



TOWN OF AVON, COLORADO
TOWN OF AVON MEETINGS FOR TUESDAY, JANUARY 12, 2016
AVON LIQUOR AUTHORITY MEETING BEGINS AT 5:00 PM
REGULAR MEETING BEGINS AT 5:05 PM
AVON TOWN HALL, ONE LAKE STREET

AVON LIQUOR LICENSING AUTHORITY MEETING BEGINS AT 5:00 PM (SEE SEPARATE AGENDA PAGE 2)

REGULAR MEETING BEGINS AT 5:05 PM

- 1. CALL TO ORDER & ROLL CALL**
- 2. APPROVAL OF AGENDA**
- 3. PUBLIC COMMENT –COMMENTS ARE WELCOME ON ITEMS NOT LISTED ON THE FOLLOWING AGENDA**
- 4. WORK SESSION**
 - 4.1. LEGAL OPINION ON AVON SALES TAX ON CONSTRUCTION MATERIALS AND TANGIBLE PERSONAL PROPERTY (TOWN ATTORNEY ERIC HEIL, ASSISTANT TOWN MANAGER SCOTT WRIGHT)
- 5. ACTION ITEMS**
 - 5.1. **PUBLIC HEARING** SECOND READING OF ORDINANCE NO. 15-12 APPROVING AN EXTENSION OF VESTED RIGHTS FOR THE RED HOUSE PLANNED UNIT DEVELOPMENT (PLANNING DIRECTOR MATT PIELSTICKER)
 - 5.2. FIRST READING OF ORDINANCE NO. 16-01, AN ORDINANCE AMENDING CHAPTER 3.30 UNCLAIMED PROPERTY OF THE AVON MUNICIPAL CODE (ASSISTANT TOWN MANAGER SCOTT WRIGHT)
- 6. CONSENT AGENDA**
 - 6.1. APPROVAL OF COMMUNITY GRANT FUNDING REQUEST FROM SALVATION ARMY (EXECUTIVE ASSISTANT TO THE TOWN MANAGER PRESTON NEILL)
 - 6.2. APPROVAL OF FULLCOURT AGREEMENT FOR ELECTRONIC COURT TICKET PROCESSING (TOWN CLERK DEBBIE HOPPE)
 - 6.3. APPROVAL OF DECEMBER 8, 2015 REGULAR MEETING MINUTES (TOWN CLERK DEBBIE HOPPE)
- 7. WRITTEN REPORTS**
 - 7.1. FINANCIAL REPORT (BUDGET ANALYST KELLY HUITT)
- 8. COMMITTEE MEETING UPDATES: COUNCILORS AND MAYOR**
 - 8.1. UPPER EAGLE REGIONAL WATER AUTHORITY (COUNCILOR SARAH SMITH HYMES)
 - 8.2. ECO TRANSIT (MAYOR PRO TEM JAKE WOLF)
 - 8.3. AFFORDABLE HOUSING BOARD (COUNCILOR MEGAN BURCH)
- 9. MAYOR & COUNCIL COMMENTS**
- 10. ADJOURNMENT**



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AVON LIQUOR AUTHORITY MEETING BEGINS AT 5:00 PM
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AVON TOWN HALL, ONE LAKE STREET

CALL TO ORDER AND ROLL CALL

1. APPROVAL OF AGENDA

2. PUBLIC COMMENT

3. REPORT OF CHANGES- CORPORATION MASTER FILE

- 3.1. APPLICANT: WAL-MART STORES, INC. D/B/A WAL-MART SUPERCENTER #1199
LOCATION: 171 YODER AVENUE
MANAGER: SAMUEL POTHIER

4. PUBLIC HEARING FOR ART GALLERY PERMIT APPLICATION

- 4.1. APPLICANT: VAIL VALLEY ART GUILD D/B/A ART IN THE VALLEY GALLERY
LOCATION: 240 CHAPEL PLACE # 119
TYPE: ART GALLERY PERMIT
MANAGER: KIM FOOS

5. RENEWAL OF LIQUOR LICENSES

- 5.1. APPLICANT: HCCL, LLC D/B/A BOXCAR
LOCATION: 182 AVON ROAD SUITE 208
TYPE: HOTEL AND RESTAURANT LICENSE
MANAGER: CARA LUFF

- 5.2. APPLICANT: BOB'S PLACE, LLC D/B/A BOB'S PLACE
LOCATION: 100 W. BEAVER CREEK BLVD
TYPE: HOTEL AND RESTAURANT LICENSE
MANAGER: ROBERT DOYLE

6. MINUTES FROM DECEMBER 8, 2015

7. ADJOURNMENT



REPORT TO AVON LIQUOR LICENSING AUTHORITY

To: Avon Liquor Licensing Authority
From: Debbie Hoppe, Town Clerk
Date: January 4, 2016
Re: Report of Changes–Master file
Wal-Mart Stores, Inc.

Town Council acting as the Local Liquor Licensing Authority is asked to consider the Report of Changes– Master file for Wal-Mart Stores, Inc.

Background on Application:

If the application for any license under Article 46 or Article 47 or Title 12 is a corporation or limited liability company, it shall submit with the application, the names, addresses, and individual history records of all of its principal officers, directors, or managers, and a copy of its articles of incorporation or articles of organization; and if a foreign entity, evidence of its qualification to do business within this state. In addition, each applicant shall submit the names, addresses, and individual history records of all persons owning 10% or more of the outstanding or issued capital stock, or persons holding a 10% or membership interest.

Discussion:

The Town Clerk and Town Attorney have reviewed the application materials. The CBI and FBI have checked the prints and reportedly found no record of any criminal history for the listed. The documents that have been included in the packet are outlined as follows:

- ✓ Colorado Department of Revenue letters December 17, 2015, October 29, 2015 and October 30, 2015.
- ✓ Attorney letter dated October 29, 2015.
- ✓ Colorado Report of Changes – Master File Application (DR8442)

Financial Implications:

The report of changes application fees have been submitted to the State of Colorado.

Recommended Motion:

I move to approve the Report of Changes – Master file for Wal-Mart Stores, Inc.



COLORADO

Department of Revenue

Enforcement Division - Liquor & Tobacco

Physical Address:
1881 Pierce Street
Lakewood, CO 80214

Mailing Address:
P.O. Box 173350
Denver, CO 80217-3350

December 17, 2015

WAL-MART STORES INC
SAM'S WEST INC
702 SOUTHWEST 8TH STREET
BENTONVILLE, AR 72716

Re: Master File Account #s 09495180000 and 12339860000

Dear Sir or Madam:

This is to advise you that the Colorado Liquor Enforcement Division ("Division") has, at your request, created a "master file" for the above-listed Licensee.

As of the date of this letter our master file includes the following items which you have submitted:

1. Individual History Records (Form DR 8404-I) for the following persons:

Donald E. Frieson
Carl D. McMillon
Cynthia P. Moehring
Steve R. Zielske
Andrea M. Lazenby

2. Fingerprint cards bearing the names and birth dates of the persons listed in paragraph 1, above. All the fingerprint cards have been submitted by us to the Colorado Bureau of Investigation. The CBI and FBI have checked the prints and reportedly found no record of any criminal history for those listed above.
3. Certificate of Authority or a Certificate of Good Corporate standing from the Colorado Secretary of State which indicates that Coffee House Holdings, Inc. is a corporation authorized to do business in Colorado.

When filing a new application for additional licensed locations, you must check with the local licensing authority to determine what documents they may require to process your application. Please feel free to provide them with this letter, as many local authorities will not require you again to submit fingerprint cards to them if you have already submitted such documents to the Division. This letter will serve to inform the local

authorities exactly which documents you have already submitted to the State Enforcement Division.

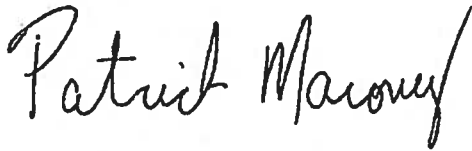
Finally, once the local authority has approved your new license or transfer of ownership application, it must be sent to the Division.

The local authority need not send change of corporate structure information previously reported to the Division, as listed in and approved by this letter.

The only documents which are needed for a new or transfer of ownership application by the Division are:

1. The approved application signed by the local authority;
2. The appropriate fees;
3. A copy of this letter;
4. Proof of possession of the premises;
5. A diagram of the licensed premises;
6. Completed form DR 8442, and an Individual History Record (DR-8404-I) if manager's registration is required.

Sincerely,

A handwritten signature in black ink that reads "Patrick Maroney". The signature is written in a cursive, flowing style.

Patrick Maroney
Division Director



COLORADO

Department of Revenue

Enforcement Division - Liquor & Tobacco

Physical Address:
1881 Pierce Street
Lakewood, CO 80214

Mailing Address:
P.O. Box 173350
Denver, CO 80217-3350

October 29, 2015

Wal-Mart Stores, Inc. / Sam's West Inc.
D/B/A Wal-Mart / Sam's Club
Attn: Licensing
702 SW 8th Street
Bentonville AR 72716-8013

Re: State Master File for **Wal-Mart Stores, Inc. (09495180000) / Sam's West Inc. (12339860000)**

Dear Sir or Madam:

This is to advise you that the Colorado Liquor Enforcement Division ("Division") has, at your request, updated the "master file" for the above-listed Licensee.

As of the date of this letter our master file includes the following items which you have submitted:

1. Individual History Records (Form DR-8404-I) for the following persons:

Carl D. McMillon

Donald E. Frieson

~~Phyllis P. Harris~~ Cynthia P. Moehring

~~Jeffrey A. Davis~~ Steven R. Zielske

Andrea M. Lazenby

~~Amy Y. Thrasher~~ --removed / not replaced

2. Fingerprint cards bearing the names and birthdates of the persons listed in paragraph 1, above. All the fingerprint cards have been submitted by us to the Colorado Bureau of Investigation. The CBI and FBI have checked the prints and reportedly found no record of any criminal history.
3. Certificate of Authority or a Certificate of Good Corporate standing from the Colorado Secretary of State which indicates that **Wal-Mart Stores, Inc. d/b/a Wal-Mart Supercenter** and **Sam's West, Inc. d/b/a Sam's Club** are authorized to do business in Colorado.

When filing a new application for additional licensed locations you must check with the local licensing authority to determine what documents they may require to process your application. Please feel free to provide them with this letter, as many local

authorities will not require you again to submit fingerprint cards to them if you have already submitted such documents to the Division. This letter will serve to inform the local authorities exactly which documents you have already submitted to the Division.

Finally, once the local authority has approved your application, it must be sent to the Division.

The only documents which are needed by the Division are:

1. The approved application signed by the local authority;
2. The appropriate fees;
3. A copy of this letter;
4. Proof of possession of the premises;
5. A diagram of the licensed premises;
6. Completed form **DR 8442**, and an Individual History Record (DR 8404-I) if manager's registration is required.

Sincerely,



Patrick Maroney
Acting Division Director



COLORADO

Department of Revenue

Enforcement Division - Liquor & Tobacco

Physical Address:
1881 Pierce Street
Lakewood, CO 80214

Mailing Address:
P.O. Box 173350
Denver, CO 80217-3350

October 30, 2015

WAL-MART STORES INC
SAM'S WEST INC
702 SOUTHWEST 8TH STREET
BENTONVILLE, AR 72716

Re: Master File Account #s 09495180000 and 12339860000

Dear Licensee:

This is to confirm that we have received the following documents and fees to process a change in the master file account noted above.

- Form DR 8177 – Corporate Report of Changes
- Evidence of Corporate Good Standing
- Individual History Record & Fingerprint card for Cynthia Moehring, sent to CBI 10-29-15.
- Individual History Record & Fingerprint card for Steven Zielske, sent to CBI 10-29-15.
- Fees payable to the Colorado Department of Revenue in the amount of \$500.00.
- Fees payable to the Colorado Bureau of Investigation in the amount of \$39.50. + \$39.50

The following additional documents or fees are needed to complete the change in masterfile:

\$ _____ payable to Colorado Department of Revenue
\$ _____ payable to Colorado Bureau of Investigation

Once the Liquor Enforcement Division has received a final background report on the individuals noted above, we will generate a letter of final approval for this proposed change in master file.

Sincerely,

Cathy Dunne
Investigations Supervisor



DILL DILL CARR STONBRAKER & HUTCHINGS, PC
ATTORNEYS AT LAW

455 Sherman St., Suite 300
Denver, Colorado 80203
303-777-3737
303-777-3823 FAX
www.dillanddill.com

Direct Dial (303) 282-4135
E-Mail: browe@dillanddill.com

October 29, 2015

VIA QUICKSILVER EXPRESS COURIER

Colorado Department of Revenue
Liquor Enforcement Division
1881 Pierce Street, Suite 108A
Lakewood, CO 80214

RE: WAL-MART STORES INC. – MASTER FILE #09-49518
SAM'S WEST INC. – MASTER FILE #12-33986
Report of Changes – Master File

Dear Liquor Enforcement Clerk:

On behalf of our client, we file a report of changes for Wal-Mart Stores Inc. / Sam's West Inc. master file. [NOTE: Wal-Mart Stores Inc. is the parent company of Sam's West Inc.; Wal-Mart Stores Inc. & Sam's West Inc. hold separate account numbers, but are considered one master file.]

Wal-Mart Stores Inc.

- Cynthia P. Moehring replaced Phyllis P. Harris as SVP / CCO
- Steven R. Zielske, Asst Treas, replaced Jeffery A. Davis, Treas
- remove Amy Y. Thrasher, Asst Sec – no replacement

Sam's West Inc.

- same as above

Please direct any questions or additional requirements to my attention at Dill and Dill. Please send any correspondence and the new master file letter to my attention as well.

Christopher W. Carr*
Daniel W. Carr
John J. Coates
Kevin M. Coates
H. Alan Dill
Robert A. Dill
Thomas M. Dunn
John A. Hutchings
Stephen M. Lee
Fay M. Matsukage**
Adam P. Stapen
Jon Stonbraker
Craig A. Stoner
Frank W. Suyat
Patrick D. Tooley
Ghisloine G. Torres Bruner***
Arthur H. Bosworth, II,
of counsel
*Also licensed in Washington
** Also Licensed in Nevada
*** Also Licensed in Florida

Liquor Enforcement Division
October 29, 2015
Page 2

Please note that our office filed a report of changes for Sam's West Inc. 7/16/2015 to report a change in the President [Donald E. Frieson replaced Todd Harbaugh]. This filing is still being processed by State Liquor, and we have not yet received an updated master file letter reflecting this change.

Thank you!!

Respectfully,



Brenda J. Rowe, Paralegal

/bjr

Enclosures: Checks / Fingerprint Cards

\$500.00 – Colorado Dept of Revenue; 2 background @ \$250

\$ 39.50 – Colo Bureau of Investigation – Moehring

\$ 39.50 – Colo Bureau of Investigation – Zielske

Fingerprint Card – Cynthia P. Moehring

[Please see note from officer – these are best prints possible]

Fingerprint Card – Steven R. Zielske

Forms / Documentation

Master File letter dated 5/28/2014 showing changes

DR8177 Report of Changes – Wal-Mart Stores Inc.

DR8177 Report of Changes – Sam's West Inc.

Individual History Record – Cynthia P. Moehring

Individual History Record – Steven R. Zielske

Entity Documents – Wal-Mart Stores Inc.

–Certificate of Good Standing

–Secretary's Certificate [in lieu of minutes]

–Certificate of Incorporation

–Foreign Entity Certificate

Entity Documents – Sam's West Inc.

–Certificate of Good Standing

–Secretary's Certificate [in lieu of minutes]

–Articles of Incorporation

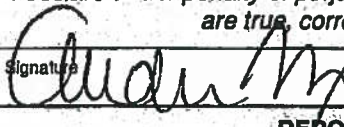
–Foreign Entity Certificate

**REPORT OF CHANGES
 MASTER FILE**

**CORPORATION, LIMITED LIABILITY
 COMPANY AND PARTNERSHIP
 Liquor and 3.2 Beer Licenses**

(2355) LLC/PARTNERSHIP
 (2350) CORPORATION

SEE INSTRUCTIONS AND
 FEE SCHEDULE ON PAGE 2

1. Corporate/L.L.C./Partnership Name WAL-MART STORES INC.		2. State Tax Account Number 00949518		3. State Liquor License Number 0949518 -- See Attached	
4. Trade Name PLEASE SEE ATTACHED				5. Telephone Number Corp: 479-277-1182	
6. Address of Licensed Premises PLEASE SEE ATTACHED		City PLEASE SEE ATTACHED		State	ZIP Code
7. Mailing Address if different than above Attn: Licensing / 702 SW 8th St		City Bentonville		State AR	ZIP Code 72716
8. LIST ALL officers, directors (corporation) or Managing Members (L.L.C.) or General Partner(s). Each Officer, Director, Managing Member or Partner MUST FILL OUT a DR 8404-I (Individual History Record).					
Position Held	Names	Home Address	DOB	Replaces	
Pres CEO	Carl Douglas McMillon	1701 NE Tiger Blvd; Bentonville AR 72712		NO CHANGE	
SVP/CCO	Cynthia P. Moehring	2908 Red Fox Ridge; Bentonville AR 72712		Phyllis P. Harris	
Asst Treas	Steven R. Zielske	4904 S 44th PL; Rogers AR 72758		Jeffery A. Davis	
Asst Sec	Andrea M. Lazenby	808 Irelan St; Lowell AR 72745		NO CHANGE	
Asst Sec	--- REMOVE FROM MASTER FILE / NOT REPLACED ---			Amy Y. Thrasher	
9. LIST ALL 10% (or more) Stockholders or 10% (or more) Members or 10% (or more) Limited Partners. Each person listed Must Fill out a DR 8404-I (Individual History Record)					
Stockholders/Members/Partners owning 10% (or more) of business	% Owned	Home Address	DOB	Replaces	
Publicly-Traded -- SEE ATTACHED					
10. Registered Agent The Corporation Company			Address For Service 1675 Broadway, Ste 1200; Denver CO 80202		
OATH OF APPLICANT					
<i>I declare under penalty of perjury in the second degree that this application and all attachments are true, correct, and complete to the best of my knowledge.</i>					
11. Authorized Signature 		Title Assistant Secretary		Date 10/14/15	
REPORT OF LOCAL LICENSING AUTHORITY					
The foregoing changes have been received and examined by the Local Licensing Authority.					
12. Local Licensing Authority For Town of Avon					
Signature		Title		Date	
Attest				D	
DO NOT WRITE IN THIS SPACE -- FOR DEPARTMENT OF REVENUE USE ONLY					
LIABILITY INFORMATION					
License Account Number	Period	Cash Fund	TOTAL		
		-100 (999)			



REPORT FOR AVON LIQUOR LICENSING AUTHORITY

To: Avon Liquor Licensing Authority
From: Debbie Hoppe, Town Clerk
Date: January 7, 2016
Agenda topic: ART GALLERY PERMIT APPLICATION – PUBLIC HEARING

The Town Council, acting as the Local Liquor Licensing Authority, is asked to consider the Art Gallery Permit Application as submitted by:

Applicant Name: Vail Valley Art Guild
Trade Name: Art In The Valley Gallery
Event Dates: January 29, 2016, February 26, 2016, March 25, 2016, April 29, 2016, May 27, 2016, June 30, 2016, July 29, 2016 August 26, 2016, September 30, 2016, October 28, 2016, November 25, 2016, December 16, 2016 and December 20, 2016.
Location: 240 Chapel Place Unit 119
Gallery Manager: Kim Foos

Background on Application: The Avon Local Liquor Licensing Authority has not previously reviewed an Art Gallery permit. Colorado Liquor Code Section 12-47-422 is re-printed for convenience as follows:

12-47-422. Art gallery permit - definition.

(1) A person operating an art gallery that offers complimentary alcohol beverages for consumption only on the premises may be issued an art gallery permit, which shall be renewed annually. An art gallery permittee shall not, directly or indirectly, sell alcohol beverages by the drink, shall not serve alcohol beverages for more than four hours in any one day, and shall not serve alcohol beverages more than fifteen days per year of licensure.

(2)(a) The state or local licensing authority may reject the application for an art gallery permit if the applicant fails to establish that the applicant is able to offer complimentary alcohol beverages without violating this section or creating a public safety risk to the neighborhood.

(b) Upon initial application, and for each renewal, the applicant shall list each day that alcohol beverages will be served, which days shall not be changed without a minimum of fifteen days' written notice to the state and local licensing authority.

(3) An art gallery shall not be denied an art gallery permit based solely on the art gallery's proximity to any public or private school or the principal campus of a college, university, or seminary.

(4) An art gallery shall not charge an entrance fee or a cover charge in connection with offering complimentary alcohol beverages for consumption only on the premises.

(5) An art gallery permit may be suspended or revoked in accordance with section 12-47-601 if the permittee violates any provision of this article or any rule adopted pursuant to this article or fails to truthfully furnish any required information in connection with a permit application.

(6) It is unlawful for any owner, part owner, shareholder, or person interested directly or indirectly in an art gallery permit to conduct, own either in whole or in part, or be directly or indirectly interested in any other business licensed pursuant to this article or article 46 of this title; except that a person regulated under this section may have an interest in other art gallery permits, in a license described in section 12-46-104(1)(c), 12-47-401(1)(j) to (1)(t), or 12-47-410(1), or in a financial institution referred to in section 12-47-308(4).

(7) As used in this section, "art gallery" means an establishment whose primary purpose is to exhibit and offer for sale works of fine art as defined in section 6-15-101, C.R.S., or precious or semiprecious metals or stones as defined in section 18-16-102, C.R.S.

(8) An art gallery issued a permit shall not intentionally allow more than two hundred fifty people to be on the premises at one time when alcohol beverages are being served.

(9) Nothing in this section shall be construed to abrogate any insurance coverage required by law; to authorize a licensed art gallery to violate section 12-47-901, including, without limitation, serving a visibly intoxicated person and taking an alcohol beverage off the licensed premises; or to violate any zoning or occupancy ordinances or laws.

Please note the following that is unique to Art Gallery liquor license permits:

- Alcohol may not be sold
- The Licensee may not charge for admittance
- Alcohol may not be served for more than 4 hours
- The Licensee may not permit more than 250 people
- Licensee may amend the designated dates with a minimum 15 day notice to state and local authority

Notice, Public Hearing, Fees: The gallery has been posted with notice of the public hearing for this application. The gallery manager will be present to answer question about the application. The Local Liquor Licensing Authority must conduct a public hearing prior to taking action on this application. The art gallery permits application fees have been submitted to the Town of Avon and the State fees will be forwarded with the application materials upon Local Liquor Authority approval.

Background Investigation: A background investigation has been completed by the Avon Police Department and the report indicates no concerns. The Colorado Bureau of Investigation report is pending.

Local Liquor Licensing Authority Review: The Local Liquor License Authority may consider (1) the character of the applicant, and (2) whether the applicant is able to offer complimentary alcohol beverages without violating this section or creating a public safety risk to the neighborhood when considering this application. The Local Authority may require the applicant to use servers who are "TIPS" trained as relevant to the public safety risk to the neighborhood.

Recommended Motion:

I move to approve (or deny stating the reasons for denial) the Art Gallery Permit for Vail Valley Art Guild d/b/a Art In The Valley Gallery.

ART GALLERY PERMIT APPLICATIONS ATTACHMENTS:

The applicants for the art gallery permit have submitted the following materials:

- ✓ Application for the art gallery permit (State form DR 8443)
- ✓ Commercial Lease Agreement
- ✓ Diagram of premises
- ✓ Police Report on Background Checks

ART GALLERY PERMIT APPLICATION

2341 ART GALLERY PERMIT \$71.25 **NEW** **RENEWAL**

1. Applicant Name (i.e. ABC Gallery Inc.) VAIL VALLEY ART GUILD		State Sales Tax Number of Applicant 005190	
2. Trade Name of Establishment (DBA) ART IN THE VALLEY GALLERY			
3. Address 240 CHAPEL PLACE UNIT 11A		Phone Number 970-471-1990	
City AVON	County EAGLE	State CO	ZIP Code 81620
4. Mailing Address (Number and Street) P.O. Box 9733		City or Town AVON	State CO ZIP Code 81620-9701

- Attach a copy of a deed or lease in the exact name of the applying entity only, reflecting possession of the permitted area for at least the minimum duration of this permit (1 year from date of issuance).
- Attach a diagram of the premises which accurately reflects the area where alcohol beverages will be stored, served, possessed or consumed.

Pursuant to 12-47-422, C.R.S., Applicant hereby states that it qualifies for an Art Gallery Permit, in order to serve complimentary alcohol beverages, and certifies to the State Licensing Authority and Local Licensing Authority:

That it does not sell alcohol beverages by the drink.

That it will not serve alcohol beverages for more than 4 hours in any one day, no more than 15 days per year as follows:

Date: From: 1-29-16 To: 1-29-16	Date: From: 4-29-16 To: 4-29-16	Date: From: 7-29-16 To: 7-29-16	Date: From: 10-28-16 To: 10-28-16	Date: From: 12-20-16 To: 12-20-16
Date: From: 2-26-16 To: 2-26-16	Date: From: 5-27-16 To: 5-27-16	Date: From: 8-26-16 To: 8-26-16	Date: From: 11-25-16 To: 11-25-16	Date: From: To:
Date: From: 3-25-16 To: 3-25-16	Date: From: 6-30-16 To: 6-30-16	Date: From: 9-30-16 To: 9-30-16	Date: From: 12-16-16 To: 12-16-16	Date: From: To:

OATH OF APPLICANT

I declare under penalty of perjury in the second degree that I have read the foregoing application and all attachments thereto, and that all information therein is true, correct, and complete to the best of my knowledge.

Signature Kim Q Fooz	Title DIRECTOR	Date 12-7-15
--------------------------------	--------------------------	------------------------

REPORT AND APPROVAL OF LOCAL LICENSING AUTHORITY (CITY/COUNTY)

The foregoing application has been examined and the premises, business conducted and character of the applicant is satisfactory, and we do report that such permit, if granted, will comply with the applicable provisions of Title 12, Articles 46 and 47, C.R.S., as amended.

THEREFORE, THIS APPLICATION IS APPROVED.

Local Licensing Authority (City or County) Town of Avon	Date filed With Local Authority 12/8/15	
Signature	Title	Date

REPORT OF STATE LICENSING AUTHORITY

The foregoing has been examined and complies with the filing requirements of Title 12, Article 47, C.R.S., as amended.

Signature	Title	Date
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DO NOT WRITE IN THIS SPACE - FOR DEPARTMENT OF REVENUE USE ONLY

Liability Information					
County	City	Industry Type	License Account Number	Liability Date	License Issued Through (Expiration Date)
				FROM	TO
Cash Fund 2341-100 (999)	City 2180-100 (999)		County 2190-100 (999)		
				TOTAL	

COMMERCIAL LEASE AGREEMENT

THIS LEASE (this "Lease") dated this 30th day of November, 2015

BETWEEN:

Osprey Capital, LLC of 825 Green Bay Road, Suite 100, Wilmette, Illinois, 60091

Telephone: (847) 512-3180 Fax: (847) 512-3199

(the "Landlord")

OF THE FIRST PART

- AND -

Vail Valley Art Guild of 240 Chapel Place, Unit 119, Avon, Colorado, 81620

(the "Tenant")

OF THE SECOND PART

IN CONSIDERATION OF the Landlord leasing certain premises to the Tenant, the Tenant leasing those premises from the Landlord and the mutual benefits and obligations set forth in this Lease, the receipt and sufficiency of which consideration is hereby acknowledged, the Parties to this Lease (the "Parties") agree as follows:

Definitions

1. When used in this Lease, the following expressions will have the meanings indicated:
 - a. "Additional Rent" means all amounts payable by the Tenant under this Lease except Base Rent, whether or not specifically designated as Additional Rent elsewhere in this Lease;
 - b. "Building" means all buildings, improvements, equipment, fixtures, property and facilities from time to time located at 119, 240 Chapel Place, Avon, CO, 81620, as from time to time altered, expanded or reduced by the Landlord in its sole discretion;
 - c. "Common Areas and Facilities" mean:
 - i. those portions of the Building areas, buildings, improvements, facilities, utilities, equipment and installations in or forming part of the Building which from time to time are not designated or intended by the Landlord to be leased to tenants of the

Building including, without limitation, exterior weather walls, roofs, entrances and exits, parking areas, driveways, loading docks and area, storage, mechanical and electrical rooms, areas above and below leasable premises and not included within leasable premises, security and alarm equipment, grassed and landscaped areas, retaining walls and maintenance, cleaning and operating equipment serving the Building; and

- ii. those lands, areas, buildings, improvements, facilities, utilities, equipment and installations which serve or are for the useful benefit of the Building, the tenants of the Building or the Landlord and those having business with them, whether or not located within, adjacent to or near the Building and which are designated from time to time by the Landlord as part of the Common Areas and Facilities;
- d. "Leasable Area" means with respect to any rentable premises, the area expressed in square feet of all floor space including floor space of mezzanines, if any, determined, calculated and certified by the Landlord and measured from the exterior face of all exterior walls, doors and windows, including walls, doors and windows separating the rentable premises from enclosed Common Areas and Facilities, if any, and from the center line of all interior walls separating the rentable premises from adjoining rentable premises. There will be no deduction or exclusion for any space occupied by or used for columns, ducts or other structural elements;
- e. "Premises" means the retail store at 119, 240 Chapel Place, Avon, CO, 81620.
- f. "Rent" means the total of Base Rent and Additional Rent.

Intent of Lease

- 2. It is the intent of this Lease and agreed to by the Parties to this Lease that rent for this Lease will be on a gross rent basis meaning the Tenant will pay the Base Rent and any Additional Rent and the Landlord will be responsible for all other service charges related to the Premises and the operation of the Building save as specifically provided in this Lease to the contrary.

Leased Premises

- 3. The Landlord agrees to rent to the Tenant the retail store municipally described as 119, 240 Chapel Place, Avon, CO, 81620, (the "Premises"). The Premises will be used for only the following permitted use (the "Permitted Use"):

Art Gallery.

Neither the Premises nor any part of the Premises will be used at any time during the term of this Lease by Tenant for any purpose other than the Permitted Use.

4. A reasonable number of pets or animals are allowed in or about the Premises. If this privilege is abused, the Landlord may revoke this privilege upon thirty (30) days notice.

Term

5. The term of the Lease is a periodic tenancy commencing at 12:00 noon on November 2, 2015 and continuing on a month-to-month basis until the Landlord or the Tenant terminates the tenancy.

Rent

6. Subject to the provisions of this Lease, the Tenant will pay a base rent of \$0.00, payable per month, for the Premises (the "Base Rent").
7. The Tenant will pay the Base Rent on or before the _____ of each and every month of the term of this Lease to the Landlord.
8. For any rent review negotiation, the basic rent will be calculated as being the higher of the Base Rent payable immediately before the date of review and the Open Market Rent on the date of review.

Use and Occupation

9. The Tenant will use and occupy the Premises only for the Permitted Use and for no other purpose whatsoever. The Tenant will carry on business under the name of Art in the Valley Gallery and will not change such name without the prior written consent of the Landlord, such consent not to be unreasonably withheld. The Tenant will open the whole of the Premises for business to the public fully fixtured, stocked and staffed on the date of commencement of the term and throughout the term, will continuously occupy and utilize the entire Premises in the active conduct of its business in a reputable manner on such days and during such hours of business as may be determined from time to time by the Landlord.
10. The Tenant covenants that the Tenant will carry on and conduct its business from time to time carried on upon the Premises in such manner as to comply with all statutes, bylaws, rules and regulations of any federal, provincial, municipal or other competent authority and will not do anything on or in the Premises in contravention of any of them.

Quiet Enjoyment

11. The Landlord covenants that on paying the Base Rent and performing the covenants contained in this Lease, the Tenant will peacefully and quietly have, hold, and enjoy the Premises for the agreed term.

Distress

12. If and whenever the Tenant is in default in payment of any money, whether hereby expressly reserved or deemed as rent, or any part of the rent, the Landlord may, without notice or any form of legal process, enter upon the Premises and seize, remove and sell the Tenant's goods, chattels and equipment from the Premises or seize, remove and sell any goods, chattels and equipment at any place to which the Tenant or any other person may have removed them, in the same manner as if they had remained and been distrained upon the Premises, all notwithstanding any rule of law or equity to the contrary, and the Tenant hereby waives and renounces the benefit of any present or future statute or law limiting or eliminating the Landlord's right of distress.
13. If the Tenant continues to occupy the Premises without the written consent of the Landlord at the expiration or other termination of the term, then the Tenant will be a tenant at will and will pay to the Landlord, as liquidated damages and not as rent, an amount equal to twice the Base Rent plus any Additional Rent during the period of such occupancy, accruing from day to day and adjusted pro rata accordingly, and subject always to all the other provisions of this Lease insofar as they are applicable to a tenancy at will and a tenancy from month to month or from year to year will not be created by implication of law; provided that nothing in this clause contained will preclude the Landlord from taking action for recovery of possession of the Premises.

Utilities and Other Costs

14. The Landlord is responsible for the payment of the following utilities and other charges in relation to the Premises: electricity, natural gas, water, sewer, telephone, Internet and cable.

Insurance

15. The Tenant is hereby advised and understands that the personal property of the Tenant is not insured by the Landlord for either damage or loss, and the Landlord assumes no liability for any such loss. The Tenant is advised that, if insurance coverage is desired by the Tenant, the Tenant should inquire of Tenant's insurance agent regarding a Tenant's Policy of Insurance.

Governing Law

16. It is the intention of the Parties to this Lease that the tenancy created by this Lease and the performance under this Lease, and all suits and special proceedings under this Lease, be construed in accordance with and governed, to the exclusion of the law of any other forum, by the laws of the State of Colorado, without regard to the jurisdiction in which any action or special proceeding may be instituted.

Severability

17. If there is a conflict between any provision of this Lease and the applicable legislation of the State of Colorado (the 'Act'), the Act will prevail and such provisions of the Lease will be amended or deleted as necessary in order to comply with the Act. Further, any provisions that are required by the Act are incorporated into this Lease.

Assignment and Subletting

18. The Tenant will not assign this Lease, or sublet or grant any concession or license to use the Premises or any part of the Premises. An assignment, subletting, concession, or license, whether by operation of law or otherwise, will be void and will, at Landlord's option, terminate this Lease.

Bulk Sale

19. No bulk sale of goods and assets of the Tenant may take place without first obtaining the written consent of the Landlord, which consent will not be unreasonably withheld so long as the Tenant and the Purchaser are able to provide the Landlord with assurances, in a form satisfactory to the Landlord, that the Tenant's obligations in this Lease will continue to be performed and respected, in the manner satisfactory to the Landlord, after completion of the said bulk sale.

Additional Provisions

20. _____

Care and Use of Premises

21. The Tenant will promptly notify the Landlord of any damage, or of any situation that may significantly interfere with the normal use of the Premises.

KX

- 22. The Tenant will not make (or allow to be made) any noise or nuisance which, in the reasonable opinion of the Landlord, disturbs the comfort or convenience of other tenants.
- 23. The Tenant will not engage in any illegal trade or activity on or about the Premises.
- 24. The Landlord and Tenant will comply with standards of health, sanitation, fire, housing and safety as required by law.

Surrender of Premises

- 25. At the expiration of the lease term, the Tenant will quit and surrender the Premises in as good a state and condition as they were at the commencement of this Lease, reasonable use and wear and damages by the elements excepted.

Hazardous Materials

- 26. _____

Rules and Regulations

- 27. The Tenant will obey all rules and regulations posted by the Landlord regarding the use and care of the Building, parking lot, laundry room and other common facilities that are provided for the use of the Tenant in and around the Building on the Premises.

General Provisions


- 28. Any waiver by the Landlord of any failure by the Tenant to perform or observe the provisions of this Lease will not operate as a waiver of the Landlord's rights under this Lease in respect of any subsequent defaults, breaches or nonperformance and will not defeat or affect in any way the Landlord's rights in respect of any subsequent default or breach.
- 29. This Lease will extend to and be binding upon and inure to the benefit of the respective heirs, executors, administrators, successors and assigns, as the case may be, of each party to this Lease. All covenants are to be construed as conditions of this Lease.
- 30. All sums payable by the Tenant to the Landlord pursuant to any provision of this Lease will be deemed to be Additional Rent and will be recovered by the Landlord as rental arrears.

31. Where there is more than one Tenant executing this Lease, all Tenants are jointly and severally liable for each other's acts, omissions and liabilities pursuant to this Lease.

IN WITNESS WHEREOF the Parties to this Lease have duly affixed their signatures under hand and seal, or by a duly authorized officer under seal, on this 30th day of November, 2015.

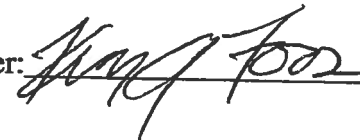
Osprey Capital, LLC (Landlord)

(Witness)

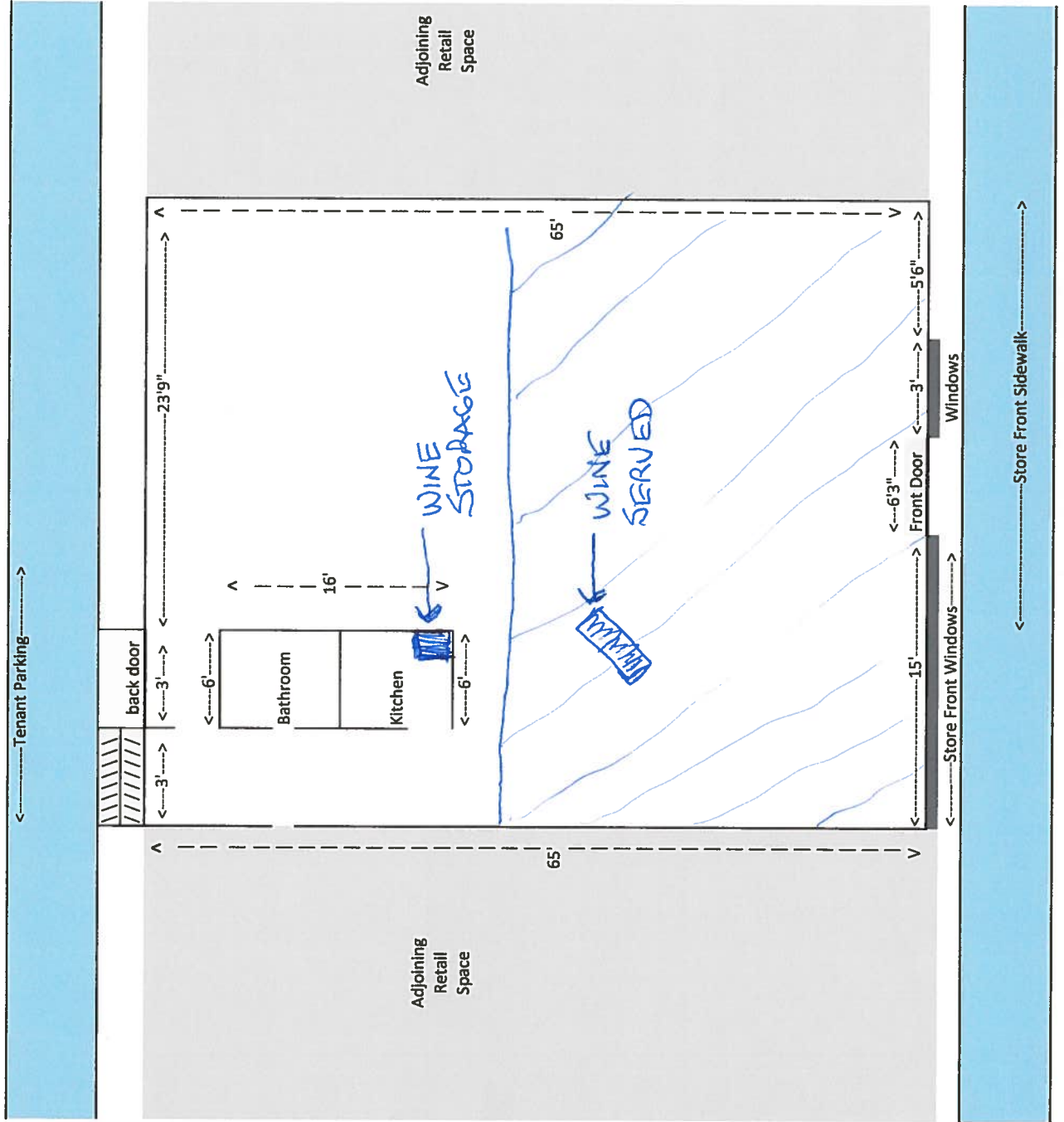
Per:  (SEAL) DEC. 1, 2015

Vail Valley Art Guild (Tenant)

(Witness)

Per:  (SEAL) 12/1/2015

Art in the Valley Gallery
 240 Chapel Place, Unit 119
 Avon, CO



= WINE CONSUMED $\frac{1}{2}$ POSSESSED

**Avon Police Department
Liquor License Application**

Individual Name(s): Kimberly Foos

Name of Business: Vail Valley Art Guild d/b/a Art in the Valley Gallery

Type of License: Art Gallery
 Special Event Permit

Event Name:
Date of Event:

Location of Business: 240 Chapel Place, unit 119
Avon, Colorado 81620

Date Received: 12/15/2015

Photographs/Fingerprints: On File
 Special Event – N/A

Investigation by:
 Detective Sergeant Jonathan Lovins
 Detective Jeremy Holmstrom

Date: 12/23/2015

CBI Criminal Investigation (attached): No recent arrests

Local Criminal Investigation: No problems in the past 12 months

Comments:

Liquor Code Violations in the past calendar year: Yes No

If yes, explain: _____

Smoking violation in the past calendar year: Yes No

If yes, explain: _____

Background investigation conducted with no problems and or areas of concern.

