

**TOWN OF MINTURN, COLORADO**

**RESOLUTION NO. 18 – SERIES 2015**

**A RESOLUTION AUTHORIZING THE MAYOR OF THE TOWN OF MINTURN TO SIGN AN INTERGOVERNMENTAL SERVICE AGREEMENT BETWEEN THE TOWN OF AVON GOVERNMENT AND THE TOWN OF MINTURN CONTRACTING FOR VEHICLE AND HEAVY EQUIPMENT MAINTENANCE AND REPAIR SERVICES FOR THE TOWN OF MINTURN, COLORADO.**

**WHEREAS**, The Town of Minturn desires The Town of Avon, Colorado to provide vehicle maintenance and repair services on a contractual basis; and

**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 the Town of Avon, Colorado.

**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 which 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hereof, any prosecution commenced, nor any other action or proceeding as commenced under or by virtue of the provision repealed or repealed and reenacted. The repeal of any provision hereby shall not revive any provision or any ordinance previously repealed or superseded unless expressly stated herein.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, APPROVED, ADOPTED AND RESOLVED this 18<sup>TH</sup> day of November, 2015.

TOWN OF MINTURN

By: *Henrietta F. Flaherty*  
Mayor

ATTEST:

*[Signature]*  
Town Clerk



## VEHICLE AND EQUIPMENT MAINTENANCE SERVICE AGREEMENT

This agreement is made and entered into this 18 day of November 2015 by and between Town of Minturn whose address is P.O. Box 309, Minturn Colorado, 81645 (hereafter known as "TOM") and the Town of Avon whose address is P.O. Box 975, 500 Swift Gulch Road, Avon, Colorado, 81620 (hereafter designated as "Contractor").

In consideration of the obligation of TOM to pay the Contractor as herein provided and in consideration of the other terms and conditions hereof, the parties agree as follows:

1. **Contractor Services:** Contractor will, during the term of this Agreement, provide the following services (collectively the "Services"):
  - (a) Routine maintenance and preventive maintenance ("Routine Maintenance") of the TOM vehicles and equipment. Service will be performed on approximately 13 vehicles and equipment listed in Exhibit A. The number of vehicles serviced may be increased or decreased in TOM's sole discretion. Routine Maintenance will be performed at a minimum frequency and scope of work consistent with the manufacturer's recommendations or when initiated at the request of TOM.
  - (b) Repair and replacement work as requested by TOM ("Repair and Replacement"). No payment for any Repair and Replacement shall be due unless TOM has approved of such charges. Services may be commenced with verbal approval by TOM of a written or verbal estimate provided by Contractor. Repair and Replacement includes, without limitation, transmissions repairs, engine repairs, rear end repairs and any other work or repairs exceeding \$2,000.00. TOM acknowledges that subcontractors will perform certain repair work. Contractor shall be responsible for assuring that all such subcontracted work will be performed promptly and in accordance with the terms and conditions of this Agreement.
2. **Facilities:** Contractor represents that its facilities are in good repair and adequately equipped and that it has a sufficient staff to perform all work in a timely manner.
3. **Compensation:** In consideration of Contractor's services during the term of this Agreement, TOM will pay Contractor a unit hourly shop rate for Routine Maintenance and Repair and Replacement. This unit rate shall be \$107.00 per hour for light duty vehicles and equipment and \$116.00 per hour for heavy duty vehicles and equipment. Materials and sublet work shall be charged at cost plus **Twenty percent (20%)**. Invoice shall be issued by the 10<sup>th</sup> of each month for services performed the previous month. Payment shall be remitted within thirty (30) days of receipt of invoice. Contractor's Fueling Facilities may be used by TOM. The cost of Unleaded Gasoline and Diesel Fuel will be at the Contractor's cost plus ten cents per gallon. Contractor's vehicle washing facility may be used by TOM. Contact TOA for current wash rates. Late payment and past due amounts shall be subject to interest as set forth in Chapter 3.32 of the Avon Municipal Code.

