title for our community to enjoy. According to Ali Teague from the Bookworm of Edwards, “I believe that every adult should read at least one middle grade or young adult book per year, as they help us empathize and connect with young people. These books tend to have the richest and most relatable characters who are not only discovering who they are, but also their place in the world. They are also, generally, more optimistic about the state of the world so they can be that much needed palette cleanser after reading a heavy-hitting adult book. But my favorite thing about books written for young readers, and the reason I read several of them per year, is how unpretentious and accessible they are. Any adult at any reading level can read a young reader's book and learn and feel just like our young readers do”; and,

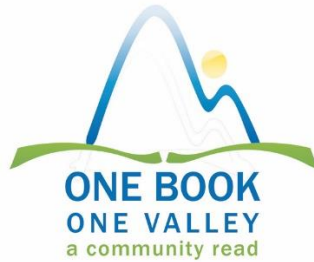
**WHEREAS**, this Eagle Valley Community Read will feature book discussions in venues around the valley; a movie night; a Chinese New Year Celebration; a Ninjago drop-in day; and, a special Guest Appearance by the author next spring; and,

**WHEREAS**, the Vail Public Library, in collaboration with the Bookworm of Edwards, Colorado Mountain College, Battle Mountain High School, Eagle Valley High School and Vail Mountain School have resolved to bring this valley-wide Community Read program to the citizens of Eagle County; and,

**WHEREAS**, the One Book One Valley initiative will encourage literacy and shared enjoyment of reading throughout Eagle County.

**NOW, THEREFORE**, we representatives from the towns of Avon, Eagle, Gypsum, Minturn, Red Cliff, Vail and the County of Eagle do hereby promote the One Book One Valley initiative and officially announce and promote the book “The Downstairs Girl” to all Eagle County residents for their enjoyment and the enjoyment of all.

