



**TOWN OF MINTURN, COLORADO
ORDINANCE NO 3- SERIES 2011**

**AN ORDINANCE AUTHORIZING THE MAYOR OF THE TOWN OF MINTURN,
COLORADO, TO SIGN AN ANNEXATION AGREEMENT**

WHEREAS, by Ordinances No. 1 & 2, Series 2011, the Town of Minturn has annexed to the Town approximately 105 acres of land in Eagle County commonly known as the Eagle County School District Maloit Park property (the "Property") in accordance with the applicable provisions of Section 30 of Article II of the Constitution of the State of Colorado, the Municipal Annexation Act of 1965 and the Minturn Municipal Charter and Code; and

WHEREAS, the Town of Minturn, Colorado, a home rule municipal corporation, ("Town") has entered into negotiations with the Eagle County School District RE 50J for an Annexation Agreement pertaining to the two annexation petitions filed by Eagle County School District RE 50J in November 2010, which petitions in the aggregate cover approximately 104.552 acres of land; and

WHEREAS, in connection with the annexation of the Property, the Eagle County School District RE50J and the Town of Minturn have reached agreement on the terms and conditions of a proposed Annexation Agreement for the Property, a copy of which is attached hereto as Exhibit A (the "Eagle County School District RE 50J Annexation Agreement"); and

WHEREAS, the Home Rule Charter of the Town of Minturn, Colorado, the Minturn Municipal Code, and C.R.S. Sec. 31-15-101, as amended, authorize the Town to enter into such agreements.

NOW, THEREFORE, THE TOWN OF MINTURN, COLORADO, ORDAINS:

Section 1. The Town Council approves the Eagle County School District RE50J Annexation Agreement.

Section 2. The Town Mayor is authorized to sign the Eagle County School District RE 50J Annexation Agreement.

Section 3. This Ordinance shall not take effect until the Eagle County School District RE 50J Annexation Agreement is signed by the representatives of all of the necessary parties thereto.

Section 4. Severability. If any part, section, sub-section, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance; and the Town Council for the Town of Minturn, Colorado hereby declares it would have passed this Ordinance and each part, section, sub-section, sentence, clause or phrase thereof, irrespective of the fact that any one or more parts, sections, sub-sections, sentences, clauses or phrases be declared invalid.

Section 5. The Town Council hereby finds, determines and declares that this Ordinance is necessary and proper for the health, safety and welfare of the Town of Minturn and the inhabitants thereof.

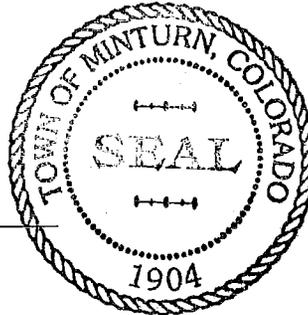
Section 6. The repeal or the repeal and re-enactment of any provision of the Minturn Municipal code as provided in this ordinance shall not affect any right which has accrued, and duty imposed, any violation that occurred prior to the effective date hereof, any prosecution commenced, nor any other action or proceeding as commenced under or by virtue of the provision repealed and re-enacted. The repeal of any provision hereby shall not revive any provision or any ordinance previously repealed or superseded unless expressly stated herein.

INTRODUCED, READ BY TITLE, APPROVED ON THE FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL THE 16th DAY OF March, 2011. 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 6th day of April, 2011, at 7 P.M. in the Minturn Town Center in the Town of Minturn, Colorado.


Mayor

Attest:


Town Clerk

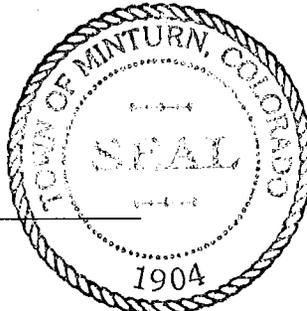


INTRODUCED, READ BY TITLE, PASSED ON SECOND READING, APPROVED AND ORDERED PUBLISHED IN FULL THIS 18th DAY OF MAY, 2011.


Mayor

Attest:


Town Clerk



**EAGLE COUNTY SCHOOL DISTRICT RE 50J
ANNEXATION AGREEMENT**

The parties to this Annexation Agreement (this "Agreement") and the **TOWN OF MINTURN, COLORADO**, a home rule municipal corporation ("Town"), and **EAGLE COUNTY SCHOOL DISTRICT RE50J**, a Colorado school district, ("District"), collectively referred to herein as "parties."

Recitals

A. **WHEREAS**, in 2010, the District filed with the Town two petitions for annexation ("Annexation Petitions") which cover approximately 104.552 acres of land south of the Town in Eagle County as legally described in the annexation resolutions and annexation ordinances as defined below (the "Property");

B. **WHEREAS**, the District owns 100% of the Property, exclusive of dedicated streets and alleys;

C. **WHEREAS**, on November 17, 2010, the Town Clerk referred the Annexation Petitions to the Town Council;

D. **WHEREAS**, on February 16, 2011 the Town Council conducted a public hearing at which it adopted Resolution Nos. 2-2011 and 3-2011 wherein it determined that the petitions for the proposed annexation complied with C.R.S. Section 31-12-107, as amended;

E. **WHEREAS**, the Property is presently zoned Resource under the Eagle County zoning regulations and currently is used for school facilities, administration facilities, housing, open space, municipal utility facilities, and related purposes;

F. **WHEREAS**, the Town and District desire to enter into an agreement setting forth more fully the terms of the annexation, zoning and future redevelopment rights of the Property, with full acknowledgement of the existing uses of the Property;

G. **WHEREAS**, it is the intent of the parties to allow for the development of those portions of the Property retained by the District as a mixed use Project ("Project") which will include both school and District related facilities ("District Development") and, public, residential and recreation uses ("non-District Development") as more specifically permitted under the zoning for the Maloit Park Character Area, consistent with the uses identified in Minturn's 2010 Three Mile Plan for Annexation;

H. **WHEREAS**, the District desires to complete the conveyance of approximately 18 acres of property to the Town, which property is used primarily for the Town's potable and raw water collection, treatment and distribution facilities;

I. **WHEREAS**, the District may in the future complete the conveyance of approximately 1 acre to Meet the Wilderness, a Colorado non-profit corporation, which property if so conveyed will be used for education related purposes, consistent with that certain Purchase Agreement dated June 8, 2005 between the District and Meet the Wilderness, Inc. to the extent it has been extended or modified by the parties;

J. **WHEREAS**, the Project may contribute to the economic and attainable growth of the Town, and the Town desires to annex the Property in order to provide for orderly long term growth in

and around the Town and to secure easements for Town infrastructure across the Property consistent with the possible redevelopment scenarios and current development of the Property;

K. **WHEREAS**, the development of the Property in accordance with this Agreement and the Maloit Park Character Area will provide for orderly growth in accordance with the policies and goals set forth in the Town's Community Plan, ensure reasonable certainty, stability, and fairness in the land use planning process, stimulate economic growth, foster cooperation between the public and private sectors in the area of land use planning and otherwise achieve the goals and purposes of the Town and the District; in exchange for these benefits and the other benefits to the Town contemplated by this Agreement, together with the public benefits served by the orderly development of the Property, the District desires to receive assurance that it may, in the future, proceed with redevelopment of the Property consistent with the terms and conditions contained in this Agreement;

L. **WHEREAS**, the Town and the District agree that the matters hereinafter set forth are reasonable conditions and requirements in connection with the acceptance and favorable action on the Annexation Petitions; the Town recognizing and reciting that such matters are necessary to protect, promote, and enhance the public welfare; and

M. **WHEREAS**, the parties agree that it is desirable for the District to annex the Property to the Town and after public hearing, it is anticipated that the Town Council will approve the Annexation Petition and annex the Property to the Town under Resolution No. 2 Series 2011 and Ordinance 2 and Resolution No. 3 Series 2011 and Ordinance 2.

NOW THEREFORE, in consideration of Ten Dollars and other good and valuable consideration including the mutual promises and covenants stated herein including the transfer of certain lands to the Town by the District by separate conveyance and the creation of certain encumbrances on the District's property and water rights as more fully set forth herein and the approval of the described zoning of the Property, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE 1. ANNEXATION AND ZONING OF THE PROPERTY

Section 1.4 Zoning. The Property has been zoned Resource in Eagle County. With the consent of the District and consistent with the requirements of C.R.S. Section 31-12-115(2), the Town has contemporaneously herewith zoned the Property by amending the official Zone District Map of the Town, also known as the Character Area Zone Map, to create the Maloit Park Character Area which consists of approximately 45.6 acres designated as Mixed Use, approximately 41.2 acres as Open Space, and approximately 18.2 acres as Public Facilities. The intent of this rezoning is to provide for the following general purposes: (a) District Development purposes; (b) public utility, facilities and infrastructure and up to ten individual dwelling units for Town employees; (c) District and non-District residential dwellings; (d) public recreational facilities; and (d) similar structures and uses directly related or accessory to such enumerated uses. The specific uses in the Character Area shall be as prescribed by the Maloit Park Character Area and include the following: schools and related school and District facilities; public utilities, including water diversion, potable and raw water transmission, potable water treatment and storage; single family residential, duplexes, multi-family residential, apartments, and structures and facilities that are accessory to such residential uses, recreational facilities, municipal or local government office facilities; passive and active recreational areas and facilities; community uses; and open space. Industrial uses, wastewater treatment plant, a dump, boneyard, bus barn and maintenance facility, or other such uses shall not be permitted uses within the Maloit Park Character Area. This agreement is conditioned upon the approval of the

zoning described herein. It is further anticipated that the District property remaining after the subdivision exemption approval provided for herein will be subject to specific subdivision as deemed appropriate by the District and approved by the Town consistent with the provisions and intent of zoning created in accordance with this Agreement and the Municipal Code; provided, however, that any such future subdivision and attendant development shall strictly conform to the Maloit Park Character Area designation. Any rezoning in the future shall not reduce the residential densities, change the specified uses or the land areas within the development area set forth herein and on the attached exhibits, except upon the request of the District. All current and existing uses, including without limitation the mobile home dwelling units, shall continue to be permitted under this zoning for the Maloit Park Character Area.

Section 1.5 No Obligation to Develop. The District shall have no obligation under this Agreement to develop all or any portion of the Project or Property and shall have no liability under this Agreement to the Town or any other person or entity for its decision not to develop all or any part of the Project or Property.

ARTICLE 2. WATER

Section 2.1 Continuation of Existing Water Service. The Property is currently provided potable water service by the Town pursuant to the terms and conditions of that certain Agreement between the parties dated May 5, 1964 ("1964 Agreement"). Paragraph 1 of the 1964 Agreement is hereby amended to provide that the water service shall be provided to the District at the Town's regular in-town metered and service fee rate, as established by Town Council pursuant to Section 13-4-70 of the Minturn Municipal Code. The first full paragraph on page 2 of the 1964 Agreement is hereby amended to provide that the District shall pay the pumping power costs for the pumping of water from the Minturn water plant clear well to the Property and within the Property, because the 1964 Agreement specified that the justification for the Town's payment of such costs was the fact that the District was previously paying out-of-town metered rates. The 1964 Agreement is hereby amended further to provide that it shall remain in full force and effect with respect to any water service being provided to the Property for District, and Non-District Development including District residential dwellings and public recreational facilities. All other provisions of the 1964 Agreement shall remain in full force and effect. The District owns interests in the Armina Ditch and uses the same for the irrigation of school recreation fields, open space, and landscaping. Additional water service to be provided to any non-District Development on the Property will be provided by the Town pursuant to applicable rules and regulations and provisions for in the Minturn Municipal Code and this Annexation Agreement. In the event that District Development of the Property is modified in such a manner as to create a material change in water service, which for purposes of this Annexation Agreement only, are defined as a proposed use requiring more than 5.80 acre feet per year, which represents a twenty-five percent (25%) increase in the historical water demands under the 1964 agreement established by averaging the water monthly demands for the three (3) years of record with the highest annual demand prior to the date of this agreement, the District will need to purchase additional taps from the Town, which taps shall count against the 150 single family equivalents in paragraph 2.3 below.

