TOWN OF MINTURN, COLORADO

RESOLUTION NO. 9 – SERIES 2014

A RESOLUTION AUTHORIZING THE MAYOR OF THE TOWN OF MINTURN TO SIGN A SERVICE CONTRACT WITH EAGLE RIVER WATER AND SANITATION FOR TOWN WIDE WATER AND TRASH BILLING SERVICES

WHEREAS, the current contract existing between Eagle River Water and Sanitation District and the Town of Minturn continues to be a valuable benefit to both entities, and;

WHEREAS, the Minturn Town Council of the Town of Minturn, Colorado has and continues to enjoy cost savings to the Citizens of Minturn by providing for this agreement, and;

WHEREAS, the Town of Minturn wishes to continue with the benefits of the existing contract with the agreed rate increases as set forth

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MINTURN, COLORADO THAT THE MAYOR OR HIS DESIGNEE IS AUTHORIZED TO SIGN ON BEHALF OF THE TOWN OF MINTURN ANY AND ALL NEGOTIATED DOCUMENTS REQUIRED TO EXECUTE SAID AGREEMENT.

INTRODUCED, READ, APPROVED, ADOPTED AND RESOLVED this 16TH day of April, 2014.

TOWN OF MINTURN

By: _____
Mayor

ATTEST:

_____
Town Clerk

TOWN OF MINTURN, COLORADO SEAL 1904

OPERATIONS AGREEMENT

THIS AGREEMENT entered into this 23rd, day of January, 2014, by and between TOWN OF MINTURN, a quasi-municipal corporation of the State of Colorado ("Town"), and EAGLE RIVER WATER & SANITATION DISTRICT, a quasi-municipal corporation of the State of Colorado ("District").

WITNESSETH:

WHEREAS, among its other functions Town owns and operates a water treatment and distribution system and provides trash collection services substantially within the boundaries of District; and

WHEREAS, District has sufficient experience, personnel and equipment to perform certain services desired by Town; and

WHEREAS, all previous Agreements dated prior to the date first written above, are superseded by this Agreement;

NOW, THEREFORE, in consideration of the premises, the mutual advantages accruing to the parties hereto and the mutual undertakings herein contained, the parties hereto agree as follows:

ARTICLE 1

GENERAL CONDITIONS

1.1 District shall provide in a good and workmanlike manner the services described in this agreement upon the terms and conditions herein stated.

1.2 District shall be an independent contractor and nothing herein contained shall be construed to create the relationship of principal and agent or employer and employee between Town and District. Any person or party hired by District shall be the employee, agent, servant or contractor of District.

1.3 District shall comply with all applicable local, State and Federal laws, rules and regulations.

1.4 District shall provide the services described in Article 2 herein in accordance with the Rules and Regulations of District and any amendments thereto.

ARTICLE 2

SCOPE OF SERVICES TO BE PERFORMED BY DISTRICT

2.1 Billing Services. District shall provide qualified personnel who shall perform billing services for monthly water and trash collection service subject to the following:

2.1.1 Billings for water service and trash collection shall be issued at the same time and in the same manner as sewer service billings.

2.1.2 All bills, which remain unpaid twenty-five days from the date of mailing of such bills, will have a Late Charge of one percent (1%) of any Balance Forward added thereto which shall be retained by District. Town authorizes District to pursue all collection procedures outlined in District's Rules and Regulations, to include Certification of the unpaid amounts to the Eagle County Treasurer for collection as property taxes annually, as allowed by Eagle County. Such unpaid amounts may include Town's unpaid water and trash collection service charges and District's unpaid sewer service charges.

2.1.3 Town, at the request of District, shall discontinue water and/or trash service to customers following notice of disconnection to such customers as provided in the Rules and Regulations of District.

2.1.4 In the event a customer's service is unable to be discontinued, Town will contract the work to correct any system deficiencies so that the customer's water service is able to be discontinued. The cost of such work may be added to the customer billing as an adjustment.

2.1.5 Approximately one month after the end of each billing period, District shall remit to Town, an amount equal to the total water and sewer services billed, less all amounts due from customers, which have any amounts in Balance Forward on their bills, which have remained unpaid for more than one hundred twenty (120) days.

ARTICLE 3

COMPENSATION AND PAYMENT

3.1 Cost of Services. Town shall pay District for services performed according to the following:

3.1.1 The cost for billing services to be performed by District is $12,000 per year, to be paid in monthly installments of $1,000 each.

3.1.2 Other services provided by District, at the request of Town, shall be billed at rates listed in Exhibit A or for amounts agreed to by District and Town.

3.2 Payment. Payment by Town to District shall be made within three (3) days following the approval of District's payment request in the regular meeting of Town Council following the end of the calendar month in which the services were performed.

ARTICLE 4

SPECIAL CONDITIONS

4.1 Insurance Requirements. At all times during the term of this Agreement, District shall carry and maintain in full force, at District's expense, the following insurance coverage. Such policies shall include a provision requiring a minimum of thirty (30) days' notice to Town of substantial change or cancellation of coverage or insurance policies.

4.1.1 General Comprehensive Liability insurance in an amount of $350,000 per person and $990,000 per occurrence, including the following coverage: property damage; underground explosion and collapse hazard; and personal injury.

4.1.2 Comprehensive Automobile Liability insurance on all owned vehicles used in connection with the services in an amount of $350,000 per person and $990,000 per occurrence combined single limits for Bodily Injury and Property Damage.