**Dated this 15<sup>th</sup> day of February, 2023.**



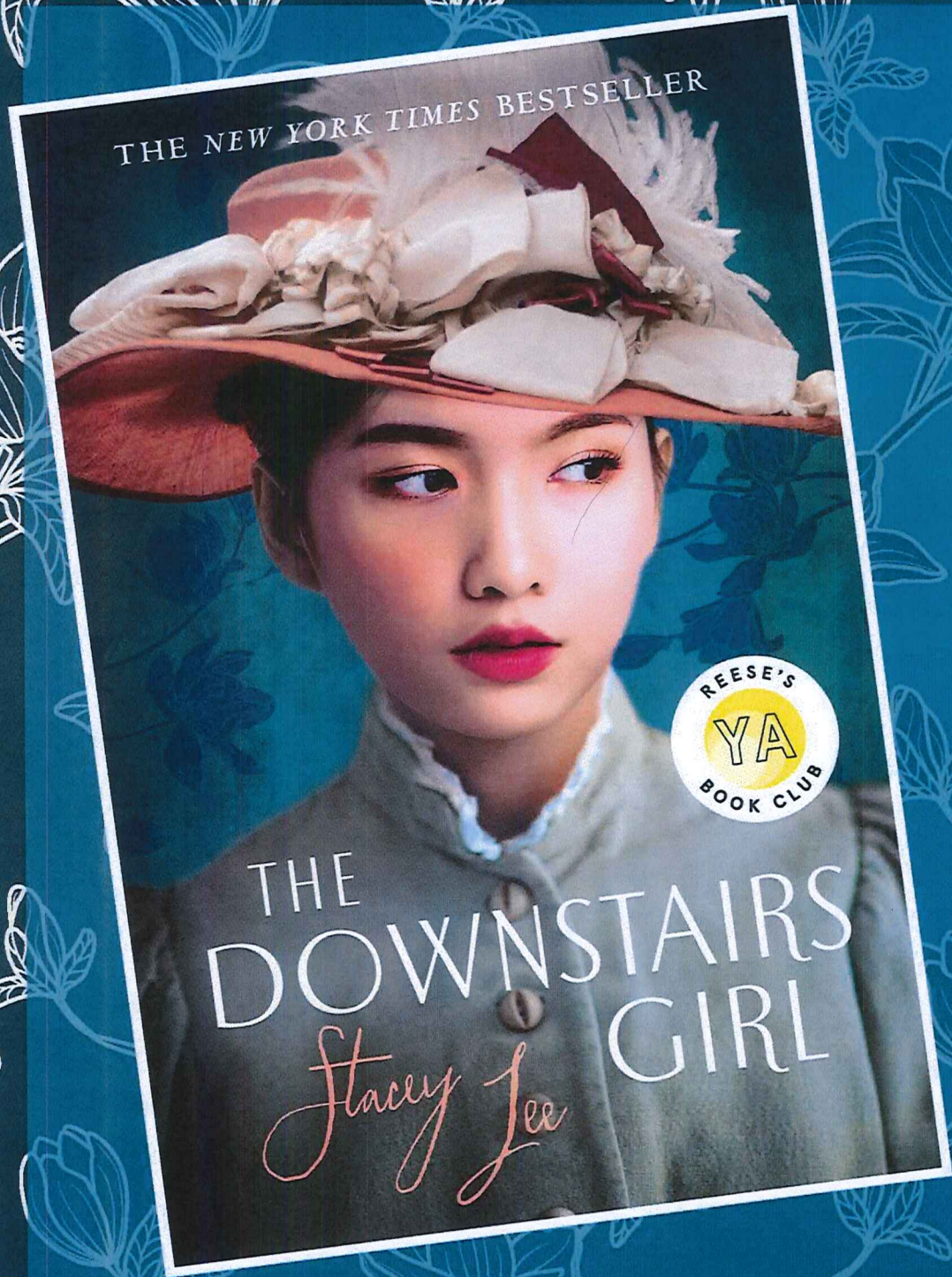
TOWN OF MINTURN

ATTEST:

By: \_\_\_\_\_  
Earle Bidez, Mayor

\_\_\_\_\_  
Jay Brunvand, Town Clerk





**ONE BOOK  
ONE VALLEY**  
a community read

**Join the  
One Book One Valley  
Community Read!**

*Borrow a copy from your local library or  
purchase one at a 10% discount  
at The Bookworm*



Glenwood Springs – Main Office

201 14<sup>th</sup> Street, Suite 200  
P. O. Drawer 2030  
Glenwood Springs, CO 81602

Aspen

0133 Prospector Rd.  
Suite 4102J  
Aspen, CO 81611

Montrose

1544 Oxbow Drive  
Suite 224  
Montrose, CO 81402

Office: 970.945.2261

Fax: 970.945.7336

*\*Direct Mail to Glenwood Springs*

DATE: January 26, 2023  
TO: Minturn Mayor and Council  
FROM: Karp Neu Hanlon, P.C.  
RE: Continuation of Water Moratorium

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Council is presented an ordinance continuing the existing water moratorium, albeit with some substantive modifications.

Background

In May 2020, the Council passed Ordinance No. 5, Series 2020 enacting a moratorium on the allocation of new SFEs of water service from the Town’s water system. The moratorium has been in place since 2020 having been renewed in February 2022. The 2020 water moratorium was in reaction to analyses of the Town’s capacity to supply water undertaken as part of the 2019 Capital Improvement Plan. The bases for the moratorium were both limitations on the Town’s ability to treat water (the aging water treatment plant) and limitations on the Town’s senior water rights (legal ability to divert water for use within the Town).

In the three years since the moratorium was enacted, additional data has been gathered and new circumstances arisen which require the Town to re-evaluate the water supply limitations in the 2020 moratorium. Specifically, the Town has hired the HDR Engineering to provide a more detailed analysis of the ability of the Town’s existing water treatment plant to meet current and future service needs. Further, the Town has continued to obtain guidance from water rights engineers Martin & Wood as to the Town’s capacity to provide water under the Town’s water rights. Updated information from both technical consultants is provided with this memorandum.

Limits on the Town’s Ability to Provide Water Service

The Town faces two significant obstacles to increasing water service beyond the current levels. These obstacles are legal limits on the Town’s ability to divert water from Cross Creek and limitations on the existing water treatment plant’s ability to deliver potable water to users.

With respect to the Town’s legal water rights, the Town currently only has infrastructure that can divert water from Cross Creek. While Cross Creek provides excellent quality source water most of the time, the Creek is subject to turbidity and water quality issues during certain periods of the year. In order to provide acceptable source water to the water treatment plant, the Town takes water from a mixture of the Town’s Cross Creek surface diversion and wells located along Cross Creek.

Increasingly, the wells located on Cross Creek provide an indispensable source of supply that is capable of being treated by the Town's aging water treatment plant. **See Memorandum of Martin & Wood dated January 26, 2023.**

The Town's senior water rights – the surface diversion and two wells – are subject to consumptive use limitations imposed by the Water Court in Case No. 07CW225. The consumptive use limitations restrict the Town's ability to divert water from the senior water rights: (a) in annual amounts, (b) in monthly amounts, and (c) by individual structure. As discussed in the Martin & Wood memorandum, the Town historically derived approximately 30% of its source water from the two wells and consumptive use limitations were imposed based on that. Now, the Town is relying more heavily on the wells and is currently using them to provide at least 50% of the water supply each month. As a result, the Town has reached the annual consumptive use limitation for one of the wells twice in the last 7 years.

