



2011

Minturn Council Meeting

Wednesday August 03, 2011

Work Session: **4:45pm**
(Town Center)

Regular Session: **6:30pm**
(Town Center)

TOP FIVE COUNCIL PRIORITIES:

- Entry Signs
- Sidewalk Installations
- Street repairs with drainage (by priority)
- 100% completion of Telemetry
- Implement Streetscape Plan



Agenda

MEETING OF THE MINTURN TOWN COUNCIL
Minturn Town Center, 302 Pine Street
Minturn, CO 81645 • (970) 827-5645

Wednesday August 3, 2011

Work Session – 4:45pm
Regular Session – 6:30pm

MAYOR – Gordon “Hawkeye” Flaherty
MAYOR PRO TEM – George Brodin

TOWN MANAGER – Jim White
TOWN CLERK/TREAS – Jay Brunvand

COUNCIL MEMBERS:

Shelley Bellm
Earle Bidez
Jerry Bumgarner
Aggie Martinez
John Rosenfeld

When addressing the Council, please state your name and your address for the record prior to providing your comments. Please address the Council as a whole through the Mayor. All supporting documents are available for public review in the Town Offices – located at 302 Pine Street, Minturn CO 81645 – during regular business hours between 8:00 a.m. and 3:00 p.m., Monday through Friday, excluding holidays.

Work Session – 4:45pm

- Site Visit: Minturn Towne Homes **(MEET AT INTERSECTION OF TAYLOR ST AND LIONS LANE)** – Cerimele (45min)
- Discussion/update: VSSC Aldo Radamus – White (30min)

Regular Session – 6:30pm

- 1. Call to Order**
 - a. Roll Call
 - b. Pledge of Allegiance
- 2. Approval of Agenda**
 - a. Items to be Pulled or Added

- 3. Approval of Minutes and Action Report**
 - July 20, 2011
 - July 25, 2011 Special Meeting
 - Action Item Report
- 4. Public comments on items, which are NOT on the agenda (5 minute time limit per person)**
- 5. Special Presentations/Citizen Recognition**
- 6. Planning Department Update**
- 7. Town Manager's Report**
- 8. Town Council Comments**

PUBLIC HEARINGS AND DISCUSSION/ACTION ITEMS

- 9. Discussion/Action – Ordinance 5 – 2011 (Second Reading) an Ordinance adopting the 2009 IBC as amended – Cerimele/Lanci (15min)**
- 10. Discussion/Action – Ordinance 11 – 2011 (Second Reading) Holy Cross Franchise Agreement – White (30min)**
- 11. Discussion/Action – Ordinance 10 - 2011 (Second Reading) an Ordinance granting and approving an Encroachment Agreement between the Minturn Towne Homes and the Town of Minturn – Cerimele (15min)**

EXECUTIVE SESSION

- 12. Executive Session – Pursuant to CRS 24-6-402(4)(a) for the purposes to consult with the Town's Attorney(s) and receive direction regarding the negotiations of the USFS Boneyard property and Pursuant to CRS 24-6-402(4)(b) for the purposes to consult with the Town's Attorney(s) and receive direction regarding the negotiations of the Battle Mountain Resort property annexation, water right issues, and EPA update – White/Christensen**

FUTURE AGENDA ITEMS

- 13. Next Meeting – August 17, 2011**
 - Meeting: Discussion/Action – Ms. Wendy Naugle of the Colorado Dept of Public Health and Environment – White (30min)

14. Future Meeting

- Town Manager annual evaluation
- Worksession: Discussion/update: Water Quality Control Professionals – White (30min) (09/07/11)
- Meeting: Discussion/Action – Resolution 4 – Series 2011 a Resolution approving a subdivision exemption plat for the Maloit Park Area – Cerimele (20min)
- Meeting: Discussion/Action – Ordinance 9 – 2011 (First and Second Readings) an Ordinance allowing the sale of Medical Marijuana (TBA Meetings in January 2012 45min, NOTE: this will require two readings)
- Worksession: Request from the Planning Commission for a work session time during September with the Council to determine a sidewalk master plan.

15. Set Future Meeting Dates

a) Council Meetings:

- August 17, 2011
- September 7, 2011
- September 21, 2011

b) Planning & Zoning Commission Meetings:

- August 10, 2011
- August 24, 2011
- September 14, 2011

c) Other Dates:

16. Adjournment

P.O. Box 309 ♦ 302 Pine Street
Minturn, CO 81645
Phone: 970-827-5645
Fax: 970-827-5545
Jim White Town Manager
manager@minturn.org



TOWN COUNCIL
Mayor – Gordon “Hawkeye” Flaherty
Mayor Pro Tem – George Brodin
Councilwoman – Shelley Bellm
Councilman – Earle Bidez
Councilman – Jerry Bumgarner
Councilman – Aggie Martinez
Council – John Rosenfeld

AGENDA ITEM COVER SHEET

AGENDA TITLE: Vail Ski and Snowboard Club (VSSC)
MEETING DATE: August 3, 2011
PRESENTER: Jim White, Town Manager
BACKGROUND: <p>The Town of Minturn supported the placement of the VSSC at the Maloit Park site following the departure of the Minturn Middle School. Fortunately, the Eagle County School District subsequently approved an agreement to house the Ski and Snowboard Club at Maloit Park.</p> <p>As the transition moves forward, discussion has ensued about a partnership which may result in a community use wellness center or recreation center of some variety. The Town of Minturn, VSSC, and the Battle Mountain Development have all discussed ideas about how this might materialize.</p> <p>Tonight’s discussion will help update the Town Council on the current status of the transition process and open dialog to help determine if a partnership is feasible or prudent.</p> <p>Aldo Radamus for VSSC will be present to deliver opening remarks, expand the dialog, and elicit feedback form the Town Council regarding this prospect.</p>
CORE ISSUES: N/A
STAFF RECOMMENDATION/MOTION: N/A



Official Minutes

MEETING OF THE MINTURN TOWN COUNCIL
Minturn Town Center, 302 Pine Street
Minturn, CO 81645 • (970) 827-5645

Wednesday July 20, 2011

Work Session – 5:00pm
Regular Session – 6:30pm

MAYOR – Gordon “Hawkeye” Flaherty
MAYOR PRO TEM – George Brodin

TOWN MANAGER – Jim White
TOWN CLERK/TREAS – Jay Brunvand

COUNCIL MEMBERS:

Shelley Bellm
Earle Bidez
Jerry Bumgarner
Aggie Martinez
John Rosenfeld

When addressing the Council, please state your name and your address for the record prior to providing your comments. Please address the Council as a whole through the Mayor. All supporting documents are available for public review in the Town Offices – located at 302 Pine Street, Minturn CO 81645 – during regular business hours between 8:00 a.m. and 3:00 p.m., Monday through Friday, excluding holidays.

Work Session – 5:00pm

- Work Session Review: Discussion/Action – Ordinance 9 – 2011 (____ Reading) an Ordinance allowing the sale of Medical Marijuana (45min)

(Note: although no decision was made on this item, it was reviewed in full with Town Council and staff was directed to finalize the ordinance and then bring it back in January 2012 for review and consideration.)

- Work Session Review: Discussion/Action – Ordinance 5 – 2011 (First Reading) an Ordinance adopting the 2009 IBC as amended – Cerimele/Lanci (30min)

Regular Session – 6:30pm

- 1. Call to Order**
 - a. Roll Call

b. Pledge of Allegiance

The meeting was called to order by Mayor Hawkeye Flaherty at 6:35 pm.

Those present included: Mayor Hawkeye Flaherty, Mayor Pro Tem George Brodin, Council Members Shelley Bellm, Aggie Martinez, John Rosenfeld, Jerry Bumgarner and Earle Bidez.

Staff present: Town Manager Jim White, Town Treasurer/Clerk Jay Brunvand, Town Planner Chris Cerimele, Deputy Clerk Michelle Metteer and Attorney Allen Christensen.

2. Approval of Agenda

a. Items to be Pulled or Added

- Request to add item 12a to the agenda, to address the appointment of a CML policy committee person.

Motion by John R., second by Aggie M., to approve the agenda as amended; all voted in favor.

3. Approval of Minutes and Action Report

- July 6, 2011
- Action Item Report

Motion by George B., second by Jerry B., to approve the minutes as presented; all voted in favor. *(Note: Council member Bellm abstained as she was absent from the July 6, 2011 meeting.)*

Request from Council to add the following to the action report: amounts of money to be spent on street repairs and sidewalk repairs and the timeline for those accomplishments and an update on the accomplishments on the streetscape plan.

4. Public comments on items, which are NOT on the agenda (5 minute time limit per person)

5. Special Presentations/Citizen Recognition

- Mr. Daniel Chisholm (not present)

6. Planning Department Update

07.13.11 Planning Commission Meeting Update

The Planning Commission met on 7.13.11 to discuss the following topics:

- Design Review Board procedures
- Open Space requirements
- Sidewalk installation requirements

The Commission finalized the language for the new DRB procedures. This will be presented to the Council as a code amendment at an upcoming meeting.

Sidewalks in south Minturn were also discussed at the meeting. The Commission would like to have a joint work session with the Town Council in September to discuss a comprehensive plan to address the issue.

251 Main Street

The mobile home at 251 Main Street was removed to accommodate the construction of a single family home. Due to unforeseen circumstances, building plans have yet to be submitted and the project has been placed on a temporary hold.

As mentioned at the July 6, 2011 Council meeting, the mobile home was relocated to the Quintana property in South Minturn with the intention of utilizing the unit for a residence. Staff has informed the Quintanas that is not permissible under the Municipal Code and International Building Code and that the mobile home must be removed from the property by August 26, 2011.

Upcoming Project

An application has been submitted for a variance to construct a detached garage at 1688 Main Street. This item is anticipated to be the subject of a Town Council public hearing in August.

7. Town Manager's Report

XCEL Natural Gas Pipeline Project Continues!

The XCEL Pipeline Project from Edwards to Minturn will return to Minturn sometime in the next two weeks once the gas line section at Dowd Junction from Eagle Vail reaches the Minturn Dowd Junction area. XCEL plans to work six days, twelve hour days from 7am to 7pm. XCEL was made aware of Minturn's Saturday weekly market and also was informed about the upcoming bike race events on July 30th and August 6th. XCEL is replacing 6" and 12" existing lines with a new 16" line. The Minturn section should take two to three weeks to complete per Jimmy Smith, project manager. Overall project completion is set for September 15, 2011. With any questions, please call XCEL at 1-877-481-6380.

Battle Mountain Update

Most of the issues discussed currently involve pending lawsuits related to responses to the EPA, quiet title action, and legal challenges to the annexation agreement. Mr. Dave Kleinkopf had requested that we restart our committee meetings. We convened the committee on Tuesday, July 12, 2011. Councilmembers Earle Bidez, and Shelley Bellm represented the Town Council. The Town Manager and the Town Attorney also participated.

Signage

Plans for signage at the south end of Minturn are in progress. In addition, we are looking at signage for the entrance to Little Beach Park. We will be working on access agreements or easements needed for both signs.

Maloit Park Water Tank

Inspection of the Maloit Park water tank finds the need to make repairs. Public Works is securing bids for the job. The plan would be to complete restoration of both the inside and outside of the tank.

Holy Cross Franchise Agreement Extension

The Town of Minturn and Holy Cross have extended our franchise through September 21, 2011. 1st and 2nd reading of the ordinance are currently planned on July 20th and August 3, 2011.

Park Update

Little Beach Park has had twelve solar lights installed along walking paths to improve visibility following the Saturday night movies. An additional porta-potty has been brought to the park. Public Works staff has been assigned to clean the park every morning beginning at 7am.

Bone Yard Parcel

On Monday evening, July 11, 2011, the Town staff made a preliminary presentation to the Eagle County Open Space Advisory Committee (OSAC) on the prospective request for funding to purchase the Bone Yard property. Toby Sprunk, new director for Eagle County's Open Lands Program, has been asked to arrange a site tour for the committee. We have also requested to be on the next agenda in August to formally request funding. We received very supportive commentary from committee members. The one predominant request was to secure funding from other partners.

On Tuesday, July 12, we met with Battle Mountain CEO, Dave Kleinkopf, and raised the issue of the Bone Yard purchase and the OSAC expressed concerns that the Town secure other funding partners.

The USFS is requesting an offer acceptance letter by July 22, 2011. In the letter, the USFS is further requesting language that outlines how the Town intends to secure funds for this transaction by September 8, 2011.

Minturn Community Garden

I will be meeting with representatives of the Minturn Community Fund to discuss possible locations and plans to begin a Minturn Community Garden. Though the growing season is relatively short here in the mountains, we will consider what types of plants to begin this endeavor. A location has not yet been selected.

Movies in the Park

Last week's movie, **School of Rock**, was postponed due to inclement weather. The plan is to show the movie instead on Saturday, July 16th at dusk.

Concert Series at Little Beach Park

The 2nd Annual Concert Series at Little Beach Park began July 7, 2011 at Little Beach Park from 6pm-8pm. Many thanks to all the volunteers who have collaborated to raise funds, secure quality music, and cover all the planning and logistics required for such events to be successful.

Special thanks are extended to Terry and Jeff Armistead, Chris Alexander, Chris Cerimele, Michelle Metteer, Lisa Osborne, Chief Martinez, and to several others.

8. Town Council Comments

John R. reminded everyone that the bears are out and to please have garbage cans secured properly.

George B. also attended the Open Space meeting and felt Minturn was well received. He was also at the ECO meetings.

PUBLIC HEARINGS AND DISCUSSION/ACTION ITEMS

9. Discussion/Action – Ordinance 5 – 2011 (First Reading) an Ordinance adopting the 2009 IBC as amended – Cerimele/Lanci (Meeting 15min)

The Mayor referred the discussion to Chris C. and Chuck Lanci, Building Inspector. Chris C. and Chuck L. summarized the issues and answered questions, advised Council that the International Energy Conservation Code is for both residential and commercial properties.

Mr. Richard Brinkley, Holy Cross Energy, 3799 HWY 82, Glenwood Springs, discussed that the International Energy Conservation Code is more about energy conservation that economic savings.

Motion by Shelley B., second by Jerry B., to approve Ordinance 5 – 2011 (First Reading) an Ordinance adopting the 2009 IBC as amended; motion passed 5-2 with John R. and Hawkeye F. nay.

10. Discussion/Action – Ordinance 11 – 2011 (First Reading) Holy Cross Franchise Agreement – White (30min)

Motion by George B., second by John R., to approve Ordinance 11 – 2011 (First Reading) as amended (review of contract in ten years) Holy Cross Franchise Agreement; all voted in favor.

11. Discussion/Action – Ordinance 10 - 2011 (First Reading) an Ordinance granting and approving an Encroachment Agreement between the Minturn Towne Homes and the Town of Minturn – Cerimele (15min)

Mr. Onie Bolduk, Representative, Minturn Townhomes, addressed the berm and drainage issues at the Townhomes location and moving forward these concerns are to be rectified through improvements and annual inspections and maintenance of the soils and the overall property. He stated the berm is to run along the back (east side) of the property in order to catch the water from the hill side and more thoroughly divert it from the back of the property and then into an existing storm drain system along the north side of the property between the Minturn Towne

Homes property and the property to the immediate north but on the Minturn Towne Homes property.

Request by Council for a work session and site visit August 3, 2011 at the Minturn Townhome property location. Notification to surrounding neighbors was requested. More information regarding the liner, the re-vegetation plan, and adding a maintenance clause to the ordinance were all part of the discussion.

Motion by Jerry B., second by George B., to approve Ordinance 10 - 2011 (First Reading) an Ordinance granting and approving an Encroachment Agreement between the Minturn Towne Homes and the Town of Minturn; motion passed 4-3 with John R, Aggie M, and Shelley B. nay).

12. Discussion/Action – Update and discussion regarding the River View Cemetery – White (10min)

The Council was updated on a request from the Riverview Cemetery District to drill and erect a water well and vault sewage system on the cemetery property. This project would enable the Town to connect the existing Public Works Facility (810 Cemetery Rd) to a potable water and sewage system that would provide service year around. Council directed staff to ensure all necessary state and local approvals are provided in writing and that the Town received copies.

12a. Action/Discussion- Acknowledging a primary representative for the CML policy committee.

Motion by Jerry B., second by Aggie M., to appoint the Mayor as the CML Policy Committee representative, and Town Manager, Jim White as the alternate; all voted in favor.

EXECUTIVE SESSION

13. Executive Session – Pursuant to CRS 24-6-402(4)(a) for the purposes to consult with the Town's Attorney(s) and receive direction regarding the negotiations of the USFS Boneyard property and Pursuant to CRS 24-6-402(4)(b) for the purposes to consult with the Town's Attorney(s) and receive direction regarding the negotiations of the Battle Mountain Resort property annexation, water right issues, and EPA update – White/Christensen

Motion by Shelley B., second by Aggie M., to convene into executive session pursuant to CRS 24-6-402(4)(a) for the purposes to consult with the Town's Attorney(s) and receive direction regarding the negotiations of the USFS Boneyard property and Pursuant to CRS 24-6-402(4)(b) for the purposes to consult with the Town's Attorney(s) and receive direction regarding the negotiations of the Battle Mountain Resort property annexation, water right issues, and EPA update. All voted in favor.

Following the executive session, the Town environmental attorney was directed to request a copy of the CBS water treatment plant annual audit; the Town Manager was directed to send a letter to the USFS and to have meetings with Vail and Avon managers; and the Town water attorney was asked to clarify legal processes related to annexation agreements.

The Executive Session adjourned at 10:37pm.

FUTURE AGENDA ITEMS

14. Next Meeting – August 3, 2011

- Meeting: Discussion/Action – Resolution 4 – Series 2011 a Resolution approving a subdivision exemption plat for the Maloit Park Area – Cerimele (20min)
- Meeting: Discussion/Action – Ordinance 11 – 2011 (____ Reading) Holy Cross Franchise Agreement – White (15min) (8/3/11)
- Meeting: Discussion/Action – Ordinance 5 – 2011 (____ Reading) an Ordinance adopting the 2009 IBC as amended – Cerimele/Lanci (15min) (8/3/11)
- Work Session- Ordinance 10 - 2011 (First Reading) an Ordinance granting and approving an Encroachment Agreement between the Minturn Towne Homes and the Town of Minturn – Cerimele (15min)
- Town Administrator Evaluation

15. Future Meeting

- Meeting: Discussion/Action – Ordinance 9 – 2011 (First Reading) an Ordinance allowing the sale of Medical Marijuana (TBA Meetings 45min, NOTE: this will require two readings)
- Discussion/Action – Ordinance ____ – 2012 (____ Reading) an Ordinance allowing the sale of Medical Marijuana (45min) (1/2012)

16. Set Future Meeting Dates

a) Council Meetings:

- August 3, 2011
- August 17, 2011
- September 7, 2011

b) Planning & Zoning Commission Meetings:

- July 27, 2011
- August 10, 2011
- August 24, 2011

c) Other Dates:

17. Adjournment

As there was no further business, Council adjourned at 10:38pm.

Mayor Hawkeye Flaherty

ATTEST:

Town Clerk, Jay Brunvand



Minutes

MEETING OF THE MINTURN TOWN COUNCIL
Minturn Town Center, 302 Pine Street
Minturn, CO 81645 • (970) 827-5645

Monday – July 25, 2011

Regular Session – 5:30pm

MAYOR – Gordon “Hawkeye” Flaherty
MAYOR PRO TEM – George Brodin

TOWN MANAGER – Jim White
TOWN CLERK/TREAS – Jay Brunvand

COUNCIL MEMBERS:

Shelley Bellm
Earle Bidez
Jerry Bumgarner
Aggie Martinez
John Rosenfeld

These minutes are formally submitted to the Town of Minturn Town Council for approval as the official written record of the proceedings at the identified Council Meeting. Additionally, all Council meetings are tape-recorded and are available to the public for listening at the Town Center Offices from 8:30am – 2:00 pm, Monday through Friday, by contacting the Town Clerk at 970/824-5645 302 Pine St. Minturn, CO 81645

Regular Session – 5:30pm

1. Call to Order

a. Roll Call

The meeting was called to order by Mayor Flaherty at 5:30pm.

Those present included: Mayor Hawkeye Flaherty, Mayor Pro Tem George Brodin, Council Members Shelley Bellm, Aggie Martinez, John Rosenfeld, Council Members Jerry Bumgarner and Earle Bidez.

Staff present: Town Manager Jim White, and Town Attorney Allen Christensen, and Attorneys Boots Ferguson and Elizabeth Mitchell of Holland and Hart.

b. Pledge of Allegiance

2. Approval of Agenda

a. Items to be Pulled or Added

Motion by Jerry B., second by Shelley B., to approve the agenda as presented; all voted in favor.