N.C.I.C. database not accessed on this applicant.

Investigation Time: 2 hours.

Administration Time: 1 hour.



REPORT TO AVON LIQUOR LICENSING AUTHORITY

To: Avon Liquor Licensing Authority
From: Debbie Hoppe, Town Clerk
Date: January 4, 2016
Agenda topic: Renewal Application–Boxcar

The Town Council serving as the Avon Liquor Licensing Authority will consider the following Liquor License Application for renewal at its Board meeting next week:

RENEWAL OF LIQUOR LICENSE

Applicant: HCCL, LLC d/b/a Boxcar
Location: 182 Avon Road Suite 208
Type: Hotel and Restaurant License
Manager: Cara Luff

Colorado Liquor Code, 12-47-302, provides for guidelines related to liquor licensing renewals; applications for the renewal of an existing license shall be made to the local licensing authority. The Town Clerk, Town Attorney, and Police Department have reviewed the application submitted and referenced above and the materials are in order. The Police Report results show the following information:

HCCL, LLC d/b/a Boxcar:

There have been no concerns or violations during the past year.

The owner/manager has been invited to attend the Liquor Board meeting.

During the liquor license renewal process, the Liquor Authority has broad discretion to consider any character issues related to the licensee holder at renewal in the same manner as granting a license. If there have been various types of behavior, such as failure to pay taxes and fraud, the courts have held these behaviors as a valid reason to find the applicant does not possess character. The Colorado Liquor Code §12-47-302 sets forth the local authority's ability to hold a hearing on the application for renewal. It is also noted that a "yes or no action" only is required on renewals; there are no conditions that can be mandated in this process.

Attachments:

- ✓ State of Colorado Renewal Application Form
- ✓ Avon Police Department Summary Reports

**LIQUOR OR 3.2 BEER LICENSE
 RENEWAL APPLICATION**

Fees Due	
Renewal Fee	\$500.00
Storage Permit \$100 x _____	_____
Optional Premise \$100 x _____	_____
Related Resort \$75 x _____	_____
Amount Due/Paid	\$500.00

BOXCAR
 P O BOX 922
 AVON CO 81620

Make check payable to: Colorado Department of Revenue. The State may convert your check to a one-time electronic banking transaction. Your bank account may be debited as early as the same day received by the State. If converted, your check will not be returned. If your check is rejected due to insufficient or uncollected funds, the Department may collect the payment amount directly from your banking account electronically.

PLEASE VERIFY & UPDATE ALL INFORMATION BELOW

RETURN TO CITY OR COUNTY LICENSING AUTHORITY BY DUE DATE

Licensee Name HCCL LLC		DBA BOXCAR		
Liquor License # 4702569	License Type Hotel & Restaurant (city)	Sales Tax License # 30020051	Expiration Date 2/20/2016	Due Date 1/6/2016
Street Address 182 AVON RD SUITE 208 AVON CO 81620				Phone Number (970) 445 7329
Mailing Address P O BOX 922 AVON CO 81620				
Operating Manager Cara Luft	Date of Birth [REDACTED]	Home Address 220 Elk Meadows, Edwards CO 81632	Phone Number 2025773231	

- Do you have legal possession of the premises at the street address above? YES NO
 Is the premises owned or rented? Owned Rented* *If rented, expiration date of lease 2020
- Since the date of filing of the last annual application, has there been any change in financial interest (new notes, loans, owners, etc.) or organizational structure (addition or deletion of officers, directors, managing members or general partners)? If yes, explain in detail and attach a listing of all liquor businesses in which these new lenders, owners (other than licensed financial institutions), officers, directors, managing members, or general partners are materially interested. YES NO
NOTE TO CORPORATION, LIMITED LIABILITY COMPANY AND PARTNERSHIP APPLICANTS: If you have added or deleted any officers, directors, managing members, general partners or persons with 10% or more interest in your business, you must complete and return immediately to your Local Licensing Authority, Form DR 8177: Corporation, Limited Liability Company or Partnership Report of Changes, along with all supporting documentation and fees.
- Since the date of filing of the last annual application, has the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) been convicted of a crime? If yes, attach a detailed explanation. YES NO
- Since the date of filing of the last annual application, has the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) been denied an alcohol beverage license, had an alcohol beverage license suspended or revoked, or had interest in any entity that had an alcohol beverage license denied, suspended or revoked? If yes, attach a detailed explanation. YES NO
- Does the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) have a direct or indirect interest in any other Colorado liquor license, including loans to or from any licensee or interest in a loan to any licensee? If yes, attach a detailed explanation. YES NO
- SOLE PROPRIETORSHIPS, HUSBAND-WIFE PARTNERSHIPS AND PARTNERS IN GENERAL PARTNERSHIPS:** Each person must complete and sign the DR 4679: Affidavit – Restriction on Public Benefits (available online or by calling 303-205-2300) and attach a copy of their driver's license, state-issued ID or valid passport.

AFFIRMATION & CONSENT

I declare under penalty of perjury in the second degree that this application and all attachments are true, correct and complete to the best of my knowledge.

Type or Print Name of Applicant/Authorized Agent of Business Cara F. Luft	Title chef/owner
Signature [Signature]	Date 11/27/15

REPORT & APPROVAL OF CITY OR COUNTY LICENSING AUTHORITY

The foregoing application has been examined and the premises, business conducted and character of the applicant are satisfactory, and we do hereby report that such license, if granted, will comply with the provisions of Title 12, Articles 46 and 47, C.R.S. **THEREFORE THIS APPLICATION IS APPROVED.**

Local Licensing Authority For Town of Avon	Date
Signature	Title
	Attest

**Avon Police Department
Liquor License Application**

Individual Name(s): Cara Loff

Name of Business: HCCL, LLC d/b/a Boxcar

Type of License: Hotel & Restaurant
 Special Event Permit

Event Name: n/a
Date of Event: n/a

Location of Business: 182 Avon Road, Suite 208
Avon, Colorado 81620

Date Received: 12/15/2015

Photographs/Fingerprints: On File
 Special Event – N/A

Investigation by:
 Detective Sergeant Jonathan Lovins
 Detective Jeremy Holmstrom

Date: 12/21/2015

CBI Criminal Investigation (attached): Clear

Local Criminal Investigation: No Problems found.

Comments:

Liquor Code Violations in the past calendar year: Yes No

If yes, explain: _____

Smoking violation in the past calendar year: Yes No

If yes, explain: _____

Background investigation conducted with no problems and or areas of concern.

N.C.I.C. database not accessed on this applicant.

Investigation Time: 2 hours.

Administration Time: 1 hour.



REPORT TO AVON LIQUOR LICENSING AUTHORITY

To: Avon Liquor Licensing Authority
From: Debbie Hoppe, Town Clerk
Date: January 04, 2016
Agenda topic: Renewal Application–Bob’s Place

The Town Council serving as the Avon Liquor Licensing Authority will consider the following Liquor License Application for renewal at its Board meeting next week:

RENEWAL OF LIQUOR LICENSE

Applicant: Bob’s Place, LLC d/b/a Bob’s Place
Location: 100 W. Beaver Creek Blvd.
Type: Hotel and Restaurant
Manager: Bob Doyle

Colorado Liquor Code, 12-47-302, provides for guidelines related to liquor licensing renewals; applications for the renewal of an existing license shall be made to the local licensing authority. The Town Clerk, Town Attorney, and Police Department have reviewed the application submitted and referenced above and the materials are in order. The Police Report results show the following information:

Bob’s Place, LLC d/b/a Bob’s Place:

There have been no concerns or violations during the past year.

The owner/manager has been invited to attend the Liquor Board meeting.

During the liquor license renewal process, the Liquor Authority has broad discretion to consider any character issues related to the licensee holder at renewal in the same manner as granting a license. If there have been various types of behavior, such as failure to pay taxes and fraud, the courts have held these behaviors as a valid reason to find the applicant does not possess character. The Colorado Liquor Code §12-47-302 sets forth the local authority’s ability to hold a hearing on the application for renewal. It is also noted that a “yes or no action” only is required on renewals; there are no conditions that can be mandated in this process.

Attachments:

- ✓ State of Colorado Renewal Application Form
- ✓ Avon Police Department Summary Reports

LIQUOR OR 3.2 BEER LICENSE RENEWAL APPLICATION

BOB'S PLACE
 BOX 1563
 AVON CO 81620

Fees Due	
Renewal Fee	\$500.00
Storage Permit \$100 x _____	_____
Optional Premise \$100 x _____	_____
Related Resort \$75 x _____	_____
Amount Due/Paid	

Make check payable to Colorado Department of Revenue. The State may convert your check to a one-time electronic banking transaction. Your bank account may be debited as early as the same day received by the State. If converted, your check will not be returned. If your check is rejected due to insufficient or uncollected funds, the Department may collect the payment amount directly from your banking account electronically.

PLEASE VERIFY & UPDATE ALL INFORMATION BELOW

RETURN TO CITY OR COUNTY LICENSING AUTHORITY BY DUE DATE

Licensee Name BOB'S PLACE LLC		DBA BOB'S PLACE		
Liquor License # 28175920000	License Type Hotel & Restaurant (city)	Sales Tax License # 28175920000	Expiration Date 2/10/2016	Due Date 12/27/2015
Street Address 100 W BEAVER CREEK BLVD AVON CO 81620				Phone Number (970) 845 8556
Mailing Address BOX 1563 AVON CO 81620				
Operating Manager Robert Doyle	Date of Birth [REDACTED]	Home Address 0018 Riverside Court Eagle-Vail, CO	Phone Number 970-390-2878	

1. Do you have legal possession of the premises at the street address above? YES NO
 Is the premises owned or rented? Owned Rented* *if rented, expiration date of lease _____
2. Since the date of filing of the last annual application, has there been any change in financial interest (new notes, loans, owners, etc.) or organizational structure (addition or deletion of officers, directors, managing members or general partners)? If yes, explain in detail and attach a listing of all liquor businesses in which these new lenders, owners (other than licensed financial institutions), officers, directors, managing members, or general partners are materially interested. YES NO
NOTE TO CORPORATION, LIMITED LIABILITY COMPANY AND PARTNERSHIP APPLICANTS: If you have added or deleted any officers, directors, managing members, general partners or persons with 10% or more interest in your business, you must complete and return immediately to your Local Licensing Authority, Form DR 8177: Corporation, Limited Liability Company or Partnership Report of Changes, along with all supporting documentation and fees.
3. Since the date of filing of the last annual application, has the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) been convicted of a crime? If yes, attach a detailed explanation. YES NO
4. Since the date of filing of the last annual application, has the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) been denied an alcohol beverage license, had an alcohol beverage license suspended or revoked, or had interest in any entity that had an alcohol beverage license denied, suspended or revoked? If yes, attach a detailed explanation. YES NO
5. Does the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) have a direct or indirect interest in any other Colorado liquor license, including loans to or from any licensee or interest in a loan to any licensee? If yes, attach a detailed explanation. YES NO
6. **SOLE PROPRIETORSHIPS, HUSBAND-WIFE PARTNERSHIPS AND PARTNERS IN GENERAL PARTNERSHIPS:** Each person must complete and sign the DR 4679: Affidavit – Restriction on Public Benefits (available online or by calling 303-205-2300) and attach a copy of their driver's license, state-issued ID or valid passport.

AFFIRMATION & CONSENT

I declare under penalty of perjury in the second degree that this application and all attachments are true, correct and complete to the best of my knowledge.

Type or Print Name of Applicant/Authorized Agent of Business ROBERT K DOYLE	Title Manager
Signature <i>[Signature]</i>	Date 12/16/15

REPORT & APPROVAL OF CITY OR COUNTY LICENSING AUTHORITY

The foregoing application has been examined and the premises, business conducted and character of the applicant are satisfactory, and we do hereby report that such license, if granted, will comply with the provisions of Title 12, Articles 46 and 47, C.R.S. **THEREFORE THIS APPLICATION IS APPROVED.**

Local Licensing Authority For Town of Avon	Date
Signature	Title
	Attest

**Avon Police Department
Liquor License Application**

Individual Name(s): Robert Doyle

Name of Business: Bob's Place LLC d/b/a Bob's Place

Type of License: Hotel & Restaurant
 Special Event Permit

Event Name: N/A
Date of Event: N/A

Location of Business: 100 W. Beaver Creek Blvd.
Avon, Colorado 81620

Date Received: 12/29/2015

Photographs/Fingerprints: On File
 Special Event – N/A

Investigation by:
 Detective Sergeant Jonathan Lovins
 Detective Jeremy Holmstrom

Date: 01/05/2015

CBI Criminal Investigation (attached): No Problems.

Local Criminal Investigation: No Problems.

Comments:

Liquor Code Violations in the past calendar year: Yes No

If yes, explain: _____

Smoking violation in the past calendar year: Yes No

If yes, explain: _____

Background investigation conducted with no problems and or areas of concern.

N.C.I.C. database not accessed on this applicant.

Investigation Time: 2 hours.

Administration Time: 1 hour.

g/6/11

*RJ
1-6-16*



TOWN OF AVON, COLORADO
AVON LIQUOR LICENSING AUTHORITY MEETING MINUTES FOR TUESDAY, DECEMBER 8, 2015
AVON TOWN HALL, ONE LAKE STREET

1. CALL TO ORDER AND ROLL CALL

Chairman Fancher called the meeting to order at 5:03 p.m. A roll call was taken and Board members present were Sarah Smith Hymes, Scott Prince, Megan Burch, Matt Gennett, Buz Reynolds and Jake Wolf. Also present were Town Manager Virginia Egger, Town Attorney Eric Heil, Assistant Town Manager Scott Wright, Police Chief Bob Ticer, Executive Assistant Preston Neill and Town Clerk Debbie Hoppe.

2. APPROVAL OF AGENDA

There were no changes to the agenda.

3. PUBLIC COMMENT – COMMENTS ARE WELCOME ON TOPICS NOT ON THE AGENDA

No public comments made.

4. PUBLIC HEARING FOR TRANSFER OF OWNERSHIP

- 4.1. Applicant: 3 Dragons LLC
 - Current Owner: China Garden, Inc.
 - Address: 100 W. Beaver Creek Blvd.
 - New Owner: Lana Sweaney
 - Type: Hotel and Restaurant License

The application was presented to the Board with owners Lana Sweaney, David Sweaney and Daniel Goldberg present. Board member Reynolds moved to continue the Transfer of Ownership Liquor License for 3 Dragons, LLC d/b/a China Garden until the January 26th meeting; Vice Chairman Wolf seconded the motion and it passed unanimously by those present.

5. RENEWAL OF LIQUOR LICENSES

- 5.1. Applicant: Columbine Bakery, Inc. d/b/a Columbine Bakery
 - Location: 51 Beaver Creek Place
 - Type: Hotel and Restaurant License
 - Manager: Daniel Niederhauser

The application was presented to the Town Council; with owner Ronda Niederhauser present. The Board raised no concerns regarding the renewal application. Board member Prince moved to approve the Hotel and Restaurant Liquor License for Columbine Bakery, Inc. d/b/a Columbine Bakery; Board member Reynolds seconded the motion and it passed unanimously by those present.

- 5.2. Applicant: Nova entertainment, LLC d/b/a Loaded Joe's
 - Location: 82 E. Beaver Creek Blvd. #14
 - Type: Tavern License
 - Manager: Kent Beidel

Vice Chairman Wolf recused himself due to a conflict. The application was presented to the Liquor Authority with owner Kent Beidel present. The Board raised no concerns regarding the renewal application. Board member Prince moved to approve the Tavern License for Nova Entertainment, LLC d/b/a Loaded Joe's; Board member Reynolds seconded the motion and it passed unanimously by those present. Vice Chairman



TOWN OF AVON, COLORADO
AVON LIQUOR LICENSING AUTHORITY MEETING MINUTES FOR TUESDAY, DECEMBER 8, 2015
AVON TOWN HALL, ONE LAKE STREET

Wolf abstained.

6. MINUTES FROM OCTOBER 17, 2015

Board member Reynolds moved to approve the Minutes from October 17, 2015; Board member Gennett seconded the motion and it passed unanimously by those present.

7. Adjournment

There being no further business to come before the Board, the meeting adjourned at 5:30 p.m.

RESPECTFULLY SUBMITTED:

Debbie Hoppe, Town Clerk

APPROVED:

Jennie Fancher

Jake Wolf

Matt Gennett

Megan Burch

Albert "Buz" Reynolds

Scott Prince

Sarah Smith Hymes

TO: Honorable Mayor Fancher and Town Council Members
FROM: Eric J. Heil, Town Attorney
RE: Sales Tax on Building Projects
DATE: January 7, 2016

SUMMARY: Avon Town Council asked that I provide a legal opinion on the Town's authority to impose sales tax on construction and building materials and tangible personal property purchased from a vendor outside of the Town of Avon and delivered and installed in the Town of Avon. Due the importance of this question to the Avon community, I have as an independent attorney to review this matter and provide an independent legal opinion. Patrick Wilson, of the Denver based law firm of Hoffman, Parker, Wilson & Carberry, P.C. has provided an opinion which is included with this memorandum. The Town's sales tax regulation is set forth in Chapter 3.08 of the Avon Municipal Code which may be obtained on the Town's website.

It is my opinion that Avon may impose its sales tax on the following categories of retail sales of construction and building materials and/or tangible personal property ("TPP"):

- 1. Delivery of Materials Into Avon:** Delivery of construction materials or tangible personal property into Avon where the purchaser obtains title to, or possession of the TPP in Avon. However, if a municipal tax has been paid on the TPP in another jurisdiction, then the Town provides a credit for the amount of municipal tax previously paid, up to the amount of the Town's tax.¹
- 2. Retailer-Contractor:** The retail sale and installation of materials by a "Retailer-Contractor", including the installation of over-the-counter sale of completed units, on projects within the Town of Avon.
- 3. Time and Materials Contract:** The Town tax may apply to the amount of mark-up of materials installed by a Contractor in a time and materials contract if a municipal tax was previously paid elsewhere on the original purchase, or on the entire amount if no municipal tax was previously paid.

BACKGROUND AND LEGAL OVERVIEW: The focus of this memorandum is on the application of the Town's sales tax to "construction materials" and "tangible personal property" purchased from a "vendor" located outside of the Town of Avon but then delivered to and/or installed on property located within the Town of Avon.

Sales and Use Tax authority is set forth in Colorado Revised Statutes §39-26-101 *et seq.* for the State and §29-2-101 *et seq.* for counties and municipalities. The Statutes set forth definitions which are terms of art in the application of sales and use tax. As a home rule municipality, Avon derives its taxing authority directly from the State Constitution, and is not bound by State statutory law as to what the Town can and cannot tax. A "use tax" is nationally regarded a complimentary tax to a sales tax. The State of Colorado and a majority of municipalities have adopted both a sales tax and a use tax.

Statutory municipalities and counties are bound by, generally must use, the State statutory definitions and interpretations for sales and use tax. Home rule municipalities have local discretion and are not required to follow the State statutory definitions. The Colorado Supreme Court has held that the power to levy and collect sales tax and the right to determine the base to which the tax applies is a matter of local

¹ AMC 3.08.320

² *Berman v. Denver*, 400 P.2d 434 (Colo.1965); *Security Life and Accident Company v. Temple*, 492 P.2d 63 (Colo.1972);

concern that can be determined by a home rule community.² Despite Avon's home rule authority and discretion in interpretation of its sales tax, Colorado municipalities are constrained by federal constitutional issues.

COLORADO DEPARTMENT OF REVENUE REGULATIONS: The Town may look to the Colorado Department of Revenue regulations for guidance in the interpretation of Town's sales tax regulations, particularly since there is an express preference in the statutory sales tax regulations for uniformity throughout the State; however, State guidance has several limitations. First, the regulations concern the State's sales tax regulations and not home rule municipal sales tax regulations. Second, the guidance may be applicable to the extent that the Town of Avon's sales tax regulation language is the same or substantially similar to the State's language. And third, case law has shown that the Colorado Department of Revenue has on occasion been challenged and lost in its interpretation and application of its regulations. That said, the State is far more active in enforcement of its sales tax regulation and has developed special regulations and other guidance that is relevant for consideration.

FEDERAL CONSTITUTIONAL LAW: The imposition of local tax on TPP that is sold by retailers located outside of the Town can implicate the Due Process clause (14th Amendment) and the Commerce Clause of the U.S. Constitution. Due Process considerations apply to both "intrastate" and "interstate" sales while the Commerce Clause applies to only "interstate" sales (where the vendor and purchaser are in different states). The U.S. Supreme Court holdings and constitutional analysis has evolved over the last 40 years. The application of Federal Constitutional law is discussed in more detail with regard to deliveries of construction materials and tangible personal property for construction projects in Avon.

LEGAL ANALYSIS: The Town of Avon has adopted a sales tax but has not adopted a use tax. The U.S. Supreme Court has recognized the interplay between the two taxes for many decades.

"A sales tax and use tax in many instances may bring about the same result. But they are different in conception, are assessments upon different transactions, and in the interlacings of the two legislative authorities within our federation may have to justify themselves on different constitutional grounds. A sales tax is a tax on the freedom of purchase A use tax is a tax on the enjoyment of that which was purchased." *McLeod v. J.E. Dilworth Co. et al.*, 322 U.S. 327 (U.S. 1944).

The initial inquiry is whether certain transaction by vendors located outside the Town of Avon constitute a retail sale or purchase of tangible personal property within the Town of Avon. The Town of Avon originally adopted a sales tax in 1978. The Avon sales tax was initially phased in to 4% sales tax over a four year timeframe. Originally, the Town deferred to the state statutes for the application of the sales tax and the definition of words related to the sales tax. The Town has amended the Sales Tax Chapter in the Avon Municipal Code several times since its first adoption. In 1991, the Town Council adopted Ordinance No. 1991-07, which codified many definitions, including definition of the phrase, "Engaged in Business in the City." The definition of Engaged in Business in the City as adopted in Avon includes (but is not limited

² *Berman v. Denver*, 400 P.2d 434 (Colo.1965); *Security Life and Accident Company v. Temple*, 492 P.2d 63 (Colo.1972); *Winslow Construction Company v. Denver*, 960 P2d 685 (Colo. 1998). However, State statutory requirements do govern home rule municipalities with respect to the *procedural* aspects of tax protests and appeals.

to) any business that, “Makes more than one deliver into the taxing jurisdiction within a twelve month period.” Avon’s definition is slightly different from the State’s definition.³

The Avon Municipal Code provides that there shall be collected and paid as a tax the amounts stated in Section 3.08.030 upon the following: (1) On the purchase price paid or charged upon all retail sales and purchases of tangible personal property within the boundaries of the Town⁴ The Town’s 4% sales tax applies to all retail sales. AMC 3.08.030(a). “Retail sales,” “Wholesale sales” and “Purchase or sale” are defined as follows:

“**Retail sales**” means all sales except wholesale sales.⁵

“**Wholesale sales**” means sales to licensed retailers, jobbers, dealers or wholesalers for resale. Sales by wholesalers to consumers are not wholesale sales. Sales by wholesalers to nonlicensed retailers are not wholesale sales.⁶

“**Purchase or sale**” means the acquisition for consideration by and person of tangible personal property . . . acquired by . . . a. Transfer, either conditionally or absolutely, of title or possession or both to tangible personal property;⁷

As applies to building and construction projects, the following categories of sales are discussed specifically:

DELIVERY OF TANGIBLE PERSONAL PROPERTY IN AVON: The law has evolved considerably over the last 40 years (and continues to evolve) regarding the obligation to pay a tax to the local jurisdiction for goods purchased from a vendor outside of the local jurisdiction but delivered to a location within the local jurisdiction. In 1979, the Colorado Supreme Court ruled in the *Associated Dry Goods* case that delivery alone is an insufficient nexus for imposing local taxes.⁸ The *Associated Dry Goods* case involved a company that used its own employees and trucks to deliver goods into the City of Arvada while it did not have any physical stores located with the City of Arvada. The Colorado Supreme Court found that based on Federal Due Process and Commerce Clause considerations, the delivery of goods into the City of Arvada did not establish a substantial nexus to allow the City of Aurora to impose a tax on such goods.

However, the law articulated in the *Associated Dry Goods Corporation* case was substantially altered by the 1992 U.S. Supreme Court *Quill Corporation* case.⁹ The Court in *Quill* issued three important rulings:

- (1) that a physical presence in a state is not necessary to establish the “minimum contacts” required to satisfy Due Process for the imposition of a state or local tax on delivered materials coming from outside of the state (or outside the local jurisdiction);

³ The state defines “Doing business in the state” as requiring that a person BOTH (1) sell, lease, or deliver tangible personal property in this state, and (2) maintain, directly or indirectly, an office, sales room, warehouse, or similar place of business within the state. [emphasis added]

⁴ AMC 3.08.020

⁵ AMC 3.08.010 definitions. Same as State definition.

⁶ AMC 3.08.010 Definitions.

⁷ AMC 3.08.010 Definitions.

⁸ *Associated Dry Goods Corporation v. City of Arvada*, 593 P.2d 1375 (Colo. 1979)

⁹ *Quill Corp. v. North Dakota*, 504 U.S. 298 (US 1992)

- (2) that a four part test announced in *Complete Auto Transit, Inc. v Brady*, 430 U.S. 274 (1977) to determine whether the required nexus exists to impose a local tax for purposes of the Commerce Clause and a state or local jurisdiction's ability to tax interstate taxation; and,
- (3) that the "bright-line" holding *National Bellas Hess, Inc. v. Department of Revenue in Ill*, 386 U.S. 753 (US 1967) was re-affirmed such that vendors outside the taxing [State] jurisdiction are free from the imposition of sales tax under the dormant Commerce Clause where the "only connection with customers in the [taxing] State is by common carrier or the United States mail."

Modern courts have upheld the constitutional validity of imposing sales tax on delivered goods where the title or possession transfers within the local taxing jurisdiction. The Colorado Appellate Court recently ruled in the *Leggett & Platt* case that "[T]ransfer of physical possession of goods is a constitutionally permissible taxable event, regardless of technical considerations regarding the time and place of passage of title which might turn on the degree of control short of transfer of physical possession."¹⁰ Because the Court found the sales to have taken place within the City of Thornton, the Colorado Appellate Court found that minimum contacts did exist for purposes of due process, and that the imposition of Thornton's sales tax on the delivery of the goods did not violate the dormant Commerce Clause.

Other states have similarly held that the location of transferring possession is the point of sale and is therefore subject to local sales tax. The Missouri Supreme Court held that the location of delivery of aviation fuel was the point of sale and therefore subject to local sales tax rejecting the objection by Shell Oil that Shell Oil did not maintain a physical place of business in the jurisdiction and that deliveries occurred by an agent transport company of Shell Oil.¹¹ The Missouri Supreme Court also found in the *Shell Oil* case that imposition of a sales tax on delivery did not violate the dormant Commerce Clause.

Retailer-Contractor: Contractors are also retail merchants of building supplies or construction materials which were purchased wholesale (tax free for resale). Such Contractors are referred to as Retailer-Contractors and must have a business and sales tax license for the jurisdictions in which they are selling such building supplies or construction materials. When a Retailer-Contractor installs such building supplies or construction materials, the point of sale is considered to be the location of the installation where possession of the materials are transferred to the property owner. The Colorado Department of Revenue has adopted special regulations in **SR-10 Contractors, 1 CCR 201-5, Sales and Use Tax – Special Regulations for Specific Business**.

The Department of Revenue regulation 1 CCR 201-5 further defines "over-the-counter" sales of materials by a Contactor as follows:

An over-the-counter sale of a complete unit not made to order, with an agreement for installation of the unit, is not a building contract. This rule includes sales of stoves, refrigerators, furnaces, air conditioners, washing machines, dryers, carpets, electrical fixtures, ready-made cabinets, storm doors, garage doors, storm windows, screens, sod and similar items. On such sales the sales tax must be collected from the purchaser by the retailer-contractor. If the installation charges are segregated in the bid proposal or sales invoices, these charges are not taxable. **SR-10 Contractors, Department of Revenue: Sales and Use Tax – Special Regulations for Specific**

¹⁰ *Leggett & Platt, Inc. v Ostrom*, 251 P.3d 1135 (Colo.App. 2010); *McGoldrick v. Berwind-White Coal Mining Co.*, 309 U.S. 33 (U.S. 1940).

¹¹ *Shell Oil Company v. Director of Revenue*, 732 S.W.2d 178 (Mo. 1987).

Businesses, 1 CCR 201-5.

In contrast, the construction material used for “special order” or “custom” construction work may not constitute tangible personal property and may therefore not be subject to sales tax at the location of installation. In the *Raynor Door* case the Colorado Court of Appeals found that the materials used for custom made garage doors which were “made to order” did not constitute tangible personal property and did not fall within the Department of Revenue’s special regulation for contractors.¹² Department of Revenue Regulation 26-102.15, 1-CCR 201.4 defines “tangible personal property” as:

Regulation 26-102.15.

"Tangible personal property " embraces all goods, wares, merchandise, products and commodities, and all tangible or corporeal things and substances which are dealt in, capable of being possessed and exchanged, except news papers excluded by the law.

The term does not include real property, such as land and buildings, nor tangible personal property that loses its identity when it becomes an integral and inseparable part of the realty, and is removable only with substantial damage to the premises. Property severed from real estate becomes tangible personal property.

The Town definition is:

“Tangible personal property” means corporeal personal property. The term shall not, however, include newspapers as defined by Section 24-70-102, C.R.S., 1973. “Corporeal” means physical as opposed to non-physical, intangible property such as stocks or bonds.

Time and Materials Contracts: Contracts for building, remodel and repair projects that itemize time and materials separately are interpreted by the State as selling the materials at retail to the property owner at the location of the property. The Colorado Department of Revenue publication FYI Sales 6 states the following:

BILLING AND CONTRACTS

The method of billing and type of contract can affect the way tax is imposed on or by a contractor.

Time and material billing: The contractor who invoices separately for labor and materials must have a sales tax license and charge applicable taxes on the marked up billing price of all materials. The contractor is liable for use tax on the cost of all supplies not separately billed to the customer, as well as on tools and equipment. A time and materials agreement cannot be treated as a lump sum contract for sales/use tax purposes.

Lump sum contract: A contractor cannot treat this type of contract as time and materials for sales tax purposes. All supplies and materials are taxable on the contractor’s cost, either through sales tax paid to the vendor or use tax paid by the contractor on the Consumer Use Tax Return (DR 0252). The contractor is liable for sales/use tax on the cost of all supplies and materials becoming part of the real property, supplies not becoming part of real property, as well as on all tools and equipment. Local taxes are paid in conjunction with building permits.

¹² *Raynor Door, Inc. v. Charnes*, 765 P.2d 650 (Colo.App. 1988)

TRANSACTIONS NOT SUBJECT TO SALES TAX: This section describes transactions that are not likely subject to Avon's sales tax. This section provides general guidance only. Every transaction is dependent upon the specific facts.

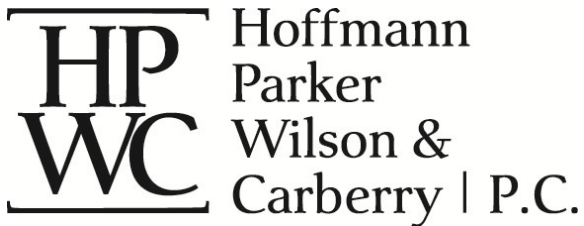
1. The purchase of building supplies or construction materials outside of the Town of Avon when the Contractor or property owner takes title to and possession of such building supplies or materials outside of the Town of Avon and pays another jurisdiction's applicable sales tax to the out of town vendor, even where the contractor uses or consumes such building supplies or construction materials inside the Town of Avon, except for Retailer-Contractors.
2. The purchase of equipment by a Contractor outside of the Town of Avon (where title and possession are obtained outside of the Town), which equipment is used and consumed in the Town of Avon on a construction project.
3. The sale of goods by a retail Vendor in Avon where the goods are delivered to a destination outside the Town of Avon and the title and possession to the goods transfers upon delivery outside of the Town.
4. Transaction which would otherwise be subject to the Town's sales tax but receive a credit in the amount of sales or use tax paid in another municipality in accordance with AMC 3.08.320.

PENDING STATE EFFORT TO PROMOTE UNIFORMITY: The Colorado General Assembly has recognized the authority of home rule municipalities to adopt, administer and interpret sales tax regulations in a manner which may differ from state regulations, which has resulted in a growing lack of uniformity in Colorado. In 2014, The General Assembly adopted **Senate Resolution 14-038 CONCERNING UNIFORM SALES AND USE TAX DEFINITIONS FOR HOME RULE MUNICIPALITIES THAT LOCALLY COLLECT THEIR SALES AND USE TAX**. Senate Resolution 14-038 calls upon home rule municipalities to work through the Colorado Municipal League to standardize definitions and further requests that municipalities considering adopting definitions and interpretations found in rules promulgated by the Department of Revenue. The Colorado Municipal League circulated to home rule communities an initial draft of standardized definitions last October. Town staff is currently reviewing the draft and anticipates presenting the adoption of standardized definitions in coordination with the Colorado Municipal League effort sometime in 2016. Any amendments to the Town Code cannot impose a tax policy change constituting a "new tax" without voter approval in compliance with Taxpayer Bill of Rights ("TABOR").

COMPARISON TO SIMILAR COMMUNITIES: The Town staff often looks to our peer communities in Eagle, Summit and Routt counties (and beyond) for examples and guidance of best practices. In particular, Town staff has looked to the Town of Breckenridge, which has a sales tax but not a use tax, for its interpretation and application of sales tax to construction materials and tangible personal property. The legal opinion in this memorandum is consistent with the interpretation of Breckenridge with regard to deliveries and retailer-contractors. Avon is utilizing a guidance letter to Contractors and spread-sheet for supplies and sub-contractors based on upon guidance documents used in Breckenridge.

Thank you, Eric

ATTACHMENTS: Legal Opinion from M. Patrick Wilson
Senate Resolution 14-038



Corey Y. Hoffmann
Kendra L. Carberry
Jefferson H. Parker
M. Patrick Wilson

Of Counsel
J. Matthew Mire

Denver Office
511 16th Street, 610
Denver, CO 80202
(303) 825-6444

Vail Office
P.O. Box 2616
Vail, CO 81658
(970) 390-4941

Ryan S. Malarky
Elizabeth R. Cross
Kathryn M. Sellars
Ashley N. Pollock
Jessica B. King

MEMORANDUM

TO: ERIC HEIL, ESQ.

FROM: M. PATRICK WILSON *PW*

DATE: JANUARY 8, 2016

RE: TOWN OF AVON – SALES TAX ASSESSMENT OF CONSTRUCTION AND BUILDING MATERIALS

At your request, we have considered whether, and in what contexts, the Town of Avon (“Town”) may impose its sales tax on the retail sale of construction and building materials (“CBM”) that come from outside of the Town and are used in connection with real property located within the Town.

We understand that the Town currently does not have authority to impose a use tax.

Consideration was given to the Town’s Municipal Code, as found on its website, relevant statutory provisions, as well as state and federal case law. Given the short time frame between when this assignment was requested and when an answer was required, this analysis is not comprehensive or as complete as it might have been with more time. If you would like further analysis on this subject, please let us know.

The primary considerations for this analysis are as follows: 1) does the language of the Town Code provide sufficient authority for the imposition of sales tax on various transactions involving CBM; and 2) are there any constitutional or statutory limitations on the imposition of the Town’s sales tax on these transactions?

If there is only a sales tax involved (and no use tax), we see the analysis as follows:

- If title or possession of CMB is transferred from retailer/vendor to consumer/vendee at a location that is within the Town, the transaction is generally going to be subject to the Town's sales tax, subject to applicable exemptions and credits. If title and possession transfer outside of the Town, the transaction is not subject to the Town's sales tax. Code §3.08.010 (definition of "purchase" or "sale"). Without a use tax, transactions where title or possession to the CBM passes outside of the Town are not subject to assessment by the Town.
- The exemptions in Code §3.08.040 (2) and (7) are not likely applicable for CBM that are brought into the Town. Subsection (2) appears to apply to Avon retailers who sell outside of the Town, and subsection (7) appears to apply only where the CBM is installed in jurisdictions with a use tax, which the Town does not have.
- Also, under Code §3.08.320, the Town would have to recognize a credit for any transaction in which another municipality's tax was lawfully imposed on the same transaction.
- For due process considerations, an out of town retailer would need to have some "minimum contacts" with the Town in order to be required to collect the Town's sales tax. If the retailer makes the delivery into the Town, that probably suffices for due process. With its definition of "engaged in business," the Town's Code places out of town retailers on notice that one delivery into the Town per year is sufficient to be considered to be doing business in the Town.¹ It is not clear if an out of town retailer uses a common carrier to make a delivery into the Town, whether that would satisfy "minimum contacts" for due process purposes. If a purchaser picks up CBM from an out of town retailer (or the purchaser arranges for it being picked up via a common carrier), "minimum contacts" likely do not exist so as to subject that retailer to the Town's tax.
- For Commerce Clause considerations, interstate commerce must be implicated to being with (an out of state retailer delivering into the Town). Then the test under the U.S. Supreme Court's decision in *Complete Auto Transit* would apply.² Under that test, a tax does not violate the Commerce Clause if 1) there is a substantial nexus between the taxing jurisdiction and the taxpayer; 2) the tax is fairly apportioned; 3) the tax does not discriminate between interstate and intrastate taxpayers; and 4) the tax is related to the services provided by the jurisdiction to the taxpayer.

¹ Note, however that the "term engaged in business" is not otherwise used in the Code in connection with the imposition of tax.

² 430 U.S. 274 (1977).

- With some possible limited exceptions, this analysis should apply equally to all TPP (not just CBM), and with all types of retailers/consumers (not just building suppliers, contractors and property owners).

Here are a few scenarios to consider:

- Where a property owner/consumer purchases CBM from an out of town retailer (for use on a project in the Town) and the retailer delivers the CBM into the Town (so that title or possession passes in the Town), the Town's sales tax should apply and it should be collected by the retailer and remitted to the Town. However, if the property owner picks up the CBM (or arranges for its pick up), then the transfer of title and possession is not deemed to transfer in the Town, and the retailer is not likely required to collect the Town sales tax. In this second scenario, a tax may be owed to the jurisdiction where the retailer has its place of business.
- Where a contractor purchases CBM from an out of town retailer (for use on a project in the Town) and the retailer delivers it into the Town, the Town's sales tax should apply and it should be collected by the retailer and remitted to the Town. Because the Town has no use tax, the contractor should not be able to avoid Town sales tax by claiming a use tax will be paid (or has been paid) in connection with a Town building permit. If the contractor picks up the CBM (or arranges for its pick up) from an out of town retailer, then the retailer is not likely required to collect the Town sales tax from a due process standpoint. However, in that scenario, the retailer may have to collect a sales tax for the jurisdiction in which it is located. This scenario would also likely require the Town to acknowledge a credit for any municipal tax that was paid.
- If the contractor picks up the CBM (or arranges for its pick up) from an out of town retailer, and no such sales tax is collected for another municipality, the contractor may be deemed to be re-selling the CBM to the property owner (i.e., in a time and materials contract). Title and/or possession of the CBM would pass to the property owner in the Town and the transaction would be subject to the Town's sales tax.
- If a contractor purchases CBM from an out of town retailer (and pays another jurisdiction's sales tax) and then "marks up" the CBM in a time and materials contract, the CBM may be subject to the Town's sales tax if the sale of the CBM to the property can be considered a separate transaction, but only to the extent of the mark-up or increased amount.