The consumptive use limitations imposed by the Water Court create a material constraint on the Town's ability to serve additional growth in Minturn with Cross Creek water. While the Town has junior water rights, including for wells, which are not subject to the consumptive use limitations, these junior water rights require augmentation which is most likely needed in the summer and fall months (when Town water service is most in demand). The Town does not have infrastructure in place to deliver augmentation water to its points of diversion on Cross Creek. As such, the use of the Town's junior water rights to supply additional growth is unreliable.

As discussed in the Martin & Wood memorandum, the Town currently has an approximate 10% buffer on the monthly consumptive use limitations. The addition of 70 SFEs (an SFE is indoor and outdoor water usage for one residential unit) plus 120 in-door only water services connections which were reserved to the Eagle County School District in Ordinance No. 3 Series 2011, places the Town close to the 10% buffer.

The Town's water treatment plant is around 60 years old. It primarily utilizes slow sand filter technology – a treatment method that today is only used in 3 municipalities in Colorado. The Town also has a temporary Cartridge Filter and the ability to chlorinate water pumped from the wells. The water treatment plant has three filter beds. However, due to age and restrictions imposed by CDPHE, the two outdoor slow sand filters have been decommissioned, leaving only one filter bed operational. That leaves the Town's ability to treat water to meet service needs significantly restricted.

HDR Engineering has undertaken an analysis of the Town's ability to meet service needs, including growth, under "constrained" and "worst case" conditions. **See Memorandum of HDR dated January 24, 2023.** Consideration of restricted conditions at the Town's water treatment plant are critical due to the age of the infrastructure. HDR's "constrained" and "worst case" scenarios look at treatment capacity if Filter 3 is off-line (due to turbidity in the source water) and one of the Town's two wells cannot operate due to the consumptive use limitations imposed by Case No. 07CW225. HDR concludes that under the "worst case" scenario, the Town is able to meet the existing average daily demand and the maximum daily demand (assuming no growth). Under the "constrained"

scenario, the Town can meet the average daily demand (including limited growth) but not the projected maximum daily demand. Maximum daily demands can be managed by imposing outdoor watering restrictions (maximum daily demands occur during the summer when irrigation is occurring) during temporary periods until the additional treatment capacity is brought back on-line.

The Town believes that a “worst case” scenario would be limited to a few weeks and short term water supply shortages can be addressed by irrigation limitations. The “constrained” scenario is an occurrence that could last for longer durations and therefore imposes a greater limitation on water service for additional growth. The limitations proposed in the proposed ordinance fall within the supply conditions of the constrained scenario.

### The Proposed Moratorium Ordinance

Town Staff has concluded that the updated analysis of limitations on the Town’s water system requires enacting a new water moratorium. The proposed moratorium ordinance contains the following provisions:

- A. Section 3 limits connections to the Town’s water system to the historic number of SFEs used on a property (or collection of properties under the same or related ownership) *plus one SFE*. This is a reduction from the allowance provided in Ordinance 5, Series 2020 of historic use plus three SFEs. The “plus one” SFE will allow limited infill such as a homeowner adding an ADU to an existing house or the construction of a 1 SFE house on a vacant lot.
- B. Section 4 continues a moratorium on the processing of land use development applications which would result in water use exceeding the historic number of SFEs plus one SFE.
- C. Section 5 amends Resolution 22 – Series 2019 limiting the number of in-lieu water right dedication fees that can be paid to one SFE.
- D. Section 6 continues allocation of 70 SFEs of water service for the Minturn North project (if such project is approved). However, Section 6 terminates the reservation if a preliminary plan for the Minturn North project is not obtained by **August 31, 2023 changed to September 30, 2023.**
- E. Section 7 grandfathers certain development applications into provisions of Ordinance No. 5, Series 2020. The developments are: Minturn North, Belden Place, and Midtown Village. These three developments have approved concept development plan. This Section allows these three developments to continue with land use approval applications and to qualify for the historic use *plus three* SFEs. It should be noted that Belden Place cannot currently process land use applications because of the “automatic stay” provisions in the Town Code as a result of pending litigation.
- F. Section 8 modifies a provision in Ordinance No. 5, Series 2020 that allowed for applications to seek relief from the moratorium. No deviations from the moratorium are permitted under the ordinance as presented.

Page 4

Staff recommends approval of the water moratorium ordinance in order to protect the health, safety and welfare of Minturn's water users.

