

**TOWN OF MINTURN
ORDINANCE 8 – SERIES 2012**

**AN ORDINANCE AUTHORIZING MAYOR TO SIGN
INTERGOVERNMENTAL AGREEMENT WITH
DOUGLAS COUNTY TO COMPLY WITH COLORADO
REVISED STATUTES CONCERNING SEX OFFENDER
TRACKING AND REGISTRATION**

WHEREAS, the Town of Minturn, in the County of Eagle and State of Colorado is a home rule municipal corporation duly organized and existing under the laws of the State of Colorado and the Town Charter; and

WHEREAS, pursuant to the provisions of Article XIV, Section 18(2)(a) of the Colorado Constitution, and section 29-1-203, C.R.S., there is established a means whereby governmental units may cooperate or contract with one another to make the most efficient and effective use of their powers and responsibilities; and

WHEREAS, Colorado Revised Statutes require Colorado municipalities to make limited information on registered sex offenders residing within municipal boundaries available to the public; and

WHEREAS, Minturn met this requirement by posting such information on the Town of Minturn's web page with a link to the Eagle County Sheriff's Office website; and

WHEREAS, the Eagle County Sheriff has made the transition to a new online tracking/community notification system for sex offenders developed and operated by the Douglas County Sheriff's Office, which is hoped to become a statewide system allowing all law enforcement agencies to participate in tracking and community notification.

NOW THEREFORE, THE TOWN OF MINTURN ORDAINS:

SECTION 1. The Mayor is authorized to sign the intergovernmental agreement by and between the Town of Minturn and the Douglas County Board of Commissioners for participation and use of the sex offender and tracking registration program to comply with Colorado Revised Statutes .

SECTION 2. The intergovernmental agreement attached hereto as Exhibit A and incorporated into this Ordinance by reference is approved, and the Mayor is authorized to execute it on behalf of the Town of Minturn, and the Town and its officers and employees are authorized to perform under it on behalf of the Town of Minturn, according to its terms.

SECTION 3. If any part, section, subsection, sentence, 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 hereby declares it would have passed this ordinance, and each part, section, subsection, sentence, clause or phrase thereof, regardless of the fact that any one or more parts, sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 4. 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 5. The repeal or the repeal and reenactment of any provisions of the Minturn Municipal Code as provided in this ordinance shall not affect any right with has accrued, any 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 or repealed and reenacted. The repeal of any provision hereby shall not revive any provision or any ordinance previously repealed or superseded unless expressly stated herein.

SECTION 6. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revise any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

SECTION 7. This Ordinance shall not be effective until the intergovernmental agreement is signed by the representatives of all the necessary parties thereto.

INTRODUCED, READ BY TITLE, APPROVED ON THE FIRST READING AND ORDERED PUBLISHED BY TITLE ONLY AND POSTED IN FULL ON THE OFFICIAL TOWN WEB SITE THE 2ND DAY OF MAY, 2012. The 16TH DAY OF MAY, 2012 AT 7:00 p.m. AT THE MINTURN TOWN HALL 302 PINE STREET, MINTURN COLORADO 81645 IS SET FOR PUBLIC HEARING HEREON.

TOWN OF MINTURN, COLORADO

Hawkeye Flaherty, Mayor

ATTEST:

By: _____
Jay Brunvand, Town Clerk

**THE TOWN OF MINTURN, COLORADO, ORDAINS THIS ORDINANCE ENACTED ON
SECOND READING THIS 16TH DAY OF MAY, 2012.**

Hawkeye Flaherty, Mayor

ATTEST:

Jay Brunvand, Town Clerk

INTERGOVERNMENTAL AGREEMENT BETWEEN THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DOUGLAS AND THE TOWN OF MINTURN

THIS AGREEMENT made this 18th day of April, 2012 by and between the Board of County Commissioners of the County of Douglas, State of Colorado (“DOUGLAS COUNTY”), and the Town of Minturn (“USER”), hereinafter referred to jointly as the Parties (“PARTIES”); and

WHEREAS, pursuant to the provisions of Article XIV, Section 18(2)(a) of the Colorado Constitution, and section 29-1-203, C.R.S., there is established a means whereby governmental units may cooperate or contract with one another to make the most efficient and effective use of their powers and responsibilities; and

WHEREAS, DOUGLAS COUNTY has developed a system to manage and exchange information regarding sex offenders which is accessed through a web-based interactive software program called the Sex Offender Tracking and Registration system or SOTAR™ (“SOTAR”). DOUGLAS COUNTY has exclusive rights of ownership in the SOTAR™ system including, but not limited to, SOTAR™, the name, the software, all source code contributed by Douglas County, the structure of any data repositories created to support SOTAR™, and all associated documentation (collectively, “SYSTEM”).