EXECUTIVE SESSION

- 3. Executive Session – Pursuant to CRS 24-6-402(4)(a) for the purposes to consult with the Town's Attorney(s) and receive direction regarding the negotiations of the USFS Boneyard property and Pursuant to CRS 24-6-402(4)(b) for the purposes to consult with the Town's Attorney(s) and receive direction regarding the negotiations of the Battle Mountain Resort property annexation, water right issues, and EPA update – White/Christensen**

Motion by Shelley B., second by John R., to convene in Executive Session Pursuant to CRS 24-6-402(4)(a) for the purposes to consult with the Town's Attorney(s) and receive direction regarding the negotiations of the USFS Boneyard property and Pursuant to CRS 24-6-402(4)(b) for the purposes to consult with the Town's Attorney(s) and receive direction regarding the negotiations of the Battle Mountain Resort property annexation, water right issues, and EPA update; all voted in favor.

Following the Executive Session the following direction was give to Staff as a result of the Executive Session:

Motion by Jerry B., second by Shelley B., to:

- Staff is directed to review the re-engineering issues and to report back to Town Council
- Jim W. to set a meeting with Aldo Radamus of the Vail Ski and Snowboard Club

4. Adjournment

Motion by Jerry B., second by George B., to adjourn the meeting at 7:10pm. All voted in favor.

Mayor Hawkeye Flaherty

ATTEST:

Town Clerk, Jay Brunvand

**Town of Minturn
Council Action Item Memo**

TO: Staff Members/Council Members
FROM: Jim White/ Town Manager
DATE: August 03, 2011
SUBJECT: Status of Action Items from Town Council Meetings

Action Item	Responsible Party	Progress Report
Town entry sign – South	White	Direction from 7/6/11 Council Meeting is to proceed with options for a sign with a goal of 2011 installation. Sign proposal has been accepted is being produced at House of Signs
Draft Medical Marijuana Ordinance	White	The Draft has been completely reviewed by Staff and Council and is on hold until January 2012 at which time it will be brought back to Council for consideration.
Battle Mountain Annexation Scholarship Fund	White	Pursue interest money from Battle Mountain scholarship fund contributions.
Minturn Scholarship Funding	White	Council is interested in providing seed money and soliciting donations for scholarship funding
Town Sidewalks	A. Martinez/White	First installations to occur on 7/11/11 on Main St and at the Town Hall. Staff and Planning Commission reviewing language to code to require sidewalks for new construction.
Town Priority list	White	Council requested at the 7/20/11 meeting for a full update on the status of each priority to be reviewed w/Council on 9/7/11
OSAC Funding for Boneyard purchase	White	Seek fundraising partners. Town staff met with Eagle County Staff. Staff plans to meet with OSAC on 8/8/11 with formal proposal.

Post Office Box 309
302 Pine Street
Minturn, CO 81645
Phone: 970-827-4272
Fax: 970-827-7420



Town Council
Mayor – Gordon “Hawkeye” Flaherty
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Councilwoman – Shelley Bellm
Councilman – Jerry Bumgarner
Councilman – Aggie Martinez
Councilman – Earle Bidez
Councilman – John Rosenfeld

To: Minturn Town Council
Cc: Jim White, Town Manager
From: Chris Cerimele, Town Planner
Re: Planning Department Update
Date: July 29, 2011

07.27.11 Planning Commission Meeting Update

The 7.27.11 Planning Commission meeting was cancelled due to the property owner at 1688 Main Street withdrawing their variance application.

Community Wildfire Protection Plan

The Eagle River Fire Protection District is funding a program to create a Community Wildfire Protection Plan. A team of consultants in conjunction with fire district personnel will assess the wildfire danger within the fire district and make recommendations to mitigate the danger. Staff attended the kick-off meeting for this planning effort last week in Edwards. Further information will be provided as the planning effort proceeds.

Jim White
Town Manager
P.O. Box 309 ♦ 302 Pine Street
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Email: manager@minturn.org



TOWN COUNCIL
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Councilmember – Jerry Bumgarner
Councilmember – Aggie Martinez
Councilmember – John Rosenfeld

To: Mayor Flaherty and Minturn Town Council
From: Jim White, Town Manager
Date: July 28, 2011
Re: **Manager’s Report for the August 3, 2011 Town Council Meeting**

XCEL Natural Gas Pipeline Project Continues!

The XCEL Pipeline Project from Edwards to Minturn will return to Minturn sometime in the next week or so once the gas line section at Dowd Junction from Eagle Vail reaches the Minturn Dowd Junction area. XCEL plans to work six days, twelve hour days from 7am to 7pm. XCEL was made aware of Minturn’s Saturday weekly market and also was informed about the upcoming bike race event on August 6th. The Minturn section should take two to three weeks to complete per Jimmy Smith, project manager. Overall project completion is set for September 15, 2011. With any questions, please call XCEL at 1-877-481-6380.

Signage

Plans for signage at the south end of Minturn are in progress. In addition, we are planning for directional signage at Cemetery Bridge for the entrance to Little Beach Park. We will be working on access agreements or easements needed for the signs.

Maloit Park Water Tank

Inspection of the Maloit Park water tank determined the need to make repairs. Public Works has secured two bids for the job. The plan would be to complete restoration of both the inside and outside of the tank. I met with a representative from the School District to discuss repairs and payment arrangements on this and other projects in Maloit Park.

Bone Yard Parcel

On Monday evening, August 8, 2011, the Town staff will make a formal presentation to the Eagle County Open Space Advisory Committee (OSAC) on the request for funding to purchase the Bone Yard property in Minturn. Toby Sprunk, new director for Eagle County’s Open Lands Program, has been asked to arrange a site tour for the committee. We received very supportive commentary from committee members. The one predominant request was to secure funding from other partners. Meetings were held with the managers of the Towns of Vail and Avon.

The USFS closing deadline for this transaction is September 8, 2011.

7/28/2011

Holy Cross Franchise Agreement Extension

The Town of Minturn and Holy Cross have extended our franchise through September 21, 2011. 2nd reading of the ordinance is planned at tonight's meeting.

Sidewalk Replacement Plan

Staff has completed two sidewalk projects already this summer and is slated to complete another this week. E are also in the process of compiling a report for Town Council to be delivered at the September 7, 2011 Town Council meeting.

Battle Mountain Update

Current issues include pending lawsuits related to responses to the EPA, quiet title action, and legal challenges to the annexation agreement.

Budget Calendar

The budget calendar is included in your packet for this evening's meeting. I will provide a brief review for planning purposes and to answer any preliminary questions Town Council may have.

Eagle County Airport Planning Meeting

The latest airport planning meeting was held yesterday in the Eagle County offices in Eagle, CO.

Lifetime Achievement Award

On August 1st, I travelled to the City of Arvada to present the first "Lifetime Achievement Award" to Craig Kocian, City Manager. He was awarded this honor by the Colorado City and County Managers' Association. I serve as president-elect of that organization and will become president in February 2012 at the annual conference.

Vacation

My wife and I will be away on vacation from August 15 through August 25th.

Respectfully submitted,

Jim White
Town Manager

P.O. Box 309 ♦ 302 Pine Street
Minturn, CO 81645
Phone: 970-827-5645
Fax: 970-827-5545
Email: manager@minturn.org



TOWN COUNCIL
Mayor – Gordon “Hawkeye” Flaherty
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Councilman – Earle Bidez
Councilman – Aggie Martinez
Councilman – John Rosenfeld

AGENDA ITEM COVER SHEET

<p>AGENDA TITLE:</p> <p>Ordinance 5 – 2011; An Ordinance of the Town of Minturn repealing and reenacting multiple sections of Chapter 18 of the Municipal Code to adopt by reference the 2009 International Building Codes with amendments. (second reading)</p>
<p>MEETING DATE: August 3, 2011</p>
<p>PRESENTER: Chris Cerimele</p>
<p>BACKGROUND: The Town Council approved this ordinance on first reading at their July 20th meeting. At that meeting, the Council requested that the Building Official investigate air exchange fans to see if any models contained an alarm system that would warn a homeowner if the unit failed and ceased functioning.</p>
<p>CORE ISSUES: At the time of this report, the Building Official has yet to locate a fan with the described alarm system.</p>
<p>BUDGET/FINANCE IMPLICATIONS: None</p>
<p>RECOMMENDED MOTION: I move to approve Ordinance 5 – Series 2011 on second reading.</p>

**TOWN OF MINTURN, COLORADO
ORDINANCE NO. 5 - SERIES 2011**

AN ORDINANCE OF THE TOWN OF MINTURN REPEALING AND REENACTING ARTICLES 1-4 AND 5-8 OF CHAPTER 18 OF THE TOWN OF MINTURN MUNICIPAL CODE AND REPLACING THOSE SECTIONS WITH ARTICLES 1-4 AND 5-8 AND ADDING A NEW ARTICLE 9 AND 10 AND RENUMBERING SUBSEQUENT SECTIONS TO ADOPT BY REFERENCE THE 2009 EDITIONS OF INTERNATIONAL BUILDING CODE, INTERNATIONAL RESIDENTIAL CODE, INTERNATIONAL FUEL GAS CODE, INTERNATIONAL ENERGY CONSERVATION CODE, INTERNATIONAL PLUMBING CODE, INTERNATIONAL MECHANICAL CODE, INTERNATIONAL PROPERTY MAINTENANCE CODE AND THE NATIONAL ELECTRICAL CODE AS CURRENTLY ADOPTED BY THE STATE OF COLORADO

WHEREAS, in promotion of the public health, safety and welfare of the inhabitants of the Town of Minturn, the Town Council desires to update its ordinances by adopting the 2009 International Building Codes with amendments; and

WHEREAS, section 11.11 of the Home Rule Charter and section 31-16-202, C.R.S., as amended, permit the contemplated adoption by reference of such codes upon notice and hearing as provided in Section 31-16-203, C.R.S.; and

WHEREAS, the Minturn Town Council held a public hearing, with proper notice provided, to consider adoption of such International Codes as required by law; and

WHEREAS, copies of said International Codes are available in the Planning Office at the Minturn Town Center; and

WHEREAS, the Town Council has determined, based on the evidence and testimony presented at the public hearing, that the adoption of these codes, as amended herein, will further the health, safety and welfare of the inhabitants of Minturn; and

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

Section 1. Article 1 of Chapter 18 of the Minturn Municipal Code is hereby repealed and reenacted to read as follows:

Section 18-1-10. Title.

The provisions of the ordinance codified herein shall be know and cited collectively as the "Town of Minturn Building Code" or "International Codes."

Section 18-1-20. Codes adopted.

- (1) The Town of Minturn adopts by reference the following codes:

- a. *International Building Code, 2009 Edition*, as published by the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001
- b. *International Residential Code, 2009 Edition*, as published by the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001
- c. *International Fuel Gas Code, 2009 Edition*, as published by the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001
- d. *International Energy Conservation Code, 2009 Edition* as published by the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001
- e. *International Plumbing Code, 2009 Edition*, as published by the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001
- f. *International Mechanical Code, 2009 Edition*, as published by the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001
- g. *International Property Maintenance Code, 2009 Edition*, as published by the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001
- h. *National Electrical Code as currently adopted by the State of Colorado.*
- i. *International Fire Code, 2009 Edition, as published by the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001 (adopted by Ordinance 8 - Series 2011)*

Section 2. Article 2 of Chapter 18 of the Minturn Municipal Code is hereby repealed and reenacted to read as follows:

Building Code

Section 18-2-10. International Building Code adopted.

(a) The *International Building Code, 2009 Edition, 2nd printing*, as published by the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001, Chapters 1 through 35 inclusive, exclusive of any Appendices, (“IBC”) is hereby adopted by reference as the Town of Minturn Building Code as if fully set out in this Ordinance with the additions, deletions, insertions and changes as set forth in this Article.

(b) No building shall be hereafter constructed, erected, enlarged, altered, or moved into the Town unless the same shall, as to design, construction, quality of materials and workmanship, conform with the IBC, as adopted and as amended.

Section 18-2-20. Amendments.

The following sections of the adopted code are hereby revised as follows:

- (1) Section 111.2 Certificate Issued shall read: "Final Certificate of Occupancy Inspection approval shall be the Certificate of Occupancy."
- (2) Section 419.2 Occupancies. The following sentence shall be added: "F and I occupancies shall not be permitted in a live/work unit."
- (3) Section 1029 Emergency Escapes and Rescue is amended to delete *Exception 1*
- (4) Section 1608.2 Ground Snow Loads is hereby deleted and replaced with the following: "Snow loads for roods and decks shall be 75 pounds per square foot."
- (5) Section 1809.5 Frost Protection. This section is amended by deleting the section in its entirety and replacing it with the following language: "Foundation walls, piers and other permanent supports of buildings and structures shall be protected from frost by the following method – Footings subject to frost shall have a minimum depth of 48" measured from finished grade to the bottom of the footing or the depth specified by the soils engineer of record."
- (6) Section 1809.12 Timber Footings is deleted in its entirety.
- (7) Section 2111.13 Exterior Air Intake is amended by adding the following: "Outside combustion air intake shall be required for all gas-fired and wood burning fireplaces. Combustion air ducts shall be a minimum 26 gauge sheet metal for the portion of duct extending through the building on the outside of the fire-resistive shaft. Ducts extending from the fireplace and exiting directly to the outside without passing through any other portion of the building may be of any material permitted by the fireplace manufacturer or the International Mechanical Code. Fireplaces: Where dampers are required to be removed, clamped or welded open- doors in front of fireplace openings are required.
- (8) Section 3001.5 is amended to read as follows: "A fee for each permit and plan review shall be paid to the Northwest Colorado Council of Governments. The annual certificate of inspection will be administered by the certified elevator inspection agency. For permit applications and inspections, contact Elevator Inspection Program at (970) 468-0295. Ext. 108

Section 3. Article 3 of Chapter 18 of the Minturn Municipal Code is hereby repealed and reenacted to read as follows:

Residential Code

Section 18-3-10. International Residential Code adopted

- (a) The *International Residential Code*, 2009 Edition, 2nd printing, as published by the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001, Chapters 1 through 44 inclusive and Appendices A, C, G, H, and N, (“IRC”) is hereby adopted by reference as the Town of Minturn Residential Building Code as if fully set out in this Ordinance, with the additions, deletions, insertions and changes as set forth in this Article.
- (b) No residential building shall be hereafter constructed, erected, enlarged, altered, or moved into the Town unless the same shall, as to design, construction, quality of materials and workmanship, conform with the IRC, as adopted and as amended.

Section 18-3-20. Amendments.

The following sections of the adopted code are hereby revised as follows:

- (1) Section R104.4 Inspections is amended by the addition of the following paragraph: “A third party inspection by a certified log inspection agency shall be required of all structural members in log framed buildings. A letter from the log grading agency certifying log grades are in accordance with the plan specifications shall be required at, or prior to frame inspection. Elevators installed in all structures shall require a third party plan review and inspection by Northwest Colorado Council of Governments.”
- (2) Section R301.2.3 Snow Loads is amended by the addition of the following: “Snow loads for roofs and decks shall be 75 pounds per square foot.”
- (3) Section R302.2.2 Townhouses is amended by the deletion of the exception.
- (4) Section R302.5.1 is amended by the addition of the following statement at the end, *Doors shall be self closing.*
- (5) Section R302.7 is amended to read enclosed accessible spaces under stairs shall have walls, under stair surfaces and any soffit protected on the enclosed side with 5/8” Type X gypsum board.
- (6) Section R313.1 Townhouse automatic fire sprinkler systems is deleted in its entirety.
- (7) Section R313.2 One and two-family dwelling automatic fire systems is deleted in its entirety.
- (8) Section R315.1 Carbon Monoxide alarms is amended by deleting this section and replacing it with the following language: “For new construction, an approved carbon monoxide alarm shall be installed within fifteen feet of the entrance to each bedroom in dwelling units within which fuel-fired appliances are installed and in dwelling units that have attached garages.”
- (9) Section R403.1.4.1 Frost Protection is amended by deleting the section in its entirety and replacing it with the following: “Foundation walls, piers, and other permanent supports of buildings shall be protected from frost by the following method – Footings subject to frost shall have a minimum depth of 48” measured from finished grade to the bottom of the footing or the depth specified by the soils engineer of record.”

- (10) Section R403.2 Footings for Wood Foundations is amended by adding the following: “Foundations shall be designed by a registered Colorado Engineer or Architect and approved by a Geotechnical Engineer.
- (11) Section R403.3 Frost Protected Shallow Foundations is amended by adding the following: “Foundations shall be designed by a registered Colorado Engineer or Architect and approved by a Geotechnical Engineer.
- (12) Section R404.2 Wood Foundation Walls is amended by adding the following: “Foundations shall be designed by a registered Colorado Engineer or Architect and approved by the Geotechnical Engineer.”
- (13) Section G2425.8 (501.8) Equipment Not Required to be Vented is amended by deleting item #7. The sentence after this exception should be amended to read: “Where the appliances listed in Items 5 and 6 above...”
- (14) Section G2445 (621) is amended by removing all subsections and replacing it with “Section G2445.1 General. Unvented room heaters are prohibited from installation.”
- (15) Table R301.2(1) is amended by deleting it in its entirety and replacing it with the following:

Table R301.2(1)

CLIMATIC AND GEOGRAPHIC DESIGN CRITERIA

Roof Snow Load	WIND DESIGN		SEISMIC DESIGN CATEGORY	SUBJECT TO DAMAGE FROM			WINTER DESIGN TEMP	ICE BARRIER UNDERLAYMENT REQUIRED	FLOOD HAZARDS	AIR FREEZING INDEX	MEAN ANNUAL TEMP
	Speed (mph)	Topographic effects		Weathering	Frost line depth	Termite					
75 psf	90	NO	B	SEVERE	48"	NONE TO SLIGHT	-15° F	YES	2007	2000	45° F

(16) Table R302.6 is amended to read:

SEPERATION	MATERIAL
From residence and attics	not less than 5/8" Type X gypsum board applied on the garage side
From all habitable rooms above the garage	not less than 5/8" Type X gypsum board
Structure(s) supporting floor ceiling assemblies used for separation required by this section	not less than 5/8" Type X gypsum board
Garages located less than 6 feet from a dwelling unit on the same lot	not less than 5/8" Type X gypsum board applied to the interior side of exterior walls of the garage that are within this area

(17) Add a new Section R303.1.2 Mechanical ventilation to read:

R303.1.2 Mechanical ventilation. Dwelling units shall be provided with a mechanical exhaust system, supply system, or combination thereof to provide whole-building ventilation with outdoor air. Such system shall comply with Section R303.1.2.1 through R303.1.2.2.

Exception:

1. Other *approved* mechanical ventilation systems.

(18) Add a new Section R303.1.2.1 Mechanical ventilation rate to read:

R303.1.2.1 Mechanical ventilation rate. The mechanical ventilation system shall provide outdoor air continuously at a rate of not less than that determined in accordance with Table R303.4(1)

Exception: Continuous operation of the system is not required where the system has controls that enable operation for not less the 25% of each 6 hour segment and the ventilation rate prescribed in Table R303.1.2.1 (1) is multiplied by the factor in accordance with Table R303.1.2.1 (2)

(19) Add a new table, TABLE R303.1.2.1 (1) to read:

TABLE R303.1.2.1 (1)
VENTILATION AIR REQUIREMENTS, CFM¹

FLOOR AREA (SQ. FT.)	BEDROOMS				
	0-1	2-3	4-5	6-7	>7
<1,500	30	45	60	75	90
1,500-3,000	45	60	75	90	105
3,001-4,500	60	75	90	105	120
4,501-6,000	75	90	105	120	135
6,001-7,500	90	105	120	135	150
>7,500	105	120	135	150	165

For SI: 1 square foot = 1 square foot = 0.0929 m².

- Equation R303.1.2.1 (1) can be used as an alternative to Table R303.1.2.1 (1)

$$Q_{fan} = 0.01 A_{floor} + 7.5 (N_{br} + 1)$$

Where:

Q_{fan} = fan flow rate in cubic feet per minute (cfm).

A_{floor} = floor area in square feet (ft²)

N_{br} = number of bedrooms; not to be less than 1

- Add a new table, TABLE R303.1.2.1 (2) to read:

TABLE R303.1.2.1 (2)

INTERMITTENT MECHANICAL VENTILATION RATE FACTORS^{a b}

Run-Time Percentage In each 6 hour Segment	25%	33%	50%	66%	75%
Factor	4	3	2	1.5	1.3

a. Interpolation between entries is permitted.

b. The ventilation system run time shall be not less than 25%

- Add a new section R303.1.2.2, System design, to read:

R303.1.2.2 System design. The required whole-house ventilation system shall consist of one or more supply or exhaust fans or a combination thereof and associated ducts and controls. Outdoor air ducts connected to the return side of an air handler shall be considered to be supply ventilation where the manufacturer's requirements for a minimum return air temperature for the air handler are met.

- Add a new section R303.1.2.3 System Controls, to read:

R303.1.2.3 System Controls. The mechanical ventilation system shall be provided with controls that enable occupant override.

(23) Add a new section R303.3.1 Bathroom ventilation to read:

R303.3.1 Bathroom ventilation. Bathrooms shall be mechanically exhausted in accordance with section 1507.