**TOWN OF MINTURN, COLORADO  
ORDINANCE NO. 02 - SERIES 2023**

**AN ORDINANCE OF THE TOWN OF MINTURN, COLORADO CONTINUING A  
MORATORIUM ON THE CONNECTION TO THE TOWN'S WATER SYSTEM AND  
ALLOCATION OF WATER SERVICE FOR PROJECTS IN EXCESS OF THE  
HISTORIC WATER USE.**

**WHEREAS**, the Town of Minturn ("Town") is a legal and political subdivision of the State of Colorado for which the Minturn Town Council ("Town Council") is authorized to act; and

**WHEREAS**, the Town has founded an enterprise for the purpose of operating the Town's water treatment and distribution system; and

**WHEREAS**, the Town's water treatment plant was constructed in the 1960s using slow sand filter technology; and

**WHEREAS**, the Town's water treatment plant has reached the end of its useful life; of the three slow sand filter trays only one remains operational placing limits on the Town's ability to treat water for existing and new users; and

**WHEREAS**, the Town's water rights are the subject of Consolidated Case Nos. 06CW264 and 07CW225 which impose annual and monthly consumptive use limitations on the Town's ability to divert and use water within its service area; and

**WHEREAS**, the Town has come close to exceeding the consumptive use limitations imposed by Consolidated Case Nos. 06CW264 and 07CW225; and

**WHEREAS**, further growth in the number of users of the Town's water resources will cause the Town to exceed the reliable capacity of the water treatment plant and the Water Court imposed limitations in Consolidated Case Nos. 06CW264 and 07CW225; and

**WHEREAS**, new construction projects and projects increasing the footprint of landscaping or the area of an existing structure proposed to be undertaken within the Town are subject to a water service application review pursuant to Section 13-2-10 et.seq. of the Minturn Municipal Code ("Code") and to pay a water rights dedication fee, a tap fee and a water system improvement fee in order to connect to the Town's water system; and

**WHEREAS**, the Town Council approved Resolution 40 – Series 2019 A Resolution to approve a Capital Improvements Plan (CIP) for the Minturn Water Plant and system within the Town of Minturn to address water system capacity issues; and

**WHEREAS**, the 2019 Water System CIP Table 3 Development Summary acknowledges approximately 70 Single Family Equivalent ("SFE") units of service can be provided with the current water infrastructure and single water source utilized in addition to the already allocated

120 remaining taps to be designated for the Eagle County School District Maloit Park area as outlined in Ordinances 1-4, Series 2011; and

**WHEREAS**, Minturn Crossing LLC submitted a Concept Development Plan for PUD application from property located in north Minturn (between Taylor Ave. and Minturn Road) to the Town on November 18, 2019; and the Town received an application (the “Application”) for the Minturn Crossing Preliminary Plan for PUD on March 13, 2020 (“Minturn North Project”); and

**WHEREAS**, the Application originally proposed up to 162 SFEs or a total buildout of 184 single-family, duplex, and multi-family dwelling units which application was amended by submittal of an amended preliminary plan application dated December 16, 2022 which contemplates full buildout of 76 SFEs (including historic use); and

**WHEREAS**, the Town enacted Ordinance No. 05 Series 2020 enacting a water moratorium on connection to the Town’s water system and the allocation of new taps (or SFEs) of water service on May 6, 2020; and

**WHEREAS**, Ordinance No. 05 Series 2020 limited the allocation of new SFEs of water service to historic use plus three additional SFEs; and

**WHEREAS**, Ordinance No. 05 Series 2020 reserved 70 SFEs of water service for the Minturn North Project; and

**WHEREAS**, the moratorium was continued for an additional year on February 16, 2022; and

**WHEREAS**, based upon current information about constraints of the water treatment plant and limitations on the Town’s water rights, an extension and modification of the existing moratorium is required; and

**WHEREAS**, the allocation of SFEs from the Town’s water system beyond what is provided for this this moratorium will result in health and safety risks to the Town and its population resulting from the inability to reliably provide water service; and

**WHEREAS**, municipalities have the authority to enact moratoria in order to preserve the status quo, protect public health and safety, and promote orderly development so long as it is not contrary to a statewide regulatory scheme or policy; and

**WHEREAS**, the Town Council hereby finds and determines that a moratorium on the allocation of SFEs in conformance with this Ordinance preserves the status quo in such a manner as to protect public health and safety, and promote orderly development within the Town and is not contrary to any statewide regulatory schemes or policies.

**NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MINTURN, COLORADO:**



SECTION 1. The foregoing recitals are incorporated herein as if set forth in full.

SECTION 2. Upon the effective date of this Ordinance, Ordinance No. 5, Series 2020 is repealed and replaced.