Section 2.2 Grants of Easements for Water System Infrastructure. The parties agree that the District will grant easements across the Property to the Town for water lines and associated facilities and infrastructure. Upon written request from the Town based on a specific projected need to construct water lines and associated facilities and infrastructure and wastewater infrastructure, as appropriate, and finalize the grant of the easements for the same, the District agrees to deliver to

the Town specific easements for potable and raw water lines and associated facilities and infrastructure and wastewater collection and transmission lines, as appropriate, along alignments that are compatible, at that time, with the then existing infrastructure and other structures and development on the District property. Such alignments are anticipated to begin in the areas generally depicted along Cross Creek and end in the areas on the easterly side of the Property shown on **Exhibit A** hereto. In the event that the Town needs such public utility easements prior to any further District or non-District Development, due to development off-site of the Property or other needs of the Town, the parties shall confer and in good faith specifically locate and legally describe such easements for conveyance in order to lessen any adverse impacts upon either District or non-District development on the Property. It is expressly acknowledged and understood that the alignment of such easements may not be the most direct or shortest alignments, but rather alignments that shall be deemed to be the least impactful on the District's current and future use of the Property. The Town further agrees that any potable or raw water lines installed by the Town within such easements shall be appropriately sized to provide capacity for any District or non-District Development on the Property, as such development is contemplated by the Maloit Park Character Area. The District shall not be required to participate in any cost-recovery or line reimbursement agreement regarding such potable or raw water lines. Such easements shall be substantially in the form attached hereto as **Exhibit B** and shall be recorded in the Eagle County Clerk and Recorder's office upon execution.

Section 2.3 Water Rights Dedication. In consideration of the District's grant of the 18 acre parcel and of utility easements requested by the Town for development off-site of the Property, and contingent upon the Arminda Ditch Water Right being used for raw water irrigation, the Town shall waive dedication requirements under the Minturn Municipal Code, Article 13, Section 13-2-20 for up to and including 150 single family equivalents on the Property.

Section 2.4 Arminda Ditch. The District owns an interest in the Arminda Ditch, Priority No. 339, adjudicated March 5, 1918, appropriation date December 29, 1892, for the portion of the Arminda Ditch water right that has been historically used upon and in connection with and is appurtenant to the Property ("Arminda Ditch Water Right"). The Arminda Ditch Water Right is important to the water service of the Property for irrigation purposes and potentially for municipal water service purposes in the future. Accordingly, the parties agree to the following provisions with regard to the Arminda Ditch Water Right:

1. At such time as the District or its successor request new taps that include outdoor irrigation to serve the 45.6 acres designated as Mixed Use in paragraph 1.4 above, not including any taps covered by the 1964 agreement pursuant to paragraph 2.1 above, the District shall convey such Arminda Ditch Water Rights to the Town. The District shall retain the first right to use the Arminda Ditch Water Right for outdoor irrigation of any portion of the Property.
2. Subsequent to conveyance to the Town, the Town shall assume all operations, maintenance and administration duties with respect to such Arminda Ditch Water Right (including ditch operation and maintenance). The users of the yield of the Arminda Ditch Water Right on the Property shall be charged no more than a pro rata share of such costs for operation, maintenance and administration based on the amount of raw water use.

3. The Town shall have the right of first refusal to purchase the Arminda Ditch Water Right. In the event the District receives a bona fide offer for the sale of the Arminda Ditch Water Right separate from the Property from a third party that is accepted by the District or that is negotiated by the District into an acceptable agreement for such sale (collectively "Third Party Sale"), the Town shall have the right to exercise its right of first refusal and become the purchaser of the Arminda Ditch Water Right under the same terms and conditions of the Third Party Sale. The Town shall have sixty (60) days from the date of receipt of the written notice from the District of the Third Party Sale to exercise its right of first refusal by agreeing to purchase the Arminda Ditch Water Right on the same terms as the Third Party Sale. If the right of first refusal is not exercised within such time period or otherwise waived by the Town, the sale may be made to such third party purchaser. This right of first refusal shall not terminate simply because the Town has previously been offered the first right to purchase the Arminda Ditch Water Right under subparagraph 2.4(2) and declines to exercise such right, whether once or numerous times.
4. In the event the District determines to sell the Arminda Ditch or portions thereof, any sale shall not include the amount of water that is being and is intended to be used on the Property for irrigation as provided herein. All irrigation on the Property will be served by the Arminda Ditch or pursuant to the 1964 Agreement between the parties, as it is amended herein and as set forth herein.

**ARTICLE 3.
WASTEWATER TREATMENT SERVICE**

Section 3.1 Wastewater Treatment Service. Wastewater treatment service is currently provided by the Eagle River Water and Sanitation District. It is anticipated that such district will continue service for any development of the Property. The easements provided for in Section 2.2 may also include the capability for the installation, operation, and maintenance of wastewater collection and transmission and facilities, provided, however, that nothing herein shall be construed as a grant of permission to utilize any easement, property, or property interest to be conveyed pursuant to this Agreement for purposes of wastewater treatment.

**ARTICLE 4.
GENERAL DEVELOPMENT OF THE PROPERTY**

Section 4.1 Future Development. It is agreed that all future development of non-District Development maybe the subject of one of the following processes: (a) a Planned Unit Development and a Planned Unit Overlay Zone District ("Zone District") may be created upon application therefore by the District; (b) Subdivision Plat Application pursuant to Town regulations and ordinances governing such process; or (c) permitted development pursuant to the Maloit Park Character Area zoning in accordance with the Town regulations and ordinances governing such development. The parties agree that the uses and densities of the Maloit Park Character Area and herein are in compliance with the Town's applicable goals, policies, and objectives and, accordingly, any future subdivision review of any non-District Development shall be based solely upon conformance with applicable design_standards as required by the Municipal Code including without limitation those pertaining to engineering, safety, platting, grading and drainage, erosion, and revegetation, together with an appropriate subdivision improvements agreement consistent with the requirements of the Municipal Code and the provisions herein. Future District Development may, or may not be a part of

such non-District Development, at the discretion of the District. In addition, the Zone District shall strictly comply and be consistent with the uses set forth for the Maloit Park Character Area described in Section 1.4, elsewhere in this Agreement and as set forth in the zoning approval for the Property as provided herein.

The parties agree and acknowledge that the District hereby reserves its rights pursuant to Title 22, Article 32 of the Colorado Revised Statutes to expand or redevelop the existing middle school or to build other schools or District related facilities, (collectively referred to in this Article 4 as "District Development") according to the development procedures applicable to District Development as set forth in Title 22, Article 32 as such procedures may be amended from time to time.

In the event the District leases or otherwise authorizes third parties to use buildings or facilities within the retained Property or otherwise materially increases its uses with the result that there is a greater demand on Town services, the costs to the Town will be identified and the parties agree in good faith to negotiate a memorandum of understanding that provides for the District or lessee to offset such costs for such uses that are not the subject of property tax payments to the Town. To the extent that any entity leasing or using the buildings or facilities is holding a special event, such entity shall pay the costs of the additional services that are required by the Town in connection with the event, or to the extent the Town has in place a special event permitting process at the time the event is held, such entity shall comply with the Town's special event permitting process.

Section 4.2 Subdivision Exemptions. At the same time as the approval of the annexation of the Property, the Town has approved subdivision exemption to create the Town of Minturn 18 acre parcel with access thereto based upon application for the same that has been submitted by the District.

Section 4.3 Development and Control of Development. It is understood by the parties that the District's plans for the Property are in a state of evolution in the context of the District's assessment of its educational mission and use of its properties and facilities and the location of its facilities. Consequently, the District has no definitive plans for the Property and its development or redevelopment with the exception of the conveyance of the 18 acre parcel on the northwest side of Cross Creek to the Town and the possible conveyance of the 1 acre parcel to Meet the Wilderness. Nevertheless, the parties agree that the retained Property is appropriately situated for District Development, public utilities, water-storage, single family residential, duplexes, multi-family residential, accessory apartments, accessory dwellings, recreational facilities, community uses, town related office facilities and recreational facilities and open space. Accordingly, the District and the Town agree to cooperate in good faith in the planning and design of the development of the Property, with the exception of the development of District Development (submission of a site plan for which

shall be made consistent with the requirements of applicable state statutes, including C.R.S. Section 22-32-124(1)), as it may be amended from time to time, in order to facilitate the public process for the review and approval of the same. The District has the right to develop the retained Property for non-District Development for up to 150 residential units subject to terms and conditions of this Agreement and, as appropriate, the completion of the land use process consistent with the provisions of the Minturn Municipal Code referenced herein. In the event the District determines to include within the District Development any residential units, such units shall be included in the total of 150 units allocated to the retained Property herein. The District shall have no liability to the Town or any other party for a decision not to develop all or any part of the retained Property.

Section 4.4 Rules Regulations, and Official Policies.

1. Fees, Conditions and Dedications. In partial consideration of the mutual covenants and promises set forth herein, the District shall make only those dedications and pay only those fees expressly provided for in this Agreement for District Development and non-District Development:
 - a. No separate real estate dedications or fees in lieu thereof shall be required for parks/recreation and/or open space in excess of that depicted as open space areas on the Character Map.
 - b. The raw water dedications, which are required pursuant to Minturn Municipal Code Section 13-2-20 as may be amended from time to time, for up to and including 150 SFEs shall be deemed waived, regardless of whether such SFEs are utilized for District Development or non-District Development. For purposes of this Agreement, an SFE is defined as a residential unit of up to 3,000 square feet, with assumed potable water requirements for each SFE of an average of 2.3 people using 88 gallons of water per person per day; each 1,000 square feet or fraction thereof greater than the 3,000 square feet base is calculated at 0.3 SFE. In-building use for commercial space is projected to be 6/10ths of an SFE per 1000 square feet. The SFE unit values assigned to water taps for non-residential, non-commercial and non-industrial development projects, which projects may include efficiency rooms, shall be calculated for each project by estimating the volume of water consumptively used as compared to the volume of water consumptively used by an SFE.
 - c. Non-utility easements and rights of way shall be identified and dedicated at the time of development/land use approvals pursuant to Section 4.1 above, as appropriate; provided, however, that the existing access to the current District facilities from State Highway 24 shall not be altered except with the express consent of the District. Any additional access required by the Town or applicable fire codes regarding future non-District Development shall be granted by the Town through the Town's 18 acre parcel, consistent with the provisions of paragraph 4.4.5 below.