Section 4. Article 4 of Chapter 18 of the Minturn Municipal Code is hereby repealed and reenacted to read as follows:

International Fuel Gas Code

Section 18-4-10. International Fuel Gas Code adopted.

(a) The *International Fuel Gas Code*, 2009 Edition 2nd printing as published by the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001, Chapters 1 through 8 inclusive, (“IFGC”) is hereby adopted by reference as the Town of Minturn Fuel Gas Code as if fully set out in this Ordinance with the additions, deletions, insertions and changes as set forth in this Article.

(b) No building shall be hereafter constructed, erected, enlarged, altered, or moved into the Town unless the same shall, as to design, construction, quality of materials and workmanship, conform with the IFGC, as adopted and as amended.

Section 18-4-20. Amendments.

The following sections of the adopted code are hereby revised as follows:

- (1) Section 303.3 Prohibited Locations is amended by deleting exceptions number 3 and 4.
- (2) Section 402.6.2 Liquefied Petroleum Gas Facilities and Piping is amending by the addition of the following sentence: “Liquefied petroleum gas facilities and equipment shall not be located in any pit or basement, under show windows or interior stairways, in engine, boiler, heater, or electric meter rooms”. The following exception shall apply: “equipment may be installed with an approved means of detection and removal of unburned liquid petroleum gas. A minimum 3” drain pipe to the exterior of the building, propane sensor and automatic safety shutoff shall be installed. The drain shall not be trapped and shall be protected from snow closure and rodents. When the above listed means cannot be achieved, an engineered mechanical exhaust system with a propane sensor, and an automatic safety shut-off, shall be required”.
- (3) Section 501.8 Equipment Not Required to be Vented is amended by the deletion of item No. 8

Section 5. Article 6 of Chapter 18 of the Minturn Municipal Code is hereby repealed and reenacted to read as follows:

International Energy Conservation Code

Section 18-5-10. International Energy Conservation Code adopted.

(a) The *International Energy Conservation Code*, 2009 Edition 5th printing as published by the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001, Chapters 1 through 6 inclusive, (“IECC”) is hereby adopted by reference as the Town of Minturn Energy Code as if fully set out in this Ordinance with the additions, deletions, insertions and changes as set forth in this Article.

(b) No building shall be hereafter constructed, erected, enlarged, altered, or moved into the Town unless the same shall, as to design, construction, quality of materials and workmanship, conform with the IECC, as adopted and as amended.

Section 18-5-20. Amendments.

The following sections of the adopted code are hereby revised as follows:

- (1) Chapter 1 Administration shall be deleted and chapter 1 of the IBC and IRC shall apply.

Section 6. Article 7 of Chapter 18 of the Minturn Municipal Code is hereby repealed and reenacted to read as follows:

International Plumbing Code

(a) The *International Plumbing Code*, 2009 Edition 3rd printing as published by the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001, Chapters 1 through 13 inclusive, (“IPC”) is hereby adopted by reference as the Town of Minturn Plumbing Code as if fully set out in this Ordinance with the additions, deletions, insertions and changes as set forth in this Article.

(b) No building shall be hereafter constructed, erected, enlarged, altered, or moved into the Town unless the same shall, as to design, construction, quality of materials and workmanship, conform with the IPC, as adopted and as amended.

Section 7. Article 8 of Chapter 18 of the Minturn Municipal Code is hereby repealed and reenacted to read as follows:

Mechanical Code

Section 18-8-10. International Mechanical Code adopted.

(a) The *International Mechanical Code*, 2009 Edition 4th printing as published by the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001, Chapters 1 through 15 inclusive, (“IMC”) is hereby adopted by reference as the Town of Minturn Mechanical Code as if fully set out in this Ordinance with the additions, deletions, insertions and changes as set forth in this Article.

(b) No building shall be hereafter constructed, erected, enlarged, altered, or moved into the Town unless the same shall, as to design, construction, quality of materials and workmanship, conform with the IMC, as adopted and as amended.

Section 8. Article 9 of Chapter 18 of the Minturn Municipal Code is hereby repealed and reenacted to read as follows:

Property Maintenance Code

Section 18-9-10. International Property Maintenance Code adopted.

(a) The *International Property Maintenance Code*, 2009 Edition 1st printing as published by the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001, is hereby adopted by reference as the Town of Minturn Property Maintenance Code as if fully set out in this Ordinance with the additions, deletions, insertions and changes as set forth in this Article.

(b) No building shall be hereafter constructed, erected, enlarged, altered, or moved into the Town unless the same shall, as to design, construction, quality of materials and workmanship, conform with the IPMC, as adopted and as amended.

Section 9. Article 10 of Chapter 18 of the Minturn Municipal Code is hereby repealed and reenacted to read as follows:

National Electrical Code

Section 18-9-10. National Electrical Code adopted.

(a) The *National Electrical Code*, as published by the National Fire Protection Association, and the rules and regulations thereunder, as adopted, amended and updated to the most current edition by the Colorado State Electrical Board from time to time (“NEC”) pursuant to the authority set forth in Article 23 of Title 12, C.R.S., is hereby adopted by reference as the City of Centennial Electrical Code as if fully set out in this Ordinance with the additions, deletions, insertions and changes as set forth in this Article.

(b) No building shall be hereafter constructed, erected, enlarged, altered, or moved into the City unless the same shall, as to design, construction, quality of materials and workmanship, conform with the NEC, as adopted and as amended.

Section 10. 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 11. 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 12. 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 or 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, TITLE READ IN FULL, APPROVED ON FIRST READING AND ORDERED PUBLISHED IN FULL THE 20 DAY OF JULY, 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 3 DAY OF AUGUST, 2011, AT 7 P.M. IN THE MINTURN TOWN CENTER IN THE TOWN OF MINTURN, COLORADO.

Henriette Flaherty

Mayor

Attest:

— *[Signature]*

Town Clerk



THE TOWN OF MINTURN, COLORADO, ORDAINS THIS ORDINANCE READ BY TITLE, ENACTED AND ORDERED PUBLISHED BY TITLE ONLY ON SECOND READING THIS _____ DAY OF _____, 2011.

Mayor

Attest:

Town Clerk

TOWN OF MINTURN ORDINANCE CHECKLIST

Ord 5-2011

FIRST READING

7/20/11 The ordinance shall be introduced and read by title at any regular or special meeting. Copies shall be available to the public.

7/25/11 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.

_____ 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.

8/2/11 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

_____ 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.

_____ 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.

Ad Ticket #5

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

Name: Town of Minturn
Address: PO Box 309
City: Minturn
State: CO
Zip: 81645-0309

Ad Name: 6804958D
Editions: 8VD/8VDI/
Start: 07/25/11
Color:
Copypine: 6804958 2-2 Ordinance No 5-2011

Original Id: 6804915
Class: 0990
Stop: 07/25/11

Issue 1
Rep: Pam Schultz

Lines:	0
Depth:	10
Columns:	5
Discount:	0.00
Commission:	0.00
Net:	0.00
Tax:	0.00
Total	325.00
Payment	0.00

Line	Rate	Class	Code	Day	Time
1	325.00	0990			

By the undersigned, I hereby certify that the above information is true and correct to the best of my knowledge and belief.

Town of Minturn
Minturn, Colorado

Signature: _____
Title: _____

By the undersigned, I hereby certify that the above information is true and correct to the best of my knowledge and belief.

Signature: _____
Title: _____

Ad shown is not actual print size

AN ORDINANCE OF THE TOWN OF MINTURN REPEALING AND REENACTING ARTICLES 1-4 AND 5-8 OF CHAPTER 18 OF THE TOWN OF MINTURN MUNICIPAL CODE AND REPLACING THOSE SECTIONS WITH ARTICLES 1-4 AND 5-8 AND ADDING A NEW ARTICLE 9 AND 10 AND RENUMBERING SUBSEQUENT SECTIONS TO ADOPT BY REFERENCE THE 2009 EDITIONS OF INTERNATIONAL BUILDING CODE, INTERNATIONAL RESIDENTIAL CODE, INTERNATIONAL FUEL GAS CODE, INTERNATIONAL ENERGY CONSERVATION CODE, INTERNATIONAL PLUMBING CODE, INTERNATIONAL MECHANICAL CODE, INTERNATIONAL PROPERTY MAINTENANCE CODE AND THE NATIONAL ELECTRICAL CODE AS CURRENTLY ADOPTED BY THE STATE OF COLORADO

WHEREAS, in promotion of the public health, safety and welfare of the inhabitants of the Town of Minturn, the Town Council desires to update its ordinances by adopting the 2009 International Building Codes with amendments; and

WHEREAS, section 11.11 of the Home Rule Charter and section 31-16-202, C.R.S., as amended, permit the contemplated adoption by reference of such codes upon notice and hearing as provided in Section 31-16-203, C.R.S.; and

WHEREAS, the Minturn Town Council held a public hearing, with proper notice provided, to consider adoption of such International Codes as required by law; and

WHEREAS, copies of said International Codes are available in the Planning Office at the Minturn Town Center; and

WHEREAS, the Town Council has determined, based on the evidence and testimony presented at the public hearing, that the adoption of these codes, as amended herein, will further the health, safety and welfare of the inhabitants of Minturn; and

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

Section 1, Article 1 of Chapter 18 of the Minturn Municipal Code is hereby repealed and reenacted to read as follows:

Section 18-1-10. Title.

The provisions of the ordinance codified herein shall be known and cited collectively as the "Town of Minturn Building Code" or "International Codes."

Section 18-1-20. Codes adopted.

- (1) The Town of Minturn adopts by reference the following codes:
 - a. International Building Code, 2009 Edition, as published by the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001
 - b. International Residential Code, 2009 Edition, as published by the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001
 - c. International Fuel Gas Code, 2009 Edition, as published by the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001
 - d. International Energy Conservation Code, 2009 Edition as published by the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001
 - e. International Plumbing Code, 2009 Edition, as published by the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001
 - f. International Mechanical Code, 2009 Edition, as published by the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001
 - g. International Property Maintenance Code, 2009 Edition, as published by the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001
 - h. National Electrical Code as currently adopted by the State of Colorado.
 - i. International Fire Code, 2009 Edition, as published by the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001 (adopted by Ordinance 8 - Series 2011)

Section 2, Article 2 of Chapter 18 of the Minturn Municipal Code is hereby repealed and reenacted to read as follows:

Building Code

Section 18-2-10. International Building Code adopted.

(a) The International Building Code, 2009 Edition, 2nd printing, as published by the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001, Chapters 1 through 33 inclusive, exclusive of any Appendices, ("IBC") is hereby adopted by reference as the Town of Minturn Building Code as if fully set out in this Ordinance with the additions, deletions, insertions and changes as set forth in this Article.

(b) No building shall be hereafter constructed, erected, enlarged, altered, or moved into the Town unless the same shall, as to design, construction, quality of materials and workmanship, conform with the IBC, as adopted and as amended.

Section 18-2-20. Amendments.

The following sections of the adopted code are hereby revised as follows:

- (1) Section 111.2 Certificate Issued shall read: "Final Certificate of Occupancy Inspection approval shall be the Certificate of Occupancy."
- (2) Section 419.2 Occupancies. The following sentence shall be added: "F and I occupancies shall not be permitted in a live/work unit."
- (3) Section 1029 Emergency Escapes and Rescue is amended to delete Exception 1
- (4) Section 1608.2 Ground Snow Loads is hereby deleted and replaced with the following: "Snow loads for roofs and decks shall be 75 pounds per square foot."
- (5) Section 1809.5 Frost Protection. This section is amended by deleting the section in its entirety and replacing it with the following language: "Foundation walls, piers and other permanent supports of buildings and structures shall be protected from frost by the following method - Footings subject to frost shall have a minimum depth of 48" measured from finished grade to the bottom of the footing or the depth specified by the soils engineer of record."
- (6) Section 1809.12 Timber Footings is deleted in its entirety.
- (7) Section 2111.13 Exterior Air Intake is amended by adding the following: "Outside combustion air intake shall be required for all gas-fired and wood burning fireplaces. Combustion air ducts shall be a minimum 26 gauge sheet metal for the portion of duct extending through the building on the outside of the fire-resistive shell. Ducts extending from the fireplace and exiting directly to the outside without passing through any other portion of the building may be of any material permitted by the fireplace manufacturer or the International Mechanical Code. Fireplaces: Where dampers are required to be removed, clamped or welded open doors in front of fireplace openings are required."
- (8) Section 3001.5 is amended to read as follows: "A fee for each permit and plan review shall be paid to the Northwest Colorado Council of Governments. The annual certificate of inspection will be administered by the certified elevator inspection agency. For permit applications and inspections, contact Elevator Inspection Program at (970) 466-0295, Ext. 108"

Section 3, Article 3 of Chapter 18 of the Minturn Municipal Code is hereby repealed and reenacted to read as follows:

Residential Code

Section 18-3-10. International Residential Code adopted

- (a) The International Residential Code, 2009 Edition, 2nd printing, as published by the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001, Chapters 1 through 44 inclusive and Appendices A, C, G, H, and N, ("IRC") is hereby adopted by reference as the Town of Minturn Residential Building Code as if fully set out in this Ordinance, with the additions, deletions, insertions and changes as set forth in this Article.
- (b) No residential building shall be hereafter constructed, erected, enlarged, altered, or moved into the Town unless the same shall, as to design, construction, quality of materials and workmanship, conform with the IRC, as adopted and as amended.

Section 18-3-20. Amendments.

The following sections of the adopted code are hereby revised as follows:

- (1) Section R104.4 Inspections is amended by the addition of the following paragraph: "A third party inspection by a certified log

inspection agency shall be required of all structural members in log framed buildings. A letter from the log grading agency certifying log grades are in accordance with the plan specifications shall be required at, or prior to frame inspection. Elevators installed in all structures shall require a third party plan review and inspection by Northwest Colorado Council of Governments."

- (2) Section R301.2.3 Snow Loads is amended by the addition of the following: "Snow loads for roofs and decks shall be 75 pounds per square foot."
- (3) Section R302.2.2 Townhouses is amended by the deletion of the exception.
- (4) Section R302.5.1 is amended by the addition of the following statement at the end, *Doors shall be self-closing.*
- (5) Section R302.7 is amended to read enclosed accessible spaces under stairs shall have walls, under stair surfaces and any soffits protected on the enclosed side with 5/8" Type X gypsum board.
- (6) Section R313.1 Townhouse automatic fire sprinkler systems is deleted in its entirety.
- (7) Section R313.2 One and two-family dwelling automatic fire systems is deleted in its entirety.
- (8) Section R315.1 Carbon Monoxide alarms is amended by deleting this section and replacing it with the following language: "For new construction, an approved carbon monoxide alarm shall be installed within fifteen feet of the entrance to each bedroom in dwelling units within which fuel-fired appliances are installed and in dwelling units that have attached garages."
- (9) Section R403.1.4.1 Frost Protection is amended by deleting the section in its entirety and replacing it with the following: "Foundations walls, piers, and other permanent supports of buildings shall be protected from frost by the following method - Footings subject to frost shall have a minimum depth of 48" measured from finished grade to the bottom of the footing or the depth specified by the soils engineer of record."
- (10) Section R403.2 Footings for Wood Foundations is amended by adding the following: "Foundations shall be designed by a registered Colorado Engineer or Architect and approved by a Geotechnical Engineer."
- (11) Section R403.3 Frost Protected Shallow Foundations is amended by adding the following: "Foundations shall be designed by a registered Colorado Engineer or Architect and approved by a Geotechnical Engineer."
- (12) Section R404.2 Wood Foundation Walls is amended by adding the following: "Foundations shall be designed by a registered Colorado Engineer or Architect and approved by the Geotechnical Engineer."
- (13) Section G2425.8 (501.8) Equipment Not Required to be Vented is amended by deleting item #7. The sentence after this exception should be amended to read: "Where the appliances listed in Items 5 and 6 above..."
- (14) Section G2445 (621) is amended by removing all subsections and replacing it with "Section G2445.1 General. Unvented room heaters are prohibited from installation."
- (15) Table R301.2(1) is amended by deleting it in its entirety and replacing it with the following:

Table R301.2(1)

CLIMATIC AND GEOGRAPHIC DESIGN CRITERIA

Roof Snow Load	WIND DESIGN Speed (mph)	TOPOGRAPHIC effects CATEGORY	SEISMIC DESIGN CATEGORY	SUBJECT TO DAMAGE FROM		WINTER DESIGN TEMP	ICE BARRIER UNDERLAYMENT REQUIRED	FLOOD HAZARDS	AIR FREEZING INDEX	MEAN ANNUAL TEMP	
				Weathering	Frost Termite						
75 psf	90	NO	B	SEVERE	48"	NONE TO SLIGHT	-15° F	YES	2007	2000	45° F

- (16) Table R302.6 is amended to read:

SEPERATION	MATERIAL
From residence and attic	not less than 5/8" Type X gypsum board applied on the garage side
From all habitable rooms above the garage	not less than 5/8" Type X gypsum board
Structure(s) supporting floor ceiling assemblies used for separation required by this section	not less than 5/8" Type X gypsum board
Garages located less than 6 feet from a dwelling unit on the same lot	not less than 5/8" Type X gypsum board applied to the interior side of exterior walls of the garage that are within this area

- (17) Add a new Section R303.1.2 Mechanical ventilation to read:

R303.1.2 Mechanical ventilation. Dwelling units shall be provided with a mechanical exhaust system, supply system, or combination thereof to provide whole-building ventilation with outdoor air. Such system shall comply with Section R303.1.2.1 through R303.1.2.2.

Exception:

1. Other approved mechanical ventilation systems.

- (18) Add a new Section R303.1.2.1 Mechanical ventilation rate to read:

R303.1.2.1 Mechanical ventilation rate. The mechanical ventilation system shall provide outdoor air continuously at a rate of not less than that determined in accordance with Table R303.4(1)

Exception: Continuous operation of the system is not required where the system has controls that enable operation for not less than 25% of each 6 hour segment and the ventilation rate prescribed in Table R303.1.2.1 (1) is multiplied by the factor in accordance with Table R303.1.2.1 (2)

- (19) Add a new table, TABLE R303.1.2.1 (1) to read:

TABLE R303.1.2.1 (1)

VENTILATION AIR REQUIREMENTS, CFM*

FLOOR AREA (SQ. FT.)	BEDROOMS				
	0-1	2-3	4-5	6-7	>7
<1,500	30	45	60	75	90
1,500-3,000	45	60	75	90	105
3,001-4,500	60	75	90	105	120
4,501-6,000	75	90	105	120	135
6,001-7,500	90	105	120	135	150
>7,500	105	120	135	150	165

For SI: 1 square foot = 1 square foot = 0.0929 m2.

1. Equation R303.1.2.1 (1) can be used as an alternative to Table R303.1.2.1 (1)

$$Q_{fan} = 0.01 A_{floor} + 7.5 (Nbr + 1)$$

Where:

$$Q_{fan} = fan flow rate in cubic feet per minute (cfm).$$

A_{floor} = floor area in square feet (ft²)

Nbr = number of bedrooms; not to be less than 1

- (20) Add a new table, TABLE R303.1.2.1 (2) to read:

TABLE R303.1.2.1 (2)
INTERMITTENT MECHANICAL VENTILATION RATE FACTORS □ □

Run-Time Percentage In each 6 hour Segment	25%	35%	50%	66%	75%
Factor	4	3	2	1.5	1.3

- a. Interpolation between entries is permitted.
- b. The ventilation system run time shall be not less than 25%

(21) Add a new section R303.1.2.2, System design, to read:

R303.1.2.2 System design. The required whole-house ventilation system shall consist of one or more supply or exhaust fans or a combination thereof and associated ducts and controls. Outdoor air ducts connected to the return side of an air handler shall be considered to be supply ventilation where the manufacturer's requirements for a minimum return air temperature for the air handler are met.

(22) Add a new section R303.1.2.3 System Controls, to read:

R303.1.2.3 Systems Controls. The mechanical ventilation system shall be provided with controls that enable occupant override.

(23) Add a new section R303.3.1 Bathroom ventilation to read:

R303.3.1 Bathroom ventilation. Bathrooms shall be mechanically exhausted in accordance with section 1507.

Section 4, Article 4 of Chapter 18 of the Minturn Municipal Code is hereby repealed and reenacted to read as follows:

International Fuel Gas Code

Section 18-4-10. International Fuel Gas Code adopted.

(a) The *International Fuel Gas Code*, 2009 Edition 2nd printing as published by the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001, Chapters 1 through 8 inclusive, ("IFGC") is hereby adopted by reference as the Town of Minturn Fuel Gas Code as if fully set out in this Ordinance with the additions, deletions, insertions and changes as set forth in this Article.

(b) No building shall be hereafter constructed, erected, enlarged, altered, or moved into the Town unless the same shall, as to design, construction, quality of materials and workmanship, conform with the IFGC, as adopted and as amended.

Section 18-4-20. Amendments.