WHEREAS, USER desires to obtain access to the SYSTEM.

WHEREAS, DOUGLAS COUNTY agrees to provide USER access to the SOTAR™ application on a basis commonly known as “software as a service” whereby USER has access to, but does not receive a copy of, SOTAR™ and obtains no right, title or interest whatsoever in or to the SYSTEM.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and the recitals as set forth above, the PARTIES hereby agree as follows:

1. **TERM OF AGREEMENT AND TERMINATION.** The effective date of this IGA shall be the date of signing by DOUGLAS COUNTY and USER, whichever is the last to sign. This AGREEMENT shall remain in full force and effect from the effective date until either PARTY elects to terminate this AGREEMENT upon 30 days prior written notice to the other PARTY.
2. **SERVICES.** DOUGLAS COUNTY will provide USER non-exclusive, limited access to SOTAR for only the following activities: view the portion of SOTAR™ available to law enforcement personnel (which includes access to all data input by jurisdictions that participate in SOTAR™), view the portion of SOTAR™ available to the general public and, subject to Section 7 below, access SOTAR™ so that USER can input data regarding sex offenders residing in its jurisdiction (all of the above collectively are “SERVICES”). DOUGLAS COUNTY may suspend or terminate the SERVICES in the event USER fails to comply with any of the terms and conditions of this AGREEMENT and may pursue all other remedies that DOUGLAS COUNTY has available to it against USER.

USER shall not be entitled to a credit or refund in the event this AGREEMENT is terminated pursuant to this Section 2.

3. **USAGE.** USER agrees that its access to and use of the portion of SOTAR™ available to law enforcement, access to the data repository underlying SOTAR™, and all associated documentation will be limited to the law enforcement personnel employed by USER and the Local Administrators designated by USER. USER shall not, directly or indirectly, disclose, copy, distribute or publish to any third party any information from SOTAR™ except for information obtained from the portion of SOTAR™ available to the general public. USER may inform the general public that SOTAR™ exists and how to access the portion of SOTAR™ available to the general public. The general public will only be able to view the portion of SOTAR™ available to the general public. USER shall not violate any federal, state or local statutes, charter provisions, ordinances, rules, regulations, or standards that apply to the storing, handling and disclosure of information regarding any person listed in the SYSTEM.
4. **SERVICE FEE.** The parties expressly recognize and agree that DOUGLAS COUNTY provides the SERVICES at a significant expense to DOUGLAS COUNTY, and that DOUGLAS County's ability to provide these SERVICES free of charge is dependent upon the availability of certain funds. The parties further recognize and agree that, in the event that said funds become unavailable for this purpose, DOUGLAS COUNTY is under no obligation to provide the SERVICES free of charge, but may negotiate the provision of said SERVICES on a fee basis.
5. **DEPLOYMENT AND OPERATION.** DOUGLAS COUNTY shall provide the SYSTEM in its "AS IS" condition. DOUGLAS COUNTY is not obligated to provide customizations specific to USER for the SYSTEM. DOUGLAS COUNTY shall use reasonable efforts to maintain the servers and infrastructure necessary to run the SYSTEM. Provided, however, inaccessibility of the SYSTEM related to high traffic volume shall not be a breach of this AGREEMENT. USER shall call 303-814-7040 (or such other number USER is notified to call) for any issues in accessing SOTAR or the proper function of the SYSTEM. DOUGLAS COUNTY may modify (add, delete or change) the functions and format of the SYSTEM at any time and in any way without any advance notice to USER. DOUGLAS COUNTY may discontinue the SYSTEM altogether at any time upon 30 days prior written notice, in which event USER shall be entitled to a pro rated credit of the service fee, if applicable, that USER paid for the year in which the discontinuance occurs. The credit may be applied to any amounts USER owes to DOUGLAS COUNTY.
6. **LOCAL ADMINISTRATORS.** USER will designate a maximum of three (3) Local Administrators within USER'S jurisdiction and provide DOUGLAS COUNTY with their contact information, and notify DOUGLAS COUNTY promptly if they are removed or replaced. DOUGLAS COUNTY will provide and maintain a contact number and email address, through which only USER'S designated Local Administrator(s) may communicate to DOUGLAS COUNTY any issues or concerns with SYSTEM availability or performance. DOUGLAS COUNTY will communicate via the contact

information for the Local Administrators it has on file regarding the SYSTEM including, but not limited to, any planned system maintenance or outages or known system defects.

