

**TOWN OF MINTURN, COLORADO**

ORDINANCE NO. 4 – SERIES 2001

**AN ORDINANCE AUTHORIZING THE MAYOR OF THE TOWN OF MINTURN TO SIGN AN AGREEMENT WITH FRANK MEDINA AND CONSUELO MEDINA GRANTING AN ACCESS EASEMENT AND FINALIZING NEGOTIATIONS CONCERNING ACQUISITION OF LAND BY THE TOWN OF MINTURN, COLORADO.**

WHEREAS, on or about July 31, 1995, representatives of the Town of Minturn entered into negotiations with Frank Medina and Consuelo Medina concerning the construction of the Town water storage tank and providing legal access to the tank; and

WHEREAS, in accordance with those negotiations Medina's conveyed certain real property to the Town and granted an access easement to the Town; and

WHEREAS to avoid acquisition of this property by eminent domain, The Town and Medina have agreed to compensation for the conveyance of property and grant of easement.

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

SECTION 1. The Mayor is authorized to sign an agreement, and such other documents as are reasonably necessary, with Frank Medina and Consuelo Medina granting an access easement and providing for payment of just compensation for the conveyance of real property and granting of the access easement.

SECTION 2. This Ordinance shall not take effect until the agreement is signed by the representatives of all the necessary parties thereto.

SECTION 3. If any part, section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance; and the Town Council hereby declares it would have passed this ordinance, and each part, section, subsection, sentence, clause or phrase thereof, regardless of the fact that any one or more parts, sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 4. The Town Council hereby finds, determines and declares that this Ordinance is necessary and proper for the health, safety and welfare of the Town of Minturn and the inhabitants thereof.

SECTION 5. The repeal or the repeal and reenactment of any provisions of the Minturn Municipal Code as provided in this ordinance shall not affect any right with has accrued, any duty imposed, any violation that occurred prior to the effective date hereof, any prosecution commenced, nor any other action or proceeding as commenced under or by virtue of the provision repealed or repealed and reenacted. The repeal of any provision hereby shall not revive any provision or any ordinance previously repealed or superseded unless expressly stated herein.

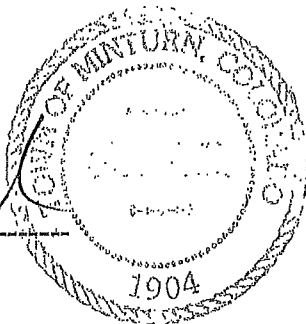
INTRODUCED, read by title, approved on the first reading and ordered published in full the 4<sup>th</sup> day of APRIL, 2001. The 18<sup>th</sup> day of APRIL, 2001, at 7:00 p.m. at the Minturn Town Hall, 243 Boulder Street, Minturn, Colorado 81645 is set for public hearing hereon.

TOWN OF MINTURN

By: *Hawkeye Flaherty*  
Mayor

ATTEST:

*[Signature]*  
Town Clerk

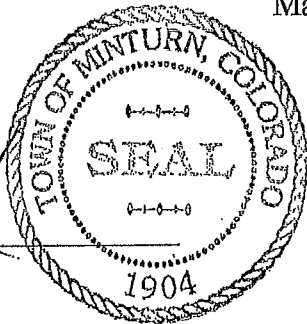


THE TOWN OF MINTURN, COLORADO, ORDAINS THIS ORDINANCE ENACTED AND ORDERED PUBLISHED BY TITLE ONLY ON SECOND READING THIS 18<sup>th</sup> DAY OF APRIL, 2001.

*Hawkeye Flaherty*  
Mayor

ATTEST:

*[Signature]*  
Town Clerk



Ord # 4-2001

## AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into this 18th day of April, 2001, by and between the TOWN OF MINTURN, COLORADO, a Colorado Home Rule Municipal Corporation ("Town"), and Frank Medina and Consuelo Medina, Husband and Wife ("Medina").

For and in consideration of the mutual covenants and promises contained herein, and intending to be legally bound, the parties agree as follows:

### RECITALS

1. On or about July 31, 1995, the Town and Medina entered into a series of negotiations concerning the construction of the water storage tank for the Town ("water tank"). In accordance with those negotiations Medina conveyed certain real property to the Town and granted an easement to the Town for construction and maintenance of the water tank. (The land conveyed to the Town and the land subject to the easement shall be referred to herein as the "subject property". A copy of the deed and easement are attached hereto as Exhibits A and B, respectively). Thereafter, Medinas decided to construct improvements on adjacent land owned by Medinas (the "Medina Property")

2. In order to avoid acquisition of the subject property by eminent domain, the Town and Medina agreed for payment of compensation to Medina by the Town for the subject property. The exact terms and conditions of payment have been the subject of continuing negotiations, but the final terms have never been agreed upon.