The following sections of the adopted code are hereby revised as follows:

- (1) Section 303.3 Prohibited Locations is amended by deleting exceptions number 3 and 4.
- (2) Section 402.6.2 Liquefied Petroleum Gas Facilities and Piping is amended by the addition of the following sentence: "Liquefied petroleum gas facilities and equipment shall not be located in any pit or basement, under show windows or interior stairways, in engine, boiler, heater, or electric meter rooms". The following exception shall apply: "equipment may be installed with an approved means of detection and removal of unburned liquid petroleum gas. A minimum 3" drain pipe to the exterior of the building, propane sensor and automatic safety shutoff shall be installed. The drain shall not be trapped and shall be protected from snow closure and rodents. When the above listed means cannot be achieved, an engineered mechanical exhaust system with a propane sensor, and an automatic safety shut-off, shall be required".
- (3) Section 501.8 Equipment Not Required to be Vented is amended by the deletion of item No. 8

Section 5, Article 6 of Chapter 18 of the Minturn Municipal Code is hereby repealed and reenacted to read as follows:

International Energy Conservation Code

Section 18-5-10. International Energy Conservation Code adopted.

(a) The *International Energy Conservation Code*, 2009 Edition 5th printing as published by the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001, Chapters 1 through 6 inclusive, ("IECC") is hereby adopted by reference as the Town of Minturn Energy Code as if fully set out in this Ordinance with the additions, deletions, insertions and changes as set forth in this Article.

(b) No building shall be hereafter constructed, erected, enlarged, altered, or moved into the Town unless the same shall, as to design, construction, quality of materials and workmanship, conform with the IECC, as adopted and as amended.

Section 18-5-20. Amendments.

The following sections of the adopted code are hereby revised as follows:

- (1) Chapter 1 Administration shall be deleted and chapter 1 of the IBC and IRC shall apply.

Section 6, Article 7 of Chapter 18 of the Minturn Municipal Code is hereby repealed and reenacted to read as follows:

International Plumbing Code

(a) The *International Plumbing Code*, 2009 Edition 3rd printing as published by the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001, Chapters 1 through 13 inclusive, ("IPC") is hereby adopted by reference as the Town of Minturn Plumbing Code as if fully set out in this Ordinance with the additions, deletions, insertions and changes as set forth in this Article.

(b) No building shall be hereafter constructed, erected, enlarged, altered, or moved into the Town unless the same shall, as to design, construction, quality of materials and workmanship, conform with the IPC, as adopted and as amended.

Section 7, Article 8 of Chapter 18 of the Minturn Municipal Code is hereby repealed and reenacted to read as follows:

Mechanical Code

Section 18-8-10. International Mechanical Code adopted.

(a) The *International Mechanical Code*, 2009 Edition 4th printing as published by the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001, Chapters 1 through 15 inclusive, ("IMC") is hereby adopted by reference as the Town of Minturn Mechanical Code as if fully set out in this Ordinance with the additions, deletions, insertions and changes as set forth in this Article.

(b) No building shall be hereafter constructed, erected, enlarged, altered, or moved into the Town unless the same shall, as to design, construction, quality of materials and workmanship, conform with the IMC, as adopted and as amended.

Section 8, Article 9 of Chapter 18 of the Minturn Municipal Code is hereby repealed and reenacted to read as follows:

Property Maintenance Code

Section 18-9-10. International Property Maintenance Code adopted.

(a) The *International Property Maintenance Code*, 2009 Edition 1st printing as published by the International Code Council, 500 New Jersey Avenue NW, 6th Floor, Washington, DC 20001, is hereby adopted by reference as the Town of Minturn Property Maintenance Code as if fully set out in this Ordinance with the additions, deletions, insertions and changes as set forth in this Article.

(b) No building shall be hereafter constructed, erected, enlarged, altered, or moved into the Town unless the same shall, as to design, construction, quality of materials and workmanship, conform with the IPMC, as adopted and as amended.

Section 9, Article 10 of Chapter 18 of the Minturn Municipal Code is hereby repealed and reenacted to read as follows:

National Electrical Code

Section 18-9-10. National Electrical Code adopted.

(a) The *National Electrical Code*, as published by the National Fire Protection Association, and the rules and regulations thereunder, as adopted amended and updated to the most current edition by the Colorado State Electrical Board from time to time ("NEC") pursuant to the authority set forth in Article 23 of Title 12, C.R.S., is hereby adopted by reference as the City of Centennial Electrical Code as if fully set out in this Ordinance with the additions, deletions, insertions and changes as set forth in this Article.

(b) No building shall be hereafter constructed, erected, enlarged, altered, or moved into the City unless the same shall, as to design, construction, quality of materials and workmanship, conform with the NEC, as adopted and as amended.

Section 10. 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 11. 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 12. 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 or 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, TITLE READ IN FULL, APPROVED ON FIRST READING AND ORDERED PUBLISHED IN FULL THE _____ DAY OF JULY, 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 ____ DAY OF AUGUST, 2011, AT 7 P.M. IN THE MINTURN TOWN CENTER IN THE TOWN OF MINTURN, COLORADO.

Mayor

Attest:

Town Clerk

THE TOWN OF MINTURN, COLORADO, ORDAINS THIS ORDINANCE READ BY TITLE, ENACTED AND ORDERED PUBLISHED BY TITLE ONLY ON SECOND READING THIS _____ DAY OF _____, 2011.

Mayor

Attest:

Town Clerk

Published in the Vail Daily on July 26, 2011.

P.O. Box 309 ♦ 302 Pine Street
Minturn, CO 81645
Phone: 970-827-5645
Fax: 970-827-5545
Jay Brunvand, Treasurer/Clerk
Email: treasurer@minturn.org



TOWN COUNCIL
Mayor – Gordon “Hawkeye” Flaherty
Mayor Pro Tem – George Brodin
Councilwoman – Shelley Bellm
Councilman – Earle Bidez
Councilman – Jerry Bumgarner
Councilman – Aggie Martinez
Councilman – John Rosenfeld

AGENDA ITEM COVER SHEET

AGENDA TITLE: Ordinance No. 11 – 2011 (Second Reading) consideration of a Franchise Agreement with Holy Cross Energy
MEETING DATE: August 3, 2011
PRESENTER: Brunvand
<ul style="list-style-type: none">• BACKGROUND: During the past several meetings, Council has reviewed this Ordinance in detail. All concerns are reflected as have been discussed. This Ordinance passed on first reading at the July 20, 2011 meeting with no concerns.
CORE ISSUES:
STAFF RECOMMENDATION/MOTION: Motion to approve Ordinance 11 – 2011 on Second Reading an Ordinance OF THE TOWN OF MINTURN, EAGLE COUNTY, COLORADO, GRANTING A FRANCHISE TO HOLY CROSS ENERGY, ITS SUCCESSORS AND ASSIGNS, TO LOCATE, BUILD, INSTALL, CONSTRUCT, ACQUIRE, PURCHASE, EXTEND, MAINTAIN, REPAIR AND OPERATE INTO, WITHIN AND THROUGH A PORTION OF THE TOWN OF MINTURN, DEFINED AS THE SERVICE AREA, ALL NECESSARY AND CONVENIENT FACILITIES FOR THE PURCHASE, GENERATION, TRANSMISSION AND DISTRIBUTION OF ELECTRICAL ENERGY, AND TO FURNISH, SELL AND DISTRIBUTE SAID ELECTRICAL ENERGY TO THE RESIDENTS OF THE SERVICE AREA FOR LIGHT, HEAT, POWER AND OTHER PURPOSES BY MEANS OF CONDUITS, CABLES, POLES AND WIRES STRUNG THEREON, OR OTHERWISE ON, OVER, UNDER, ALONG, ACROSS AND THROUGH ALL PUBLIC EASEMENTS AND ALL STREETS AND OTHER PUBLIC WAYS IN SAID SERVICE AREA, AND FIXING THE TERMS AND CONDITIONS THEREOF.

TOWN OF MINTURN, COLORADO
ORDINANCE NO. 11 – Series of 2011

AN ORDINANCE OF THE TOWN OF MINTURN, EAGLE COUNTY, COLORADO, GRANTING A FRANCHISE TO HOLY CROSS ENERGY, ITS SUCCESSORS AND ASSIGNS, TO LOCATE, BUILD, INSTALL, CONSTRUCT, ACQUIRE, PURCHASE, EXTEND, MAINTAIN, REPAIR AND OPERATE INTO, WITHIN AND THROUGH A PORTION OF THE TOWN OF MINTURN, DEFINED AS THE SERVICE AREA, ALL NECESSARY AND CONVENIENT FACILITIES FOR THE PURCHASE, GENERATION, TRANSMISSION AND DISTRIBUTION OF ELECTRICAL ENERGY, AND TO FURNISH, SELL AND DISTRIBUTE SAID ELECTRICAL ENERGY TO THE RESIDENTS OF THE SERVICE AREA FOR LIGHT, HEAT, POWER AND OTHER PURPOSES BY MEANS OF CONDUITS, CABLES, POLES AND WIRES STRUNG THEREON, OR OTHERWISE ON, OVER, UNDER, ALONG, ACROSS AND THROUGH ALL PUBLIC EASEMENTS AND ALL STREETS AND OTHER PUBLIC WAYS IN SAID SERVICE AREA, AND FIXING THE TERMS AND CONDITIONS THEREOF.

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

ARTICLE 1

SHORT TITLE

- 1.1 This Ordinance shall be known and may be cited as the “Holy Cross Energy Franchise Ordinance.”

ARTICLE 2

DEFINITIONS

For the purpose of this Ordinance, the following terms shall have the meaning given herein:

- 2.1 “Town” is the Town of Minturn, Eagle County, Colorado, the municipal corporation as is now constituted or as the same may be enlarged or expanded from time to time through annexation.
- 2.2 “Company” refers to Holy Cross Energy, a Colorado corporation, its successors and assigns.
- 2.3 “Service Area” refers to all land inside the municipal boundaries of the Town, as of the enactment of this Ordinance, and all land annexed within such boundaries hereafter, within the area certified to the Company by the Public Utilities Commission of the State of Colorado.
- 2.4 “Council” refers to the legislative body of the Town, known as the Town Council of the Town of Minturn, Colorado.
- 2.5 “Facilities” refers to all overhead and underground electric facilities, buildings and structures owned by the Company which are necessary to provide electricity into, within and through the Town including, but not limited to, such essential apparatus, appliances, plants, systems, substations, works, transmission and distribution lines, structures, anchors, cabinets, cables, conduits, guy posts, guy wires, meters, microwave, communication facilities, overhead and underground lines, pedestals, poles, regulators, sectionalizers, switchgears, transformers,

- various pad mounted and pole mounted equipment, vaults, wires and all other related electrical equipment required for the distribution, generation, maintenance, operation, purchase and transmission of electrical energy.
- 2.6 “Public Easements” refers to easements created by general dedication and available for use by any public utility for its facilities
- 2.7 “Private Easements” refers to easements created by deed, specific dedication to specific grantees or acquired by the Company by prescriptive right and available only for use by the Company for its Facilities, or by the Company and other users or utilities specifically named as grantees in the deed of dedication or which have also acquired the easement by prescriptive right.
- 2.8 “Residents” refers to and includes all persons, businesses, industry, governmental agencies and any other entity whatsoever, presently maintaining a residence, business, farm, ranch or other enterprise located within, in whole or in part, the boundaries of the Town.
- 2.9 “Revenues”, unless otherwise specified, refers to and are the gross amounts of money that the Company receives from its customers within the Town from the sale or delivery of electrical energy for any particular period of time.
- 2.10 “Streets and Other Public Ways” refers to streets, alleys, viaducts, bridges, roads, lanes and other public ways in the Town, subject to limitations stated herein.

ARTICLE 3

GRANT OF FRANCHISE

- 3.1 Grant of Right to Serve. Subject to the conditions, terms and provisions contained in this Franchise, the Town hereby grants to the Company a non-exclusive right, privilege and authority to locate, build, install, construct, acquire, purchase, extend, maintain, repair and operate into, within and through all of the Service Area, all necessary and convenient Facilities for the purchase, generation, transmission and distribution of electrical energy. Such grant is made together with the exclusive right and privilege to furnish, sell and distribute said electrical energy to the Residents for light, heat, power and other purposes.
- 3.2 Scope of Grant. Such grant includes the non-exclusive right and obligation to furnish electrical energy using the Company Facilities on, over, under, along, across and through any and all Public Easements and all Streets and Other Public Ways, on, over, under, along, across and through any extension, connection with, or continuation of, the same and/or on, over, under, along, across and through any and all such new Public Easements and Streets and Other Public Ways as may be hereafter laid out, opened, located or constructed within the Service Area. The Company is further granted the right, privilege and authority to excavate in, occupy and use any and all Streets and Other Public Ways and Public Easements. Any such excavation, occupation and use must be in accordance with Town standards and regulations, and will be undertaken under the supervision of the properly constituted authority of the Town for the purpose of bringing electrical energy into, within and through the Service Area and supplying electrical energy to the Residents.
- 3.3 Service to Town Facilities. The Town hereby grants to the Company the non-exclusive right, privilege and authority to provide street and security lighting to the Town, and to serve all Town owned or operated structures, plants,

equipment or Town apparatus and facilities, including the right, privilege and authority to furnish, sell and distribute electrical energy necessary for such.

ARTICLE 4

SPECIFIC ELEMENTS OF GRANT

- 4.1 Recreational Areas. The Company shall not have the right to locate, build or construct Facilities under, across or through public parks or recreational areas, open space or other Town owned property located within the Town except as expressly set forth in this Franchise or with prior written approval granted by the Council. Said approval shall not be unreasonably withheld.
- 4.2 Trees and Shrubs. The Company shall have the right to trim or cut down such trees and shrubbery and to control the growth of the same by machinery or otherwise but shall not use chemicals for such purpose, only as may be reasonably necessary to protect its Facilities as provided for in the Company "Vegetation Management Guidelines" as such may from time to time be amended.
- 4.3 Location of Company's Facilities. Wherever reasonable and practicable, the Company will endeavor to install its Facilities within Public Easements. The Company shall locate its Facilities within the Town so as to cause minimum interference with any of the Town's facilities or property, including without limitation water lines, sewer lines, storm drains and the proper use of Streets and Other Public Ways, and so as to cause minimum interference with the rights or reasonable convenience of property owners whose property adjoins any of the said Streets and Other Public Ways.
- 4.4 Restoration of Public and Private Improvements. Should it become necessary for the Company, in exercising its rights and performing its duties hereunder, to interfere with any sidewalk, graveled or paved street, road, alley, water line, sewer line, storm drain or any other public or private improvement, the Company shall at its own expense and in a quality workmanlike manner, repair or cause to be repaired and restored to its original condition such sidewalk, graveled or paved street, road, alley, water line, sewer line, storm drain or other public or private improvement after the installation of its Facilities. However, upon failure of the Company to do such required repairs within a reasonable time and in a workmanlike manner, the Town may perform the required work and charge the Company for all reasonable costs thereof. Nothing hereinabove shall be construed to obligate the Company to pay for the removal and relocation of its Facilities where such is at the request or demand of a person, or a public or private entity under circumstances which require the party requesting or demanding such to pay for the relocation under other provisions hereof or under the provisions of the Company's Electric Service Tariffs, Rules and Regulations or other customary practices, as such may from time to time be amended.
- 4.5 Use of Facilities. The Company shall have the right to make such use of its Facilities and other property owned by Company, for uses other than the uses contemplated in this Franchise Ordinance, as it deems proper so long as such other uses do not interfere with its ability to supply electrical energy, consistent with the then current zoning.
- 4.6 Changed Conditions (Overhead). If at any time it shall be necessary to change the position of any overhead electrical facilities of the Company located within

Public Easements or Streets and Other Public Ways to permit the Town to lay, make or change street grades, pavements, sewers, water mains, storm drains or other Town works, such changes shall be made by the Company at its own expense, after reasonable notice from the Town. Any necessary position change of overhead electrical facilities of the Company located within Private Easements will be paid for by the person, or private or public entity requesting such change. The Town shall consult with the Company during the design of any such Town works which may require relocation of existing overhead electrical facilities of the Company and work with the Company to ensure that any relocation necessary is minimized and that a location for the relocated Facilities is provided.

- 4.7 Compliance with Town Ordinances. The Company shall comply with all Town ordinances and regulations regarding curb and pavement cuts, excavating, digging and related construction, maintenance and operational activities. If requested by the Town, the Company shall submit copies of reports of annual and long-term planning for capital improvement projects with descriptions of required street cuts, excavation, digging and related construction activities within 30 days after issuance of request.
- 4.8 Town Review of Construction and Design. Prior to construction of any significant Facilities within the Town, as determined jointly by the Company and Town, the Company shall furnish to the Town the plans for such proposed construction. In addition, the Company shall assess and report on the impact of such proposed construction on the Town environment. Such plans and reports may be reviewed by the Town to ascertain, inter alia, (1) that all applicable laws including building and zoning codes, air and water pollution regulations are complied with, (2) that aesthetic and good planning principles have been given due consideration and (3) that adverse impact on the environment has been minimized.
- 4.9 Capital Improvement and Major Development Projects. The Company and the Town shall endeavor to inform one another of any capital improvement and major development projects anticipated within the Town that may impact the Facilities or operations of either party. The party proposing such capital improvements shall inform the other party of the nature of such improvements within a reasonable time after plans for such improvements have been substantially formulated. Each party shall cooperate in the timely exchange of all necessary information, design data, drawings and reports to properly assess and evaluate the potential impacts of said improvements and major developments.
- 4.10 Maintenance of Facilities. The Company shall install, maintain, repair, replace and upgrade its Facilities to ensure both the adequacy of and quality of, electric service to the Town and all Residents. All excavation and construction work done by or under the authority of the Company shall be done in a timely and expeditious manner which minimizes the inconvenience to the Town and all Residents. The Town shall have the right to inspect any portion of the Facilities located in the Streets or Other Public Ways. However, the Town will not require construction of the Facilities in such a manner that would not meet the National Electrical Safety Code and other governing entity requirements or standard utility engineering practices. The Company agrees to cooperate with the Town in conducting the inspection.

- 4.11 Town Not Required to Advance Funds. Upon receipt from the Town of an authorization to proceed and a promise to pay for construction, the Company shall extend its Facilities to the Town for municipal uses therein or for any municipal facility outside the Service Area and within the Company's certificated service area, without requiring the Town to advance funds prior to construction.
- 4.12 Scheduled Interruptions. The Company shall, whenever possible, give notice, either oral or written, to the Town and its affected Residents, of planned service interruptions of significant duration.
- 4.13 Cooperation with Other Utilities. When undertaking a project of undergrounding, the Town and the Company shall work with other utilities or companies to have all lines undergrounded as part of the same project. The Company shall not be required to pay the costs of any other utility or company in connection with work under this section.
- 4.14 Annual Review of Franchise. At the request of either the Town or the Company, the parties hereto shall meet to discuss any topic of concern.

ARTICLE 5

RATES, REGULATIONS, UNIFORMITY OF SERVICE AND UPGRADES

- 5.1 Furnishing Electrical Energy. The Company shall furnish electrical energy within the Service Area, and to the Residents thereof at the Company's applicable and effective rates and under the terms and conditions set forth in the Company's Electric Service Tariffs, Rules and Regulations and Consumer Service Facilities Metering and Use Guidebook adopted by and on file with the Company, as such may from time to time be amended, subject only to regulations thereof as is provided by law. The Company shall not, as to rates, charges, service, Facilities, rules, regulations or in any other respect, make or grant any preference or advantage to any Resident, provided that nothing in this grant shall be taken to prohibit the establishment from time to time of a graduated scale of charges and classified rate schedules to which any customer coming within an established classification would be entitled.
- 5.2 Facility Upgrades. The Company will, from time to time, during the term of this Franchise make such improvements, enlargements and extensions of its Facilities incorporating, when reasonable and practical, technological advances within the industry as the business of the Company and the growth of the Town justify, in accordance with its Electric Service Tariffs, Rules and Regulations, Consumer Service Facilities Metering and Use Guidebook or other customary practices in effect and on file with the Company, as such may from time to time be amended, subject only to regulations thereof as is provided by law.
- 5.3 Reliable Supply of Electricity. The Company shall take all reasonable and necessary steps to provide an adequate supply of electricity to its customers at the lowest reasonable cost consistent with long-term reliable supplies. If the supply of electricity to its customers is interrupted, the Company shall take all necessary and reasonable actions to restore such supply within the shortest practicable time.
- 5.4 Maps and Regulations. The Company shall, submit copies of its Consumer Services Facilities Metering and Use Guidebook, Electric Service Tariffs, Rules and Regulations and maps of its Facilities within the Service Area to the Town Clerk.

All changes in such information shall be submitted to the Town as the same may from time to time occur.