SECTION 3. A moratorium is hereby continued on the acceptance of applications for connection to the Town's water system or allocation of SFEs as provided in Section 13-2-10 et. seq. and is limited to no more than the historic number of SFEs used plus one additional SFE for new water use for an entire property or collection of adjoining properties as legally configured on the date Ordinance No. 05 Series 2020 was passed that are owned by the same or related owners.

SECTION 4. A moratorium is hereby continued on the acceptance and processing by the Town of land use development applications submitted pursuant to Minturn Municipal Code Chapters 16 and 17 that will result in water use exceeding the historic number of SFEs plus one additional SFE for a property or collection of adjoining properties as legally configured on the date Ordinance No. 05 Series 2020 was passed that are owned by the same or related owners.

SECTION 5. Until such time as this moratorium is lifted by Council, the terms of Section 3 in Resolution 22 – Series 2019 are hereby amended to state that “Cash in lieu fees may be approved by Town staff for new water use that does not exceed one SFE for an entire property or collection of adjoining properties owned by the same or related owners.”

SECTION 6. Up to 70 SFEs of available water service are reserved for the Minturn North Project. In the event that a final plat is not approved for the Minturn North Project on or before September 30, 2023, the reservation of SFEs for the Minturn North Project shall automatically terminate and Council may amend this Ordinance to reallocate available SFEs for other water service.

SECTION 7. Any property or collection of adjoining properties that has received a PUD Concept Development Plan approval (per Section 16-15-120) shall: (a) be permitted to receive connection to the Town's water system and allocation of SFEs in the amount of the historic number of SFEs used plus three additional SFE for new water use for an entire property or collection of adjoining properties as legally configured on the date Ordinance No. 05 Series 2020 was passed that are owned by the same or related owners, and (b) be permitted to process land use development applications pursuant to Minturn Municipal Code Chapters 16 and 17 that will result in water use not to exceed the historic number of SFEs plus three additional SFEs for property or collection of adjoining properties as legally configured on the date Ordinance No. 05 Series 2020 was passed that are owned by the same or related owners.

SECTION 8. The Town may accept no applications for connection to the Town's water system or allocation of SFEs that differ from the content of this ordinance.

SECTION 9. If any section, subsection, clause, phrase, or provision of this ordinance, or the application thereof to any person or circumstance shall to any extent be held by a court of competent jurisdiction to be invalid, void or unconstitutional, the remaining sections, subsections,

clauses, phrases and provisions of this ordinance, or the application thereof to any person or circumstance, shall remain in full force and shall in no way be affected, impaired or invalidated.

**INTRODUCED, READ BY TITLE, APPROVED ON THE FIRST READING AND ORDERED PUBLISHED BY TITLE ONLY AND POSTED IN FULL ON THE OFFICIAL TOWN WEBSITE THE 1<sup>st</sup> DAY OF FEBRUARY 2023. A PUBLIC HEARING ON THIS ORDINANCE SHALL BE HELD AT THE REGULAR MEETING OF THE TOWN COUNCIL OF THE TOWN OF MINTURN, COLORADO ON THE 15<sup>th</sup> DAY OF FEBRUARY 2023 AT 5:30 p.m. AT THE MINTURN TOWN HALL 302 PINE STREET, MINTURN COLORADO 81645.**

**TOWN OF MINTURN, COLORADO**

\_\_\_\_\_  
**Earle Bidez, Mayor**

**ATTEST:**

**By:** \_\_\_\_\_  
**Jay Brunvand, Town Clerk**

**THE TOWN OF MINTURN, COLORADO, ORDAINS THIS ORDINANCE ENACTED ON SECOND READING AND ORDERED PUBLISHED BY TITLE ONLY AND POSTED IN FULL ON THE OFFICIAL TOWN WEB SITE THIS 15<sup>th</sup> DAY OF FEBRUARY 2023.**

**TOWN OF MINTURN, COLORADO**

\_\_\_\_\_  
**Earle Bidez, Mayor**

**ATTEST:**

**By:** \_\_\_\_\_  
**Jay Brunvand, Town Clerk**



## Memorandum

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**To:** Mike Sawyer, Town Attorney and Michelle Metteer, Town Manager

**From:** Cristy Radabaugh, P.E.

**Date:** January 26, 2023

**Subject:** Minturn Consumptive Use Limits and Growth Evaluation

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Minturn primarily uses three water rights to provide water for Minturn's Water Service Area. These water rights are referred to as Minturn's "senior water rights" and include its Minturn Water System Ditch water right, its water right for the Town of Minturn Well No. 1 (currently diverted at Minturn Well No. 3), and its water right for the Town of Minturn Well No. 2 (currently diverted at Minturn's Well No. 4). This memo provides information on the consumptive use limits associated with the senior water rights and information related to growth that can be supported within the limits.

