



**TOWN OF AVON, COLORADO**  
**TOWN OF AVON MEETINGS FOR TUESDAY, FEBRUARY 23, 2016**  
**REGULAR MEETING BEGINS AT 7:30 PM**  
AVON TOWN HALL, ONE LAKE STREET

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**REGULAR MEETING BEGINS AT 7:30 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. ACTION ITEMS**

4.1. RESOLUTION NO. 16-03 REFERRING A POLICE STATION BALLOT QUESTION TO A SPECIAL ELECTION  
(TOWN ATTORNEY ERIC HEIL)

4.2. FIRST READING OF ORDINANCE NO. 16-02, AUTHORIZING THE FINANCING OF CERTAIN PUBLIC IMPROVEMENTS OF THE TOWN, AND IN CONNECTION THEREWITH AUTHORIZING THE LEASING OF CERTAIN TOWN PROPERTY AND THE EXECUTION AND DELIVERY BY THE TOWN OF A SITE LEASE, A LEASE PURCHASE AGREEMENT, A DISCLOSURE CERTIFICATE, A PRELIMINARY OFFICIAL STATEMENT AND OTHER DOCUMENTS AND MATTERS RELATING TO CERTAIN CERTIFICATES OF PARTICIPATION, SERIES 2016; SETTING FORTH CERTAIN PARAMETERS AND RESTRICTIONS WITH RESPECT TO THE FINANCING; AUTHORIZING OFFICIALS OF THE TOWN TO TAKE ALL ACTION NECESSARY TO CARRY OUT THE TRANSACTIONS CONTEMPLATED HERBY; RATIFYING ACTIONS PREVIOUSLY TAKEN; AND PROVIDING OTHER MATTERS RELATED THERETO  
(TOWN ATTORNEY ERIC HEIL)

4.3. CONSENT AGENDA

4.3.1. RESOLUTION NO. 16-01, RESOLUTION DESIGNATING THE LOCATIONS FOR POSTING THE NOTICES OF PUBLIC MEETINGS (TOWN CLERK DEBBIE HOPPE)

4.3.2. MINUTES FROM FEBRUARY 9, 2016 MEETING (TOWN CLERK DEBBIE HOPPE)

4.3.3. MINUTES FROM FEBRUARY 12, 2016 RETREAT  
(EXECUTIVE ASSISTANT TO THE TOWN MANAGER PRESTON NEILL)

**5. WORK SESSION**

5.1. REVIEW OF REPORT ON TOWN OF AVON SALES TAX ON BUILDING MATERIALS (TOWN MANAGER VIRGINIA EGGER, ASSISTANT TOWN MANAGER SCOTT WRIGHT, TOWN ATTORNEY ERIC HEIL)

**6. WRITTEN REPORTS**

6.1. MONTHLY FINANCIALS (BUDGET ANALYST KELLY HUITT)

6.2. GIFT REPORTING – 2016 WINTERWONDERGRASS VIP FESTIVAL PASSES  
(EXECUTIVE ASSISTANT TO THE TOWN MANAGER PRESTON NEILL)

**7. COMMITTEE MEETING UPDATES: COUNCILORS AND MAYOR**

7.1. ECRTA BOARD MEETING – MAYOR PRO TEM JAKE WOLF

**8. MAYOR & COUNCIL COMMENTS**



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**9. EXECUTIVE SESSION**

- 9.1. EXECUTIVE SESSION FOR THE PURPOSE OF DETERMINING POSITIONS RELATIVE TO MATTERS THAT MAY BE SUBJECT TO NEGOTIATIONS, DEVELOPING STRATEGY FOR NEGOTIATIONS, AND/OR INSTRUCTING NEGOTIATORS, UNDER C.R.S. §24-6-402(2)(E) AS WELL AS A CONFERENCE WITH THE TOWN ATTORNEY FOR THE PURPOSE OF RECEIVING LEGAL ADVICE UNDER C.R.S. §24-6-402(2)(B) CONCERNING THE UPPER EAGLE RIVER WATER AUTHORITY.

**10. ADJOURNMENT**

**TO:** Honorable Mayor Fancher and Town Council members  
**FROM:** Eric J. Heil, Town Attorney  
**RE:** Referral of Ballot Question re: Certificate Participation Financing for the Police Station, Resolution No. 16-03 and Ordinance No. 16-02  
**DATE:** February 18, 2016

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**SUMMARY:** Resolution 16-03 is presented to Council which would refer a ballot question concerning financing for a police station to a special election on May 3, 2016 ("**Ballot Question**"). The proposed financing is through "certificates of participation" ("**COP**") in a principal amount not to exceed \$6.5 million. A companion Ordinance No. 16-02 is also presented which includes the authorization, terms and limitations of the COP financing. The Ballot Question seeks approval of Ordinance No. 16-02.

Accompanying this memorandum is are memoranda from Justin Hildreth discussing the cost estimate for the police station and from Scott Wright discussing the financing terms for a bond issuance through COP financing.

The referred Ballot Question for the police station financing is coordinated with the efforts of the Eagle River Fire Protection District ("**ERFPD**") to refer its own ballot question to its regular special district election May 3, 2016. The ERFPD will seek voter approval for debt authorization and a supporting mill levy. The coordinated effort is the implementation of the Intergovernmental Agreement, dated April 28, 2015 ("**IGA**"), to construct a "**Joint Public Safety Facility**" on Lot 1B, Buck Creek Subdivision, on the north side of I-70 (adjacent to the medical office building under construction).

Last year the ERFPD was able to sell Lot 1A and acquire Lot 1B which resulted in a reduction of the ERFPD's outstanding debt on the property by approximately \$1.4 million. As part of the IGA to pursue the construction of a Joint Public Safety Facility, the Town of Avon provided temporary financing to assist the ERFPD with the sale of Lot 1A and acquisition of Lot 1B. The IGA contemplates cost sharing to reduce the overall cost of a regional fire station and new police station by sharing the land costs and certain site improvements.

The construction of a regional fire station to replace the existing Avon fire station was an identified goal of ERFPD since the Town joined the ERFPD and transferred all of Avon's fire protection equipment and assets to ERFPD. The Town owns the existing fire station building in Avon and has leased the building to ERFPD at no cost since joining the district. The direct benefits to the Town of the new regional fire station are (1) moving the fire station to a better location for improved response time, (2) constructing a facility that can accommodate the ladder truck and thereby move it up from Cordillera to Avon, (3) constructing a larger regional facility that is planned to serve the community for the next 40-50 years, and (4) vacating the existing fire station owned by the Town so that the Town may reuse this property.

The proposed police station is 10,419 sq.ft. and is sized to meet the needs of the Avon Police Department for the next 40-50 years. The size and configuration of the police station are based on upon programming analysis conducted during the initial design process and based upon a review of comparable police stations in peer communities.

The most current cost estimate for construction is \$4,324,914. A 10% contingency, soft costs, land acquisition, architectural and engineering fees result in a total estimated Project cost of \$6,248,112. (See Justin Hildreth's memorandum for more information.) The costs of bond financing is approximately \$150,000, which results in a total expected cost of \$6,450,000. The referred Ballot Question and Ordinance No. 16-02 proposes a total principal amount of \$6.5 Million based on the current total project cost estimates and the estimated financing costs.

A public presentation and open forum for the proposed Joint Public Safety Facility is scheduled for February 23, 2016, in Town Council Chambers, immediately prior to the Avon Town Council meeting, which presentation will include additional detail on the Joint Public Safety Facility project. Additional public outreach meetings are scheduled for March 23, April 11 and April 27. In addition, a Town of Avon community meeting will be held on March 2, where the Facility will be one of the topics expected to be discussed.

In order for the Joint Public Safety Facility project to proceed this summer, both the Town of Avon Ballot Question and Eagle River Fire Protection District ballot question must receive voter approval on May 3, 2016. Should one or both of the ballot issues fail, the ERFPD and the Town of Avon will meet to evaluate how to proceed thereafter.

#### **PROPOSED MOTIONS:**

"I move to approve Resolution No. 16-03 REFERRING A POLICE STATION BALLOT QUESTION TO A SPECIAL ELECTION."

"I move to approve Ordinance No. 16-02 AUTHORIZING THE FINANCING OF CERTAIN PUBLIC IMPROVEMENTS OF THE TOWN, AND IN CONNECTION THEREWITH AUTHORIZING THE LEASING OF CERTAIN TOWN PROPERTY AND THE EXECUTION AND DELIVERY BY THE TOWN OF A SITE LEASE, A LEASE PURCHASE AGREEMENT, A DISCLOSURE CERTIFICATE, A PRELIMINARY OFFICIAL STATEMENT AND OTHER DOCUMENTS AND MATTERS RELATING TO CERTAIN CERTIFICATES OF PARTICIPATION, SERIES 2016; SETTING FORTH CERTAIN PARAMETERS AND RESTRICTIONS WITH RESPECT TO THE FINANCING; AUTHORIZING OFFICIALS OF THE TOWN TO TAKE ALL ACTION NECESSARY TO CARRY OUT THE TRANSACTIONS CONTEMPLATED HEREBY; RATIFYING ACTIONS PREVIOUSLY TAKEN; AND PROVIDING OTHER MATTERS RELATED THERETO"

**REFERRED BALLOT QUESTION:** The Avon Town Council is authorized by the Avon Home Rule Charter and by state statute to refer a ballot question to a special election. The Avon Town Council must take action to refer the Ballot Question at least 60 days prior to the election date (March 4 deadline for May 3, 2016 election). The Ballot Question would authorize Ordinance No. 16-02. If approved by the Avon voters, Ordinance No. 16-02 would be effective upon certification of the election results. Ordinance No. 16-02 is not subject to a citizen's petition for referendum because it is referred to the Avon voters.

The proposed Ballot Question is as follows:

#### **Police Station Financing**



**Without raising any taxes, shall Ordinance No. 16-02 be approved and shall the Avon Town Council thereby be authorized to use certificate of participation financing, with a principal amount not to exceed \$6.5 million, to construct a new police station facility in accordance with the terms of Ordinance No. 16-02?**

Council has discretion to determine the Ballot Question language. The Ballot Question is not subject to the Tax Payers Bill of Rights (“**TABOR**”) and therefore is not required to follow the prescribed language for ballot questions set forth in TABOR. The proposed Ballot Question is worded to begin with the phrase “Without raising any taxes,” because the Ballot Question does not propose to raise any existing tax rates in the Town of Avon. The repayment of the COP financing would occur through existing revenues. The remainder of the Ballot Question includes approval of Ordinance No. 16-02 and authorization of COP financing for a new police station facility in a principal amount not to exceed \$6.5 Million.

**CERTIFICATE OF PARTICIPATION FINANCING AND TABOR:** The ballot question seeks authorization for financing through the use of COP financing. COP financing is not a general obligation of the Town, a “constitutional debt” or a “multi-year fiscal obligation” and therefore is not subject to TABOR. COP financing uses an arrangement whereby the lending institution obtains a leasehold interest on the public property, then leases the public property back to the public entity for the duration of the bond repayment. The obligation of public entity to pay the annual lease payment is “subject to annual budget and appropriation”. In the event that the public entity does not appropriate and pay the annual lease payment, the lending institution has the right to “evict” the public entity, obtain possession of the public property, and re-let the property for the duration of the leasehold to obtain revenues to pay the remaining loan amount. COP financing is a common method of financing used by local governments throughout Colorado. The Town has used COP financing on multiple occasions (e.g. Transit Facility in 2010 and Street Improvements in 2014). The Town has never defaulted on COP financing payments.

**ORDINANCE NO. 16-02:** Ordinance No. 16-02 was prepared by bond counsel for the Town of Avon. The Ordinance specifies that the location of the Police Station will be on Lot 1B, Buck Creek Subdivision, Avon, Colorado (adjacent to the medical office building under construction) **IF** the Eagle River Fire Protection District ballot question passes and if the Joint Public Safety Facility project proceeds this summer. If this does not occur, then Ordinance No. 16-02 would authorize the construction of a Police Station on other land owned or leased by the Town of Avon within the Town’s boundaries. Ordinance No. 16-02 also states that the use is for a Police Station **or other lawful uses**. The reference to **other lawful uses** is to accommodate requirements that lending institutions have to permit any lawful use during the term of the leasehold interest and repayment of the bonds. Under federal law there are many restrictions on the use of public facilities financed with tax exempt bonds.

**PLEASE NOTE** that Ordinance No. 16-02 references a form of Lease Agreement, Site Lease, Trust Indenture and Continuing Disclosure Statement. Due to the volume of pages, these documents are provided on-line on the Town’s website and several hard copies will be provided to the public at the Council meeting. Hard copies will be provided to Council members on request.

**FAIR CAMPAIGN PRACTICES ACT:** The Fair Campaign Practices Act establishes restrictions on Town to advocate for or against a referred ballot measure. Once the Ballot Question is referred to an election,

the Town may not spend more than \$50 advocating for or against the passage of the ballot issue. The Town may provide a factual statement to the public provided that the factual statement is objective, does not advocate for or against the ballot issue, and includes arguments for and against the ballot issue. The relevant statutory authorization for a factual statement is reprinted as follows:

CRS §1-45-117(1)(b) (I) Nothing in this subsection (1) shall be construed as prohibiting an agency, department, board, division, bureau, commission, or council of the state, or any political subdivision thereof from expending public moneys or making contributions to dispense a factual summary, which shall include arguments both for and against the proposal, on any issue of official concern before the electorate in the jurisdiction. Such summary shall not contain a conclusion or opinion in favor of or against any particular issue. As used herein, an issue of official concern shall be limited to issues that will appear on an election ballot in the jurisdiction.