- A “retailer-contractor” should be licensed with the City and collecting and remitting Town sales tax if it is selling CBM in the City.

In general:

Colorado home rule municipalities, like Avon, are afforded broad latitude in which transactions, events, property and services to subject to sales tax. In other words, the *substantive* provisions of a home rule tax code (i.e., what to tax and how much) is left to the home rule municipality’s discretion, so long as constitutional limitations and requirements are adhered to. A home rule municipality’s substantive tax provisions cannot usually be curtailed or conditioned by the General Assembly.

One such constitutional provision to be aware of is the 1992 Taxpayer Bill of Rights (“TABOR”). Any changes/amendments to the Town’s Code that would increase Town revenue or expand the tax base to persons, things or transactions that were not previously subject to tax, should be analyzed for compliance with TABOR. No new tax may be imposed without a vote of the citizens/electors. TABOR should be kept in mind as the Town considers the participating in the tax definition standardization effort being organized by the Colorado Municipal League in response to the General Assembly 2014 Senate Resolution 14-038.

Note that the Colorado Supreme Court has also ruled that *procedural* matters relating to local sales and use tax protests, possibly including the applicable statute of limitations, are matters of statewide concern and State statutory provisions governing the procedural aspects of tax protests are applicable to home rule municipalities. Conflicting home rule procedural provisions relating to tax protests usually must yield to State law.



SENATE JOINT RESOLUTION 14-038

BY SENATOR(S) Steadman and Harvey, Newell, Ulibarri;
also REPRESENTATIVE(S) Kagan and Conti, Becker, Court, Fields,
Gardner, Hamner, Holbert, Hullinghorst, Joshi, Labuda, May, McCann,
Melton, Pettersen, Primavera, Ryden, Schafer, Singer, Tyler, Williams,
Wright, Young, Ferrandino.

CONCERNING UNIFORM SALES AND USE TAX DEFINITIONS
FOR HOME RULE MUNICIPALITIES THAT LOCALLY COLLECT
THEIR SALES AND USE TAXES.

WHEREAS, Colorado's system of local collection of sales and use tax
by home rule municipalities can be cumbersome and difficult for
multijurisdictional merchants; and

WHEREAS, The state, local governments, and businesses alike agree
that standardization of definitions of the goods or services subject to sales
or use tax and the goods or services exempted from sales or use tax (the
"sales and use tax base") would improve Colorado's business
environment; and

WHEREAS, The use of different definitions including varying tax
guidance regarding the different definitions among all taxing jurisdictions
creates confusion for taxpayers and needless audit exposure for
businesses; and

WHEREAS, Standardization of definitions for the sales and use tax
base was recommended in the report prepared by the department of
revenue titled "Uniform Sales and Use Tax Base Throughout the State"
dated December 15, 2013; and

WHEREAS, Standardization of definitions is something that ought to
be accomplished without causing a major revenue loss to taxing

jurisdictions or a revenue increase that necessitates voter approval as required in section 20 of article X of the state constitution; and

WHEREAS, In 1992, Colorado's home rule municipalities that locally collect their sales and use tax adopted a package of standardized definitions that the municipalities themselves had developed, under the aegis of the Colorado Municipal League, and in cooperation with the business community; and

WHEREAS, The 1992 effort did not include a mechanism to maintain standardization of definitions over time, nor did that effort anticipate the practical effect of varying tax guidance among taxing jurisdictions on continued standardization of definitions; now, therefore,

Be It Resolved by the Senate of the Sixty-ninth General Assembly of the State of Colorado, the House of Representatives concurring herein:

(1) The standardization of definitions used by Colorado taxing jurisdictions to define their sales and use tax base is in the public interest and serves to improve Colorado's business environment;

(2) The General Assembly urges Colorado's home rule municipalities that locally collect their sales taxes to work together once again, through the Colorado Municipal League, on a package of uniform definitions recommended for adoption by all home rule, locally collecting municipalities;

(3) The General Assembly further urges that such definitions be developed so that they may be utilized by Colorado municipalities without either significant adverse fiscal impact or voter approval as required in section 20 of article X of the state constitution;

(4) The General Assembly also requests the municipalities to develop among themselves a mechanism for maintaining standardization of the uniform definitions over time;

(5) The General Assembly further requests the municipalities to develop among themselves a coordinated system for issuance of non-judicial guidance regarding the scope or interpretation of such definitions, in order to avoid disparate local tax guidance from interfering

with uniform application of tax definitions;

(6) The General Assembly further requests that the municipalities consider adopting definitions existing in the state's sales and use tax statutes, including interpretations of those definitions found in rules promulgated by the Department of Revenue, where such state and municipality uniformity may be achieved consistent with the objective of revenue neutrality;

(7) The General Assembly further requests that these important undertakings include opportunities for input and consultation with the business community, insofar as retail business is government's partner in collecting this critical tax; and

(8) The General Assembly urges home rule municipalities that locally collect their sales taxes to begin adopting and utilizing a system of standardized definitions and guidance by August 2016.

Be It Further Resolved, That copies of this Joint Resolution be sent to the Colorado Municipal League; the Department of Revenue; the Colorado Association of Commerce and Industry; and the Colorado Retail Council.

Morgan Carroll
PRESIDENT OF
THE SENATE

Mark Ferrandino
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi Markwell
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES



TOWN COUNCIL REPORT

To: Honorable Mayor Jennie Fancher and Avon Town Council
From: Matt Pielsticker, AICP, Planning Director
Meeting Date: January 12, 2016
Agenda Topic: Public Hearing and Second Reading of Ordinance No. 15-12, Approving an Extension of Vested Rights for the Red House Planned Unit Development

ACTION BEFORE COUNCIL

Vote on Second Reading of Ordinance No. 15-12(Exhibit A), an Ordinance approving a five (5) year extension to the Vested Rights of the Red House Planned Unit Development (PUD).

PROPOSED MOTION

“I move to **approve** Ordinance No. 15-12, an Ordinance approving a five (5) year extension to the Vested Rights of the Red House Planned Unit Development (PUD).”

Alternate motions available to Town Council:

“I move to **continue** Ordinance No. 15-12, an Ordinance approving a five (5) year extension to the Vested Rights of the Red House Planned Unit Development (PUD).”

“I move to **deny** Ordinance No. 15-12, an Ordinance approving a five (5) year extension to the Vested Rights of the Red House Planned Unit Development (PUD).”

BACKGROUND

At the November 17, 2015 Council meeting the first reading of Ordinance No. 15-12 was approved. Council directed Staff to work with the applicant to ensure public access from the future ECO trail down to the Eagle River through Lot 2, Riverside Subdivision (“Lot 2”).

Since first reading on November 17, 2015, the applicant acquired ownership of Lot 2. After taking ownership of Lot 2, it was revealed that the property is a development parcel allowing for up to 8 condominium units, and not zoned for open space as indicated on the Town of Avon Zoning Map. Based on this new information and the desire to safeguard river access in the vicinity, action on Ordinance No. 15-12 was continued from December 8, 2015 to the January 12, 2016 meeting in order for more time to work with the applicant.

Ordinance No. 15-12 has been amended based on discussions between Staff, the applicant and the Town Attorney. The future path connection and other desired amenities are not part of the Red House PUD and located within a separate parcel and zoned property (Riverside PUD); therefore a PUD Amendment application is necessary. The attached Ordinance No. 15-12 extends the vested rights for the Red House PUD, and documents the requirement to submit a subsequent PUD application to address river access and other desires of the developer.

Changes to Ordinance No. 15-12 since first reading include:

- Vested Rights extension for an additional five (5) years instead of three (3).
- Conditional approval based on applicant submitting a PUD amendment to the Riverside PUD, including the following points:
 - Development rights associated with Lot 2, Riverside PUD are abandoned.
 - An easement of 1,728.5 sq. ft. will be provided on the eastern portion of Lot 2, Riverside for public use as a foot path to gain access to the Eagle River.
 - The remainder of Lot 2 will be considered for private amenity use, including the ability to construct a “recreation” for owners of condominiums in the adjacent Red House PUD.

Note: *This application would be subject to public review and processing by Planning and Zoning and Avon Town Council pursuant to the general procedures outlined Avon Municipal Code Section 7.16.020.*

- Minor PUD application will be processed subsequent to Ordinance No. 15-12.

The applicant’s written requests (Exhibit B) are attached. For a complete background of the project as well as a review of the mandatory review criteria for this type of application please refer to Exhibit C. Lastly, the 2009 Annexation and Development Agreement is included in full. The Annexation and Development Agreement details all of the other public benefits approved with the Red House PUD project that will continue forward if this vested property rights extension is approved.

EXHIBITS

A – Ordinance 2015-12

B – Applicant’s Request Letters

C – Project Background and Review Criteria

D – 2009 Annexation and Development Agreement

E – Vicinity Map

**TOWN OF AVON, COLORADO
ORDINANCE 2015-12**

**AN ORDINANCE AMENDING THE ANNEXATION AND
DEVELOPMENT AGREEMENT THEREBY EXTENDING
THE EXISTING VESTED PROPERTY RIGHTS FOR THE
RED HOUSE PUD PROPERTY LOCATED AT LOT 1,
EAGLE RIVER AT AVON SUBDIVISION, TOWN OF
AVON, STATE OF COLORADO**

WHEREAS, the Town of Avon (“Town”) is a home rule authority municipal corporation and body politic organized under the laws of the State of Colorado and possessing the maximum powers, authority and privileges to which it is entitled under Colorado law; and

WHEREAS, Dominic Mauriello, Mauriello Planning Group on behalf of Red House Avon, LLC (“Applicant” or “Owner”) has submitted a Vested Property Rights Application (“Application”) to amend the Annexation and Development Agreement approved by Council through Ordinance 09-07 (“Development Agreement”), thereby amending the term of the Development Agreement as defined in Section 3.1 of Article III; and

WHEREAS, the Application amends Section 3.1 of Article III of the Development Agreement to extend the expiration date for an additional three (3) years to then expire July 28, 2019; and

WHEREAS, pursuant to Section 7.16.140(f), *Extension of Vested Property Rights*, the Town Council finds the Application eligible for consideration since the Application was submitted at least six (6) months prior to the expiration of the vested property rights; and

WHEREAS, pursuant to Section 7.16.140(e)(2), Avon Municipal Code, the Town Council has considered the applicable guidelines for the Application; and

WHEREAS, the Town Council of the Town of Avon held public hearings on November 17, 2015 and January 12, 2016 after posting notice of such hearings in accordance with the requirements of Section 7.16.020(d), *Step 4: Notice*, Avon Municipal Code, and considered all comments provided before taking action; and

WHEREAS, the Town Council makes the following specific findings as the basis for its decision as required by Section 7.16.020(f)(3) of the Avon Development Code:

The Application meets the review criteria set forth in Section 7.16.140(e)(2), specifically:

(ii) and (iii) Property values and the real estate market experienced a significant downturn for several years, commencing locally in early 2009 and continuing for several years during the

EXHIBIT A

initial vested rights period and market conditions for the construction of new multi-family residential product have improved only recently; and,

(iv) There have been no changes to the Avon Comprehensive Plan or other community planning documents that affect the project as originally approved in 2009; therefore, the project continues to comply with the Avon Comprehensive Plan and other community planning documents; and,

(v) The project has provided a portion of the required public amenities through the dedication of land for recreation and preservation of the Eagle river and the terms of the Development Agreement require additional amenities including road way improvements, school land dedications, water rights dedications, landscaping improvements and employee housing mitigation; and,

(vii) The extended duration of the vested property rights for an additional five (5) years is reasonable considering the local, state and national economic recovery and local market conditions for new construction of multi-family residential product and considering the conditions related to integration of Lot 2, Riverside PUD, adjoining the current property; and,

WHEREAS, approval of this Ordinance on first reading is intended only to confirm that the Town Council desires to comply with state law, the Avon home rule charter and the Avon Development Code by setting a public hearing in order to provide the public an opportunity to present testimony and evidence regarding the application and that approval of this Ordinance on first reading does not constitute a representation that the Town Council, or any member of the Town Council, supports, approves, rejects, or denies the proposed zoning or other matters in this Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF AVON, COLORADO, the following:

Section 1. Recitals Incorporated. The above and foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the Town Council.

Section 2. Red House Annexation and Development Agreement Amendment. The Town Council gives conditional approval to the extension of the vested property rights as set forth in Section 3 below. The Red House Annexation and Development Agreement is hereby amended by replacing the language in Article III – Term, Section 3.1 in its entirety to read as follows:

“3.1 Term. In recognition of the nature of the development contemplated under this Agreement, the investment and time required to complete the development of the Property, the potential for phased development of the Property, the possible impact of the recent economic downturn and other economic cycles, and poor market conditions at the time of approval, and in recognition of the current severity of the economic recession and uncertainty of economic recovery, the term of the Vested Property Rights shall

EXHIBIT A

commence on the Effective Date and shall continue through and including the twelfth (12th) anniversary of the Effective Date (“**Term**”) and shall expire on July 28, 2021. Expiration or earlier termination of the Term shall not (a) affect any other obligations of the Parties contained in the Agreement, (b) affect any right arising from the issuance of a building permit (but limited to the building for which it is issued) or common law vested property rights obtained prior to the expiration of the Term, or (c) without additional action, result in the termination or rescission of any other legislative, quasi-judicial or administrative approvals occurring prior to the expiration of the Term.”

Section 3. Conditions of Approval. The Town Council approval of the extension of the Vested Property Rights is subject to conditions as described in this section. In the event that the conditions are not satisfied on or prior to December 31, 2016, the Town Council may repeal this ordinance by ordinance and thereby revoke the extension of Vested Property Rights. The conditions of approval include the following:

The Owner shall submit an application to amend the Riverside PUD, which application shall include the following:

1. The PUD amendment application shall be submitted no later than April 30, 2016.
2. The amended PUD Plat shall include the conveyance of a 1,748.5 sq.ft. easement across Lot 2, Riverside PUD, Avon, CO, as shown on the attached Exhibit A, for the purpose of public access as an unimproved or natural foot path to be maintained by the Town, which conveyance shall occur by an instrument acceptable to the Town.
3. Owner, as owner of Lot 2, Riverside PUD, shall abandon the existing development rights on as provided on Lot 2 of the Riverside PUD and apply for the right to use Lot 2, Riverside PUD for recreation cabin as a private amenity, built in the location of the remains of the current cabin structure, or in a similar location, and with a similar square footage, bulk, size and height, or such square footage, bulk, size and height as may be proposed by the Owner and for the right to use Lot 2, Riverside PUD private open space and private passive recreation uses.
4. The Town shall waive any application and associated fees provided that the application for a PUD amendment application is timely submitted and provided that such application meets the conditions stated herein.
5. Nothing contained herein shall restrict or infringe upon the discretion of the Avon Planning and Zoning Commission and Town Council to review and act upon an application to for an amendment to a planned unit development.

Section 4. Correction of Errors. Town Staff is authorized to insert proper dates, references to recording information and make similar changes, and to correct any typographical, grammatical, cross-reference, or other errors which may be discovered in any documents

EXHIBIT A

associated with this Ordinance and documents approved by this Ordinance provided that such corrections do not change the substantive terms and provisions of such documents.

Section 5. **Severability.** If any provision of this Ordinance, or the application of such provision to any person or circumstance, is for any reason held to be invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable. The Town Council hereby declares that it would have passed this Ordinance and each provision thereof, even though any one of the provisions might be declared unconstitutional or invalid. As used in this Section, the term “provision” means and includes any part, division, subdivision, section, subsection, sentence, clause or phrase; the term “application” means and includes an application of an ordinance or any part thereof, whether considered or construed alone or together with another ordinance or ordinances, or part thereof, of the Town.

Section 6. **Effective Date.** This Ordinance shall take effect thirty days after final adoption in accordance with Section 6.4 of the Avon Home Rule Charter.

Section 7. **Safety Clause.** The Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Avon, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

Section 8. **Publication.** The Town Clerk is ordered to publish this Ordinance in accordance with Chapter 1.16 of the Avon Municipal Code.

[EXECUTION PAGE FOLLOWS]

EXHIBIT A

INTRODUCED, APPROVED, PASSED ON FIRST READING AND ORDERED POSTED on November 17, 2015 and a public hearing on this ordinance shall be held at the regular meeting of the Town Council on January 12, 2016, at 5:00 P.M. in the Council Chambers, Avon Municipal Building, One Lake Street, Avon, Colorado.

BY:

ATTEST:

Jennie Fancher, Mayor

Debbie Hoppe, Town Clerk

ADOPTED ON SECOND AND FINAL READING on January 12, 2016.

BY:

ATTEST:

Jennie Fancher, Mayor

Debbie Hoppe, Town Clerk

APPROVED AS TO FORM:

Eric J. Heil, Town Attorney

EXHIBIT B

Matt Pielsticker

From: Dominic Mauriello <dominic@mpgvail.com>
Sent: Friday, December 18, 2015 3:26 PM
To: Matt Pielsticker; Eric Heil - Heil Law Mail Address
Subject: Vested Rights Extension for Red House
Attachments: Riverside-lot2-easement-exhibit-3.pdf

Hi Matt and Eric:

I am getting back to you with regard to the Town Council's request that owner of Lot 2, a parcel of land adjacent to the Red House PUD, but completely unrelated to the PUD or the request for an extension of vested rights. After discussing some of our original thoughts and ideas with you, I believe we have come to an understanding.

I have been working with the owner of this property since the request was made by the Town Council. As you are aware, the property is not zoned open space, which may have played into the thinking with regard to the original request (i.e., you can't develop the lot anyway, so what's the impact the of easement request). The property is zoned PUD and Lot 2 specifically allows development of 8 dwelling units. We've analyze the property and given setbacks and other development restrictions, the property supports the development of two dwelling units (condo units).

After discussing what may be best for the Red House PUD, the owner is willing to abandon the idea of developing dwelling units on Lot 2 subject to agreement with the Town.

I have attached a graphic prepared by Alpine Engineering which shows Lot 2, the existing TOA easement for the ECO Trail improvements, the Town's Tract A (Riverside Subdivision), and a proposed easement of 1,748.5 sq. ft. A conceptual trail is shown that provides for a footpath from the proposed Eco Trail to the Town's Tract A. You will note there is sufficient land on Tract A outside of the high water mark of the Eagle River to allow for public access.

Here is the applicant's revised proposal:

- The owner will provide the 1,748.5 sq. ft. easement as shown for use of an unimproved/natural foot path only (i.e., no other rights or uses). The Town will be required to improve any pave developed;
- The applicant will agree to abandon the development rights as provided for Lot 2 in the Riverside PUD;
- The applicant with sign the application for a Minor or Major PUD amendment to the Riverside PUD, Lot 2. The application would remove the development rights on Lot 2 and replace it with allowing private amenity, recreation cabin built in its current or similar location, and allow private open space and recreation uses. The Town will process the application and will waive any associated fees;
- The Town approves the vested rights extension for the Red House PUD of an additional 5 years (instead of the 3 years originally requested) on January 12, 2016;
- The granting of the easement and processing of the PUD amendment shall occur subsequent to the extension of vested rights

Thank you for your efforts to come to an equitable agreement. I assume that Eric with revise the ordinance for second reading and provide these terms in a more formal draft.

EXHIBIT B

Dominic F. Mauriello, AICP

Mauriello Planning Group, LLC

PO Box 4777

2205 Eagle Ranch Road

Eagle, Colorado 81631

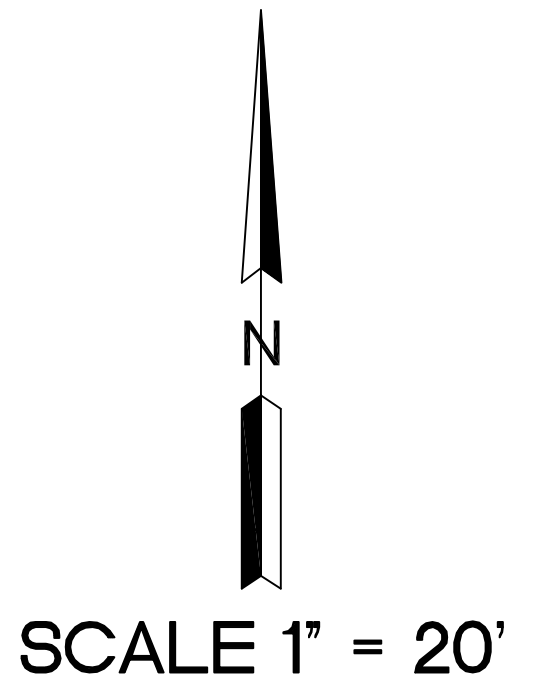
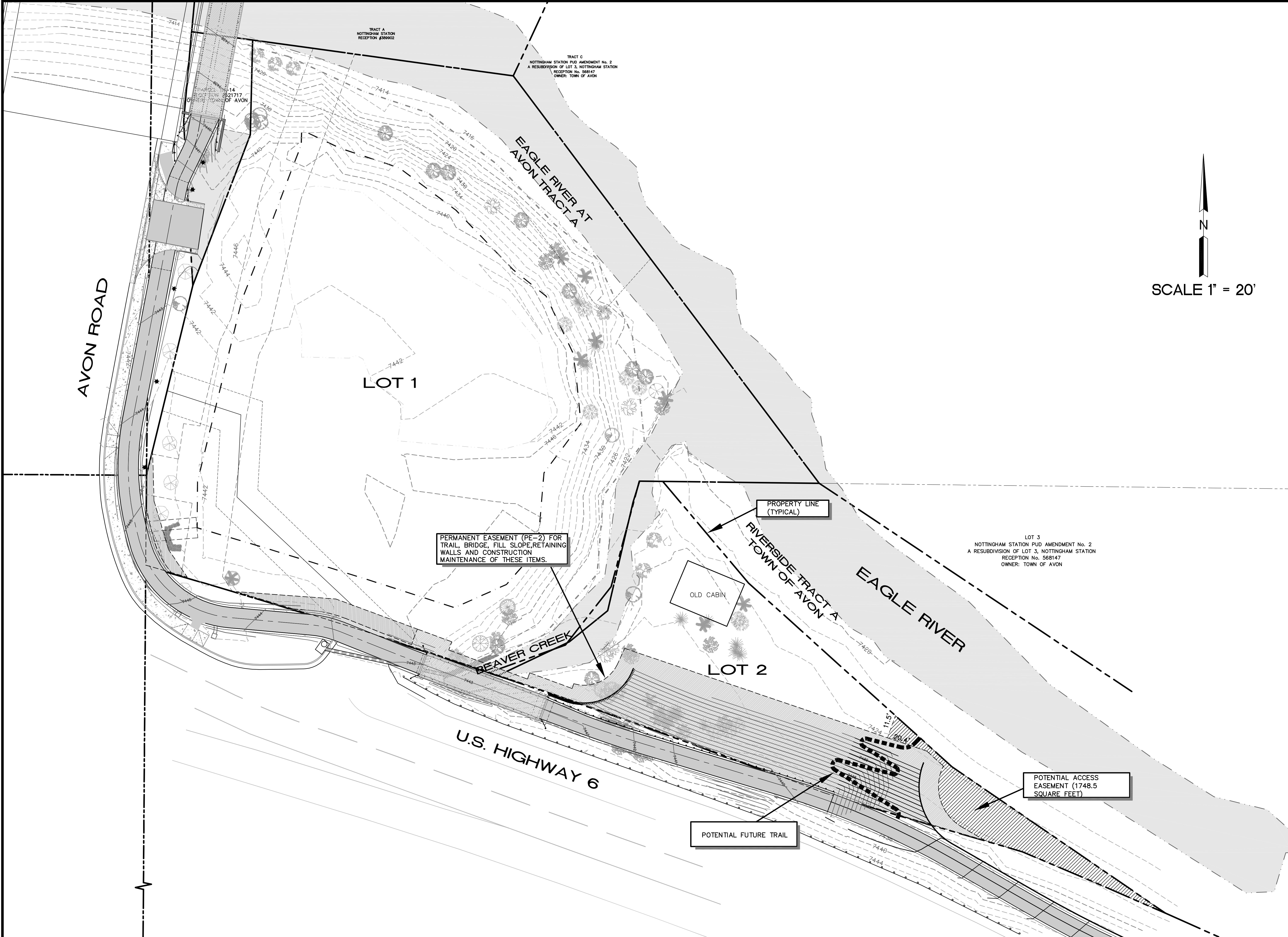
970-376-3318 cell

www.mpgvail.com

REDHOUSE LOT 2
 ACCESS EASEMENT
 EXHIBIT

(SEAL)

DESIGNED	DATE	NO.	DATE	REVISIONS	BY
XXX					
XXX					
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EXHIBIT B



October 22, 2015

Brian Garner
Town Planner
Town of Avon
One Lake Street
Avon, Colorado 81620

Re: Red House - Vested Rights Extension

Dear Brian:

We are providing this letter to supplement our vested rights extension request submitted to the Town on October 20, 2015.

Pursuant to section 7.16.140(f) of the Development Code, a landowner may seek extension of vested property rights by submitting a request for extension at least six month prior to the expiration of the existing vested rights expiration. The request was submitted on October 20, 2015, and therefore meets this requirement as the vested rights expire on July 28, 2016.

Vested rights give a landowner the assurance that he or she can invest significant funds into the detailed building and construction plans required for development without the fear that the rules or the project might change and cause significant financial hardship to the owner. This owner is in the process of pursuing significant investment beyond the purchase of the property.

The Town spent a significant amount of time working with the previous owner of the property to develop a plan that is consistent with the Town's goals and plans. By extending the vesting period the Town is helping to realize the benefits of this project which include increased vitality of the Town Core, enhanced revenues from real estate transfer tax, sales tax, and lodging tax, other public improvements detailed below which might otherwise not occur without this assurance.

Since the rules have not changed since the approval and because the project has already provided benefits to the Town (stream tract parcel dedication) there is really no significant reason not to extend the vesting period and give the owner this assurance.

In granting the extension, the Town Council considers the guidelines contained in 7.16.140(e)(2). Below we have provided a response to each of these guidelines in support of our request:

- (i) The size and phasing of the development, specifically, but not limited to, whether the development can be reasonably completed within the vested rights period;

Applicant Analysis:

The proposed development plan includes the construction of fifteen townhouses in three separate buildings. Permits will be pulled for one building or more at a time. The project will likely be developed completely in

EXHIBIT B

one continuous development phase or may include up to three phases. The applicant believes the project can be started and completed within the extended vesting period.

- (ii) Economic cycles and specifically but not limited to resort community economic cycles, regional and state economic cycles and national economic cycles;

Applicant Analysis:

Avon and the Colorado resort market are just now exiting the impacts of the great recession. With the transfer of ownership of the property having just occurred and the new ownership is evaluating the economics of the project related to financing and construction costs. The extension of the vested rights period is necessary to ensure the owners can develop when the economics of the project align over the next year or so.

- (iii) Market conditions and specifically but not limited to absorption rates for leasing and sales of similar development projects;

Applicant Analysis:

The applicant believes that market conditions are favorable for the sale of townhouse style residential units in this location and in the next couple of years. The economic downturn has created demand due to the lack of supply for residential product just as consumers are starting to spend again. Labor supply is low and construction costs are currently high due to downsizing in the area over the last 8 years but it is anticipated that labor in the construction market will align with market.

- (iv) Compliance with the Avon Comprehensive Plan and other community planning documents;

Applicant Analysis:

This development plan was found to be in compliance with the Plan when it was originally approved and that document remains unchanged. Therefore the project continues to comply with the Plan.

- (v) Proposed public amenities and benefits that enhance the project and the overall attractiveness of the Avon community, including the degree to which such public amenities and benefits are defined in terms of design, timeframe and phasing with development;

Applicant Analysis:

Several public benefits and amenities are included with the project. Some of those benefits have already been realized including the dedication to the Town of land for recreation and stream tract enhancement. Additional benefits include pedestrian access path development to the Eagle River, crosswalk on Highway 6 benefitting the community at large, and dedication of drainage easement across the subject property. The project is also providing roadway improvements, school land dedication fees, water rights to serve the project, landscape improvements, and employee housing in-lieu fees. The project design is providing a welcoming entry to the Town of Avon with quality architecture and substantial landscaping. The project will help to improve the vitality of the core of Avon with new residents and revenues.

- (vi) Projected public financial benefits or costs estimated to be caused by the development project, including the timeframe for realization by the Town or other public entities and potential costs for operation and maintenance of any new public amenities or infrastructure dedicated to the Town or other public entities;

EXHIBIT B

Applicant Analysis:

The project requires very little public participation in the operation and maintenance of the project. All of the onsite improvements, include the access driveway, will be owned and maintained by the project itself. While no official estimate of potential revenues has been made, the project will provide ongoing annual revenues related to real estate transfer tax, property tax, sales tax from those living and spending within the community, and potential for lodging tax from those short term leasing their units.

- (vii) The breadth and scope of the requested vested property right, including but not limited to the extent to which such vested property right restricts the Town's ability to apply future legislatively adopted fees and regulations for the purpose of providing public infrastructure, public services and public facilities and for the purpose of meeting evolving community needs;

Applicant Analysis:

The annexation and development agreement does not preclude the Town from applying legislatively adopted fees and regulations which are general in nature, uniform in character and applicable to all property or class of properties similarly situated to the project pursuant to sections 2.4 and 2.5 of the agreement.

- (viii) The terms of any existing site specific development plans with development agreements for the applicant's property that specify the duration of vested property rights;

Applicant Analysis:

An annexation and development agreement was adopted for the Red House PUD. The agreement specifies the term of the vesting period which is requested to be extended and which will be done by amendment to this agreement pursuant to section 9.8 of the agreement.

- (ix) Any proposed modifications to previously approved vested property rights to address changed conditions within the Avon community, compliance with the Comprehensive Plan and other community planning documents or performance of previously approved site specific development plans; and

Applicant Analysis:

Modification of the period of vested rights is being requested due to the recent change in ownership of the property and the short period of time left in the vesting period. This is due to the lingering effects of the great recession as discussed herein. The extension will not affect the project's continued compliance with the Avon Comprehensive Plan or any other planning documents of the Town. This extension will allow the owners to perform on the previously approved site specific development plan.

- (x) Any other factors deemed relevant by the Council when determining to grant a vested property right for a period greater than three (3) years.

Applicant Analysis:

No analysis required.

We look forward to working with you on this great project.

EXHIBIT B



October 19, 2015

Matt Pielsticker, AICP
Planning Manager
Town of Avon
One Lake Street
Avon, Colorado 81620

Re: Red House - Vested Rights Extension

Dear Matt:

Mauriello Planning Group is assisting the new owners of the Red House property located at Lot 1, Eagle River at Avon, 38359 Highway 6, to extend the vested rights period another 3 years (the typical statutory period). The property was purchased in September of this year by Gregg & Co. Builders, a local building and development company that has been developing homes in the Vail Valley for the past 25 years.

The Red House PUD, approved in 2009, provides for the development of 15 townhouse units in a beautiful setting along the Eagle River. The project provides for many benefits to the Town including the dedicating of land, easements, and pedestrian improvements along the Eagle River, provisions for workforce housing, roadway improvements, and dedication of water rights.



EXHIBIT B

According to the Annexation and Development Agreement for this PUD, the period of vested rights for this PUD (a site specific development plan) will expire on July ??, 2016.

The new owners of the property expect to move forward expeditiously with development of the project, but having just purchased the property and not having a firm understanding of construction costs, the need for plan refinements, and the generally economic conditions that may exist in the spring of 2016, they need the assurance of more time to make responsible decisions.

I think the Town is acutely aware of the sudden escalation of construction costs which can be attributed to a variety of issues including loss of local labor pool during the economic downturn, development pressure in the Front Range of Colorado, and increases in materials costs. These conditions may prove to be short term and therefore an extension of the vested rights would allow the new owners some relief in making hasty decisions. Having the vested rights in place for an extended period gives the owners the assurance they need to feel comfortable planning the development of this project.

We hope that you agree and can grant the extension requested.

Sincerely,



Dominic F. Mauriello, AICP
Principal

Exhibit C
Background and Review Guidelines

BACKGROUND

As approved by Town Council through Ordinance 2009-06, the Red House Property was annexed to the Town of Avon in 2009. Subsequently, the Property was zoned PUD through Ordinance 2009-07 in conjunction with a site-specific development plan containing vested property rights for seven (7) years, expiring July 28, 2016. The site specific development plan includes fifteen (15) townhome units arranged along an access driveway. The townhome residences are designed as three separate buildings: a four-plex and a five-plex along the Eagle River and Beaver Creek frontage and a six-plex in the interior, according to the Red House Development Plan. The approved Development Plan is attachment to this staff report.

As required by Article II, 2.1 of the Annexation and Development Agreement, the property was replatted through the Town's subdivision process as the final plat of Eagle River at Avon, approved by Council through Resolution 09-29.

VESTED PROPERTY RIGHTS

Vested Property Right means the right to undertake and complete the development and use of property under the express terms and conditions of a site specific development plan.

SITE SPECIFIC DEVELOPMENT PLAN

Site specific development plan means a planned unit development plan or any amendment thereto, approved pursuant to Section 7.16.060, Planned Unit Developments, together with a development agreement approved pursuant to Section 7.16.140 hereof.

ANNEXATION AND DEVELOPMENT AGREEMENT (EXHIBIT D)

Article II - 2.2 Vesting of Property Rights.

The PUD Development Plan and Development Standards constitute an approved "site-specific development plan" as defined in the Vested Property Rights Statute and Vested Property Rights Code and Owner shall have vested property rights, pursuant to the Vested Property Rights Statute and Vested Property Rights Code as implemented by this Agreement, to undertake and complete development and use of the Property under the terms and conditions of the PUD Development Plan and Development Standards during the Term. Pursuant to Section 17.14.050 of the Vested Property Rights Code and this Agreement, the PUD Development Plan and Development Standards constitute a site specific development plan for which a vested property right has been granted pursuant to Article 68 of Title 24, C.R.S., for the Term.

SECTION 7.16.140(f) EXTENSION OF VESTED PROPERTY RIGHTS

A landowner may request an extension of vested property rights by submitting an application for extension of vested property rights at least six (6) months prior to the expiration of the vested property rights. No application for extension of a vested property right shall be approved until after providing notice and conducting public hearings in compliance with Subsection [7.16.020\(d\)](#). The guidelines in Paragraph [7.16.140\(e\)\(2\)](#) shall be considered when determining whether to grant an extension to a vested property right. An extension of a vested property right shall be approved by ordinance. The notice of approval provisions in Paragraph [7.16.140\(d\)\(1\)](#) above shall apply to any approval for extension of vested property rights.

SECTION 7.16.140(e)(2), APPROVAL GUIDELINES

The Town Council shall use the following guidelines when determining whether to grant vested property rights for a period greater than three (3) years:

- (i) The size and phasing of the development, specifically, but not limited to, whether the development can be reasonably completed within the vested rights period;*
- (ii) Economic cycles and specifically but not limited to resort community economic cycles, regional and state economic cycles and national economic cycles;*
- (iii) Market conditions and specifically but not limited to absorption rates for leasing and sales of similar development projects;*
- (iv) Compliance with the Avon Comprehensive Plan and other community planning documents;*
- (v) Proposed public amenities and benefits that enhance the project and the overall attractiveness of the Avon community, including the degree to which such public amenities and benefits are defined in terms of design, timeframe and phasing with development;*
- (vi) Projected public financial benefits or costs estimated to be caused by the development project, including the timeframe for realization by the Town or other public entities and potential costs for operation and maintenance of any new public amenities or infrastructure dedicated to the Town or other public entities;*
- (vii) The breadth and scope of the requested vested property right, including but not limited to the extent to which such vested property right restricts the Town's ability to apply future legislatively adopted fees and regulations for the purpose of providing public infrastructure, public services and public facilities and for the purpose of meeting evolving community needs;*
- (viii) The terms of any existing site specific development plans with development agreements for the applicant's property that specify the duration of vested property rights;*
- (ix) Any proposed modifications to previously approved vested property rights to address changed conditions within the Avon community, compliance with the Comprehensive Plan and other community planning documents or performance of previously approved site specific development plans; and*
- (x) Any other factors deemed relevant by the Council when determining to grant a vested property right for a period greater than three (3) years.*

RESPONSE TO REVIEW GUIDELINES

The request to extend the vested property rights to maintain the current approval of the development plan is reasonable given the poor economic conditions for several years following the 2009 approval, and the recent transaction to the new owner. In particular, Guidelines *ii* and *iii* above address the economic reasons for granting the extension. It should be noted that there are no substantive changes to the Avon Development Code that would cause a change to the approved development plan if submitted today as a new submittal for review and approval.

Since 2009 there have been no further changes to the Avon Comprehensive Plan; therefore this vested rights extension request remains in compliance with the Avon Comprehensive Plan (Guideline *iv*), as amended in 2009 concurrently with the PUD application.

A number of public amenities (Guideline *v*) remain intact with this vested rights extension, including:

- Tract A river access parcel dedicated to the Town with PUD and Subdivision Plat, and
- Future Whitewater Park access path under the Avon Road Bridge, and
- Employee Housing Mitigation
- Right-of-way improvements including Highway 6 crosswalk safety improvements

The five (5) year extension request provides the new property owner with greater surety that the development plan approval is locked-in so that construction documents can be prepared for development of the site.

EAGLE COUNTY, CO
TEAK J SIMONTON
Pg: 46 03:30:55PM
REC: \$256.00 DOC: \$

200921817
10/05/2009



recording return to:
anner Michow & Cox LLP
attn: Eric Heil, Esq.
13133 E. Arapahoe Road, Suite 100
Centennial, Colorado 80112

ANNEXATION AND DEVELOPMENT AGREEMENT

4071/2:

THIS ANNEXATION AND DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into as of the 23rd day of June, 2009 by and between The Vail Corporation, a Colorado corporation, d/b/a Vail Associates, Inc. (as defined in Section 1.17, "Owner"), and the Town of Avon, a home rule municipal corporation of the State of Colorado (the "Town").

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RECITALS

This Agreement is made with respect to the following facts:

- A. Capitalized terms have the meanings given them in Article I.
- B. Owner is the owner of approximately 1.44 acres of real property for which Owner has submitted the Annexation Petition for annexation of the Property to the Town.
- C. Pursuant to Resolution No. 08-21, Series of 2008, the Town previously found that the Property is eligible for annexation to the Town in that the requirements of the applicable parts of C.R.S. §§ 31-12-104 and -105 have been met.
- D. Upon annexation of the Property, the Town has authority to zone and regulate development of the Property in accordance with this Agreement, the Comprehensive Plan, the Municipal Code, and other applicable Town ordinances and policies. The Town's authority to enter into this Agreement is derived from its home rule charter, state statutes, and the power generally held by Colorado home rule municipalities to address matters of local concern by contract, ordinance or otherwise.
- E. The legislature of the State of Colorado adopted the Vested Property Rights Statute to provide for the establishment of vested property rights in order to ensure reasonable certainty, stability and fairness in the land use planning process and in order to stimulate economic growth, secure the reasonable investment-backed expectations of landowners, and foster cooperation between the public and private sectors in the area of land use planning. The Vested Property Rights Statute authorizes the Town to enter into development agreements with landowners providing that property rights may be vested for a period exceeding three (3) years where warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of the development, economic cycles, and market conditions.
- F. Consistent with the Vested Property Rights Statute, the Vested Property Rights Code authorizes the Town to enter into development agreements with landowners and other qualified applicants providing for the vesting of property rights for a period exceeding three (3) years.

EXHIBIT D

G. Annexation and development of the Property in accordance with this Agreement is intended and anticipated to provide for orderly growth in accordance with the policy and goals set forth in the Comprehensive Plan, ensure reasonable certainty, stability and fairness in the land use planning process, stimulate economic growth, secure the reasonable investment-backed expectations of the Owner, foster cooperation between the public and private sectors in the area of land use planning, provide for land dedication to the Town and certain public amenities as set forth herein, provide for off-site employee housing, and otherwise achieve the goals and purposes for which the Vested Property Rights Statute and the Vested Property Rights Code were enacted.