3. In order to finalize these negotiations the Town and Medina agree to the payment described herein as full and final payment for conveyance of the land and granting of the easement described above.

### TERMS AND CONDITIONS

4. The Town will pay to Medina \$14,000.00 upon execution of this agreement.

5. Medina will receive two (2) water taps for service on his main house and guest house being constructed on the real property described on Exhibit C, referred to in this agreement as the Medina Property. The parties agree the value of these water taps is \$2,000.00.

6. Medina will receive domestic water service from the Town at no cost up to and including April 18, 2041. Medinas' use shall be limited to domestic water consumption, and in no case shall be used for ~~irrigation~~ commercial, industrial or any other purpose save and except domestic water consumption. ~~It is~~ the parties intent that the water shall be for Medinas' household use and this list is merely for illustration, and not by way of limitation. Medinas' use

shall not exceed 12,167 gallons per month, per residence on the Medina property, or Medinas shall be required to pay for the excess at the charges in effect at that time for domestic water consumption, based upon the approved domestic use rate, per 1,000 gallons.

To have and to hold this agreement for water usage to Medinas and their successors and assigns. The agreement shall hereby granted shall run with the land and shall be appurtenant to the Medina property, such that a transfer of legal to title to the Median property shall automatically transfer a proportionate interest in this agreement for water usage.

7. The Town will provide two (2) water meters (3/4") from the Town and Medina will install them promptly on the Medina property described in Exhibit C at Medinas' sole cost and expense.

8. The parties agree the Town owns and will remove the large pile of rocks at or near the Medina property and will grade the dirt remaining after removal of the rocks. The grading shall be done at the direction and in the sole discretion of the Town. The Town has the right to sell all or part of the rocks at its discretion and Medina waives any right to payment for the rocks or to any claim of payment for sale or transfer of these rocks.

9. The Town will, to the extent that they are legally entitled to do so, allow Medinas to use the Town's existing access easement for Medinas access on the existing road. The parties agree Medinas use of the road will be formalized by a separate agreement, whether by access easement, right of way agreement, or permission to use real property of the Town. Medinas understand and agree the Town can grant such legal access only to the extent the Town's access easement permits. Such use of the road shall be accomplished and Medinas undertand and agree that the usage of the road will be in the condition of the road "AS IS", with no further upgrades or improvements. The terms of such usage shall be, as noted herein above, defined in a subsequent agreement, but shall be at Medinas' sole risk and without any obligation of the Town to improve or upgrade the condition of the road.

10. The parties agree that the road for access to the Medina property and subject property is not a dedicated road and is unimproved, unpaved, of steep grade may contain natural hazards, and may not be accessible at times due to weather, forces of nature and road conditions. The parties agree the road is an access easement across private property of another, and the Town does not and cannot guaranty Medinas legal access, now or in the future. Furthermore, the road is a service road, used by the Town for access to the water tank and the Town cannot guaranty or provide access to the Medina property by fire, ambulance or emergency service vehicles of any kind and Medinas acknowledge they are constructing their residence and guest house on the subject property with advance knowledge of this known risk and agree to assume this known risk and any and all use of the road, including, but not limited to the inability of the Town to provide emergency services to the subject property. Medinas agree to assume all risk of use of the road and the Medina property. Furthermore, Medinas agree to indemnify and hold harmless the Town of Minturn from any claims made for any tenants, guests, invitees, licensees, and/or trespassers for any claims made against the Town concerning use of the road, including its reasonable attorney fees and costs.

11. Medina shall install a fire hydrant for service to the Medina property at Medinas sole cost and expense. The hydrant shall be installed in compliance with all applicable health, safety and fire codes now, or hereafter in effect, by the Town.

12. Medina shall takes all steps necessary and shall establish connections for sanitary sewer service to the Medina property with the Upper Eagle Valley Water & Sanitation District.