- 5.5 Subdivision Review. The Company shall analyze any subdivision plats or planned unit development plans submitted to it by the Town and respond to any request by the Town for information regarding the adequacy of its Facilities necessary to serve such proposed plat or plan and answer any other questions posed to the Company by the Town regarding said plat or plan as are within the knowledge of the Company. The Company shall respond to said requests or questions within reasonable time limits set by the Town's Subdivision Regulations. The Town will require the developers of such projects to meet all applicable provisions of the Company's Electric Service Tariffs, Rules and Regulations and other customary practices, as such may from time to time be amended.
- 5.6 Interrelationship of Laws, Rates, Regulations and Ordinances. The Company shall comply with all County, State or Federal laws and rules and regulations related to the subject matter hereof. The Company also agrees to abide by all ordinances and resolutions of the Town, unless and except to the extent that this Franchise Ordinance shall relieve the Company of the obligation to comply with the terms and conditions of such other ordinances or any other provisions hereof. The Company, from time to time, may promulgate such rules, regulations, terms and conditions governing the conduct of its business, including the use of electrical energy and the payment therefor, and the interference with, or alteration of, any of the Company's property upon the premises of its customers as shall be necessary to provide a safe, continuous and uninterrupted service to each and all of such customers and the proper measurement thereof and payment therefor. Any such rules, regulations, terms and conditions must not be inconsistent with this Franchise Ordinance, but no ordinance of the Town may regulate the Company's rates or charges for the furnishing of electrical energy, or shall lessen the safety of providing such energy to its customers, nor shall any such ordinance alter the manner in which service is extended to such customers.

ARTICLE 6

USE OF COMPANY FACILITIES

- 6.1 Use of Poles by Town. The Town shall have the right, without cost, to jointly use all poles and suitable overhead structures within the Service Area for the purpose of stringing wires thereon for any reasonable Town authorized use; which use shall not include generation, distribution or transmission of electricity. However, the Company shall assume no liability, or any additional expense, in connection therewith, and said use shall not interfere in any unreasonable manner with the Company's use of same, or the use thereof by the Company's permittees, licensees or other existing users of such Facilities. The Town is not authorized to assign its right to jointly use the Company's Facilities to any third party. The Company, in its sole discretion, may allow third parties to use its Facilities upon such terms and conditions as the Company deems appropriate.
- 6.2 Joint Use of Trenches. The Company, upon receiving a written request from the Town, shall permit the Town to install additional conduit in any trench excavated for the Company's Facilities, for the express purpose and use of the Town, provided such additional installation shall be in accordance with sound

engineering methods and safety regulations, and shall not interfere with or cause any conflict with the Company's Facilities, and shall not cause the Company additional installation expense or additional expense to maintain and repair its Facilities. The Town, at its expense, will pay all costs and expenses of such additional installation. The Town shall be responsible for ensuring that required vertical and horizontal separations between its facilities and that of the Company's are strictly maintained. The Town and Company shall jointly hold each other harmless from any liability or damage resulting from their respective facilities being installed in a joint trench.

ARTICLE 7

INDEMNIFICATION AND POLICE POWER

- 7.1 Mutual Hold Harmless. Each party, shall to the extent allowed by law, indemnify, defend and save the other party harmless from and against all liability or damage and all claims or demands whatsoever in nature arising out of the operations of the indemnifying party under the provisions of this Franchise, and the securing of, and the exercise of the Franchise rights granted in this ordinance and the indemnifying party shall pay all reasonable expenses arising therefrom. The indemnifying party will provide prompt written notice to the other party of the pendency of any claim or action against the indemnified party arising out of the exercise of the Franchise rights. The indemnifying party will be permitted, at its own expense, to appear and defend or to assist in defense of such claim. Notwithstanding any provision hereof to the contrary, the indemnifying party shall not be obligated to indemnify, defend or hold the other party harmless to the extent of any claim, demand, or lien arising out of, or in connection with, any negligent act or failure to act or the intentional misconduct by the indemnified party or any of its officers, employees or agents. The indemnified party's use of independent contractors shall not constitute an avoidance or defense to the indemnifying party's duties to defend and indemnify under this section. Each party shall maintain public liability insurance in an amount not less than \$1,000,000. Each party shall be a named additional insured on the other party's liability insurance.
- 7.2 Police Power Reserved. The right is hereby reserved to the Town to adopt from time to time, in addition to the provisions herein contained, such Ordinances as may be deemed necessary in the exercise of its police power, provided that such regulations shall be reasonable and not destructive of the rights herein granted, and not in conflict with the laws of the State of Colorado, or with orders of other authorities having jurisdiction in the premises.

ARTICLE 8

FRANCHISE FEE

- 8.1 Franchise Fee. As a further consideration for this Franchise, and accepted by the Town in lieu of all occupancy and license taxes and all other special taxes, assessments, fees, or excises upon the Facilities or other property of the Company, or other levies that might be imposed, either as a franchise tax, occupation tax, occupancy tax, license tax, permit charge, or for the inspection of the Facilities or other property of the Company, and charges which would

otherwise be chargeable to the Company, or otherwise, the Company shall pay to the Town a sum equal to three percent (3%) of its quarterly Revenues collected from the sale of electricity within the Service Area for electrical energy furnished for light, heat, power and other purposes. This three percent (3%) fee shall be surcharged to the Residents within the Service Area and is in addition to any charges specified in the Company's Electric Service Tariffs, Rules and Regulations and any applicable taxes. Payment of the franchise fee does not exempt the Company from payment of property or sales taxes which are not directly related to the franchise or the occupation of the Streets and Other Public Ways. Revenues received from Town facilities will not be assessed a three percent (3%) fee under this section nor will the Town be paid the three percent (3%) fee from such revenues collected from Town facilities.

- 8.2 Payment. Payment of the Franchise Fee shall be made by the Company to the Town on or before 30 days after the end of each quarter of each calendar year for the preceding three (3) month period, but shall be adjusted for the portions of the calendar quarters at the beginning and at the end of this Franchise. All payments shall be made to the Town Clerk.
- 8.3 Revenue Audit. For the purpose of ascertaining or auditing the correct amount to be paid under the provisions of this Article, the Company shall file with the Town Clerk, or such other official as shall be designated by the Town from time to time, a statement, in such reasonable form as the Town may require, showing the total gross receipts received by the Company from the sale of electricity to Residents within the Service Area for the preceding three (3) month period. The Town Clerk or any official appointed by the Council shall have limited access to the books of said Company for the sole purpose of confirming the quarterly Revenues received from operations within the Service Area. Such access is conditioned on the agreement of the Town not to disclose the information to any third party.
- 8.4 Correction of Underpayment/Overpayment. Should either the Company or Town discover either an underpayment or overpayment of the quarterly Franchise Fee, the party making such discovery shall inform the other party within a reasonable time. If the error is substantiated as an underpayment, the Company shall make payment of the deficiency within 30 days of the date the error was substantiated. If the error is substantiated as an overpayment, a credit equal to the overpayment will be applied to the next quarterly Franchise payment due the Town. If any dispute arises regarding underpayment/overpayment, Company and Town agree to submit the dispute to binding arbitration, with each party to bear their own costs.
- 8.5 Occupancy Tax Alternative. In the event said Franchise Fee levied herein should be declared invalid and or shall be set aside by a Court of competent jurisdiction, then, and in such event, and in lieu thereof, the Town may thereafter levy an occupancy tax upon the Company, not to exceed in any calendar year three percent (3%) of the Revenues collected from the sale of electricity within the Service Area for electrical energy furnished for light, heat, power, and other purposes for that calendar year. Such occupancy tax shall be adjusted for any Franchise Fees previously paid to the Town in such calendar year. In the event the Town shall enact such an occupancy tax, in lieu of the Franchise Fee, all of the remaining terms, conditions and provisions of this Ordinance shall remain in

full force and effect for the period stated herein. Such occupancy tax ordinance or enactment shall be designed to meet all legal requirements to ensure that it is not construed as an income tax.

- 8.6 Franchise Fee Payment in Lieu of Other Fees. As indicated in Section 8.1, above, the Franchise Fee paid by the Company is accepted by the Town in lieu of any occupancy tax, license tax, permit charge, inspection fee or similar tax on the privilege of doing business or in connection with the physical operation thereof, but does not exempt the Company from any lawful taxation upon its property or any other tax not related to the Franchise or the physical operation thereof and does not exempt the Company from payment of head taxes or other fees or taxes assessed generally upon business.
- 8.7 Payment of Expenses Incurred by Town in Relation to Ordinance. At the Town's option, the Company shall pay in advance or reimburse the Town for expenses incurred in publication of notices and ordinances arising out of the negotiations or process of obtaining this franchise.
- 8.8 Street Cut Permits. The Company will provide the Town with a Corporate Bond without Sureties each year to ensure it performs all conditions imposed by such permits. Upon request from the Town, the Company will furnish the Town with the Company's estimated cost of street repair.
- 8.9 Termination of Franchise. If this Franchise is terminated by either the Company or the Town for whatever reason, or is declared null and void, all Franchise Fees or occupancy taxes levied herein shall be suspended as of the date the Franchise is legally terminated. Final payment of any Franchise Fee or occupancy tax owed and due the Town shall be made on or before 30 days after the date the Franchise is legally terminated.

ARTICLE 9

REPORTING AND CHANGE IN FRANCHISE FEE

- 9.1 Reports. The Company shall submit reasonable and necessary reports containing, or based upon, information readily obtainable from the Company's books and records as the Town may request with respect to the operations of the Company under this Franchise, and shall, if requested, provide the Town with a list of real property within the Town which is owned by the Company.
- 9.2 Change of Franchise Fee. The Company shall, upon request from the Town, notify the Council of any changes in the Franchise Fee percentage made with other municipalities served by the Company under a franchise within the State of Colorado. If the Council decides the Franchise Fee percentage hereunder shall be changed, it shall provide for such change by Ordinance. However, any change in the Franchise Fee percentage shall then be surcharged by the Company to the Residents of the Town.
- 9.3 Change of Franchise Fee - Town Initiated. The Town expressly reserves the right to notify the Company of its desire to revise the Franchise Fee to a different percentage of revenue prior to October 1 of the even numbered years during the term of this franchise, which revised Franchise Fee shall become effective on the next succeeding January 1, following notification. Provided, however, that the maximum amount of the Franchise Fee shall be five percent (5%) of the gross Revenues collected within the Service Area. Notification to the consumer shall be given by the Town no less than thirty (30) days prior to January 1, the effective

date of the scheduled increase. All expenses associated with notification shall be paid entirely by the Town.

ARTICLE 10
ADMINISTRATION

- 10.1 Duration of Franchise. This Ordinance shall be in full force and effect from and after its passage as by law required and the conditions, terms, and provisions herein shall remain in full force and effect for a period of 10 years from and after such enactment.
- 10.2 Temporary Extension of Franchise. Prior to the expiration of this Franchise, should the parties desire to renew the terms and conditions of this Franchise or execute a new Franchise, but have not yet done so, the parties may temporarily extend the terms and conditions of this Franchise by written agreement for a period of not longer than 180 days from such date of expiration. During such extension, all provisions of the Franchise shall continue in effect as if the Franchise had not expired.
- 10.3 Amendments. At any time during the term of this Franchise, the Town through its Council, or the Company, may propose amendments to this Franchise by giving 30 days written notice to the other party of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, shall within a reasonable time, negotiate in good faith in an effort to agree upon a mutually satisfactory amendment(s). No amendment(s) to this Franchise shall be effective until mutually agreed upon by the Town and the Company and until all public notice requirements pursuant to Colorado statutes, and ordinance requirements of the Town, have been met. This section shall not apply to Franchise Fee changes under Article 9.
- 10.4 Revocation of Privileges by Condemnation. In the event, at any time during the term of this Franchise, the Town shall condemn any of the Facilities of the Company within the Service Area, and thereby revoke all or any part of the privilege and authority herein granted to the Company to serve the Residents of the Service Area, then and in such event the Town shall pay to the Company just compensation as provided by the laws of the State of Colorado for such rights and Facilities by reason of such condemnation.
- 10.5 Compliance Impaired. Both the Company and the Town recognize there may be circumstances whereby compliance with the provisions of this Franchise is impossible or is delayed because of circumstances beyond the Company's or Town's control. In those instances, the Company or Town shall use its best efforts to comply in a timely manner and to the extent possible.
- 10.6 Company's Failure to Perform. It is agreed that in case of the failure of the Company to perform and carry out any of the conditions, terms and provisions herein set forth in any substantial particular, wherein such failure is within the Company's control and with respect to which redress is not otherwise herein provided, the Town, acting through its Council, may, after hearing, determine such substantial failure; and, thereupon, after notice given the Company of such failure, the Company may have a reasonable time, not less than 90 days, unless otherwise agreed by parties, in which to remedy the conditions respecting which such notice shall have been given. After the expiration of such time and the

failure to correct such conditions, the Council shall determine whether any or all rights and privileges granted the Company under this ordinance shall be forfeited and may declare this Franchise null and void.

- 10.7 Ownership of Facilities. All Facilities used or placed by the Company either within or outside the Service Area shall be and remain the property of the Company.
- 10.8 Transfer of Rights. The Company shall not transfer or assign any rights under this Franchise to a third party, excepting only corporate reorganizations of the Company not including a third party, unless the Town shall approve in writing such transfer or assignment. Approval of the transfer or assignment shall not be unreasonably withheld.
- 10.9 Removal of Facilities. Upon the expiration of this Franchise, if thereafter the Company Facilities shall not be used for electric, telephone, or cable TV purposes for a period of 12 successive months, the Town shall have the option of having the Company remove such Facilities or claim such Facilities as its own. If the Town elects to have the Company remove the Facilities, it shall give written notice to the Company directing it to remove such Facilities, and the Company shall remove the same no later than 90 days after the date of such notice, unless the Company and the Town agree to a longer period within which removal shall occur. Any Facilities, either underground or overhead, remaining after such time that are not expressly claimed by the Town shall be deemed to have been abandoned. Any cost incurred by the Town in removing abandoned Facilities, and any liability associated with Facilities abandoned by the Company shall be the liability of the Company. For any Facilities claimed by the Town, any liability associated with such Facilities shall become the liability of the Town.
- 10.10 Non-renewal of Franchise (Alternative Electric Service). If this Franchise is not renewed, or if it is declared null and void, or the Company terminates any service provided for herein for any reason, and the Town has not provided for alternative electric service to the Residents of the Service Area, the Company shall not remove its Facilities and shall be obligated to continue electric service to the Residents until alternative electric service is provided. The Company will not withhold any temporary services necessary to protect the public.

ARTICLE 11

COMMUNITY ENHANCEMENT FUND

- 11.1 Purpose. The Company is committed to programs designed to make a difference in people's lives and the communities in which they reside. The Company will voluntarily make monetary resources available to the Town for such programs and/or activities. Programs for which such funds shall be spent shall be limited to (1) beautification projects, (2) energy conservation projects, (3) equipment and technology upgrades for schools, (4) scholarship funds, (5) acquisition of open space and/or park land and development thereof, (6) sponsorship of special community events and (7) undergrounding of overhead electric and other utility lines. Funds made available under this Article may be spent for other purposes only with the express written consent of the Company.
- 11.2 Payments to the Fund. The Company shall make annual payments to the fund equal to one percent (1%) of its prior year's Revenues, prorated for the portions of the months at the beginning and end of the term of this Franchise, collected

from the sale of electricity within the Service Area, or \$2,000, whichever amount is greater. Said payments shall be made into the fund no later than February 15th of the year subsequent to the year in which the gross revenues are received by the Company.

- 11.3 The Fund. The fund established by the Company shall be maintained in a bank account in the name of the Town, but shall be maintained separately from all other funds and accounts held by the Town.
- 11.4 Payments from the Fund. All payments from the fund shall be for projects described in Section 11.1 hereof. Prior to any such expenditure, authorization to withdraw from the fund shall be given by resolution or ordinance duly enacted by the Council, and such resolution or ordinance shall clearly describe the nature and purpose of the project for which the expenditure is made. Prior to any expenditure, the Town shall notify the Company of its intended use of the funds. Unless the Company objects, in writing, prior to such expenditure, the Company shall have waived its right to object in the future if the funds are expended for the use identified in the notice.
- 11.5 Audits. The Town may audit the Company's books for the limited purpose of determining the Revenues being collected within the Town at any reasonable time and with reasonable prior notice. The Company may audit the fund account, expenditures from the fund and resolutions and ordinances authorizing such expenditures at any reasonable time and with reasonable prior notice.
- 11.6 Forfeiture of Enhancement Funds. The Company shall have the express right to temporarily suspend or terminate in full its annual contributions to the Enhancement Fund if it is determined that funds allocated and paid to the Town are being, or have been, misappropriated, administered with bias or discrimination or for other inappropriate actions.
- 11.7 Advancement of Fund. The Company shall consider advances of funds, subject to the provisions of this section, for all projects that specifically involve undergrounding of overhead lines or projects acceptable to the Company which are related to the Company's existing Facilities. The Town shall make all reasonable attempts to plan and budget use of the Fund without advancement of future Funds. However, if the Town requests and the Company and the Town agree that it is in the mutual interest of both, the Company shall anticipate Fund amounts to be available for up to three (3) years in advance. Both parties shall enter into a special agreement concerning the advanced Funds. Any amounts advanced shall be credited against amounts to be expended in succeeding years until such advances are eliminated.
- 11.8 TABOR Compliance Issue. The Community Enhancement Fund described in this Article is a program that has been initiated solely by the Company. This Town has not made the program a requirement for granting of a franchise to the Company. Funding for this program is not a cost of doing business, but is a voluntary contribution by the Company and is intended to be and shall be considered to be a gift or grant within the meaning of Article X, Section 20, of the Constitution of the State of Colorado for purposes of determining compliance by the Town with such constitutional provisions.

ARTICLE 12

UNDERGROUNDING

- 12.1 At Consumer's Request. If a customer(s) within the Town should request that new Facilities be installed underground or for the conversion of existing overhead electrical facilities of the Company to underground facilities or if Town ordinances or resolutions require a customer(s) to install Company facilities underground, the Company shall proceed in accordance with its Electric Service Tariffs, Rules and Regulations or other customary practices, as each may from time to time be amended.
- 12.2 Town Requested Undergrounding. Except for the Company's contributions to the Community Enhancement Fund, which may be used by the Town to pay for the undergrounding of the Company's overhead electric facilities, any request, requirement imposed by resolution or ordinance, or other communication from the Town to the Company, asking, or requiring the Company to underground its new electrical facilities or its existing overhead electric facilities, or move, remove, or replace its existing underground electrical facilities, shall be responded to in accordance with the provisions of the Company's Electric Service Tariffs, Rules and Regulations or other customary practices, as such may from time to time be amended.
- 12.3 Relocation of Underground Facilities. No provision contained in this Article shall be construed to obligate the Company to pay for the removal and relocation of its underground electric facilities where such is at the request or demand of a person, or a public or private entity under circumstances which require the party requesting or demanding such to pay for the relocation under other provisions hereof or under the provisions of the Company's Electric Service Tariffs, Rules and Regulations or other customary practice in use by the Company, as such may be from time to time amended.
- 12.4 Governmental Mandates. This Franchise or the Town's Municipal Code, as either may be amended from time to time, shall not prohibit or limit the Company's right to enforce its collection of any cost increase caused by governmental mandate in accordance with the provisions of the Company's Electric Service Tariffs, Rules and Regulations, or other customary practices of the Company, as such may be from time to time amended.

ARTICLE 13

MISCELLANEOUS

- 13.1 Changes in Utility Regulation. In the event new legislation materially affects the terms and conditions of this Franchise Ordinance, the parties agree to renegotiate the affected terms and conditions in good faith as an amendment hereto. The parties hereto acknowledge that regulatory and legislative changes in the electric utility, gas utility and other energy industries are currently being discussed nationwide and statewide; that some changes in utility industry sectors have already been implemented; and that other changes may be made in the future, during the term of this Franchise. The parties agree, that insofar as future changes in the utility laws will allow, the Company shall always retain the right to bill customers for utility transportation services and energy sales within the Service Area if it is the provider of either the energy product or the transportation of such product. The parties agree that this will provide the most efficient and convenient utility service to the Residents of the Service Area and

provide assurance to the Town of franchise fee collection for each component charged for the sale and delivery of energy products within the Service Area.

13.2 Successors and Assigns. The rights, privileges, franchises and obligations granted and contained in this Ordinance shall inure to the benefit of and be binding upon the Company, its successors and assigns.

13.3 Representatives. Both parties shall designate from time to time in writing representatives to act as franchise agents for the Company and the Town. Such will be the persons to whom notices shall be sent regarding any action to be taken under this Ordinance. Notice shall be in writing and forwarded by certified mail or hand delivery to the persons and addresses as hereinafter stated, unless the persons and addresses are changed at the written request of either party. Until any such change shall hereafter be made, notices shall be sent to the Town Manager and to the Company's Chief Executive Officer. Currently the addresses for each are as follows:

Town:

Town Manager
Town of Minturn
P.O. Box 309
302 Pine Street
Minturn, CO 81645-0309

Company:

Chief Executive Officer
Holy Cross Energy
P.O. Box 2150
Glenwood Springs, CO 81602-2150

13.4 Severability. Should any one or more provisions of this Franchise be determined to be illegal or unenforceable, all other provisions nevertheless shall remain effective; provided, however, the parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft provisions that will achieve the original intent of stricken provisions.