AGREEMENT

NOW, THEREFORE, in consideration of the premises set forth above, the terms, conditions and covenants set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owner and the Town agree as follows with respect to the development of the Property:

ARTICLE I DEFINITIONS

Definitions. The following terms shall have the meanings set forth below unless the context in which they are used clearly indicates otherwise:

- 1.1 Access and Utility Easement. As defined in Section 5.1(a).
- 1.2 Agreement. This Annexation and Development Agreement as defined in the introductory paragraph.
- 1.3 AMI. As defined in Section 4.2.
- 1.4 Annexation Petition. The annexation petition for the Property submitted by Owner to the Town and dated March 24, 2008.
- 1.5 Authority. The Upper Eagle Regional Water Authority.
- 1.6 CDOT. Colorado Department of Transportation.
- 1.7 Comprehensive Plan. The Avon Comprehensive Plan adopted by the Planning and Zoning Commission of the Town in February 2006, as may be amended from time to time.
- 1.8 Crosswalk Improvements. As defined in Section 4.4(c).
- 1.9 Development Standards. The development standards pertaining to the Property as contained in the PUD Development Plan attached hereto as Exhibit B.
- 1.10 Drainage Easement. As defined in Section 4.6.
- 1.11 Effective Date. July 28, 2009

EXHIBIT D

1.12 Exhibits. The following are Exhibits to this Agreement, all of which are incorporated by reference into and made a part of this Agreement:

Exhibit A	Legal Description of the Property
Exhibit B	PUD Development Plan and Development Standards for Red House
Exhibit C	Preliminary Subdivision Plan
Exhibit D	Form of Access and Utility Easement
Exhibit E	Form of Landscape Construction and Maintenance Easement

1.13 Final Condominium Plat. The final condominium subdivision plat for the Property to be submitted and processed as in accordance with the subdivision regulations in Chapter 16 of the Municipal Code.

1.14 Landscape Easement. As defined in Section 5.1(b).

1.15 Minor Subdivision Plat. The subdivision plat for the Property, which, among other things, (1) eliminates the existing lot line internal to the Property, (2) re-subdivides the Property into a lot and the River Tract, (3) dedicates the River Tract and Drainage Easement to the Town, and (4) vacates and extinguishes the Kayak Easement.

1.16 Municipal Code. The Avon Municipal Code, as may be amended from time to time.

1.17 Owner. The Vail Corporation, a Colorado corporation, d/b/a Vail Associates, Inc., as defined in the introductory paragraph, its successors and assigns.

1.18 Party(ies). Individually and collectively, Owner and the Town.

1.19 Preliminary Plan. The preliminary plan for the Property submitted by Owner to the Town in connection with Owner's submittal of the PUD Development Plan and Development Standards.

1.20 Property. The real property described on Exhibit A attached hereto.

1.21 Public Improvements. Those improvements necessary to serve the Property to be acquired, constructed or installed for the benefit of and dedication to the public, including, but not limited to, all on-site and/or off-site streets, water lines, sewer lines, stormwater facilities, open space, landscaping, traffic control devices, sidewalks, trails, transportation improvements, signage and related improvements as to be set forth in the SIA.

1.22 PUD. Planned unit development or PUD, as such terms are defined and used in the Municipal Code, as approved by the Town with respect to the Property.

1.23 PUD Development Plan. The PUD Development Plan and Development Standards for Red House, attached hereto as Exhibit B.

1.24 River Tract. As defined in Section 4.6.

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1.25 School Site Payment. As defined in Section 4.7.

1.26 SIA. The subdivision improvement agreement to be entered into between the Town and Owner which shall set forth, among other matters, Owner's obligations with respect to the construction, installation and maintenance of the Public Improvements, including, without limitation, Owner's obligations with respect to provision of collateral therefor.

1.27 Term. As defined in Section 3.1.

1.28 Town. The Town of Avon, a home rule municipal corporation of the State of Colorado, as defined in the introductory paragraph.

1.29 Town Approvals. Collectively, annexation of the Property to the Town, this Agreement, the Preliminary Plan and the PUD Development Plan and Development Standards.

1.30 Town Council. The Town Council of the Town.

1.31 Vested Property Rights Code. Chapter 17.14 of the Municipal Code, as in effect on the date of Town Council's final approval of the ordinance approving this Agreement; provided that, notwithstanding any provision of Chapter 17.14 of the Municipal Code to the contrary, no subsequent amendments or recodifications of such chapter shall apply to the Property; provided however, if Owner applies to the Town for any amendment to the PUD Development Plan and/or this Agreement and the Town finally approves such amendment, the Town, in its discretion, may require in connection with such approval that Chapter 17.14 of the Municipal Code as in effect on the date of the Town's final approval of such amendment shall thereafter apply to the Property.

1.32 Vested Property Rights Statute. C.R.S. §§ 24-68-101, *et seq.*, as in effect on the date of Town Council's final approval of the ordinance approving this Agreement.

1.33 Workforce Housing Payments. As defined in Section 4.2.

ARTICLE II **ENTITLEMENTS AND VESTED RIGHTS**

2.1 PUD Zoning; Subdivision. Concurrently with the Town's approval of this Agreement, the Town has approved (i) PUD zoning for the Property in accordance with the PUD Development Plan; and (ii) the Preliminary Plan for the Property. The PUD Development Plan and Development Standards set forth the standards and regulations for development of the Property and have been approved by the Town as part of the PUD zoning for the Property, and set forth, among other things, set back distances, building height limitations, site coverage levels, development densities, allowed uses (both permitted uses by right and those permitted upon special review), parking requirements and other guidelines and limitations for the development of the Property. The PUD Development Plan, Development Standards, the Preliminary Plan and this Agreement take precedence over other general zoning and subdivision regulations of the Town, as amended from time to time, for those matters that are specifically addressed in the PUD Development Plan, Development Standards, the Preliminary Plan and this Agreement. Not later than four (4) months after Town Council finally approves the latest of the ordinances approving the

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Town Approvals, Owner shall submit to the Town an application for the Minor Subdivision Plat in a form materially consistent with the Preliminary Plan, PUD Development Plan and PUD Development Standards; provided, however, notwithstanding any provision of the Municipal Code to the contrary, because no Public Improvements shall be constructed in connection with the Town's approval of the Minor Subdivision Plat, no SIA shall be required; provided further, however, in connection with the Town's issuance of the first building permit for the Property, Owner shall submit to the Town engineered construction drawings for all improvements to be constructed on the Property and Owner and the Town shall enter into the SIA. Notwithstanding any provisions of the Municipal Code to the contrary, the PUD Development Plan, Development Standards, Preliminary Plan and Minor Subdivision Plat shall not lapse or expire during the Term, and Owner shall have the period of the Term to submit to the Town the Final Condominium Plat.

2.2 Vesting of Property Rights. The PUD Development Plan and Development Standards constitute an approved "site-specific development plan" as defined in the Vested Property Rights Statute and Vested Property Rights Code and Owner shall have vested property rights, pursuant to the Vested Property Rights Statute and Vested Property Rights Code as implemented by this Agreement, to undertake and complete development and use of the Property under the terms and conditions of the PUD Development Plan and Development Standards during the Term. Pursuant to Section 17.14.050 of the Vested Property Rights Code and this Agreement, the PUD Development Plan and Development Standards constitute a site specific development plan for which a vested property right has been granted pursuant to Article 68 of Title 24, C.R.S., for the Term.

2.3 Effect of Vested Property Rights. By approving the PUD Development Plan and Development Standards as a site specific development plan and granting a vested property right to the Owner to undertake and complete the development and use of the Property under the terms and conditions of the PUD Development Plan and Development Standards, any zoning or land use action by the Town or pursuant to an initiated measure that would materially alter, impair, prevent, diminish, impose a moratorium on development, or otherwise delay the development or use of the Property as set forth in the PUD Development Plan and Development Standards shall not apply to the Property during the Term, except as provided in C.R.S. §§ 24-68-105(1) and in Sections 2.4 and 2.5 of this Agreement.

2.4 Compliance with General Regulations. The establishment of vested property rights under this Agreement shall not preclude the adoption and/or application of Town ordinances or regulations, or state or federal laws and regulations, which are general in nature and are applicable to all property, or a class of properties similarly situated to the Property, subject to land use regulation by the Town, including, but not limited to, regulations contained in Chapter 15 of the Municipal Code, regulations concerning subdivision improvements and right-of-way dedications, and regulations establishing requirements and specifications for any public infrastructure or public facility improvements as all such regulations exist on the date of Town Council's final approval of this Agreement or may be enacted or amended after such approval.

2.5 Legislatively Adopted Fees. Except as otherwise provided in this Agreement, the establishment of a vested property right under this Agreement shall not preclude the application

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of any legislatively adopted fees which are general in nature, uniform in character and applicable to all property or a class of properties similarly situated to the Property.

ARTICLE III TERM

3.1 Term. In recognition of the nature of the development contemplated under this Agreement, the investment and time required to complete the development of the Property, the potential for phased development of the Property, the possible impact of the recent economic downturn and other economic cycles, and poor market conditions at the time of approval, and in recognition of the current severity of the economic recession and uncertainty of economic recovery, the term of the Vested Property Rights shall commence on the Effective Date and shall continue through and including the seventh (7th) anniversary of the Effective Date (the “Term”). Expiration or earlier termination of the Term shall not (a) affect any other obligations of the Parties contained in this Agreement, (b) affect any right arising from the issuance of a building permit (but limited to the building for which it is issued) or common law vested property rights obtained prior to the expiration of the Term, or (c) without additional action, result in the termination or rescission of any other legislative, quasi-judicial or administrative approvals occurring prior to the expiration of the Term.

ARTICLE IV OWNER OBLIGATIONS

4.1 Water and Water Rights. Owner shall, as a condition of water service for the Property, dedicate and convey to the Authority sufficient water rights and water storage rights, subject to the approval of the Town and the Authority, to make up the quantity, quality and use needed to serve the number of units or equivalent thereof approved for the Property. The water rights to be so dedicated shall provide for all water uses contemplated for the approved development of the Property and shall include a reversionary clause in any deed of conveyance stating that the water rights conveyed shall automatically vest in the Town upon dissolution of the Authority. The water rights dedication shall also be accompanied by an agreement between the Authority and the Town, acceptable to the Town that provides (1) the Authority shall agree to provide sufficient water to the Property on the same basis as other users within the Authority’s service area to meet the construction, residential, municipal, irrigation, recreation and other incidental water demands of the Property, (2) the Authority shall acknowledge an increase in the total single family equivalents to be served in the Town in the amount necessary to serve the Property, and (3) the Authority shall agree that the specific water rights conveyed to the Authority to serve this Property shall be conveyed to the Town upon dissolution of the Authority. Owner shall reimburse the Town and Authority for their expenses, including reasonable and actual engineering costs and legal fees, incurred in evaluating the sufficiency of water rights and water storage rights to be dedicated under this Agreement or incurred in connection with any water court action or other proceeding(s) required to enable the dedicated water rights to be used by the Town and the Authority as contemplated in this Agreement. Dedication of augmentation water and related water rights and water storage rights shall be completed by the earlier of (1) within four (4) months after Town Council finally approves the latest of the ordinances approving the Town Approvals, (2) Final Plat approval or (3) prior to the issuance of any building permit on the Property.

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4.2 Workforce Housing. Owner's development of the Property pursuant to the PUD Development Plan and Development Standards shall result in an "employee household demand" of 1.4 employee households, as calculated pursuant to the provisions of the 2005 Eagle County Nexus Update as in effect as of the date of Owner's PUD Development Plan submittal to the Town. Owner agrees to make two payments to the Town to mitigate the increased demand for employee household demand created by the PUD Development Plan ("**Workforce Housing Payments**"). The Workforce Housing Payments shall be calculated by subtracting the maximum affordable housing cost (defined as housing costs not to exceed 30% of gross income and based on a 30 year fixed mortgage at 5.5% interest with a 10% down payment) for a residential unit at 140% of the area median income for Eagle County, Colorado, as calculated in accordance with the most current U.S. Department of Housing and Urban Development area median income figures ("AMI"), from the maximum affordable housing cost (as defined above) for a residential unit at 170% of AMI. The amount of each Workforce Housing Payment shall be calculated at the time that each Workforce Housing Payment is due. [Example of one Workforce Housing Payment calculation: As of the Effective Date, 170% of AMI = \$551,987.00; 140% of AMI = \$454,577.00; the difference between 170% AMI and 140% AMI is \$97,410.00; therefore, the Workforce Housing Payment (one of the two required payments) is \$97,410.00]. Owner shall provide the first of the two required Workforce Housing Payments prior to receiving the first temporary certificate of occupancy for a residential unit on the Property. Owner shall provide the second of the two required Workforce Housing Payments prior to receiving a temporary certificate of occupancy for the earlier of (1) the last residential unit on the second building to be constructed, or (2) the tenth residential unit. Owner's performance of the requirements of this Section 4.2 within the Term (including, without limitation, Owner's provision of such Workforce Housing Payments prior to receiving any temporary certificates of occupancy for improvements on the Property) shall constitute full satisfaction of the Owner's obligation with respect to mitigation of the impacts of Owner's development of the Property on employee/attainable housing units notwithstanding any current or future regulations of general applicability adopted by the Town with respect to such matters. In the event the Property is not developed in accordance with the PUD Development Plan with the Term, nothing contained herein shall restrict the Town from applying any affordable housing regulations to the Property after the expiration of the Term of the Vested Property Right; provided, however, given the size of the Property and limited number of residential units that may be constructed thereon, the Town shall not have the right to require Owner provide on-site workforce housing units without Owner's consent.

4.3 Relocation of Existing Public Improvements. In accordance with the PUD Development Plan and Section 4.4(b), Owner shall be responsible for the relocation of the sidewalk and associated landscape improvements located adjacent to Highway 6 and adjacent to Avon Road in connection with Owner's development of the Property pursuant to the PUD Development Plan.

4.4 Installation of Other Public Improvements. In consideration of the vested property rights granted by the Town to Owner pursuant to Sections 2.2 and 2.3 and because of the need to address the impacts from development of the Property, Owner, with full knowledge and without duress, shall be responsible for the construction and installation of all Public Improvements necessary to serve the Property. Such obligations reasonably relate to the impact of development of the Property and are proportional to such impact. Owner shall install or cause

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to be installed all Public Improvements in a good and workmanlike manner in accordance with applicable Town regulations and specifications as in effect on the Effective Date and the SIA. The street and utility Public Improvements shall be set forth in the SIA; provided, however, that the SIA shall provide that Owner shall design, engineer, construct and install the following Public Improvements prior to the Town's issuance of a final certificate of occupancy for any improvements constructed on the Property, which Public Improvements shall constitute full satisfaction of Owner's obligations other than with respect to the street and utility Public Improvements referenced above:

(a) Footpath improvements adjacent to the shoreline of the Eagle River as generally depicted on the PUD Development Plan, and having a minimum width of three and one-half (3.5) feet; provided however, where feasible, such improvements shall have a width of five (5) feet.

(b) Seven (7) foot wide sidewalk and five and one-half (5.5) foot wide (from edge of sidewalk to back of curb) landscape buffer improvements adjacent to Avon Road and Highway 6, as generally depicted on the PUD Development Plan.

(c) Right-of-way crosswalk improvements (materially consistent in design and materials with the existing "Hurd Lane" crosswalk improvements) located on Avon Road at the north leg of the Highway 6 intersection and on Highway 6 at the east leg of the Avon Road intersection, as generally depicted on the PUD Development Plan (the "**Crosswalk Improvements**"). Notwithstanding the foregoing, the Town acknowledges the design, engineering, construction and installation of the Crosswalk Improvements are subject, in addition to the Town's approval, to the approval of CDOT in CDOT's sole discretion for the portion of the Crosswalk Improvements located in CDOT right-of-way and that Owner shall have no obligation or responsibility to satisfy the requirements of this Section 4.4(c) with respect to that portion of the Crosswalk Improvements within such CDOT right-of-way if CDOT does not approve the Crosswalk Improvements, provided Owner shall use reasonable good faith efforts to diligently process those application(s) necessary in connection with CDOT's approval of the Crosswalk Improvements and to implement changes to such application(s) reasonably required by CDOT. Owner will (i) give notice to the Town of any scheduled meetings between Owner and CDOT regarding the Crosswalk Improvements in order that Town representative(s) may attend any such meetings in the Town's discretion; and (ii) provide to the Town a copy of all correspondence between Owner and CDOT regarding the Crosswalk Improvements.

The foregoing obligations, together with the street and utility Public Improvements obligations to be determined in connection with the Town's issuance of the first building permit for the Property, shall be incorporated into the SIA.

4.5 Indemnification and Hold Harmless. Owner shall indemnify, defend and hold harmless the Town (and its officials, agents, representatives, employees, contractors, and successors and assigns) from all claims, demands, damages (including, without limitation, consequential damages), causes of action, fines, penalties, losses, liability, judgments, costs or expenses (including reasonable attorneys' fees) resulting from claims for bodily injury (including death) to any person or damage to any property, caused by or arising from the conduct or activities of Owner in performing its obligations under this Agreement; provided, however, such

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indemnification shall not extend to the portion of any claims caused by or arising from the Town's negligence or willful misconduct.

4.6 Dedications. Owner shall, by the Minor Subdivision Plat, convey to the Town a parcel of land adjacent to Eagle River, as generally depicted in Exhibit C (the "**River Tract**"), shall grant to the Town a non-exclusive perpetual drainage easement in gross for drainage purposes (the "**Drainage Easement**"), as generally depicted on Exhibit C; provided, however, as consideration for Owner's conveyance of the River Tract and grant of the Drainage Easement, contemporaneously with such conveyance and grant, the Town shall, by the Minor Subdivision Plat, vacate and extinguish in its entirety the existing kayak park pedestrian easement encumbering the Property and recorded at Reception No. 200622401 (the "**Kayak Easement**"). With respect to the conveyance of the River Tract, the Minor Subdivision Plat shall include special warranty deed conveyance language and use restriction language mutually acceptable to the Town and Owner. If the Town fails to vacate and extinguish the Kayak Easement in accordance with this Section 4.6, Owner shall have no obligation or responsibility to convey the River Tract or grant the Drainage Easement and the Town shall not deny the issuance of any building permits for the Property for such failure by Owner to satisfy the requirements of this Section 4.6. Owner's dedication of the River Tract in accordance with this Section 4.6 shall in no manner modify or otherwise affect setbacks from Eagle River and Beaver Creek as set forth in the PUD Development Plan and Development Standards and all such setbacks shall be measured from the average annual high water mark, as shown on the PUD Development Plan and Development Standards. Further, Owner may use, refer to and include the size, area and location of the River Tract for any future development application related to the Property or amendment to the PUD Development Plan and/or Development Standards for the purpose of calculating density, site coverage, setbacks and any other applicable dimensional standards and compliance with other development standards of the Town, the intention being that the dedication of the River Tract to the Town by the Owner shall not operate to render the application of the Town's development standards to the remaining portion of the Property more onerous or restrictive.

4.7 School Site Dedication. Based on the size the Property and the number of proposed residential units to be constructed thereon, the land dedication requirement as calculated by the formula set forth in Section 16.50.020(a)(2) of the Municipal Code is not practical and therefore payment in lieu of a school site land dedication ("**School Site Payment**") is hereby required. Contemporaneously with the Town's approval of the first building permit for the Property, Owner shall provide the School Site Payment, which shall be based on a report prepared by a qualified appraiser engaged by Owner (and completed within the 12 months preceding the time payment is due) of the fair market value of 1,748.5 square feet of unimproved developable land in the area suitable for a school site; provided, however, if the Town disagrees with such report, the Town may engage a qualified appraiser to prepare a report based on the same criteria and the School Site Payment shall be based on such report. Town agrees to deposit the School Site Payment in a fund for school purposes which funds may be appropriated and expended in the discretion of the Town. Payment of the School Site Payment shall be deemed to be complete satisfaction of the School Site Dedication requirement set forth in Chapter 16.50 of the Municipal Code. The School Site Payment shall not restrict, limit or impair the imposition of any legislatively adopted fees for school purposes which are general in nature, uniform in character and applicable to all properties or a similarly situated class of properties.

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4.8 Emergency Service Impact Fees. Owner acknowledges that Town has fully disclosed the Impact Fee for Emergency Services as set forth in Ordinance No. 08-06, Resolution No.08-20, and Section 3.40.100 of the Municipal Code. Owner agrees to pay the fees for fire protection and emergency medical services as may be adjusted from time to time in accordance with Chapter 3.40 of the Municipal Code.

4.9 Recycling Red House Materials. Owner agrees to use commercially reasonable efforts to recycle, reuse or make available for reuse the salvageable building materials from the demolition and removal of the Red House structure. Owner's compliance with this Section 4.9 shall be subject to the sole discretion of Owner and Town shall have no right to declare any alleged non-compliance with this Section 4.9 a default of this Agreement.

ARTICLE V TOWN OBLIGATIONS

5.1 In addition to the Town's other obligations set forth in this Agreement, the Town shall grant to Owner the following easements:

(a) Contemporaneously with the Town's execution of this Agreement, the Town shall grant to Owner a non-exclusive perpetual access and utility easement appurtenant to the Property over a portion of certain real property known as Parcel TK-14, which abuts the Property, as generally depicted on the PUD Development Plan ("**Access and Utility Easement**"), in accordance with the form of Access and Utility Easement attached hereto as Exhibit D.

(b) Contemporaneously with the recording of the Minor Subdivision Plat and Owner's dedication of the River Tract to the Town, the Town shall grant to Owner a non-exclusive landscape construction and maintenance easement appurtenant to the Property over the River Tract ("**Landscape Construction and Maintenance Easement**") in accordance with the form of Landscape Construction and Maintenance Easement attached hereto as Exhibit E. Owner shall install or cause to be installed all landscape Public Improvements on the River Tract in a good and workmanlike manner in accordance with applicable Town regulations and specifications as in effect on the Effective Date and the SIA.

ARTICLE VI WATER SERVICES

6.1 Upon Owner's compliance with Section 4.1 hereof and payment of applicable fees and charges pursuant to the provisions of the Municipal Code and/or other generally applicable rules and regulations of the Town, the Town shall cause water service to be provided to the Property, as required for the development of the Property. Water infrastructure and other capital facilities which are necessary for the Town to provide water to the Property shall be provided by Owner in accordance with the plans for same included in the PUD Development Plan. Owner and the Town shall enter into the SIA, and upon compliance with the terms thereof, the Owner shall convey the water infrastructure improvements to the Authority by good and sufficient bill of sale.

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ARTICLE VII CONDITIONS PRECEDENT

7.1 Neither Owner nor the Town shall record or cause to be recorded the instruments described in C.R.S. § 31-12-113(2)(a)(II)(A) unless and until (i) the Town and Owner have complied with or Owner has waived the conditions precedent set forth in Section 20 of the Annexation Petition, which conditions precedent are incorporated herein by this reference; and (ii) the Town Council has approved the Preliminary Plan and such approval becomes final and non-appealable, or Owner has waived such condition.

ARTICLE VIII DEFAULTS, REMEDIES AND TERMINATION

8.1 Default by Town. A “breach” or “default” by the Town under this Agreement shall be defined as the Town’s failure to perform any of its material obligations under this Agreement, including the obligation to provide water service in accordance with the terms and conditions of Article V, after the applicable cure period described in Section 8.3.

8.2 Default by Owner. A “breach” or “default” by Owner shall be defined as Owner’s failure to fulfill or perform any material obligation of Owner contained in this Agreement following the applicable cure period described in Section 8.3.

8.3 Notices of Default, Right to Cure. In the event of a default by either Party under this Agreement, the non-defaulting Party shall deliver written notice to the defaulting Party of such default, at the address specified in Section 9.7, and the defaulting Party shall have thirty (30) days from and after receipt of such notice to cure such default. If such default is not of a type that can be cured within such thirty (30) day period and the defaulting Party gives written notice to the non-defaulting Party within such thirty (30) day period that it is actively and diligently pursuing such cure, the defaulting Party shall have a reasonable period of time up to one hundred eighty (180) days given the nature of the default to cure such default, provided that such defaulting Party is at all times within such additional time period actively and diligently pursuing such cure.

8.4 Remedies for Default by Town.

(a) Except as otherwise provided in this Agreement, if a default by the Town under this Agreement is not cured as described in Section 8.3, Owner shall have the right to enforce the Town’s obligations by an action for specific performance.

(b) Because this Agreement constitutes a development agreement which confers vested property rights pursuant to the Vested Property Rights Statute and the Vested Property Rights Code, any action by the Town that revokes or impairs the vested property rights granted by Sections 2.2 and 2.3 shall entitle Owner to an action for injunction or specific performance or to seek compensation to the extent permitted by Section 24-68-105(1)(c) of the Vested Property Rights Statute. Owner agrees, however, to first pursue specific performance, and, if granted, shall have no right to pursue compensation as set forth in Section 24-68-105(1)(c) of the Vested Property Rights Statute. Only if a court of competent jurisdiction denies specific performance shall Owner be entitled to pursue compensation as set forth in Section 24-

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68-105(1)(c) of the Vested Property Rights Statute. Adoption of the ordinance approving this Agreement is subject to referendum pursuant to the Vested Property Rights Statute. In the event such a referendum is filed and succeeds in overturning the approval of the ordinance authorizing this Agreement, the vested property rights created under this Agreement shall be null and void; provided, however, that none of the development rights for the Property or approvals granted to Owner under the PUD zoning or the PUD Development Plan and Development Standards shall be affected thereby unless overturned by a separate referendum.

8.5 Remedies for Default by Owner.

(a) If any default by Owner under this Agreement is not cured as described in Section 8.3, the Town shall have the right to enforce the Owner's obligations hereunder by an action for any equitable remedy, including injunction or specific performance; or an action to recover damages.

(b) Because this Agreement requires the Owner to provide or cause to be provided Public Improvements in order to serve the development of the Property, in the event of a breach or default by the Owner, the Town may withhold the processing of any development or permit applications relating to property located within the Property or withhold issuance of permits, water taps or certificates of occupancy for property located within the Property.

(c) Subject to the notice requirements of Section 8.3, if any default by Owner under this Agreement is not cured as described in Section 8.3, Town Council may declare the vested property rights created by this Agreement, and any amendment to this Agreement or the PUD Development Plan and Development Standards, forfeited in accordance with the provisions of the Vested Property Rights Code; provided, however, Town Council's determination that such vested property rights are forfeited shall be subject to Owner's right to appeal such determination pursuant to and in accordance with C.R.C.P. 106.

(d) Any amounts of money owed to the Town by the Owner under this Agreement shall accrue interest at the rate established in Section 3.32.010 of the Municipal Code.

(e) Each remedy in this Section 8.5 is cumulative and is in addition to every other remedy provided for in this Agreement or otherwise existing at law or in equity.

8.6 Arbitration. Any controversy or claim arising out of or relating to this Agreement, including, without limitation, any breach, default, or interpretation hereof, shall be settled by binding arbitration in Eagle County, Colorado, in accordance with the Uniform Arbitration Act, § 13-22-201, C.R.S., *et seq.* The parties shall each appoint one arbitrator and attempt to select a third arbitrator agreeable to all, but if they are unable to do so within twenty (20) days after a request for arbitration, then such arbitrator may be appointed by any judge of a competent state court having jurisdiction in Eagle County, Colorado, upon application of any party. All arbitrators individually and jointly selected by the parties and/or appointed by the court must be Colorado-licensed attorneys who have substantial experience in real estate development. Any such arbitration panel shall have the power to grant any relief, including equitable relief as just and appropriate. Any award in such arbitration shall have the effect of a

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judgment and may be entered in any court having jurisdiction thereof. Each party shall bear its own costs of arbitration.

ARTICLE IX **MISCELLANEOUS**

9.1 Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado.

9.2 No Joint Venture or Partnership. No form of joint venture or partnership exists between the Town and the Owner, and nothing contained in this Agreement shall be construed as making the Town and the Owner joint venturers or partners.

9.3 Applicability of Avon Municipal Code. All matters not covered by this Agreement are controlled by the Municipal Code to the extent applicable. This Agreement does not prevent the Town from imposing additional requirements not inconsistent with this Agreement as conditions for approval of a future subdivision or the granting of a building permit.

9.4 Expenses. The Owner shall reimburse the Town for its out-of-pocket costs and expenses incurred in connection with the negotiation of this Agreement pursuant to that certain Reimbursement Agreement previously entered into by and between the Owner and the Town dated April 30, 2008.

9.5 Waiver. No waiver of one or more of the terms of this Agreement shall be effective unless in writing. No waiver of any provision of this Agreement in any instance shall constitute a waiver of such provision in other instances.

9.6 Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect.

9.7 Notices. Any notice or communication required or permitted under the terms of this Agreement shall be in writing, may be given by the Parties hereto or such Parties' respective legal counsel, and shall be deemed given and received (i) when hand delivered to the intended recipient(s), by whatever means; (ii) three (3) business days after the same is deposited in the United States Mail, with adequate postage prepaid, and sent by registered or certified mail, with return receipt requested; (iii) one (1) business day after the same is deposited with an overnight courier service of national reputation having a delivery area encompassing the address of the intended recipient, with the delivery charges prepaid; or (iv) when received via facsimile on the intended recipient's facsimile facilities accessed by the applicable telephone number set forth below (provided such facsimile delivery and receipt is confirmed on the facsimile facilities of the noticing party). Any notice shall be delivered, mailed, or sent, as the case may be, to the appropriate address set forth below:

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If to the Town: Town of Avon
P.O. Box 975
Avon, Colorado 81620
Attention: Town Manager
Telephone: 970-748-4005
Facsimile: 970-748-4078

And: Eric Heil, Esq.
Widner Michow & Cox LLP
13133 E. Arapahoe Road, Suite 100
Centennial, Colorado 80112
Telephone: 303-754-3392
Facsimile: 303-754-3395

If to Owner: The Vail Corporation
P. O. Box 959
137 Benchmark Road
Avon, CO 81620
Attn: Keith Fernandez
Telephone: 970-754-2524
Facsimile: 970-754-2555

And: The Vail Corporation
P. O. Box 959
137 Benchmark Road
Avon, CO 81620
Attn: Assistant General Counsel
Telephone: 970-754-2534
Facsimile: 970-754-2555

And: The Vail Corporation
390 Interlocken Crescent
Broomfield, CO 80021
Attn: General Counsel
Telephone: 303-404-1800
Facsimile: 303-648-6422

And: Otten Johnson Robinson Neff + Ragonetti PC
950 17th Street, Suite 1600
Denver, Colorado 80202
Attn: Kimberly Martin
Telephone: 303-825-8400
Facsimile: 303-825-6525

Each Party may change its addresses and/or fax numbers for notices pursuant to a written notice which is given in accordance with the terms hereof. As used herein, the term "business day" shall mean any day other than a Saturday, a Sunday or a legal holiday for which U.S. Mail

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service is not provided. Whenever any date or the expiration of any period specified under this Agreement falls on a day other than a business day, then such date or period shall be deemed extended to the next succeeding business day thereafter.

9.8 Amendment of Agreement. Except as otherwise set forth in this Agreement, this Agreement may be amended or terminated only by mutual consent of the Town and the Owner in writing following the public notice and public hearing procedures required for approval of this Agreement. Notwithstanding any provision of this Agreement to the contrary, for the purpose of any amendment to this Agreement, "Owner" shall mean only the Owner as defined herein and those parties, if any, who have specifically been granted, in writing by Owner, the power to enter into such amendments.

9.9 Binding Effect; Assignment. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors in interest or the legal representatives. Owner shall have the right to assign this Agreement without the consent of the Town, provided that the assignee fully assumes in writing all obligations of Owner and Owner provides written notice to the Town of such assignment. Nothing in this Section 9.9 shall be deemed to limit or in any way restrict the sale or other conveyance of property within the Property.

9.10 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

9.11 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 Town, its officials, employees, contractors, or agents, or any other person acting on behalf of the Town 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.

[Signature Pages Follow This Page]

EXHIBIT D

IN WITNESS WHEREOF, Owner and the Town have executed this Agreement as of the date first written above.

TOWN:

TOWN OF AVON



By: *Ronald C. Wolfe*
Ronald C. Wolfe, Mayor

ATTEST

Patty McKenny
Patty McKenny, Town Clerk

STATE OF COLORADO)
) ss.
COUNTY OF EAGLE)

Subscribed before me this 21st day of July, 2009, by Ronald C. Wolfe, as Mayor, and Patty McKenny, as Town Clerk of Town of Avon, a Colorado municipal corporation.

My commission expires:

Krista D. Jaramillo
Notary Public

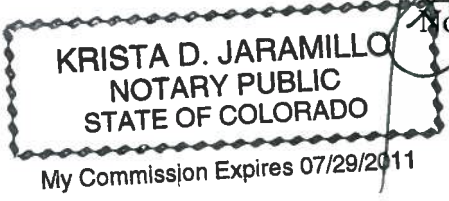


EXHIBIT D

OWNER:

THE VAIL CORPORATION, a Colorado corporation, d/b/a Vail Associates, Inc.

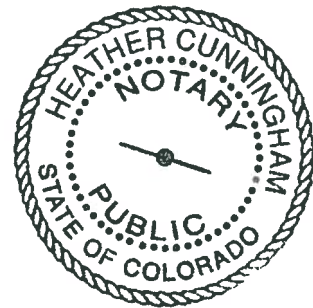
By: 
Keith Fernandez, President & COO - VRDC

STATE OF COLORADO)
) ss.
COUNTY OF Eagle)

The foregoing instrument was acknowledged before me this 8 day of September 2009, by Keith Fernandez, as President & COO - VRDC of THE VAIL CORPORATION, a Colorado corporation, d/b/a Vail Associates, Inc.

My commission expires:
1-14-2013


Notary Public




Approved as to Form: Vail Resorts Legal Department
By: <u></u>
Name: <u>ORLA BANNAN</u>
Date: <u>9/4/09</u>

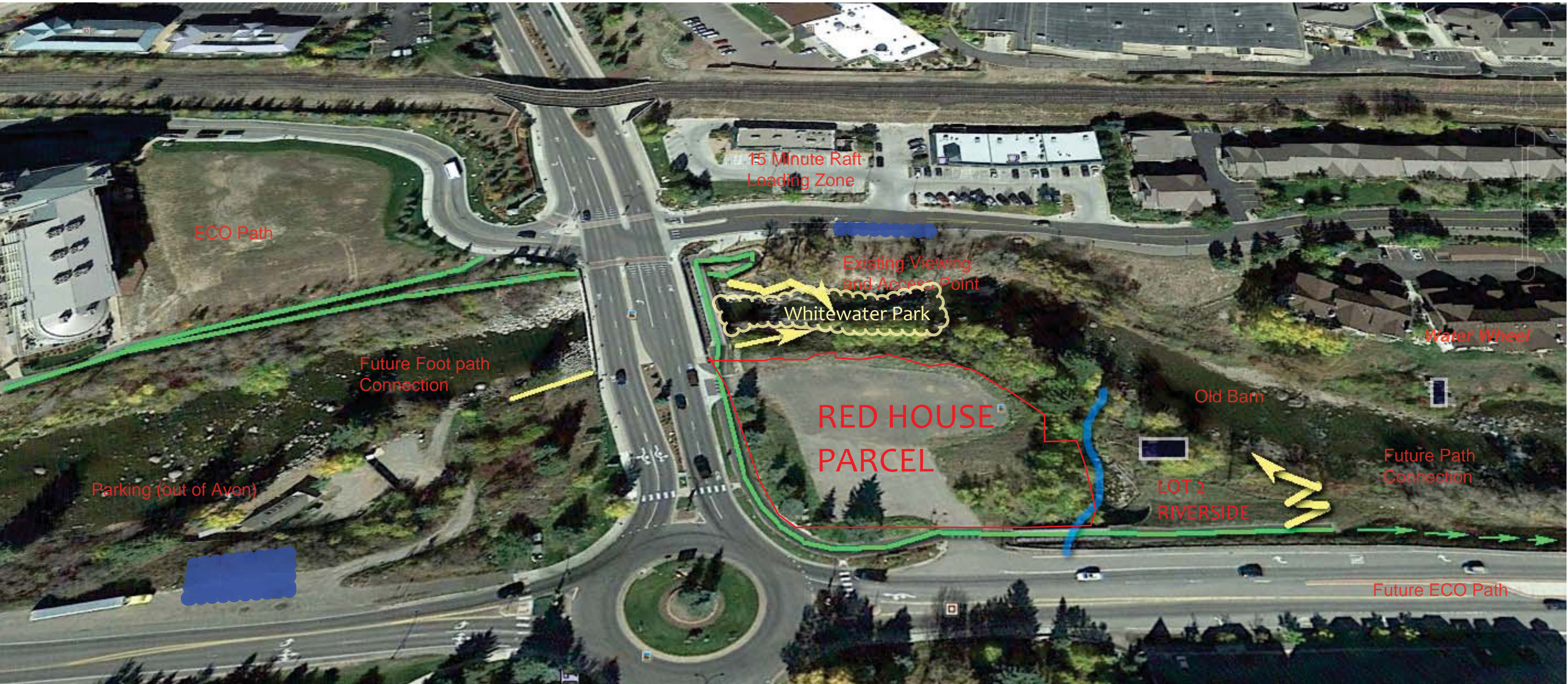
EXHIBIT D

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Lots 1 and 2, Exemption Plat of Red House, County of Eagle, State of Colorado, recorded on November 7, 2000 in the Office of the Eagle County Clerk and Recorder at Reception No. 743459.

Exhibit E Vicinity Map





TOWN COUNCIL REPORT

To: Honorable Mayor Jennie Fancher and Avon Town Council

From: Scott Wright, Asst. Town Manager
Robert Ticer, Police Chief

Date: January 4, 2016

Topic: Ordinance No. 16-01 – Amendment to Unclaimed Property Code

Summary

The Town's Unclaimed Property code was adopted in 1998 in order to prescribe procedures for disposing of certain items of unclaimed tangible and intangible personal property, primarily outstanding checks and personal effects and sports equipment.

This amendment seeks to increase the dollar amount of the notification requirements for disposing of personal effects and sports equipment so that these items can be disposed of more expeditiously.

Proposed Motion

I move to adopt Ordinance No. 16-01 Amending the Town's Unclaimed Property Code on First Reading with amendments to Chapter 3.30.

Attachments:

A - Ordinance No. 16-01

EXHIBIT A

CHAPTER 3.30 - Unclaimed Property

3.30.010 - Purpose.

The purpose of this Chapter is to provide for the administration and disposition of unclaimed property which is in the possession of or under the control of the Town.

3.30.020 - Definitions.

Unless otherwise required by context or use, words and terms shall be defined as follows:

Director shall mean the Finance Director or designee thereof.

Owner means a person or entity, including a corporation, partnership, association, governmental entity other than this municipality, or a duly authorized legal representative or successor in interest of same, which owns unclaimed property held by the town.

Town means the Town of Avon, Colorado.

Unclaimed property means any tangible or intangible property, including any income or increment derived therefrom, less any lawful charges, that is held by or under the control of the Town and which has not been claimed by its owner for a period of more than one year after it became payable or distributable. Except that unclaimed property shall not include abandoned motor vehicles or confiscated weapons.

3.30.030 - Procedure for disposition of sums payable on a check.

Notwithstanding any other provision of this Chapter to the contrary, any sum payable on a check on which the Town is liable, which has been outstanding for a period of at least one (1) year after it was payable or after its issuance if payable on demand, is deemed abandoned and without providing notice the Town may write off the amount of such check.

3.30.040 - Procedure for disposition of clothes and personal effects collected at Town facilities and having an estimated value of less than one ~~thousand hundred~~ dollars.

Notwithstanding any other provision of this Chapter to the contrary, any single item of clothing or personal effects, including sports equipment, having an estimated value of less than one ~~thousand hundred~~ dollars (\$1,000.00) which has been left for a period of thirty (30) days or more at a Town facility or on Town property or turned into Town personnel is deemed abandoned and shall become the sole property of the Town. Such property is subject to disposal in such way as the Director, at his or her discretion, deems to be in the best interests of the Town.

3.30.050 - Procedure for disposition of all other property.

- (a) Notice—value one ~~thousand hundred~~ dollars (\$1,000.00) or more. Prior to disposition of any other unclaimed property having an estimated value of one ~~thousand hundred~~ dollars (\$1,000.00) or more, the Director shall send a written notice by mail, to the last known address, if any, of any owner of unclaimed property. The last known address of the owner shall be the last address as shown by the records of the municipal department or agency holding the property. The notice shall include a description of the property, the amount or estimated value of the property, and when available, the purpose for which the property was

EXHIBIT A

deposited or otherwise held. The notice shall also state where the owner may make inquiry of or claim the property. The notice shall also state that if the owner fails to provide the Director with a written claim for the return of the property within thirty (30) days of the date of the notice, the property shall become the sole property of the Town and any claim of the owner to such property shall be deemed forfeited.

