

TOWN OF MINTURN

RESOLUTION NO. 03 – SERIES 2016

A RESOLUTION APPROVING AN EMPLOYMENT  
AGREEMENT BETWEEN WILLIAM POWELL AND THE  
TOWN OF MINTURN, COLORADO

WHEREAS, Pursuant to Minturn Municipal Code Section 2-21, The Town Council shall appoint a Town Administrator who shall be the chief administrative officer of the Town; and

WHEREAS, the Council has negotiated an employment contract and desires to appoint William Powell as the Town Administrator and Mr. Powell has accepted.

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

1. The Minturn Town Council hereby approves the Employment Agreement between Mr. William "Willy" Powell and the Town of Minturn, Colorado and authorizes the Mayor to execute said Agreement.

**INTRODUCED, READ, APPROVED, ADOPTED AND RESOLVED  
this 6<sup>th</sup> day of January, 2016.**

TOWN OF MINTURN

By: *Hankap F. Hebert*  
Mayor

ATTEST:

*[Signature]*  
Town Clerk



**AGREEMENT FOR EMPLOYMENT**

THIS AGREEMENT is made and entered into this 1st day of January, 2016, by and between the Town of Minturn, a Colorado home rule municipality (the "Town"), and William Powell ("Powell") (each a "Party" and collectively "the Parties").

**RECITALS:**

A. The Town requires the services of a part time Town Administrator pursuant to Section 2-3-10 of the Minturn Municipal Code; and

B. Powell has held himself out to the Town as having the requisite expertise and experience and has conducted the duties as acting Town Administrator since May 2014; and

C. The Town, acting through the Town Council of the Town of Minturn ("Council"), desires to appoint Powell as Town Administrator; and

D. The Town and Powell desires to set forth the terms of Powell's contract to provide services in writing as described herein.

NOW, THEREFORE, for the consideration hereinafter set forth, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

**I. SCOPE OF SERVICES**

Powell shall furnish all labor to perform the work and services required for the complete execution and performance of all duties, obligations and responsibilities of the Town Administrator specified by Colorado state statutes, the Town of Minturn Home Rule Charter and Municipal Code. At the future direction of Council, Powell shall also assist in recruiting a new Town Administrator and provide orientation to a new Town Administrator. Powell shall report directly to the Mayor and Town Council.

**II. COMPENSATION**

In consideration for the services specified herein by Powell, the Town shall pay Powell at the rate of sixty dollars (\$60.00) per hour for an amount of hours not to exceed thirty-four (34) hours per week on average for a total of forty-eight (48) weeks per year, unless additional hours and compensation are approved by Council. Powell shall be paid at the same time as other Town employees are paid. Town shall pay Powell a car allowance of three hundred dollars (\$300.00) per month.

**III. TERMINATION**

Town may terminate this Agreement without cause by giving written notice to Powell of not less than thirty (30) days. Town may terminate this Agreement for Cause immediately. Termination for "Cause" shall mean:

- a. Employee's willful misfeasance or nonfeasance of duty with the intent to injure, or having the effect of injuring in some material fashion, the reputation, business or business relationships of Employer;
- b. Employee's plea of guilty or no contest to or conviction of a crime involving moral turpitude, whether or not committed during the term of employment;
- c. Employee's commitment of any unethical, fraudulent or felonious act with respect to his duties to the Employer;
- d. Employee's prolonged unexcused absence from employment (other than by reason of disability due to physical or mental illness).

Powell may terminate this Agreement by giving written notice to Town of not less than six (6) months.

#### **IV. EMPLOYMENT STATUS**

The Parties agree Powell shall be a part-time employee of the Town, and as a part-time employee, Powell is not eligible for any benefits provided by the Town except as otherwise provided in this Agreement.

#### **V. COMPLIANCE WITH LAW**

The work and services to be performed by Powell hereunder shall be done in compliance with applicable laws, ordinances, rules and regulations, including the Town Municipal Code and Charter and any other applicable laws, ordinances, or regulations of the Town of Minturn. In addition, Powell agrees to perform any other legally permissible and proper duties and functions as the Town Council shall from time to time assign to Powell.

#### **VI. OUTSIDE ACTIVITIES**

The employment provided for by this Agreement shall be Powell's primary employment. Recognizing that certain outside consulting or teaching opportunities provide indirect benefits to the Town and the community, Powell may elect to accept limited teaching, consulting or other business opportunities with the understanding that such arrangements shall not constitute interference with nor a conflict of interest with his responsibilities under this Agreement.