4. **Terms and Termination:** This Agreement will be effective as of January 1, 2016 and will terminate on December 31, 2016 unless either party fails to substantially perform the duties and obligations in accordance herewith. In such an event, the non-defaulting party may terminate this Agreement by providing seven (7) days written notice to that the defaulting party, unless the defaulting party cures the breach within the seven (7) day remedy period. Either party may terminate this Agreement without cause by providing thirty (30) days written notice.
5. **Relationships and Taxes:** The relationship between the parties is that of independent contracting parties, and nothing herein shall be deemed or construed by the parties hereto or by any third party as creating a relationship of principal and agent or partnership, or of a joint venture between the parties. Contractor shall be solely responsible for any tax, withholding or contribution levied by the Federal Social Security Act. Contractor is not entitled to unemployment compensation or other employment related benefits, which are otherwise made available by TOM to its employees. Contractor shall provide TOM an original of its Form W-9 (Request for Taxpayer Identification Number of Certification).
6. **Warranty:** Contractor shall perform all Services in a prompt, efficient and workmanlike manner. Contractor shall promptly correct any defective work. This warranty shall be in lieu of all other warranties, express or implied. Contractor's sole liability hereunder, whether in tort or in contract, is expressly limited to the warranty provided for herein.
7. **Assignment:** Contractor's duties hereunder requires particular expertise and skills, and may not be assigned to any third party without the expressed written consent of TOM, and any attempt to do so shall render this Agreement null and void and no effect as respects the assignee (s) and shall constitute an event of default by Contractor.
8. **Waiver:** Failure to insist upon strict compliance with any terms, covenants, and/ or conditions hereof shall not be deemed a waiver of such term, covenant, or condition, nor shall any waiver or relinquishment of any right or power hereunder at any time or more times be deemed a waiver or relinquishment of such right or power at any other time or times.
9. **Benefit:** The terms, provisions, and covenants contained in this Agreement shall apply to, inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors in interest, and legal representatives except as otherwise herein expressly provided.
10. **Situs and Severability:** The laws of the State of Colorado shall govern the interpretation, validity, performance and enforcement of this Agreement. If any provision of this Agreement shall be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby.
11. **Modification:** This Agreement contains the entire agreement between the parties, and no agreement shall be effective to change, modify, or terminate in whole or in part unless such agreement is in writing and duly signed by the party against whom enforcement of such change, modification, or termination is sought.

**12. Non-Liability of Town for Indirect or Consequential Damages or Lost Profits:** Parties agree that the Contractor shall not be liable for any indirect or consequential damages which may arise from any breach of this Service Agreement by Contractor or which may arise by the Contractor's breach of warranty.

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

**14. No Third Party Beneficiaries:** Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party, including any agent, sub-consultant or sub-contractor of TOM. Absolutely no third party beneficiaries are intended by this Agreement. Any third-party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.

**15. Article X, Section 20/TABOR:** The Parties understand and acknowledge that the Town of Avon and TOM are subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The Parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Agreement to the contrary, all payment obligations of the Town are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the Town's current fiscal period ending upon the next succeeding December 31. Financial obligations of the Town payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of Town of Avon, and other applicable law. Upon the failure to appropriate such funds, this Agreement shall be terminated.

EXECUTED this 18 day of November, 2015.

EXECUTED this \_\_\_\_ day of \_\_\_\_\_, 2015.

**Town of Minturn**

**TOWN OF AVON**

By: Hawkeye Flaherty

By: \_\_\_\_\_

**EXHIBIT A**

VIN	Year	Manufacturer	Equipment Type	Unit #	Code
1FDWF37R58ED33805	2009	Ford	F350	13M	L
1D3HW28P67S190021	2007	Dodge	Dakota	7M	L
1D7HW28N565657232	2006	Dodge	2500	6M	L
1FTSX31PX4EC60013	2004	Ford	F350	8M	L
1FTWF33PX4EC60014	2004	Ford	F350	5M	L
1GNET16M556166328	2005	Chevrolet	Trailblazer	1M	L
1FTZR15EX9PAD2057	2009	Ford	Ranger	14M	L
1XKAD69X0NS	1992	Kenworth	Dump truck	144M	H
1B7KF23W6XJ637692	1999	Dodge	2500	12M	L
2B3KA43H37H770201	2007	Dodge	Charger	333	L
JJG0249826	2000	Case	580L Backhoe	11M	H
DJN00332	2009	Cat	IT38F Loader	15M	H
44E559257	1996	Mack	Dump Truck	16m	H

**END EXHIBIT A**