- (b) Notice—value less than one ~~thousand hundred~~-dollars (\$1,000.00) or no last known address. Prior to disposition of any unclaimed property having an estimated value of less than one ~~thousand hundred~~-dollars (\$1,000.00) or having no last known address of the owner, the Director shall cause a notice to be published in a newspaper of general circulation in the municipality. The notice shall include a description of the property, the owner of the property, the amount or estimated value of the property and, when available, the purpose for which the property was deposited or otherwise held. The notice shall state where the owner may make inquiry of or claim the property. The notice shall also state that if the owner fails to provide the Director with a written claim for the return of the property within thirty (30) days of the date of the publication of the notice, the property shall become the sole property of the Town and any claim of the owner to such property shall be deemed forfeited.
- (c) Forfeiture. If the Director receives no written claim within the above thirty-day claim period, the property shall become the sole property of the Town and any claim of the owner to such property shall be deemed forfeited.
- (d) Written claims. If the Director receives a written claim within the above thirty-day claim period, the Director shall evaluate the claim and file a written notice to the claimant within thirty (30) days thereof that the claim has been accepted or denied in whole or in part. The Director may investigate the validity of a claim and may request further supporting documentation from the claimant prior to disbursing or refusing to disburse the property.
- (e) Multiple claimants. In the event that there is more than one (1) claimant for the same property, the Director may, at his or her sole discretion, resolve any claims, or may resolve such claims by depositing the disputed property with the registry of the Eagle County district court in an interpleader action.
- (f) Denial of claims. In the event that all claims filed are denied, the property shall become the sole property of the Town and any claim of the owner of such property shall be deemed forfeited.
- (g) Appeal. Any legal action filed challenging a decision of the Director shall be filed pursuant to Rule 106 of the Colorado Rules of Civil Procedure within thirty (30) days of such decision or shall be forever barred. If any legal action is timely filed, the property shall be disbursed by the Director pursuant to the order of the court having jurisdiction over such claim.
- (h) Disposal at Town's discretion. Thirty (30) days after the Director's final decision determining the Town's sole ownership to any unclaimed property described in this Section, the Director, in his or her sole discretion, is hereby authorized to sell such property or otherwise dispose of it in the best interest of the Town.
- (i) Sale of unclaimed property—advertisement. If the Director determines that any unclaimed property should be sold, then at any time after thirty (30) days after the Director's final decision determining the Town's sole ownership to any unclaimed property described in this

EXHIBIT A

Section, the Director may prepare a notice, which notice shall be published in a newspaper legally qualified for Town publications pursuant to the Town Charter and posted at Town Hall, which notice shall be directed to the public and shall contain a statement that a list of all such property unclaimed is on file with the Town Clerk and available for public inspection. The notice shall further state the time and place where all such unclaimed property shall be sold by the Town; the time fixed in the notice for such sale shall be no greater than fifteen (15) days nor less than five (5) days from the date of posting. At the time and place mentioned in the notice, it shall be the duty of the Town to dispose of or sell all such unclaimed property for the highest and best price the same will bring in cash, and to receive from the purchaser of each and every article the amount paid by such purchaser for the same, and to deliver the article, together with a bill of sale for the same, to the purchaser.

- (j) Sale of perishable, bulky, etc., property. Notwithstanding any other provision in this Chapter, if any property taken possession of by the Town is of a perishable nature or so bulky or of such a nature as to make it dangerous or inadvisable to retain possession thereof for the length of time specified in this Article, the Director upon certifying such fact to the Town Manager, setting forth reasons why such property should not be retained for the fixed period before selling or disposing of the same, may cause such property to be advertised forthwith in a newspaper legally qualified for Town publications and sell or dispose of such property at public sale at any time after three (3) days shall have elapsed from the time the property comes under control of the Town.
- (k) Administrative procedures. The Director is authorized to establish and administer procedures for the administration and disposition of unclaimed property consistent with this Article, including compliance requirements for other Town officers and employees in the identification and disposition of such property.

**TOWN OF AVON, COLORADO
ORDINANCE 16-01**

**AMENDING CHAPTER 3.30 - UNCLAIMED PROPERTY
OF THE AVON MUNICIPAL CODE**

RECITALS

WHEREAS, the Town of Avon (“Town”) is a home rule municipal corporation and body politic organized under the laws of the State of Colorado and possessing the maximum powers, authority and privileges to which it is entitled under Colorado law; and

WHEREAS, in 1998 Section 3.30.10 of Chapter 3.30 of Title 3 of the Municipal Code of the Town of Avon was added for the purpose of providing for the administration and disposition of unclaimed property which is in the possession of or under the control of the Town; and

WHEREAS, the amendment and update of the Unclaimed Property Code will ease the administrative burden of the disposition of unclaimed property; and

WHEREAS, the Avon Town Council finds that the health, safety and welfare of the Avon community will be enhanced and promoted by the adoption of this Ordinance; and

WHEREAS, approval of this Ordinance on First Reading is intended only to confirm the Town Council desires to comply with the requirements of the *Avon Home Rule Charter* by setting a Public Hearing in order to provide the public an opportunity to present testimony and evidence regarding the application, and that approval of this Ordinance on First Reading does not constitute a representation that the Town Council, or any member of the Town Council, supports, approves, rejects, or denies this Ordinance;

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

Section 1. **Recitals Incorporated.** The above and foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the Town Council.

Section 2. **Amendment to Section 3.30.040.** Section 3.30.040 of the Avon Municipal Code is repealed in its entirety and re-enacted to read as follows:

“3.30.040 - Procedure for disposition of clothes and personal effects collected at Town facilities and having an estimated value of less than one thousand dollars.

Notwithstanding any other provision of this Chapter to the contrary, any single item of clothing or personal effects, including sports equipment, having an estimated value of less than one thousand dollars (\$1,000.00) which has been left for a period of thirty (30) days or more at a Town facility or on Town property or turned into Town personnel is deemed abandoned and shall become the sole

property of the Town. Such property is subject to disposal in such way as the Director, at his or her discretion, deems to be in the best interests of the Town.”

Section 3. Amendment to Section 3.30.050. Sections 3.30.050(a) and (b) of the Avon Municipal Code are repealed in its entirety and re-enacted to read as follows:

“3.30.050 - Procedure for disposition of all other property.

(a) Notice—value one thousand dollars (\$1,000.00) or more. Prior to disposition of any other unclaimed property having an estimated value of one thousand dollars (\$1,000.00) or more, the Director shall send a written notice by mail, to the last known address, if any, of any owner of unclaimed property. The last known address of the owner shall be the last address as shown by the records of the municipal department or agency holding the property. The notice shall include a description of the property, the amount or estimated value of the property, and when available, the purpose for which the property was deposited or otherwise held. The notice shall also state where the owner may make inquiry of or claim the property. The notice shall also state that if the owner fails to provide the Director with a written claim for the return of the property within thirty (30) days of the date of the notice, the property shall become the sole property of the Town and any claim of the owner to such property shall be deemed forfeited.

(b) Notice—value less than one thousand dollars (\$1,000.00) or no last known address. Prior to disposition of any unclaimed property having an estimated value of less than one thousand dollars (\$1,000.00) or having no last known address of the owner, the Director shall cause a notice to be published in a newspaper of general circulation in the municipality. The notice shall include a description of the property, the owner of the property, the amount or estimated value of the property and, when available, the purpose for which the property was deposited or otherwise held. The notice shall state where the owner may make inquiry of or claim the property. The notice shall also state that if the owner fails to provide the Director with a written claim for the return of the property within thirty (30) days of the date of the publication of the notice, the property shall become the sole property of the Town and any claim of the owner to such property shall be deemed forfeited.”

Section 4. Codification Amendments. The codifier of the Town’s Municipal Code, Colorado Code Publishing, is hereby authorized to make such numerical and formatting changes as may be necessary to incorporate the provisions of this Ordinance within the Avon Municipal Code. The Town Clerk is authorized to correct, or approve the correction by the codifier, of any typographical error in the enacted regulations, provided that such correction shall not substantively change any provision of the regulations adopted in this Ordinance. Such corrections may include spelling, reference, citation, enumeration, and grammatical errors.

Section 5. Severability. If any provision of this Ordinance, or the application of such provision to any person or circumstance, is for any reason held to be invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable. The Town Council hereby declares that it has passed this Ordinance and each

provision thereof, even though any one of the provisions might be declared unconstitutional or invalid. As used in this Section, the term “provision” means and includes any part, division, subdivision, section, subsection, sentence, clause or phrase; the term “application” means and includes an application of an ordinance or any part thereof, whether considered or construed alone or together with another ordinance or ordinances, or part thereof, of the Town.

Section 6. **Effective Date.** This Ordinance shall take effect thirty (30) days after public notice following final passage in accordance with Section 6.4 of the Avon Home Rule Charter.

Section 7. **Safety Clause.** The Town Council hereby finds, determines and declares this Ordinance is promulgated under the general police power of the Town of Avon, that it is promulgated for the health, safety and welfare of the public and this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

Section 8. **Publication.** The Town Clerk is ordered to publish this Ordinance in accordance with Chapter 1.16 of the Avon Municipal Code.

[execution page follows]

INTRODUCED AND ADOPTED ON FIRST READING AND REFERRED TO PUBLIC HEARING on January 12, 2016 and setting such public hearing for January 26, 2016 at the Council Chambers of the Avon Municipal Building, located at One Lake Street, Avon, Colorado.

BY:

ATTEST:

Jennie Fancher, Mayor

Debbie Hoppe, Town Clerk

ADOPTED ON SECOND AND FINAL READING on January 26, 2016.

BY:

ATTEST:

Jennie Fancher, Mayor

Debbie Hoppe, Town Clerk

APPROVED AS TO FORM:

Eric J. Heil, Town Attorney



TOWN COUNCIL REPORT

To: Honorable Mayor and Town Council
From: Preston Neill, Executive Assistant to the Town Manager
Date: January 12, 2016
Agenda: Approval of Community Grant Funding Request from Vail Valley Salvation Army

ACTION BEFORE COUNCIL:

On December 1, 2015, the Town received a cover letter, attached as Exhibit 1, and a community grant funding application, attached as Exhibit 2, from Vail Valley Salvation Army requesting \$5,000 to continue and expand the "Get Out and Grow Avon!" community garden event series.

STAFF RECOMMENDATION:

Staff recommends approval of Vail Valley Salvation Army's request for funding in the amount of \$5,000.

FINANCIAL IMPLICATIONS:

Seeing as 2016 community grant requests were reviewed by Council on September 22, 2015 and all 2016 community grant funding was approved by Council in the *2016 Town of Avon General Fund Budget* on December 8, 2015, staff recommends funding come from Contingency.

PROPOSED MOTION:

"I move to approve the Vail Valley Salvation Army's request for funding in the amount of \$5,000 to be paid out of Contingency."

BACKGROUND:

On July 24, 2015, the application materials for community grant requests, found in Exhibit 3, were advertised for a thirty-five (35) day period. The advertisement was posted on the Town's website accompanied by a press release. Past recipients were also notified of the application process. Over the course of soliciting requests, the Town received twenty-nine (29) requests.

Once all of the submittals were received, an "ad hoc review committee" met on September 9th to review the applications. The review focused on the Review Criteria and rating system included in the application materials. Points were weighted to organizations that provided the most public benefit to Avon residents and visitors, as well as programs that fell in line with the Program Overview and the *Avon Brand Platform*. The points were only one of the key indicators to determine the funding recommendation. Past funding levels, available funds, potential for on-going requests, filling a funding or service gap and general priorities for all applications were also considered in the funding level recommendation.

Council met in a work session on September 22, 2015 to review and take action on all submitted funding applications. Subsequently, all 2016 community grant funding was approved by Council in the *2016 Town of Avon General Fund Budget* on December 8, 2015.

ATTACHMENTS:

Exhibit 1: Vail Valley Salvation Army Cover Letter
Exhibit 2: Vail Valley Salvation Army Funding Request
Exhibit 3: 2016 Town of Avon Community Grants - Application Guidelines



Vail Valley Salvation Army
PO Box 2183 – Edwards, CO 81632
322 E. Beaver Creek Blvd – Avon, Colorado
(970) 748-0704 – Office
(970) 748-0705 – Fax

December 1, 2015

Dear Town of Avon;

Vail Valley Salvation Army thanks you for the funding to complete our greenhouse from 2015. We realize this is a late request for the 2016 funding cycle, but wanted to first make sure that we were in compliance with last year's grant before applying for more funding.

We think that the operating funds we are requesting in this grant align with the grant from 2015, in operating "Get Out and Grow Avon", and to allow us to promote more actively these programs, in partnership with Town of Avon's Special Events Coordinator.

We have established our community garden, which involves diverse groups of people and communities. Thanks to your funding in 2015, we are almost finished building our Greenhouse, to augment healthier food in our Food Pantry. We host several learning programs for the community, including Growing Gardeners for preschoolers, -Ongoing free workshops including but not limited to: Starting your garden, Winterizing your garden, Seed saving, Food preservation, Composting, Troubleshooting your garden, Container gardening, preparing local foods demo/ Q&A with local chefs. We also offered "Lunch at the Garden" summer lunch program, as well as a Farm to table free dinner at the garden featuring local chefs. This event will benefit local restaurants through visibility.

We continue to look for ways to expand our services to our clients, such as nutrition classes, starting a commodities program, and showing cooking classes on a television in our lobby.

We hope this is a good fit with your Grant funding.

Many thanks for considering our request.

Tsu Wolin-Brown

Tsu Wolin-Brown
Center Coordinator



2016 Town of Avon Funding Request

Contact Information: The Salvation Army, a California Corporation, Vail Valley Salvation Army
P.O. Box 2183, Edwards, CO 81632
0322 E. Beaver Creek Blvd, Avon, CO 81620
Tsu Wolin-Brown, Center Coordinator
(970)748-0704 tsu@salvationarmyvail.org

Description and Purpose of Organization: The Vail Valley Service Extension Unit of the Salvation Army provides emergency services and strives to meet human needs, in an effort to promote self-sufficiency.

Emergency assistance:

Self Sufficiency and Economic Supports: Vail Valley Salvation Army supports individuals in the work force and their families, allowing them to continue to work, and linking unemployed individuals with resources so that they are able to work and therefore be self-sufficient. This benefits Avon's working residents as well as Avon Employers.

Vail Valley Salvation Army partners with local public safety and law enforcement by feeding rescue workers and victims with our canteen, by managing shelters, and by assisting with stranded motorists and travelers' aid.

Avon Community Garden: Mountain Harvest Project

OUR MISSION:

The Mountain Harvest, a project of the Vail Valley Salvation Army, aims to foster healthy food access in Eagle County and the surrounding region. We grow community and confidence when we support sustainable food practice through education, outreach, and partnership.

OUR VISION:

The Mountain Harvest creates an environment of support and understanding within the community around issues of healthy food access.

We network across sectors to involve and engage all demographics as we work together to build sustainable local food systems. We integrate culturally appropriate strategies, honor the wealth of our local agriculture, and listen to the needs local businesses and community leaders.

OUR PARTNERSHIP:

The Mountain Harvest is engaging non-profits, local government, community outreach organizations, local businesses, farmers and ranchers within the region, religious organizations, Colorado Mountain College, and Colorado State University Extension. We seek to partner with all organizations; understanding the common goal of creating a sustainable local food system doesn't happen without teamwork.

OUR OBJECTIVE:

Build and maintain a community garden and greenhouse structure in Avon, Colorado. The Mountain Harvest Greenhouse project will provide a safe space to learn about, grow, and access whole healthy food. The project will reflect the stewardship of Avon's natural resources while providing educational opportunities that build a vibrant community experience around local foods. Thinking of Local food systems as an essential part of the built environment allows the Town of Avon to honor and celebrate our rich farming heritage.

The Avon Community Garden has been in place for three summers. Thanks to last year's Town of Avon funding, the Greenhouse has now been enclosed, and is close to completion. We offer garden plots to Avon Residents for \$50.00 and to local businesses for \$200.00 a season. Foods by Marc, a local Avon restaurant, has a large garden plot used to grow fresh food for his business. Other restaurants would be welcome. We have included raised beds, with good organic soil, and a drip irrigation system. We also offer plots to our low-income clients at no charge. We grow food for the Salvation Army Food Pantry as well. We partner with SOS Outreach, Eagle River Youth Coalition,

Bright Future Foundation, and the Town of Avon summer camp program offering education and community engagement opportunities, free of charge.

Mountain Harvest Get Out and Grow Avon Project

OUR EVENTS:

The "Get out and Grow Avon!" community garden event series

-Farm to table free dinner at the garden featuring local chefs. This event will benefit local restaurants through visibility.

-"Lunch at the Garden" summer lunch program featuring local chefs. Grab a bite to eat, enjoy the sunshine, and learn about local food on your lunch break! This event will encourage employees to get outside, take a walk, and eat healthy during their work day. This will benefit businesses concerned with health & wellness in the workplace.

-Ongoing free workshops including but not limited to:

Starting your garden, Winterizing your garden, Seed saving, Food preservation, Composting, Troubleshooting your garden, Container gardening, preparing local foods demo/ Q&A with local chefs.

-Growing Gardeners program offered to preschoolers. This event will be held at Avon Elementary during the winter months.

These events took place at the Avon Community Garden in 2015. In 2015, we were able to host these events using only volunteers. It is now a large enough time commitment that we need to pay a coordinator to manage the programs. We also have determined after our inaugural summer that we need to have a person dedicated to promoting, marketing and documenting these programs.

All events have been led by CSU ext. Master Gardeners. As with any community engagement project, we allow for adjustment based upon community voice and needs.

The "Get out and Grow Avon!" event series will benefit the community and local economy by providing opportunities for health and wellness activities around local foods. These events encourage active lifestyles and healthy eating. When we work together to connect the community with nature and build healthy habits the entire community is elevated.

We are requesting funding to continue and expand the Get Out and Grow Avon Project:

Funding to support educators providing these programs at little to no charge to the community: \$4,500.00

Funding to support materials and resources required to execute this program: \$500.00

Total amount requested: \$5,000.00

Should you require our operational budget, we can provide it. We do not yet have a line-item budget for the Get Out and Grow Project. Program development is in place. Classes have been offered this summer. Funding is needed to augment and execute "Get out and Grow Avon".



POST OFFICE BOX 975
ONE LAKE STREET
AVON, CO 81620

July 24, 2015

RE: 2016 Town of Avon Community Grants

Dear Potential Applicant:

The Town of Avon welcomes applications from organizations who are seeking grants for programs, projects, special events and/or activities which preserve or enrich the social and economic welfare, and the education and health of the Avon community. This packet includes important information to help your organization meet the goals of Town funding, the application submission requirements, review criteria and schedule for application presentations to the Avon Town Council.

AVAILABILITY OF FUNDS: The Town of Avon looks at every opportunity for advancing the partnerships with organizations in Avon. The demands on Town resources, however, must be understood. In Fiscal Year 2015, the Town Council approved \$197,850 in funding for community grants. This funding level is anticipated to again be available. Funding, however, is not guaranteed and is in the complete discretion of the Avon Town Council.

Monies to outside agencies are prioritized with all the other requests, services and facility needs of the Town of Avon and its revenue projections. Funding, if any, will be based upon the organization's written application and, if requested, a presentation to Town Council. The Town Council is scheduled to review all applications at their September 22, 2015 regular meeting. The following materials include all information you should need to prepare a grant request:

- GRANTS: MEETING ESTABLISHED TOWN GOALS (INCLUDING PROGRAM OVERVIEW, ELIGIBILITY CRITERIA, REVIEW CRITERIA AND REVIEW PROCESS)
- APPLICATION REQUIREMENTS & SUBMITTAL GUIDELINES
- AVON BRAND PLATFORM

If you have any questions on materials to be submitted, please do not hesitate to contact Preston Neill at 970-748-4404 or pneill@avon.org.

Sincerely,

A handwritten signature in blue ink, appearing to read "Preston Neill", is written over a faint, illegible printed name.

Preston Neill
Executive Assistant to the Town Manager

GRANTS: MEETING ESTABLISHED TOWN GOALS

Program Overview:

The Town Council will evaluate the various proposals based upon direct benefit to the Avon community, including its residents, visitors and businesses. Community organizations may receive grants, if funds are available, or in-kind support (including land, buildings, equipment, and services) which support, preserve, or enrich the social and economic welfare, and the education and health of the Avon community. The Town has presented the following overview in support of funding:

The Town of Avon, surrounded by natural beauty, is today a strong community that will build on its strengths to become a nationally and internationally recognized year-round mountain resort community. Committed to providing a high level of municipal services for our citizens and visitors, and the stewardship of our natural resources, Avon will expand its cultural, recreational and educational offerings in partnership with our broader community and regional public and private sector agencies, thereby ensuring sustained economic vitality and a vibrant community experience.

The importance of vibrancy and activity within the Town will be supported by attracting an array of new and diverse cultural and recreational events to Avon which are in concert with the values of our community and serve to nurture a cohesive sense of place and public.

It is the Town of Avon's elected officials and staff commitment to fiduciary responsibility, effectiveness and efficiency in providing government services and a practiced belief in open and transparent governance that will lead the successful implementation of this vision for the growth and development of Avon.

Applicants are encouraged to review the *Avon Brand Platform* to ensure programs, activities and special events are in support of the document. Applicants should indicate any services or programming an organization or program can provide to the Town of Avon in support of the *Avon Brand Platform*.

Eligibility Criteria:

1. Non-profit applicants may apply as a 501(c)(3) or under the umbrella of a 501(c)(3) with a letter of agreement between the applicant and the umbrella 501(c)(3).
2. For-profit business applications as a general practice are not accepted except for signature events. Applicants, who are interested in "seeding" a special event in Avon, are, however, eligible, when a non-profit is included as a beneficiary of some or all of the proceeds of the proposal. At a minimum, the applicant must include a description of the corporate organizational structure and plan for determining total "seed" needs and terms.
3. Applications will be accepted from organizations and for events that provide educational, cultural, athletic and entertainment opportunities, which directly benefit the Town of Avon residents, businesses and visitors.
4. Special event and festival applicants must identify a specific calendar date which is compatible with other events in the Town of Avon, and when applicable, in the Vail Valley.
5. Funding will not be provided for capital improvements.

Review Criteria:

1. Community and Citizen Benefit (Quality of Life):

Points: 0-10

- How many people benefit this event/program/organization?
- Does this event/program/organization have the potential to contribute to Avon's sense of community?

2. Program Overview & Avon Brand Platform (Established Policies/Priorities):

Points: 0-20

- Is the event/program/organization supported by the Program Overview and the Avon Brand Platform?
- Is it associated with one or more of the following priorities: Economic Development; Special Events?
- Does this event/program/organization have the potential to expand Avon's cultural, recreational, and/or educational offerings?

3. Feasibility & Implementation Risk:

Points: 0-10

- Are there significant obstacles or unknown factors that may prevent the event/program/organization from being completed?
- What happens if the event/program/organization is delayed or denied?

4. Business Vitality:

Points: 0-10

- Does this event/program/organization have the potential to benefit Avon's restaurants, hotels, and retail establishments and does it promote visitors intent to return?
- Does this event/program/organization reinforce the Town's goal of sustained economic vitality?

5. Partnership with the Town of Avon (programs or organizations only):

Points: 0-10

Can or does the program/organization provide programming or other services to the Town of Avon?

6. Special Events Only:

Points: 0-20

- Does this event have the potential to contribute to Avon's long term sustainable special events strategy?
- What is the growth potential for this event? Does it have the potential to be an annual event and grow within Avon?
- How does this event contribute to a balanced annual calendar of events? (www.avon.org)
- Does the producer of this event have the ability to produce an event compatible with the image of Avon as a cultural attraction?

Review Process & Schedule:

July 24 th	2016 Town of Avon Community Grants Open for Application
August 28 th	Deadline for Applications
Week of September 14 th	Funding Recommendation by Community Grants Committee Distributed to Council & Applicants
September 22 nd	Applicant Presentations to Council Avon Town Hall, 5:30 p.m. (subject to change)
December 8 th	Notification of Awards

APPLICATION REQUIREMENTS & SUBMITTAL GUIDELINES FOR COMMUNITY ORGANIZATIONS

THE DEADLINE FOR RECEIPT OF THIS APPLICATION IS 5:00 P.M. ON FRIDAY, AUGUST 28, 2015

Application Requirements (Please Do Not Exceed Three Pages):

1. Contact Information:
 - a. Name of organization
 - b. Mailing address
 - c. Contact person
 - d. Telephone number
 - e. Email address
2. If your organization received funding from the Town of Avon in 2015, it is mandatory that you provide a progress or final report on the funded activity, program and /or event. The report must include revenues and expenditures, including other outside revenue support. Please address all conditions stated in the Town of Avon Letter of Agreement you received, which announced your funding award.
3. Description and Purpose of the Organization/Mission Statement (If representing a tax exempt organization, please provide a copy of the determination letter from the Internal Revenue Service recognizing your tax-exempt status under IRS 501(c)(3). If applying under the umbrella of a 501(c)(3), please provide letter of agreement.)
4. Detailed description of the event or program and its activities. Identify if this is a new program, organization or event.
5. Explanation of funding needs and amount of funds requested from the Town of Avon. Include when funds are needed for payment.
6. Amount of funds requested and/or provided from other agencies, organizations or companies (i.e. other funding committed).
7. Anticipated line item budget for the organization or event.
8. 2014 final actual profit and loss statement.
9. Explain how the event or organization benefits the Avon community.
10. If applicable, explain what marketing efforts will be made for this event or program and how it will benefit the Town.
11. Include a description of any "in-kind" contributions and related costs that the Town of Avon provides to your organization, including but not limited to, land, buildings, and facilities and/or services.
12. Please note that no additional materials will be accepted. Do not send newspaper clippings, letters of support or promotional materials.

Application Submittal Guidelines:

1. Submit, by email, a PDF of the full application to pneill@avon.org.
2. Number each item in the application to correspond to the Application Requirements stated above.
3. Only one application may be submitted per organization.
4. **Incomplete or late applications will not be considered.**

Disclosures to all applicants:

1. Funds will not be available until after January 1, 2016, and may be dispersed in installments, if awarded.
2. Notification of awards will be sent after the Council approves the final budget currently scheduled for December 8, 2015.



TOWN COUNCIL REPORT

To: Honorable Mayor Jennie Fancher and Avon Town Council
From: Debbie Hoppe, Town Clerk

Meeting Date: January 12, 2016

Agenda

Topic: FullCourt Enterprise Agreement – Avon Municipal Court Management System

ACTION BEFORE COUNCIL

The Town Clerk's office is recommending approval of the attached license agreement between the Town of Avon, Colorado and FullCourt Enterprise.

PROPOSED MOTION

I move to approve the FullCourt Enterprise Agreement subject to the changes Town Attorney Eric Heil provided being accepted by FullCourt.

BACKGROUND

The FullCourt management system will interface with the Brozos electronic citation system, recently implemented by the Avon Police Department. FullCourt will eliminate the manual input of citations by the Police Department Administrative Service -Officers, and the current duplicate manual input of the same citations by the Court Clerk for the Municipal Court. The software is funded fully in the 2016 budget.

FULLCOURT ENTERPRISE® AGREEMENT

IN CONSIDERATION of the mutual promises and agreements provided herein, **Justice Systems, Inc. (Justice Systems)**, and **The Town of Avon (Customer)**, whose mailing address is PO Box 975, Avon, CO, 81620, agree that: **Justice Systems** will license to **Customer** rights to FullCourt *Enterprise*® software (SOFTWARE) on a nonexclusive basis for **Customer's** use in the geographical jurisdiction described as Avon Municipal Court with site(s) located at One Lake Street, Avon, CO 81620.

THIS AGREEMENT provides for (i) an end user LICENSE of the FullCourt *Enterprise* SOFTWARE (ii) an end user SUBLICENSE of the FullCourt *Enterprise* Application Server, (iii) specifications for the FullCourt *Enterprise* operating environment, (iv) the FullCourt *Enterprise* Data Dictionary, (v) SERVICES associated with the installation, setup, implementation and training in the use of the FullCourt *Enterprise* system and the SERVICES associated with any enhancements, modifications or customizations to the base SOFTWARE system and, (vi) the FullCourt *Enterprise* Maintenance and Support Agreement for continued maintenance and support of the system following expiration of the Warranty Period.

DEFINITIONS:

As used in this Agreement, the following words or terms shall have the meaning described as set forth below:

“ALTERNATIVE DATABASE”- shall mean any database (other than the customarily provided Oracle database) which **Justice Systems** has approved for use in conjunction with the FullCourt *Enterprise* SOFTWARE.

“CUSTOM SOFTWARE”- shall mean those deliverables, as well as documentation related thereto, which are made available by Justice Systems to Customer as part of a customization, modification, alteration, supplementation, addition or change to the STANDARD SOFTWARE and intended to be used as part of or in conjunction therewith. “CUSTOM SOFTWARE” includes all embedded components, subsystems, libraries and/or runtimes supplied by Justice Systems as part of the FullCourt Enterprise customization whether or not the same originated with Justice Systems.

“DOCUMENTATION”- shall mean all written, printed, electronic or other format materials published or otherwise made available by **Justice Systems** that relate to the functional, operational and/or performance capabilities of the SOFTWARE. DOCUMENTATION shall not include SOURCE CODE.

“LICENSE”- shall mean the worldwide, perpetual, personal, non-transferable, non-exclusive, license for **Customer's** internal use only granted by **Justice Systems** to use the SOFTWARE and SOFTWARE PRODUCTS under this Agreement.

“MIDDLEWARE”- shall mean the SOFTWARE layer that lies between the operating system and the application. Typically, this refers to Java Application Server and Web Server software.

“OBJECT CODE”- shall mean the binary machine readable version of the SOFTWARE.

“SERVICES”- shall mean the work done by **Justice Systems** in support of the SOFTWARE and SOFTWARE PRODUCTS but not limited to installation, training, consulting, on site and remote support, as well as such other SERVICES as may be mutually agreed upon by the parties.

“SOFTWARE”- shall mean the aggregate of the STANDARD SOFTWARE and the CUSTOM SOFTWARE, including all physical components that are provided by **Justice Systems**, including but not limited to magnetic and digital media, job aids, templates and other similar devices, and exclusive of the SUBLICENSED systems and products not provided by Justice Systems.

“SOFTWARE PRODUCTS”- Shall mean all physical components, other than SOFTWARE, that are offered by **Justice Systems**, including but not limited to documentation, magnetic and digital media, CD-ROMS, job aids, templates and other similar devices.

“SOURCE CODE”- shall mean those statements in computer language, which when processed by a compiler, assembler or interpreter become executable by a computer. Unless otherwise specifically set forth in this or a separate written instrument, the use of SOURCE CODE is not authorized or granted hereunder.

“STANDARD SOFTWARE”- means the standard FullCourt Enterprise application as indicated on the LICENSE which is attached to and made a part of this Agreement. “STANDARD SOFTWARE” includes all embedded components, subsystems, libraries and/or runtimes supplied by Justice Systems as part of the FullCourt Enterprise application whether or not the same originated with Justice Systems. “STANDARD SOFTWARE” does not include the SUBLICENSSED systems or any Customer-supplied software or systems which may be used in conjunction with the FullCourt Enterprise, whether the same may or may not be necessary for the performance of that system.

“SUBLICENSE”- shall mean the non-transferable, temporary, non-exclusive, license for **Customer’s** use only granted by **Justice Systems** to use the components of the STANDARD SOFTWARE licensed to **Justice Systems** by third parties under the terms and conditions of their respective license agreements. SUBLICENSSED components are warranted and supported by Justice Systems as provided in the LICENSE and in the Maintenance and Support Agreement.

The following schedules are attached hereto and made a part of this Agreement:

FullCourt Enterprise Software License: Providing for the license provisions under which the SOFTWARE provided by **Justice Systems** may be used;

FullCourt Enterprise Data Dictionary License Agreement.

FullCourt Enterprise Operating Environment: Setting forth the operating environment intended to be used to support the SOFTWARE plus any additional software required for use by FullCourt Enterprise system. Also, providing for the responsibilities of **Customer** relating to the establishment of an operating environment compatible with the FullCourt Enterprise system;

FullCourt Enterprise Application Server Sublicense Agreement: - Providing for the terms and provisions governing the application server.

Services Agreement: Setting forth the SERVICES that shall be provided by **Justice Systems**;

Maintenance & Support Agreement for FullCourt Enterprise: Setting forth the terms comprising the Agreement for maintenance and support SERVICES to be provided by **Justice Systems** after the initial warranty period has expired.

CitePayUSA Services Agreement: Setting forth the terms and conditions under which ePayment services may be requested by Customer for use with FullCourt.

1. COST OF SOFTWARE LICENSE AND SERVICES TO BE PERFORMED:

Customer shall pay to Justice Systems the sum of TWENTY-SEVEN-THOUSAND-THREE-HUNDRED-EIGHTY-SEVEN and 50/100 DOLLARS -as follows:

a.	<i>Total License fees in the amount of</i>	\$	<i>5,810.00</i>
b.	<i>Services as set forth in Services Agreement</i>	\$	<i>19,450.00</i>
c.	<i>Annual Maintenance and Support fees FullCourt Enterprise</i>	\$	<i>2,127.50</i>
	TOTAL	\$	<i>27,387.50</i>

Payment is due upon receipt of invoice to be mailed or emailed to the Customer’s address above first set forth.

2. **CONFIDENTIAL INFORMATION:** **Customer** acknowledges that the SOFTWARE is a copyrighted work and that the same contains proprietary intellectual property rights. **Customer** agrees to keep the SOFTWARE, and any other products delivered by **Justice Systems** in confidence and to take all reasonable precautions to ensure that no unauthorized persons shall have access to the same and to protect against the making of any unauthorized copies. Breach of this provision shall be construed as a material breach of the terms of this Agreement. As a consequence, in the event of such any breach, **Justice Systems**, at its sole option, may immediately terminate this Agreement without further obligation. **Customer** shall not alter any proprietary markings in connection with the SOFTWARE including copyright, trademark, trade secret, and patent legends.

Customer's obligations under this section as they relate to the use of the SOFTWARE shall include, without limitation, giving notification to authorized users of the provisions of this section; to immediately halt and report to **Justice Systems** unauthorized copying, use, distribution, installation, or transfer of possession of the licensed products by any authorized user of which **Customer** has actual knowledge.

It is understood that receipt of confidential information under this Agreement shall not create any obligations in any way limiting or restricting the assignment of **Customer**'s employees.

Notwithstanding the foregoing, Confidential Information shall not include information which the recipient can demonstrate by competent written proof (a) is now, or hereafter becomes, through no act or failure to act on the part of the recipient, generally known or available or otherwise part of the public domain; (b) is rightfully known by the recipient without restriction on use prior to its first receipt of such information from the disclosing party as evidenced by its records; (c) is hereafter furnished to the recipient by a third party authorized by Justice Systems to furnish the information to the recipient, as a matter of right and without restriction on disclosure; or (d) is the subject of a written permission by the disclosing party to disclose.

Notwithstanding the foregoing, disclosure of Confidential Information shall not be precluded if:

(a) such disclosure is in response to a valid order of a court or other governmental body of the United States or any political subdivision thereof, including, but not limited to a Public Records disclosure request; provided, however, that the recipient of such Confidential Information shall first have given notice to the other party, who may make a reasonable effort to obtain a protective order requiring that the information to be disclosed be used only for the purposes for which the order was issued;

(b) such disclosure is necessary to establish rights or enforce obligations under this Agreement, but only to the extent that any such disclosure is necessary for such purpose; or

(c) the recipient of such confidential information received the prior written consent to such disclosure from **Justice Systems**, but only to the extent permitted in such consent.

The obligations hereunder with respect to each item of Confidential Information shall survive the termination of this Agreement.

3. **DATA CONVERSION:** Conversion of **Customer**'s data files from **Customer**'s current or prior computer systems shall be the responsibility of **Customer** unless it is specifically agreed between **Justice Systems** and **Customer** in accordance with the terms of the "SERVICES Agreement" incorporated into this Agreement.
4. **ACCEPTANCE:** The SOFTWARE shall be deemed accepted when it has been installed and passes **Justice Systems**' standard installation test procedures.
5. **CUSTOMER'S OBLIGATION FOR DATA PROTECTION:** **Justice Systems** shall not be responsible for data protection; and, **Customer** shall be responsible for performing regular back up of data on the computer system used in connection with the SOFTWARE to minimize likelihood of data loss. **Customer** shall be solely responsible for backup SOFTWARE, hardware procedures and operations. **Customer** shall provide the safe storage of all backup tapes and/or disks. **Customer** shall be responsible for keeping **Customer** computer systems free of computer viruses.
6. **COPYRIGHT & PATENT ASSURANCE:** **Justice Systems** has taken reasonable precautions against the infringement by the SOFTWARE of copyright, patent or trade secrets; and, to the best of its knowledge no portion of the SOFTWARE infringes upon the intellectual property rights of any other party. No other or additional warranties are made nor given with respect to intellectual property right infringement. Notwithstanding the above, Justice Systems shall have no duty under this Section with respect to any claim, action or proceeding arising from or related to infringements (i) by Third-Party Products, (ii) arising out of modifications to the SOFTWARE not made by or under the direction of **Justice Systems**, (iii) resulting from use of the SOFTWARE to practice any method or process which does not occur wholly within the SOFTWARE, or (iv) resulting from modifications to the SOFTWARE or prepared pursuant to specifications or other material furnished by or on behalf of **Customer**. This Section states the entire obligation of **Justice Systems** regarding infringement of intellectual property rights, and it will survive the termination of this Agreement.

7. **TERM AND TERMINATION:** This Agreement and any supplement shall continue in force unless terminated as set forth herein. Either party may terminate this agreement upon thirty (30) days advance written notice to the other party of its intent to terminate, or immediately by **Justice Systems** if **Customer** is in breach of any confidentiality obligations or in violation of any obligations concerning use or protection of the intellectual property rights of **Justice Systems**. Any portion of this agreement and/or the schedules hereto may be independently terminated in the same manner without prejudice to the remaining portions of this agreement.

Upon the termination of the LICENSE granted by this Agreement, **Customer** shall (i) immediately cease using all SOFTWARE and SOFTWARE PRODUCTS, (ii) notify **Justice Systems** in writing that it has ceased using all SOFTWARE and SOFTWARE PRODUCTS, (iii) immediately remove from its system and operating environment all SOFTWARE and SOFTWARE PRODUCTS, (iv) notify **Justice Systems** in writing that it has completely removed from its system and operating environment all SOFTWARE and SOFTWARE PRODUCTS, (v) return to **Justice Systems** all documents and materials relating to the SOFTWARE and SOFTWARE PRODUCTS (vi) maintain confidentiality and prevent disclosure of any information and documentation relating to the SOFTWARE and the SOFTWARE PRODUCTS or the systems and procedures of **Justice Systems** as to any and all third parties, and (vii) allow **Justice Systems** to conduct reasonable remote or onsite audits of **Customer's** system and operating environment within business hours from time to time as may be requested by **Justice Systems** to ensure full compliance with these termination provisions for a period of two years.

8. **MODIFICATIONS:** The SOFTWARE may not be modified by anyone other than **Justice Systems**. Any modifications not made by Justice Systems shall nullify all warranties given and will terminate the SOFTWARE LICENSE.
9. **SEVERABILITY:** In the event that any provision of this agreement is held by a court of competent jurisdiction to be legally ineffective or unenforceable, the validity of the remaining provisions shall not be affected.
10. **INTEGRATION:** This agreement and any supplements hereto attached as schedules contain the full understanding of the parties with respect to the subject matter hereof and supersedes all prior communications, understandings and instruments relating thereto, whether orally given or made in writing. If an inconsistency arises in the interpretation of this Agreement and any of the attached schedules, supplements or any amendments thereto, that interpretation applied to the latter dated instrument shall control. No waiver, consent, modification, amendment or change of the terms of this Agreement and its supplements shall be binding unless in writing and signed by the authorized representatives of **Customer** and **Justice Systems**.
11. **ARBITRATION:** Any dispute arising out of this agreement other than claims for preliminary injunctive relief or other prejudgment remedies shall be resolved at the request of either party through binding arbitration. Arbitration shall be conducted in Albuquerque, New Mexico under the rules and procedures of the American Arbitration Association ("AAA"). The arbitration shall be by a panel of three arbitrators and, if feasible, one of the three shall possess knowledge of computer SOFTWARE and its distribution.
12. **NOTICE:** Any notice required or permitted to be given in this agreement shall be in writing and shall be sent in a manner requiring a signed receipt, or if mailed, by registered or certified mail, return receipt requested. Notice is effective upon receipt. Unless otherwise set forth in writing, **Customer** designates the address set forth above as the location for delivery of any notifications.
13. **NO WAIVER:** The failure of either party to exercise any right, or the waiver by either party of any breach, shall not prevent a subsequent exercise of such right nor be deemed a waiver of any subsequent breach of the same or any other term of the agreement.
14. **FORCE MAJEURE:** Neither party shall be deemed in default of this agreement to the extent that performance of their obligations or attempts to cure any breach are delayed or prevented by reason of any act of God, fire, natural disaster, accident, shortages of materials or supplies, or any other cause beyond the control of such party. This provision requires that any party claiming relief under this provision give written notice within fifteen (15) days of discovery thereof. In no event shall the time for performance be extended beyond 90 days.
15. **DUTIES OF CUSTOMER:** In order to ensure adequate performance and operation of FullCourt *Enterprise*, and to avoid additional cost under this Agreement **Justice Systems** will not begin installation until the requisite

preparations have been completed. Should **Justice Systems** personnel arrive at **Customer's** site and be delayed in installing FullCourt *Enterprise* SOFTWARE, conducting training, or performing other contracted SERVICES because **Customer** has not adequately performed any portion of the hardware, SOFTWARE or system infrastructure implementation, or other required elements to support FullCourt *Enterprise* SOFTWARE, **Customer** will be billed for any delays, extra travel or other expenses incurred and for the stand-by time for personnel. Such delays may necessitate re-scheduling of the installation, training, and/or other SERVICES to be performed by **Justice Systems**. Charges occasioned by **Customer's** failure to otherwise comply with this sub-paragraph will be billed in accordance with **Justice Systems' Standard Professional SERVICES Fees** rates, in addition to actual "out-of-pocket" expenses incurred for travel, lodging, etc., and payable upon receipt of an itemized statement therefor.