- d. Public utility easements shall be granted to the Town for public purposes. The exact location and extent of such utility easements shall be determined in consultation with the District so as to be complimentary with both future District and non-District development.
 - e. Water tap fees shall be waived for District Development that fall under the 1964 Agreement as described in paragraph 2.1 above.
2. Improvements Guarantee. Notwithstanding any provision in the Code to the contrary, the District agrees that the financial security to guarantee any non-District Development improvements for which the security is to be provided under the Municipal Code will be 125% of the estimated costs of such improvements. No guarantee shall be required for District Development, provided that the District demonstrates to the Town's reasonable satisfaction that the District has duly budgeted and appropriated funds for such public improvements for District Development.
 3. Road Maintenance. At such time as any non-District Development within the Property is approved, the Town shall include in such approval a commitment to assume the maintenance of all roads, streets, and rights of way that are dedicated to the public in connection with the non-District development.
 4. Park, Open Space, and Public Recreational Areas. In the event that the District determines that its recreational area needs are diminished based upon future District Development or change of District usage in the existing facilities, the parties shall meet and confer regarding the possible transfer of use and maintenance of District recreational areas for Town usage as additional park, open space and recreational areas in order to maintain a generally similar level and quality of recreational uses and facilities that exist at the time of this agreement.
 5. Access and Emergency Access. The Town acknowledges that the single point of access and the alignment of the existing access road from Highway 24 to the Property are sufficient for both current and anticipated development of the Property, including both District and non-District Development. In the event that the fire department and ambulance service having jurisdiction over the Property, or both require a secondary access for emergency access to any future District or non-District Development, the Town agrees that the Town's access road to the 18 acre parcel may be utilized for such emergency access by authorized responders to the extent authorized by the U.S. Forest Service, the owner of the land on which portions of such road is located. The Town shall coordinate with such agencies regarding such access, including gates, road widths, turnarounds, etc. and the District shall accommodate such requirements and pay for the same; all use of the U.S. Forest Service road would be subject to U.S. Forest Service authorization and subject to such use not materially interfering with Minturn's use of such road consistent with its permit.

Section 4.5 Conveyance. In partial consideration of the mutual covenants, promises, and representations stated herein, in addition to the conveyance of easements as provided in paragraph 2.2 herein, the District agrees to convey to the Town, by general warranty deed, title to the 18 acre parcel upon which the Town currently has located and operates its municipal potable water treatment plant and related facilities. The District's conveyance of the 18 acre parcel to the Town

shall contain a reserved right of establishing an access through the parcel for emergency vehicles if such access is required by any fire/emergency rescue local authority, together with other reserved easements or covenants, all as more fully set forth herein in paragraph 4.4.5 and shall be subject to a covenant running with the land restricting the use of the 18 acre parcel for only ten individual dwelling units for Town employees and municipal utility purposes and associated municipal offices and facilities excluding wastewater treatment, storage, or collection other than for collection of wastewater from the uses thereon. Any remodel or replacement of the water treatment plant will be done in a rustic aesthetic manner consistent with the small town character of Minturn and shall have appropriate landscaping. All such dwelling units, offices, and facilities shall be in accordance with the applicable design standards as required by the Municipal Code. The District's conveyance of the 18 acre parcel shall also contain a reserved nonexclusive easement for the benefit of the Property to provide recreational access to the segment of Cross Creek that crosses the Property, including the bed of Cross Creek and extending 20 feet onto the banks of Cross Creek located on the 18 acres. Such reserved easement will preserve the right of the District, subject to prior consultation with the Town, to impose reasonable controls with respect to fishing activities within such easement (e.g., catch and release restrictions) and reserve the right of the District, in coordination with the Town, to construct or cause to be constructed stream improvements provided such improvements do not interfere with the Town's current or future water, water related, and water treatment plant facilities. Either by covenants running with the land, appropriate instrument, or by a grant of a similar easement, the District shall ensure public recreational access and reserve rights to impose reasonable controls with respect to such recreational activities on the retained parcel along the opposite side of Cross Creek, including the bed of Cross Creek. Such covenants, easements, or instruments shall not restrict public access, including without limitation the District's invitees and licensees, to either side of Cross Creek or to crossover the bed of said Creek. The deed and easement or other appropriate instruments shall be prepared, executed, and recorded within 30 days after the effective date of the annexation ordinance.

ARTICLE 5.

COOPERATION & IMPLEMENTATION

Section 5.1 Statement of Intent. It is the express intent of the District and the Town to cooperate and diligently work to implement any PUD zoning and related preliminary subdivision plat and final subdivision plat, associated land use approvals, building permits or approvals which are necessary or desirable in connection with the development of the Property in substantial conformance with any land use approvals except as modified by this Agreement. The Town and the applications submitted by the District; and their dealings with one another in connection with all phases and aspects of the Project each shall conform to a high standard of good faith and fair dealing.

Section 5.2 Scope of this Agreement.

1. This Agreement is intended to set forth the parties' understanding and agreements regarding the annexation of the Property pursuant to the Municipal Annexation Act of 1965, as amended; as to procedures, limitations and standards applicable to the

construction of future non-District improvements that may be installed to serve the Property and District improvements, to the extent applicable; to the responsibilities of the parties for various costs, fees and charges; and to such other matters the parties believe can be adequately addressed at this time.

2. Except as otherwise provided in this Agreement, this Agreement is not intended to address those matters which are more appropriately considered at the time the District submits to the Town for its review and approval appropriate land use applications for non-school development of the Property.
3. It is not the intention of the parties in any to diminish or limit the Town's legislative, judicial, quasi-judicial or other non-delegable discretionary powers. Except as otherwise provided in this Agreement, it is not the intention of the parties to impose on the Town any duty, beyond its ordinances and regulations as they may from time to time exist, nor to impose any special obligation on the Town to approve or accept any items submitted by the District or its successors and assigns including, but not limited to, plans, drawings, reports, security documents, improvements, and conveyance.
4. The future consideration to be provided by the Town for the conveyances by the District and restrictions on the District's property right rights described above shall survive any conveyance or dedication by the District.

Section 5.3 Processing. If necessary or required, upon satisfactory completion by the District of all required preliminary actions and payments of appropriate processing fees, if any, the Town shall proceed to complete all steps required or necessary for the implementation of this Agreement and the non-District Development by the District of the Property in accordance with this Agreement and the applicable provisions of the Minturn Municipal Code, including but not limited to, the following:

1. Scheduling, convening and concluding all required public hearings in a manner consistent with applicable laws and regulations in force as if the date the applicable applications are submitted.
2. Processing and approval as appropriate in an expeditious manner, of all plats, plans, grading permits, land use permits, building plans and specifications and other plans relating to the development of the Property.
3. Scheduling and processing any matters related to the District Development that properly come before the Town.

Section 5.4 Other Governmental Permits. The Town shall cooperate with the District in its efforts to obtain such other permits and approvals as may be required by other governmental or quasi-governmental agencies having jurisdiction over the Property in connection with the development of, or provision of services to, the Property, and shall from time to time at the request of the District, attempt with due diligence and in good faith to enter into binding agreements with any such entity necessary to assure the availability of such permits and approvals or services, provided such agreements are reasonable and not detrimental to the Town.

Section 5.5 Cooperation in the Event of a Legal Challenge. In the event of any Legal Challenge or other legal or equitable act, action or other proceeding instituted by a third party, other governmental entity or official challenging the validity of any provision of this Agreement, the parties

hereby agree to cooperate in defending said action or proceeding. In the event the Town and the District are unable to select mutually agreeable legal counsel to defend such action or proceeding or it is inappropriate to do so, each party may select its own legal counsel.

Section 5.6 Severability. If any part of this Agreement is held to be invalid or of no effect by a court of competent jurisdiction, such judicial determination shall not affect any other part of this Agreement, which will continue in full force and effect. If any part of this Agreement is determined by a court of competent jurisdiction to be in excess of party's power and authority, such part shall be unenforceable by either party to this Agreement. In the event of a judicial determination of the nature described herein, which determination has the effect of materially and adversely impairing to a substantial degree any of either party's rights expressly established pursuant to this Agreement, such party may elect either to honor this Agreement as judicially reformed, or to terminate this Agreement and without liability or penalty to either party, in which event this Agreement shall be of no further force or effect.

ARTICLE 6. MISCELLANEOUS

Section 6.1 Time of the Essence. Time is of the essence with respect to the performance of each party's obligations hereunder. However, neither party shall be liable for delays or failures to perform due to acts of God, strikes, civil commotions, epidemics, quarantines, freight embargoes, or other cause of similar nature not reasonably within such party's control.

Section 6.2 Term. The term of this Agreement shall commence upon the date hereof and shall extend until all of the commitments hereunder are satisfied. After the expiration of the term, this Agreement shall be deemed terminated and of no further force or effect; provided however, that such termination shall not affect (a) the annexation of the Property to the Town; and (b) any right arising from Town permits, approvals or other entitlements for the Property or the Project which were granted or approved prior to, concurrently with, or subsequent to the approval of this Agreement.

Section 6.3 Amendment of Agreement. Except as otherwise provided herein, this Agreement, may be amended from time to time by mutual consent of the original parties or their successors in interest in writing following the applicable public notice and public hearing procedures required in the Minturn Municipal Code for approval of this Agreement. Neither the approval of nor any amendment to land use approvals nor any subdivision or resubdivision of the Property (or any part thereof) shall require an amendment to this Agreement.

Section 6.4 Default and Remedies. A "breach" or "default by either party under this Agreement shall be defined as failure to fulfill or perform any material obligation of a party contained in this Agreement. In the event of default by one party in the performance of its obligations under this Agreement, written notice of such default shall be given to the defaulting party by the nondefaulting party. If the default is failure to pay any amount of money due pursuant to the terms of this Agreement or to post security as provided herein, then such default shall be cured within thirty (30) days after notice of default is given to the defaulting party. If such default constitutes a breach or violation of any term or provision of this Agreement other than the payment of a monetary amount or the posting of a letter of credit, the defaulting party shall have thirty (30) days after written notice of default is given to the defaulting party within which to institute corrective action and shall proceed diligently thereafter to cure the default within no more than six months from the date of the notice of default. In the event of a material breach or default by such party that is not timely cured, as provided in this Section the non-defaulting party shall be entitled to one or more of the following remedies as applicable: (1) the right to seek and obtain injunctive relief; (2) the right to seek and

obtain specific performance; and (3) have all rights and remedies allowed at law or in equity.

Section 6.5 No Joint Venture or Partnership. The parties hereby renounce the existence of any form of joint venture or partnership between them and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making them joint ventures or partners.

Section 6.6 No Third Party Beneficiaries. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any legal person other than the parties, any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions or provisions hereof, and all of the covenants, terms, conditions and provisions in this Agreement by and on behalf of the Parties shall be for the sole and exclusive benefit of the parties. Nothing in this Agreement is intended to interfere with the agreements of the parties with third parties.