*Thank you, Eric*

**ATTACHMENTS:**

Memorandum from Justin Hildreth

Memorandum from Scott Wright

Resolution No. 16-03 Referring the Ballot Question to a May 3, 2016 Election

Ordinance No. 16-02 Authorizing Certificate of Participation Financing for a Police Station

## **RESOLUTION NO. 16-03**

### **REFERRING A POLICE STATION BALLOT QUESTION TO A SPECIAL ELECTION**

**WHEREAS**, Section 3.2 of the Avon Home Rule Charter states that the Council may call a special municipal election by resolution; and

**WHEREAS**, the Avon Town Council finds that the construction of an Avon Police Station through the use of certificates of participation will provide the best financing terms and lowest cost for the Avon Community; and

**WHEREAS**, the Avon Town Council finds that the referral of a ballot question to the Avon voters will promote community involvement and input on significant capital expenditures for essential public facilities; and

**WHEREAS**, the Avon Town Council has the right to refer any question on its own motion to a special election; and

**WHEREAS**, the Avon Town Council has the right to determine the title and ballot question; and

**WHEREAS**, Colorado Revised Statute §1-7.5-104 authorizes the governing board of a political subdivision other than a county to determine to conduct an election as a mail ballot election.

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

**Section 1. Special Election, Title and Ballot Question.** A special election is hereby called to be held on Tuesday, May 3, 2016 for consideration of the following ballot question:

#### **Police Station Financing**

**Without raising any taxes, shall Ordinance No. 16-02 be approved and shall the Avon Town Council thereby be authorized to use certificate of participation financing, with a principal amount not to exceed \$6.5 million, to construct a new police station facility in accordance with the terms of Ordinance No. 16-02?**

**YES** \_\_\_\_\_

**NO** \_\_\_\_\_

**Section 2. Mail Ballot Election.** Special election on May 3, 2016 shall be conducted as a mail ballot election.

**Section 3.**     **Town Clerk.** The Town Clerk is authorized and directed to take all actions as necessary and appropriate to conduct a mail ballot election on May 3, 2016, in accordance with the law.

**RESOLUTION INTRODUCED, READ, APPROVED AND ADOPTED ON FEBRUARY 23, 2016.**

By: \_\_\_\_\_  
Jennie Fancher, Mayor

Attest: \_\_\_\_\_  
Debbie Hoppe, Town Clerk



## TOWN COUNCIL REPORT

To: Honorable Mayor Jennie Fancher and Avon Town Council  
From: Justin Hildreth, Town Engineer  
Virginia C. Egger, Town Manager  
Meeting Date: February 23, 2016  
Agenda Topic: Cost Estimate for Joint Town of Avon Police and Eagle River Fire Protection District  
Public Safety Facility

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**SUMMARY:** The Town has been working on a Joint Public Safety Facility that includes the Town of Avon Police Station and Eagle River Fire Protection District (“ERFPD”) Regional Fire Station to be located at Lot 1B, Buck Creek Subdivision. Last fall, a schematic design for the police station portion of the facility included 19,099 SF building plus 2,173 SF in shared space. The design included 22 underground parking spaces, with a total construction price of \$6,675,224, including all fees and contingency.

The Council, during its November 10, 2015 meeting, voiced concerns about the size and cost of the project and directed staff to eliminate all the structure parking and reduce the scope of the project. To meet the objectives, other police stations were surveyed in mountain communities and the Breckenridge Police Station was found to be the most comparable having a current staff of 29. The Breckenridge station was constructed in 1996 and is 11,240 square feet. All vehicle parking is outdoors, with patrol cars provided canopy outdoor parking. A review of the Breckenridge space program met or exceeded all the programmatic needs identified for a new Avon Police Department.

At Council’s December 8, 2015 meeting, Council approved a Police Station not to exceed 11,300 square feet with surface parking. The total estimated cost was \$4,688,656, and was derived using the same \$315.00 square foot cost estimate from the larger building. The Council also approved the continuation of the building’s revised schematic design in order to provide the best pricing prior to setting the ballot question to allow the use of Certificates of Participation.

Upon receipt of the schematic design package, Evans Chaffee Construction Group (“ECCG”) solicited competitive bids from numerous qualified sub-contractors in each trade and completed pricing of the project on February 15, 2016. Exhibit 1 summarizes the construction cost for the entire Joint Public Safety Facility. Table 1 summarizes the pricing for The Town of Avon Police Station portion of construction costs. Table 1 shows that even though the square footage of the building has been further reduced by 881 square feet, the estimated cost, with surface parking, has increased by \$707,000, with competitive pricing. The cost of the facility, with surface parking, however, still remains \$1,300,000 less expensive than if developed with structured parking.

Chris Evans reports the increase construction pricing is a result of actual competitive pricing versus an estimate based upon limited schematic plans; the high cost of retaining walls for the surface

parking designated for the police station; and, the compaction of the police program into a smaller area.

Staff has been in early discussion with Chris Evans to identify cost savings. Additional savings will be identified over the next six weeks and prior to the final Guaranteed Maximum Price being contracted.

A 10% construction contingency is included in the project budget at this time to cover any cost adjustments as the plans are developed into final construction plans and for unforeseen circumstances encountered during construction such as poor soils or dewatering. Contingency can be released once the foundation and site work are completed since that contains the most risk.

**TABLE 1**  
**Avon Police Station at Buck Creek Public Safety Facility**  
**Total Maximum Square Footage: 10,419**  
**August 1, 2016 Ground Break**

<b>Facility</b>	<b>General Contractor Pricing – Jan 25, 2016 Schematic Design 10,419 SF</b>	<b>12/8/2015 Project Budget SF Schematic Design 11,300 SF</b>
Police Building & Parking	\$4,302,498	\$3,669,342
Contingency at 10%	\$430,250	\$355,950
<b>Sub-total: Building &amp; Parking Costs</b>	<b>\$4,732,748</b>	<b>\$4,025,292</b>
Soft Costs Estimate: Utility fees, dewatering, survey, signage, IT, moving, legal, FFE, etc.*	\$309,224	\$309,224
<b>Total Building &amp; Parking Construction Costs</b>	<b>\$5,041,972</b>	<b>\$4,334,516</b>
Architectural & Engineering Fees; & GC Pricing for Redesign	\$354,140	\$354,140
<b>Total Construction Project Costs</b>	<b>\$5,396,112</b>	<b>\$4,688,656</b>
Land Acquisition Cost	\$852,000	\$852,000
<b>Total Estimated Project Costs</b>	<b>\$6,248,112</b>	<b>\$5,540,656</b>

**SCHEDULE:** Upon approval by Town Council of the ballot language at the February 23, 2016 meeting, the Davis Partnership Group will move forward with design development and preparation of final construction plans. The design development plans, which will be at approximately 2/3 completion of

final construction plans, will be done by March 23<sup>rd</sup> and submitted to ECCG for another round of pricing with the sub-contractors. The design development pricing will be used to develop the Guaranteed Maximum Price (“GMP”) for the project and included in the ECCG Construction Contract. The construction plans will be completed on May 20<sup>th</sup>, 2016. Assuming the May 3<sup>rd</sup> election is successful; the contractor will then obtain the building permit and will mobilize around August 1, 2016. Construction can be completed and the building occupied by the end of 2017.

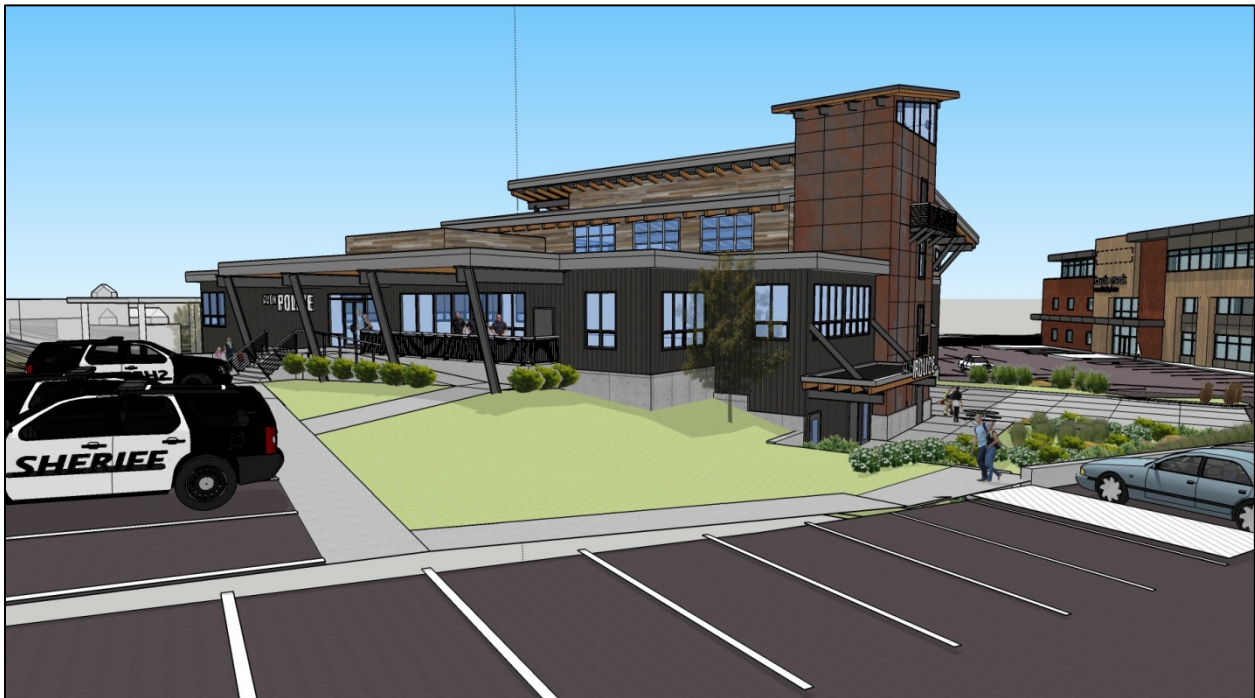


**Figure 1 – View from Swift Gulch Road**





**Figure 2 – View looking southeast of the apparatus bay**



**Figure 3 – View of public police station entrance on north side of building**

EXHIBIT A – ECCG Avon Public Safety Facility VE Pricing Recap



# EXHIBIT A Avon Public Safety Facility VE Pricing Recap

## Previous Pricing

### 1 - Base Estimate Per Plans

### Square Footage

	Gross Cost	Fire	Police	Previous	Fire	Police	Shared	Gross
Fire	\$3,163,799	\$3,163,799		Level 1	9,192	9,224	868	19,284
Police	\$1,940,142		\$1,940,142	Level 2		7,985	3,646	11,631
Shared	\$7,974,366			Level 3	6,877		1,464	8,341
				<b>Gross</b>	<b>16,069</b>	<b>17,209</b>	<b>5,978</b>	<b>39,256</b>
Fire	55% \$4,385,901	\$4,385,901						
Police	45% \$3,588,465		\$3,588,465					
50-50 Split	\$1,727,763							
Fire	50% \$863,882	\$863,882						
Police	50% \$863,882		\$863,882					
Project Totals:		\$8,413,582	\$6,392,488					
Cost per SF (including 50% Shared):		\$441.47	\$316.49					

## Current Pricing

### 1 - Base Estimate Per Plans

### Square Footage

	Gross Cost	Fire	Police	Current	Fire	Police	Shared	Gross
Fire	\$4,675,267	\$4,675,267		Level 1	8,276	3,601	526	12,403
Police	\$3,011,339		\$3,011,339	Level 2	375	6,818	256	7,449
Shared	\$1,465,514			Level 3	6,648		244	6,892
				<b>Gross</b>	<b>15,299</b>	<b>10,419</b>	<b>1,026</b>	<b>26,744</b>
Fire	55% \$806,033	\$806,033		Net Change:	(770)	(6,790)	(4,952)	(12,512)
Police	45% \$659,481		\$659,481	% Change:	-4.8%	-39.5%	-82.8%	-31.9%
50-50 Split	\$1,308,188							
Fire	50% \$654,094	\$654,094						
Police	50% \$654,094		\$654,094					
Project Totals:		\$6,135,394	\$4,324,914					
Cost per SF (including 50% Shared):		\$388.02	\$395.62					
Net Change:		(\$2,278,188)	(\$2,067,574)					
% Change:		-27.1%	-32.3%					

Includes	\$48,000	Irrigation Ditch Work
	\$30,000	Thicker asphalt
	\$314,418	3' Over-Ex per soils rpt
<b>Total:</b>	<b>\$392,418</b>	



## TOWN COUNCIL REPORT

**To:** Honorable Mayor Jennie Fancher and Avon Town Council  
**From:** Scott Wright, Asst. Town Manager  
**Date:** February 23, 2016  
**Topic:** Ordinance No. 16-02 – Authorizing the Financing of Certain Public Improvements

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**SUMMARY:** This memorandum addresses the terms of the financing and the timetable regarding the bond issuance. The proposed funding source of Real Estate Transfer Taxes, and other sources of current taxes as may be appropriated, **allows the Town to bond for the police station without raising taxes or increasing taxes.**

**BONDING SCENARIOS:** The flowing table identifies the differences between including or excluding the architectural and engineering fees, as well as the difference in term between a 15-year and a 20-year term financing. NOTE: “TIC” refers to *Total Interest Costs*, which includes all costs of the transaction, not just the stated interest rate (or coupon interest).

PUBLIC SAFETY FACILITY - AVON POLICE DEPARTMENT				
UPDATED FEBRUARY 12, 2016				
DEBT SERVICE				
	Projected Cost 2/12/2016 General Contractor Pricing - Super SD Design (Includes Architectural and Engineering Fees)		Projected Cost 2/12/2016 General Contractor Pricing - Super SD Design (Excludes Architectural and Engineering Fees)	
TOTAL COST - BOND PROCEEDS	\$6,425,000		\$6,065,000	
DEBT SERVICE	DEBT SERVICE	TIC	DEBT SERVICE	TIC
20 YEARS	413,224	2.60%	390,104	2.60%
COP (average interest rate)	2.547%		2.548%	
15 YEARS	505,297	2.23%	477,018	2.23%
COP (average interest rate)	2.147%		2.147%	

**CAPITAL PROJECTS FUND:** On September 15, 2014, the final debt service payment was made on the bonds that were used to finance the Avon Recreation Center. The final debt service payment was \$465,248. The amounts highlighted in yellow represent annual debt service payments that are within staff’s recommended limit of \$450,000 to be paid for from real estate transfer taxes out of the Town Capital Projects Fund. This amount has previously been

approved in the Town's 5-year long-range CIP plan. To be clear, Certificates of Participation do not increase any current Town tax or require that a new tax be approved. The appropriation will be planned as an expense of the Capital Projects Fund, which receives its monies from real estate transfer taxes, however, the bonds can be paid from any and all Town revenues.