16. **DATA DICTIONARY:** Included among the products to be delivered as a part of this Agreement is a copy of the most current version of the FullCourt *Enterprise* Data Dictionary. The use of the FullCourt *Enterprise* Data Dictionary is controlled by the terms and conditions of its license. The **Customer** acknowledges receipt of the license and that it has read and understood the same. Updates to the FullCourt *Enterprise* Data Dictionary which are necessitated by the issuance of maintenance releases to the FullCourt *Enterprise* SOFTWARE shall be provided only when the **Maintenance and Support Agreement**, remains in effect. **Customer** further understands that support for the FullCourt *Enterprise* Data Dictionary may be obtained from **Justice Systems** through direct telephone technical support (and is not included as part of the maintenance and support provided for FullCourt *Enterprise*). Telephonic Technical Support is available for the FullCourt *Enterprise* Data Dictionary providing direct telephonic assistance from a Justice Systems, Inc. technician at the rate of **\$165.00/hr**, minimum ½ hour increments (this amount being subject to change by Justice Systems at any time in the future). **Customer** agrees to pay all amounts incurred for any such support provided upon presentation of an invoice therefor.

17. **LATE FEES, COSTS, ATTORNEYS' FEES:** Late payment charges and fees shall be allowed in the amount of 1.5% per month, compounded monthly, and shall apply to any payments in arrears for a period exceeding thirty (30) days. In any legal action or arbitration brought under this agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs of litigation arbitration, or injunctive relief proceedings necessary to carry out the provisions of this agreement. This provision shall not be construed as limiting the right of **Justice Systems** to demand timely payment; nor shall it require that **Justice Systems** extend time for payment under the provisions of this Agreement.

18. **GOVERNING LAW:** This agreement shall be governed by and interpreted, construed, and enforced in accordance with the laws of the State of Colorado.

ACCEPTED BY:

JUSTICE SYSTEMS, INC.

x _____
 (Authorized signature)

BY: _____
 Ernie L. Segó, President/CEO

 (Type or print name)

 (Date)

 (Title)

 (Date)

FULLCOURT ENTERPRISE® SOFTWARE LICENSE

Date of License: _____/_____/2015

Justice Systems, Inc. (“Justice Systems”), a New Mexico corporation, grants to Customer a personal, non-transferable, nonexclusive, perpetual license to use FullCourt *Enterprise* SOFTWARE and DOCUMENTATION and to use other SOFTWARE modules developed and provided by Justice Systems in conjunction therewith as identified below. By use of the STANDARD SOFTWARE and CUSTOM SOFTWARE Customer agrees to abide by the terms of this SOFTWARE LICENSE. “Definitions” as set forth in the Agreement to which this SOFTWARE LICENSE has been made a part are not repeated herein, but are hereby incorporated by reference as though fully set forth herein for the purpose of this SOFTWARE LICENSE.

Note: This SOFTWARE LICENSE is intended to cover the STANDARD SOFTWARE and CUSTOM SOFTWARE, as well as any modules that are used in conjunction therewith and as may be delivered by Justice Systems pursuant to the provisions of the underlying Agreement to which this SOFTWARE LICENSE has been made apart. Not all modules may be licensed hereunder, and the Customer should review the schedule below to determine those products for which this SOFTWARE LICENSE has been granted. The number of licensed users to the application may be different than those licensed for each module. This SOFTWARE LICENSE supersedes and replaces any and all other FullCourt *Enterprise* licenses granted to the Customer prior to the date set forth above, and does not grant the right to increase the number of concurrent users for any of the licensed products beyond the number identified herein. Acceptance of this SOFTWARE LICENSE and use of the products licensed hereunder supersedes and replaces all previously granted LICENSES only to the extent that they conflict with this SOFTWARE LICENSE.

The SOFTWARE LICENSE granted herein authorizes the use of the SOFTWARE only in OBJECT CODE format (and does not grant any rights to SOURCE CODE) for the purposes of creating, updating, and/or deleting information or data of **Customer** by no more than **ONE (1)** concurrent users. A “concurrent user” is anyone authorized by **Customer** who is signed onto the application through a workstation as permitted by the application (any such user simultaneously signed on through more than one (1) workstation will only be counted as a single user). **Customer** shall assure compliance with the conditions of this license and will permit **Justice Systems** to perform reasonable audits and on-site inspections of the SOFTWARE, and its use. The SOFTWARE shall be used only within the geographical jurisdiction of **Customer** and at such sites as are identified in writing to **Justice Systems**. **Customer** shall not make copies of the SOFTWARE, nor shall **Customer** sell, assign, give or permit a security interest to be taken herein or otherwise convey or allow any other person or entity to use the SOFTWARE without prior written consent of **Justice Systems**. **Customer** shall not cause or permit reverse engineering, derivation of SOURCE CODE, disassembly, decompilation of the SOFTWARE nor disclose nor permit access to the SOFTWARE by any unauthorized third party without the written consent of **Justice Systems**. **Customer** shall not create derivative works from, adapt, translate or use any portion of the SOFTWARE except as otherwise specifically permitted in this SOFTWARE LICENSE. **Customer** shall not disclose results of benchmark tests of the SOFTWARE. **Customer** acknowledges that **Customer** obtains no ownership rights in the SOFTWARE and that the SOFTWARE is the proprietary product of **Justice Systems** and is protected by copyright and other intellectual property laws. **Customer** shall have the right to use the SOFTWARE in the operating environment identified by **Customer** to **Justice Systems**.

No database relationships shall be modified, nor shall any writing of data into the database be performed by **Customer**, at **Customer’s** direction, or with **Customer’s** knowledge and consent.

Once installed by **Justice Systems**, **Customer** may not copy onto or transfer the SOFTWARE to any other device(s) than that upon which originally installed, except in the case of one-to-one transfers to new hardware installations, in which case such hardware shall conform to any prerequisites of this SOFTWARE LICENSE or accompanying SUBLICENSES and that the use of the SOFTWARE installed on the pre-existing hardware will terminate immediately. Notwithstanding the terms of this subparagraph, **Customer** may temporarily transfer the SOFTWARE onto another device if the original device becomes inoperable or is malfunctioning.

Additionally, **Customer** is authorized to use in conjunction with the SOFTWARE the following modules / features, which have been identified by the initials of an authorized representative of **Justice Systems**, for the number of concurrent users indicated next to the description of each module:

Per User/Seat Licensed Modules:

Initials: __N/A__	FullCourt <i>Enterprise</i> Jury Management Module Number of Licensed Users (_N/A_)
Initials: __N/A__	FullCourt <i>Enterprise</i> Batch Scanning Module Number of Licensed Seats (_N/A_)

Licensed Users Same As Number of Concurrent Users of SOFTWARE:

Initials: __N/A__	FullCourt <i>Enterprise</i> Imaging Module
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Unlimited Public Access Users of SOFTWARE

Initials: __N/A__	FullCourt <i>Enterprise</i> unlimited Public Access users; provided with CPU licenses for Oracle and FullCourt <i>Enterprise</i> Application Server
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JUSTICE SYSTEMS WARRANTS THAT IT OWNS ALL RIGHTS, TITLE, AND INTEREST IN AND TO THE SOFTWARE DESCRIBED AND IDENTIFIED IN THIS LICENSE.

JUSTICE SYSTEMS WARRANTS THAT FOR 90 DAYS FROM THE DATE OF INSTALLATION THAT THE LICENSED AND SUBLICENSSED SOFTWARE SHALL SUBSTANTIALLY CONFORM TO THE FUNCTIONAL SPECIFICATIONS DESCRIBED IN DOCUMENTATION PROVIDED BY JUSTICE SYSTEMS A.ND WHEN OPERATED IN THE DESIGNATED OPERATING ENVIRONMENT.

JUSTICE SYSTEMS DOES NOT WARRANT THAT THE OPERATION OF THE LICENSED AND SUBLICENSSED SOFTWARE OR OF THE APPLICATION WILL BE UNINTERRUPTED AND ERROR FREE.

JUSTICE SYSTEMS DOES NOT WARRANT AGAINST INTERFERENCE WITH ENJOYMENT OF INFORMATION.

THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES. IF CUSTOMER GIVES NOTICE OF AN ERROR OR INABILITY OF THE LICENSED AND SUBLICENSSED SOFTWARE TO SUBSTANTIALLY PERFORM AS SET FORTH HEREIN JUSTICE SYSTEMS SHALL, AT ITS OPTION, RESOLVE THE ERROR OR INABILITY TO PERFORM BY CORRECTING OR REPLACING THE SOFTWARE, OR PROVIDE A REASONABLE WORK-AROUND FOR THE ERROR OR INABILITY, OR SHALL REFUND THE LICENSE FEES PAID UNDER THIS AGREEMENT AND TERMINATE THE LICENSE.

WARRANTY OF LAW: JUSTICE SYSTEMS REPRESENTS AND WARRANTS THAT TO THE BEST OF ITS KNOWLEDGE: (I) THERE IS NO CLAIM, LITIGATION OR PROCEEDING PENDING OR THREATENED AGAINST JUSTICE SYSTEMS WITH RESPECT TO THE COMPUTER SOFTWARE PROVIDED TO CUSTOMER OR ANY COMPONENT THEREOF ALLEGING INFRINGEMENT OF ANY PATENT OR COPYRIGHT OR ANY TRADE SECRET OR ANY PROPRIETARY RIGHT OF ANY PERSON; (II) THE COMPUTER SOFTWARE PROVIDED TO CUSTOMER COMPLIES IN ALL MATERIAL RESPECTS WITH APPLICABLE LAWS, RULES AND REGULATIONS; (III) JUSTICE SYSTEMS HAS FULL AUTHORITY TO ENTER INTO THIS AGREEMENT AND TO CONSUMMATE THE TRANSACTIONS CONTEMPLATED HEREBY; AND (IV) THIS AGREEMENT IS NOT PROHIBITED BY ANY OTHER AGREEMENT TO WHICH JUSTICE SYSTEMS IS A PARTY OR BY WHICH IT MAY BE BOUND.

IN THE EVENT OF A BREACH OF THIS WARRANTY OF LAW, JUSTICE SYSTEMS SHALL INDEMNIFY AND HOLD HARMLESS THE CUSTOMER FROM AND AGAINST ANY AND ALL HARM, INJURY, DAMAGES, COSTS, LOSSES, LIABILITIES, SETTLEMENT AMOUNTS AND EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES, INCURRED BY JUSTICE SYSTEMS ARISING OUT OF SAID BREACH.

JUSTICE SYSTEMS SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OR OTHER DAMAGES FOR LOST REVENUE, LOST OPPORTUNITY, LOST DATA OR DATE USE INCURRED BY CUSTOMER OR ANY THIRD-PARTY AND IN ANY EVENT, ANY LIABILITY OF JUSTICE SYSTEMS SHALL NOT EXCEED THE AMOUNT PAID BY CUSTOMER FOR THE SOFTWARE; PROVIDED, HOWEVER, THAT THIS LIMITATION SHALL

NOT APPLY TO JUSTICE SYSTEM'S INDEMNIFICATION OBLIGATIONS FOR WARRANTY OF LAW AS SET FORTH, ABOVE.

EXCEPT AS SET FORTH IN THIS AGREEMENT, JUSTICE SYSTEMS MAKES NO IMPLIED REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE SOFTWARE AS TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

CUSTOMER RECOGNIZES THAT PORTIONS OF THE SOFTWARE MAY INCLUDE OPEN SOURCE CODE DERIVED FROM OTHER SOURCES THAN JUSTICE SYSTEMS AND THAT WITH RESPECT TO THAT SOURCE CODE, JUSTICE SYSTEMS HAS TAKEN REASONABLE PRECAUTIONS AND TO THE EXTENT REASONABLY POSSIBLE USED DUE DILIGENCE IN ASSURING THAT THE SOFTWARE PROVIDED IS FREE OF THIRD-PARTY CLAIMS OF COPYRIGHT OR PATENT INFRINGEMENT.

FULLCOURT ENTERPRISE MAY INCLUDE RUNTIME PRODUCTS OF THIRD-PARTY VENDORS IN ORDER TO PROVIDE ADDITIONAL FUNCTIONALITY FOR THE BENEFIT OF CUSTOMER. CUSTOMER AGREES NOT TO ALTER, DISASSEMBLE, DECOMPILE, TRANSLATE, ADAPT OR REVERSE-ENGINEER ANY SUCH RUNTIME PRODUCT OR THE PROPRIETARY PRODUCTS CREATED THEREWITH (E.G., WITH RESPECT TO REPORT GENERATION TOOLS THE .RPT REPORT FILE FORMAT); NOT TO DISTRIBUTE THE RUNTIME PRODUCTS TO ANY THIRD-PARTY; NOT TO USE THE RUNTIME PRODUCTS TO CREATE FOR DISTRIBUTION A PRODUCT THAT IS GENERALLY COMPETITIVE WITH THOSE RUNTIME PRODUCT(S) PROVIDED BY JUSTICE SYSTEMS; AND, NOT TO USE THE RUNTIME PRODUCTS ON A RENTAL OR TIMESHARING BASIS OR TO OPERATE A SERVICE BUREAU FOR THE BENEFIT OF THIRD PARTIES. WITH RESPECT TO THOSE RUNTIME PRODUCT(S) LICENSED BY BUSINESS OBJECTS, S.A, OR ANY OF ITS SUBSIDIARIES, CUSTOMER AGREES NOT TO USE THE RUNTIME PRODUCT(S) TO CREATE FOR DISTRIBUTION A PRODUCT THAT CONVERTS THE REPORT FILE (.RP1) FORMAT TO AN ALTERNATIVE REPORT FILE FORMAT USED BY ANY GENERAL PURPOSE REPORT WRITING, DATA ANALYSIS OR REPORT DELIVERY PRODUCT THAT IS NOT THE PROPERTY OF BUSINESS OBJECTS, S.A, OR ANY OF ITS SUBSIDIARIES.

THIS WARRANTY EXTENDS ONLY TO THE CUSTOMER IDENTIFIED IN THE BODY OF THIS LICENSE AGREEMENT, OR THE UNDERLYING AGREEMENT TO WHICH IT HAS BEEN MADE AN ATTACHMENT. SUBSEQUENT TRANSFEREES MUST ACCEPT THE APPLICATION "AS IS" AND WITH NO WARRANTIES OF ANY KIND. ANY AND ALL WARRANTIES AND INDEMNIFICATIONS PROVIDED BY THIS LICENSE SHALL BE NULL AND VOID AS TO THE SOFTWARE, SOFTWARE PRODUCTS AND SERVICES WHERE NONCOMPLIANCE IS CAUSED BY OR RELATED TO (1) ACTS OR OMISSIONS OF OTHERS THAN JUSTICE SYSTEMS PERSONNEL, ITS AGENTS OR THIRD PARTIES; (2) MISUSE, THEFT, VANDALISM, FIRE, WATER OR OTHER PERIL; (3) MOVING OR RELOCATION NOT AUTHORIZED BY JUSTICE SYSTEMS; (4) ANY ALTERATIONS OR MODIFICATIONS MADE TO THE SOFTWARE BY CUSTOMER, ITS AGENTS OR REPRESENTATIVES, ACCIDENT, ABUSE, MISAPPLICATION, FAILURE TO FOLLOW CORRECT PROCEDURES FOR STARTING UP THE SYSTEM OR SHUTTING IT DOWN, OR BY INTRODUCTION OF ANY NEW SOFTWARE OTHER THAN IN THE OPERATING ENVIRONMENT SPECIFIED BY JUSTICE SYSTEMS; (6) FAILURE OF CUSTOMER TO ADEQUATELY PROVIDE FOR DATA SECURITY AND REASONABLE PROTECTION AGAINST VIRUSES, WORMS OR OTHER DESTRUCTIVE SOFTWARE MECHANISMS; OR (7) CODING, INFORMATION, OR SPECIFICATIONS CREATED OR PROVIDED BY CUSTOMER.

Notwithstanding any other provision of this Agreement **Justice Systems** may terminate this SOFTWARE LICENSE agreement immediately if **Customer** (a) fails to make any LICENSE fee payment as set forth by agreement; or, (b) commits a material breach of any of its obligations provided for under this LICENSE, which breach is not remedied or cured within sixty (60) days after notice thereof by **Justice Systems** to **Customer**. Upon termination, **Customer** shall immediately cease to use the SOFTWARE and shall immediately deliver to **Justice Systems** all copies of the SOFTWARE or any other property of **Justice Systems** relating to the SOFTWARE and shall certify in writing that these terms have been fulfilled.

Customer recognizes that money damages may not be an adequate remedy for its breach or violation of the terms of this SOFTWARE LICENSE, or threatened breach or violation, and injunctive relief or other equitable remedies

shall be available to **Justice Systems** as a remedy in addition to any other remedies available under the law. Any dispute relating to the terms of this license other than claims for preliminary injunctive relief or other equitable remedies shall be resolved at the request of either party through binding arbitration. Arbitration shall be conducted in Albuquerque, New Mexico under the rules and procedures of the American Arbitration Association. This provision, and the rights created hereunder, shall survive termination of the Agreement.

Customer
Initials _____

FullCourt *Enterprise*[®] Data Dictionary License Agreement

For good and valuable consideration **Justice Systems, Inc.**, a New Mexico corporation, hereby grants to Customer, (hereinafter “**Licensee**”) a LICENSE for the FullCourt *Enterprise* Data Dictionary, as follows:

The FullCourt *Enterprise* Data Dictionary is the exclusive proprietary property of Justice Systems, Inc., a New Mexico corporation. As such, its use and products created as a result of its use (and the technology disclosed therein) are strictly governed by the terms of the original FullCourt *Enterprise* LICENSE and other licenses which may accompany the FullCourt *Enterprise* Court Case Management System.

Use, disclosure, extraction from and any other information derived as a result of this disclosure of the FullCourt *Enterprise* Data Dictionary is further governed, as follows:

1- The FullCourt *Enterprise* Data Dictionary is protected in accordance with the provisions of the Justice Systems, Inc. copyright to FullCourt *Enterprise*;

2- The FullCourt *Enterprise* Data Dictionary is licensed, not sold, by Justice Systems, Inc. It shall remain proprietary to and a trade secret of Justice Systems, Inc. which retains the title, ownership and intellectual property rights in and to the FullCourt *Enterprise* Data Dictionary;

3- The **Licensee** may not modify, network, rent, lease, loan, sublicense, assign, or otherwise transfer, pledge, or encumber the FullCourt *Enterprise* Data Dictionary, in whole or in part;

4- The FullCourt *Enterprise* Data Dictionary contains trade secrets, and the **Licensee**, or its assignees, may not decompile, reverse engineer, disassemble, or otherwise manipulate any components of FullCourt *Enterprise* or the FullCourt *Enterprise* Database so as to disclose trade secrets, or for any other purpose;

5- The FullCourt *Enterprise* Data Dictionary described herein, and any modifications, updates, revisions, corrections or additions thereto, shall be used only for the purpose of providing **Licensee** with information pertaining to the FullCourt *Enterprise* Database so that **Licensee** might read data contained in the FullCourt *Enterprise* Database for the purpose of extracting, exporting, ad hoc inquiry and reporting;

6- Under no circumstances may any product developed by **Licensee**, or its assignees, modify, enhance or in any way affect the FullCourt *Enterprise* database structure. Any such modifications to the FullCourt *Enterprise* Database shall immediately void any and all warranties, and maintenance obligations of Justice Systems, Inc., and other obligations of Justice Systems, Inc. under the then existing FullCourt *Enterprise* license agreement;

This license to the FullCourt *Enterprise* Data Dictionary is an extension of the original SOFTWARE LICENSE and shall terminate at such time as the original SOFTWARE LICENSE; **Licensee** shall keep the FullCourt *Enterprise* Data Dictionary and DOCUMENTATION in confidence and take all reasonable precautions to ensure that no unauthorized persons have access to the same.

Customer
Initials _____

FULLCOURT ENTERPRISE®
OPERATING ENVIRONMENT AGREEMENT

Standard Configuration:

FullCourt *Enterprise* is supported by four different components, each of which may be implemented on separate hardware platforms. These components are:

- FullCourt *Enterprise* Java application/web server. Justice Systems requires FullCourt *Enterprise* Application Server as the application / web server for FullCourt *Enterprise*. The server running the application / web server must use either a Windows Server 2008 / 2012 or later or a Redhat Linux v5 or later operating system that is compatible with FullCourt *Enterprise* Application Server or such other MIDDLEWARE products as **Justice Systems** may approve.
- Database server containing FullCourt *Enterprise* application data. **Customer** will provide Microsoft SQL Server 2008 / 2008 R2 / 2012 (Standard or Enterprise) as the FullCourt *Enterprise* database. **Customer** shall properly license and install the database as specified by **Justice Systems** or as the parties mutually agree. **Customer** will maintain and support the database and database environment. **Justice Systems** will assist the **Customer** in configuring the database to enable it to work in conjunction with FullCourt *Enterprise*.
- Workstations supporting the browser based user interface. **Justice Systems** currently requires Microsoft Internet Explorer v9 or later or Google Chrome v23 or later as the browser for FullCourt *Enterprise* but will designate at the time of installation the appropriate version (in the event of change).

Performance of the overall system is the result of a combination of products working together in harmony. Inasmuch as both parties will be independently providing and responsible for maintaining various components of the system, the parties mutually recognize that no assurances can be made by **Justice Systems** as to the final performance of the SOFTWARE. The parties agree to work together to achieve optimum performance results to the extent that the same may be reasonably obtained.

Justice Systems Will Provide:

It is understood that the FullCourt *Enterprise* System utilizes FullCourt *Enterprise* Application Server MIDDLEWARE and that **Justice Systems** will provide this MIDDLEWARE with FullCourt *Enterprise*.

Justice Systems will provide as a part of the implementation contemplated by this Agreement all necessary SOFTWARE and SOFTWARE PRODUCTS for the operation of the FullCourt *Enterprise* System, including Enterprise Service Bus.

Customer Will Provide:

Any and all other components of the operating environment will be provided by **Customer**, including without limitation, the following:

- All hardware, including workstations and servers
- Compatible operating systems
- Microsoft SQL Server 2008 / 2008 R2 / 2012
- All networking components
- All printers and scanners
- Microsoft Word
- A compatible internet browser
- All backup system components
- Java Virtual Machine
- Java Development Kit

Customer Preparation Responsibilities:

The **Customer** must have the complete hardware and networking infrastructure in place and operational before the installation of the STANDARD SOFTWARE and/or CUSTOM SOFTWARE. This includes:

1. Assuring that all hardware (server/workstations/Local Area Network/ printers/Internet access with ports 80 and 443 unblocked/tape backup system etc.) is fully tested and operational prior to the FullCourt *Enterprise* installation.
2. Assuring that Internet access is available to the server and workstations in order to support remote installation and diagnosis. If any component is to be installed on servers running Linux, at least one (1) Windows workstation with Internet access should also have X Server SOFTWARE installed so that the server(s) may be accessed for installation, configuration and maintenance.

The entire system (including Internet connection) must be fully tested and operational prior to the installation of the **Justice Systems'** provided SOFTWARE. Customer must contact **Justice Systems** with any questions regarding the required hardware/software necessary to run the Justice Systems' products. In order to assure that the proper hardware, networking, and operating system infrastructure, etc. is installed and fully operational, **Justice Systems** will conduct a preliminary installation conference call with the appropriate **Customer** staff (including Information Systems personnel).

The operating environment will be configured by Customer pursuant to the provisions of the most currently published version of the "FullCourt *Enterprise* Recommended System Configuration" which will be provided to **Customer** by **Justice Systems**.

Customer
Initials _____

FullCourt *Enterprise*[®] Application Server SUBLICENSE Agreement

Justice Systems grants to Customer a SUBLICENSE to use FullCourt *Enterprise* Application Server software (FCE-AS) in conjunction with the FullCourt *Enterprise* software provided by Justice Systems to Customer. This SUBLICENSE is subject to the terms and conditions of the underlying Agreement to which this SUBLICENSE Agreement has been made a part, as well as the following terms.

- 1) The right to use FCE-AS is a nonexclusive, non-transferable SUBLICENSE granted Customer by Justice Systems to use FCE-AS provided by Justice Systems with the FullCourt *Enterprise* software LICENSE granted concurrent hereto.
- 2) FCE-AS will be provided by Justice Systems and shall be used only with FullCourt *Enterprise* or such other programs as may be provided by Justice Systems to Customer.
- 3) Justice Systems will install FCE-AS as provided by the agreement(s) referred to above.
- 4) Each copy of FCE-AS shall be for the Customer's own internal use within the limits of its geographic jurisdiction. The FCE-AS program shall not be transferred except for temporary transfer in the event of computer malfunction.
- 5) Customer shall not remove or modify any program markings, nor any notice of proprietary rights. All trademarks, trade names, logos and notices present will be preserved and not deliverately defaced, modified or obliterated except by normal wear and tear. Customer shall not use any trademarks without express written authorization.
- 6) Customer shall not hold Justice Systems liable for any damages, whether direct, indirect, special, incidental, or consequential, arising from the use of FCE-AS.
- 7) Customer shall, at the termination of the SUBLICENSE, promptly discontinue use and return to Justice Systems all copies of FCE-AS and Documentation.
- 8) Customer shall comply fully with all relevant export laws and regulations of the United States to assure that neither FCE-AS, nor any direct product thereof, are exported, directly or indirectly, in violation of United States law or laws of any other country.
- 9) Justice Systems does not provide any warranty for FCE-AS separate and apart from such warranties as are provided in the software license.

Products Applicable to this Sublicense:

Item #	Application Specific Program	Maximum Server Size	Description	Qty	Price per License	Total License Charge
1	FCE-AS	N/A	FCE Application Server Application Specific, Server Instance Licenses	1	N/C	N/C
TOTAL APPLICATION SPECIFIC LICENSE CHARGE					\$	N/C

Customer
Initials _____

Services Agreement

WHEREAS, Justice Systems, Inc., (**Justice Systems**) and **Customer** have simultaneously herewith or previously entered into an agreement for the licensing of software designed, developed or otherwise provided by **Justice Systems**; and,

WHEREAS, the parties recognize that continued use and operation of the licensed products by **Customer** may from time-to-time require modification, upgrade or enhancement and that **Justice Systems** is willing to obligate itself to provide same for the benefit of **Customer** in accordance with the terms of this Agreement;

IN CONSIDERATION of the mutual promises and undertakings provided herein, the parties agree as follows:

- 1- That **Customer** may purchase from **Justice Systems** professional services related to the design, development, set-up and implementation of the FullCourt[®], FullCourt Enterprise[®], and /or FullCase[®] Case Management System, their associated modules, add-ons and extensions, as well as any other software products as the latter shall be willing to provide and support;
- 2- That the professional services to be provided in accordance with the foregoing subparagraph may include obtaining specifications, consulting, pre-installation, installation, set-up, training, project management, software modification, and such other services as **Justice Systems** may provide; and,
- 3- That the description of these professional services and the parties' relative responsibilities with respect thereto, are set forth in the succeeding paragraphs (the parties acknowledge that this list is not all-inclusive but representative of those types of services which may be provided).

Services & Responsibilities:

The following services will be provided:

	Description	Price
a.	Remote Installation and Setup of FullCourt <i>Enterprise</i>	4,750
b.	5 Day End User Training on FullCourt <i>Enterprise</i> in Albuquerque, NM	6,700
c.	Remote Old Case Index data conversion. This conversion depends on the Customer to extract the legacy data from the legacy system into the format specified by Justice Systems . Only Parties are created in FullCourt <i>Enterprise</i> , and a subset of old case information is placed in a text field and associated with the Party.	6,000
d.	Remote Standard Citation Import Module setup	2,000
	Total Services:	\$ 19,450

a- Customer Preparation Responsibilities:

The **Customer** must have the complete hardware and networking infrastructure in place and operational before the installation of the STANDARD SOFTWARE and/or CUSTOM SOFTWARE. This includes:

3. Installation of the printers, database and other related SOFTWARE.
4. Assuring that all hardware (server/workstations/Local Area Network/ printers/Internet access with ports 80 and 443 unblocked/tape backup system etc.) is fully tested and operational prior to the FullCourt *Enterprise* installation.
5. Internet access must be available to the server and workstations in order to support remote installation and diagnosis. If any component is to be installed on servers running either UNIX or Linux, at least one (1) Windows workstation with Internet access should also have X Server SOFTWARE installed so that the server(s) may be accessed for installation, configuration and maintenance.
6. Installation of Internet Explorer (the version as designated by **Justice Systems**);

The entire system (including Internet connection) must be fully tested and operational prior to the installation of the **Justice Systems**' provided SOFTWARE. Customer must contact **Justice Systems** with any questions regarding the required hardware/software necessary to run the Justice Systems' products. In order to assure that the proper hardware, networking, and operating system infrastructure is installed and fully operational, **Justice Systems** will conduct a preliminary installation conference call with the appropriate **Customer** staff (including Information Systems personnel).

- b- **Installation:**
Justice Systems will install SOFTWARE onto the **Customer's** server(s).

For those SOFTWARE products which require the FullCourt *Enterprise* Application Server MIDDLEWARE for the proper operation of the SOFTWARE, **Justice Systems** will remotely install and configure the same.

- c- **Training:**
To initiate the product installation, **Justice Systems** will send the **Customer** a product installation kit, containing several forms that need to be completed by the **Customer** and which will serve as the basis for customized setup of the product. The table set-up should be completed prior to training.

- d- **Programming Services:**
Any requests for Programming Services that **Justice Systems** is willing to accommodate shall be managed in a two (2) phase process.

Phase I will be the analysis portion of any programming work—that period of time when both the **Customer** and **Justice Systems** are working closely to communicate requirements, designs, work plans and the like-and Justice Systems

Phase II applies to the period after which the delivery of designs has been made and plans have been agreed upon.

Given this dual phased approach to Programming Services, a “workflow” process is intended to provide for a well-defined and cooperative environment:

- Each request for Programming Services will be submitted by the **Customer** in writing and with as much detail as reasonably possible given the existent circumstances. Whenever practical, requests for multiple Programming Services will be submitted simultaneously to become part of a single “project”.
- Each request will incorporate written documents that may more clearly apprise **Justice Systems** of the desired functionality and assist in the design process.
- All requests for Programming Services shall be submitted in behalf of the **Customer** by an authorized Project Management personnel (PM), so stating that the request has been authorized and that sufficient funding for the Phase I commitment is available.
- The written request will be submitted to a designated **Justice Systems** Client Manager, who will acknowledge receipt of same in writing and either simultaneously with that acknowledgement, or within a reasonable time thereafter, provide the **Customer** PM the Tracker Issue Number(s) assigned to the request.
- The acknowledgment and assignment of a Tracker Issue Number will constitute **Justice Systems'** acceptance of the request to begin analysis and design work toward the development of final specifications and a work plan. Phase I charges in accordance with the schedule set forth at the end of this Services Agreement will begin to be incurred at this point and continue until either of these events occurs: (a) the **Customer** PM communicates in writing to the **Justice Systems** Client Manager that the requested Programming Services has been withdrawn; or (b) the final specifications and Final Work Plan have been accepted by the **Customer** and a Purchase Order has been timely submitted to **Justice Systems**. All Phase I charges incurred up to this point and time will become due and payable as specified in the Payment section below.

Analysis and Design:

- Upon acknowledgment of the requested Programming Services, **Justice Systems** will begin initial analysis toward the Design and the definition of a Preliminary Work Plan. This analysis will most likely involve participation of resources from within the **Customer's** staff. The Justice System Client Manager, together with the **Customer** PM, will coordinate the assignment and commitment of resources for this purpose.

- The completion of analysis work will take place following one or more of the following: conference calls among resources, email communications, web meetings and (where necessary) on-site meetings, as well as any other forms of communication and information exchanges as the parties mutually agree to be reasonably required in achieving the goals of the analysis.
- Analysis work, the design, specifications and Work Plans (both Preliminary and Final) are intended to be elements of an overall “process” involving the exchange of ideas, questions, concepts and, as necessary, written instruments demonstrating screen mockups, reports, etc.. Sometimes a single event or meeting may be all that is required for the parties to sufficiently appreciate the request. An iterative process will more likely be the standard.

Final Specifications and Final Work Plan:

- Products of the Analysis and Design work will be:
 - Preliminary Design Specification(s);
 - A Preliminary Work Plan;
 - A Quote based upon the Preliminary Design Specifications and Preliminary Work Plan which will be submitted by **Justice Systems** to the **Customer** for review, comment and approval. Based upon the **Customer** feedback, these deliverables will be finalized.
- Upon the **Customer**’s approval of the Final Design Specification(s), **Justice Systems** will prepare and submit simultaneously, or within a reasonable time thereafter, a proposed Final Work Plan and Fixed Price Proposal. The Final Work Plan will outline the anticipated schedule for completion of the modification(s) outlining timeframes and deliverables.
- The Final Work Plan, and included schedules, will be dependent upon receipt by **Justice Systems** of a Purchase Order for the contemplated Programming Services within the timeframe set forth in the proposed Plan. Failure to timely provide the Purchase Order, or other changes to the proposed Final Work Plan, may result in the necessity to adjust other timeframes or scheduling.
- A Purchase Order will be required before **Justice Systems** will begin the performance of Services set out in the Quote (Phase II).

Change Orders:

- All requests from the **Customer** for Change Orders to the agreed upon specifications shall be submitted in writing to the **Justice Systems** Client Manager, and the parties will employ the same procedures outlined for submission of originating requests.
- Change Orders not affecting the approved Programming Services, Final Design Specifications or Final Work Plan will be treated as “new” requests and assigned as being new Projects.
- Change Orders or subsequent requests affecting the approved Programming Services, Final Design Specifications or Final Work Plan may require amendments to any, or all, such instruments, including changes to the agreed upon fixed costs. Therefore, all Change Orders will first be analyzed and work performed on account thereof charged in accordance with the Phase I process.
- Prior to performing any work occasioned by a Change Order affecting the approved Programming Services, Final Design Specifications or Final Work Plan, the **Customer** will be invoiced for any affected work already in progress and shall be payable as specified in the Payment section below. Invoices will be for the proportionate amount of the fixed costs for work already performed by **Justice Systems**.

e- *Data Conversion Services:*

The Customer may purchase from **Justice Systems** Programming Services for the conversion of data from other legacy systems. **The Customer** acknowledges that the ability to convert data and the accuracy of converted data depends upon elements beyond the control of **Justice Systems**. **JUSTICE SYSTEMS DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH REGARD TO CONVERTED DATA FILES.**

Data Cleansing:

The parties understand that an existing data environment may be compromised by a variety of errors such as:

1. Instances of different persons with the same Social Security Number
2. Missing or incorrect financial information
3. Incorrect and inconsistent status information
4. Malformed information (e.g., state code included in city name)
5. Inconsistent and non-standard data formats

Such data errors may have a negative impact upon the quality of the converted data, and therefore the **Customer** may be required to manually cleanse the data.

To the extent reasonable and practical, the approach outlined in the section entitled “*Programming Services*” will be applied for a data conversion. Other data conversion options are also available and **Justice Systems** may be contracted to perform the Services, where appropriate, and in accordance with the Schedule of Standard Professional Service Rates.

The above listed services are not intended to be all-inclusive. **Justice Systems’** responsibility to provide any other services is limited to those matters specifically enumerated in this Agreement, or as may be otherwise agreed to in writing between the parties.

The Schedule of Standard Professional Service Rates is as follows:

Professional Services		Hourly Rate
Executive Management		\$200
Administrative Staff		\$60
Management	Client Manager	\$165
	Project Manager	\$165
Configuration Management		\$145
Domain Specialist		\$155
Sr. Systems Analyst / Programmer		\$155
Programmer		\$145
Quality Assurance		\$145
Technical Writer		\$100
Training Services		Daily Rate
Onsite	Per instructor	\$1,500/day
Justice Systems facility	Per instructor	\$1,000/day

- From time-to-time at Justice Systems’ sole discretion these rates may change.
- Travel time and travel expenses related to SERVICES are not included in the above rates and will be charged and invoiced separately.

Payment of Services (non-Maintenance):

- Phase I charges will be billed monthly for Programming Services that are “Time & Material”, unless otherwise mutually agreed upon in a fixed price quote.
- Phase I “Time & Material” charges for Programming Services will be itemized on the monthly invoice by “rate type” of the Schedule of Standard Professional Services Rates.
- Travel Expenses / Per Diem Expenses will be the actual/reasonable expenses incurred for each resource and will be invoiced monthly.

- Travel time will be invoiced separately and as “time and materials” in accordance with the Professional Services schedule.
- All travel expenses and travel time is in addition to other costs unless otherwise specifically agreed in writing.
- “Fixed Prices” will include the total costs for **Justice Systems**’ development, testing, and delivery of the requested modification(s), the cost of Release Letter and Help Text production, and other costs mutually agreed to by the parties. “Fixed Prices”, unless otherwise agreed in writing, do not include travel time or travel expenses.
- Fixed Prices shall be invoiced, as follows:
 - Fifty (50%) percent along with the Purchase Order;
 - Forty (40%) percent at the time of delivery of the first release of the modification;
 - Ten (10%) percent upon acceptance of the modification or within thirty (30) days of its placement into production, whichever first occurs.
- All invoices shall be paid within thirty (30) days of invoice date.

Customer
Initials _____

Maintenance & Support Services

TERM: Except as may otherwise be specifically stated herein, the Maintenance & Support Services shall begin at the end of the warranty period and shall continue for one year terms with automatic renewal for successive one year periods or until specifically terminated by either party giving thirty (30) days written notice of intent to terminate. Maintenance & Support Services is intended to survive the completion and termination of the underlying Agreement to which it has been made a part. "Definitions" as set forth in the underlying Agreement to which this Maintenance & Support Services has been made a part are not repeated herein, but are hereby incorporated by reference into this instrument as though fully set forth herein.

APPLICABILITY: As used in the Maintenance & Support Services, the definitions set forth in the underlying FullCourt®/FullCourt Enterprise® and/or FullCase® Agreement shall apply.

SUPPORT PROVIDED: Justice Systems will:

- 1) provide **Customer** with telephone access by which **Customer** may communicate with **Justice Systems** for purposes of seeking technical support of the LICENSED and SUBLICENSED SOFTWARE provided to the **Customer**, but excluding support for modifications, changes or upgrades to interfaces software not specifically and solely developed by Justice Systems (e.g., modifications made to third party software with which FullCourt products have been interfaced);
- 2) provide to **Customer** maintenance of the SOFTWARE covered under this agreement, including maintenance releases of the STANDARD SOFTWARE and CUSTOM SOFTWARE regularly distributed, upgrade versions of the STANDARD SOFTWARE periodically distributed, but shall not include any modifications to either the STANDARD SOFTWARE or the CUSTOM SOFTWARE as may be required due to changes made by third parties to integrated systems, or services or supporting applications or systems, not provided by Justice Systems;
- 3) correct or replace LICENSED and SUBLICENSED SOFTWARE and/or provide SERVICES necessary to remedy any SOFTWARE error which is attributable to Justice Systems or which functions differently than published Justice Systems' documentation, or Justice Systems will provide a reasonable workaround for the error, or Justice Systems will refund the pro-rata pre-paid maintenance and support fees paid by customer under this agreement and terminate the maintenance and support agreement;
- 4) provide **Customer** with remote diagnostic SERVICES for the SOFTWARE.