### Consumptive Use Limitations on Senior Water Rights

There are limitations on Minturn's senior water rights related to consumption of the water. These consumptive use limits result in restrictions on Minturn's diversions and well pumping under the senior water rights on a monthly, seasonal, and annual basis (Table 1). Consumptive use is calculated from the metered water deliveries to customers and based on how the water is used (indoor uses are less consumptive than outdoor uses). The total consumption is allocated between each of the senior water rights based on daily diversion and pumping data.

If a consumptive use limit shown in Table 1 is reached, Minturn must cease diversions and/or pumping associated with the senior water right that has hit a consumptive use limit. In that circumstance, Minturn may either divert under its junior water rights from the same structure or may temporarily cease diversions and/or pumping. For example, if the annual consumptive use limit is reached in August at one of Minturn's wells, Minturn would choose between 1) no longer using that well until the annual use under the limit resets, or 2) using the well to pump water associated with a different, more junior water right. If Minturn chooses to pump water associated with its junior water right from the well, then Minturn will likely be required to make

augmentation replacements to prevent impacts to more senior downstream water rights holders on Cross Creek, the Eagle River, and/or the Colorado River.

**Table 1**  
**Consumptive Use Limits for Minturn’s Senior Water Rights**

| <b>Monthly Consumption Limits (af)</b>    |                |              |                |
|---|----------------|--------------|----------------|
| <b>Month</b>                              | <b>Maximum</b> | <b>Month</b> | <b>Maximum</b> |
| Nov                                       | 0.75           | May          | 3.5            |
| Dec                                       | 0.75           | Jun          | 9.75           |
| Jan                                       | 0.75           | Jul          | 11.5           |
| Feb                                       | 0.75           | Aug          | 8.5            |
| Mar                                       | 0.75           | Sep          | 5.0            |
| Apr                                       | 1              | Oct          | 2.25           |
| <b>Seasonal Consumption Limit (af)</b>    |                |              |                |
| June through August                       |                |              | 27.5           |
| <b>Annual Consumption Limits (af)</b>     |                |              |                |
| Well No. 3 (from Well No. 1 water right)  |                |              | 9.0            |
| Well No. 4 (from Well No. 2 water right)  |                |              | 2.31           |
| Annual Limit from All Senior Water Rights |                |              | 38.0           |

Notes:

1. The monthly and seasonal limits apply to the combined consumption associated with the three senior water rights (Minturn Water System Ditch, Well No.1 water right at Well No. 3, Well No. 2 water right at Well No. 4).
2. The seasonal limit is less than the sum of its associated monthly limits, and the annual limit is less than the sum of the monthly limits.
3. The annual consumption limit by well applies only to the respective well/water right and is an additional limit specific to those senior water rights.

While Minturn has augmentation supplies along the Eagle River and the Colorado River, Minturn does not currently have augmentation supplies that can be used on Cross Creek. This currently makes the use of Minturn’s junior water rights along Cross Creek unreliable. If Minturn is using its junior water rights and cannot provide augmentation water to Cross Creek, Minturn may be ordered to stop diverting/pumping under its junior water rights to prevent injury to a senior water right on Cross Creek. Therefore, Minturn currently plans to maintain its water use within the consumptive use limits in order to avoid a situation where an augmentation replacement is due to Cross Creek.

The monthly consumptive use limits are most likely to be reached or exceeded in warm, dry months, when outdoor watering is typically high. In the last 10 years, the Town came within 10% of a monthly consumptive use limit in September of 2017 and 2022. The Town implemented some watering restrictions beginning in 2021 and adjusted its rate schedule in 2022 to encourage the efficient use of water, which may provide for lower consumption in the future. Without these changes, it is anticipated that Minturn's consumption under the senior water rights in September 2022 would have been more than 90% of the monthly limit. We will continue to monitor Minturn's consumption associated with the senior water rights, and additional years of water use data will be helpful in evaluating the impacts of the restrictions and rate schedule changes. Minturn may wish to consider further restrictions.

The Town reached the annual consumptive use limit on the Well No. 2 senior water right (based on pumping at Well No 4), twice in the last 10 years. The consumptive use limits, which were based on historical data, indicate that an average of 30% of Minturn's water historically came from wells and the remaining water came from the Minturn Water System Ditch. Relying more heavily on well water, because of intermittent water quality issues on Cross Creek or other factors, has increased the likelihood of reaching or exceeding a consumptive use limit associated with Minturn's wells.