13. Upon completion of the residence and connection of the sewer line to the Medina Property, the Town will provide such inspections as necessary under applicable Town ordinances for inspection to allow Medina to obtain a certificate of occupancy, using the existing road as the appropriate access.

14. All other utilities of any kind whatsoever, shall be installed at Medinas sole cost and expense.

15. By accepting the payments and services set forth herein above Medina agrees that this is a full and final settlement with the Town for payment for conveyance of the subject property and granting of the access easement.

16. Medina agrees that no promise or agreement not expressed herein has been made and by executing this agreement, Medina is not relying upon any statement or representation made by the Town or by anyone who has acted for the Town or on its behalf and Medina is relying solely upon their own judgment.

17. Medina understands fully that this is a final disposition of the dispute as to payment and that it is mutual, final and binding upon all of the parties hereto regardless of whether too much or too little has been paid.

18. This is a full and final settlement and is intended to cover any and all past or future circumstances concerning the subject property, not now known to either party, but which may later develop or be discovered, including the effects or consequences thereto and including all causes of action therefor. This agreement expressly supersedes any prior agreements between the parties, including, but not limited to the agreement set forth in the Town's letter dated July 31, 1995, attached hereto as Exhibit D.

19. This Agreement may be signed in counterparts. When a counterpart is signed by each party, this Agreement shall be fully binding upon all parties. Copies of this Agreement, whether produced by fax or otherwise, shall be of equal evidence as originals.

20. This agreement shall be governed by the laws of the State of Colorado and shall be binding upon, and shall inure to the benefit of the parties and their respective heirs, successors, assigns, legal representatives, and personal representatives.

21. This agreement is a legal document and Medinas have had the opportunity prior to signing to consult with their legal counsel concerning this agreement.

22. Time is of the essence of this agreement.



STATE OF COLORADO )  
 ) ss.  
COUNTY OF EAGLE )

Subscribed and sworn to before me this 13th day of April, 2001,  
by Conseulo Medina.

WITNESS my hand and official seal.

My commission expires: 10/31/02



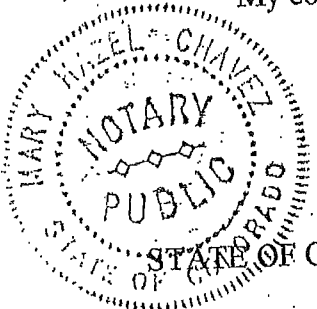
Mary Hazel Chavez  
Notary Public Mary Hazel Chavez

STATE OF COLORADO )  
 ) ss.  
COUNTY OF EAGLE )

Subscribed and sworn to before me this 18 day of April, 2001,  
by Hawkey Elchery as Mayor of the Town of Minturn, Colorado.

WITNESS my hand and official seal.

My commission expires: My Commission Expires  
04/29/2002



Jay Brunvand  
Notary Public

STATE OF COLORADO )  
 ) ss.  
COUNTY OF EAGLE )

Subscribed and sworn to before me this 19TH day of APRIL, 2001,  
by Jay Brunvand as Town Clerk of the Town of Minturn, Colorado.

WITNESS my hand and official seal.

My commission expires: 10/31/02

Mary Hazel Chavez  
Notary Public Mary Hazel Chavez

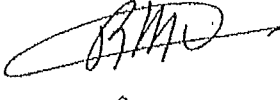




EXHIBIT A

1. Provided that the above-described real property (the "subject property") shall be used for municipal purposes, including, but not limited to construction, maintenance and use of a water storage facility on the subject property. And provided further that if Grantee determines the land is no longer to be used for the proposes stated above, Grantee shall, upon making such determination by ordinance or resolution, offer in writing to sell the subject property to Grantor for TEN DOLLARS and NO/100 (\$10.00), Grantor shall have thirty (30) days to enter into a contract for purchase of the subject property, and if Grantor fails to do so, Grantor's option to purchase shall expire and become null and void.

2. Grantor hereby reserves the right to use whatever portion of the subject property for grazing, hiking and recreational proposes so long as they do not interfere with the water tank, or municipal construction on the subject property. By this clause Grantor intends to reserve this right for themselves and their children now living, for the rest of their natural lives.