7. **USER ACCESS AND MAINTENANCE; LICENSE.** As a condition of granting USER access to the SYSTEM, USER shall input data on all existing and new sex offenders in USER'S jurisdiction and manage existing data in the data repository underlying SOTAR™. DOUGLAS COUNTY will provide the Local Administrator(s) with a secure login ID and password, limited system documentation and instructions for acceptable use. USER'S Local Administrators shall be responsible for provisioning, de-provisioning, maintaining and supporting system operators in USER'S jurisdiction. Only the Local Administrator for that jurisdiction shall have access to the user management feature for the USER'S jurisdiction. USER understands and agrees that USER shall be solely liable for any errors, omissions or claims arising out of or related to the data USER input into the data repository underlying the SOTAR™ application. USER understands and agrees that all data input by USER will be viewable by all other LEA users of the SYSTEM.
8. **USE OF USER INFORMATION.** DOUGLAS COUNTY and all users from all other jurisdictions that have access to the SOTAR™ application shall have the unlimited, perpetual, irrevocable, fully paid up right to use the data contributed by USER provided such use complies with this AGREEMENT. Neither DOUGLAS COUNTY nor any other jurisdiction shall have any obligation at any time to segregate or stop using the information USER contributes to the data repository underlying SOTAR™.
9. **NO REVERSE ENGINEERING.** USER shall not reverse engineer, decompile, decrypt, or otherwise derive the design, internal logic, structure or inner workings (including algorithms and source code) of any software, products, models or prototypes related to the SYSTEM. USER shall not copy any part of the SYSTEM for any reason, including that information input by USER or related to USER'S jurisdiction.
10. **NO THIRD PARTY USE OR ACCESS.** USER shall not sell or in any manner, directly or indirectly, give any access to SOTAR™, the data repository underlying SOTAR™, documentation, or derivative works to any third party, including but not limited to, any governmental agency in USER'S jurisdiction, any other government agency, or any for profit or non-profit entity. All inquiries from third parties regarding access to the SYSTEM must be directed to DOUGLAS COUNTY.
11. **EXCLUSIVE OWNERSHIP.** It is expressly understood and agreed by USER that the SYSTEM is protected by copyright and other intellectual property laws and that DOUGLAS COUNTY is the sole owner of all right, title and interest in and to the SYSTEM, and that through this AGREEMENT, DOUGLAS COUNTY is conveying only the limited access rights expressly contained in this AGREEMENT, but DOUGLAS COUNTY is not conveying to USER any right, title or interest in or to the SYSTEM or derivative works.

12. **DISCLAIMER OF WARRANTY.** The SYSTEM is provided by DOUGLAS COUNTY on an “AS IS, WHERE IS” basis, with no warranties whatsoever except as expressly set forth in this AGREEMENT. DOUGLAS COUNTY hereby disclaims all other warranties, express or implied, including the implied warranties of merchantability, fitness for a particular purpose, title, non-infringement of intellectual property rights and course of dealing. DOUGLAS COUNTY makes no warranties or representations regarding applicability of the SYSTEM to USER or compatibility of the SYSTEM with the infrastructure used by USER. DOUGLAS COUNTY makes no warranties as to the accuracy of the information contained in the data repository. Without limiting the generality of the foregoing, DOUGLAS COUNTY has no obligation to indemnify or defend USER against any claims arising out of or related to the use of the SYSTEM including, but not limited to, infringement of intellectual property rights.
13. **LIMITATIONS ON LIABILITY.** In no event will DOUGLAS COUNTY be liable for any direct, indirect, incidental, special, consequential or punitive damages arising out of or related to this AGREEMENT regardless of the form of action, whether in contract, tort (including, but not limited to, negligence), strict product liability or otherwise even if DOUGLAS COUNTY is advised in advance of the possibility of the damages in question and even if such damages were foreseeable and even if USER’S remedies fail of their essential purpose.
14. **NOTICE.** Any notice required by this AGREEMENT shall be given, in writing. Any such notice shall be deemed given (a) on the date of delivery, if personally delivered (if a signed receipt is obtained); (b) by electronic transmission, provided electronic or other written confirmation of delivery is obtained; or (c) on the third business day following mailing by registered or certified mail, return receipt requested, provided proper postage was prepaid and the mail was addressed to the address set forth immediately below or such new address that is given to the other PARTY in accordance with this Section 14.
- i. To USER
Town of Minturn
Attn: Manager Jim White and Chief Lorenzo W. Martinez
Post Office Box 191
Minturn, Colorado 81645
- ii. To DOUGLAS COUNTY:
Douglas County Government
Attn: Lori Orr
4000 Justice Way
Castle Rock, CO 80109
15. **APPLICABLE LAW.** The PARTIES agree to comply with applicable federal, state and local statutes, charter provisions, ordinances, rules, regulations and standards as are in effect at the time this AGREEMENT is executed and as they may change from time to time. Any disputes arising under this AGREEMENT shall be brought exclusively in Douglas County District Court in the State of Colorado. USER hereby knowingly and