### **Staying within the Limits**

Minturn is planning for future growth and intending to use additional water supplies in the future. Until Minturn can further reduce or eliminate the need to augment Cross Creek, Minturn is limiting growth.

I understand that Minturn's 2020 Water Moratorium allows growth for 70 single-family equivalents (SFE) for indoor and outdoor water use at Minturn North, if approved by the Council, and also for 120 SFE for indoor use on the Eagle County School District property. This is a combined 190 SFE. The 70 SFE that include outdoor use will represent approximately a 9.6% increase to Minturn's existing approximate 730 SFE. These 70 SFE and 120 SFE can be reasonably expected to consume water in alignment with existing customers, and therefore are expected to put Minturn very close to the monthly consumptive use limits at times. If the 190 SFE had been using water last year along with the existing customers, it is estimated that Minturn would have been at 99.8% of the monthly consumptive use limit in September 2022.

Based upon the existing data used for calculation of consumptive use under Minturn's water right decrees, it is anticipated that the planned 190 SFE of growth is all the additional water consumption that can be handled under the monthly consumptive use limits.



# Technical Memo

Date: Tuesday, January 24, 2023

Project: Minturn WTP Design

To: Michelle Metteer, Town of Minturn

From: HDR Engineering, Inc

Subject: **Water Treatment Plant Production Capacity**

The existing Minturn WTP comprises of two surface water treatment trains as well as two groundwater wells. The surface water treatment includes one slow sand filter (Filter 3) capable of producing 60 gpm under ideal raw water quality conditions as well as one 1.0 micron cartridge filter capable of producing 50 gpm of treated water. Groundwater wells #3 and #4 provide water to the WTP clearwell where chlorine is applied for disinfection. Wells #3 and #4 can produce 80 gpm each of treated water. Raw water quality as it relates to the treatment limitations at the WTP and secured junior and senior water rights in Cross Creek are the basis for evaluating scenarios with restricted production capacity of Minturn’s WTP.

The anticipated worst-case scenario comprises both compromised water quality in Cross Creek (e.g., spring runoff when Cross Creek turbidity is highest) as well as Minturn conserving use of its senior water rights from the wells. The constrained scenario comprises the same water quality compromises but Well #4 is used, thereby providing additional water to the system. The constrained and worst-case scenarios regarding the total production of treated water from the existing WTP are summarized in the following table.

| Water Supply                           | Constrained Scenario         |            | Worst-Case Scenario          |            | Comments  |
|--|------------------------------|------------|------------------------------|------------|---|
|  | Status                       | Production | Status                       | Production |   |
| Surface Water Supplies                 |                              |            |                              |            |   |
| Filter 3                               | Offline                      | -          | Offline                      | -          | Unable to meet turbidity compliance   |
| Cartridge Filter                       | Online                       | 50 gpm     | Online                       | 50 gpm     | Absolute filtration by manufactured filter element  |
| Groundwater Supplies                   |                              |            |                              |            |   |
| Well #3                                | Online                       | 80 gpm     | Online                       | 80 gpm     | -   |
| Well #4                                | Online                       | 80 gpm     | Offline                      | -          | Typically, the Town will delay use of this water right due to consumptive use limitations. Well #4 could be brought online if needed. |
| <b>Total Production</b>                | <b>210 gpm / 304,000 gpd</b> |            | <b>130 gpm / 187,000 gpd</b> |            | Does not account for water loss in distribution system which reduces the delivery to customers  |
| <b>Estimated Delivery to Customers</b> | <b>243,000 gpd</b>           |            | <b>150,000 gpd</b>           |            | Based on a 20% loss from treatment to customer deliveries   |





Minturn’s existing water treatment plant is estimated to be able to reliably produce up to 187,000 gallons per day under the worst-case scenario and 304,00 gpd under the constrained scenario. If a conservative water loss factor capturing distribution system leaks of 20% is applied to the WTP production, the actual production available to customers under the worst-case scenario is 150,000 gpd and under the constrained scenario is 243,000 gpd.

Minturn’s Capital Improvements Plan (CIP), completed in 2019 while slow sand filters #1 and #2 were still operational, identified existing and future water demands, which are presented in the following table.