13.5 Entire Agreement. This Franchise constitutes the entire agreement of the parties. There have been no representations made other than those contained in this Franchise.

ARTICLE 14

APPROVAL

14.1 Town Approval. This grant of Franchise shall not become effective until approved by the Town in accordance with its ordinances and the statutes of the State of Colorado.

14.2 Company Approval. The Company shall file with the Town Clerk its written acceptance of this Franchise and of all its terms and provisions within 15 business days after the final adoption of this Franchise by the Town. The acceptance shall be in the form and content approved by the Town Attorney. If the Company shall fail to timely file its written acceptance as herein provided, this Franchise shall become null and void.

INTRODUCED, TITLE READ IN FULL, APPROVED ON FIRST READING AND ORDERED PUBLISHED IN FULL THE 20th DAY OF JULY, 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 3rd DAY OF AUGUST, 2011, AT 7 P.M. IN THE MINTURN TOWN CENTER IN THE TOWN OF MINTURN, COLORADO.



Hawkeye Flaherty

Mayor

ATTEST:

[Signature]

Town Clerk

THE TOWN OF MINTURN, COLORADO, ORDAINS THIS ORDINANCE READ BY TITLE, ENACTED AND ORDERED PUBLISHED BY TITLE ONLY ON SECOND READING THIS 3rd DAY OF AUGUST, 2011.

Mayor

Attest:

Town Clerk

APPROVED AS TO FORM:

Town Attorney

Publication Dates:

HOLY CROSS ENERGY

Del Worley, Chief Executive Officer

Date

TOWN OF MINTURN ORDINANCE CHECKLIST

Ord 11-2011

FIRST READING

7/20/11 The ordinance shall be introduced and read by title at any regular or special meeting. Copies shall be available to the public.

7/25/11 *Publish date* 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.

_____ 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.

8/3/11 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

_____ 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.

_____ 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.

Ad Ticket #5

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

Name: Town of Minturn
Address: PO Box 309

City: Minturn
State: CO

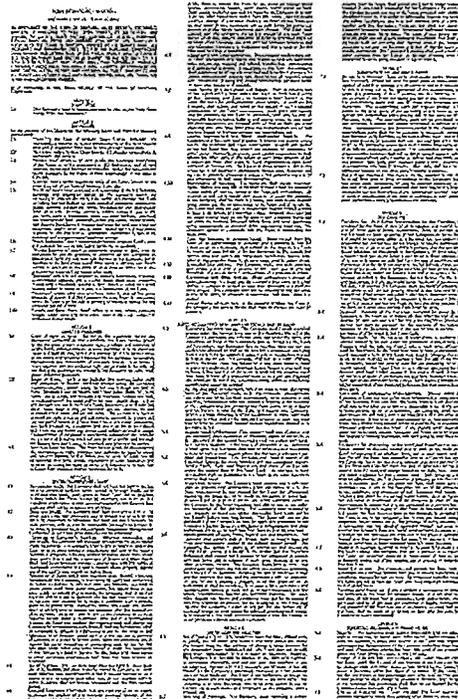
Zip: 81645-0309

Ad Name: 6804869D
Editions: 8VD/8VD//
Start: 07/25/11
Color:
Copyline: 6804869 1-2 Ordinance No 11-2011

Original Id: 0
Class: 0990
Stop: 07/25/11

Issue 1
Rep: Pam Schultz

Lines:	0
Depth:	15
Columns:	5
Discount:	0.00
Commission:	0.00
Net:	0.00
Tax:	0.00
Total	487.50
Payment	0.00



Ad shown is not actual print size

AN ORDINANCE OF THE TOWN OF MINTURN, EAGLE COUNTY, COLORADO, GRANTING A FRANCHISE TO HOLY CROSS ENERGY SERVICES, INC. AND ASSIGNS, TO LOCATE, BUILD, INSTALL, CONSTRUCT, ACQUIRE, PURCHASE, EXTEND, MAINTAIN, REPAIR AND OPERATE INTO, WITHIN AND THROUGH A PORTION OF THE TOWN OF MINTURN, DEFINED AS THE SERVICE AREA, ALL NECESSARY AND CONVENIENT FACILITIES FOR THE PURCHASE, GENERATION, TRANSMISSION AND DISTRIBUTION OF ELECTRICAL ENERGY AND TO FURNISH, SELL AND DISTRIBUTE SAID ELECTRICAL ENERGY TO THE RESIDENTS OF THE SERVICE AREA FOR LIGHT, HEAT, POWER AND OTHER PURPOSES BY MEANS OF CONDUITS, CABLES, POLES AND WIRES STRUNG THEREON, OR OTHERWISE ON, OVER, UNDER, ALONG, ACROSS AND THROUGH ALL PUBLIC EASEMENTS AND ALL STREETS AND OTHER PUBLIC WAYS IN SAID SERVICE AREA, AND FIXING THE TERMS AND CONDITIONS THEREOF.

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

ARTICLE 1
SHORT TITLE

1.1 This Ordinance shall be known and may be cited as the "Holy Cross Energy Franchise Ordinance."

ARTICLE 2
DEFINITIONS

For the purpose of this Ordinance, the following terms shall have the meaning given herein:

- 1.1 "Town" is the Town of Minturn, Eagle County, Colorado, the municipal corporation as is now constituted or as the same may be enlarged or expanded from time to time through annexation.
1.2 "Company" refers to Holy Cross Energy, a Colorado corporation, its successors and assigns.
1.3 "Service Area" refers to all land inside the municipal boundaries of the Town, as of the enactment of this Ordinance, and all land annexed within such boundaries hereafter, within the area ceded to the Company by the Public Utilities Commission of the State of Colorado.
1.4 "Council" refers to the legislative body of the Town, known as the Town Council of the Town of Minturn, Colorado.
1.5 "Facilities" refers to all overhead and underground electric facilities, buildings and structures owned by the Company which are necessary to provide electricity into, within and through the Town including, but not limited to, such essential apparatus, appliances, plants, systems, substations, works, transmission and distribution lines, structures, towers, cables, conduits, guy posts, guy wires, meters, microwave, communication facilities, overhead and underground lines, pedestals, poles, regulators, sectionalizers, switches, transformers, various pad mounted and pole mounted equipment, vaults, wires and all other related electrical equipment required for the distribution, generation, maintenance, operation, purchase and transmission of electrical energy.
1.6 "Public Easements" refers to easements created by general dedication and available for use by any public utility for its facilities.
1.7 "Private Easements" refers to easements created by deed, specific dedication to specific grantees or acquired by the Company by prescriptive right and available only for use by the Company for its facilities, or by the Company and other users or utilities specifically named as grantees in the deed of dedication or which have also acquired the easement by prescriptive right.
1.8 "Residents" refers to and includes all persons, businesses, industry, governmental agencies and any other entity whatsoever, presently maintaining a residence, business, farm, ranch or other enterprise located within, in whole or in part, the boundaries of the Town.
1.9 "Revenues", unless otherwise specified, refers to and are the gross amounts of money that the Company receives from its customers within the Town from the sale or delivery of electrical energy for any particular period of time.
1.10 "Streets and Other Public Ways" refers to streets, alleys, viaducts, bridges, roads, lanes and other public ways in the Town, subject to limitations stated herein.

ARTICLE 3
GRANT OF FRANCHISE

- 3.1 Grant of Right to Serve. Subject to the conditions, terms and provisions contained in this Franchise, the Town hereby grants to the Company a non-exclusive right, privilege and authority to locate, build, install, construct, acquire, purchase, extend, maintain, repair and operate into, within and through all of the Service Area, all necessary and convenient facilities for the purchase, generation, transmission and distribution of electrical energy. Such grant is made together with the exclusive right, privilege and authority to furnish, sell and distribute said electrical energy to the Residents for light, heat, power and other purposes.
3.2 Scope of Grant. Such grant includes the non-exclusive right and obligation to furnish electrical energy using the Company's facilities on, over, under, along, across and through any and all Public Easements and all Streets and Other Public Ways, on, over, under, along, across and through any extension, connection with, or continuation of, the same and/or on, over, under, along, across and through any and all such Public Easements, Streets and Other Public Ways as may hereafter be laid out, opened, located or constructed within the Service Area. The Company is further granted the right, privilege and authority to excavate in, occupy and use any and all Streets and Other Public Ways and Public Easements. Any such excavation, occupation and use must be in accordance with Town standards and regulations, and will be undertaken under the supervision of the properly constituted authority of the Town for the purpose of bringing electrical energy into, within and through the Service Area and supplying electrical energy to the Residents.
3.3 Service to Town Facilities. The Town hereby grants to the Company the non-exclusive right, privilege and authority to provide street and security lighting to the Town, and to serve all Town owned or operated structures, plants, equipment or Town apparatus and facilities, including the right, privilege and authority to furnish, sell and distribute electrical energy necessary for such.

ARTICLE 4
SPECIFIC ELEMENTS OF GRANT

- 4.1 Recreational Areas. The Company shall not have the right to locate, build or construct facilities under, across or through public parks or recreational areas, open space or other Town owned property located within the Town except as expressly set forth in this franchise or with prior written approval granted by the Council. Said approval shall not be unreasonably withheld.
4.2 Trees and Shrubs. The Company shall have the right to trim or cut down such trees and shrubbery and to control the growth of the same by machinery or otherwise but shall not use chemicals for such purpose, only as may be reasonably necessary to protect the facilities as provided for in the Company "Vegetation Management Guidelines" as such may from time to time be amended.
4.3 Location of Company's Facilities. Wherever reasonable and practicable, the Company will endeavor to install its facilities within Public Easements. The Company shall locate its facilities within the Town so as to cause minimum interference with any of the Town's facilities or property, including without limitation water lines, sewer lines, storm drains and the proper use of Streets and Other Public Ways, and so as to cause minimum interference with the rights or reasonable convenience of property owners whose property adjoins any of the said Streets and Other Public Ways.
4.4 Restoration of Public and Private Improvements. Should it become necessary for the Company, in exercising its rights and performing its duties hereunder, to interfere with any sidewalk, graveled or paved street, road, alley, water line, sewer line, storm drain or other public or private improvement, the Company shall at its own expense and in a quality workmanlike manner, repair or cause to be repaired and restored to its original condition such sidewalks, graveled or paved street, road, alley, water line, sewer line, storm drain or other public or private improvement after the installation of its facilities. However, upon failure of the Company to do such required repairs within a reasonable time and in a workmanlike manner, the Town may perform the repairs and the Company shall be liable for all reasonable costs thereof. Nothing hereinabove shall be construed to obligate the Company to pay for the removal and relocation of its facilities where such is at the request or demand of a person, or a public or private entity under circumstances which require the party requesting or demanding such to pay for the relocation under other provisions hereof or under the provisions of the Company's Electric Service Tariffs, Rules and Regulations, or other customary practices, as such may from time to time be amended.
4.5 Use of Facilities. The Company shall have the right to make such use of its facilities and other property owned by Company, for uses other than the uses contemplated in this Franchise Ordinance, as it deems proper so long as such other uses do not interfere with its ability to supply electrical energy, consistent with the then current zoning.
4.6 Changed Conditions (Overhead). If at any time it shall be necessary to change the position of any overhead electrical facilities of the Company located within Public Easements or Streets and Other

public easements, the Company shall give notice to the Town of any such installation and shall be in accordance with the engineering methods and safety regulations, and shall not interfere with or cause any conflict with the Company's facilities, and shall not cause the Company additional installation expense or additional expense to maintain and repair its facilities. The Town, at its expense, will pay all costs and expenses of such additional installation. The Town shall be responsible for ensuring that required vertical and horizontal separations between its facilities and that of the Company's are strictly maintained. The Town and Company shall jointly hold each other harmless from any liability or damage resulting from their respective facilities being installed in a joint trench.

7.1 Compliance with Town Ordinances. The Company shall comply with all Town ordinances and regulations relating to overhead electric facilities, excavating, digging and related construction, maintenance and operational activities. If requested by the Town, the Company shall submit copies of reports of annual and long-term planning for capital improvement projects with descriptions of required streets, excavations, digging and related construction activities within 30 days after issuance of request.

7.2 Town Review of Construction and Design. Prior to construction of any significant Facilities within the Town, as determined jointly by the Company and the Town, the Company shall submit to the Town the plans for such proposed construction. In addition, the Company shall assess and report on the impact of such proposed construction on the Town environment. Such plans and reports may be reviewed by the Town to ascertain, inter alia, (1) that all applicable existing zoning codes and other applicable environmental pollution regulations are complied with, (2) that aesthetic and good planning principles have been given due consideration and (3) that adverse impact on the environment has been minimized.

7.3 Capital Improvement and Major Development Projects. The Company and the Town shall endeavor to inform one another of any capital improvement and major development projects anticipated within the Town that may impact the facilities or operations of either party. The party proposing such capital improvements shall inform the other party of such projects in writing, and shall allow a reasonable time after plans for such improvements have been substantially formulated. Each party shall cooperate in the timely exchange of all necessary information, design data, drawings and reports to properly assess and evaluate the potential impacts of said improvements and major developments.

7.4 Maintenance of Facilities. The Company shall install, maintain, repair, replace and upgrade its facilities to ensure both the adequacy of and quality of electric service to the Town and all Residents. All excavation and construction work within the Town shall be done in a timely and expeditious manner which minimizes the inconvenience to the Town and all Residents. The Town shall have the right to inspect any portion of the facilities located in the Streets or Other Public Ways. However, the Town will not require construction of the facilities in such a manner that would not meet the National Electrical Safety Code and other governing utility requirements or standard utility engineering practices. The Company agrees to cooperate with the Town in conducting the inspection.

7.5 Town Not Required to Advance Funds. Upon receipt from the Town of an authorization to proceed and a promise to pay for construction, the Company shall extend its facilities to the Town for municipal use or any municipal facility outside the Service Area and within the Company's certificated service area without requiring the Town to advance funds prior to construction.

7.6 Scheduled Interruptions. The Company shall, whenever possible, give notice, either oral or written, to the Town and its affected Residents, of planned service interruptions. In addition, the Company shall cooperate with other utilities. When undertaking a project of undergrounding, the Town and the Company shall work with other utilities or companies to have all lines undergrounded as part of the same project. The Company shall not be required to pay the costs of any other utility or company in connection with work under this section.

7.7 Annual Review of Franchise. At the request of either the Town or the Company, the parties hereto shall meet to discuss any topic of concern.

ARTICLE 5
RATES, REGULATIONS, UNIFORMITY OF SERVICE AND UPGRADES

5.1 Furnishing Electrical Energy. The Company shall furnish electrical energy to the Service Area, and shall be subject to all of the terms and conditions set forth in the Company's Electric Service Tariffs, Rules and Regulations, and Consumer Service Facilities Metering and Use Guidebook adopted by and on file with the Company, as such may from time to time be amended, subject to the following, insofar as it is provided by law. The Company shall not, as to rates, charges, service, facilities, rules, regulations or in any other respect, make or grant any preference or advantage to any Resident, provided that nothing in this grant shall be taken to prohibit the Company from time to time of a graduated scale of charges and classified rate schedules to which any customer coming within an established classification would be entitled.

5.2 Facility Upgrades. The Company will, from time to time, during the term of this Franchise make such improvements, alterations and extensions of its facilities incorporating, when reasonable and practical, technological advances within the industry as the business of the Company and the growth of the Town justify, in accordance with its Electric Service Tariffs, Rules and Regulations, Consumer Service Facilities Metering and Use Guidebook, or other customary practices in effect and on file with the Company, as such may from time to time be amended, subject only to regulations thereof as is provided by law.

5.3 Reliable Supply of Electricity. The Company shall take all reasonable and necessary steps to provide an adequate supply of electricity to its customers at the lowest reasonable cost consistent with long-term reliable supplies. If the supply of electricity to its customers is interrupted, the Company shall take all necessary and reasonable actions to restore such supply within the shortest practicable time.

5.4 Maps and Regulations. The Company shall, submit copies of its Consumer Service Facilities Metering and Use Guidebook, Electric Service Tariffs, Rules and Regulations, and maps of its Facilities within the Service Area, to the Town Clerk. All changes to such information shall be submitted to the Town as the same may from time to time occur.

5.5 Subdivision Review. The Company shall analyze any subdivision plats or planned unit development plans submitted to it by the Town and any response to such information by the Town for information regarding the adequacy of its facilities necessary to serve such proposed plat or plan and answer any other questions posed to the Company by the Town regarding said plat or plan as are within the knowledge of the Company. The Company shall respond to said requests or questions in writing within the shortest practicable time. The Town's Subdivision Regulations. The Town will require the developers of such projects to meet all applicable provisions of the Company's Electric Service Tariffs, Rules and Regulations and other customary practices, as such may from time to time be amended, in interrelationship of laws, Rates, Regulations and Ordinances. The Company shall comply with all County, State or Federal laws and rules and regulations related to the subject matter hereof. The Company also agrees to abide by all ordinances and resolutions of the Town, unless and except to the extent that this Franchise Ordinance shall relieve the Company of the obligation to comply with the terms and conditions of such other ordinances or any other provisions hereof. The Company, from time to time, may promulgate such rules, regulations, terms and conditions governing the conduct of its business, including the use of electrical energy and the payment therefor, and the interference with, or alteration of, any of the Company's property upon the premises of its customers as shall be necessary to provide a safe, continuous and uninterrupted service to its customers. Such rules, regulations, terms and conditions must not be inconsistent with this Franchise Ordinance, but no ordinance of the Town may regulate the Company's rates or charges for the furnishing of electrical energy or shall lessen the safety of providing such energy to its customers, nor shall any such ordinance alter the manner in which service is extended to such customers.

5.6 Payment of Expenses Incurred by Town in Relation to Ordinance. At the Town's option, the Company shall pay in advance or reimburse the Town for expenses incurred in publication of notices and ordinances arising out of the negotiations or process of obtaining this franchise.

5.7 Franchise Fee Payment in Lieu of Other Fees. As indicated in Section 8.1, above, the Company shall pay to the Town in lieu of any occupancy tax, license tax, permit charge, inspection fee or similar tax on the privilege of doing business or in connection with the physical operation thereof, but does not exempt the Company from any lawful taxation upon its property or any other tax not related to the Franchise or the physical operation thereof and does not exempt the Company from payment of head taxes or other fees or taxes assessed generally upon business.

5.8 Street Light Permits. The Company will provide the Town with a Corporate Bond without Sureties each year to ensure it performs all conditions imposed by such permits. Upon request from the Town, the Company will furnish the Town with the Company's estimated cost of street repair.

5.9 Termination of Franchise. If this Franchise is terminated by either the Company or the Town for whatever reason, or is declared null and void, all Franchise Fees or occupancy taxes levied hereunder shall be suspended as of the date the Franchise is legally terminated. The Company's rates and charges for the use of electrical energy shall be as if the Town shall be made on or before 30 days after the date the Franchise is legally terminated.

ARTICLE 6
USE OF COMPANY FACILITIES

- 6.1 Use of Poles by Town. The Town shall have the right, without cost, to jointly use all poles and suitable overhead structures within the Service Area for the purpose of stringing wires thereon for any reasonable Town authorized use; which use shall not include generation, distribution or transmission of electricity. However, the Company shall assume no liability, or any additional expense, in connection therewith, and said use shall not interfere in any manner with the Company's facilities or the use of electrical energy thereof by the Company's permittees, licensees or other existing users of such facilities. The Town is not authorized to assign its right to jointly use the Company's facilities to any third party. The Company, in its sole discretion, may allow third parties to use its facilities upon such terms and conditions as the Company deems appropriate.
6.2 Joint Use of Trenches. The Company, upon receiving a written

request, shall be in accordance with the engineering methods and safety regulations, and shall not interfere with or cause any conflict with the Company's facilities, and shall not cause the Company additional installation expense or additional expense to maintain and repair its facilities. The Town, at its expense, will pay all costs and expenses of such additional installation. The Town shall be responsible for ensuring that required vertical and horizontal separations between its facilities and that of the Company's are strictly maintained. The Town and Company shall jointly hold each other harmless from any liability or damage resulting from their respective facilities being installed in a joint trench.

ARTICLE 7
INDEMNIFICATION AND POLICE POWER

7.1 Mutual Hold Harmless. Each party shall, to the extent allowed by law, indemnify, defend and save the other party harmless from and against all liability or damage and all claims or demands whatsoever in nature arising out of the operations of the indemnifying party under the provisions of this Franchise, and the securing of, and the coverage of, the franchise rights granted hereunder. In addition, the indemnifying party shall pay all reasonable expenses arising therefrom. The indemnifying party will provide prompt written notice to the other party of the pendency of any claim or action against the indemnified party arising out of the exercise of the Franchise rights. The indemnifying party shall be permitted, at its own expense, to appear and defend or to assist in defense of such claim. Notwithstanding any provision hereof to the contrary, the indemnifying party shall not be obligated to indemnify, defend or hold the other party harmless to the extent of any claim, demand, lien arising out of, or in connection with, any negligent act or failure to act or the intentional misconduct by the indemnified party or any of its officers, employees or agents. The indemnified party's use of independent contractors shall not constitute an avoidance or defense to the indemnifying party's duties to defend and indemnify under this section. Each party shall maintain public liability insurance in an amount not less than \$1,000,000. Each party shall be a named additional insured on the other party's liability insurance.
7.2 Police Power Reserved. The rights herein granted to the Town to act from time to time, in addition to the provisions herein contained, such Ordinances as may be deemed necessary in the exercise of its police power, provided that such regulations shall be reasonable and not destructive of the rights herein granted, and not in conflict with the laws of the State of Colorado, or with orders of other authorities having jurisdiction in the premises.