**ARCHITECTURAL AND ENGINEERING FEES:** It is common in these types of projects to include architectural and engineering fees in the financing in order to reimburse the Town for these out-of-pocket costs. These fees are currently budgeted in the Capital Projects Fund because of the necessity of planning and designing the project prior to the election and issuance of the bonds. Because of the low interest rate environment, staff is recommending that these fees be included in the financing.

**BOND PARAMETERS AND ELECTION QUESTION:** Attached as an Exhibit to this memo is a schedule of Sources and Uses of the proposed Certificates of Participation financing. The bond issuance is subject to a successful election and therefore will not close for several months. The parameters of the financing are included in Section 4 of Ordinance No. 16-02. The parameters allow for a small degree of adjustment in the event that financing conditions change over the next four months.

The table below compares the parameters under current financing compared to proposed parameters that are recommended in Ordinance No. 16-02 to allow for changes in financial conditions in the next four months.

	COP Financing based on Current Rates and Bond Insurance	COP Financing Parameters Included in Bond Ordinance
Aggregate Principal Amount	\$6,425,000	\$6,500,000
Maximum Annual Repayment Amount	\$415, 791.50	\$450,000
Total Repayment Cost	\$8,311,464.83	\$8,450,000
Maximum Net Effective Interest Rate	2.76%	3.50%

**TIMETABLE (EXHIBIT B):** Attached is a timetable of events for the issuance of the Certificates of Participation. The table shows the process beginning right after a successful election and concluding with a closing and delivery of bond proceeds on July 1, 2016.

#### **Exhibits:**

A – Sources and Uses of Funds

B – Draft Timetable for COP Issuance

Exhibit A  
Sources and Uses of Funds

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Town of Avon, Colorado  
Certificates of Participation, Series 2016

\*\*\*\*\*  
Police Facility - Scenario 1 - Including architectural and engineering fees  
\*\*\*\*\*

Preliminary Rates as of February 18, 2015  
(20-years/AAA +50 bps)

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Bond Pricing . . . . .	2
Bond Debt Service . . . . .	3
Bond Summary Statistics . . . . .	4

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SOURCES AND USES OF FUNDS

Town of Avon, Colorado  
Certificates of Participation, Series 2016

\*\*\*\*\*  
Police Facility - Scenario 1 - Including architectural and engineering fees  
\*\*\*\*\*

Preliminary Rates as of February 18, 2015  
(20-years/AAA +50 bps)

Dated Date           08/01/2016  
Delivery Date       08/01/2016

Sources:

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Bond Proceeds:	
Par Amount	6,425,000.00
	<hr/>
	6,425,000.00

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Uses:

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Project Fund Deposits:	
Project Fund	6,272,769.00
Cost of Issuance:	
Other Cost of Issuance	70,000.00
Delivery Date Expenses:	
Underwriter's Discount	51,400.00
Bond Insurance	<hr/>
	29,090.13
	80,490.13
Other Uses of Funds:	
Additional Proceeds	1,740.87
	<hr/>
	6,425,000.00

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# BOND PRICING

Town of Avon, Colorado  
 Certificates of Participation, Series 2016  
 \*\*\*\*\*  
 Police Facility - Scenario 1 - Including architectural and engineering fees  
 \*\*\*\*\*  
 Preliminary Rates as of February 18, 2015  
 (20-years/AAA +50 bps)

Bond Component	Maturity Date	Amount	Rate	Yield	Price
Serial Bond:					
	12/01/2017	270,000	0.880%	0.880%	100.000
	12/01/2018	275,000	1.020%	1.020%	100.000
	12/01/2019	280,000	1.130%	1.130%	100.000
	12/01/2020	280,000	1.230%	1.230%	100.000
	12/01/2021	285,000	1.330%	1.330%	100.000
	12/01/2022	290,000	1.510%	1.510%	100.000
	12/01/2023	290,000	1.700%	1.700%	100.000
	12/01/2024	295,000	1.880%	1.880%	100.000
	12/01/2025	305,000	2.030%	2.030%	100.000
	12/01/2026	310,000	2.160%	2.160%	100.000
	12/01/2027	315,000	2.280%	2.280%	100.000
	12/01/2028	325,000	2.370%	2.370%	100.000
	12/01/2029	330,000	2.470%	2.470%	100.000
	12/01/2030	340,000	2.570%	2.570%	100.000
	12/01/2031	345,000	2.660%	2.660%	100.000
		4,535,000			
Term Bond:					
	12/01/2032	355,000	3.000%	3.000%	100.000
	12/01/2033	365,000	3.000%	3.000%	100.000
	12/01/2034	380,000	3.000%	3.000%	100.000
	12/01/2035	390,000	3.000%	3.000%	100.000
	12/01/2036	400,000	3.000%	3.000%	100.000
		1,890,000			
		6,425,000			

Dated Date	08/01/2016	
Delivery Date	08/01/2016	
First Coupon	12/01/2016	
Par Amount	6,425,000.00	
Original Issue Discount		
Production	6,425,000.00	100.000000%
Underwriter's Discount	-51,400.00	-0.800000%
Purchase Price	6,373,600.00	99.200000%
Accrued Interest		
Net Proceeds	6,373,600.00	

# BOND DEBT SERVICE

Town of Avon, Colorado  
Certificates of Participation, Series 2016

\*\*\*\*\*  
Police Facility - Scenario 1 - Including architectural and engineering fees  
\*\*\*\*\*

Preliminary Rates as of February 18, 2015  
(20-years/AAA +50 bps)

Period Ending	Principal	Coupon	Interest	Debt Service
12/01/2016			46,990.83	46,990.83
12/01/2017	270,000	0.880%	140,972.50	410,972.50
12/01/2018	275,000	1.020%	138,596.50	413,596.50
12/01/2019	280,000	1.130%	135,791.50	415,791.50
12/01/2020	280,000	1.230%	132,627.50	412,627.50
12/01/2021	285,000	1.330%	129,183.50	414,183.50
12/01/2022	290,000	1.510%	125,393.00	415,393.00
12/01/2023	290,000	1.700%	121,014.00	411,014.00
12/01/2024	295,000	1.880%	116,084.00	411,084.00
12/01/2025	305,000	2.030%	110,538.00	415,538.00
12/01/2026	310,000	2.160%	104,346.50	414,346.50
12/01/2027	315,000	2.280%	97,650.50	412,650.50
12/01/2028	325,000	2.370%	90,468.50	415,468.50
12/01/2029	330,000	2.470%	82,766.00	412,766.00
12/01/2030	340,000	2.570%	74,615.00	414,615.00
12/01/2031	345,000	2.660%	65,877.00	410,877.00
12/01/2032	355,000	3.000%	56,700.00	411,700.00
12/01/2033	365,000	3.000%	46,050.00	411,050.00
12/01/2034	380,000	3.000%	35,100.00	415,100.00
12/01/2035	390,000	3.000%	23,700.00	413,700.00
12/01/2036	400,000	3.000%	12,000.00	412,000.00
	6,425,000		1,886,464.83	8,311,464.83

# BOND SUMMARY STATISTICS

## Town of Avon, Colorado Certificates of Participation, Series 2016

\*\*\*\*\*  
Police Facility - Scenario 1 - Including architectural and engineering fees  
\*\*\*\*\*

Preliminary Rates as of February 18, 2015  
(20-years/AAA +50 bps)

Dated Date	08/01/2016
Delivery Date	08/01/2016
Last Maturity	12/01/2036
Arbitrage Yield	2.563606%
True Interest Cost (TIC)	2.599542%
Net Interest Cost (NIC)	2.617086%
All-In TIC	2.761305%
Average Coupon	2.547670%
Average Life (years)	11.525
Duration of Issue (years)	9.843
Par Amount	6,425,000.00
Bond Proceeds	6,425,000.00
Total Interest	1,886,464.83
Net Interest	1,937,864.83
Total Debt Service	8,311,464.83
Maximum Annual Debt Service	415,791.50
Average Annual Debt Service	408,760.57
Underwriter's Fees (per \$1000)	
Average Takedown	
Other Fee	8.000000
Total Underwriter's Discount	8.000000
Bid Price	99.200000

Bond Component	Par Value	Price	Average Coupon	Average Life	PV of 1 bp change
Serial Bond	4,535,000.00	100.000	2.147%	8.662	3,465.50
Term Bond	1,890,000.00	100.000	3.000%	18.394	2,853.90
	6,425,000.00			11.525	6,319.40

	TIC	All-In TIC	Arbitrage Yield
Par Value	6,425,000.00	6,425,000.00	6,425,000.00
+ Accrued Interest			
+ Premium (Discount)			
- Underwriter's Discount	-51,400.00	-51,400.00	
- Cost of Issuance Expense		-70,000.00	
- Other Amounts		-29,090.13	-29,090.13
Target Value	6,373,600.00	6,274,509.87	6,395,909.87
Target Date	08/01/2016	08/01/2016	08/01/2016
Yield	2.599542%	2.761305%	2.563606%



# EXHIBIT B

## Draft Timetable for COP Issuance

\$\_\_\_\_\_\*

Town of Avon, Colorado  
 Certificates of Participation, Series 2016  
 Draft Timetable of Events  
 As of January 19, 2016

May-16						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

Jun-16						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

Jul-16						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

DATE	EVENT	RESPONSIBLE PARTY
5/3/16	Election	A
5/4/16	Kick-off/begin drafting legal documents	ALL
5/9/16	Send around first draft of legal documents	BC
5/11/16	First reading of POS/document review session	ALL
5/16/16	Comments on first draft of POS due to BC	ALL
5/19/16	Second document review session	ALL
5/23/16	Complete Legal and Offering Document Preparation	BC
5/25/16	Send Rating Agencies and Insurance Providers Information	U
5/31/16	<ul style="list-style-type: none"> <li>Rating Calls</li> <li>Packets Due for Second Reading</li> </ul>	A/U
6/8/16	<ul style="list-style-type: none"> <li>Receive Ratings</li> <li>Public Hearing, Second Reading of Ordinances</li> <li>Received bids back from rating agencies</li> </ul>	U
6/15/16	Post POS	BC
6/22/16	<ul style="list-style-type: none"> <li>Price Certificates of Participation</li> <li>Continued Public Hearing/Second Reading (if necessary)</li> </ul>	A
6/27/16	Post Final Official Statement	BC
6/30/16	Pre-Closing (30 Days after Final Readying for Referendum)	All
7/1/16	Closing and Delivery of Proceeds	All

A = Town of Avon  
 BC = Bond Counsel (Butler Snow)  
 U = Underwriter (Piper Jaffray)

\*Subject to Change

PiperJaffray®

COVER MEMOS ARE  
FOUND WITH AGENDA ITEM 4.1

ORDINANCE NO. 16-02  
FOLLOWS THIS NOTE

**TOWN OF AVON, COLORADO  
ORDINANCE NO. 16-02**

**AUTHORIZING THE FINANCING OF CERTAIN PUBLIC IMPROVEMENTS OF THE TOWN, AND IN CONNECTION THEREWITH AUTHORIZING THE LEASING OF CERTAIN TOWN PROPERTY AND THE EXECUTION AND DELIVERY BY THE TOWN OF A SITE LEASE, A LEASE PURCHASE AGREEMENT, A DISCLOSURE CERTIFICATE, A PRELIMINARY OFFICIAL STATEMENT AND OTHER DOCUMENTS AND MATTERS RELATING TO CERTAIN CERTIFICATES OF PARTICIPATION, SERIES 2016; SETTING FORTH CERTAIN PARAMETERS AND RESTRICTIONS WITH RESPECT TO THE FINANCING; AUTHORIZING OFFICIALS OF THE TOWN TO TAKE ALL ACTION NECESSARY TO CARRY OUT THE TRANSACTIONS CONTEMPLATED HEREBY; RATIFYING ACTIONS PREVIOUSLY TAKEN; AND PROVIDING OTHER MATTERS RELATED THERETO.**

**WHEREAS**, the Town of Avon, Eagle County, Colorado (the “Town”) is a duly organized and existing home rule municipality of the State of Colorado, created and operating pursuant to Article XX of the Constitution of the State of Colorado and the home rule charter of the Town (the “Charter”); and

**WHEREAS**, pursuant to Chapter XIV of the Charter, the Town is authorized to enter into one or more leases or lease-purchase agreements for land, buildings, equipment and other property for governmental or proprietary purposes; and

**WHEREAS**, the Town is authorized by Article XX, Section 6 of the Colorado Constitution, its Charter, and part 8 of Article 15 of title 31, Colorado Revised Statutes (“C.R.S.”), to enter into rental or leasehold agreements in order to provide necessary land, buildings, equipment and other property for governmental or proprietary purposes; and

**WHEREAS**, for the functions or operation of the Town, it is necessary that the Town finance the construction of buildings and improvements for a police station facility (“Police Station”) and the acquisition of real property if needed, as authorized by law, for police operations and other lawful Town purposes (collectively, the “Project”); and

**WHEREAS**, the Town owns, or will own, in fee title, the Site and the premises, buildings and improvements located thereon (the “Leased Property”), as further described in the Site Lease and the Lease (hereinafter defined); and

**WHEREAS**, the Town Council of the Town (the “Town Council”) has determined, and now hereby determines, that it is in the best interest of the Town and its inhabitants that the Town lease the Leased Property to UMB Bank, n.a., as trustee under the Indenture (the “Trustee”) pursuant to a Site Lease between the Town, as lessor, and the Trustee, as lessee (the “Site Lease”), and lease back the Trustee’s interest in the Leased Property pursuant to the terms of a

Lease Purchase Agreement (the “Lease”) between the Trustee, as lessor, and the Town, as lessee; and

**WHEREAS**, pursuant to the Lease, and subject to the right of the Town to terminate the Lease and other limitations as therein provided, the Town will pay certain Base Rentals and Additional Rentals (as such terms are defined in the Lease) in consideration for the right of the Town to use the Leased Property; and

