

**TOWN OF MINTURN, COLORADO
RESOLUTION NO. 12 – SERIES 2015**

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF
MINTURN AND EAGLE COUNTY, COLORADO CONCERNING THE
EAGLE VALLEY TRAIL COMPLETION PROJECT TOWN OF
MINTURN TRAIL SEGMENT**

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) is entered into by and between the Town of Minturn, a Colorado municipal corporation (hereinafter “Town”) and Eagle County, Colorado a body corporate and politic (hereinafter “County”). Collectively the Town and County shall be referred to as the “Parties”. This Agreement is entered into and is effective on the 27 day of OCTOBER, 2015.

RECITALS

WHEREAS, C.R.S. 29-1-201*et. seq.* encourages intergovernmental agreements through which local governments cooperate and participate in joint projects; and

WHEREAS, the Parties each support the effort to complete the Eagle Valley Trail System through their participation in the Eagle County Regional Transportation Authority; and

WHEREAS, as part of the effort to complete the Eagle Valley Trail System, the Town and County have been working cooperatively to plan for a public recreation trail from Dowd Junction into Minturn starting at County Road 14 bridge over the Eagle River and ending at the Minturn downtown commercial core (collectively, the “Project”); and

WHEREAS, through its 2015 budget the County is currently funding certain trail planning, design and permit studies to support the eventual construction and completion of all of the remaining unbuilt segments of the Eagle Valley Trail System and expects that process to carry forward into 2016; and

WHEREAS, the Parties are working jointly to solicit planning, design and permit studies for the Project and Inter-Mountain Engineering and its sub-consultants have been selected to perform identified services; and

WHEREAS, the Parties are working together to develop construction cost estimates for the Project by early 2016; and

WHEREAS, the County and Town have determined that the Project will serve the citizens of Eagle County, as well as the residents of the Town: and

WHEREAS, the Parties desire to enter into this Agreement to define their respective roles and responsibilities.

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

1. The Minturn Town Council hereby approves and the Mayor is authorized to enter into an intergovernmental agreement with Eagle County and a professional services contract with Intermountain Engineering and associated consultants in furtherance of this Resolution.

INTRODUCED, READ, APPROVED, ADOPTED AND RESOLVED this 7th day of October, 2015.

TOWN OF MINTURN

By: Gene A. Brodie
Mayor *Pro Tem*

ATTEST:

[Signature]
Town Clerk



AGREEMENT

NOW THEREFORE, in consideration of the mutual rights and obligations as set forth below, the Parties agree as follows:

1. DESCRIPTION OF THE PROJECT LOCATION

1.1 The Project is generally depicted on Exhibit A entitled Eagle Valley Trail Minturn Segment. Exhibit A is attached hereto and incorporated herein by reference. The Project location is generally described as commencing at Highway 6 and County Road 14 (hereinafter "CR 14") and ending at the point that CR 14 crosses over the Union Pacific Railroad tracks approximately 7,000 feet south of the start point. The Project will generally be located on the east side of CR 14 in the public road right of way or on public or private property not owned by County.

2. PROJECT SCOPE OF WORK AND FUNDING

2.1. County agrees to reimburse the Town in an amount up to and not to exceed \$63,000.00 (sixty three thousand dollars) for the sole purpose of reimbursing the Town for costs incurred in the performance of the tasks set forth in paragraph 2.2 below.

2.2 Town agrees to perform or enter into contracts with Inter-Mountain Engineering or other consultants as necessary for the completion of the following tasks in connection with the Project (collectively the "Work") as follows:

- a. Obtain trail design studies and mapping for the proposed trail route identified on Exhibit A to include, but not be limited to, trail location, topography, proposed grades for accessibility, wildlife, geologic hazards, drainage, property lines, rights of way, utilities, structures and proposed route.
- b. Consultation and coordination with applicable local, state, federal and private landowners on the proposed trail route.
- c. Obtain environmental and cultural clearance studies for wetlands, archaeology, wildlife, threatened and endangered species.
- d. Make application to the US Forest Service for a right of way for the proposed trail route including but not limited to legal description and exhibit map.
- e. Make application to the Colorado State Land Board for proposed trail route including but not limited to legal description and exhibit map.
- f. Make application to the Union Pacific Rail Road for proposed trail route including but not limited to legal description and exhibit map.
- g. Obtain conceptual cost estimate for construction of the Minturn Segment of the trail
- h. Coordinate with US Forest Service or others as needed.
- i. Ensure that all consultants performing the Work are obligated to provide any and all reports, studies, work product and other materials generated in connection with the Work and Project for use by both County and Town. All Documents (defined below) prepared in connection with the Work shall become property of County and Town. Town shall ensure that consultants agree to execute written assignments to County and Town of all rights (including