Section 6.7 Notices. Any notice or communication required hereunder between the Town and the District must be in writing, and may be given either personally or by registered or certified mail, return receipt requested. If given by registered or certified mail, the same shall be deemed to have been given and received on the first to occur of (a) actual receipt by any of the addresses designated below as the party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. Any party hereto may at any time, by giving written notice to the other party hereto as provided herein, designate any other address in substitution of or in addition to the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth below:

If to the Town: Town of Minturn
 302 Pine Street
 P.O. Box 309
 Minturn, CO 81645
 Attention: Town Manager

with a copy to: Allen C. Christensen, Esq.
 97 Main St. Suite W 206
 P.O. Box 4128
 Edwards, CO 81632

If to the District: Office of the Superintendent
 Eagle County School District RE-50J
 P.O. Box 740
 Eagle, CO 81631

with a copy to: Richard N. Lyons, Esq.
 Lyons Gaddis Kahn & Hall, P.C.
 PO Box 978
 Longmont, CO 80502-0978

Section 6.8 Assignment. This Agreement shall be binding upon and inure to the benefit of the successors in interest or the legal representatives of the parties hereto. The District shall

have the right to assign or transfer all or any portion of its interests, rights or obligations under this Agreement to third parties acquiring any interest or estate in the Property, including but not limited to purchasers or long-term ground lessees of individual lots, parcels, or of any improvements now or hereafter located within the Property. In connection with any such assignment, the express assumption of any of the District's obligations and commitments under this Agreement by its assignee or transferee shall thereby relieve the District of any further obligation under this Agreement with respect to the matter so assumed.

Section 6.9 Authorization. The signatories to this Agreement affirm that they are fully authorized to enter into and execute this Agreement, and all necessary actions, notices, meetings and/or hearings pursuant to any law required to authorize their execution of this Agreement have been made.

Section 6.10 Governing Law. This Agreement be construed and enforced in accordance with the laws of the State of Colorado.

Section 6.11 Enforcement. Unless this Agreement is amended or terminated pursuant to the provisions of this Agreement, this Agreement shall be enforceable by any party hereto notwithstanding, any change hereafter enacted or adopted in any applicable zoning ordinance, subdivision ordinance or any other land use ordinances or building ordinances, resolutions or other rules, regulations or policies adopted by the Town which changes, alters or amends the rules, regulations or policies applicable to the development of the Property at the time of the approval of this Agreement subject to the provisions hereof. This Agreement shall not prevent the Town in subsequent actions applicable to the Property from applying new rules, regulations and policies which apply equally to all citizens and property owners in the Town as provided herein subject to the provisions hereof.

Section 6.12 Conflict with Provisions of the Town's Municipal Code. The parties acknowledge and agree that this Agreement is in conformity with the current Municipal Code. In the event any provision of this Agreement or the application thereof conflicts with any provision of the Municipal Code in the future, as it may be amended from time to time, this Agreement shall control the determination of the rights and obligations of the parties with respect to such conflicting matter.

Section 6.13 Waiver of Breach. The waiver by any party to this Agreement of a breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any other term or provision or of any subsequent breach by any party.

Section 6.14 Entire Agreement. This Agreement represents the entire agreement between the parties and supersedes any oral or collateral agreements or understandings between the parties.

Section 6.15 No Additional Annexation Conditions Imposed. The Town and the District acknowledge and affirm that this Agreement does not impose additional terms and conditions within the meaning of Section 31-12-107(1) (g), C.R.S. To the extent that Section 31-12-107(1)(g), C.R.S. might be construed as being ambiguous as to what might be considered additional terms and conditions, the District, as the owner of 100% of the Property, hereby declares that it has voluntarily entered into this Agreement.

Section 6.16 Execution of Other Documents. The parties agree to execute, any additional documents and to take any additional actions necessary to carry out this Agreement.

Section 6.17 Counterparts: Facsimile. This Agreement may be executed in multiple

constitute one and the same agreement. This Agreement may be executed by facsimile.

IN WITNESS WHEREOF, the Town and the District have executed this Agreement affective as of May 18 2011.

TOWN OF MINTURN

By: *Heather Flaherty*
Mayor

ATTESTED BY:

[Signature]
Town Clerk



APPROVED, as to legal form by:

Allen C. Christensen
Allen C. Christensen, Town Attorney

EAGLE COUNTY SCHOOL DISTRICT

By: _____

ATTESTED BY:

APPROVED, as to legal form by:

Richard N. Lyons, Attorney for the District

constitute one and the same agreement. This Agreement may be executed by facsimile.

IN WITNESS WHEREOF, the Town and the District have executed this Agreement affective as of May 18 2011.

TOWN OF MINTURN

By: _____
Mayor

ATTESTED BY:

Town Clerk

APPROVED, as to legal form by:

Allen C. Christensen, Town Attorney

EAGLE COUNTY SCHOOL DISTRICT

By:  _____

ATTESTED BY:

 _____

APPROVED, as to legal form by:

Richard N. Lyons, Attorney for the District

constitute one and the same agreement. This Agreement may be executed by facsimile.

IN WITNESS WHEREOF, the Town and the District have executed this Agreement effective as of May 18 2011.

TOWN OF MINTURN

By: _____
Mayor

ATTESTED BY:

Town Clerk

APPROVED, as to legal form by:

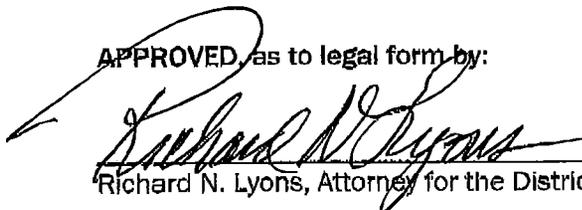
Allen C. Christensen, Town Attorney

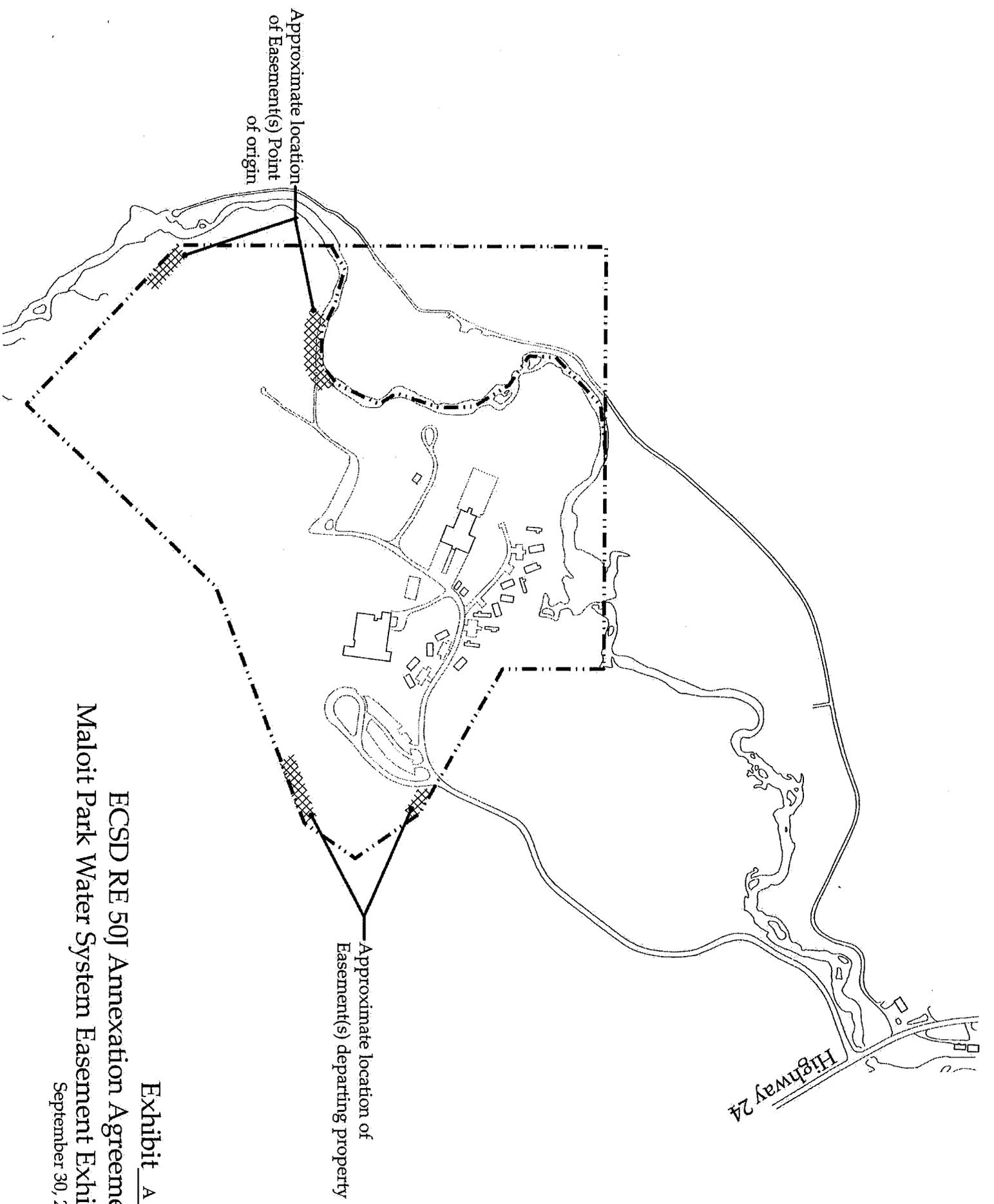
EAGLE COUNTY SCHOOL DISTRICT

By: _____

ATTESTED BY:

APPROVED, as to legal form by:


Richard N. Lyons, Attorney for the District



Highway 24

Exhibit A

ECSD RE 50J Annexation Agreement
Maloit Park Water System Easement Exhibit
September 30, 2010

**EXHIBIT B
TO THE EAGLE COUNTY SCHOOL DISTRICT RE 50J
ANNEXATION AGREEMENT**

WATER LINE EASEMENT AGREEMENT

This Water Line Easement Agreement (“Easement”) is entered into this _____ day of _____, 20____, by and between TOWN OF MINTURN, a Colorado municipal corporation and home rule city located at 302 Pine Street, Minturn, CO 81645 (the “Town”), and EAGLE COUNTY SCHOOL DISTRICT RE50J, a Colorado school district located at 948 Chambers Avenue, Eagle, CO 81631 (“Grantor”).

RECITALS

WHEREAS, the Town owns and operates the Town of Minturn municipal water treatment and distribution system; and

WHEREAS, pursuant to the Eagle County School District RE50J Annexation Agreement dated May 28, 2011, and recorded at Reception No. _____, Eagle County, Colorado records (“Annexation Agreement”) the Town annexed land owned by the Grantor south of the Town, as more specifically described in the Annexation Agreement (the “Property”); and

WHEREAS, pursuant to the Annexation Agreement, the Grantor desires to grant and convey to the Town specific easements for potable and raw water lines and associated facilities and infrastructure and wastewater collection and transmission lines along alignments that are least impactful to the Property at the time they are to be granted and conveyed, as appropriate, on the Property on the terms and conditions herein provided;

THEREFORE, IN CONSIDERATION of the promises and agreements set forth below, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Grant of Easements. Grantor hereby grants and conveys to the Town one or more perpetual non-exclusive easements and rights of way (the “Easements”) for the purposes of excavation, installation, operation, use, maintenance, repair, and replacement of the Town’s potable and raw water lines and associated facilities and infrastructure and wastewater collection and transmission lines located within the Easements. The Easements shall be _____ feet wide and are described on **Exhibit A**, which is attached hereto and incorporated herein by reference. The Easements, and access thereto, are granted over, upon, across, under, in and through Grantor’s Property. This grant of easements shall run with the land for the benefit of the Town, and shall be binding upon and inure to the benefit of the Town, and its successors and assigns.