**WHEREAS**, the Town’s obligation under the Lease to pay Base Rentals and Additional Rentals shall be from year to year only; shall constitute currently budgeted expenditures of the Town; shall not constitute a mandatory charge or requirement in any ensuing budget year; and shall not constitute a general obligation or other indebtedness or multiple fiscal year financial obligation of the Town within the meaning of any constitutional, charter, statutory limitation or requirement concerning the creation of indebtedness or multiple fiscal year financial obligation, nor a mandatory payment obligation of the Town in any ensuing fiscal year beyond any fiscal year during which the Lease shall be in effect; and

**WHEREAS**, the Trustee will enter into an Indenture of Trust (the “Indenture”) pursuant to which there is expected to be executed and delivered certain certificates of participation (the “Certificates”) dated as of their date of delivery that shall evidence proportionate interests in the right to receive certain Revenues (as defined in the Lease), shall be payable solely from the sources therein provided and shall not directly or indirectly obligate the Town to make any payments beyond those appropriated for any fiscal year during which the Lease shall be in effect; and

**WHEREAS**, the net proceeds of the Certificates are expected to be used to finance the Project; and

**WHEREAS**, there has also been presented to this meeting of the Town Council the form of Continuing Disclosure Certificate (the “Continuing Disclosure Certificate”); and

**WHEREAS**, there will be executed and distributed in connection with the sale of the Certificates an Official Statement (the “Official Statement”) in substantially the form of the Preliminary Official Statement (the “Preliminary Official Statement”) relating to the Certificates as approved by the Finance Director of the Town; and

**WHEREAS**, Section 11-57-204 of the Supplemental Public Securities Act, constituting Title 11, Article 57, Part 2, Colorado Revised Statutes, as amended (the “Supplemental Act”), provides that a public entity, including the Town, may elect in an act of issuance to apply all or any of the provisions of the Supplemental Act; and

**WHEREAS**, there has been presented to the Town Council and are on file at the Town offices the following: (i) the proposed form of the Site Lease; (ii) the proposed form of the Lease; and (iii) the proposed form of the Continuing Disclosure Certificate to be provided by the Town (the “Disclosure Certificate”); and

**WHEREAS**, capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Lease; 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** the following:

**Section 1. Short Title.** This ordinance shall be known and may be cited by the short title “2016 COP Ordinance.”

**Section 2. Recitals Incorporated.** The above and foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the Town Council.

**Section 3. Location.** The location of the Police Station shall be on a portion of Lot 1B, Buck Creek Subdivision, Avon, CO, (“Lot 1B Property”) if (1) the ballot question referred by the Eagle River Fire Protection District for financing of a regional fire station on the Lot 1B Property passes (“ERFPD Ballot Question”) and (2) the Eagle River Fire Protection District proceeds to construct its portion of the “Joint Facility” as described in the Intergovernmental Agreement for a Joint Fire-Police Station Facility between the Town of Avon and the Eagle River Fire Protection District, dated April 28, 2015 (“IGA”). If either the ERFPD Ballot Question does not pass or ERFPD does not proceed to construct its portion of Joint Facility in accordance with the IGA, then the Police Station may be constructed on any land owned or leased by the Town within the municipal boundaries of the Town of Avon.

**Section 4. Use.** The Police Station constructed with the certificate of participation financing authorized by this 2016 COP Ordinance may be used as a Town of Avon police station or any other lawful purpose.

**Section 5. Ratification and Approval of Prior Actions.** All action heretofore taken (not inconsistent with the provisions of this Ordinance) by the Town Council or the officers, agents or employees of the Town Council or the Town relating to the Site Lease, the Lease, the acquisition, construction, installation or improvement of the Project, and the execution and delivery of the Certificates is hereby ratified, approved and confirmed.

**Section 6. Finding of Best Interests.** The Town Council hereby finds and determines, pursuant to the Constitution, the laws of the State of Colorado and the Charter, that the acquisition, construction, and installation of the Project, and the financing of the costs thereof pursuant to the terms set forth in the Site Lease and the Lease are necessary, convenient, and in furtherance of the Town’s purposes and are in the best interests of the inhabitants of the Town and the Town Council hereby authorizes and approves the same.

**Section 7. Supplemental Act; Parameters.** The Town Council hereby elects to apply all of the provisions of the Supplemental Act to the Site Lease and the Lease and in connection therewith delegates to each of the Mayor, the Town Manager or the Finance Director the authority to make any determination delegable pursuant to §11-57-205(1)(a-i) of the Colorado Revised Statutes, as amended, in relation to the Site Lease and the Lease, and to execute a sale certificate (the “Sale Certificate”) setting forth such determinations, including without limitation, the term of the Site Lease, the rental amount to be paid by the Trustee pursuant to the Site Lease, the term of the Lease, and the rental amount to be paid by the Town pursuant to the Lease, subject to the following parameters and restrictions:

- (a) the term of the Site Lease shall not extend beyond 40 years;
- (b) the aggregate principal amount of the Base Rentals payable by the Town pursuant to the Lease shall not exceed \$6,500,000;
- (c) the Lease Term shall not extend beyond 30 years;
- (d) the maximum annual repayment cost of the Base Rentals under the Lease shall not exceed \$450,000, and the total repayment cost shall not exceed \$8,450,000; and
- (e) the maximum net effective interest rate on the interest component of the Base Rentals relating to the 2016 Certificates shall not exceed 3.50%.

Pursuant to §11-57-205 of the Supplemental Act, the Town Council hereby delegates to each of the Mayor, the Town Manager or the Finance Director the authority to sign a contract for the purchase of the Certificates or to accept a binding bid for the Certificates and to execute any agreement or agreements in connection therewith. In addition, each of the Mayor, the Town Manager or the Finance Director is hereby authorized to determine if obtaining an insurance policy for all or a portion of the Certificates is in the best interests of the Town, and if so, to select an insurer to issue an insurance policy, execute a commitment relating to the same and execute any related documents or agreements required by such commitment. Each of the Mayor, the Town Manager or the Finance Director is also hereby authorized to determine if obtaining a reserve fund insurance policy for the Certificates is in the best interests of the Town, and if so, to select a surety provider to issue a reserve fund insurance policy and execute any related documents or agreements required by such commitment.

The Town Council hereby agrees and acknowledges that the proceeds of the Certificates will be used to finance the costs of the Project and to pay other costs of issuance.

**Section 8. Approval of Documents.** The Site Lease, the Lease, and the Disclosure Certificate, in substantially the forms presented to the Town Council and on file with the Town, are in all respects approved, authorized and confirmed, and the Mayor or Mayor Pro Tem of the Town is hereby authorized and directed for and on behalf of the Town to execute and deliver the Site Lease, the Lease, and the Disclosure Certificate in substantially the forms and with substantially the same contents as presented to the Town Council, provided that such documents may be completed, corrected or revised as deemed necessary by the parties thereto in order to carry out the purposes of this Ordinance.

**Section 9. Approval of Official Statement.** A Preliminary Official Statement and a final Official Statement, in substantially the form of the Official Statement relating to the 2010 Certificates of Participation, which such updates and revisions as hereafter approved by the Mayor, the Town Manager or the Finance Director, and as hereafter presented to the Town Council and on file with the Town, is in all respects approved and authorized. The Mayor is hereby authorized and directed, for and on behalf of the Town, to execute and deliver the final Official Statement in substantially the form and with substantially the same content as the Preliminary Official Statement, with such changes as may be approved by the Town Manager or the Finance Director. The distribution of the Preliminary Official Statement and the final Official Statement to all interested persons in connection with the sale of the Certificates is hereby ratified, approved and authorized.

**Section 10. Authorization to Execute Collateral Documents.** No provision of this ordinance, the Site Lease, the Lease, the Indenture, or the Certificates, shall be construed as creating or constituting a general obligation or other indebtedness or multiple fiscal year financial obligation of the Town within the meaning of any constitutional, statutory or home rule charter provision, nor a mandatory charge or requirement against the Town in any ensuing fiscal year beyond the then current fiscal year. The Town shall have no obligation to make any payment with respect to the Certificates except in connection with the payment of the Base Rentals (as defined in the Lease) and certain other payments under the Lease, which payments may be terminated by the Town in accordance with the provisions of the Lease. Neither the Lease nor the Certificates shall constitute a mandatory charge or requirement of the Town in any ensuing fiscal year beyond the then current fiscal year or constitute or give rise to a general obligation or other indebtedness or multiple fiscal year financial obligation of the Town within the meaning of any constitutional, statutory or Charter debt limitation and shall not constitute a multiple fiscal year direct or indirect debt or other financial obligation whatsoever. No provision of the Site Lease, the Lease or the Certificates shall be construed or interpreted as creating an unlawful delegation of governmental powers nor as a donation by or a lending of the credit of the Town within the meaning of Sections 1 or 2 of Article XI of the Colorado Constitution. Neither the Lease nor the Certificates shall directly or indirectly obligate the Town to make any payments beyond those budgeted and appropriated for the Town's then current fiscal year.

**Section 11. No General Obligation Debt.** No provision of this Ordinance, the Site Lease, the Lease, the Indenture, the Certificates, the Preliminary Official Statement, or the final Official Statement shall be construed as creating or constituting a general obligation or other indebtedness or multiple fiscal year financial obligation of the Town within the meaning of any constitutional, statutory or Charter provision, nor a mandatory charge or requirement against the Town in any ensuing fiscal year beyond the then current fiscal year. The Town shall have no obligation to make any payment with respect to the Certificates except in connection with the payment of the Base Rentals (as defined in the Lease) and certain other payments under the Lease, which payments may be terminated by the Town in accordance with the provisions of the Lease. Neither the Lease nor the Certificates shall constitute a mandatory charge or requirement of the Town in any ensuing fiscal year beyond the then current fiscal year or constitute or give rise to a general obligation or other indebtedness or multiple fiscal year financial obligation of the Town within the meaning of any constitutional, statutory or Charter debt limitation and shall not constitute a multiple fiscal year direct or indirect debt or other financial obligation

whatsoever. No provision of the Site Lease, the Lease or the Certificates shall be construed or interpreted as creating an unlawful delegation of governmental powers nor as a donation by or a lending of the credit of the Town within the meaning of Sections 1 or 2 of Article XI of the Colorado Constitution. Neither the Lease nor the Certificates shall directly or indirectly obligate the Town to make any payments beyond those budgeted and appropriated for the Town's then current fiscal year.

**Section 12. Reasonableness of Rentals.** The Town Council hereby determines and declares that the Base Rentals due under the Lease, in the maximum amounts authorized pursuant to Section 3 hereof, constitute the fair rental value of the Leased Property and do not exceed a reasonable amount so as to place the Town under an economic compulsion to renew the Lease or to exercise its option to purchase the Trustee's leasehold interest in the Leased Property pursuant to the Lease. The Town Council hereby determines and declares that the period during which the Town has an option to purchase the Trustee's leasehold interest in the Leased Property (i.e., the entire maximum term of the Lease) does not exceed the useful life of the Leased Property. The Town Council hereby further determines that the amount of rental payments to be received by the Town from the Trustee pursuant to the Site Lease is reasonable consideration for the leasing of the Leased Property to the Trustee for the term of the Site Lease as provided therein.

**Section 13. No Recourse against Officers and Agents.** Pursuant to §11-57-209 of the Supplemental Act, if a member of the Town Council, or any officer or agent of the Town acts in good faith, no civil recourse shall be available against such member, officer, or agent for payment of the principal, interest or prior redemption premiums on the Certificates. Such recourse shall not be available either directly or indirectly through the Town Council or the Town, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise. By the acceptance of the Certificates and as a part of the consideration of their sale or purchase, any person purchasing or selling such Certificate specifically waives any such recourse.

**Section 14. Repealer.** All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revise any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

**Section 15. 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 16. Interpretation.** This Ordinance shall be so interpreted and construed as to effectuate its general purpose.

**Section 17. Charter Controls.** Pursuant to Article XX of the State Constitution and the Charter, all State statutes that might otherwise apply in connection with the provisions of this Ordinance are hereby superseded to the extent of any inconsistencies or conflicts between the provisions of this Ordinance and the Sale Certificate authorized hereby and such statutes. Any such inconsistency or conflict is intended by the Town Council and shall be deemed made pursuant to the authority of Article XX of the State Constitution and the Charter.

**Section 18. Effective Date, Recording, and Authentication.** This Ordinance shall be effective only in the event that it is approved by the voters of the Town at a May 3, 2016, special election. This Ordinance shall be numbered and recorded in the official records of the Town kept for that purpose, and shall be authenticated by the signatures of the Mayor and Mayor Pro-Tem and Town Clerk, and published in accordance with law.

**Section 19. Safety Clause.** The Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town, 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 20. Publication.** The Town Clerk is ordered to publish this Ordinance in accordance with Chapter 1.16 of the Avon Municipal Code.

**INTRODUCED AND ADOPTED ON FIRST READING AND REFERRED TO PUBLIC HEARING** on February 23, 2016 and setting such public hearing for March 8, 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 March 8, 2016.

BY:

ATTEST:

\_\_\_\_\_  
Jennie Fancher, Mayor

\_\_\_\_\_  
Debbie Hoppe, Town Clerk

APPROVED AS TO FORM:

Eric J. Heil, Town Attorney

STATE OF COLORADO     )  
  )  
COUNTY OF EAGLE        ) SS.  
  )  
TOWN OF AVON             )

I, Debbie Hoppe, the Town Clerk of the Town of Avon, Colorado (the “Town”), do hereby certify:

I, the duly elected, qualified, and acting Town Clerk of the Town of Avon, Colorado (the “Town”), do hereby certify that:

(1) The foregoing pages are a true, correct and complete copy of an ordinance (the “Ordinance”) that was introduced, approved on first reading and ordered published in full in accordance with the Town Charter (the “Charter”) by the Town Council at a regular meeting thereof held on February 23, 2016, and was introduced, approved on second and final reading, and ordered published in full in accordance with the Charter on March 8, 2016, which Ordinance has not been revoked, rescinded or repealed and is in full force and effect on the date hereof.