common law, statutory, and other rights, including copyrights) to the same as County or Town shall from time to time request. "Documents" shall mean and include all reports, plans, studies, tape or other electronic recordings, drawings, sketches, estimates, data sheets, maps and work sheets produced, or prepared by or for consultants (including any employee or sub-consultant in connection with the performance of the Work. Ensure consultants shall provide electronic copies of all survey, engineering and other technical information in the original computer aided drawing format as well as PDF format.

- j. Ensure that County is a third party beneficiary to any agreement among the Town and its consultants for the Project and provide copies of those contracts to County upon request. Notwithstanding the foregoing, in no event shall County's status as an intended third party beneficiary to a consulting agreement confer any obligations, duties or responsibilities upon County.
- k. Ensure that consultants maintain adequate insurance including commercial general liability and professional liability coverage. Ensure consultants name Town and County as additional insureds on commercial general liability coverage.
- l. Ensure consultant(s) indemnifies Town and County in connection with the Work it performs.
- m. Ensure consultants acknowledge and agree that consulting agreement may be assigned to County in the future without obtaining consultant(s) consent. Nothing herein shall obligate Town to assign any consulting agreements to County or County to assume the same.
- n. All Work identified in paragraph 2.2 shall be completed no later than February 28th, 2016.

2.3 Town agrees to deliver copies of Documents as defined above to County upon completion and request.

2.4 The Project will be designed in compliance with the standards as adopted by the Town and County in the 2001 Eagle Valley Regional Trails Plan and current Colorado Department of Transportation Specifications for highway and multi-use path construction.

2.5 This Intergovernmental Agreement does not convey final approval of the route of the trail or act as a license or easement for the same in CR 14. Approval of the trail route on County right of way shall be processed as a separate matter upon application by the Town.

2.6 Town will be solely responsible for the management and administration of the planning and design professional services for the Project. County shall have no responsibilities or role in management or administration of the professional services, other than advisory, and will assist Town upon request, to the extent possible for County.

2.7 Town will have sole decision authority on the final trail route within the Town's municipal limits. County and Town will work cooperatively to identify an acceptable trail route outside of the municipal limits, primarily with intent to ensure that all local, state and federal regulations relative to the Project will be met and the necessary permits will be obtained for the Project. Notwithstanding the foregoing, the Parties agree that County will have final decision making authority outside of the Town's municipal boundary.

3. ACCOUNTING AND REPORTING COST OF ASSETS

3.1 This Agreement represents the total of funds available for the Project, and the Town agrees that it shall work in good faith to complete the tasks as described above in paragraph 2.2 of this Agreement. Town may request additional funds for the Project upon showing cause which request may be granted or denied by County in its sole discretion. The Parties acknowledge that funds allocated to the Project are limited and County will have no obligation to provide additional funding. The Parties will work together in good faith to fund and construct the Project, including the sections located in the Town and in the unincorporated area near or adjacent to the Town limits, as shown on Exhibit A.

3.2 Payment will be made for Work satisfactorily performed within thirty (30) days of receipt of a proper and accurate invoice from Town for Work performed by its consultant(s) or sub-consultants. All invoices shall include detail regarding the hours spent, tasks performed, who performed each task and such other detail as County may request. Any out-of-pocket expenses incurred by consultants or sub-consultants shall be repaid without additional mark up. Town will seek reimbursement from County on a monthly basis for design costs for the Project by submitting invoices to County. County's reimbursement to Town shall not exceed the County approved funds for the Project as set forth in Paragraph 2.1 of this Agreement.

3.3 All funds received under this Agreement shall be expended solely for the purpose stated herein, and any such funds not so expended, including funds lost or diverted to other purposes, will be returned to the County.

3.4 The Town will assume all liability associated with the Project being funded through this Agreement and to the extent allowed by law, shall indemnify and hold harmless the County with respect to any claims, liability or judgments in any way related to, actually or allegedly caused by or attributable to or resulting in any way from the operations and duties undertaken in connection with this Agreement.