#### **VII. TECHNOLOGY**

The Town shall provide Powell with a computer, software, fax/modem, and other technological equipment required for Powell to perform the job and to maintain communication.

#### **VIII. INDEMNIFICATION**

The Town shall defend, save harmless and indemnify Powell against any tort, professional liability claim or demand or other legal action brought by any party other than the Town, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Powell's duties as Town Administrator or resulting from the exercise of judgment or discretion in connection with the performance of Powell's duties or responsibilities, unless the act or omission involved an intentional tort or willful and wanton conduct. Powell

may request, and the Town shall not unreasonably refuse to provide, independent legal representation at the Town's expense if Powell's interests and the Town's interests are materially divergent. Legal representation, provided by the Town for Powell, shall extend until a final determination of the legal action including any appeals brought by either party. The Town shall indemnify Powell against any and all losses, damages, judgments, interest, settlements, fines, court costs and other reasonable costs and expenses of the legal proceedings including attorney's fees, and legal assistant fees, and any other liabilities incurred by, imposed upon, or suffered Powell in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened, covered by this indemnification.

Any settlement of any claim must be made with the prior approval of the Town in order for indemnification, as provided in this Section, to be available.

Powell recognizes that the Town shall have the right to compromise and settle any action. If Powell is a party to the suit, Powell shall have a veto authority (which Powell shall not unreasonably exercise) over the settlement of any claim or suit which does not fully and completely release Powell from all claims. Further, the Town agrees to pay all reasonable expenses of Powell throughout the pendency of any litigation to which Powell is a party, witness or advisor to the Town. Such expense payments shall continue beyond Powell's service and Interim Town Administrator as long as the litigation is pending and will include reasonable consulting fees and travel expenses when Powell serves as a witness, advisor or consultant to the Town.

**IX. TERM**

The term of this Agreement shall be from January 1, 2016 through December 31, 2017. On or before June 1, 2017, Powell and Council will consult whether the Town will retain the services of a full time Town Administrator, or whether the Town and Powell desire to continue under an extension of this Agreement for an additional period of time. In the event that Council decides to retain the services of a full time Town Administrator, Powell will assist with the candidate search and will continue to act as Town Administrator until a replacement is hired.

**XI. MISCELLANEOUS**

A. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Eagle County, Colorado.

B. Integration. This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.

C. Third Parties. There are no intended third-party beneficiaries to this Agreement.

D. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

E. Modification. This Agreement may only be modified upon written agreement of the Parties.

F. Assignment. Neither this Agreement nor any of the rights or obligations of the Parties hereto, shall be assigned by either Party without the written consent of the other.

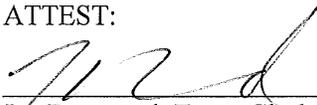
G. Governmental Immunity. The Town and its officers, attorneys and employees are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Town and its officers, attorneys or employees.

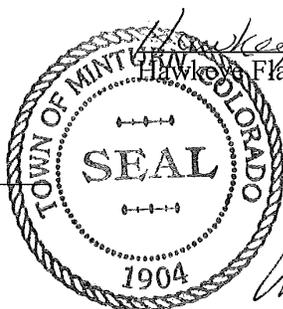
H. Subject to Annual Appropriation. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the Town not performed during the current fiscal year is subject to annual appropriation, shall extend only to monies currently appropriated and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first set forth above.

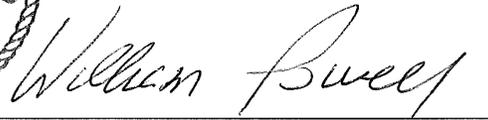
**TOWN OF MINTURN, COLORADO**

ATTEST:

  
Jay Brunvand, Town Clerk



  
William Flaherty, Mayor

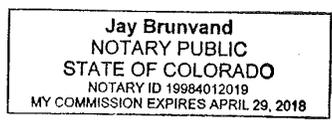
  
William Powell

STATE OF COLORADO )  
 ) ss.  
COUNTY OF Eagle )

The foregoing instrument was subscribed, sworn to and acknowledged before me this 6 day of January, 2016, by William Powell.

My commission expires: 2/29/18

(SEAL)



[Signature]  
Notary Public