(2) The Ordinance was duly moved and seconded, and the Ordinance was approved on first reading, at the meeting of February 23, 2016, by an affirmative vote of a majority of the membership of the entire Town Council as follows:

<u>Councilmember</u>	Voting “Yes”	Voting “No”	Absent	Abstaining
Jennie Fancher				
Jake Wolf				
Megan Burch				
Matt Gennett				
Sarah Smith Hymes				
Scott Prince				
Buz Reynolds				

(3) The Ordinance was duly moved and seconded, and the Ordinance was approved on second and final reading, at the meeting of March 8, 2016, by an affirmative vote of a majority of the membership of the entire Town Council as follows:

<u>Councilmember</u>	Voting “Yes”	Voting “No”	Absent	Abstaining
Jennie Fancher				
Jake Wolf				
Megan Burch				
Matt Gennett				
Sarah Smith Hymes				
Scott Prince				
Buz Reynolds				

(4) The members of the Town Council were present at such meetings and voted on the passage of such Ordinance as set forth above.

(5) The Ordinance was authenticated by the signature of the Mayor, sealed with the Town seal, attested by the Town Clerk, and recorded in the minutes of the Town Council.

(6) There are no bylaws, rules or regulations of the Town Council that might prohibit the adoption of the Ordinance.

(7) Notices of the meetings of February 23, 2016, and March 8, 2016, in the forms attached hereto as **Exhibit A** were posted at the Town Hall not less than 24 hours prior to each meeting in accordance with law.

(8) On \_\_\_\_\_, 2016, and \_\_\_\_\_, 2016, the Ordinance was published by title only in the Vail Daily, a newspaper of general circulation in the Town, in accordance with the Charter and Chapter 1.16 of the Avon Municipal Code. Affidavits of publication are attached hereto as **Exhibit B**.

WITNESS my hand and the seal of the Town affixed on \_\_\_\_\_, 2016.

[ S E A L ]

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Town Clerk

## EXHIBIT A

(Attach Notices of Meetings of February 23, 2016 and March 8, 2016)

**EXHIBIT B**

**(Affidavits of Publication)**



## **TOWN COUNCIL REPORT**

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

Meeting Date: February 23, 2016

Agenda Topic: Resolution No. 16-01 Designating Locations for Posting Notices of Public Meetings

C.R.S. Section 24-6-402(2)(c) requires that a municipality's posting places must be designated at the first regular meeting of the calendar year as part of Colorado's "Open Meetings Law". Resolution No. 16-01 is presented to satisfy this requirement whereby it identifies three public locations used for posting notices of Avon's public meetings in addition to the Town's website.

### **PROPOSED MOTION**

"Move to approve Resolution No. 16-01 Designating Locations for Posting Notices of Public Meetings."

**TOWN OF AVON, COLORADO  
RESOLUTION NO. 16-01**

**RESOLUTION DESIGNATING THE LOCATIONS  
FOR POSTING THE NOTICES OF PUBLIC MEETINGS**

**Whereas**, Local Public Bodies, including the Avon Town Council, are required by Subsection 24-6-402 (2)(c) C.R.S., to designate annually at the Town Council's first regular meeting of each calendar year, the place at which notice will be posted at least 24 hours prior to each meeting.

**NOW, THEREFORE BE IT RESOLVED BY THE AVON TOWN COUNCIL AS FOLLOWS:**

Notice of meetings of the Town Council required pursuant to Section 24-6-401, et seq., C.R.S. shall be posted within the boundaries of the Town at least 24 hours prior to each meeting at the following locations:

Avon Town Hall, One Lake Street  
Avon Recreation Center, 90 Lake Street,  
Avon Public Library, 200 Benchmark Road  
Town of Avon website @ [www.avon.org](http://www.avon.org)

**ADOPTED THIS 23RD DAY OF FEBRUARY 2016.**

**TOWN COUNCIL  
TOWN OF AVON, COLORADO**

\_\_\_\_\_  
Jennie Fancher, Mayor

**Attest:**

\_\_\_\_\_  
Debbie Hoppe, Town Clerk





**TOWN OF AVON, COLORADO**  
**AVON MEETING MINUTES FOR TUESDAY, FEBRUARY 9, 2016**  
AVON TOWN HALL, ONE LAKE STREET

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**1. CALL TO ORDER & ROLL CALL**

Mayor Fancher called the meeting to order at 5:05 p.m. A roll call was taken and Council members present were Jake Wolf, Matt Gennett, Megan Burch, Scott Prince and Sarah Smith Hymes. Buz Reynolds was absent. Also present were Town Manager Virginia Egger, Town Attorney Eric Heil, Assistant Town Manager Scott Wright, Planning Director Matt Pielsticker, Police Chief Bob Ticer, Executive Assistant to the Town Manager Preston Neill and Town Clerk Debbie Hoppe.

**2. APPROVAL OF AGENDA**

Mayor Fancher requested action item 5.1 be reviewed before works session item 4.1. Council agreed to the change.

**3. PUBLIC COMMENT**

No public comments were made.

**4. WORK SESSION**

4.1. REVIEW OF REPORT ON TOWN OF AVON SALES TAX ON BUILDING MATERIALS (ASSISTANT TOWN MANAGER SCOTT WRIGHT, TOWN MANAGER VIRGINIA EGGER, TOWN ATTORNEY ERIC HEIL)  
Michael Cacioppo, Angelo Loria and Roger Benedict commented.

**5. ACTION ITEMS**

5.1. CONSIDERATION OF FOURTH AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT WITH EAGLE RIVER FIRE PROTECTION DISTRICT TO WAIVE FEES RELATED TO THE CONSTRUCTION OF THE JOINT PUBLIC SAFETY FACILITY (TOWN ENGINEER JUSTIN HILDRETH)

Mayor Pro Tem Wolf moved to approve the Fourth Amendment to the Intergovernmental Agreement for a Joint Fire-Police Station Facility between the Town of Avon and the Eagle River Fire Protection District, which waives Building Permit fees and planning review fees, and allocates the payment of the Town of Avon Water Tap Fee to offset the actual water infrastructure costs for the project. Action on the request to waive the Exterior Energy Offset Program fee will be delayed until the results of the geothermal feasibility study is completed. Councilor Burch seconded the motion and it passed unanimously by those present. Councilor Reynolds was absent.

5.2. APPROVAL OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF AVON AND EAGLE COUNTY FOR PLAN4HEALTH PROJECT (TOWN ATTORNEY ERIC HEIL)

Councilor Gennett moved to approve the Intergovernmental Agreement between the Town of Avon and Eagle County for Plan4Health Project; Mayor Pro Tem Wolf seconded the motion and it passed unanimously by those present. Councilor Reynolds was absent.



**TOWN OF AVON, COLORADO**  
**AVON MEETING MINUTES FOR TUESDAY, FEBRUARY 9, 2016**  
AVON TOWN HALL, ONE LAKE STREET

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5.3. RESOLUTION NO. 16-02, A RESOLUTION INITIATING ANNEXATION PROCEEDINGS AND SETTING A PUBLIC HEARING FOR THE ANNEXATION OF UPPER EAGLE RIVER WATER AUTHORITY MOUNTAIN STAR WATER TANK PROPERTY (TOWN ATTORNEY ERIC HEIL)

Jason Cowles commented.

Councilor Smith Hymes moved to approve Resolution No. 16-02, Initiating Annexation of the Mountain Star Water Tanks Site Property, finding the petition for annexation to be in substantial compliance, and setting a public hearing; Mayor Pro Tem Wolf seconded the motion and it passed unanimously by those present. Councilor Reynolds was absent.

5.4. MINUTES FROM JANUARY 26, 2016 MEETING (TOWN CLERK DEBBIE HOPPE)

Councilor Burch moved to approve the minutes from the January 26, 2016 meeting. Councilor Gennett seconded the motion and it passed unanimously by those present. Councilor Reynolds was absent.

**6. WRITTEN REPORTS**

**7. COMMITTEE MEETING UPDATES: COUNCILORS AND MAYOR**

**8. MAYOR & COUNCIL COMMENTS**

**9. ADJOURNMENT**

There being no further business to come before the Council, the regular meeting adjourned at 7:14 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

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**TOWN OF AVON, COLORADO**  
**TOWN COUNCIL RETREAT MEETING MINUTES FOR FRIDAY, FEBRUARY 12, 2016**  
AVON REGIONAL TRANSPORTATION FACILITY, 500 SWIFT GULCH ROAD

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**1. CALL TO ORDER & ROLL CALL**

Mayor Fancher called the meeting to order at 11:05 a.m. A roll call was taken and Council members present were Megan Burch, Matt Gennett, Jake Wolf, Scott Prince and Sarah Smith Hymes. Buz Reynolds was absent. Also present were Town Manager Virginia Egger, Town Attorney Eric Heil, Assistant Town Manager Scott Wright and Executive Assistant to the Town Manager Preston Neill.

**2. WORK SESSION**

- 2.1. TOWN COUNCIL MEETINGS
- 2.2. SPLIT VOTES
- 2.3. TOWN COUNCIL MINUTES
- 2.4. STRATEGIC PLAN
- 2.5. FESTIVAL SPONSORSHIP POLICY
- 2.6. NEXT RETREAT MEETING DATE

Councilor Reynolds joined the meeting at 12:28 p.m.

Councilor Reynolds left the meeting at 2:02 p.m.

**3. ADJOURNMENT**

There being no further business to come before the Council, the retreat adjourned at 4:55 p.m.

**RESPECTFULLY SUBMITTED:**

\_\_\_\_\_  
Preston Neill, Executive Assistant to the Town Manager

**APPROVED:**

Jennie Fancher	_____
Jake Wolf	_____
Matt Gennett	_____
Megan Burch	_____
Albert "Buz" Reynolds	_____
Scott Prince	_____
Sarah Smith Hymes	_____



## TOWN COUNCIL REPORT

To: Honorable Mayor Jennie Fancher and Avon Town Council  
From: Virginia C. Egger, Town Manager

Meeting Date: February 23, 2016

### Agenda

Topic: Review of *Report on Town of Avon Sales Tax on Building Materials*  
(Town Manager Virginia Egger, Assistant Town Manager Scott Wright,  
Town Attorney Eric Heil)

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### **ACTION BEFORE COUNCIL**

Town Council reviewed the attached *Report on the Town of Avon Sales Tax on Building Materials* at a February 9, 2016, Work Session. At the conclusion of the Work Session, the Council indicated that no action to exempt or change the tax would be considered based on the *Report*. The Council did discuss options to dedicate all or a portion of the collected taxes to an affordable/worker housing fund or project; and, developing an ordinance to automatically exempt the building materials sales tax on public facilities. In addition, staff recommendations in the *Report* were understood to be implemented as soon as possible.

In scheduling the February 9<sup>th</sup> Work Session, Mayor Jennie Fancher was aware that Councilor Buz Reynolds would not be able to attend the meeting. Mayor Fancher agreed to hold the February 9<sup>th</sup> Work Session, and then another Work Session on the topic, when Councilor Reynolds would be present on February 23<sup>rd</sup>. Interested members of the public, who had attended the January 12, 2016, Work Session on the topic, were also noticed that a Work Session would be held on February 23<sup>rd</sup>.

Council action is a review of the *Report* and direction to staff as desired.



**THE TOWN OF AVON**

**SALES TAX REPORT**

**ON**

**BUILDING MATERIALS**

INCLUDING  
COLLECTION DATA, LEGAL REVIEW, TAX RELIEF OPTIONS,  
FINANCIAL INFORMATION AND  
ADMINISTRATION RECOMMENDATIONS

Prepared for the February 9, 2016  
regular meeting of the  
Avon Town Council

Town Attorney Eric J. Heil  
Assistant Town Manager Scott Wright  
Town Manager Virginia Egger

## EXECUTIVE SUMMARY

This Sales Tax Report on Building Materials ("**Report**") has been requested by Mayor Jennie Fancher, on behalf of the Avon Town Council. The purpose of this Report is to provide additional information and background on the Town's past and present administrative procedures related to sales tax collection, relevant financial information, legal analysis and response to various questions, potential options for amending Town's sales tax regulations and recommendations regarding additional improvements to Town's administrative procedures as relates to sales tax collections on Building Materials. For the purposes of this Report, "**Building Materials**" includes "construction materials" and "tangible personal property" (as defined in the Town's sales tax regulations) which are related to building projects.

This Report is based on sales tax reporting information available to the Town. The Town has adopted the Colorado Municipal Records Retention Schedule and therefore only has sales tax reporting information as far back as 2010. Sales tax reporting information prior to 2010 has been destroyed in accordance with the Colorado Municipal Records Retention Schedule procedures.

Sales tax reporting information is required to be filed by a Retailer who has obtained a sales tax license. Sales tax reporting information indicates the total quantity of retail sales (i.e. gross retail sales) within the Town of Avon for a given period but does not specify the identity of individual purchasers (or contractors or suppliers in the case of building projects). The Town does have business address information for Retailers and can determine in-town Retailers from out-of-town Retailers. The Town also categorizes business licenses according to industry and can determine which Retailers sell Building Materials.