3.5 The Parties shall maintain for a minimum of three years, adequate financial records for reporting to the other on the performance of responsibilities hereunder. Each party shall be subject to audit by state, county or town auditors or their designees. Each party authorizes the other to perform audits or to make inspections during normal business hours, upon 48 hours' notice. Each party shall fully cooperate in the event of an audit or inspection.

3.6 Notwithstanding anything to the contrary contained in this Agreement, neither party shall have any obligations under this Agreement after, nor shall any payments be made in respect of any period after December 31 of any year, without an appropriation therefor in accordance with an adopted budget in compliance with Article 25, title 30 of the Colorado Revised Statutes, the Local Government Budget Law (C.R.S. 29-1-101 et. seq.) and the TABOR Amendment (Colorado Constitution, Article X, Sec. 20).

4. INSURANCE AND GOVERNMENTAL IMMUNITY

4.1 **Insurance.** The County and the Town shall each provide their own insurance coverage as each party may deem adequate and necessary for any potential liability arising from this Agreement.

4.2 **No Waiver of Governmental Immunity.** Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to either party, its officials, employees, or agents, or any other person acting on behalf of either party and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.

5. TERM AND TERMINATION

5.1 This Agreement will be effective as of the day and year first set forth above and will terminate on December 31, 2016. This Agreement shall automatically renew for one additional year until December 31, 2017 unless earlier terminated as set forth herein.

5.2 If either party fails to substantially perform the duties and obligations in accordance herewith, the other party may terminate this Agreement upon seven (7) days written notice to that party, unless that party cures the breach within the seven (7) day remedy period or such other period as mutually agreed to by the Parties. Either party may terminate this Agreement without cause upon thirty (30) days written notice.

6. MISCELLANEOUS

6.1 **Notices and Payments.** All notices, bills and payments shall be made in writing and may be given by personal delivery or by mail. Notices, bills, payments sent by mail should be addressed as follows:

Eagle County
Attn: Ellie Caryl, ECO Trails Program Manager
P.O. Box 1070
Gypsum, CO 81637
Hand deliver: 3289 Cooley Mesa Road, Gypsum
Phone: 970-328-3523

Town of Minturn
Attn: Willy Powell, Town Manager
P.O. Box 309
Minturn, CO 81645
Hand deliver: 302 Pine Street, Minturn
Phone: 970-827-5645

6.2 **Modification.** This Agreement contains the entire agreement between the Parties. This Agreement may not be amended or supplemented, nor may any obligations hereunder be waived, except by agreement signed by both Parties.

6.3 **No Third Party Beneficiaries.** Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party, including any agent, sub-consultant or sub-contractor of Town or County. Absolutely no third party beneficiaries are intended by this Agreement.

6.4 **No Assignment.** Neither party shall assign this Agreement without the prior written

consent of the other. Either party may terminate this Agreement if the other assigns this Agreement without the prior written consent of the other.

6.5 **Jurisdiction and Venue.** This Agreement shall be interpreted in accordance with the laws of the state of Colorado and the Parties agree to submit to the jurisdiction of the courts thereof. Venue shall be in the Eagle County District Court.

6.6 **Invalidity.** Invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed as if such invalid or unenforceable provision was omitted.

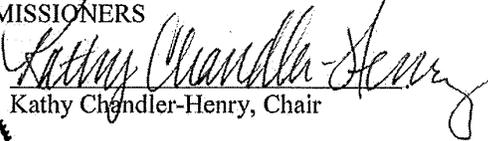
6.7 **Compliance With Law.** Each party shall comply with all applicable federal, state and local rules, regulations and laws.

6.8 **Time of Essence.** Each party agrees to perform its obligations hereunder in an expeditious manner, within the sound exercise of its judgment and professional standards. Time is of the essence with respect to this Agreement.

IN WITNESS WHEREOF, each party, by signature below of its authorized representative, hereby acknowledges that it has read this Agreement, understands it and agrees to be bound by its terms and conditions.

COUNTY OF EAGLE, STATE OF COLORADO,
By and Through Its BOARD OF COUNTY
COMMISSIONERS

By:


Kathy Chandler-Henry, Chair

Attest:

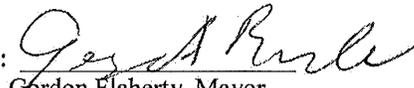


By:


Teak J. Simonton, Clerk to the Board

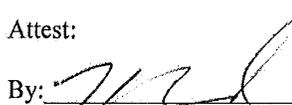
TOWN OF MINTURN

By:


Gordon Flaherty, Mayor

Attest:

By:


Jay Brunvand, Town Clerk