*L.M.*   
*J.M.*

10/1/93

173

GRANT TO EASEMENT  
TO  
TOWN OF MINTURN, COLORADO

KNOW ALL MEN BY THESE PRESENTS, that Frank Medina and Consuelo Medina, (referred to in this Easement as Grantor), in consideration of \$10.00 and other good and valuable consideration paid by TOWN OF MINTURN, COLORADO, a Colorado Municipal Corporation (referred to in this Easement as Grantee), the receipt and sufficiency of which is hereby acknowledged, does hereby grant, bargain, sell, transfer, and convey to Grantee, its successors, agents and assigns, a non-exclusive, perpetual easement (referred to in this Easement as the Easement) with the right to erect, construct, install, and lay and thereafter use, operate, inspect, repair, maintain, replace, and remove utility lines, including but not limited to water, sanitary sewer, storm drainage, electric and other compatible uses in and across the following-described real property owned by Grantor in Eagle County, State of Colorado:

976

SEE EXHIBIT A

Said strip land contains .252 acres, more or less,

together with the right of ingress and egress over Grantor's adjacent real property for the purposes for which the above-mentioned rights are granted.

Grantee agrees to maintain such easement in a state of good repair and efficiency so that no unreasonable damages to Grantor's premises will result from its use. Grantee agrees to restore the surface of the Easement to at least its original level and condition upon Grantee's initial use of the Easement and thereafter following any maintenance work performed by Grantee in the Easement. Grantee further agrees to use the Easement in such a manner as to not interfere with access to and egress from Grantor as now or hereafter denominated. Grantee agrees to hold the Grantor harmless from any and all liability resulting from Grantee's use of this Easement. Grantor reserves the right to utilize the property in any manner provided such usage does not interfere with Grantee's rights hereunder. Grantor shall not construct or place anything over or so close to any utility line or other facility of Grantee as will be likely to interfere with Grantee's access thereto by use of equipment or means customarily employed in the maintenance of the Easement. All damage to growing crops, drainage tile and fences of Grantor occasioned by the construction or repair of any of the facilities herein authorized to be maintained and operated by Grantee shall

08/17/95

41461

be paid by Grantee after the damage is done. The foregoing agreement, together with other provisions of this Easement, shall constitute a covenant running with the land for the benefit of the Grantee, its successors, agents and assigns. The Grantor covenants that Grantor is the owner of the above-described real property and that the Grantor has the authority to grant this Easement.

IN WITNESS WHEREOF, Grantor has executed this Grant of Easement this 15<sup>th</sup> day of August, 1995.

GRANTOR:

Frank Medina  
FRANK MEDINA

Consuelo Medina  
CONSUELO MEDINA

GRANTEE:

TOWN OF MINTURN, COLORADO

By Michael Gallagher  
Michael Gallagher  
Its Mayor

ATTEST:

Ashley Royal  
Town Clerk  
Ashley Royal

00130

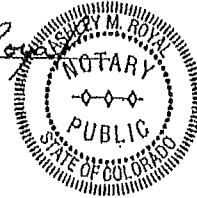
STATE OF COLORADO )  
                          ) ss.  
COUNTY OF EAGLE )

Subscribed and sworn to before me on this 1st day of August, 1995, by FRANK MEDINA AND CONSUELO MEDINA.

Witness my hand and official seal.

My Commission expires: 7/21/97

Ashley M. Royal  
Notary Public



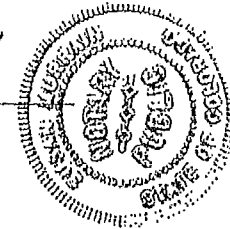
STATE OF COLORADO )  
                          ) ss.  
COUNTY OF EAGLE )

Subscribed and sworn to before me on this 1st day of August, 1995, by MICHAEL GALLAGHER, as Mayor, and ASHLEY ROYAL, as Town Clerk of the Town of Minturn, Colorado.

Witness my hand and official seal.

My Commission expires: MY COMMISSION EXPIRES: Jan. 25, 1999

Minturn, Colorado 81644  
Notary Public



00101

EXHIBIT A

An easement seven and a half feet (7.5 feet) wide to the left and seven and a half feet (7.5 feet) wide to the right of the following described center line (sidelines to be lengthened or shortened so as to produce regular intersections) over property in Parcel B, South Minturn Estates, located in the NW 1/4 of the NE 1/4 of Section 35, Township 5 South, Range 81 West of the Sixth Principal Meridian, Eagle County, Colorado.