Although certain large isolated sales of Building Materials by out-of-town Retailers can be attributed to large building projects anecdotally, the Town does not require individual building projects to report the Building Materials purchased and the sales tax paid. Rather, in accordance with State law, the primary obligation to impose, collect, remit and report sales tax is on the Retailer and not the building contractor. ***Town's records indicate that the Town has collected sales tax on Building Materials from numerous out-of-town Retailers throughout the period of available sales tax reporting information. (see below - Executive Summary Table – Out-of-Town Retailers of Building Materials)***

The Town's administrative procedures to impose and collect sales tax on Building Materials and other tangible personal property has evolved and progressed, especially since 2010. As described in the Town Attorney's legal memorandum for the January 12, 2016 Council meeting, the law concerning the imposition of sales tax on materials delivered into a local government taxing jurisdiction changed with the 1992 U.S. Supreme Court case of *Quill Corp. v. North Dakota* and the 2010 Colorado Appellate Court case of *Leggett & Platt, Inc. v. Ostrom*. Collectively, these cases ruled that it is legally permissible to impose municipal sales tax on goods delivered into a municipality.<sup>1</sup>

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<sup>1</sup> The *Quill Corp.* case re-affirmed a "bright line" exception that goods delivered by common carrier where no other business connection existed were not subject to sales tax at the point of delivery.

peer communities, including the Town of Breckenridge, and explores methods of improving administrative procedures to promote greater awareness and compliance with the Town's sales tax regulations. From 2012 through 2015, the Finance Department adopted improved administrative procedures to notify contractors, sub-contractors and suppliers of the Town's sales tax requirements and applicability of the Town's sales tax to Building Materials delivered into Avon. The Finance Department implemented MUNIRevs software in 2014 and Town Council adopted revisions to business licensing regulations by Ordinance No. 15-02. These two actions expanded the Town's ability to identify businesses operating in Avon and the Town's ability to notify such businesses of Town's sales tax requirements. ***The number of business licenses issued to out-of-town Retailers selling Building Materials in Avon increased from 2010 to 2015 due to Town's improvements to its administrative procedures and notifications and due to the overall increase in building activity in Avon.***

The sales tax collected on Building Materials from out-of-town Retailers as relates to overall construction activity for years 2010-2015 is summarizes as follows:

<b>EXECUTIVE SUMMARY TABLE</b>			
<b>OUT-OF-TOWN RETAILERS OF BUILDING MATERIALS</b>			
<b>Year</b>	<b>Number of Out-of-Town Retailers of Building Materials filing Sales Tax Reports</b>	<b>Sales Tax Collected from Out-of-Town Retailers of Building Materials</b>	<b>Total Building Activity by Valuation</b>
2010	47	\$ 44,218.85	\$13,021,586
2011	51	\$ 57,873.18	\$ 9,334,790
2012	52	\$ 72,747.72	\$13,848,500
2013	85	\$100,061.95	\$36,149,636
2014	105	\$318,821.24	\$15,235,900
2015	118	\$311,607.95	\$34,999,261

*Building Activity by Valuation is based on building permit information. The purchase of Building Materials at retail and remittance of the associated sales tax for such Building Materials may occur in the succeeding year or later depending upon the timing and progress of the building project.*

Council has the legislative authority to enact a variety of options to exempt, credit or rebate sales tax imposed on Building Materials generally or upon Building Materials sold by out-of-town Retailers and delivered into Avon. The financial impact of not collecting sales tax on Building Materials delivered into Avon is dependent upon the level of construction activity. ***The projected reduction in sales tax revenue in future years is estimated to average \$300,000 annually based upon the amount of sales tax collected in 2014 and 2015.***

The Town provides a sales tax credit on "taxable transactions" in The Village (at Avon) that corresponds to a public improvement fee imposed in the Village (at Avon). The public improvement fee on retail sales is the most significant revenue source for Traer Creek Metropolitan District. ***Legislative action to provide an exemption from sales tax for Building Materials delivered into the Village (at Avon) may reduce the future potential***

***revenues of Traer Creek Metropolitan District.***

Finally, uniformity in taxation of retail transactions is widely considered to be fair, efficient, beneficial and preferred, both at the state level and national level. ***Sales tax exemptions or tax relief which are not uniform across Avon and other jurisdictions can result in a competitive disadvantage for some Retailers.***

This Report is organized into six sections, described as follows:

**I. SALES TAX COLLECTIONS ON BUILDING MATERIALS**

This section includes basic terms and definitions; a chronology of the Town's administrative efforts to collect sales tax on Building Materials; a description of the licensing, collection and reporting process; and, an overview of enforcement practices. Also included are examples of forms and collection letters as attached exhibits.

**II. LEGAL**

Town Attorney Eric J. Heil addresses legal questions raised at the January 12, 2016, Council meeting regarding tax policy change, TABOR issues, the 2002 Use Tax Ballot question, Village at (Avon) Annexation and Development Agreement, and legal considerations concerning potential legislative options to amend the Town's sales tax regulations.

**III. SUMMARY OF FINANCIAL INFORMATION**

Two detailed reports are included in this section. The first is a summary of sales tax collections related to Building Materials and the number of return filers from 2010-2015. The second report is a ten-year summary of building permit activity within the Town of Avon. In addition, two credit ratings reports, from Standard & Poor's and Moody's, providing credit opinions on the Town of Avon, are included along with a general discussion based on their comments.

**IV. LEGISLATIVE OPTIONS**

This section identifies and discusses an array of options the Town Council may consider for a sales tax on Building Materials, considerations for potential outcomes of the option, and additional questions that may be raised in considering the action.

**V. RECOMMENDATIONS FOR SALES TAX ADMINISTRATION IMPROVEMENT**

This section details staff's recommendations for additional efforts to improve administration of the Town sales tax on Building Materials.

**VI. EXHIBITS**

The following Exhibits referred to in the above sections.

1. Exhibit 1 – Supplier Verification Form
2. Exhibit 2 – Contractor Letter
3. Exhibit 3 – 1<sup>st</sup> Delinquency Letter
4. Exhibit 4 – 2<sup>nd</sup> Delinquency Letter
5. Exhibit 5 – Standard & Poor's Rating Opinion Letter
6. Exhibit 6 – Moody's Rating Opinion Letter
7. Table 1 – Sales Tax Collections Related to Building Materials
8. Table 2 – Commercial and Residential Construction



## SECTION I SALES TAX COLLECTIONS ON BUILDING MATERIALS

### Terms and Definitions:

- **Person** means an individual or any recognized legal entity.
- **Retailer** means any person selling tangible personal property at retail.
- **Sales Taxpayer** means a person buying taxable goods from a Retailer.
- **Business License** means a license required by the Town for any person engaged in business in the Town.
- **Sales Tax License** means the license required by the Town for any person engaged in the business of making retail sales within the Town.

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### Chronology of Efforts to Enhance Sales Tax Compliance

#### 2010

- Electronic Business Licenses & Sales Tax Records on File - The Records Retention Act, established by the Colorado State Archives, which is authorized by Colorado State Statute, and adopted by the Town of Avon, directs the disposition schedules of public documents.
  - a. Sales Tax Return Records: Required to be retained for four (4) years after filing of the return. Electronic records are currently on file for years beginning in 2010. Since 2010, the Town no longer accepts paper returns. Paper returns, prior to 2010, have been destroyed in compliance with the Records Retention Act.
  - b. Business Licenses: Required to be retained for two (2) years after expiration. Electronic records are currently on file for years beginning in 2014. Prior to March, 2015, only contractors and subcontractors, with a fixed location in Avon, were required to have a Business License.
- Town administration relies on Retailers and businesses to understand that business licensing, sales tax licensing and other regulations apply when commencing or engaging in business in Avon.
- Town's website includes informational links both on the [www.avon.org](http://www.avon.org) homepage under the button "Online Payments", as well as under the Finance Department's page.
- Enforcement is practiced on a limited basis when license holders fail to file a return, returns appear inconsistent when filed, or the Finance Department becomes aware of a Retailer who did not have a Business License.

## **2012- 2013**

- Town hires new Accounting Assistant – Additional duties included sales tax administration.
- Town staff attends Colorado Tax Audit Professionals meetings. Among current topics, discussions include how to ensure the enforcement and collection of sales taxes on construction projects due to the increase in building activity coming out of the great recession.
- Town staff researches the Town of Breckenridge process, which also has a sales tax on Building Materials and no use tax.
- Finance Director and Town Attorney agree that a process similar to the Town of Breckenridge for identifying suppliers and contractors on large building projects, called a "*Supplier Verification Form*" should be implemented in Avon.
- May, 2013 – Town of Avon Building Official notifies in writing all Building Permit recipients of the Town's sales tax requirements at the time of Building Permit issuance. General Contractors are given a general information letter and form – see Exhibits 1 and 2.
- Town purchases MUNIRev software for sales tax administration.
- Building Permits begin to increase with better economy. Wyndham project is approved and is a significant construction project with delivery of many Building Materials. Town staff contacts the contractor, and subsequently all its subcontractors and suppliers, to promote awareness of the Town's sales tax requirements and applicability to delivered Building Materials.

## **2014**

- Business License administration is re-organized, with the Finance Department becoming responsible for all aspects of Business License administration, which was previously the duty of the Town Clerk's office.
- Finance Department begins the process of transferring the administration of the licensing into new MUNIRevs software. This change of administration oversight brought together all information needed to identify, track and monitor businesses and sales tax remittance.
- The website is updated to list the MUNIRevs telephone number prominently on the web page and to describe the processes for obtaining a Business License and Sales Tax License.

## **2015**

- In March, 2015, the Town Council adopted Ordinance No. 15-02 which cross-referenced the sales tax definition of “doing business in Town” for uniformity and thus required anyone doing business in Town to obtain a Business License. Previously, only businesses with physical locations in Town were required to get a Business License.
- The revision to the Business License regulations in early 2015 resulted in the issuance of Business Licenses to approximately 347 new businesses. Many of the new Business Licenses are related to the building industry, including both Retailers of Building Materials, contractors and sub-contractors. Contractors with an address outside of Avon who do business in Avon must now obtain a Business License in addition to obtaining a Contractor’s License.
- Contractors are set up in the MUNIREvs with sales tax forms on either a monthly or quarterly basis (unless the Finance Department has been informed by the contractor that the respective business operations are not subject to Avon sales tax (i.e. service-related only)). If there are no taxable transactions, a business with a Sales Tax License must still file a sales tax return indicating zero amount due.
- For 2015, the Finance Department has collected a total of \$76,675 in Business License fees for all businesses compared to \$22,300, in 2014.

## **SUMMARY:**

The changes to the Town’s Business License Regulations in the Avon Municipal Code and changes to administrative procedures along with an overall increase in economic activity and building activity have resulted in an increase in the number of Business Licenses and Sales Tax Licenses held by out-of-town Retailers of Building Materials. The number of in-town Retailers of Building Materials has remained comparatively stable over the last six years. The legislative and administrative changes over the last several years have resulted in a greater number of Business Licenses and Sales Tax Licenses for businesses “doing business in Avon” have thereby advanced uniformity in the application of the Town’s sales tax. The change in Business Licenses and Sales Tax Licenses for Retailers of Building Materials is summarized as follows:

<b>Year</b>	<b>In-Town Retailers</b>	<b>Out-of-Town Retailers</b>	<b>Sales Tax from In-Town Retailers</b>	<b>Sales Tax from Out-of-Town Retailers</b>	<b>Total Building Activity by Valuation</b>
<b>2010</b>	14	47	\$166,154	\$ 44,219	\$13,021,586
<b>2011</b>	14	51	\$180,254	\$ 57,873	\$ 9,334,790
<b>2012</b>	15	52	\$258,565	\$ 72,748	\$13,848,500
<b>2013</b>	18	85	\$237,766	\$100,062	\$36,149,636
<b>2014</b>	16	105	\$282,976	\$381,821	\$15,235,900
<b>2015</b>	21	118	\$331,503	\$311,608	\$34,999,261

**Process for Business Licenses, Sales Tax Notification, Collection & Enforcement**  
**(May, 2013 – Present)**

With the implementation of MUNIRevs, the Town's online licensing and sales tax collection system, obtaining a Business License, Sales Tax License, filing of returns, and payment of taxes is all accomplished in one place.

- Registration of a business is accomplished through the process of obtaining a Business License. A Sales Tax License must be performed prior to opening the business and making retail sales. Business License fees vary depending on the location and type of business. There is no fee to obtain a Sales Tax License.
- Detailed information and instructions for registration are found on the Town of Avon website ([www.avon.org](http://www.avon.org)) under both the Business License and Sales Tax links under the Home Page drop-down screen for Departments. In addition, there is specific information regarding the collection of sales tax on materials delivered to job sites within the Town. This information has been available since 2014.
- There are also informational links both on the [www.avon.org](http://www.avon.org) homepage under the button "Online Payments" as well as under the Finance Department's page to the MUNIRevs registration site. In addition, the MUNIRevs telephone number is shown prominently on the web page and throughout the process for obtaining the Business and Sales Tax Licenses.
- Once a Sales Tax License is issued, the Retailer must file a sales tax return, which includes the payment of tax. This process is performed online. The Retailer is required to report the amount of gross taxable sales made for the reporting period, the amount of returned goods, and the amount of retail sales that are exempt from taxation.<sup>2</sup>
- Sales tax returns are due by the 20<sup>th</sup> day of the month for the sales activities occurring in the preceding calendar month. The Finance Department does allow quarterly and annual filing of returns for those businesses that do not have minimal retail sales activity.
- It is the duty of each Retailer who obtains a Sales Tax License to keep and preserve adequate records of sales and such other books and accounts necessary to determine the amount of sales tax. Such books and records of the Retailer may be examined at any time by the Director of Finance and must be kept for a period of three (3) years.<sup>3</sup>

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<sup>2</sup> AMC 3.08.120(b)

<sup>3</sup> AMC 3.08.200

## **Enforcement**

Enforcement of the Town's sales tax regulations generally follows these steps:

1. **Written Notice:** Written notice of a failure to file is sent out through the mail on approximately the 1<sup>st</sup> of the month following the due date of the return. After approximately 30 additional days, subsequent mailings are sent out under the Town Attorney's signature for failure to respond or file. Copies of these collection letters are attached as Exhibits 3 and 4.
2. **Municipal Court Complaint:** If a business does not respond to the Town's multiple letter requests then a municipal court citation is issued and/or a sales tax lien is placed on a business. Often, the Sales Taxpayer is instructed by the Court to work out a payment plan with the Finance Department. On only two occasions over the past twenty years has the Finance Director issued a distraint warrant to the County Sheriff. A distraint warrant is an order to seize and sell personal property for payment of delinquent tax amounts due. The Town works cooperatively with the Colorado Department of Revenue in matters involving collection of state sales tax delinquency.
3. **Audits:** The Finance Director is responsible for examining returns. The Director performs an initial examination of returns as taxes are remitted to determine if the sales tax remittance is unusual or unexpected considering the nature of the business. The Director has authority to order an investigation (i.e. audit) of the Retailer's books.<sup>4</sup>

Audits are sometimes conducted as group audits of large Retailers with other municipalities. Audits may also occur for a select number of specific businesses within the Town. Businesses are selected based upon size of the business and/or concerns identified by sales tax reports. The use of audits is relatively rare in Avon. The Town has not adopted formal programmatic random audits for each business category in a manner similar to larger urban municipalities.