FEES¹: Maintenance and support is included during the warranty period. After that, maintenance and support under the Maintenance & Support Services will be provided at the price stated in underlying Agreement or in any other accepted document (proposal, invoice, agreement, etc.), or any subsequently issued invoice and shall be paid in advance of the beginning of the covered period. This fee, unless otherwise stated in the underlying Agreement, is for the first year and may be increased in subsequent years at **Justice Systems'** sole discretion. This fee may also be increased should the **Customer** elect to have modifications or customizations incorporated into the STANDARD SOFTWARE. SERVICES for the FullCourt Enterprise Data Dictionary shall be separately provided upon request of **Customer** who will be charged therefor on a per call basis at the then current Standard Professional Services Rate. **Customer** agrees that each call shall be billed in minimum one-half hour increments.

Maintenance and Support shall be paid for all active LICENSES unless otherwise approved by Justice Systems in writing. Should the **Customer** reduce to total number of active LICENSES for which Maintenance and Support is provided and thereafter reinstate to active status some or all of those LICENSES which had been deactivated, a "reinstatement to active status" fee shall be assessed and paid before reactivation of the LICENSE.

There shall be no refunds or pro-ration of the SOFTWARE maintenance and support fees.

¹ For the purposes of this Agreement, it should be understood that included in the "Fees" is the maintenance and support of the FullCourt Enterprise application. Not covered by this agreement are any support services related to the browser, the operating system and operating environment, backup and restore software, word processing software, and any other software or hardware that was not sold and provided by Justice Systems as a component to the FullCourt Enterprise system. Upgrades and changes to the hardware, operating system or infrastructure are not included and may require additional services that may be provided by Justice Systems in accordance with its then current Standard Professional Service Rates.

CONDITIONS OF SUPPORT: **Customer** acknowledges and agrees that support under the Maintenance & Support Services will not be provided for damage or problems to SOFTWARE caused by fire, smoke, water, vandalism, riots, theft, misuse, accidents, power outages, abuse, any acts of war, or acts of God. **Customer** further acknowledges that this agreement will not cover corrections for difficulties or defects traceable to system changes by **Customer**, alterations to SOFTWARE other than by **Justice Systems**, introduction of incompatible programs, hardware, viruses, worms or any other cause beyond the control of **Justice Systems**.

If the customer elects to run FullCourt *Enterprise* in a virtualized environment, **Justice Systems** will support the product with some restrictions. Reported issues that are obviously originating in FullCourt *Enterprise* will be addressed in accordance with this Maintenance & Support Agreement. Issues that could have their origin in the configuration or management of the virtual environment - such as problems with performance, network and printer communications, etc. - may need to be reproduced outside of the virtual environment. Where the issue is confirmed to be unrelated to the virtual environment, **Justice Systems** will support the product in a manner consistent with support provided when the software is not running in a virtualized environment.

Any support rendered by **Justice Systems** at **Customer**'s request to deal with any problems that lie outside the scope of this Maintenance & Support Agreement shall be billed in accordance with the time and materials rates then in effect by **Justice Systems** at the time the work is completed, together with any travel and expenses incurred in providing such extra support.

Charges for support or work provided to **Customer** by **Justice Systems** that lie outside the scope of the Maintenance & Support Agreement shall be paid within thirty (30) days from the date of billing. Payments not timely made shall bear a penalty of 1 1/2 percent per month until paid.

Services Excluded from Maintenance & Support Services:

It is expressly understood and agreed by **Customer** that **Justice Systems** will not be responsible for performing the following SERVICES:

Training

Support SERVICES do not include any training SERVICES that may be required by **Customer**, including such SERVICES that may be required as a result of enhancements, modifications or upgrades. These SERVICES may be separately purchased at **Justice Systems**' then current Standard Professional Service Rate.

Non-Standard Configuration

Justice Systems may assist, at costs additional to those set forth in this Agreement, with the configuration of any ALTERNATE DATABASE in order to assure that it will operate in conjunction with FullCourt *Enterprise*, but makes no assurances of compatibility.

Hardware

Hardware installation and setup, work station or server setup, fax-modem, scanner or printer installation or setup, local or wide-area networking hardware or setup, back-up system hardware or setup, services related to set up of the networking infrastructure.

Other Software

Supplying, installing, or integrating any other SOFTWARE, including but not limited to operating or networking systems; MIDDLEWARE and database SOFTWARE not defined as part of the Standard Configuration, or word processing systems; nor setup, remote communications SOFTWARE, back-up system SOFTWARE, or any legacy system or other non-FullCourt *Enterprise* application.

VERSIONS SUPPORTED: Support under the Maintenance and Support Services shall be provided only for the most current release or as otherwise communicated in writing by **Justice Systems** to the **Customer** of the Justice Systems provided components as specified in the "FullCourt Enterprise Operating Environment Agreement". Subject to the availability of resources, **Justice Systems**, at its option, will provide maintenance and support for Justice Systems provided components as specified in the "FullCourt Enterprise Operating Environment Agreement" not satisfying this criterion on a time and materials basis.

It may be necessary to install the latest SOFTWARE releases for the licensed program and it may be necessary to update **Customer's** computer hardware, operating systems and/or other SOFTWARE to achieve compatibility with the currently supported release of the licensed program. If **Customer** has not installed any releases that **Justice Systems** has made in the licensed SOFTWARE or is not using a currently supported release of the licensed program, database or necessary MIDDLEWARE, **Justice Systems** may suspend provision of SOFTWARE maintenance and support for the licensed program until **Customer** cures this condition.

At times, releases provided as part of this Maintenance & Support Agreement may require changes to components that support the SOFTWARE, which changes are not included or covered in the SERVICES enumerated by the terms of the Maintenance & Support Services.

Any installation required for an upgrade to a currently supported release of a licensed program, when performed by **Justice Systems**, will be charged to **Customer** at **Justice Systems'** then current hourly rates plus reimbursement for any out-of-pocket costs or expenses incurred by **Justice Systems**. Such installation charges shall be in addition to other fees or charges that may be due.

RELEASES:

- Releases of SOFTWARE modifications will be accompanied by:
 - Distribution of SOFTWARE via **Justice Systems'** FTP site (email notification of placement on the FTP site will be provided);
 - Mailing to the **Customer** of a CD/DVD upon which the SOFTWARE is written;
 - Written Release Notes that include: (1) identification of the **Customer** issues and modifications contained in the SOFTWARE release; (2) specific instructions pertaining to table setup and system setup affected by the release and delivered modifications; (3) other issues which **Justice Systems** determines appropriate for notification to end users;
 - Online Help Text (which will be regularly updated with each release).

It is understood that completion of all modifications will be dependent upon the mutual commitments of the **Customer** and **Justice Systems**. Change Orders, or unforeseeable circumstances may impact actual delivery dates; and, while both the **Customer** and **Justice Systems** will endeavor to perform their individual responsibilities as expeditiously as reasonably possible, delays may occur.

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TIME OF SUPPORT: Maintenance and support SERVICES provided under this agreement shall be available during the normal working hours of 7:00 a.m. to 5:00 p.m. in Albuquerque, New Mexico excluding weekends, legal holidays, or other days determined by **Justice Systems** by prior notice to **Customer**.

WARRANTIES: EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, **JUSTICE SYSTEMS** DOES NOT WARRANT SERVICES AND SUPPORT PROVIDED FOR AND INCLUDED IN THIS AGREEMENT AND THE **CUSTOMER** HEREBY ACKNOWLEDGES THAT SAID AGREEMENT IS ENTERED INTO AND SAID SERVICES ARE PURCHASED REALIZING THAT NO IMPLIED WARRANTIES ARE MADE OTHER THAN THAT **JUSTICE SYSTEMS** WILL USE REASONABLE EFFORTS TO RESOLVE PROBLEMS, ANSWER QUESTIONS AND HELP **CUSTOMER** OBTAIN SATISFACTORY PERFORMANCE OF THE SOFTWARE.

REMOTE SUPPORT: **Customer** agrees to install and maintain for the duration of this agreement Internet access to the FullCourt *Enterprise* system that is compatible with Justice Systems' remote diagnostics system. **Customer** will pay for installation, maintenance and use of said items. Justice Systems shall use these items in connection with error correction and/or support. Any access by Justice Systems shall be subject to prior approval of **Customer** and in any case access shall be solely for the purpose authorized by **Customer**.

PROPRIETARY RIGHTS: Any changes, additions and enhancements in the form of new or partial programs or documentation as may be provided under this agreement shall remain the proprietary property of Justice Systems.

TERMINATION: In the event of termination of the SOFTWARE license specified above, all maintenance fees or charges payable for the entire term of the Maintenance & Support Services, without notice or demand by **Justice Systems**, shall immediately become due and payable; and, **Justice Systems'** obligations under this agreement shall immediately end. **Justice Systems** may terminate the Maintenance & Support Services in the event of the failure of **Customer** to fulfill its obligations hereunder. **Justice Systems** shall be entitled to payment for the full amount of SERVICES performed under the contract.

GENERAL: This agreement is not assignable without prior written consent of **Justice Systems**. Any attempt by **Customer** to assign any of the rights, duties and obligations of this agreement without such consent is void.

The Maintenance & Support Services can be modified only by a written agreement duly signed by persons authorized to sign agreements on behalf of **Customer** and **Justice Systems**. Variance from the terms and conditions of the Maintenance & Support Services except in writing and signed by those persons authorized to sign for the **Customer** and **Justice Systems** will be of no effect.

If any provision or provisions of the Maintenance & Support Services shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. No action regardless of form arising out of this agreement may be brought by either party more than two years after the cause of action has arisen or in the case of non-payment, more than two years from the date of last payment.

Customer
Initials _____

CITEPAYUSA SERVICES AGREEMENT

THIS AGREEMENT entered into this ____ day of _____, 2015, by and between **Justice Systems, Inc.** (the “**Provider**”) and **The Town of Avon** (the “**Customer**”), shall be the complete understanding of the parties with respect to provision of the products and services hereinafter described, as well as the compensation to be paid on account thereof.

THE PARTIES AGREE AS FOLLOWS:

1. Term of Agreement: This agreement shall commence on the date herein executed by both parties and, unless sooner terminated as hereinafter provided, shall be for an initial term of three (3) years. Thereafter, the term shall automatically renew for one (1) year periods unless either party gives written notice to the other at least thirty (30) days prior to inception of the next annual period indicating an intent not to renew. Following the initial three (3) year period either party may terminate the agreement by giving thirty (30) days written notice of intent to terminate.

2. Services: Provider, on behalf of the Customer,

2.1.1. shall perform services for the processing of payments through the use of **Provider’s** software and facilities, including the uploading of certain data from the **Customer’s** FullCourt CMS to **Provider** and the downloading of such payment transactions from **Provider** to the FullCourt CMS of the **Customer**.

2.1.2. will provide the appropriate merchant account(s).

2.1.3. will transmit funds due the **Customer** to its “Deposit Account”. For the purposes of this subparagraph it is understood that **Provider** will deposit to the account of the **Customer** amounts collected for case matters pending before said court as the same may be identified by the FullCourt CMS and in accordance with the provisions of paragraph “**5. Payments/Billings/Reports**”, below.

2.1.4. Provider, as part of this Agreement, shall sell to **Customer** as many payment terminals with CitePay software installed (unit) as the **Customer** requests from **Provider**, at a per unit cost of Eight Hundred (\$800.00) Dollars (which amount includes delivery charges). Payment terminals are not required for use of CitePayUSA’s online services, and may be requested at any time during the term of this agreement. Each unit shall come pre-installed with CitePayUSA screens and software for interaction with the CitePay ePayment system, which screens and software shall not be modified, removed or otherwise altered without the prior written consent of the **Provider**. It is understood that the following terms and conditions shall apply to all units purchased:

2.1.4.1. Each such unit shall only be used incidental to the processing of transactions via the CitePay ePayment system;

2.1.4.2. Each such unit shall be installed and setup by **Customer** and maintained in accordance with the provisions for “Maintenance and Support” set forth in paragraph 2.1.5, below;

2.1.4.3. At the beginning of each service year, for each unit placed in service, **Customer** will pay to **Provider** One-Hundred-Eighty (\$180) Dollars for Maintenance and Support.

2.1.4.4. **Customer** agrees to the software license with Verifone, Inc. which is an integral part of this agreement.

2.1.5. Maintenance and Support: **Provider’s** Help Desk support team shall provide to the **Customer’s** employees and their designees all maintenance and support reasonably required for the operation of the CitePay ePayment system. It is understood that under normal circumstances support will be available during normal business hours of 7:00AM through 5:00PM, Mountain Time (excluding weekends and holidays).

2.1.5.1 Should **Provider** determine that return of the unit to its facilities is required for repair or replacement of the unit, all shipping and handling charges associated with the return of the unit to said facilities shall be paid by **Customer**.

2.1.5.2 As part of the ongoing maintenance and support of each unit **Provider** may reasonably require from time-to-time that **Customer** install upgrades and enhancements to the software. The timing of the installation of any upgrades and enhancements shall be mutually agreed upon by the **Provider** and **Customer**.

2.2. Customer's Responsibilities:

2.2.1. **Customer** shall install upgrades to FullCourt CMS and software necessary to assure a compatible interface with the CitePayUSA ePayment system. **Customer**, for the purpose of permitting Automated Clearing House Network (ACH) transfers between **Customer** and CitePayUSA, shall maintain a Deposit Account as per the Authorization Agreement for Direct Deposits/Payments included in this agreement.

2.2.2. **Customer** shall: (1) notify in writing **Provider** any time there is a change in the bank or account that may materially affect the ability of **Provider** to make ACH transactions to the **Customer's** Deposit Account; (2) at its own cost, maintain a persistent connection with the Internet for the purposes of transmittal of data and case information necessary to provide the services herein described and contracted; (3) maintain the FullCourt CMS (i) by continuing in effect the Maintenance and Support Agreement offered by Justice Systems, Inc.; (ii) by installing the then most current release of the FullCourt CMS as specified by Justice Systems, Inc.; (iii) and by maintaining the hardware, infrastructure and operating environment necessary for proper functioning of the FullCourt CMS; (4) be responsible for the accuracy of all case data and content made available to or transmitted to CitePayUSA; (5) immediately notify **Provider** of any perceived or known irregularities in services provided, including without limitation, the operation of the FullCourt CMS, the CitePayUSA ePayment system, transactions made to the **Customer's** account(s) via the ACH system, and any transactions processed through CitePayUSA.com.

3. Fees:

3.1. Automated Payment Service Fees – **Customer** agrees to pay to **Provider** an automated payment service fee of 5.95% of the fine, fee or other amounts collected by **Provider** in behalf of **Customer**, as compensation for the services and products provided by **Provider** under this agreement. **Customer** and **Provider** understand and agree that said fee shall be paid as follows:

3.1.1 **Customer** agrees and authorizes **Provider** to assess the automated payment service fee owed for each transaction to the credit card, debit card or other account (as applicable) of the person or entity making payment in behalf of the defendant, litigant or individual, howsoever described, obligated to make a payment to the **Customer**, the relevant Court or court authorized agency. Said fee shall be in addition to the amount of the obligation owed to the **Customer**. The parties understand and agree that **Provider's** receipt and retention of said fee shall substitute for the payment of same by **Customer** to **Provider**, but shall not relieve **Customer** of the obligation to pay said fee if **Provider** is ultimately unable to collect it as described in this paragraph, such as in the event of a chargeback or return as provided in paragraph 3.2 below.

3.1.2 **Provider** shall calculate the total amount of automated payment service fees owed by **Customer** to **Provider** each month, and shall invoice that total amount to **Customer**. Said fees shall be due and payable by **Customer** to **Provider** 30 calendar days after the date of each invoice.

3.2. Chargeback/Returned Check Fees - In the event that **Provider** is notified of a chargeback/returned check or the same shall be imposed upon or incurred by **Provider** for any reason whatsoever **Provider** shall charge to the **Customer** and **Customer** shall pay to the **Provider** an administrative fee of \$15 in addition to all credit card, debit card and ACH transaction fees. **Customer** shall also reimburse **Provider** all amounts paid/credited to **Customer's** account by reason of the obligation related to the chargeback/returned check. **Provider** shall notify **Customer** of any chargebacks/returned checks and provide documentation of amounts due as a result of a chargeback/returned check. [Note: **Customer** will be responsible for adjusting the balance of the FullCourt case associated with said chargeback/returned check and in accordance with the policies of **Customer** and/or court].

3.3. Within the initial three (3) year term of this agreement, or any renewal thereof, all costs and fees enumerated are subject to change only upon the mutual consent of the parties; except that in the event that any costs or fees imposed upon the Provider by the debit/credit card transaction service providers are increased by more than twenty-five (25%) percent **Provider** shall notify **Customer** of said increase as soon as reasonably possible. In addition to giving such notification, **Provider** shall propose to **Customer** adjustments to the provisions of this Agreement which **Provider** deems reasonable under the circumstances. **Customer** will thereafter have three (3) business days within which to accept said proposal or, in lieu thereof, **Provider** may elect to suspend the provision of services hereunder. If the parties are unable to mutually agree upon an adjustment of the enumerated costs and fees within a reasonable time following notification, either party may elect to terminate this agreement without penalty.

4. Security, Exclusivity: The parties agree that each shall remain compliant with the PCI Data Security Standard requirements of the Card Association and/or Merchant Bank and that the CitePay ePayment system shall be the exclusive method utilized for accepting all credit and debit card transactions for the payment of fines, fees, bonds and other payments by those courts of **Customer** which utilize the FullCourt CMS. The **Customer** shall cease using any alternative methods or systems for accepting credit and/or debit card transactions within thirty (30) days of the implementation of the CitePay ePayment system at their location; or, in the event the **Customer** is under existing contractual obligations which cannot be cancelled without penalty, at the time of termination of said contractual obligations.

5. Payments/Billings/Reports: **Provider** shall periodically provide to **Customer** financial reports as may be reasonably necessary for management of transactions. **Provider** shall transmit by ACH transfer payments received via the CitePayUSA ePayment system, and on account of obligations due to the **Customer**, within two (2) business days of the deposit of funds representing payment by the obligee, or in behalf of the obligee, to **Provider's** account, conditioned upon: (1) a valid authorization code having been received from the Card Association; (2) acceptance of the payment has been had in accordance with the Terms and Conditions of the CitePayUSA website; and (3) payment has been received and deposited into the **Provider's** Settlement Bank Account. Availability of ACH transferred funds for use by the **Customer** is subject to the control of the banking institutions. Payments shall be in the net amount received after deduction of all automated payment fees.

6. Confidentiality: **Customer** acknowledges that portions of the CitePayUSA ePayment system are a copyrighted work. Any materials provided by **Provider** including documentation may contain proprietary intellectual property rights. **Customer** agrees to keep the software, documentation and the CitePayUSA proprietary intellectual property in confidence and to take all reasonable precautions to ensure that no unauthorized persons have access to the same and that no unauthorized copies are made. Breach of this provision shall be construed as a material breach of the terms of this Agreement. As a consequence, in the event of such any breach, **Provider** at its sole option, may immediately terminate this Agreement without further obligation. **Customer** shall not alter any proprietary markings in connection with the CitePayUSA ePayment system, including copyright, trademark, trade secret, and patent legends. **Customer's** obligations under this section as they relate to the use of the CitePayUSA ePayment system shall include, without limitation, giving notification to authorized users of the provisions of this section; to immediately halt and report to **Provider** unauthorized copying, use, distribution, installation, or transfer of possession of the licensed products by any authorized user of which **Customer** has actual knowledge. It is understood that receipt of confidential information under this Agreement shall not create any obligations in any way limiting or restricting the assignment of **Customer's** employees.

7. WARRANTY: IN NO EVENT SHALL PROVIDER BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR EXEMPLARY DAMAGES OR FOR ANY INTERRUPTION OR LOSS OF USE, DATA, BUSINESS OR PROFITS, WHETHER OR NOT SUCH LOSS OR DAMAGES WERE FORESEEABLE OR OF WHICH PROVIDER WAS ADVISED OF THE POSSIBILITY THEREOF AND REGARDLESS OF WHETHER ANY LIMITED REMEDY HEREIN FAILS OF ITS ESSENTIAL PURPOSE. PROVIDER SPECIFICALLY DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THE INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS WITH RESPECT TO THE SERVICES PROVIDED HEREUNDER. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, PROVIDER DOES NOT GUARANTEE OR WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE.

- 8. Acts or Failures to Act:** Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement.
- 9. Limitation of Liability: Provider** will not accept responsibility for errors, acts, failure to act by banks, communication common carriers, data processors or clearinghouses through which transactions may be passed, originated, and/or authorized. **Provider** undertakes no duties to **Customer** other than the duties expressly provided for in this Agreement.
- 10. Severability:** In the event that any provision of this agreement is held by a court of competent jurisdiction to be legally ineffective or unenforceable, the validity of the remaining provisions shall not be affected.
- 11. Provider Software Upon Termination:** Upon termination of this agreement, with or without cause, **Customer** shall immediately cease the use of any CitePay software installed on the payment terminals as well as software installed upon other devices for the purpose of interfacing to said terminals.
- 12. Notices:** Any notice required or permitted to be given in this agreement shall be in writing and shall be sent in a manner requiring a signed receipt, or if mailed, by registered or certified mail, return receipt requested. Notice is effective upon receipt. Unless otherwise set forth in writing, the addresses for notice are those set forth with the names of the signatories to this agreement below.
- 13. No Waiver:** The failure of either party to exercise any right, or the waiver by either party of any breach, shall not prevent a subsequent exercise of such right nor be deemed a waiver of any subsequent breach of the same or any other term of the agreement.
- 14. Force Majeure:** Neither party shall be deemed in default of this agreement to the extent that performance of their obligations or attempts to cure any breach are delayed or prevented by reason of any act of God, fire, natural disaster, accident, shortages of materials or supplies, or any other cause beyond the control of such party. This provision requires that any party claiming relief under this provision give written notice within fifteen (15) days of discovery thereof.
- 15. Compliance with Federal, State & Local Law:** The parties shall perform all obligations hereunder in compliance with applicable federal, state and local statutes, laws, regulations and ordinances. This agreement shall be governed by and interpreted, construed, and enforced in accordance with the laws of the State of New Mexico.

CITEPAYUSA SERVICES AGREEMENT DEFINITIONS

When used in this Agreement the following words or terms, unless otherwise specifically stated, shall have the following meaning:

- a. "ACH" – means the Automated Clearing House Network.
- b. "Authorization" – is the process whereby **Provider** in compliance with the Operating Rules for each Card obtains approval of a Charge from the Card Issuer. An Authorization indicates only the availability of the Cardholder's credit limit at the time the Authorization is requested.
- c. "Business Day" – is Monday through Friday excluding Merchant Bank holidays. Each Business Day ends at the cutoff time specified by the Merchant Bank. Charges submitted for processing on a holiday, weekend, or after the cut-off time are treated as received on the following Business Day.
- d. "Card Association" – refers to any entity formed to administer or promote credit cards or debit cards, including without limitation, MasterCard International, Inc., Visa International, DiscoverCard and Debit Networks.
- e. "Cardholder" – is the person issued a credit card or debit card and a corresponding account by a Card Issuer.
- f. "Card Issuer" – is the institution authorized by a Card Association to issue credit cards and debits cards to Cardholders and that has issued a credit card or debit card presented to **Provider** for a charge or credit voucher.
- g. "Chargeback" – is a return of a charge to **Provider** typically initiated by a Cardholder through a Card Issuer, for transmittal to and payment by Merchant under Operating Rules established by the Card Association.
- h. "CitePay Terminal" – is such device or devices, including software, either provided or required by **Provider** for interfacing to the FullCourt CMS and/or other hardware so as to allow interaction with the CitePayUSA ePayment system. The sale or conveyance by **Provider** of each device, or associated software, is subject to restrictions and conditions imposed by third-party providers.
- i. "Credit Card" – A plastic card (Visa-branded, MasterCard-branded or DiscoverCard-branded Credit and Business Cards or Debit Cards) bearing an account number assigned to a cardholder with a credit limit that can be used to purchase goods and services and to obtain cash disbursements on credit, for which a cardholder is subsequently billed by an issuer for repayment of the credit extended at once or on an installment basis.
- j. "Database" – dependent upon the context of the language in which it is used, "database" will mean the FullCourt CMS database associated with the Customer's court case management system, or the CitePayUSA database owned and maintained by the Provider.
- k. "Debit card" – A plastic card with which an individual court customer may withdraw funds on deposit in the individual court customer's account. A debit card transaction pays the **Customer/Provider** by withdrawing funds already on deposit in the individual court customer's account, as opposed to a credit card transaction in which funds are loaned to the individual court customer by the card issuer.

- l. “Deposit Account” – the **Customer’s** business account with a banking institution set up for receipt of payments from the **Provider**.
- m. “DISCOVERCARD[®]” card – A card that bears the DiscoverCard symbol, enabling a DiscoverCard cardholder to obtain goods, services or cash from a DiscoverCard merchant or acquirer.
- n. “FullCourt CMS” – is the FullCourt[®] or FullCourt Enterprise[®] Court Case Management System.
- o. “Individual court customer” – is the litigant, defendant, respondent, party, driver, registrant, or other person or corporation, howsoever denominated in the **Customer’s** FullCourt CMS, or identified as the entity making payment to the **Customer** on account of fines, fees, charges, bonds, restitution, costs or other obligations related to a court case within the FullCourt CMS database.
- p. “MASTERCARD[®]” card – A card that bears the MasterCard symbol, enabling a MasterCard cardholder to obtain goods, services or cash from a MasterCard merchant or acquirer. MasterCard Incorporated is a membership organization owned by financial institutions that issue its card. MasterCard is also the company's brand of credit cards.
- q. “Merchant Bank” – A financial institution that provides credit card processing services for the **Customer** or the **Provider**. Also herein referred to as the “acquiring bank” or “acquirer”.
- r. “Returned Check” – is an electronic check presented for payment which has been returned (not paid) by the financial institution or payment processor for any reason, including but not limited to, incorrect routing number, incorrect account number, and insufficient funds.
- s. “Settlement Account” – the **Provider’s** business account with the Merchant Bank set up for receipt of payments via credit cards, debit cards and electronic checks.
- t. “VISA[®]” card – A card that bears the VISA symbol, enabling a VISA cardholder to obtain goods, services or cash from a VISA merchant or acquirer. VISA is a brand of credit card and debit card operated by the VISA International Service Association of San Francisco, California, USA, an economic joint venture of financial institutions that issue and market Visa products.

CITEPAYUSA SERVICES AGREEMENT

**AUTHORIZATION AGREEMENT FOR DIRECT DEPOSITS/PAYMENTS
(ACH CREDITS/DEBITS)**

Court Name: **Avon Municipal Court** (hereinafter called **Customer**).

Customer hereby authorizes **Justice Systems, Inc.** (hereinafter called **Provider**) to initiate credit/debit entries to **Customer's** Checking Account / Savings Account (select one) indicated below at the depository financial institution named below hereafter called DEPOSITORY, and to credit/debit the same to such account. **Customer** acknowledges that the origination of ACH transactions to **Customer's** account must comply with the provisions of U.S. law.

Depository Name: _____

City: _____

State: _____

Zip: _____

Routing Number: _____

Account Number: _____

This authorization is to remain in full force and effect until **Provider** has received written notification from **Customer** of its termination in such time and in such manner as to afford **Provider** and DEPOSITORY a reasonable opportunity to act on it.

Name: _____
(Please Print)

Date: _____

Signature: _____

NOTE: WRITTEN CREDIT/DEBIT AUTHORIZATION MUST PROVIDE THAT THE RECEIVER MAY REVOKE THE AUTHORIZATION ONLY BY NOTIFYING THE ORIGINATOR IN THE MANNER SPECIFIED IN THE AUTHORIZATION.

CITEPAYUSA SERVICES AGREEMENT

Verifone PayWarePC® License Agreement

In conjunction with the purchase of the CitePay Terminal and software by Customer from Provider, Customer agrees to the following software license with Verifone, Inc.

IMPORTANT

CAREFULLY REVIEW THIS AGREEMENT BEFORE CONTINUING THE INSTALLATION OR USE OF THE PAYWARE PC SOFTWARE ("SOFTWARE"). THIS END-USER LICENSE AGREEMENT ("AGREEMENT") IS A LEGAL AGREEMENT BETWEEN YOU (EITHER AN INDIVIDUAL OR A SINGLE ENTITY) ("YOU") AND VERIFONE, INC. ("VERIFONE"). IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, TERMINATE THIS INSTALLATION AND PROMPTLY RETURN ALL SOFTWARE AND DOCUMENTATION, IF APPLICABLE, TO THE RESELLER FROM WHOM YOU OBTAINED THE SOFTWARE (THE "RESELLER") FOR A FULL REFUND. THE SOFTWARE INCLUDES COMPUTER SOFTWARE, THE ASSOCIATED MEDIA, ANY PRINTED MATERIALS, AND ANY "ONLINE" OR ELECTRONIC DOCUMENTATION. BY DOWNLOADING THE SOFTWARE AND/OR OPENING THE SOFTWARE PACKET(S) AND/OR USING THE SOFTWARE, YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT AND AGREE TO BE BOUND BY ITS TERMS.

- 1. GRANT OF LICENSE.** Subject to the terms and conditions of this Agreement and your payment of the applicable license fees, VERIFONE grants You a limited, nontransferable (except as provided in Section 11 below), nonexclusive license to use the Software solely (i) in object (executable) code form, (ii) on a single computer (the "Computer"), and (iii) for your internal use only. You understand that You must comply with VERIFONE's Software registration policies and the failure to comply with those policies may result in the disablement of the Software. The Software is in "use" on a computer when it is loaded into temporary memory (i.e. RAM) or installed into permanent memory (e.g. hard disk, CD-ROM, or other storage device) of a computer.
- 2. COPYRIGHT.** The Software and all copies provided to you are licensed and not sold. All title to the Software resides and remains in VERIFONE and its suppliers. The Software is protected by U.S. copyright laws and international copyright treaties. You may make one copy of the Software solely for backup or archival purposes. You may not copy any documentation accompanying the Software.
- 3. OTHER RESTRICTIONS.** You may not decompile, disassemble, or otherwise reverse engineer the Software, except to the extent that the foregoing restriction is expressly prohibited by applicable law. You may not sublicense, lend, lease, donate, sell, load, pledge, or distribute (on a temporary or permanent basis) the Software. You may not use the Software for commercial time-sharing, rental, or service bureau use.
- 4. U.S. GOVERNMENT RESTRICTED RIGHTS.** The Software is provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software -- Restricted Rights at 48 CFR 52.227-19, as applicable. Contractor/manufacturer is VeriFone, Inc., 2099 Gateway Place, Suite 600, San Jose, CA 95110.
- 5. LIMITED WARRANTY.** VERIFONE warrants that the magnetic media on which the Software is contained shall be free from defects in materials and workmanship under normal use for a period of thirty (30) days after the purchase date. If you discover physical defects in the media on which the Software is distributed, VERIFONE will replace the media within that warranty period. If You are not completely satisfied with the Software, and you purchased the Software directly from VERIFONE, you may return it to VERIFONE for a refund, provided that you do so within thirty (30) days of purchase. If You purchased the Software from a Reseller, You should contact the Reseller regarding availability of a refund.
- 6. SUPPORT.** You must purchase support for the Software for the first year after Software activation. Support may be purchased from the Reseller or from VERIFONE. Support is available from VERIFONE by telephone during the hours of 9 a.m. to 9 p.m. Eastern Time, seven days a week; these hours are subject to change.
- 7. NO OTHER WARRANTIES.** EXCEPT FOR THE WARRANTIES PROVIDED HEREIN, THE SOFTWARE IS PROVIDED "AS IS." TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, VERIFONE DISCLAIMS ALL OTHER WARRANTIES REGARDING THE SOFTWARE, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. THE LIMITED WARRANTY IN SECTION 5 GIVES YOU SPECIFIC LEGAL RIGHTS. YOU MAY HAVE OTHER RIGHTS THAT VARY FROM JURISDICTION TO JURISDICTION.
- 8. NO LIABILITY FOR CONSEQUENTIAL DAMAGES.** VERIFONE AND ALL PARTIES INVOLVED IN THE CREATION OR DELIVERY OF THE SOFTWARE TO YOU SHALL HAVE NO LIABILITY TO YOU OR ANY THIRD PARTY FOR SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, GOODWILL OR SAVINGS,

DOWNTIME, DAMAGE TO OR REPLACEMENT OF SOFTWARE AND DATA) ARISING FROM CLAIMS BASED IN WARRANTY, CONTRACT, TORT OR OTHERWISE, RELATING IN ANY MANNER TO THE SOFTWARE, EVEN IF VERIFONE OR ANY SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIM OR DAMAGE. IN ANY CASE, VERIFONE'S ENTIRE LIABILITY RELATING IN ANY MANNER TO THE SOFTWARE, REGARDLESS OF THE FORM OR NATURE OF THE CLAIM, SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY YOU FOR THE SOFTWARE. ANY WRITTEN OR ORAL INFORMATION OR ADVICE GIVEN BY VERIFONE'S DEALERS, DISTRIBUTORS, AGENTS OR EMPLOYEES WILL IN NO WAY INCREASE THE SCOPE OF THIS WARRANTY. BECAUSE SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF IMPLIED WARRANTIES OR LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

9. **TERMINATION.** VERIFONE may terminate this Agreement at any time as a result of a breach by You of any of the terms or conditions herein, by giving YOU written notice of termination. Upon any termination of this Agreement, You shall immediately remove from your Computer all copies of the Software and certify to VERIFONE such removal.

10. **EXPORT/LAWS.** You shall fully comply with all laws and regulations of the United States and other countries relating to the export, import and use of the Software. You will defend, indemnify and hold harmless VERIFONE from and against any and all claims, proceedings, losses, damages, liabilities, fines, penalties, costs, and fees (including reasonable attorneys' fees) arising in connection with any violation of any regulation of any United States or other governmental authority relating to the use of the Software by You or your agents.

11. **MISCELLANEOUS.** This Agreement constitutes the entire agreement between VERIFONE and You and supersedes all prior or contemporaneous communications and proposals, whether electronic, oral or written, relating to the subject matter hereof. This Agreement will be governed by the laws of the State of California, without regard to its conflict of law provisions. Each party consents to the exclusive jurisdiction and venue of the appropriate courts in Santa Clara County, California for all disputes arising out of or relating to this Agreement. The prevailing party in any action or proceeding to enforce its rights hereunder shall be entitled to recover reasonable attorneys' fees and other reasonable costs incurred in the action or proceedings. The failure of a party to exercise or enforce any right or provision of this Agreement will not constitute a waiver of such right or provision. You may not assign this Agreement, in whole or in part, without VERIFONE's prior written consent. Notwithstanding the foregoing, you may assign this Agreement in its entirety without VERIFONE's consent to any entity that buys or otherwise acquires all or substantially all of Your assets, provided You give VERIFONE written notice of such assignment. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid, the parties agree that the court should endeavor to give the maximum effect to the parties' intentions as reflected in the provision, and that the other provisions of the Agreement shall remain in full force and effect. In addition to those obligations that have accrued prior to termination, Sections 3, 4 and 7 through 11 shall survive any termination of this Agreement. All notices, demands, or consents required or permitted hereunder shall be in writing and shall be delivered in person or sent via overnight delivery or certified mail to the respective parties. Notices for VERIFONE shall be sent to VERIFONE's Corporate Legal Director at 2099 Gateway Place, Suite 600, San Jose, CA 95110 or such other address as shall have been given to You in writing. Notices for You shall be sent to the address in VERIFONE's customer database, or such other address as shall have been given to VERIFONE in writing. Such notices shall be deemed effective upon the earliest to occur of: (i) actual delivery; or (ii) three days after mailing, addressed and postage prepaid, return receipt requested.

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TOWN OF AVON, COLORADO
AVON MEETING MINUTES FOR TUESDAY, DECEMBER 8, 2015
AVON TOWN HALL, ONE LAKE STREET

1. CALL TO ORDER & ROLL CALL

Mayor Fancher called the meeting to order at 5:32 p.m. A roll call was taken and Council members present were Scott Prince, Megan Burch, Matt Gennett, Buz Reynolds, Jake Wolf and Sarah Smith Hymes. Also present were Town Manager Virginia Egger, Town Attorney Eric Heil, Assistant Town Manager Scott Wright, Planning Manager Matt Pielsticker, Police Chief Bob Ticer, Executive Assistant to the Town Manager Preston Neill and Town Clerk Debbie Hoppe.

2. APPROVAL OF AGENDA

There were no changes to the agenda.

3. PUBLIC COMMENT

T.J. Davis, Dave Dantas and Jason Browning commented.

4. WORK SESSION

4.1. FISCAL CONDITIONS REPORT ON TAXES, FUND BALANCE RESERVES & DEBT (TOWN MAYOR JENNIE FANCHER)
David Strandjord commented.

5. ACTION ITEMS

5.1 PUBLIC HEARINGS – ADOPTION OF THE 2015 FINAL REVISED BUDGETS, 2016 OPERATING BUDGETS, 2016 CAPITAL PROJECTS FUND BUDGET & LONG-RANGE CAPITAL PROGRAM

5.1.1 RESOLUTION NO. 15-22, RESOLUTION TO AMEND THE 2015 TOWN OF AVON OPERATING FUNDS BUDGETS (BUDGET ANALYST KELLY HUITT)

Councilor Reynolds moved to approve Resolution No. 15-22, Resolution to Amend the 2015 Town of Avon Operating Funds Budgets; Councilor Gennett seconded the motion and it passed unanimously by those present.

5.1.2 RESOLUTION NO. 15-23, RESOLUTION TO ADOPT THE 2016 TOWN OF AVON OPERATING FUNDS BUDGETS (BUDGET ANALYST KELLY HUITT)

Councilor Reynolds moved to approve Resolution No. 15-23, Resolution to Adopt the 2016 Town of Avon Operating Funds Budgets; Councilor Burch seconded the motion and it passed unanimously by those present.

5.1.3 RESOLUTION NO. 15-24, RESOLUTION TO AMEND THE 2015 TOWN OF AVON CAPITAL PROJECTS FUND BUDGET (BUDGET ANALYST KELLY HUITT)

Councilor Reynolds moved to approve Resolution No. 15-24, Resolution to Amend the 2015 Town of Avon Capital Projects Funds Budget; Councilor Prince seconded the motion and it passed unanimously by those present.

5.1.4 RESOLUTION NO. 15-25, RESOLUTION TO ADOPT THE TOWN OF AVON LONG-RANGE CAPITAL PROGRAM AND SIMULTANEOUSLY ADOPT THE 2016 CAPITAL PROJECTS FUND BUDGET (BUDGET ANALYST KELLY HUITT)



TOWN OF AVON, COLORADO
AVON MEETING MINUTES FOR TUESDAY, DECEMBER 8, 2015
AVON TOWN HALL, ONE LAKE STREET

Councilor Reynolds moved to approve Resolution No. 15-25, Resolution to Adopt the Town of Avon Long-Range Capital Program and Simultaneously Adopt the 2016 Capital Projects Funds Budget; Councilor Gennett seconded the motion and it passed unanimously by those present.

- 5.1.5 RESOLUTION NO. 15-26, SERIES OF 2015, RESOLUTION LEVYING GENERAL PROPERTY TAXES FOR THE YEAR 2015, TO HELP DEFRAY THE COSTS OF GOVERNMENT FOR THE TOWN OF AVON, COLORADO, FOR THE 2016 BUDGET YEAR (BUDGET ANALYST KELLY HUITT)

Peter Buckley, David Strandjord and Harry Greenburg commented.

Councilor Reynolds moved to approve Resolution No. 15-26, Resolution Levying General Property Taxes for the Year 2015, to help defray the costs of Government for the Town of Avon, Colorado, for the 2016 Budget Year; Councilor Burch seconded the motion and it passed unanimously by those present.

- 5.1.6 RESOLUTION NO. 15-27, SERIES OF 2015, RESOLUTION LEVYING GENERAL PROPERTY TAXES FOR THE YEAR 2015, TO HELP DEFRAY THE COSTS OF GOVERNMENT FOR THE TOWN OF AVON GENERAL IMPROVEMENT DISTRICT NO. 1, AVON, COLORADO FOR THE 2016 BUDGET YEAR (BUDGET ANALYST KELLY HUITT)

Councilor Gennett moved to approve Resolution No. 15-27, Resolution Levying General Property Taxes for the Year 2015, to help defray the costs of Government for the Town of Avon General Improvement District No. 1, Avon, Colorado for the 2016 Budget Year; Councilor Burch seconded the motion and it passed unanimously by those present.