2. Temporary Construction Easement. The Easements include an additional _____ feet temporary construction easement extending on either side of the outer edges of such Easements for temporary construction purposes only. This temporary construction easement shall not extend into such areas where such extension would interfere with Grantor's use of its permanent facilities, other than roads, as provided below, which are located on the Property.

3. Ingress and Egress. The Town shall have the right of ingress and egress for equipment, vehicles, and persons over and across the Property to and from the Easements and along such Easements; provided, however, that such right of ingress and egress shall, to the extent practicable, be along established roadways on the Property, as they may be located and relocated from time to time.

4. Use of Easements By the Town. The Town's agents, employees, contractors and other designated persons may enter and go upon the Easements at all reasonable times to undertake routine use, operation and maintenance of the Town's potable and raw water lines and associated facilities and infrastructure and wastewater collection and transmission lines. Notwithstanding the foregoing, the Town may enter and go upon the Easements at any time in the event of any emergency situation or condition and may undertake such repair or replacement activities it deems necessary to remedy the emergency. In the event the Town plans major repairs or replacement of infrastructure or excavation within the Easements, it shall provide Grantor with reasonable advance notice of the work to be undertaken, and the estimated time of completion.

After the exercise of any of its rights hereunder, the Town shall grade, re-seed or re-sod to the reasonable comparable pre-disturbance condition and contour, provided however, that the Town shall not be required to restore or replace any trees, bushes, brush, gardens or other vegetation on the Easements, nor any structures or paving thereon. To the extent the Town's exercise of its rights granted herein involves the excavation of any roads existing on the Property prior to execution of this Agreement, the Town shall repair any work done with the same materials and at the same grade as the affected road within a reasonable time after the completion of the work.

5. Use of Easements by Grantor. Grantor shall retain the right to use and enjoy the Property including the portions subject to the Easements so long as such use and enjoyment do not interfere with the Town's rights hereunder. Grantor (and Grantor's heirs, executors, administrators, personal representatives, successors, successors-in-interest, and assigns) shall not bore, drill, tunnel or undertake any digging or excavation on or under the Easements or impair the lateral or subjacent support of the Easements and shall not install, build, make or construct any building, structure, fence, lake, pond, dam, drainage ditches, excavation, engineering works, roads, streets, driveways, pipelines, sewer lines, water lines, natural gas or oil lines, electric lines, telephone lines, cable lines or other utilities of any kind, whether above ground or underground, or improvement of any kind (each, an "Improvement") nor place any trees, shrubs, bushes, plantings (excluding shallow root crops), or other vegetation (other than naturally growing grasses or shallow root shrubbery or plants)

("Landscaping") in, on, over or across the Easements, nor change the contour or grade of, or add or remove dirt from the Easements, without, in each case, first obtaining the prior written consent of the Town, which consent will not be unreasonably withheld, provided that each of the following are satisfied: (i) the safety and integrity of the water lines and associated infrastructure are not impaired by the applicable Landscaping or Improvement, (ii) the applicable Landscaping or Improvement does not unreasonably diminish the utility or usefulness of the Easements to the Town, and (iii) the applicable Landscaping or Improvement does not materially impair the ability of or increase the cost to the Town to undertake any of the activities described or allowed in this Agreement, including the ability to install additional water lines and related infrastructure in the Easements and general maintenance. In the event items (i) through (iii) above have not been satisfied, as reasonably determined by the Town, then the Town may withhold its consent at its sole discretion. The Town's consent to any Landscaping or Improvement shall not constitute any agreement, representation, or warranty by the Town about the safety, condition, or sufficiency of any such Landscaping or Improvement or compliance with laws and regulations for any such Landscaping or Improvement, and such risks, which shall remain solely with the Grantor. In the event that the Town consents to the replanting of any Landscaping, or installation of any Improvements, that may have been disturbed, damaged or destroyed by the Town's exercise of its rights hereunder, such replanting or installation shall not interfere with the maintenance or integrity of the water lines and related infrastructure and shall be at Grantor's sole cost and expense. The Town shall have the right, but not the obligation, to notify and require Grantor, at Grantor's cost, to immediately remove any such unauthorized Improvement or Landscaping from the Easements, and if Grantor fails to remove such unauthorized Improvement or Landscaping within 30 days after receipt of the Town's notice, then the Town shall have the right to remove them at Grantor's cost and that the Town shall have no responsibility or liability for any damage or destruction thereto, or to the Property as a result of such removal.

In the event Grantors discover an emergency condition pertaining to the Town's potable and raw water lines and associated facilities and infrastructure and wastewater collection and transmission lines located on, over, in or through the Easements, Grantors shall make reasonable attempts to promptly notify the Town of such condition.

6. Abandonment of Easements. Non-use shall not constitute abandonment of the Easements and other rights granted herein or be grounds for termination of this Agreement, and shall have no effect on the validity of the Easements. If the Easements are no longer useful to the Town for the purposes stated herein, as determined by the Town in its sole discretion, the Town may execute and record a termination of this Agreement. The Town may, but shall have no obligation to, remove the water lines and related infrastructure in connection with such termination.

7. Liability to Others. Each party shall be responsible for any and all claims, demands, actions, losses, liabilities, or expenses of whatever sort, including attorneys' fees, that are incurred by any person or entity arising out of or in connection with such party's use or occupation of the Easements, or the use or occupation the Easements by its agents, employees, contractors, invitees or licensees. In the event the Town and

Grantor, or their respective officers, directors, members, employees, agents, contractors, representatives, heirs or assigns may be held jointly and severally liable under any statute, decision, or other law provided for such joint and several liability for their respective activities on the Easements, the obligations of each to respond in damages shall be apportioned, as between the Town and Grantor collectively, in proportion to the contributions of each as measured by the acts and omissions of each which in fact caused such legal injury, damage or harm and the Town and Grantor shall indemnify each other to the extent necessary to assure such apportionment.

8. Damages Limitation. Any damages awarded to either party under this Agreement shall be limited to only the actual damages directly incurred by such party and neither party shall be liable for consequential, incidental, punitive, exemplary or indirect damages in tort or in contract, or under any legal theory, and all such damages are hereby excluded and waived by the parties hereto with respect to this Agreement and the exercise of rights hereunder.

9. Notices. All notices required or permitted hereunder shall be given by certified mail, postage prepaid, return receipt requested, by overnight express delivery by a nationally recognized overnight courier, or by facsimile directed as follows:

If intended for the Town, to:

Town of Minturn
302 Pine Street
P.O. Box 309
Minturn, CO 81645
Fax: (970) 827-5545
Attention: Town Manager

With a copy to:

Allen C. Christensen, Esq.
97 Main Street, Suite W 206
P.O. Box 4128
Edwards, CO 81632

If intended for Grantor, to:

Office of the Superintendent
Eagle County School District RE50J
P.O. Box 740
Eagle, CO 81631
Fax: (970) 328-1024

With a copy to:

Richard N. Lyons, Esq.
Lyons Gaddis Kahn & Hall, P.C.
P.O. Box 978
Longmont, CO 80502

Such notice delivered by (a) certified mail in accordance with the foregoing procedures shall be deemed to have been duly given after such notice is deposited with the United States Post Office, (b) overnight express delivery by a nationally recognized overnight courier shall be deemed to have been duly given one business day after such notice is deposited with such overnight courier with instructions to deliver such notice the next following business day, or facsimile shall be deemed effective when received if an electronic confirmation of sending is available. Any party may specify a different address for notices by delivery of written notice to the other party.

10. Covenants Running with the Land; Assignment. The rights granted in this Agreement are appurtenant to, and covenants running with, the land and shall extend to and be binding upon, and inure to the benefit of, Grantor and the Town and each of their respective heirs, executors, administrators, personal representatives, successors and assigns. This Agreement does not create rights in any other third party, unless specifically provided herein. Any sale, transfer, conveyance or other disposition of the Property or any interest therein by Grantor shall be subject to the Easements granted herein. Deeds to subsequent owners of the Property shall provide notice of this Agreement and the obligations contained herein. The Town may assign to any other party the rights and Easements herein granted, either in whole or in part, without Grantor's consent.

11. Recording. This Agreement shall be recorded with the Eagle County Clerk and Recorder, and shall impose easements and covenants running with the land upon the Property.

12. Governing Law; Venue; Attorneys' Fees. This Agreement and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the State of Colorado. Venue for all actions arising under this Agreement shall be Eagle County, Colorado. In the event legal remedies must be pursued to resolve any dispute or conflict regarding the terms of this Agreement or the rights and obligations of the parties hereto, the prevailing party shall be entitled to recover costs incurred in pursuing such remedies, including expert witness fees and reasonable attorneys' fees.

13. Severability; Construction. If any provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement and the application of such provision to persons or situations other than those to which it shall have been held invalid or unenforceable, shall not be affected thereby, but shall continue valid and enforceable to the fullest extent permitted by law. This Agreement shall not be construed against either party in the event of an ambiguity or other form of dispute as to its interpretation.

14. Entire Agreement, Amendments. This Agreement constitutes the entire agreement between Grantor and the Town relating to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, negotiations, representations, statements, and discussions between the parties, whether oral or written, except for this Agreement. This Agreement may be modified or amended only by a writing signed by each of the parties hereto.

15. Authorization of Signatures. The parties acknowledge and represent to each other that all procedures necessary to validly contract and execute this Agreement have been performed and that the persons signing for each party have been duly authorized to do so.

16. Headings; Construction. The section headings in this Agreement are for convenience only and shall not be used in its interpretation or considered part of this Agreement. Whenever appropriate from the context, the use of any gender (including, but not limited to, neuter) shall include any other or all genders, and the singular number shall include the plural, and the plural shall include the singular. Unless otherwise expressly provided, the word "including" does not limit the preceding words or terms.

17. Waiver. Failure of any party hereto to insist upon the strict performance of any provision of this Agreement shall not be construed as a waiver for the future of any such provision.

18. Counterparts. This Agreement may be signed using counterpart signature pages, with the same force and effect as if all parties signed on the same signature page.

IN WITNESS WHEREOF, the parties have executed this Agreement the date and year first above written.

TOWN OF MINTURN

Name: _____
Address _____

EAGLE COUNTY SCHOOL DISTRICT RE50J

Name: _____
Address _____

STATE OF COLORADO)
)
COUNTY OF EAGLE)

The foregoing instrument was acknowledged before me by _____
_____, this _____ day of _____, 2011.

Witness my hand and official seal.

Notary Public

My commission expires: _____
SEAL

STATE OF COLORADO)
)
COUNTY OF EAGLE)

The foregoing instrument was acknowledged before me by _____
_____, this _____ day of _____, 2011.

Witness my hand and official seal.

Notary Public

My commission expires: _____
SEAL

TOWN OF MINTURN ORDINANCE CHECKLIST

Ord 3-2011

FIRST READING

3/16/11 The ordinance shall be introduced and read by title at any regular or special meeting. Copies shall be available to the public.