4.1.3 Worker's Compensation insurance in accordance with the provisions of the Worker's Compensation Act of the State of Colorado for all employees to be engaged in the services.

4.2 Certificates of Insurance. Prior to commencement of services, District shall provide Town with Certificate(s) of Insurance evidencing the insurance required by this Article and naming Town as an additional named insured as its interests may appear for all Comprehensive General Liability insurance.

4.3 Indemnity. To the extent of the limits of any insurance coverage maintained by District, District further agrees to indemnify and hold Town harmless from, and defend all actions against, all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising from any negligent act or omission on the part of District, its agents, or employees, provided, however, that any claim for negligent acts or omissions must be brought in accordance with and subject to the limitations of the Colorado Governmental Immunity Act, C.R.S. 24-10-101, et. seq., as amended, as the same may now or hereafter exist, and nothing herein shall be deemed or construed to be a waiver of the rights granted hereunder. Town shall provide District with notice of the commencement of any action, subject to this paragraph, not more than five (5) days following receipt by Town of notice of commencement of such action.

4.4 Renegotiation. Duties or services to be performed by District may be added or deleted and charges for services may be renegotiated by either party upon thirty (30) days written notice to the other party.

4.5 Assignment. Either party without the express written consent of both parties shall make no assignment of its rights and/or obligations under this Agreement.

4.6 Term of Agreement. The effective date of this Agreement shall be January 1, 2014 for a period of twelve (12) months. This Agreement shall be automatically extended for successive one (1) year periods with no notice required to either party unless either party provides written notice of intent to terminate or amend not later than sixty (60) days prior to the annual extension of the Agreement.

4.7 Termination. The provisions of Section 4.6 notwithstanding, either party shall have the right to terminate this Agreement thirty (30) days after written notice of any election to terminate.

ARTICLE 5

MISCELLANEOUS

5.1. Entire Agreement. This Agreement constitutes the entire Agreement between the parties hereto relating to the services, and sets forth the rights, duties, and obligations of each to the other as of this date. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect. This Agreement may not be modified except by a writing executed by both parties.

5.2. Binding Agreement. This Agreement shall inure to and be binding upon the parties, their successors, and assigns.

5.3. No Waiver. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other of the provisions of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.

5.4. Controlling Law. This Agreement shall be governed by and construed in accordance with the law of the State of Colorado.

5.5. Subject to Annual Appropriation and Budget. Under no circumstances shall this Agreement constitute, or be considered as, a multiple-fiscal year obligation of either the District or the Town. The Town's and the District's obligations under this Agreement exist subject to annual budgeting and appropriations, and shall remain subject to the same for the entire term of this Agreement.

5.6. Governmental Immunity. Nothing in this Agreement shall be construed to constitute a waiver, in whole or in part, of any of either of the parties' rights and protections under the Colorado Governmental Immunity Act, § 24-10- 101, et seq., C.R.S., as amended from time to time.

5.7. No Third Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the parties and nothing contained in this Agreement shall give or

allow any such claim or right of action by any other third party on such Agreement. It is the express intention of the parties that any person other than parties receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

5.8. Counterpart Execution. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the day and year first above written.

TOWN OF MINTURN

By: _____
Mayor

ATTEST:

_____
Town Clerk

TOWN OF MINTURN, COLORADO SEAL 1904

EAGLE RIVER WATER & SANITATION DISTRICT:

By: _____
Chairman

ATTEST:

_____
Secretary

Exhibit A

Equipment/Labor	In- District Hourly Rates
1 Ton Utility, Duramax	$45.00
3" Pump	$25.00
6" Power Prime Pump Trailer	$50.00
Air Compressor	$20.00
Backhoe	$75.00
Chain Saw	$25.00
Composting Auger	$30.00
Demo Saw	$25.00
End Dump Trailer	$65.00
Fork Lift	$40.00
Generator	$50.00
Jackhammer	$45.00
Large Jetting Truck	$110.00
Loader	$75.00
Lowboy Tractor	$65.00
Lowboy Trailer	$60.00
Message Board	$25.00
Meter Test Bench	$40.00
Mikasa Jumping Jack	$45.00
Pickup with Plow	$45.00
Pickup with Plow & Liftgate	$45.00
Skid Steer	$60.00
Small Dump Truck	$35.00
Small Jetting Truck	$100.00
Small Portable Welder	$20.00
Steamer	$20.00
Tandem Dump Truck	$50.00
TOC Portable Analyzer at a rate of:	*$600.00 per month*
TV Van	$100.00
Utility Trailer	$30.00
Valve Box Cleaner	$20.00
Vehicle & Tools	$35.00
LABOR: Operational Interns/Temps	$16.00
LABOR: Dist & Coll. Personnel	$37.00
LABOR: Water & Wastewater Operation	$36.00
LABOR: Operations Supervisors and D&C Leads, & Planners	$46.00
LABOR: Construction Managers	$50.00
LABOR: Office Administration & Accounting Staff	$34.00
LABOR: Manager	$59.00
LABOR: Executive Manager	$78.00

Note 1: *None of the above equipment includes labor. Labor will be billed in addition to hourly rates for equipment used.*
Note 2: *Emergency calls after hours will be charged the above rates times 1.5 for labor only. Equipment will be charged the hourly rate stated above.*