ARTICLE 8
FRANCHISE FEE

8.1 Franchise Fee. As a further consideration for this Franchise, and accepted by the Town in lieu of all occupancy and license taxes and all other special taxes, assessments, fees, or excises upon the facilities and other property of the Company, or otherwise, the fees that might be imposed, either as a franchise tax, occupancy tax, occupancy tax, license tax, permit charge, or for the inspection of the facilities or other property of the Company, and charges which would otherwise be chargeable to the Company, or otherwise, the Company shall pay to the Town three percent (3%) of its quarterly revenues collected from the sale of electricity within the Service Area for electrical energy furnished for light, heat, power and other purposes. This three percent (3%) fee shall be surcharged to the Residents within the Service Area and in addition to any charges specified in the Company's Electric Service Tariffs, Rules and Regulations and any applicable taxes. Payment of the franchise fee does not exempt the Company from payment of property or sales taxes which are not directly related to the franchise or the occupation of the Streets and Other Public Ways. The revenues from Town facilities will not be assessed a three percent (3%) fee under this section nor will the Town be paid the three percent (3%) fee from such revenues collected from Town facilities.

8.2 Payment. Payment of the Franchise Fee shall be made by the Company to the Town on or before 30 days after the end of each quarter of each calendar year for the preceding three (3) month period, but shall be adjusted for the portions of the calendar quarters at the beginning and at the end of this Franchise. All payments shall be made to the Town Clerk.

8.3 Revenue Audit. For the purpose of ascertaining or auditing the correct amount to be paid under the provisions of this Article, the Company shall file with the Town Clerk, or such other official as shall be designated by the Town from time to time, a statement, in which shall be set forth as the Town may require, a true and correct copy of the gross receipts received by the Company from the sale of electricity to Residents within the Service Area for the preceding three (3) month period. The Town Clerk or any official appointed by the Town shall have limited access to the books and records of the Company for the sole purpose of confirming the quarterly revenues received from operations within the Service Area. Such access is conditioned on the agreement of the Town not to disclose the information to any third party.

8.4 Correction of Underpayment/Overpayment. Should either the Company or Town discover either an underpayment or overpayment of the quarterly Franchise Fee, the party making such discovery shall inform the other party within a reasonable time. If the error is substantiated as an underpayment, the Company shall make payment of the deficiency within 30 days of the date the error was substantiated. If the error is substantiated as an overpayment, a credit equal to the overpayment will be applied to the next quarterly Franchise payment due to the Town. If any dispute arises regarding underpayment/overpayment, the Company and Town agree to submit the dispute to binding arbitration, with each party to bear their own costs.

8.5 Occupancy Tax Alternative. In the event said Franchise Fee levied hereunder should be declared invalid and or shall be set aside by a Court of competent jurisdiction, then and in such event, and in lieu thereof, the Town may thereafter levy an occupancy tax upon the Company, not to exceed in any calendar year three percent (3%) of the Revenues collected from the sale of electricity within the Service Area for electrical energy furnished for light, heat, power, and other purposes for that calendar year. Such occupancy tax shall be adjusted for any Franchise Fees previously paid to the Town in such calendar year. In the event the Town shall enact such an occupancy tax, in lieu of the Franchise Fee, all of the remaining terms, conditions and provisions of this Ordinance shall remain in full force and effect for the period stated herein. Such occupancy tax ordinance or enactment shall be designed to meet all legal requirements to ensure that it is not construed as an income tax.

8.6 Franchise Fee Payment in Lieu of Other Fees. As indicated in Section 8.1, above, the Company shall pay to the Town in lieu of any occupancy tax, license tax, permit charge, inspection fee or similar tax on the privilege of doing business or in connection with the physical operation thereof, but does not exempt the Company from any lawful taxation upon its property or any other tax not related to the Franchise or the physical operation thereof and does not exempt the Company from payment of head taxes or other fees or taxes assessed generally upon business.

8.7 Payment of Expenses Incurred by Town in Relation to Ordinance. At the Town's option, the Company shall pay in advance or reimburse the Town for expenses incurred in publication of notices and ordinances arising out of the negotiations or process of obtaining this franchise.

8.8 Street Light Permits. The Company will provide the Town with a Corporate Bond without Sureties each year to ensure it performs all conditions imposed by such permits. Upon request from the Town, the Company will furnish the Town with the Company's estimated cost of street repair.

8.9 Termination of Franchise. If this Franchise is terminated by either the Company or the Town for whatever reason, or is declared null and void, all Franchise Fees or occupancy taxes levied hereunder shall be suspended as of the date the Franchise is legally terminated. The Company's rates and charges for the use of electrical energy shall be as if the Town shall be made on or before 30 days after the date the Franchise is legally terminated.

ARTICLE 9
REPORTING AND CHANGE IN FRANCHISE FEE

- 9.1 Reports. The Company shall submit reasonable and necessary reports containing, or based upon, information readily obtainable from the Company's books and records as the Town may request in respect to the operations of the Company under this Franchise, and shall, if requested, provide the Town with a list of real property within the Town which is owned by the Company.
9.2 Change of Franchise Fee. The Company shall, upon request from the Town, notify the Council of any changes in the Franchise Fee percentage made with other rates and charges approved by the Town under a franchise within the State of Colorado. If the Council decides the Franchise Fee percentage hereunder shall be changed, it shall provide for such change by Ordinance. However, any change in the Franchise Fee percentage shall then be surcharged by the Company to the users of the Town.
9.3 Change of Franchise Fee - Town Initiated. The Town expressly reserves the right to notify the Company of its desire to revise the

Franchise Fee to a different percentage of revenue prior to October 1 of the even numbered years during the term of this franchise, which revised Franchise Fee shall become effective on the next succeeding January 1, following notification. Provided, however, that the maximum amount of the Franchise Fee shall be One percent (5%) of the gross Revenues collected within the Service Area. Notification to the consumer shall be given by the Town no less than thirty (30) days prior to January 1, the effective date of the scheduled increase. All expenses associated with notification shall be paid entirely by the Town.

**ARTICLE 10
ADMINISTRATION**

10.1 **Duration of Franchise:** This Ordinance shall be in full force and effect from and after its passage as by law required and the conditions, terms, and provisions herein shall remain in full force and effect for a period of 10 years from and after such enactment.

10.2 **Temporary Extension of Franchise:** Prior to the expiration of this Franchise, should the parties desire to renew the terms and conditions of this Franchise or execute a new Franchise, but have not yet done so, the parties may temporarily extend the terms and conditions of this Franchise by written agreement for a period of not longer than 180 days from such date of expiration. During such extension, all provisions of the Franchise shall continue in effect as if the Franchise had not expired.

10.3 **Amendments:** At any time during the term of this Franchise, the Town through its Council, or the Company, may propose amendments to this Franchise by giving 30 days written notice to the other party of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, shall within a reasonable time, negotiate in good faith in an effort to agree upon a mutually satisfactory amendment(s). No amendment(s) to this Franchise shall be effective until mutually agreed upon by the Town and the Company and until all public notice requirements pursuant to Colorado statutes, and ordinance requirements of the Town, have been met. This section shall not apply to Franchise Fee changes under Article 9.

10.4 **Revocation of Privileges by Condemnation:** In the event, at any time during the term of this Franchise, the Town shall condemn any of the Facilities of the Company within the Service Area, and thereby revoke all or any part of the privilege and authority herein granted to the Company to serve the Residents of the Service Area, then and in such event the Town shall pay to the Company just compensation as provided by the laws of the State of Colorado for such rights and Facilities by reason of such condemnation.

10.5 **Compliance Impaired:** Both the Company and the Town recognize there may be circumstances whereby compliance with the provisions of this Franchise is impossible or is delayed because of circumstances beyond the Company's or Town's control. In those instances, the Company or Town shall use its best efforts to comply in a timely manner and to the extent possible.

10.6 **Company's Failure to Perform:** It is agreed that in case of the failure of the Company to perform and carry out any of the conditions, terms and provisions herein set forth in any substantial particular, wherein such failure is within the Company's control and with respect to which redress is not otherwise herein provided, the Town, acting through its Council, may, after hearing, determine such substantial failure; and, thereupon, after notice given the Company of such failure, the Company may have a reasonable time, not less than 90 days, unless otherwise agreed by parties, in which to remedy the conditions respecting which such notice shall have been given. After the expiration of such time and the failure to correct such conditions, the Council shall determine whether any or all rights and privileges granted the Company under this ordinance shall be forfeited and may declare this Franchise null and void.

10.7 **Ownership of Facilities:** All Facilities used or placed by the Company either within or outside the Service Area shall be and remain the property of the Company.

10.8 **Transfer of Rights:** The Company shall not transfer or assign any rights under this Franchise to a third party, excepting only corporate reorganizations of the Company not including a third party, unless the Town shall approve in writing such transfer or assignment. Approval of the transfer or assignment shall not be unreasonably withheld.

10.9 **Removal of Facilities:** Upon the expiration of this Franchise, if thereafter the Company Facilities shall not be used for electric, telephone, or cable TV purposes for a period of 12 successive months, the Town shall have the option of having the Company remove such Facilities or claim such Facilities as its own. If the Town elects to have the Company remove the Facilities, it shall give written notice to the Company directing it to remove such Facilities, and the Company shall remove the same no later than 90 days after the date of such notice, unless the Company and the Town agree to a longer period within which removal shall occur. Any Facilities, either underground or overhead, remaining after such time that are not expressly claimed by the Town shall be deemed to have been abandoned. Any cost incurred by the Town in removing abandoned Facilities, and any liability associated with Facilities abandoned by the Company shall be the liability of the Company. For any Facilities claimed by the Town, any liability associated with such Facilities shall become the liability of the Town.

10.10 **Non-renewal of Franchise (Alternative Electric Service):** If this Franchise is not renewed, or if it is declared null and void, or the Company terminates any service provided for herein for any reason, and the Town has not provided for alternative electric service to the Residents of the Service Area, the Company shall not remove its Facilities and shall be obligated to continue electric service to the Residents until alternative electric service is provided. The Company will not withhold any temporary services necessary to protect the public.

**ARTICLE 11
COMMUNITY ENHANCEMENT FUND**

11.1 **Purpose:** The Company is committed to programs designed to make a difference in people's lives and the communities in which they reside. The Company will voluntarily make monetary resources available to the Town for such programs and/or activities. Programs for which such funds shall be spent shall be limited to (1) beautification projects, (2) energy conservation projects, (3) equipment and technology upgrades for schools, (4) scholarship funds, (5) acquisition of open space and/or park land and development thereof, (6) sponsorship of special community events and (7) undergrounding of overhead electric and other utility lines.

Funds made available under this Article may be spent for other purposes only with the express written consent of the Company.

11.2 **Payments to the Fund:** The Company shall make annual payments to the fund equal to one percent (1%) of its prior year's Revenues, prorated for the portions of the months at the beginning and end of the term of this Franchise, collected from the sale of electricity within the Service Area, or \$2,000, whichever amount is greater. Said payments shall be made into the fund no later than February 15th of the year subsequent to the year in which the gross revenues are received by the Company.

11.3 **The Fund:** The fund established by the Company shall be maintained in a bank account in the name of the Town, but shall be maintained separately from all other funds and accounts held by the Town.

11.4 **Payments from the Fund:** All payments from the fund shall be for projects described in Section 11.1 hereof. Prior to any such expenditure, authorization to withdraw from the fund shall be given by resolution or ordinance duly enacted by the Council, and such resolution or ordinance shall clearly describe the nature and purpose of the project for which the expenditure is made. Prior to any expenditure, the Town shall notify the Company of its intended use of the funds. Unless the Company objects, in writing, prior to such expenditure, the Company shall have waived its right to object in the future if the funds are expended for the use intended in the notice.

11.5 **Audits:** The Town may audit the Company's books for the limited purpose of determining the Revenues being collected within the Town at any reasonable time and with reasonable prior notice. The Company may audit the fund account, expenditures from the fund and resolutions and ordinances authorizing such expenditures at any reasonable time and with reasonable prior notice.

11.6 **Forfeiture of Enhancement Funds:** The Company shall have the express right to temporarily suspend or terminate in full its annual contributions to the Enhancement Fund if it is determined that funds allocated and paid to the Town are being, or have been, misappropriated, administered with bias or discrimination or for other inappropriate actions.

11.7 **Advancement of Fund:** The Company shall consider advances of funds, subject to the provisions of this section, for all projects that specifically involve undergrounding of overhead lines or projects acceptable to the Company which are related to the Company's existing Facilities. The Town shall make all reasonable attempts to plan and budget use of the Fund without advancement of future funds. However, if the Town requests and the Company and the Town agree that it is in the mutual interest of both, the Company shall anticipate Fund amounts to be available for up to three (3) years in advance. Both parties shall enter into a special agreement concerning the advanced funds. Any amounts advanced shall be credited against amounts to be expended in succeeding years until such advances are eliminated.

11.8 **TABOR Compliance Issue:** The Community Enhancement Fund described in this Article is a program that has been initiated solely by the Company. This Town has not made the program a requirement for granting of a franchise to the Company. Funding for this program is not a cost of doing business, but is a voluntary contribution by the Company and is intended to be and shall be considered to be a gift or grant within the meaning of Article X, Section 20, of the Constitution of the State of Colorado for purposes of determining compliance by the Town with such constitutional provisions.

**ARTICLE 12
UNDERGROUNDING**

12.1 **At Consumer's Request:** If a customer(s) within the Town should request that new facilities be installed underground or for the conversion of existing overhead electrical facilities of the Company to underground facilities or if Town ordinances or resolutions require a customer(s) to install Company facilities underground, the Company shall proceed in accordance with its Electric Service Tariffs, Rules and Regulations or other customary practices, as each may from time to time be amended.

12.2 **Town Requested Undergrounding:** Except for the Company's contributions to the Community Enhancement Fund, which may be used by the Town to pay for the undergrounding of the Company's overhead electric facilities, any request, requirement imposed by resolution or ordinance, or other communication from the Town to the Company, asking, or requiring the Company to underground its new electrical facilities or its existing overhead electrical facilities, or move, remove, or replace its existing underground electrical facilities, shall be responded to in accordance with the provisions of the Company's Electric Service Tariffs, Rules and Regulations or other customary practices, as such may from time to time be amended.

12.3 **Relocation of Underground Facilities:** No provision contained in this Article shall be construed to obligate the Company to pay for the removal and relocation of its underground electrical facilities where such is at the request or demand of a person, or a public or private entity under circumstances which require the party requesting or demanding such to pay for the relocation under other provisions hereof or under the provisions of the Company's Electric Service Tariffs, Rules and Regulations or other customary practice in use by the Company, as such may be from time to time amended.

12.4 **Governmental Mandates:** This Franchise or the Town's Municipal Code, as either may be amended from time to time, shall not prohibit or limit the Company's right to enforce its collection of any cost increase caused by governmental mandate in accordance with the provisions of the Company's Electric Service Tariffs, Rules and Regulations, or other customary practices of the Company, as such may be from time to time amended.

**ARTICLE 13
MISCELLANEOUS**

13.1 **Changes in Utility Regulation:** In the event new legislation materially affects the terms and conditions of this Franchise Ordinance, the parties agree to renegotiate the affected terms and conditions in good faith as an amendment hereto. The parties hereto acknowledge that regulatory and legislative changes in the electric utility, gas utility and other energy industries are currently being discussed nationwide and statewide; that some changes in utility industry sectors have already been implemented; and that other changes may be made in the future, during the term of this Franchise. The parties agree, that insofar as future changes in the utility laws will allow, the Company shall always retain the right to bill customers for utility transportation services and energy sales within the Service Area if it is the provider of either the energy

product or the transportation of such product. The parties agree that this will provide the most efficient and convenient utility service to the Residents of the Service Area and provide assurance to the Town of franchise fee collection for each component charged for the sale and delivery of energy products within the Service Area.

13.2 **Successors and Assigns:** The rights, privileges, franchises and obligations granted and contained in this Ordinance shall inure to the benefit of and be binding upon the Company, its successors and assigns.

13.3 **Representatives:** Both parties shall designate from time to time in writing representatives to act as franchise agents for the Company and the Town. Such will be the persons to whom notices shall be sent regarding any action to be taken under this Ordinance. Notice shall be in writing and forwarded by certified mail or hand delivery to the persons and addresses as hereinafter stated, unless the persons and addresses are changed at the written request of either party. Until any such change shall hereafter be made, notices shall be sent to the Town Manager and to the Company's Chief Executive Officer. Currently the addresses for each are as follows:

Town:
Town Manager
Town of Minturn
P.O. Box 309
302 Pine Street
Minturn, CO

81645-0309

Company:
Chief Executive
Holy Cross
P.O. Box 2150
Glenwood
Springs, CO 81602-2150

13.4 **Severability:** Should any one or more provisions of this Franchise be determined to be illegal or unenforceable, all other provisions nevertheless shall remain effective; provided, however, the parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft provisions that will achieve the original intent of stricken provisions.

13.5 **Entire Agreement:** This Franchise constitutes the entire agreement of the parties. There have been no representations made other than those contained in this Franchise.

**ARTICLE 14
APPROVAL**

14.1 **Town Approval:** This grant of Franchise shall not become effective until approved by the Town in accordance with its ordinances and the statutes of the State of Colorado.

14.2 **Company Approval:** The Company shall file with the Town Clerk its written acceptance of this Franchise and of all its terms and provisions within 15 business days after the final adoption of this Franchise by the Town. The acceptance shall be in the form and content approved by the Town Attorney. If the Company shall fail to timely file its written acceptance as herein provided, this Franchise shall become null and void.

INTRODUCED, TITLE READ IN FULL, APPROVED ON FIRST READING AND ORDERED PUBLISHED IN FULL THE 20th DAY OF JULY, 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 3rd DAY OF AUGUST, 2011, AT 7 P.M. IN THE MINTURN TOWN CENTER IN THE TOWN OF MINTURN, COLORADO.

Mayor
ATTEST:

Town Clerk

THE TOWN OF MINTURN, COLORADO, ORDAINS THIS ORDINANCE READ BY TITLE, ENACTED AND ORDERED PUBLISHED BY TITLE ONLY ON SECOND READING THIS 3rd DAY OF AUGUST, 2011.

Attest: _____ Mayor
Town Clerk _____

APPROVED AS TO FORM: _____

Town Attorney _____

Publication Dates:
HOLY CROSS ENERGY
Del Worley, Chief Executive Officer
Date
Published in the Vall Daily on July 26, 2011.

Town of Minturn

302 PINE STREET
P. O. BOX 309, MINTURN, CO 81645
(970) 827-5645 FAX (970) 827-5545
CHRIS CERIMELE- TOWN PLANNER
PLANNER1@MINTURN.ORG



Town Council

MR. GORDON FLAHERTY, MAYOR
MR. GEORGE BRODIN, MAYOR PRO TEM
MRS. SHELLEY BELLM
MR. JERRY BUMGARNER
MR. AGGIE MARTINEZ
MR. EARLE BIDEZ
MR. JOHN ROSENFELD

TOWN OF MINTURN PLANNING DEPARTMENT
Town Council Staff Report
Subject: ORD 10 - 2011; An Ordinance granting and approving an encroachment agreement between the Minturn Towne Homes Home Owners' Association and the Town of Minturn.
Chris Cerimele, Town Planner
HEARING DATE: August 3, 2011
Staff Recommendation: Approval

APPLICANT:

Minturn Towne Homes Owners' Association

LOCATION

Minturn Towne Homes – Taylor Street Area

AGENDA ITEM BRIEF

The Minturn Towne Homes Owners' Association is requesting a revocable license agreement from the Town that will allow them to construct a drainage channel, earth berm and storm sewer inlet along a section of Town-owned land known as Grant Avenue.

BACKGROUND

The Minturn Towne Homes Owners' Association approached the Town this past spring to request permission to install a drainage system on Town-owned land. The purpose of the proposed system is to alleviate drainage issues that were occurring on the property. Currently, water flows over the retaining wall pictured below and into a storm sewer system. The intent of the proposed berm and channel is to intercept the run-off water before it flows over the retaining wall.



The proposed system will consist of excavating a small channel to divert run-off water into a new storm water inlet. Additionally, a small berm will be constructed on the down slope side of the channel to prevent water from flowing over the retaining wall and into the living units. The water that is collected in the channel will flow to the north and be collected in a new storm sewer inlet. The new storm sewer inlet will be connected to the existing storm sewer system on the property.