^{Pub.}
3/23/11 If the ordinance is approved on first reading, Mayor and Clerk must sign ordinance after first reading. It shall be published in full in a newspaper of general circulation within the Town. The minutes shall reflect number of votes for and against each ordinance.

5/18/11 *(Several continuations)*
If the ordinance is tabled, it shall be reconsidered at subsequent meetings until it is approved with or without amendment or rejected by vote of the Council.

_____ The Council shall set a day, hour and place at which the Council shall hold a public hearing on the ordinance, and notice of such day, hour and place shall be included in the first publication.

SECOND READING

5/18 The ordinance shall be introduced a second time at the meeting at which the public hearing on the ordinance is held. The ordinance may be read by title only on second reading. The ordinance may be amended before final approval or rejection by vote of the Council. The text of any such amendment or amendments shall be read in full.

5/21 If the ordinance is substantially amended it shall be published in full after final passage. If not amended in substance, it may be published either by title or in full, as the Council may determine, after final passage.

 The minutes shall reflect the number of votes for and against the ordinance.

 A true copy of every ordinance shall be numbered and recorded in the official records of the Town. Its adoption and publication shall be authenticated by the signatures of the Mayor or Mayor Pro Tem and the Town Clerk and by the certificate of publication. Proof of publication for both readings shall be attached to the ordinance.

 The effective date of ordinances is seven (7) days after publication following final passage unless a later date is prescribed in the ordinance.

TOWN OF MINTURN, COLORADO
ORDINANCE NO. 3, SERIES 2011

AN ORDINANCE AUTHORIZING THE MAYOR OF THE TOWN OF MINTURN, COLORADO, TO SIGN AN ANNEXATION AGREEMENT

WHEREAS, by Ordinance No. 1 & 2, Series 2011, the Town of Minturn has annexed to the Town approximately 105 acres of land in Eagle County commonly known as the Eagle County School District Maloit Park property (the "Property") in accordance with the applicable provisions of Section 30 of Article II of the Constitution of the State of Colorado, the Municipal Annexation Act of 1965 and the Minturn Municipal Charter and Code; and

WHEREAS, the Town of Minturn, Colorado, a home rule municipal corporation, ("Town") has entered into negotiations with the Eagle County School District RE 50J for an Annexation Agreement pertaining to the two annexation petitions filed by Eagle County School District RE 50J in November, 2010, which petitions in the aggregate cover approximately 104,552 acres of land; and

WHEREAS, in connection with the annexation of the Property, the Eagle County School District RE50J and the Town of Minturn have reached agreement on the terms and conditions of a proposed Annexation Agreement for the Property, a copy of which is attached hereto as Exhibit A (the "Eagle County School District RE 50J Annexation Agreement"); and

WHEREAS, the Home Rule Charter of the Town of Minturn, Colorado, the Minturn Municipal Code, and C.R.S. Sec. 31-15-101, as amended, authorize the Town to enter into such agreements.

NOW, THEREFORE, THE TOWN OF MINTURN, COLORADO, ORDAINS:

Section 1. The Town Council approves the Eagle County School District RE50J Annexation Agreement.

Section 2. The Town Mayor is authorized to sign the Eagle County School District RE 50J Annexation Agreement.

Section 3. This Ordinance shall not take effect until the Eagle County School District RE 50J Annexation Agreement is signed by the representatives of all of the necessary parties thereto.

Section 4. Severability. If any part, section, subsection, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance; and the Town Council for the Town of Minturn, Colorado hereby declares it would have passed this Ordinance and each part, section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more parts, sections, sub-sections, sentences, clauses or phrases be declared invalid.

Section 5. The Town Council hereby finds, determines and declares that this Ordinance is necessary and proper for the health, safety and welfare of the Town of Minturn and the inhabitants thereof.

Section 6. The repeal or the repeal and re-enactment of any provision of the Minturn Municipal Code as provided in this ordinance shall not affect any right which has accrued, and duty imposed, any violation that occurred prior to the effective date hereof, any prosecution commenced, nor any other action or proceeding as commenced under or by virtue of the provision repealed and re-enacted. The repeal of any provision hereby shall not revive any provision or any ordinance previously repealed or superseded unless expressly stated herein.

INTRODUCED, READ BY TITLE, APPROVED ON THE FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL THE 16th DAY OF MARCH, 2011. 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 6th day of April, 2011, at 7 P.M. in the Minturn Town Center in the Town of Minturn, Colorado.

Mayor

Attest:

Town Clerk

INTRODUCED, READ BY TITLE, PASSED ON SECOND READING, APPROVED AND ORDERED PUBLISHED IN FULL THIS 6th DAY OF APRIL, 2011.

Mayor

Attest:

Town Clerk

EAGLE COUNTY SCHOOL DISTRICT RE 50J
ANNEXATION AGREEMENT

The parties to this Annexation Agreement (this "Agreement") and the TOWN OF MINTURN, COLORADO, a home rule municipal corporation ("Town"), and EAGLE COUNTY SCHOOL DISTRICT RE50J, a Colorado school district, ("District"), collectively referred to herein as "parties."

Recitals

A. WHEREAS, in 2010, the District filed with the Town two petitions for annexation ("Annexation Petitions") which cover approximately 104,552 acres of land south of the Town in Eagle County as legally described in the annexation resolutions and annexation ordinances as defined below (the "Property");

B. WHEREAS, the District owns 100% of the Property, exclusive of dedicated streets and alleys;

C. WHEREAS, on November 17, 2010, the Town Clerk referred the Annexation Petitions to the Town Council;

D. WHEREAS, on February 16, 2011 the Town Council conducted a public hearing at which it adopted Resolution Nos. 2-2011 and 3-2011 wherein it determined that the petitions for the proposed annexation complied with C.R.S. Section 31-12-107, as amended;

E. WHEREAS, the Property is presently zoned Resource under the Eagle County zoning regulations and currently is used for school facilities, administration facilities, housing, open space, municipal utility facilities, and related purposes;

F. WHEREAS, the Town and District desire to enter into an agreement setting forth more fully the terms of the annexation, zoning and future redevelopment rights of the Property, with full acknowledgment of the existing uses of the Property;

G. WHEREAS, it is the intent of the parties to allow for the development of those portions of the Property retained by the District as a mixed use Project ("Project") which will include both school and District related facilities ("District Development") and, public, residential and recreation uses ("non-District Development") as more specifically defined under the zoning for the Maloit Park Character Area, consistent with the uses identified in Minturn's 2010 Three Mile Plan for Annexation;

H. WHEREAS, the District desires to complete the conveyance of approximately 18 acres of property to the Town, which property is used for the Town's water treatment and wastewater collection, treatment and distribution facilities;

I. WHEREAS, the District may in the future complete the conveyance of approximately 1 acre to Meet the WkMgms, a Colorado non-profit corporation, which property it so conveyed will be used for education related purposes, consistent with that certain Purchase Agreement dated June 8, 2005 between the District and Meet the Wilderness, Inc. to the extent it has been extended or modified by the parties;

J. WHEREAS, the Project may contribute to the economic and attainable growth of the Town, and the Town desires to annex the Property in order to provide for orderly long term growth in and around the Town and to secure easements for Town infrastructure across the Property consistent with the possible redevelopment scenarios and current development of the Property;

K. WHEREAS, the development of the Property in accordance with this Agreement and the Maloit Park Character Area will provide for orderly growth in accordance with the policies and goals set forth in the Town's Community Plan, ensure reasonable certainty, stability, and fairness in the land use planning process, stimulate economic growth, foster cooperation between the public and private sectors in the area of land use planning and otherwise achieve the goals and purposes of the Town and the District; in exchange for these benefits and the other benefits to the Town contemplated by this Agreement, together with the public benefits served by the orderly development of the Property, the District desires to receive assurance that it may, in the future, proceed with redevelopment of the Property consistent with the terms and conditions contained in this Agreement;

L. WHEREAS, the Town and the District agree that the matters hereinafter set forth are reasonable conditions and requirements in connection with the acceptance and favorable action on the Annexation Petitions; the Town recognizing and reciting that such matters are necessary to protect, promote, and enhance the public welfare; and

M. WHEREAS, the parties agree that it is desirable for the Town to annex the Property to the Town and after public hearing, it is anticipated that the Town Council will approve the Annexation Petition and annex the Property to the Town under Resolution Nos. 2-2011 and 3-2011 and Ordinance No. 1 and Resolution No. 3, Series 2011 and Ordinance

NOW THEREFORE, in consideration of Ten Dollars and other good and valuable consideration including the mutual promises and covenants set forth herein including the transfer of certain lands to the Town by the District by separate conveyance and the creation of certain encumbrances on the District's property and water rights as more fully set forth herein and the approval of the more densely zoned of the Property, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE 1.
ANNEXATION AND ZONING OF THE PROPERTY

Section 1.4 Zoning. The Property has been annexed to the Eagle County and with the consent of the District and consistent with the requirements of C.R.S. Section 31-12-115(2), the Town has contemporaneously herewith zoned the Property by amending the official Zone District Map of the Town, also known as the Character Area Zone Map, to create the Maloit Park Character Area which is zoned approximately 45.6 acres and designated as Mixed Use, approximately 41.2 acres as Open Space, and approximately 18.2 acres as Public Facilities. The intent of this zoning is to provide for the following general purposes:

(a) District Development purposes; (b) public utility, facilities and infrastructure and up to an individual dwelling unit for Town employees; (c) District non-District residential dwellings; (d) public recreational facilities; and (e) similar structures and uses directly related or accessory to such enumerated uses. The specific uses in the Character Area shall be as prescribed by the Maloit Park Character Area and include the following: schools and related school and District facilities; public utilities including water diversion, potable and raw water transmission, potable water treatment and storage; single family residential, duplexes, multi-family residential, apartments, and structures and facilities that are accessory to such residential uses, recreational facilities, municipal or local government of utility facilities; and other structures and facilities; community uses; and open space. Industrial uses, wastewater treatment plant, a dump, boneyard, bus barn and maintenance facility, or other such uses shall not be permitted uses within the Maloit Park Character Area. This agreement is entered into with the approval and the zoning as described herein. It is further anticipated that the District property remaining after the subdivision exemption approval provided for herein will be subject to specific subdivision as deemed appropriate by the District and approved by the Town consistent with the provisions and intent of zoning regulations in accordance with the current and the Municipal Code; provided, however, that any such future subdivision and attendant development shall strictly conform to the Maloit Park Character Area designation. Any rezoning in the future shall not reduce the residential densities, change the specified uses or the land areas within the development area set forth in the attached exhibits.

except upon the request of the District. All current and existing uses, including without limitation the mobile home dwelling units, shall continue to be permitted under this zoning for the Maloit Park Character Area.

Section 1.5 No Obligation to Develop. The District shall have no obligation under this Agreement to develop all or any portion of the Project or Property and shall have no liability under this Agreement to the Town or any other person or entity for its decision not to develop all or any part of the Project or Property.