In 2015, the Finance Department ordered audits of seven companies (none of these audits involved any Retailers selling Building Materials). Four of the audits found that the Retailer was in compliance. The other three audits resulted in additional tax assessments of \$22,549.58. The total cost of these audits was \$13,919. The Town has not conducted any recent audits of Building Materials suppliers or contractors.

An audit is the only administrative procedure that authorizes the Town to obtain additional information on specific retail transactions beyond the general reporting of gross retail sales. Information obtained from audits is confidential, except that the Town may publish statistics if, "so classified as to prevent the identification of particular reports or returns or items thereof".<sup>5</sup>

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<sup>4</sup> AMC 3.08.170

<sup>5</sup> AMC 3.08.200

## SECTION II LEGAL

**SUMMARY:** This **Section II – Legal** has been prepared by Eric J. Heil, Avon Town Attorney. Avon Town Council met on January 12, 2016 to review administration of the Town’s sales tax on building projects in Avon. Specifically, Council discussed and reviewed the application of the Town’s sales tax to Building Materials sold by out-of-town Retailers and delivered in Avon. Several additional legal questions were raised at this meeting which are addressed in this Section.

The conclusions in this **Section II - Legal** are summarized as follows:

- *Town staff has an affirmative duty to administer and enforce sales tax as is legally permissible.*
- *A change in administrative procedures to increase sales tax compliance does not constitute a tax policy change requiring advance voter approval where Town voters have previously approved the Town’s authority to exceed revenue limits set forth by TABOR.*
- *The legal effect of enacting “tax exemptions” versus “tax credits” versus “tax rebates” should be understood because each results in different restrictions on the legislative discretion of future Town councils.*
- *The voter rejection of the referred Use Tax ballot question in 2002 does not affect, restrict or diminish the Town’s legal authority to impose and collect the sales tax under the Town’s sales tax regulations and authority.*
- *The enactment of any exemption, tax credit or tax rebate for Building Materials will likely have a financial affect on the Village (at Avon). The degree of financial affect and potential financial impact depends upon the scope of such exemption, credit or rebate.*
- *The Town Council has broad discretion to enact exemptions, credits and rebates on sales tax imposed on Building Materials provided that such tax relief is (1) for a public purpose, (2) does not discriminate against a protected class and (3) does not discriminate against interstate commerce, thereby violating the dormant commerce clause.*
- *The Town is not liable for refunds of any past sales taxes imposed and collected on Building Materials if Council adopts legislation to provide an exemption, credit or rebate of sales tax on Building Materials.*

Specific legal topics are discussed as follows:

**TOWN’S DUTY TO ADMINISTER AND ENFORCE SALES TAX:** Chapter 3.08 – Sales Tax includes several provisions for enforcement and administration of the Town’s sales tax regulations. **Section 3.08.290 – Administration** states, “The administration of all the provisions of this Chapter is vested in the Director of Finance, who may, with the approval



of the Town Manager, prescribe forms and reasonable rules and regulations in conformity with this Chapter for the making of returns, for the ascertainment, assessment and collection of the taxes imposed hereunder, and for the proper administration and enforcement hereof, a copy of which forms, rules and regulations shall be made available to the public.” The **Avon Home Rule Charter, Section 8.3 Powers and Duties**, states the Town Manager’s first power and duty as, “(a) be responsible for the enforcement of laws and ordinances of the Town.” The Town Staff, by and through the Town Manager, has a general affirmative duty to administer and enforce the collection of sales tax.

**TAX POLICY CHANGE:** The Taxpayer’s Bill of Rights (“TABOR”) was an amendment to the Colorado constitution adopted in 1992 that established a variety of circumstances related to increases in revenue, taxation and debt that required prior voter approval. Article X, Section 20(4)(a) states that [D]istricts must have voter approval in advance for . . . any new tax, tax rate increase, mill levy above that for the prior year, valuation for assessment ratio increase for a property class, or extension of an expiring tax, or **a tax policy change directly causing a net tax revenue gain to any district**. [emphasis added]. As outlined in my memorandum of January 8, 2016, the imposition of the Town’s 4% sales tax on Building Materials delivered into Avon is based on the sales tax regulations properly adopted by Avon and pre-dating TABOR. As such, the imposition of the Town’s sales tax is not a “new tax” or “tax rate increase” as legally defined by TABOR.

The Colorado Supreme Court announced in 2009 *Mesa County Board of County Commissioners* case that a “tax policy change directly causing a net tax revenue gain to any district” must be considered in conjunction with Subsection (7) of TABOR concerning revenue limits.<sup>6</sup> Where prior voter approval has properly occurred to allow the District to collect revenues in excess of TABOR revenues limits, a subsequent vote is not required for each tax policy change directly causing a net tax revenue gain. “We find that a tax policy change directly causing a net tax revenue gain only requires voter approval when the revenue gain exceeds the limits dictated by subsection (7).”<sup>7</sup>

The Mesa County Board of County Commissioners involved a challenge to legislation to direct school district funds. In the Town of Avon, no legislative action by Council has occurred with regard to the imposition of sales tax to Building Materials delivered into Avon. Rather, the imposition of the Town’s sales tax has resulted from changes in case law and administrative efforts to increase compliance and uniformity.

**TABOR CONSIDERATIONS:** The Taxpayer’s Bill of Rights raises several legal constraints that Council should understand. The Town may legally enact temporary “tax credits,” which may expire or may be repealed and thus effectively allow the re-imposition of the tax without constituting a “new tax” or “tax rate increase” that requires prior voter approval. Tax credits may be extended in the Council’s discretion.

The Town Council may also enact “tax rebates” whereby the tax continues to be imposed, is collected, and then is rebated to the party paying the tax. Tax rebates are permissible where Council has determined that the primary reason for the rebate is a

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<sup>6</sup> *Mesa County Board of County Commissioners v. State*, 203 P.3d 519 (Colo.2009).

<sup>7</sup> *Mesa County Board of County Commissioners*, at P.529.

public purpose. Tax rebates can be specific to a community policy goal (e.g. affordable housing) or specific to a project that is expected to provide public benefits. Tax rebates are essentially an agreement to appropriate an expenditure of revenues received and therefore must be “subject to annual budget and appropriation” or must be new “special project revenues” in order to comply with TABOR’s restriction on multi-year fiscal obligations.

Alternatively, the enactment of a “tax exemption” by ordinance is permanent and such exemption cannot be repealed or reversed without voter approval in compliance with TABOR.

**EFFECT OF USE TAX REJECTED BY VOTERS:** The Avon voters rejected a Use Tax in 2002. The referred ballot question was in the form required by TABOR and asked if Town’s taxes should be increased, “by the imposition of a four percent (4%) use tax on the privilege of using or consuming in the Town any construction materials.” As stated in my January 8, 2016, memorandum, sales tax and use tax are legally distinct. Each tax has a separate legal authority that authorizes the imposition of such tax. The scope of transactions subject to sales tax and the scope of transactions subject to a use tax overlaps and courts have long recognized that some transactions are subject to both the sales tax and use tax authority (but liable to pay both sales tax and use tax). The 2002 Use Tax ballot question did not in any manner affect the Town’s legal authority to impose a sales tax on all transactions legally subject to the Town’s sales tax, including the imposition of the Town’s sales tax on retail transactions that occur within the Town of Avon. Specifically, the 2002 Use Tax did not ask whether the use or consumption of construction materials in Avon should be exempt from paying Avon’s sales tax.

The Use Tax Ballot Question referred to the voters in 2002 was worded as follows:

“SHALL THE TOWN OF AVON TAXES BE INCREASED \$1.6 MILLION (\$1,600,000) ANNUALLY IN 2003, AND BY WHATEVER ADDITIONAL AMOUNTS ARE RAISED ANNUALLY THEREAFTER, BY THE IMPOSITION OF A FOUR PERCENT (4%) USE TAX ON THE PRIVILEGE OF USING OR CONSUMING IN THE TOWN ANY CONSTRUCTION MATERIALS, SUCH USE TAX REVENUES TO BE APPROPRIATED AND SPENT SOLELY FOR TRANSPORTATION AND RECREATION CAPITAL PROJECTS AND SERVICES AND INFRASTRUCTURE RELATED THEREO [SIC], ALL IN ACCORDANCE WITH ORDINANCE NO. 02-18 ADOPTED BY THE TOWN COUNCIL; AND SHALL THE REVENUES COLLECTED FROM SUCH TAX AND ANY EARNINGS FROM THE INVESTMENT OF SUCH REVENUES BE COLLECTED AND SPENT AS A VOTER APPROVED REVENUE CHANGE AND AN EXCEPTION TO THE LIMITS WHICH WOULD OTHERWISE APPLY UNDER ARTICLE X, SECTION 20, OF THE COLORADO CONSTITUTION OR ANY OTHER LAW?”

**VILLAGE (AT AVON):** The Town of Avon originally entered into an Annexation and Development Agreement with the Village (at Avon) in 1998 that included an agreement to provide a “Tax Credit” on Town sales tax, accommodations tax and real estate transfer tax. The Annexation and Development Agreement was amended several times, then was substantially revised as part of settlement of litigation in 2014. The Consolidated,



Amended and Restated Annexation and Development Agreement for the Village (at Avon) (“**Development Agreement**”) includes the Town’s agreement to provide a credit on sales taxes on “Taxable Transactions”.<sup>8</sup> This Tax Credit is codified in the Avon Municipal Code at Section 3.08.035.

The Development Agreement establishes a multi-party arrangement whereby (1) the Town of Avon provides a Tax Credit, (2) the non-profit Public Improvement Companies impose a “Public Improvement Fee” or “PIF” on retail transactions and remit those revenues to the Traer Creek Metropolitan District, and (3) the Traer Creek Metropolitan District then issues tax exempt municipal bonds and constructs public improvements to serve development in the Village (at Avon).

The Development Agreement does restrict the Town’s ability to take any action that would reduce the Tax Credit on Taxable Transactions, but does not restrict the Town’s legislative authority to enact exemptions to transactions that are subject to the Town’s sales tax. The definition of “Taxable Transaction(s)” means a retail sales transaction ***that is subject to the Town’s sales tax.*** [Emphasis added]. Therefore, the Town may amend its sales tax regulation by ordinance to enact new exemptions, thereby defining certain transactions that are not subject to the Town’s sales tax, which exemptions would then apply in the Village (at Avon). Such action by the Town would not violate the Development Agreement. However, it is important to recognize that any significant legislative change to the Town’s sales tax regulations should be coordinated with Traer Creek Metropolitan District due to interrelated financial relationship. Council is encouraged to understand and consider any potential negative consequences that new sales tax exemptions may have on the revenue sources and ability of Traer Creek Metropolitan District to service outstanding bonds.

**DISCRETION TO GRANT EXEMPTIONS:** The Town Council may adopt exemptions which are specific to certain transactions or industries provided that (1) there is a public benefit or purpose to such exemption and (2) the exemption does not violate constitutional considerations. There are many examples in the statutory tax authority for granting exemptions, or legislatively defining certain transactions that are not subject to a tax. Examples of sales tax exemptions include application to public entities, purchases of food, purchases of food with food stamps, and purchases of medical supplies. The Town’s existing sales tax regulations exempt “medial supplies” “prosthetic devices” and “therapeutic devices” from the imposition of sales tax.<sup>9</sup>

With regard to real estate transfer tax, the Town provides an exemption for the first \$160,000 when a property is purchased for use as a primary residence. The Town Council may grant an exemption when it finds that the exemption will promote a public purpose. Council is acting in a legislative capacity when enacting such exemptions.

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<sup>8</sup> Sec. 4.2(a) of the Development Agreement.

<sup>9</sup> AMC 3.08.040

Substantial discretion is granted by courts to the Town Council when acting in a legislative capacity to determine what constitutes a valid public purpose. However, such legislative discretion is not without discretion. Legal limits can be found in the following circumstances:

1. the true intent is to provide a private benefit (i.e. gift) in violation of the gift clause of the Colorado Constitution;
2. the exemption violates equal protection (i.e. discriminates based upon a protected class – e.g. race, religion, gender, age, etc.); and,
3. the legislation would discriminate against interstate commerce and violate the dormant commerce clause (e.g. granting an exemption for Retailers of Building Materials located in Eagle County or in Colorado but imposing the sales tax on out-of-state Retailers that deliver Building Materials to Avon).

**EXEMPTION FOR PUBLIC ENTITIES: Section 3.08.050 Exempt Tax Payers**, subsection (1) provides a general exemption from sales tax for public entities, but then states in subsection (3): “Nothing herein contained shall be deemed to exempt from the tax levied by this Chapter sales of building material or supplies to be used by a contractor for the construction of an improvement for any of the institutions or agencies enumerated in Subsections (1) or (2) above.”<sup>10</sup> The language in subsection (3) differs from state statute which does exempt public entities from paying state and county sales tax and/or use tax on construction materials used in public projects. Council may adopt language that parallels state statute.

**EXEMPTION FOR AFFORDABLE HOUSING:** Council may adopt an exemption of sales tax on Building Materials for housing projects. The provision of adequate and affordable housing has long been recognized as a legitimate public purpose for all levels of government. It is well within Council’s discretion to adopt an exemption (or credit or rebate) on sales tax on Building Materials for affordable housing projects. Specific considerations for any sales tax exemption, credit or rebate for affordable housing projects include:

- Defining projects eligible for exemption. Such as deed restricted, public/non-profit rental projects, or other housing projects intended to serve a housing demand.
- Applying the exemption for all construction materials, whether purchased from in-town vendors and out-of-town vendors who deliver materials to Avon.
- Adopting an exemption versus a “credit” or “rebate.” A rebate has the advantage that it would help a purchaser avoid paying sales tax on Building Materials in another municipality and a rebate could be reduced or terminated in the future without requiring voter approval.