- 5.2 ACTION TO AUTHORIZE THE TOWN MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT FOR THE DESIGN OF MIKAELA WAY AND THE WEST AND EAST BEAVER CREEK BOULEVARDS FOR IMPROVED WALKABILITY, BICYCLE RIDERSHIP, ON-STREET PARKING, TRANSIT AND VEHICULAR TRAVEL LANES (PLANNING DIRECTOR MATT PIELSTICKER & TOWN ENGINEER JUSTIN HILDRETH)

Councilor Smith Hymes moved to authorize issuance of Professional Service Agreement for Design Services for the 2016 Beaver Creek Boulevard Reconstruction Project to Design Workshop for Tasks 1 thru 3 in the amount of \$74,000, as described fully in Attachment; Councilor Burch seconded the motion and it passed on a 5 to 2 vote. Councilor Prince and Mayor Pro Tem Wolf voted no.

- 5.3 REVIEW AND RECOMMENDED ACTION TO SET A MAXIMUM BUILDING SQUARE FOOTAGE AND BUDGET FOR THE POLICE DEPARTMENT'S RELOCATION TO THE PUBLIC SAFETY FACILITY AT BUCK CREEK AND PREFERRED OPTION OF CERTIFICATES OF PARTICIPATION FOR FUNDING, SUBJECT TO VOTER APPROVAL ON MAY 3, 2016 (TOWN ENGINEER JUSTIN HILDRETH & TOWN MANAGER VIRGINIA EGGER)

Councilor Reynolds moved to approve the recommended action:

1. A Maximum Building Square Footage not to exceed 11,300 square feet, with a maximum budget of \$4,688,656.00, with surface parking;
2. A Maximum Budget as set forth in the line items shown in the table above, Avon Police Station at Buck Creek Public Safety Facility, with the exception of the land purchase cost, which is to be



TOWN OF AVON, COLORADO
AVON MEETING MINUTES FOR TUESDAY, DECEMBER 8, 2015
AVON TOWN HALL, ONE LAKE STREET

determined by the formula set forth in the recommended *Second Amendment to the IGA* (Agenda Item 5.4);

3. That Certificates of Participation are the preferred financing option, with a 15 or 20-year term, with the expectation of an election to be held on May 3rd, 2016;
4. That the Town's Work Group elected representatives Mayor Jennie Fancher and Councilor Buz Reynolds are authorized to approve the December 22nd Schematic Plan Redesign, if all parameters are met, also subject to Town Attorney review;
5. Authorize additional architecture fees to Davis Partnership in the amount of \$59,455, for updating the December 22 Schematic Plan Redesign;
6. Authorize the Town Manager to release the balance of the design and pricing fees, subject to the December 22nd Schematic Plan Redesign being approved.

Mayor Pro Tem Wolf seconded the motion and it passed unanimously by those present.

5.4 REVIEW AND ACTION ON THE SECOND AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT FOR A JOINT FIRE-POLICE STATION FACILITY BETWEEN THE TOWN OF AVON AND THE EAGLE RIVER FIRE PROTECTION DISTRICT
(TOWN ATTORNEY ERIC HEIL & TOWN MANAGER VIRGINIA EGGER)

Councilor Gennett moved to approve *Second Amendment to the Intergovernmental Agreement for a Joint Fire-Police Station Facility*, and to allow minor, non-substantive changes to the IGA to be made by the Town Mayor, subject to review by the Town Attorney; Councilor Burch seconded the motion and it passed unanimously by those present

5.5 PUBLIC HEARING SECOND READING OF ORDINANCE 15-09, IMPLEMENTING THE 2015 INTERNATIONAL BUILDING CODES (CHIEF BUILDING OFFICIAL WILLEY GRAY)

Mayor Fancher opened the Public Hearing, no comments were made. Councilor Gennett moved to approve second reading of Ordinance 15-09 on Second Reading, approving the adoption of the 2015 International Building Codes, including the Wildland Urban Interface Code; and approving an Exterior Energy Offset Program for the Town of Avon; Councilor Burch seconded the motion and it passed unanimously by those present.

5.6 PUBLIC HEARING SECOND READING OF ORDINANCE NO. 15-12 APPROVING AN EXTENSION OF VESTED RIGHTS FOR THE RED HOUSE PLANNED UNIT DEVELOPMENT. NOTE: APPLICANT HAS REQUESTED CONTINUATION TO THE JANUARY 12, 2016, REGULAR TOWN COUNCIL MEETING (PLANNING DIRECTOR MATT PIELSTICKER)

Mayor Fancher opened the Public Hearing, no comments were made. Mayor Pro Tem Wolf moved to continue second reading of Ordinance 15-12 and public hearing to January 12, 2016; Councilor Smith Hymes seconded the motion and it passed unanimously by those present.

5.7 PUBLIC HEARING: SECOND READING OF ORDINANCE 15-14, AN ORDINANCE ENACTING CHAPTER 2.34 QUALIFICATIONS OF COUNCIL MEMBERS AND PLANNING AND ZONING COMMISSION MEMBERS OF THE AVON MUNICIPAL CODE (TOWN ATTORNEY ERIC HEIL)



TOWN OF AVON, COLORADO
AVON MEETING MINUTES FOR TUESDAY, DECEMBER 8, 2015
AVON TOWN HALL, ONE LAKE STREET

Mayor Fancher opened the Public Hearing, no comments were made. Councilor Prince moved to approve second reading of Ordinance 15-14, An Ordinance Enacting Chapter 2.34 Qualifications of Council Members and Planning and Zoning Commission Members of the Avon Municipal Code; Councilor Gennett seconded the motion and it passed unanimously by those present.

5.8 REVIEW AND ACTION ON A REQUEST FOR FUNDING FOR A 2016 CREATIVE WRITING EVENT ON LABOR DAY WEEKEND (PRODUCER DON DONAHUE)

Councilor Burch moved to approve funding up to \$75,000 for talent acquisition and up to \$5,000 of in-kind services to Donahue Entertainment, LLC, producer of the event. Funding will be from the 2016 General Fund Special Events Assigned Fund Balance; Councilor Smith Hymes seconded the motion and it passed on a 5 to 2 vote. Councilor Prince and Councilor Gennett voted no.

5.9 APPROVAL OF 2016 REGULAR MEETING SCHEDULE (TOWN CLERK DEBBIE HOPPE)

Councilor Reynolds moved to approve the 2016 Regular Meeting Schedule with suggested changes; Mayor Pro Tem Wolf seconded the motion and it passed unanimously by those present.

5.10 APPOINTMENTS TO BOARDS, COMMISSIONS, COMMITTEES (TOWN CLERK DEBBIE HOPPE)

Mayor Pro Tem Wolf moved to elect Councilor Smith Hymes as the primary representative for the Upper Eagle Regional Water Authority and Councilor Reynolds as the alternate; Councilor Burch seconded the motion and it passed unanimously by those present.

Councilor Gennett moved to elect Councilor Smith Hymes as the alternate for the Public Access TV Channel 5; Mayor Pro Tem Wolf seconded the motion and it passes unanimously by those present.

Councilor Gennett moved to add Beaver Creek Resort Committee to the list and elect Mayor Fancher as the primary representative and Councilor Reynolds as the alternate; Mayor Pro Tem Wolf seconded the motion and it passed unanimously by those present.

5.11 CONSENT AGENDA

5.11.1 APPROVAL OF THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE COUNTY OF EAGLE, STATE OF COLORADO, AND THE TOWN OF AVON FOR ANIMAL CONTROL SERVICES (POLICE CHIEF BOB TICER)

5.11.2 APPROVAL OF NOVEMBER 17, 2015 REGULAR MEETING MINUTES (TOWN CLERK DEBBIE HOPPE)

Councilor Gennett moved to approve the consent agenda; Councilor Burch seconded the motion and it passed unanimously by those present.

6 WRITTEN REPORTS

6.1 POLICE DEPARTMENT TRI-ANNUAL ACTIVITY REPORT (POLICE CHIEF BOB TICER)

6.2 2015 END OF YEAR FORFEITURE REPORT (POLICE CHIEF BOB TICER)

6.3 REPORT ON BLACKSMITH SHOP (PLANNING DIRECTOR MATT PIELSTICKER)

6.4 MONTHLY FINANCIALS (BUDGET ANALYST KELLY HUITT)



TOWN OF AVON, COLORADO
AVON MEETING MINUTES FOR TUESDAY, DECEMBER 8, 2015
AVON TOWN HALL, ONE LAKE STREET

6.5 GIFT REPORTING – 2015 AUDI BIRDS OF PREY GIFT BAGS AND VIP TICKETS AND BEAVER CREEK PARKING MEDALLIONS (EXECUTIVE ASSISTANT TO THE TOWN MANAGER PRESTON NEILL)

7. COMMITTEE MEETING UPDATES: COUNCILORS AND MAYOR

8. MAYOR & COUNCIL COMMENTS

9. EXECUTIVE SESSION - THIS SESSION IS NOT OPEN TO THE PUBLIC

9.1. CONFERENCE WITH THE TOWN ATTORNEY FOR THE PURPOSE OF RECEIVING LEGAL ADVICE UNDER C.R.S. §24-6-402(2) (B) CONCERNING THE MOUNTAIN STAR WATER STORAGE TANK

Councilor Gennett moved to meet in Executive Session for the purpose of a Conference with the Town Attorney for the Purpose of Receiving Legal Advice Under C.R.S. §24-6-402(2) (b) Concerning the Mountain Star Water Storage Tank.

The time was 9:48 p.m.

Executive session ended at 11:07 p.m. Council reconvened into regular session.

Council reconvened into regular session at 11:07 p.m.

10. ACTION ITEM

10.1 REVIEW AND ACTION ON THE UPPER EAGLE WATER AUTHORITY'S REQUEST FOR ADDITIONAL FUNDING PARTICIPATION FOR THE DESIGN AND ENGINEERING OF THE MOUNTAIN STAR WATER TANK IN THE AMOUNT OF \$56,260 (TOWN ENGINEER JUSTIN HILDRETH)

Mayor Fancher moved to approve the funds be appropriated in the 2015 water fund budget with following conditions:

- All the parties acknowledge that this contribution comes from the Town of Avon Mountain Star water tap fees dedicated to this project
- Mountain Star LLC also contributes \$56,250 to the design to acknowledge the partnership that is required to complete the project

Councilor Smith Hymes seconded the motion and it passed on a 4 to 3 vote. Councilor Gennett, Councilor Reynolds and Mayor Pro Tem Wolf voted no.



TOWN OF AVON, COLORADO
AVON MEETING MINUTES FOR TUESDAY, DECEMBER 8, 2015
AVON TOWN HALL, ONE LAKE STREET

11. ADJOURNMENT

There being no further business to come before the Council, the regular meeting adjourned at 11:09 p.m.

RESPECTFULLY SUBMITTED:

Debbie Hoppe, Town Clerk

APPROVED:

Jennie Fancher

Jake Wolf

Matt Gennett

Megan Burch

Albert "Buz" Reynolds

Scott Prince

Sarah Smith Hymes



**FISCAL YEAR 2015
FINANCIAL REPORT**

January 12, 2016

1. Fiscal Year 2015 Financial Report Cover Memo
2. Sales and Accommodations Tax Reports - October 2015
3. Real Estate Transfer Tax Report and Monthly Detail - November 2015
4. General Fund Year-To-Date Expenditures - November 2015
5. Fleet Maintenance Fund Year-To Date Expenditures - November 2015
6. Transit Fund Year-To Date Expenditures - November 2015



TOWN COUNCIL REPORT

To: Honorable Mayor Jennie Fancher and Avon Town Council

From: Kelly Huitt, Budget Analyst

Date: January 6, 2016

Re: Fiscal Year 2015 Financial Report – October / November

Revenues:

SALES TAX

- Sales tax revenue for the month of October is up \$5,780 or 1.38% compared to October 2014, and down -3.93% compared to the budget. This increase includes \$11,677 from new businesses, and after adjusting for new business growth, -1.41% is the loss in revenue from existing business for the month. Year-to-date sales tax is up \$200,666 compared to estimated monthly budgets, and new businesses make up 62.10% of this total growth.
- October sales tax collections are down for several categories compared to 2014 including: Miscellaneous Retail (-10.19%), Restaurants/Bars (-5.29%), Other (-11.08%), and Service Related (-33.53%). The Restaurants/Bars total is skewed due to one entity filing their October return late. After correcting for this late payment the adjusted year over year change is -1.50% for this category. The Other business category had a shift from closing businesses to newly opened entities mostly related to construction and building finishing contractors. Service Related businesses have widely varying returns month to month largely affected by architectural and decorating related business. Sales tax from Home/Garden grew 17.40% for the month and Sporting Goods Rental/Retail Sales increased 19.92%. The Grocery, Specialty, and Health category is also up for October at 10.10%.

Sales Tax Monthly Totals			
Category	2014/2015	Growth	Growth
	Variance	Existing Business	New Business
Home/Garden	8,287.65	6.95%	10.45%
Grocery, Specialty, Health	10,894.71	5.25%	4.85%
Liquor Stores	800.00	4.45%	0.12%
Sporting Goods Retail/Rental	4,469.93	19.92%	0.00%
Miscellaneous Retail	(2,419.16)	-10.22%	0.03%
Accommodations	860.22	0.15%	2.22%
Restaurants/Bars	(4,416.62)	-5.56%	0.27%
Other	(6,789.02)	-11.46%	0.38%
Service Related	(5,907.64)	-34.50%	0.97%
Total	\$5,780.07	-1.41%	2.79%

ACCOMMODATIONS TAX

- Accommodations tax revenue for October is up \$3,729, or 10.66% compared to October 2014, and up 2.10% compared to the monthly budget.
- October accommodations tax collections increased for Hotels and Timeshares at 11.78% and 11.64%, while Vacation Rentals are slightly down -3.72%.

REAL ESTATE TRANSFER TAX

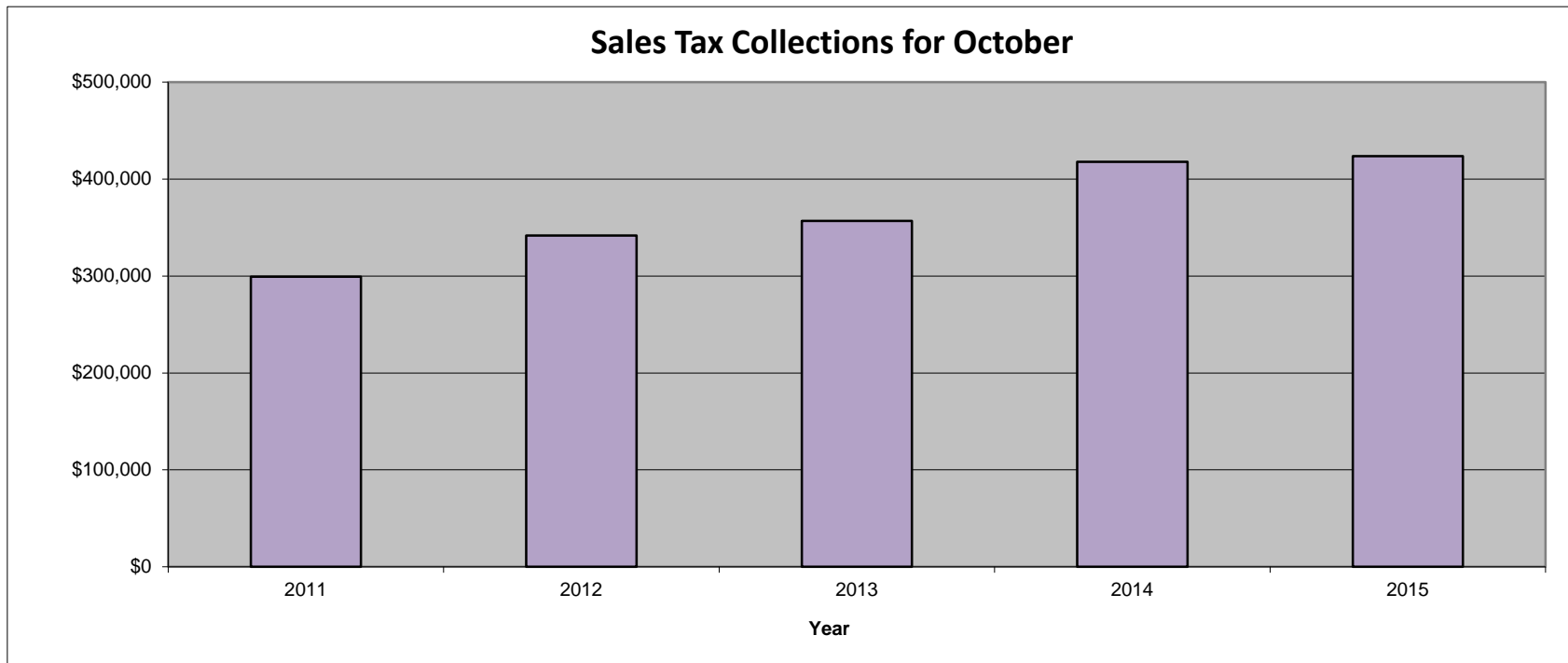
- 2015 real estate transfer tax collections for November equal \$169,328.38.
- Year-to-date real estate transfer tax collections through November total 95.25% of the total revised 2015 estimated revenue.

Expenditures:

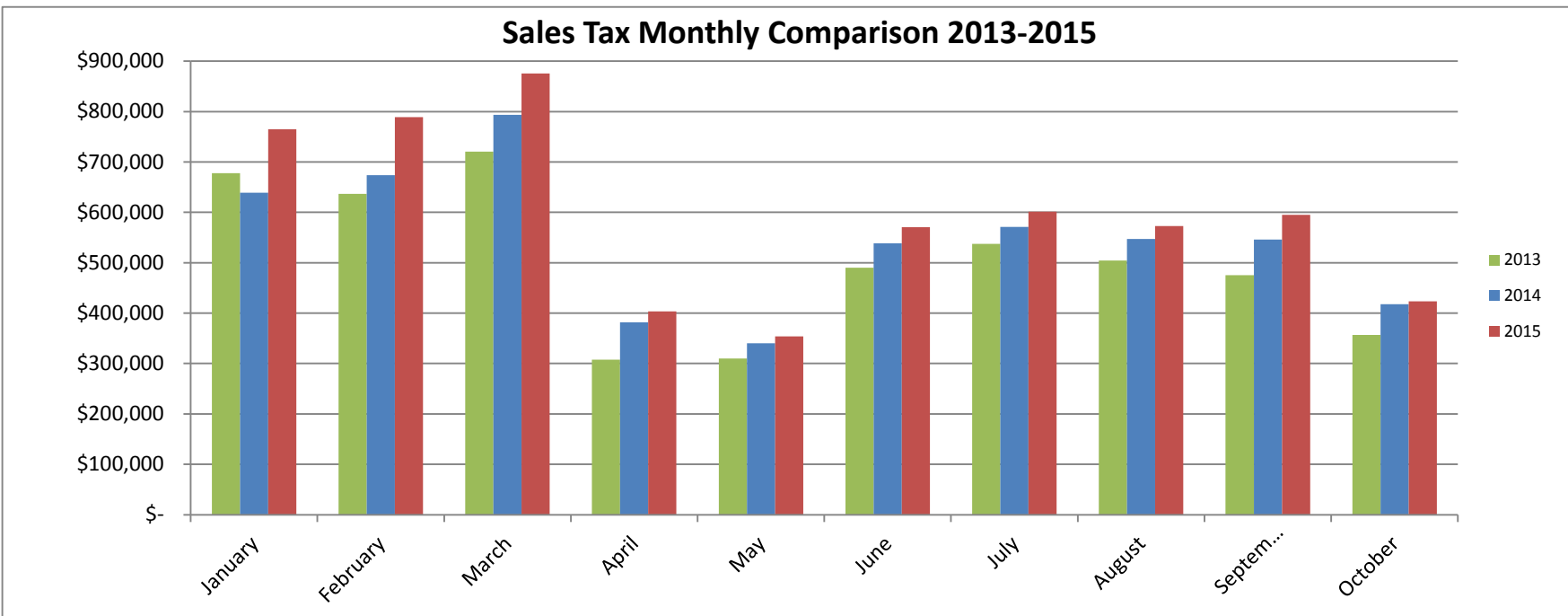
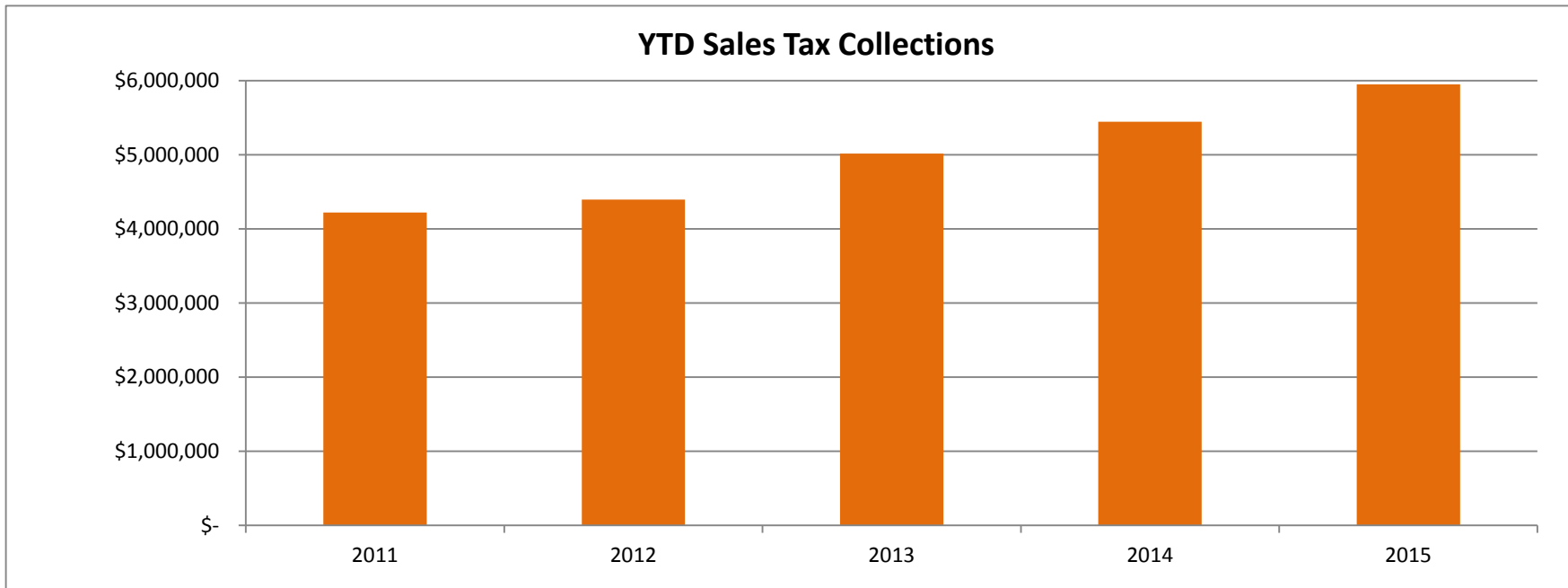
- General Fund expenditures through November 2015 total 86.97% of the total revised budget. These expenditures include the annual Cirsa insurance payment as well as contributions for several of the community grants and special event seed funding.
- Fleet expenditures to date are at 90.85% of the total revised budget. These costs include stock parts and several blanket purchase orders, which encumber funds for the year for ongoing expenditures such as regularly purchased shop supplies and monthly copier charges.
- Transit funds are 88.51% expended compared to the revised annual budget. This includes encumbered funds for the purchase of one bus scheduled for acquisition in 2015.

**TOWN OF AVON
SALES TAX
2015 Actual vs. Budget**

	Actual Collections					Budget 2015	YTD Collections 2015	Budget Variance	% of change from 2014
	2010	2011	2012	2013	2014				
January	\$ 515,009.18	\$ 511,040.76	\$ 519,784.89	\$ 677,943.78	\$ 638,863.27	\$ 674,203	\$ 765,195.68	\$ 90,992.75	19.77%
February	504,752.59	532,903.25	533,546.48	636,702.27	673,722.03	710,990	788,999.06	78,009.10	17.11%
March	620,937.20	665,532.70	643,910.29	720,267.31	793,301.96	837,185	875,499.53	38,314.90	10.36%
April	309,937.09	305,269.73	304,220.84	307,407.13	381,839.56	402,962	403,560.42	598.84	5.69%
May	242,830.16	236,424.93	270,082.79	309,938.72	340,332.28	359,158	353,840.11	(5,318.15)	3.97%
June	377,920.42	406,828.27	430,588.57	490,329.18	538,517.31	568,306	570,424.51	2,118.32	5.93%
July	421,975.98	452,873.44	472,215.40	537,479.66	570,959.86	602,543	601,516.82	(1,026.53)	5.35%
August	361,702.25	419,977.29	455,439.86	504,332.25	547,085.80	577,349	572,647.57	(4,701.09)	4.67%
September	359,139.22	391,546.49	424,793.75	475,362.88	546,016.59	576,220	595,235.68	19,015.38	9.01%
October	288,859.84	299,193.35	341,711.43	356,925.96	417,921.46	441,039	423,701.53	(17,337.87)	1.38%
November	284,528.70	301,407.41	336,060.63	362,460.94	397,935.36	419,948			
December	818,360.74	921,815.61	852,868.64	981,917.79	1,221,263.98	1,288,820			
Total	\$ 5,105,953.37	\$ 5,444,813.23	\$ 5,585,223.57	\$ 6,361,067.87	\$ 7,067,759.46	\$ 7,458,723	\$ 5,950,620.91	\$ 200,665.65	9.21%

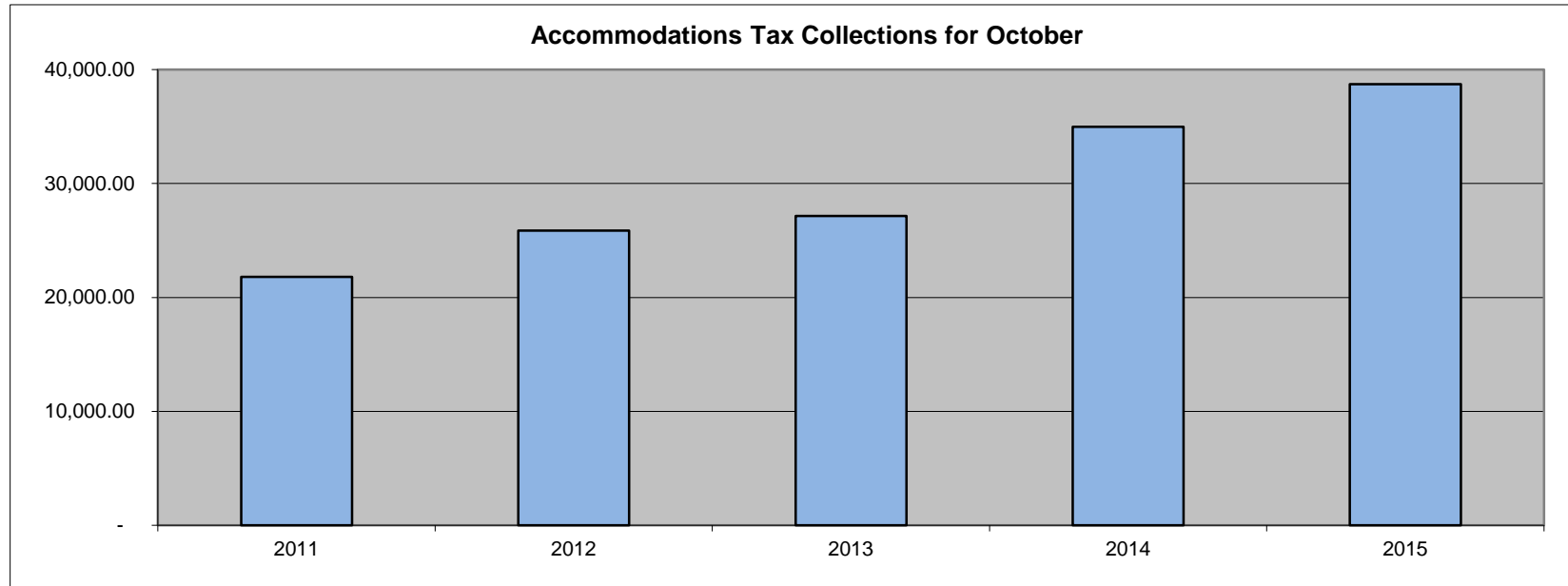


**TOWN OF AVON
SALES TAX
2015 Actual vs. Budget**



**TOWN OF AVON
ACCOMMODATIONS TAX
2015 Actual vs. Budget**

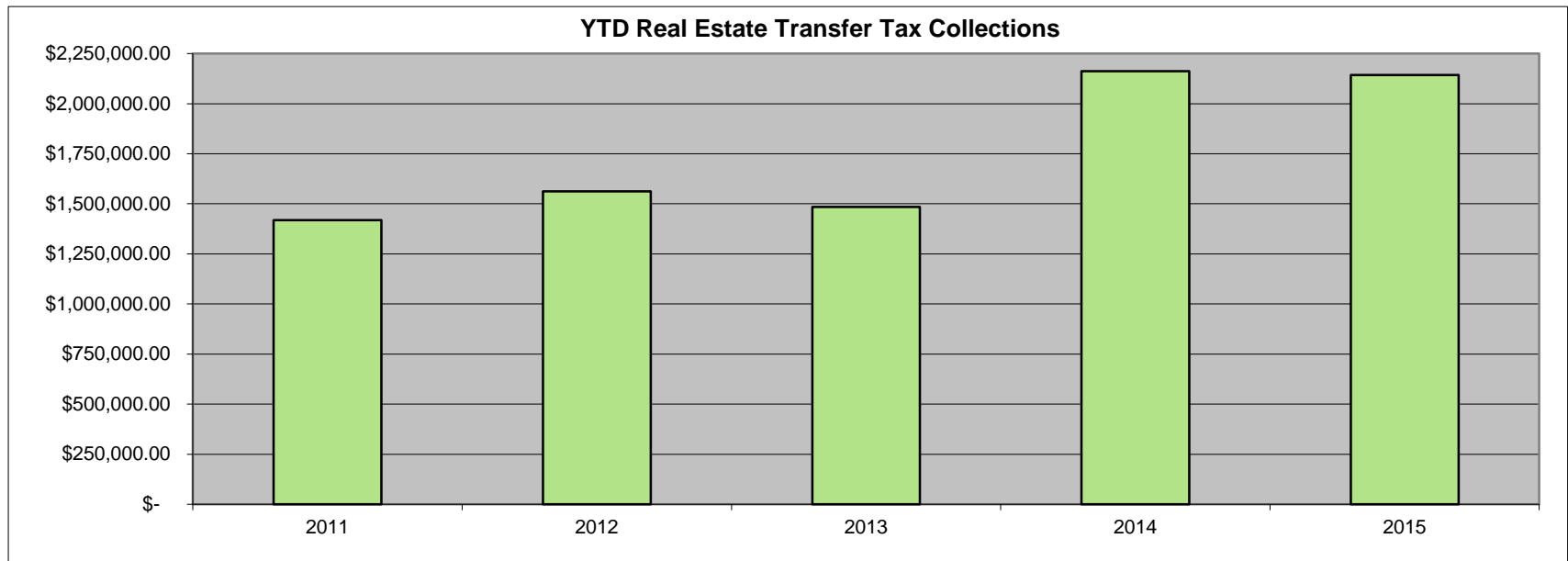
	Actual Collections					Budget 2015	YTD Collections 2015	Budget Variance	% change 2014
	2010	2011	2012	2013	2014				
January	\$ 87,938.84	\$ 85,233.73	\$ 90,118.88	\$ 108,508.43	\$ 129,851.78	\$ 140,746	\$ 164,361.04	\$ 23,615.12	26.58%
February	99,336.34	114,035.90	106,016.32	137,503.61	150,317.06	162,928	175,056.31	12,128.14	16.46%
March	105,518.15	122,145.16	115,043.42	153,208.80	168,597.39	182,742	183,650.29	908.13	8.93%
April	26,496.88	26,214.58	20,786.24	26,494.49	31,626.02	34,279	34,825.13	545.79	10.12%
May	12,425.51	15,152.82	16,664.44	24,527.17	21,961.97	23,805	28,002.56	4,198.05	27.50%
June	32,857.68	49,999.66	56,012.17	66,578.91	54,232.23	58,782	53,397.46	(5,384.68)	-1.54%
July	51,170.82	62,928.07	66,726.73	73,008.92	81,083.01	87,886	86,301.22	(1,584.39)	6.44%
August	42,188.56	52,037.55	58,358.93	67,688.07	71,044.33	77,005	75,107.71	(1,897.01)	5.72%
September	30,090.34	35,521.81	42,245.24	44,661.37	50,840.16	55,105	60,417.74	5,312.26	18.84%
October	20,614.06	21,801.56	25,879.51	27,154.53	34,977.59	37,912	38,706.72	794.62	10.66%
November	20,582.47	24,971.33	22,786.42	28,171.04	32,064.02	34,754			
December	98,561.90	135,984.00	112,759.02	131,361.43	168,944.85	183,119			
Total	\$ 627,781.55	\$ 746,026.17	\$ 733,397.32	\$ 888,866.77	\$ 995,540.41	\$ 1,079,063	\$ 899,826.18	\$ 38,636.04	13.25%



Town of Avon
Real Estate Transfer Tax
2015 Actual vs. Budget

	Actual Collections					Budget 2015	YTD Collections 2015	\$ change 2014	% of change 2014
	2010	2011	2012	2013	2014				
January	\$ 237,133.00	\$ 57,540.00	\$ 50,204.00	\$ 22,535.00	\$ 85,126.74	\$ 94,169	\$ 48,640.40	\$ (36,486.34)	-42.86%
February	362,719.22	230,705.50	41,750.07	55,872.69	562,219.70	260,794	85,479.08	(476,740.62)	-84.80%
March	284,243.65	187,099.47	84,760.49	125,927.64	50,375.06	152,407	168,744.22	118,369.16	234.98%
April	210,185.30	249,482.30	219,195.80	144,437.80	197,656.36	212,453	125,266.30	(72,390.06)	-36.62%
May	112,431.30	187,668.62	270,170.12	121,784.12	183,745.60	182,246	237,971.08	54,225.48	29.51%
June	66,271.14	49,606.58	169,040.47	90,309.74	220,009.15	123,864	294,434.84	74,425.69	33.83%
July	63,509.36	46,707.37	71,057.40	386,434.78	141,051.52	147,487	396,838.68	255,787.16	181.34%
August	88,823.40	106,785.21	232,505.93	97,579.70	154,032.32	141,445	152,380.93	(1,651.39)	-1.07%
September	159,861.96	140,876.56	96,389.34	157,010.67	267,886.92	171,056	291,223.61	23,336.69	8.71%
October	222,575.20	64,005.33	176,889.62	169,839.80	178,044.24	168,836	172,855.22	(5,189.02)	-2.91%
November	115,654.16	98,057.44	150,549.86	112,491.82	122,582.66	124,717	169,328.38	46,745.72	38.13%
December	236,117.45	198,448.03	145,134.57	83,382.60	1,598,062.92	470,525			
Total	\$ 2,159,525.14	\$ 1,616,982.41	\$ 1,707,647.67	\$ 1,567,606.36	\$ 3,760,793.19	\$ 2,250,000	\$ 2,143,162.74	\$ (19,567.53)	-0.90%

Budget 2,250,000.00
Variance, Favorable (Unfavorable) \$ (106,837.26)



General Fund November 2015 Expenditures to Date

Department Expenditure Summaries

Dept./Div. Number	Description	2015 Budget	Encumbrances Outstanding	Year To Date Expenditures	Available Balance	YTD/Budget
General Government:						
Legislative:						
111	Mayor and Town Council	\$ 239,890	\$ 24	\$ 170,236	\$ 69,630	70.97%
112	Boards and Commissions	15,299	-	10,951	4,348	71.58%
113	Town Attorney	155,000	51,066	112,124	(8,190)	105.28%
115	Town Clerk	119,162	5,710	111,304	2,148	98.20%
	Total Legislative	529,351	56,800	404,615	67,936	87.17%
Judicial:						
121	Municipal Court	109,262	4,102	83,767	21,393	80.42%
Executive:						
131	Town Manager	359,067	-	303,688	55,379	84.58%
133	Community Relations	132,355	-	103,176	29,179	77.95%
	Total Executive	491,422	-	406,864	84,558	82.79%
Finance Department:						
132	Human Resources	365,133	6,603	295,069	63,461	82.62%
141	Finance	779,580	9,040	678,778	91,762	88.23%
143	Information Systems	376,095	9,304	338,812	27,979	92.56%
149	Nondepartmental	395,157	19,210	346,174	29,773	92.47%
	Total Financial Administration	1,915,965	44,157	1,658,833	212,975	88.88%
	Total General Government	3,046,000	105,059	2,554,079	386,862	87.30%
Community Development:						
212	Planning	288,835	4,707	250,397	33,731	88.32%
213	Building Inspection	135,274	-	115,897	19,377	85.68%
214	Economic Development	130,568	4,163	85,108	41,297	68.37%
215	Town Produced Events	364,963	3,872	303,375	57,716	84.19%
216	Signature Event Seed Funding	302,122	45,398	290,398	(33,674)	111.15%
217	Community Grants	247,850	650	192,822	54,378	78.06%
	Total Community Development	1,469,612	58,790	1,237,997	172,825	88.24%
Police Department:						
311	Administration	619,451	7,453	525,027	86,971	85.96%
312	Patrol	2,188,121	17,683	1,942,420	228,018	89.58%
313	Investigations	198,955	950	228,288	(30,283)	115.22%
	Total Police	3,006,527	26,086	2,695,735	284,706	90.53%

General Fund November 2015 Expenditures to Date

Department Expenditure Summaries

Dept./Div. Number	Description	2015 Budget	Encumbrances Outstanding	Year To Date Expenditures	Available Balance	YTD/Budget
Public Works:						
412	Engineering	379,433	552	277,857	101,024	73.38%
413	Roads and Bridges	1,494,783	31,486	1,233,687	229,610	84.64%
415	Parks	1,016,043	44,329	835,633	136,081	86.61%
418	Buildings & Facilities	1,157,527	67,294	898,487	191,746	83.43%
Total Public Works		4,047,786	143,661	3,245,664	658,461	83.73%
Parks and Recreation:						
514	Administration	214,045	2,976	190,089	20,980	90.20%
515	Adult Programs	34,146	40	26,949	7,157	79.04%
516	Aquatics	435,468	1,800	353,651	80,017	81.63%
518	Fitness	131,054	89	128,975	1,990	98.48%
519	Guest Services	269,718	4,322	230,116	35,280	86.92%
521	Youth Programs	119,952	2,036	100,498	17,418	85.48%
522	Cabin	6,078	-	5,878	200	96.71%
Total Parks and Recreation		1,210,461	11,263	1,036,156	163,042	86.53%
TOTAL OPERATING EXPENDITURES		\$ 12,780,386	\$ 344,859	\$ 10,769,631	1,665,896	86.97%

Fleet Maintenance Enterprise Fund November 2015 Expenditures to Date

Expenditure Summary

Dept./Div. Number	Description	2015 Budget	Encumbrances Outstanding	Year To Date Expenditures	Available Balance	YTD/Budget
EXPENDITURES						
Public Works:						
434	Fleet Maintenance	\$ 1,737,941	\$ 38,942	\$ 1,539,991	\$ 159,008	90.85%
	Total Operating Expenditures	<u>1,737,941</u>	<u>38,942</u>	<u>1,539,991</u>	<u>159,008</u>	<u>90.85%</u>
	TOTAL EXPENDITURES	<u>\$ 1,737,941</u>	<u>\$ 38,942</u>	<u>\$ 1,539,991</u>	<u>\$ 159,008</u>	<u>90.85%</u>

Transit Enterprise Fund November 2015 Expenditures to Date

Expenditure Summary

Dept./Div. Number	Description	2015 Budget	Encumbrances Outstanding	Year To Date Expenditures	Available Balance	YTD/Budget
EXPENDITURES						
431	Transit Administration	\$ 235,325	\$ 1,755	\$ 191,027	\$ 42,543	81.92%
432	Transit Operations	1,130,144	135,080	919,112	75,952	93.28%
435	Wash Bay	130,967	1,314	76,262	53,391	59.23%
Total Operating Expenditures		1,496,436	138,149	1,186,401	171,886	88.51%
TOTAL EXPENDITURES		\$ 1,496,436	\$ 138,149	\$ 1,186,401	\$ 171,886	88.51%