Starting at the Southwestern Corner of Parcel B, South Minturn Estates, located in the NW 1/4 of the NE 1/4 of Section 35, Township 5 South, Range 81 West of the Sixth Principal Meridian; thence North 89°46'45" East for a distance of 154.00 feet along the Parcel B property line; thence North 01°22'05" West for a distance of 82.26 feet to the TRUE POINT OF BEGINNING; thence along said centerline for the following nine (9) courses: (1) N 81° 06'05"E a distance of 37.38 feet; (2) N43°53'58" a distance of 110.29 feet; (3) N 68°28'49"E a distance of 126.24 feet; (4) N 22°12'26"E a distance of 50.17 feet; (5) N02°07'08" E a distance of 52.17 feet; (6) N 05°37'15"W a distance of 136.77 feet, (7) N 10°37'04"W a distance of 79.80 feet, (8) N 21°43'58"W a distance of 103.57 feet; (9) N 32°37'38"W a distance of 34.13 feet to its point of intersection with the northerly boundary line of Parcel B of said South Minturn Estates.

In case there is a conflict with this easement alignment so as to hinder building development on Parcel B along courses 1, 2, and 3 as defined above, the Town of Minturn will relocate the pipeline in this area, at no cost to the Grantor, provided a new easement is given for placement of the realigned pipeline.

*E.M.*  
*W.S.* *J.M.* *B.M.L.*

06102

AGREEMENT

This Agreement is between the Town of Minturn and Frank and Consuelo Medina regarding fulfillment of the agreement between the parties, dated April 18, 2001.

For and in consideration of the terms and conditions herein, and intended to be legally bound, the parties agree as follows.

RECITALS

1. An agreement dated April 18, 2001 was entered into by the parties. The parties agree terms of Section 8 of the agreement have not been fulfilled. The agreement is attached as Exhibit A.
2. The Parties desire to agree to terms which will satisfy Section 8 and conclude all items within the agreement.

TERMS AND CONDITIONS

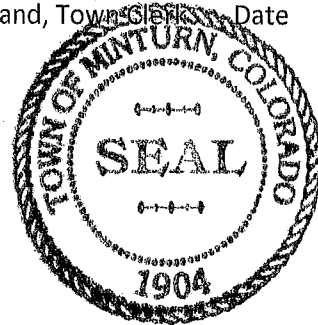
1. In lieu of the town satisfying Section 8 of the agreement, and thereby not removing rocks or grading on the Medina property, the town will deliver to the Medina property 15 dump truck loads of roto-mill material and dumped in locations desired by Medina.
2. The work will be performed by town staff during 2016.
3. Upon completion of delivery of the 15 loads of material, the parties agree that all terms and conditions of the 2001 agreement have been fulfilled, including Section 8 of the agreement.
4. All other terms and conditions of the original agreement will remain in full effect and force.

TOWN OF MINTURN, COLORADO

Willy Powell 8/24/16  
 Willy Powell, Town Manager Date

Attest: Jay Brunvand 8/24/16  
 Jay Brunvand, Town Clerk Date

Frank Medina 8/24/2016  
 Frank Medina Date

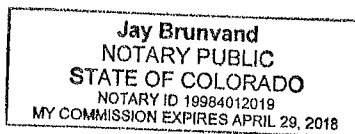


STATE OF COLORADO )  
 ) ss.  
 COUNTY OF EAGLE )

Subscribed and sworn to before me this 24<sup>th</sup> day of August, 2016 by Frank Medina.

WITNESS my hand and official Seal.

Jay Brunvand  
 Jay Brunvand, Notary Public



TOWN OF MINTURN  
P.O. Box 309 ♦ 302 Pine Street  
Minturn, CO 81645  
Phone: 970-827-5645 Fax: 970-827-5545

Jay Brunvand, MMC  
Town Treasurer and Town Clerk



Town Council  
Mayor – Matt Scherr  
Mayor Pro Tem – Earle Bidez  
Councilmember – Terry Armistead  
Councilmember – Harvey Craig  
Councilmember – Sage Pierson  
Councilmember – Sidney Harrington  
Councilmember – John Widerman

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September 8, 2016

This receipt confirms the delivery to Frank Medina of fifteen (15) loads of rotomill and fulfills the agreement entered into with the Town of Minturn on August 24, 2016. Furthermore this receipt confirms complete fulfillment of the above stated agreement conditions.

Arnold Martinez, Minturn Public Works

Frank Median, Homeowner

9/8/18