**Water demands based on 2019 Minturn Capital Improvements Plan**

|                       | Existing Demand | Future Demand  |
|-----------------------|-----------------|--|
| Average               | 147,000 gpd     | 196,000 gpd  |
| Maximum               | 333,000 gpd     | 441,000 gpd  |
| Notes                 |                 | An additional 190 SFEs are planned for Minturn North and the School District |
| Production Capacities |                 | Constrained: 243,000 gpd<br>Worst Case: 150,000 gpd                          |

Under the worst-case production scenario, the Town is able to meet the existing average demand but is unable to meet the future average demand. The maximum daily demands cannot be satisfied under the worst-case scenario and are closer to being met under the constrained scenario. Under the constrained scenario, the Town is able to meet the existing average demand and 75% of the existing maximum demand

The Town can impose water restrictions disallowing or reducing the use of water for irrigation purposes. Irrigation water use contributes to max day demand conditions and thus validates the use of average day demand conditions as the measuring stick for the ability of the Town to produce enough water to meet those demands.

**Acronyms**

- WTP – Water Treatment Plant
- gpm/gpd – Gallons per minute / gallons per day
- CIP – Capital Improvements Plan



# OFFICIAL AD PROOF

This is the proof of your ad scheduled to run in **Vail Daily** on the dates indicated below. If changes are needed, please contact us prior to deadline at **(970) 949-0555**.

Notice ID: usM20qrOrRPyv0hy8rEg | **Proof Updated: Feb. 03, 2023 at 12:56pm MST**  
Notice Name: 8CD13 ORD 2 - 2023 | Publisher ID: 261645

**This is not an invoice. Below is an estimated price, and it is subject to change. You will receive an invoice with the final price upon invoice creation by the publisher.**

| <b>FILER</b>          | <b>FILING FOR</b> |
|-----------------------|-------------------|
| TOWN OF MINTURN       | Vail Daily        |
| treasurer@minturn.org |                   |
| (970) 827-5645        |                   |

|                        |                         |
|------------------------|-------------------------|
| <b>Columns Wide: 1</b> | <b>Ad Class: Legals</b> |
|------------------------|-------------------------|

|                          |       |
|--------------------------|-------|
| 02/07/2023: Other Notice | 13.26 |
| Affidavit Fee            | 4.00  |

|                |                |
|----------------|----------------|
| Subtotal       | \$17.26        |
| Tax            | \$0.00         |
| Processing Fee | \$1.73         |
| <b>Total</b>   | <b>\$18.99</b> |

TOWN OF MINTURN, COLORADO  
ORDINANCE NO. 2 - SERIES 2023

AN ORDINANCE OF THE TOWN OF MINTURN, COLORADO CONTINUING A MORATORIUM ON THE CONNECTION TO THE TOWN'S WATER SYSTEM AND ALLOCATION OF WATER SERVICE FOR PROJECTS IN EXCESS OF THE HISTORIC WATER USE.

THE TOWN OF MINTURN, COLORADO, ORDAINS THIS ORDINANCE ENACTED ON SECOND READING AND ORDERED PUBLISHED BY TITLE ONLY AND POSTED IN FULL ON THE OFFICIAL TOWN WEB SITE THIS 15TH DAY OF FEBRUARY 2023.

TOWN OF MINTURN, COLORADO  
Earle Bidez, Mayor

ATTEST:  
By:  
Jay Brunvand, Town Clerk  
**PUBLISHED IN THE VAIL DAILY ON TUESDAY, FEBRUARY 7, 2023.**



Town of Minturn  
301 Boulder St #309  
Minturn, CO 81645  
970-827-5645  
[council@minturn.org](mailto:council@minturn.org)  
[www.minturn.org](http://www.minturn.org)

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## **FUTURE MEETING AGENDA ITEMS**

Below reflects proposed topics to be scheduled at future Town Council meetings and is informational only. Dates and topics are subject to change.

### **February 15, 2023**

- Executive Session – Conflict waiver request – Holland and Hart
- Review/Renewal of Ordinance 02 – Series 2023 (Second Reading); An Ordinance Amending and Renewing the Minturn Water Moratorium
- Consent Agenda – Resolution supporting the RAISE grant application
- Ord \_\_\_ - Series 2023 – Bolts Reservoir IGA (First Reading) – Tentative
- Proclamation – One Book One Valley

### **March 1, 2023**

- Ord \_\_\_ - Series 2023 – ECSD Impact Fee in lieu
- Special Presentation – Eagle County Sheriff's Office annual report
- Ord \_\_\_ - Series 2023 – Bolts Reservoir IGA (Second Reading) – Tentative
- Executive Session – Battle Mountain

### **March 15, 2023**

- Discussion/Direction – Raw water irrigation systems
- Downtown Development Authority – Business Engagement
- Discussion/Direction – Leash Law

### **April 5, 2023**

- Discussion/Direction - Water Infrastructure Analysis

### **Dates to be Determined**

- Special Presentation – Code Updates Project Outline - Hunn