ARTICLE 2.
WATER

Section 2.1 Continuation of Existing Water Service. The Property is currently provided potable water service by the Town pursuant to the terms and conditions of that certain Agreement between the parties dated May 5, 1964 ("1964 Agreement"). Paragraph 1 of the 1964 Agreement is hereby amended to provide that the water service shall be provided to the District at the Town's regular in-town metered and service fee rate, as established by the Minturn Municipal Code, Section 13-4-70 of the Minturn Municipal Code. The first full paragraph on page 2 of the 1964 Agreement is hereby amended to provide that the District shall pay the pumping power costs for the pumping of water from the Minturn water plant clear well to the Property and within the Property, because the 1964 Agreement provided for the District to pay for the payment of such costs was the fact that the District was previously paying out-of-town metered rates. The 1964 Agreement is hereby amended further to provide that it shall remain in full force and effect with respect to any water service being provided to the Property for District, non-District Development, open included for District, non-District Development and public recreational facilities. All other provisions of the 1964 Agreement shall remain in full force and effect. The District owns interests in the Arminia Ditch and uses the same for the irrigation of school recreation fields, open space, and landscaping. Additional water service, which for purposes of any non-District Development on the Property will be provided by the Town pursuant to applicable rules and regulations and provisions for in the Minturn Municipal Code and this Annexation Agreement. In the event that District Development of the Property is modified in such a manner as to create a material change in water service, which for purposes of this Annexation Agreement only, are defined as a proposed use requiring more than 5.80 acre feet per year, which represents a twenty-five percent (25%) increase in the historical water demands under the 1964 agreement established by averaging the water monthly demands for the three (3) years immediately prior to the proposed use, then on the date of this agreement, the District will need to purchase additional taps from the Town, which taps shall count against the 150 single family equivalents in paragraph 2.3 below.

Section 2.2 Grants of Easements for Water Systems. The parties agree that the District will grant easements across the Property to the Town for water lines and associated facilities and infrastructure. Upon written request from the Town based on a specific projected need to construct water lines and associated facilities and infrastructure and wastewater infrastructure, as appropriate, and to create the grant of the easements for the same, the District agrees to deliver to the Town specific easements for potable and raw water lines and associated facilities and infrastructure and wastewater collection and transmission lines, as appropriate, along alignments that are compatible, at that time, with the then existing infrastructure and other relevant easements on the District's property. Such alignments are anticipated to begin in the areas generally depicted along Cross Creek and end in the areas on the easterly side of the Property shown on Exhibit A hereto. In the event that the Town needs such public utility easements pursuant to any future non-District Development, due to development off-site of the Property or other needs of the Town, the parties shall confer and in good faith specifically locate and legally describe such easements for conveyance in order to lessen any adverse impacts upon either District or non-District development on the Property. It is expressly acknowledged and understood by the parties that such easements may not be the most direct or shortest alignments, but rather alignments that shall be deemed to be the least impactful on the District's current and future use of the Property. The Town further agrees that any potable or raw water lines installed by the Town within such easements shall be owned and operated by the Town capacity for any District or non-District Development on the Property, as such development is contemplated by the Maloit Park Character Area. The District shall not be required to participate in any cost-recovery or line reimbursement agreement regarding such potable or raw water lines. Such easements shall be specifically described and attached hereto as Exhibit B and shall be recorded in the Eagle County Clerk and Recorder's office upon execution.

Section 2.3 Water Rights Dedication. In consideration of the District's grant of the 18 acre parcel of utility easements requested by the Town for development off-site of the Property, and contingent upon the Arminia Ditch Water Right being used for raw water irrigation, the Town shall waive dedication requirements under the Minturn Municipal Code, Article 13, Section 13-2-20 for up to and including 150 single family equivalents on the Property.

Section 2.4 Arminia Ditch. The District owns an interest in the Arminia Ditch, Priority No. 339, adjudicated March 5, 1918, appropriation date December 29, 1932, for the portion of the Arminia Ditch water right that has been historically used and in connection with it is appurtenant to the Property ("Arminia Ditch Water Right"). The Arminia Ditch Water Right is important to the water service of the Property for irrigation purposes and potentially for municipal water service purposes in the future. Accordingly, the parties agree to the following provisions with regard to the Arminia Ditch Water Right:

1. At such time as the District or its successor request new taps that include outdoor irrigation to serve the 45.6 acres designated as Mixed Use in paragraph 1.4 above, not including any taps covered by the 1964 agreement pursuant to paragraph 2.1 above, the District shall convey such Arminia Ditch Water Right to the Town. The District shall retain the first right to use the Arminia Ditch Water Right for outdoor irrigation of any portion of the Property.

2. Subsequent to conveyance to the Town, the Town shall assume all operations, maintenance and administration duties with respect to such Arminia Ditch Water Right (including ditch operation and maintenance). The users of the yard of the Arminia Ditch Water Right on the Property

shall be charged no more than a pro rata share of such costs for operation, maintenance and administration based on the amount of raw water use.

3. The Town shall have the right of first refusal to purchase the Arminia Ditch Water Right. In the event the District receives a bona fide offer for the sale of the Arminia Ditch Water Right separate from the Property from a third party that is accepted by the District or that is negotiated by the District into an acceptable agreement for such sale (collectively "Third Party Sale"), the Town shall have the right to exercise its right of first refusal within the time period set forth in the Arminia Ditch Water Right under the same terms and conditions of the Third Party Sale. The Town shall have sixty (60) days from the date of receipt of the written notice from the District of the Third Party Sale to exercise its right of first refusal by agreeing to purchase the Arminia Ditch Water Right on the same terms as the Third Party Sale. If the right of first refusal is not exercised within such time period or otherwise waived by the Town, the sale may be made to such third party purchaser. This right of first refusal shall not terminate simply because the Town has previously been offered the first right to purchase the Arminia Ditch Water Right under subparagraph 2.4 and does not constitute such right, whether once or numerous times.

4. In the event the District determines to sell the Arminia Ditch or portions thereof, any sale shall not include the amount of water that is being provided to the Property for use on the Property for irrigation as provided herein. All irrigation on the Property will be served by the Arminia Ditch or pursuant to the 1964 Agreement between the parties, as it is amended herein and as set forth herein.

ARTICLE 3.
WASTEWATER TREATMENT SERVICE

Section 3.1 Wastewater Treatment Service. Wastewater treatment service is currently provided by the Eagle River Water and Sanitation District. It is anticipated that such district will continue to provide for any development on the Property. The easements provided for in Section 2.2 may also include the capability for the installation, operation, and maintenance of wastewater collection and transmission and facilities, provided, however, that nothing herein shall be construed as a grant of permission to utilize any easement, property, or interest to be conveyed to the Town pursuant to this Agreement for purposes of wastewater treatment.

ARTICLE 4.
GENERAL DEVELOPMENT OF THE PROPERTY

Section 4.1 Future Development. It is agreed that all future development of non-District Development may be the subject of one of the following processes: (a) a Planned Unit Development and a Planned Unit Overlay Zone District ("Zone District") may be created upon application therefor by the District; (b) Subdivision Plat Application pursuant to Town regulations and ordinances governing such process; or (c) permitted development pursuant to the Maloit Park Character Area zoning in accordance with the Town regulations and ordinances governing such development. The parties agree that the uses and densities of the Maloit Park Character Area and herein are in compliance with the Town's applicable goals, policies, and objectives and, accordingly, any future subdivision review of any non-District Development shall be based solely upon conformance with applicable design standards as required by the Municipal Code including without limitation those pertaining to grading, safety, planting, grading and drainage, erosion, and revegetation, together with an appropriate subdivision improvements agreement consistent with the requirements of the Municipal Code and the provisions herein. Future District Development may, or may not be a part of such non-District Development, at the discretion of the District. In addition, the District shall comply and be consistent with the uses set forth for the Maloit Park Character Area described in Section 1.4, elsewhere in this Agreement and as set forth in the zoning approval for the Property as provided herein.

The parties agree and acknowledge that the District hereby reserves its rights pursuant to Title 22, Article 32 of the Colorado Revised Statutes to expand or redevelop the existing middle school or to build other schools or District related facilities, (collectively referred to in this Article 4 as "District Development") according to the development process with the exception of the development set forth in Title 22, Article 32 as such procedures may be amended from time to time.

In the event the District leases or otherwise authorizes third parties to use buildings or facilities within the retained Property or otherwise materially increases its uses with the result that there is a greater demand on Town services, the costs to the Town will be identified and the parties agree in good faith to negotiate a memorandum of understanding that provides for the District or lessee to offset such costs for such uses that are not the subject of property tax payments to the Town. To the extent that any entity leasing or using the buildings or facilities is holding a special event, such entity shall pay the costs of the additional services that are required by the Town in connection with the event, or to the extent the Town has in place a special event permitting process at the time the event is held, such entity shall comply with the Town's special event permitting process.

Section 4.2 Subdivision Exemptions. At the same time as the approval of the annexation of the Property, the Town has approved subdivision exemption to create the Town of Minturn 18 acre parcel with the exception of the fire department, for the same that has been submitted by the District.

Section 4.3 Development and Control of Development. It is understood by the parties that the District's plans for the Property are in a state of evolution in the context of the District's mission and its educational mission and use of its properties and facilities and the location of its facilities. Consequently, the District has no definitive plans for the Property and its development or redevelopment with the exception of the conveyance of the 18 acre parcel on the northwest side of Cross Creek to the District to Meet the Wilderness. Nevertheless, the parties agree that the retained Property is a publicly situated for District Development, public utilities, water-storage, single family residential, duplexes, multi-family residential, accessory apart

ments, accessory dwellings, recreational facilities, community uses, town related office facilities and recreational facilities and open space. Accordingly, the District and the Town agree to cooperate in good faith in the planning and design of the development of the Property, with the exception of the development of District Development (submission of a site plan for which shall be made consistent with the requirements of applicable state statutes, including C.R.S. Section 22-32-12(1)), as it may be amended from time to time, in order to facilitate the public process for the review and approval of the same. The District has the right to develop the retained Property for non-District Development for up to 150 residential units subject to terms and conditions of this Agreement and, as appropriate, the completion of the land use process consistent with the provisions of the Minturn Municipal Code referenced herein. In the event the District determines to include within the District Development any residential unit, such units shall be included in the total of 150 units allocated to the retained Property herein. The District shall have no liability to the Town or any other party for a decision not to develop all or any part of the retained Property.

Section 4.4 Rules, Regulations, and Official Policies.

1. Fees, Conditions and Dedications. In partial consideration of the mutual covenants and promises set forth herein, the District shall make only those dedications and pay only those fees expressly provided for in this Agreement or District Development and non-District Development:

a. No separate real estate dedications or fees in lieu thereof shall be required for parks, recreation and/or open space in excess of that depicted as open space areas on the Character Map.

b. The raw water dedications, which are required pursuant to Minturn Municipal Code Section 13-2-20 as may be amended from time to time, for up to and including 150 SFEs shall be deemed waived, regardless of whether such SFEs are utilized for District Development or non-District Development. For purposes of this Agreement, an SFE is defined as a residential unit of up to 3,000 square feet, with assumed potable water requirements for each SFE of an average of 2.3 people using 88 gallons of water per person per day; each 1,000 square feet or fraction thereof greater than 1,000 square feet shall be calculated at 0.3 SFE. In-building use for commercial space is projected to be 6/10ths of an SFE per 1000 square feet. The SFE unit values assigned for water taps for non-residential, non-commercial and non-industrial development projects, which projects may include efficiency rooms, shall be calculated for 1,000 square feet as appropriate. The volume of water consumptively used as compared to the volume of water consumptively used by an SFE.

c. Non-utility easements and rights of way shall be identified and dedicated at the time of development/land use approvals pursuant to Section 4.1 above, as appropriate. Provided, however, that the existing access to the current District facilities from State Highway 24 shall not be altered except with the express consent of the District. Any additional access required by the Town or applicable fire codes regarding future non-District Development shall be granted by the Town through the Town 18 acre parcel consistent with the provisions of paragraph 4.4.5 below.

d. Public utility easements shall be granted to the Town for public purposes. The exact location and extent of such utility easements shall be determined in accordance with the District so as to be complementary with both future District and non-District development.

e. Water tap fees shall be waived for District Development that fall under the 1964 Agreement as described in paragraph 2.1 above.