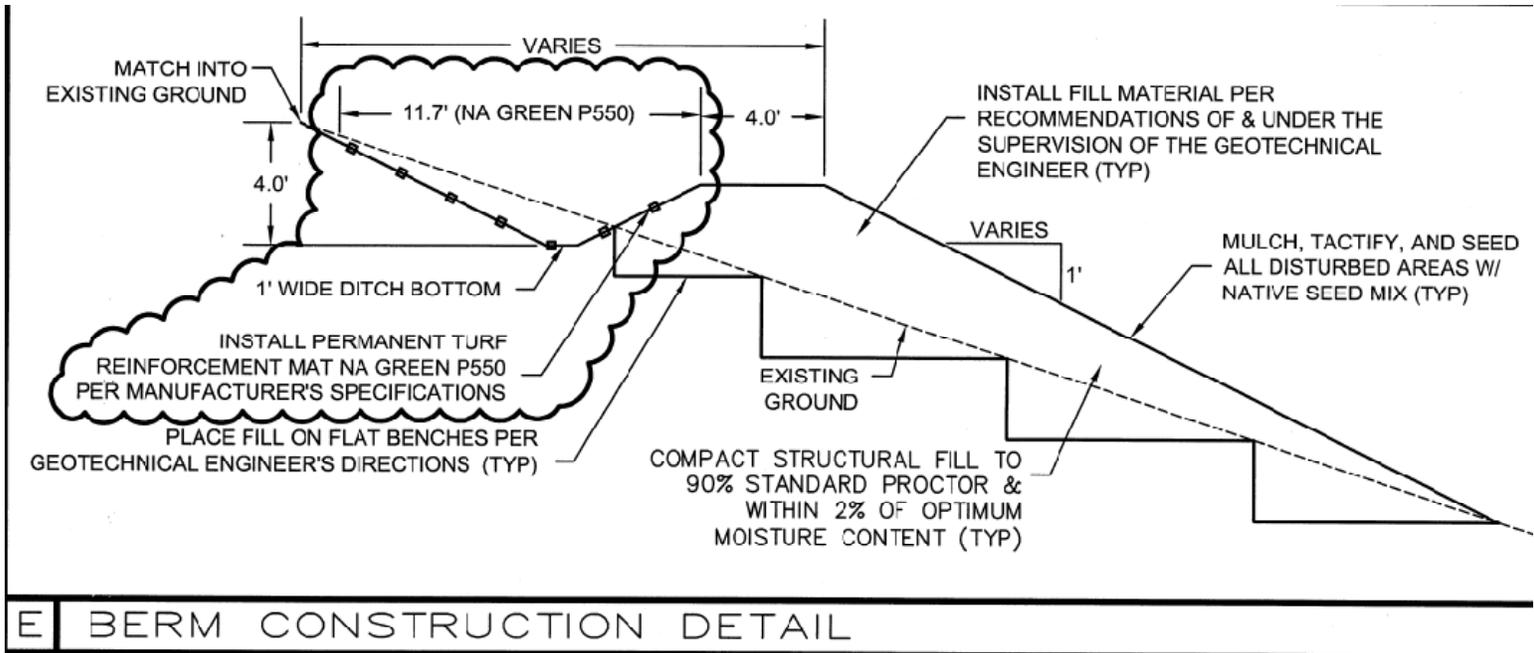
The general area where the proposed facilities would be constructed is shown on the pictures below. Per the Council's request, the area has been staked to delineate the boundary of the proposed system. Generally, the system will be constructed in the middle of the photos below.



The project entails the excavation of 52 cubic yards of earth from the Grant Avenue right-of-way to create the drainage channel. Additionally, 629 cubic yards of dirt will be brought into the site to be used to create the earthen berm between the drainage channel and buildings H, I and J of the Minturn Towne

Homes. A drainage inlet and pipe will be installed at the north end of the property to direct the run-off water into the existing drainage system on the property.

Details of the berm construction can be seen here:



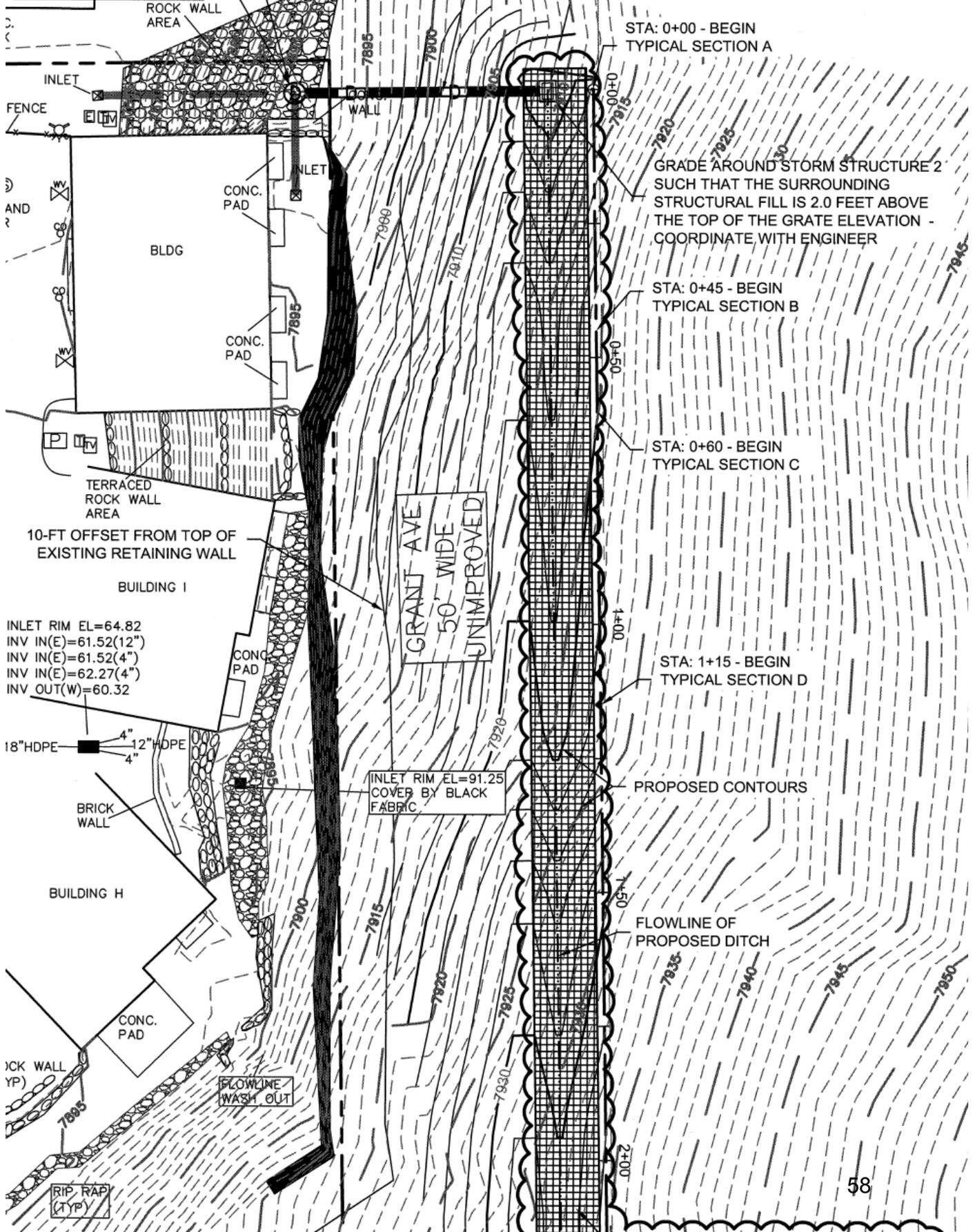
The dotted line on the above drawing indicates the existing slope of the hillside. Soil will be excavated to create the 1' wide channel. Per the specifications of the project geotechnical engineer, structural fill (soil) will be brought in for the construction of the berm. This fill will be placed on excavated benched to ensure the stability of the berm. In no place will the height of the berm exceed 4'.

Town staff requested a drainage report from the project engineer stating that the existing storm sewer system could handle the increased flows due to the construction of the proposed system. The HOA provided the requested report from Marcin Engineering that concluded the existing storm sewer system could definitively handle the increased flows. Steve Humann of TST Engineering -the Town's contract engineer - reviewed the drainage report from Marcin Engineering and agreed with their conclusion (see attached email report).

The following drawing indicates the extent of the proposed system. The drainage channel and berm will be constructed in the hatched area of the drawing.

STORM STRUCTURE 1
 STRUCTURE: 48" Manhole
 RIM: 7890.80
 SUMP: 7886.55
 INV IN: 7886.80 18" HDPE

STORM STRUCTURE 2
 STRUCTURE: C-DOT Type C
 Inlet with Standard Grate
 GRATE: 7908.68
 INV OUT: 7904.73 18" HDPE



FENCE
 AND

P

INLET RIM EL=64.82
 INV IN(E)=61.52(12")
 INV IN(E)=61.52(4")
 INV IN(E)=62.27(4")
 INV OUT(W)=60.32

18" HDPE
 4" 12" HDPE
 4"

ROCK WALL (YP)
 7893
 RIP RAP (TYP)

GRANT AVE
 50' WIDE
 UNIMPROVED

INLET RIM EL=91.25
 COVER BY BLACK FABRIC

STA: 0+00 - BEGIN
 TYPICAL SECTION A

GRADE AROUND STORM STRUCTURE 2
 SUCH THAT THE SURROUNDING
 STRUCTURAL FILL IS 2.0 FEET ABOVE
 THE TOP OF THE GRATE ELEVATION -
 COORDINATE WITH ENGINEER

STA: 0+45 - BEGIN
 TYPICAL SECTION B

STA: 0+60 - BEGIN
 TYPICAL SECTION C

STA: 1+15 - BEGIN
 TYPICAL SECTION D

PROPOSED CONTOURS

FLOWLINE OF
 PROPOSED DITCH

INSTALL PERMANENT TUBE

LICENSE AGREEMENT:

The license agreement authorizes the use of the Town right-of-way until such a time as the Town determines at a public hearing that the area of encroachment is necessary for use as a recreational trail or other municipal purpose. The agreement releases and discharges the Town from any and all liability arising from the construction of the proposed drainage system. Per the direction of the Town Council, a maintenance provision was added to the license agreement. This provision states that the Grantee will be responsible for annual maintenance on the drainage facility to ensure that the channel and inlet remain free from debris and obstructions.

RECOMMENDATION:

Staff recommends approval of Ord. 10 – 2011 on second reading.

DRAFT MOTION; ORD. 10 - 2011:

I move to approve Ord. 10 – 2011 on second reading

OR

Deny Ord. 10 - 2011
Provide alternative direction to staff

Respectfully Submitted

Chris Cerimele, Town Planner

Attachments:

Grading and Drainage Plan – Marcin Engineering
Email from – TST Consulting Engineers
Ordinance 10 - 2011

Chris Cerimele

From: Steve Humann [shumann@tstinc.com]
Sent: Tuesday, June 21, 2011 3:14 PM
To: Chris Cerimele
Cc: Jim White; Don Taranto
Subject: RE: Minturn Townhomes: Drainage Letter

Chris,

We have reviewed the engineering analysis provided by Marcin Engineering LLC for the proposed drainage improvements to the Minturn Townhomes as discussed in a letter dated May 19, 2011 from Marcin Engineering to Bold Real Estate Solutions. The information and analysis appear to be accurate and there appears to be no additional flow exiting the development site with the proposed condition.

Our primary concern, as discussed when we met on site, was the capacity of the existing pipe and inlet infrastructure. Marcin has stated in the letter that the increase of flow through the pipe in a 100 year storm flow condition will not exceed the capacity of the system and will not surcharge out of the inlets causing flooding conditions at the inlets. Based on our review, their calculations and conclusions appear to be correct.

As far as the Town's concern regarding the outflow from the development sheeting across Taylor Ave. in the absence of a culvert, the proposed improvements do not make that condition worse in that all the drainage in question ended up in that same spot anyway. This is an unfortunate situation that should have been looked at during the initial development approval.

Please let me know if I can be of any additional help in this matter.

Steve F. Humann, P.E.
TST, Inc. Consulting Engineers
760 Whalers Way, Bldg. C, Suite 200
Fort Collins, CO 80525
970-226-0557
shumann@tstinc.com

**TOWN OF MINTURN, COLORADO
ORDINANCE NO. 10, SERIES 2011**

AN ORDINANCE AUTHORIZING THE MAYOR TO SIGN A REVOCABLE LICENSE AGREEMENT WITH MINTURN TOWNE HOMES OWNERS' ASSOCIATION TO PERMIT ENCROACHMENT ONTO TOWN RIGHT OF WAY PROPERTY OF THE TOWN OF MINTURN, COLORADO, AS IT PERTAINS TO GRANT AVENUE, BLOCK A, TAYLOR ADDITION TO THE TOWN OF MINTURN, EAGLE COUNTY, COLORADO

WHEREAS, Town of Minturn, Colorado (Grantor) owns for use and benefit of the citizens of the Town of Minturn, Colorado and the general public, a 50-foot wide platted right of way in the Taylor Addition to the Town of Minturn, Eagle County, Colorado, upon a portion of which the Minturn Towne Homes Owners' Association wishes to construct a drainage channel, berm and inlet along Grant Avenue, Block A – Taylor Addition to the Town of Minturn on the aforementioned platted right of way as shown in Attachment A; and

WHEREAS, Minturn Towne Homes Owners' Association, (Grantee) wish authority to use the area of the aforementioned platted right of way to construct the aforementioned drainage channel, berm and inlet. Grantor is agreeable to the use of such property under the terms and conditions as set forth below, more particularly described in the license agreement attached as Attachment B, situated in the Town of Minturn, Colorado; and

WHEREAS, after notice provided by law, a public hearing was held before the Minturn Town Council, at which time the applicant and the public were given an opportunity to express their opinions regarding the proposed amendment; and

WHEREAS, based on the evidence, testimony and exhibits and recommendations of the Town Council of the Town of Minturn, Colorado, finds as follows:

1. The proper publication was provided as required by law for the Town Council of the Town of Minturn, Colorado.
2. The hearings before the Town Council were both extensive and complete and all pertinent facts, matters and issues were submitted at those hearings.

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

INTRODUCED, read by title, approved on the first reading and ordered published in full the 20 day of July, 2011. The 3 day of August, 2011, at 7:00 p.m. at the Minturn Town Hall, Minturn, Colorado 81645 is set for public hearing hereon.

TOWN OF MINTURN

By: _____
Mayor

ATTEST:

Town Clerk

THE TOWN OF MINTURN, COLORADO, ORDAINS THIS ORDINANCE ENACTED AND ORDERED PUBLISHED BY TITLE ONLY ON SECOND READING THIS _____ DAY OF _____, 2011.

Mayor

ATTEST:

Town Clerk

LICENSE AGREEMENT

This Agreement, entered into this 20th day of July, 2011, by and between the Town of Minturn, a Colorado municipal corporation (hereinafter "Grantor") and Minturn Towne Homes Owners' Association, (hereinafter "Grantee").

RECITALS

Whereas, Grantor owns, for use and benefit of the citizens of the Town of Minturn, Colorado and the general public, a 50-foot wide, unimproved, platted public road ("public right of way") in Block A, Taylor Addition to the Town of Minturn, Eagle County, Colorado, and

Whereas, Grantee wishes authority to use the area depicted on the map attached as Exhibit A to construct a drainage berm and channel for the purpose of diverting run-off water from the adjacent hillside into the existing drainage system located on the Grantee's property and Grantor is agreeable to the use of such property under the terms and conditions as set forth below.

Now, therefore, for and in consideration of the performing of the covenants and agreements by the Parties to this Agreement, the Grantor does hereby permit the Grantee to use the property depicted on the map attached as Exhibit A for the purpose of installing a drainage channel and inlet for the purpose of diverting run-off water from the adjacent hillside into the existing drainage system as set forth in this License Agreement:

This license shall extend from the date of this License Agreement until such a time as the Grantor determines at a public hearing that the area of encroachment is necessary for use as a recreational trail or other municipal purpose. The following stipulations are expressly agreed by and between the Grantor and Grantees.

1. Use of Site. The site be used for the construction of a drainage channel and inlet and for no other purpose whatsoever.
2. Term. As indicated above.
3. Condition of Site. During the term of this License Agreement, Grantees shall keep the premises licensed under this Agreement in good condition. Grantees agree to undertake no activity which could be hazardous or in any way detrimental to the community, or permit further encroachment of the structure into the public right of way.
4. Maintenance. The Grantee will be responsible for annual maintenance on the drainage facility to ensure that the channel and inlet remain free from debris and obstructions.
5. Release From Liability. Grantee hereby releases and discharges the Grantor from any and all liability arising from this Agreement, to-wit; from damage to its property, whether in custody of the Grantee or its agents or representatives, or in the control or custody of the employees or representatives of the Grantor, or whether in the control or custody of third parties or while upon premises owned or under the control of the Grantor or Grantee.

6. Indemnification. Grantee hereby agrees that it shall indemnify, defend and hold harmless Grantor and its successors and assigns from, against, and with respect to any claim, liability, obligation, loss, damage, assessment, judgment, cost or expense (including, without limitation, reasonable attorneys' fees and expenses and costs and expenses reasonably incurred in investigating, preparing or defending against any litigation or claim, action, suit, proceeding or demand, of any kind or character), of or in any manner relating or attributable to any claims of damages arising from Grantee's activities associated with this License Agreement.
7. Assignment and Subletting. This License Agreement may not be transferred or assigned during the term of this License Agreement without the prior written consent to assignment of this License Agreement by Grantor, nor shall Grantee permit any other person or entity to share its occupancy hereunder without the prior written permission of the Grantor.
8. Notices. All notices and communications required herein shall be in writing and shall be sent by certified mail to the following addresses:

Grantor:
Town Manager
Town of Minturn
PO Box 309
Minturn, CO 81645

Grantee:

Minturn Towne Homes Owners Association
PO Box 5800
Avon, CO 81620

Notices shall be deemed properly given when mailed by certified mail in a sealed envelope, postage prepaid, addressed to the above addresses. Any such notice or demand shall be deemed to have been given or made at the time it is deposited in the United States Post Office. Any party may change its address of record by giving written notice of the change to the other party.

8. Waiver. Failure or delay on the part of Grantee or the Grantor to exercise any right, power or privilege hereunder shall not operate as a waiver thereof.
9. Prior Negotiations. This License Agreement constitutes the entire agreement of the parties hereto and shall supersede all prior offers, negotiations and agreements.
10. Amendments. No revision of this License Agreement shall be valid unless made in writing and signed by an authorized officer of Grantor and by Grantee.

11. Applicable Law. This License Agreement is entered into at Minturn, Eagle County, Colorado, and it is agreed that the proper jurisdictions and venue of any action pertaining to the interpretation of enforcement of this License Agreement shall be in the County or District Court of Eagle County, Colorado. This License Agreement shall be interpreted under the laws of the State of Colorado.
12. Binding Agreement. It is understood and agreed that this Agreement shall be binding upon the assigns and successors in interest of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have set the hands of their respective authorized officers.

TOWN OF MINTURN,
a Colorado Municipal Corporation,
Grantor

ATTEST:

Town Clerk

Mayor

MINTURN TOWN HOMES OWNERS' ASSOCIATION,

Inc.,

Grantee

By: _____

Its: _____

ATTEST:

Secretary

TOWN OF MINTURN ORDINANCE CHECKLIST

Ord 10 - 2011

FIRST READING

7/20/11 The ordinance shall be introduced and read by title at any regular or special meeting. Copies shall be available to the public.

7/22/11 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.

_____ 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.

8/3/11 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

_____ 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.

_____ 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
P.O. Box 309 (302 Pine Street)
Minturn, Colorado 81645-0309
970-827-5645 Fax: 970-827-5545
treasurer@minturn.org

**FROM THE DESK OF
JAY BRUNVAND, TREASURER/FINANCE**

MEMORANDUM

TO: Minturn Town Council
FROM: Jay Brunvand, Treasurer/Clerk
CC:
DATE: Wednesday, July 27, 2011
RE: Executive Session

At the Council meeting, Council will need to convene in Executive Session with the Town Manager and Attorneys to discuss the USFS Boneyard and issues regarding Battle Mountain Resort. The following motion is recommended:

“Recommended motion: “I move to convene in Executive Pursuant to CRS 24-6-402(4)(a) for the purposes to consult with the Town's Attorney(s) and receive direction regarding the negotiations of the USFS Boneyard property and Pursuant to CRS 24-6-402(4)(b) for the purposes to consult with the Town's Attorney(s) and receive direction regarding the negotiations of the Battle Mountain Resort property annexation, water right issues, and EPA update.”

The Mayor will announce for the record if any decision is to be made as a result of the Executive Session once the Regular Session meeting reconvenes.

Please contact me in the event you have any questions.

Thank You, Jay