voluntarily waives any objection to Douglas County, Colorado as an inconvenient forum and hereby consents to the exercise of personal jurisdiction by the Douglas County District Court in the State of Colorado. The PARTIES may mutually agree to informal resolution of disputes. Prior to filing litigation, the PARTIES shall discuss participation in alternative dispute resolution, which may include pre-suit mediation or settlement conferences.

16. **NON-WAIVER.** The PARTIES shall not be excused from complying with any provisions of this AGREEMENT by the failure or delay of any PARTY to insist upon or seek compliance with such provisions.
17. **SEVERABILITY.** Should any provision(s) of this AGREEMENT be determined to be illegal or unenforceable, such provision shall be modified to make it legal and enforceable to the fullest extent of the law. In the event modification would not make the provision legal and enforceable, such provision shall be deleted from this AGREEMENT and all remaining provisions of this AGREEMENT shall remain fully enforceable. Provided, however, with respect to the deleted provision, the PARTIES shall forthwith enter into good faith negotiations and proceed with due diligence to draft a term that will achieve the original intent of the PARTIES hereunder.
18. **AMENDMENT.** This AGREEMENT may be amended, modified, or changed, in whole or in part, only by written AGREEMENT executed by the PARTIES hereto.
19. **ASSIGNABILITY; SUBLICENSING.** USER shall not assign or sublicense its rights or delegate its duties under this AGREEMENT without the prior written consent of DOUGLAS COUNTY.
20. **HEADINGS FOR CONVENIENCE.** Headings and titles contained herein are intended for the convenience and reference of the PARTIES only and are not intended to combine, limit, or describe the scope or intent of any provision of this AGREEMENT.
21. **GOVERNMENTAL IMMUNITY.** The PARTIES hereto understand and agree that the PARTIES and their commissioners, officials, officers, directors, agents and employees, are relying on, and do not waive or intend to waive by any provisions of this AGREEMENT, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, 55 24-10-101 to 120, C.R.S., or otherwise available to the PARTIES.
22. **OPEN RECORDS.** The PARTIES expressly agree that if any request is made that subjects the subject matter of this AGREEMENT to disclosure pursuant to the Colorado Open Records Act, Section 24-72-201, C.R.S. et. seq., then the data will be disclosed in printed, hardcopy form, and not in digital form, so long as the law allows this discretion. In the event it must be disclosed in digital form, the recipient shall sign a non-disclosure and non-use agreement related to the SYSTEM (which will be supplied by DOUGLAS COUNTY) prior to obtaining the digital information.

23. **THIRD PARTY BENEFICIARIES.** DOUGLAS COUNTY does not intend by the Agreement to assume any contractual obligations to anyone other than the USER, and the USER does not intend by the AGREEMENT to assume any contractual obligation to anyone other than DOUGLAS COUNTY. DOUGLAS COUNTY and USER do not intend that there be any third-party beneficiary to this AGREEMENT.
24. **SURVIVAL:** Where the context of this AGREEMENT reasonably requires such an interpretation, the provisions of this AGREEMENT shall survive termination.
25. **EXECUTION.** This AGREEMENT may be executed in counterparts.

THEREFORE, IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT the day and year first above written.

THE BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF DOUGLAS, COLORADO,

_____ Date: _____
David A. Weaver
Douglas County Sheriff

APPROVED AS TO LEGAL FORM:

_____ Date: _____
Kelly Dunnaway,
Deputy County Attorney

_____ Date: _____
Gordon "Hawkeye" Flaherty,
Mayor