2. Improvements Guarantee. Notwithstanding any provision in the Code to the contrary, the District agrees that the financial security to guarantee any non-District Development improvements for which the security is to be provided under the Municipal Code will be 125% of the estimated costs of such improvements. No guarantee shall be required for District Development, provided that the District demonstrates to the Town's reasonable satisfaction that the District has duly budgeted and appropriated funds for such public improvements for District Development.

3. Road Maintenance. At such time as any non-District Development within the Property is approved, the Town shall include in such approval a commitment to assume the maintenance of all roads, streets, and rights of way that are dedicated to the public in connection with the non-District development.

4. Park, Open Space, and Public Recreational Areas. In the event that the District determines that its recreational area needs are diminished based upon future District Development or change of District usage in the existing facilities, the parties shall meet and discuss regarding the possible transfer of use and maintenance of District recreational areas for Town usage as additional park, open space and recreational areas in order to maintain a generally similar level and quality of recreational uses and facilities that exist at the time of this agreement.

5. Access and Emergency Access. The Town acknowledges that the single point of access and the alignment of the existing access road from Highway 24 to the Property are sufficient for both current and anticipated development of the Property, including both District and non-District Development. In the event that the fire department and ambulance service having jurisdiction over the Property, or both require a secondary access for emergency access to any future District or non-District Development, the Town agrees that the Town's access road to the 18 acre parcel may be utilized for such emergency access by authorized responders to the extent authorized by the U.S. Forest Service, the owner of the land on which portions of such road is located. The Town shall coordinate with such agencies regarding such access including gates, road widths, turnarounds, etc. and the District shall accommodate such requirements and pay for the same out of the U.S. Forest Service authorization and subject to such use not materially interfering with Minturn's use of such road consistent with its permit.

matters the parties believe can be adequately addressed at this time.

2. Except as otherwise provided in this Agreement, this Agreement is not intended to address those matters which are more appropriately considered at the time the District submits to the Town for its review and approval appropriate land use applications for non-school development of the Property.

3. It is not the intention of the parties in this Agreement to diminish or limit the Town's legislative, judicial, quasi-judicial or other non-delegable discretionary powers. Except as otherwise provided in this Agreement, it is not the intention of the parties to impose on the Town any duty, beyond its ordinance and regulations as they may from time to time exist, not to impose any special obligation on the Town to approve or accept any items submitted by the District or its successors and assigns including, but not limited to, plans, drawings, reports, security documents, improvements, and conveyances.

4. The future consideration to be provided by the Town for the conveyances by the District and restrictions on the District's property rights is described above shall survive any conveyance or dedication by the District.

Section 5.3 **Processing.** If necessary or required, upon satisfactory completion by the District of all required preliminary actions and payments of appropriate processing fees, if any, the Town shall proceed to complete all steps required or necessary for the implementation of this Agreement and the non-District Development by the District and the Property in accordance with this Agreement and the applicable provisions of the Minturn Municipal Code, including but not limited to, the following:

1. Scheduling, convening and conducting all required public hearings in a manner consistent with applicable laws and regulations in force as of the date the applicable applications are submitted.

2. Processing and approval as appropriate in an expeditious manner, of all plats, planning permits, land use permits, building plans and specifications and other plans relating to the development of the Property.

3. Scheduling and processing any matters related to the District Development that properly come before the Town.

Section 5.4 **Other Governmental Permits.**

The Town shall cooperate with the District in its efforts to obtain such other permits and approvals as may be required by other governmental or quasi-governmental agencies having jurisdiction over the Property in connection with the development of, or provision of services to, the Property, and shall from time to time at the request of the District, attempt with due diligence and in good faith to enter into binding agreements with any such entity necessary to assure the availability of such permits and approvals or services, provided such agreements are reasonable and not detrimental to the Town.

Section 5.5 **Cooperation in the Event of a Legal Challenge.** In the event of any Legal Challenge or other legal or equitable act, action or other proceeding instituted by a third party, other governmental entity or official challenging the validity of any provision of this Agreement, the parties hereby agree to cooperate in defending said action or proceeding. In the event the Town and the District are unable to select mutually agreeable legal counsel to defend such action or proceeding or it is inappropriate to do so, each party may select its own legal counsel.

Section 5.6 **Severability.** If any part of this Agreement is held to be invalid or of no effect by a court of competent jurisdiction, such judicial determination shall not affect any other part of this Agreement, which will continue in full force and effect.

ended or shall be construed to confer upon, or to give to, any legal person other than the parties, any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions or provisions hereof, and all of the covenants, terms, conditions and provisions in this Agreement shall be on behalf of the Parties shall be for the sole and exclusive benefit of the parties. Nothing in this Agreement is intended to interfere with the agreements of the parties with third parties.

Section 6.7 **Notice.** Any notice or communication required hereunder between the Town and the District must be in writing, and may be given either personally or by registered or certified mail, return receipt requested. If given by registered or certified mail, the same shall be deemed to have been given and received on the first to occur of (a) actual receipt by any of the addressees designated below as the party to whom notice is to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. Any party hereto may at any time, by giving written notice to the other party hereto as provided herein, designate any other address in substitution of or in addition to the address to which such notice or communications shall be given. Such notices or communications shall be given to the parties at their addresses set forth below:

If to the Town: Town of Minturn
302 Pine Street
P.O. Box 309
Minturn, CO 81645
Attention: Town Manager

with a copy to: Allen C. Christensen, Esq.
977 Main St, Suite W 205
P.O. Box 4128
Edwards, CO 81632

If to the District: Office of the Superintendent
Eagle County School District
RE-501
P.O. Box 740
Eagle, CO 81631

with a copy to: Richard N. Lyons, Esq.
Lyons Geddis Kaim & Hall, P.C.
P.O. Box 3778
Longmont, CO 80502-0978

Section 6.8 **Assignment.** This Agreement shall be binding upon and inure to the benefit of the successors in interest or the legal representatives of the parties hereto. The District shall have the right to assign or transfer, all or any portion of its interests, rights or obligations under this Agreement to third parties acquiring any interest or estate in the Property, including but not limited to purchasers or long-term ground lessees of individual lots, parcels, or of any improvements now or hereafter located within the Property. In connection with any such assignment, the express assumption of any of the District's obligations and commitments under this Agreement by its assignee or transferee shall thereby relieve the District of any further obligation under this Agreement with respect to the matter so assumed.

Section 6.9 **Authorization.** The signatories to this Agreement affirm that they are fully authorized to enter into and execute this Agreement, and all necessary actions, notices, meetings and/or hearings pursuant to any law required to authorize their execution of this Agreement have been made.

Section 6.10 **Governing Law.** This Agreement be construed and enforced in accordance with the laws of the State of Colorado.

Section 6.11 **Enforcement.** Unless this Agreement is amended or terminated pursuant to the provisions of this Agreement, this Agreement shall be enforceable by any party hereto notwithstanding any change hereafter enacted or adopted in any applicable zoning ordinance, subdivision ordinance or any other land use ordinances or building or

ordinances, resolutions or other rules, regulations or policies adopted by the Town which changes alters or amends the rules, regulations or policies applicable to the development of the Property at the time of the approval of this Agreement subject to the provisions hereof. This Agreement shall not prevent the Town in subsequent actions applicable to the Property from applying new rules, regulations and policies which apply equally to all citizens and property owners in the Town as provided herein subject to the provisions hereof.

Section 6.12 **Conflict with Provisions of the Town's Municipal Code.** The parties acknowledge and agree that this Agreement is in conformity with the current Municipal Code. In the event any provision of this Agreement or the application thereof conflicts with any provision of the Municipal Code in the future, as it may be amended from time to time, this Agreement shall control the determination of the rights and obligations of the parties with respect to such conflicting matter.

Section 6.13 **Waiver of Breach.** The waiver by any party to this Agreement of a breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any other term or provision or of any subsequent breach by any party.

Section 6.14 **Entire Agreement.** This Agreement represents the entire agreement between the parties and supersedes any oral or collateral agreements or understandings between the parties.

Section 6.15 **No Additional Annexation Conditions Imposed.** The Town and the District acknowledge and affirm that this Agreement does not impose additional terms and conditions within the meaning of Section 31-12-107(1)(g), C.R.S. To the extent that Section 31-12-107(1)(g), C.R.S. might be construed as being ambiguous as to what might be considered additional terms and conditions the District, as the owner of 100% of the Property hereby declares that it has voluntarily entered into this Agreement.

Section 6.16 **Execution of Other Documents.** The parties agree to execute any additional actions necessary to carry out this Agreement.

Section 6.17 **Counterparts: Facsimile.** This Agreement may be executed in multiple counterparts each of which shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. This Agreement may be executed by facsimile.

IN WITNESS WHEREOF, the Town and the District have executed this Agreement effective as of

TOWN OF MINTURN
By: _____
Mayor
ATTESTED BY:
Town Clerk
APPROVED, as to legal form by:
Allen C. Christensen, Town Attorney

EAGLE COUNTY SCHOOL DISTRICT
By: _____
ATTESTED BY:
APPROVED, as to legal form by:

Richard N. Lyons, Attorney for the District

Thu, May 19, 2011

11:56:04

6548243

Ad Ticket #5

Acct: 1003134
Phone: (303)827-5645
E-Mail:
Client:
Caller: Jay Brunvand
Receipt

Name: Town of Minturn
Address: PO Box 309

City: Minturn
State: CO
Zip: 81645-0309

Ad Name: 6548243A

Original Id: 0

Editions: 8VD/8VDI/

Class: 0990

Start: 05/21/11

Stop: 05/21/11

Color:

Issue 1

Copyline: Ordinance No. 3-2011 6548243

Rep: Pam Schultz

**OWN OF MINTURN, COLORADO
ORDINANCE NO 3- SERIES 2011**

**AN ORDINANCE AUTHORIZING THE MAYOR
OF THE TOWN OF MINTURN,
COLORADO, TO SIGN AN ANNEXATION
AGREEMENT**

INTRODUCED, READ BY TITLE, PASSED ON
SECOND READING, APPROVED AND
ORDERED PUBLISHED IN FULL THIS 18TH DAY
OF MAY, 2011.

Lines:	21
Depth:	1.76
Columns:	1
Discount:	0.00
Commission:	0.00
Net:	0.00
Tax:	0.00
Total	19.95
Payment	0.00

Mayor

Attest: _____

Town Clerk

Published in the Vall Daily May 21, 2011.
(6548243)

Ad shown is not actual print size