**LIABILITY FOR REFUND IF CODE AMENDED:** The question was asked if the Town would be liable for a refund to those who have paid the Town sales tax on Building Materials

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<sup>10</sup> This language was adopted in 1982 by Ordinance No. 82-27

delivered in the Town in the past if the Town amended its sales tax regulations to exempt such transactions. As stated in my prior memorandum dated January 8, 2016, it is my legal opinion that existing sales tax regulation was properly adopted and may be legally applied to the sale of Building Materials when those retail transactions occur in Avon, including the transfer of possession or title of such Building Material by delivery in Avon. The Town is not legally or financially liable for past administration and enforcement of a law, including a sales tax regulation, by virtue of amending or partially repealing such law by legislative action.

**THREE YEAR LIMITATION OF ACTIONS:** **Section 3.08.330 – Sales tax – collection – limitation of actions** states that the Town may commence enforcement actions for unpaid sales tax for up to three years after the date on which the tax was payable; however, when a Retailer has failed to file a return, the sales tax may be assessed and collected at any time. **Section 3.08.340 – Sales tax – refunds – limitation of actions** states that an application for refund of tax moneys paid in error or by mistake must be made within three years after the date of the purchase. If there was a successful legal challenge the Town's collection of sales tax on Building Materials sold by out-of-town Retailers and delivered into Town, the Town could be liable for a refund of all similar collections for the preceding three year period.

**CHANGES IN FEDERAL AND STATE LAW:** Federal and state law is expected to continue evolving with regard to the imposition of sales tax on out-of-jurisdiction Retailers who deliver goods into a jurisdiction. The U.S. Supreme Court *Quill Corp.* strongly emphasized that Congress has a direct role in legislating on such issues. The Market Place Fairness Act was introduced in 2010, which would have required out-of-state Retailers to collect and remit sales tax on purchases shipped to residents. The Marketplace Fairness Act (a substantially similar bill) was introduced in 2013 and 2015.

Although Congress has not yet passed legislation requiring on-line Retailers to collect and remit sales tax, several large internet retailers have already begun collecting and remitting sales tax. Amazon recently announced that it will collect Colorado state sales tax after an on-going legal challenge to Colorado's law to require consumers to pay sales tax and to require on-line Retailers to report sales to Colorado consumers to the Colorado Department of Revenue. The national trend is clearly towards on-line Retailers collecting and remitting sales tax on delivered goods. Any change in the national law to legislate that sales tax may be imposed upon goods that are delivered (via U.S. mail, common carrier or any other method) and/or to redefine what constitutes "doing business in a state or local jurisdiction" will most likely directly affect local sales tax regulations. Council is cautioned to be mindful of adopting any permanent exemptions to Avon's sales tax which may become inconsistent with future national law concerning out-of-state Retailers.

### SECTION III SUMMARY OF FINANCIAL INFORMATION

Included in this **Section III – Summary of Financial Information** are two tables containing statistical information regarding building activity and a discussion regarding credit ratings.

**Table 1.** Table 1 is a summary of sales taxes collected on Building Materials for the years 2010 through 2015. Also included is information regarding the number of sales tax return filers, both in-town and out-of-town, for each Building Materials category. In addition, totals are provided for both in-town and out-of-town Building Materials sales tax collections and filers. Finally, total sales tax collections for all categories of sales taxes for both in-town and out-of-town are presented.

**Table 2.** Table 2 is a summary of commercial and residential building activity including the number of permits issued, total square footage and value for commercial construction, and the number of dwelling units and values for residential construction.

**Credit Ratings.** Even a partial reduction in the Town's sales tax base could have undesirable consequences. The Town is proposing to issue Certificates of Participation for its portion of the financing of the joint Police / Fire Regional Station at Buck Creek. In the past, this type of debt has been rated by Standard & Poor's (A+) and Moody's (Aa3) (see attached Exhibits 5 and 6) due primarily to the Town's reserves, consistent financial performance, and modestly-sized tax base based on an adequate economy supported by good financial management. A down-grade in these ratings would undoubtedly increase the interest cost of the Town's debt.

According to Moody's Credit Opinion for the Town of Avon, page 4 states that both a "Deterioration in the Town's financial position" and "Substantial decline in tax base size" could move the Town's ratings down. Enacting any sales tax exemption which is not common for Colorado municipalities and which is viewed as a material change to the Town's tax base could adversely affect the Town's credit rating from both Standard and Poor's and Moody's.

## SECTION IV LEGISLATIVE OPTIONS

This **Section IV – Legislative Options** outlines and describes options for Council consideration regarding the imposition of sales tax on Building Materials. Some of the options may be combined or may be varied by Council direction and community input. For all options, it is assumed that the effect on the Town’s budget (either positive or negative) is a relevant consideration for Council; however, it difficult and somewhat speculative for Town staff to estimate or forecast the potential financial effect of each option.

1. **No Legislative Action:** Council has the option of not amending Chapter 3.08 of the Avon Municipal Code. Under this option, Town staff would continue current efforts to inform, impose, collect and enforce the Town’s sales tax on the sale of Building Materials by Retailers located outside Avon and delivered into the Town of Avon. Town staff is continuing to improve and update the administration, notification and guidance materials to facilitate understanding and compliance of the Town’s sales tax requirements. Direction from Council would be appropriate on specific methods or actions that would best accomplish the goal of improving uniformity and compliance.
2. **Enact An Exemption on Delivered “Building Materials”:** Council may amend Chapter 3.08 to expressly exempt the application of sales tax on Building Materials that are delivered to Avon AND where the Retailer does not have a physical office presence in Avon. Specific considerations on the details of such an exemption include:
  - a. Should the definition of “Building Materials” that qualify for exemption include only Building Materials that are incorporated into the real estate (e.g. concrete, lumber, insulation, drywall, fasteners, etc.)? Should the exemption apply to fixtures (e.g. appliances, toilets, sinks, faucets, furnace, etc.)? Should the exemption include the sales of material and equipment from “retailer-contractors”?
  - b. Should an exemption for delivered “Building Materials” also apply to out-of-town Retailers that actively advertise within the Town of Avon or actively use sales persons within the Town of Avon? (Active advertisement and the use of sales persons within the jurisdiction are facts which courts have considered relevant and material when determining whether a business is ‘conducting business’ within a jurisdiction and therefore subject to that jurisdictions taxation).
  - c. Are there any financial consequences to the Town’s credit rating?
  - d. Are there any financial consequences to the Traer Creek Metropolitan District’s ability to service existing debt and ability to issue new debt to finance the construction of additional public improvements in the Village (at Avon).

- e. Are there any impacts to existing and future in-town Retailers of Building Materials arising from such an exemption.
  - f. Will this exemption result in the contractor paying sales tax to another municipality when the Retailer's physical location is in another municipality?
3. **Enact an Exemption on all "Building Materials":** Council may amend Chapter 3.08 to exempt from sales tax all Building Materials, whether purchased from a Retailer located outside Avon and delivered into the Town of Avon or purchased from a Retailer located in Avon. Specific considerations on the details of such an exemption include:
- a. The general considerations stated above concerning the definition of Building Materials; and,
  - b. A comprehensive exemption would significantly impact Public Improvement Company fee revenue sources from Home Depot and other retailer-vendors in the Village (at Avon) which may materially affect the existing Public Improvement Fee revenue streams and the ability of Traer Creek Metropolitan District to service existing debt payments.
4. **Enact an Exemption on all Delivered Materials:** Council may amend Chapter 3.08 to exempt all tangible personal property from Town's sales tax when sold by a Retailer located outside of Avon but delivered into the Town of Avon. Specific considerations on the details of such an exemption include:
- a. Consideration of marketing activities within the Town by out-of-town Retailer; and,
  - b. The competitive impact on existing in-town Retailers.
5. **Enact an Exemption for Public Facilities and Projects:** Council may amend Chapter 3.08 to exempt the imposition of sales tax on Building Materials used for public facilities and projects. Such exemption would simply repeal Section 3.08.050(3) so that the Town's sales tax regulations are consistent with the State's sales tax regulations. Such an exemption would apply to both sales by in-town Retailers and sales by out-of-town Retailers that deliver to Town.
6. **Enact an Exemption for Affordable Housing Projects:** Council may amend Chapter 3.08 to exempt the imposition of sales tax on Building Materials for affordable housing projects. Specific considerations on the details of such an exemption include:
- a. Defining what qualifies as an affordable housing project (e.g. deed restriction); and,

- b. Whether to apply the exemption to sales by both out-of-town and in-town Retailers.
7. **Enact a “Credit” or “Rebate” Rather Than Exemption:** Council may provide sales tax relief in the form of a credit or rebate rather than an exemption. A “credit” or a “rebate” may be repealed or re-defined in scope without the requirement of advance voter approval as required by the Taxpayer’s Bill of Rights. A credit or rebate may be more appropriate when granting tax relief for affordable housing projects because the Council retains greater flexibility to update the definitions and scope of the credit or rebate over time depending upon circumstances.
8. **Enact a Temporarily Reduced Sales Tax on Delivered Building Materials:** Council may enact a temporary sales tax credit or rebate on delivered building materials which is phased out over time. The Town’s existing 4% sales tax was originally phased-in such that the sales tax rate was 1% for the first year, 2% the second year, 3% the third year, and the full 4% commencing on the fourth year.
9. **Refer a Use Tax Ballot Question for Voter Consideration:** Council may refer a ballot question on Use Tax to the next eligible TABOR election on November 8, 2016, which, if approved by the Avon voters, would (1) complement the Town’s sales tax, as widely recognized throughout the nation, (2) would be more comprehensive in applying to all goods used in Avon rather than goods that are delivered in Avon or sold in Avon, and (3) would significantly simplify administration, compliance and enforcement.
10. **Dedicate Sales Tax on Building Materials to a Specific Purpose:** Council may enact an ordinance pledging the revenue from sales tax on Building Materials to a specific purpose (e.g. capital improvement projects, affordable housing). Council has previously enacted an ordinance pledging Real Estate Transfer Tax revenues to the capital improvement projects fund. An ordinance adopting a pledge or earmark of revenues for an identified purpose can be changed by a future Council by adoption of a new ordinance.



## SECTION V RECOMMENDATIONS FOR SALES TAX ADMINISTRATION IMPROVEMENT

Town staff provides the following recommendations to improve sales tax administration:

1. **Meet with New Licensees.** Newly licensed contractors would be required to meet with Finance Department representatives prior to being issued a building permit to ensure they have the proper business license, determine whether or not they are required to have a sales tax license, and provide necessary assistance and guidance in these processes.
2. **Create and Publish Administrative Guidelines.** Administrative Guidelines would be used to provide more information and/or guidance on specific sales tax-related issues. They can be more detailed than the Municipal Code and can use real-life examples.
3. **Reach-out to Potential New Licensees.** Conduct periodic informational campaigns to inform the public and potential new businesses about the Town's licensing requirements.
4. **Work with Community Development Department.** Coordinate with the Community Development Department to identify ways to ensure compliance with the Town's licensing requirements.
5. **Website Improvements.** Continue to review information provided on the Town's website and update when appropriate to improve it's efficiency, accessibility and functionality for users.





# Supplier Verification Form

[illegible]

Contact Name, Phone Number

[illegible]

To the best of my knowledge and belief, the foregoing information is true, correct, and complete.

Signature \_\_\_\_\_

Date \_\_\_\_\_

## EXHIBIT 2

Dear Contractor and/or Project Manager:

Thank you for choosing Avon for your project.

We recognize that some Colorado municipalities you do business in have a use tax payable at the time of permitting, and therefore have a related sales tax exemption on construction materials. We would like to take a few moments of your time to educate you on the Town of Avon tax process. The Town of Avon does not collect a use tax and ***does not exempt construction materials from sales tax.*** As a contractor pulling a permit, this means that you will need to pay sales tax to your vendors for all taxable materials; the rate of tax applied to invoices will depend upon the point of delivery. All materials delivered to a job site located within the Town of Avon will be subject to the Town of Avon sales tax of 4%, in addition to applicable State, County, and special district taxes. Alternatively, materials that you take possession of in another municipality would be subject to that municipality's tax rate. This information also applies to your subcontractors and their vendors, and it is your responsibility to relay this important information to all involved on your project.

Contracts that you may enter into including those involving sub-contractors or construction related suppliers of windows, concrete, construction material, appliances, furniture, etc. are subject to Town of Avon taxation and require that the business possess a Town of Avon sales tax license. From your perspective as the developer of the property, bids and invoices for such materials as named above, for example, should include appropriate estimates of sales tax that are required to be remitted by the supplier to the Town of Avon, or other municipality, based upon the point of delivery. Please keep this in mind when reviewing and approving any potential bid or contract.

Town of Avon staff experience has determined that sales have taken place in the construction industry that has not been properly taxed. Whether this is due to a misunderstanding of the Code or an intentional disregard for current law has not been determined. As a result, staff has decided to elevate educational efforts to familiarize the industry.

Chapter 3.08.010 of the Avon Municipal Code clearly defines taxable transactions, including an extensive (but not all-inclusive) list of construction materials. The Code further goes on to define "engaged in business in the Town" to include performing or providing services or selling, leasing, renting, delivering or installing tangible personal property for storage, use or consumption within the Town.

The Town of Avon has provided a "Supplier Verification Form". The purpose of the Supplier Verification Form is to provide information to the Finance Department setting forth the name, business address and telephone number of each contractor, subcontractor and material supplier who provided labor or materials in connection with the property for which the permit was issued. This information is used to substantiate compliance with licensing and sales tax provisions designed to ensure an equitable business environment within the Town of Avon. The Town of Avon strongly urges you to complete this information to prove compliance with our sales tax policies.

On behalf of all of us who work for the Town of Avon, let me extend our thanks to you for choosing to pursue business in Avon. We also thank you for understanding this process and its importance in successfully providing an even and equitable business environment that is crucial to operating a first rate Town.

For additional information, you may review the Town Code on line at [www.Avon.org](http://www.Avon.org). Please address any questions that you or your subcontractors/vendors have on this process to, Beth Johnston via email [bjohnston@avon.org](mailto:bjohnston@avon.org) or via phone 970-748-4019.



EXHIBIT 3



FTF ①

11/23/15

1/4 (Oct) 2nd not out yet

January 12, 2016

«DBA\_Name»  
«Business\_Name»  
«Mailing\_Address\_1»  
«Mailing\_Address\_2»  
«Mailing\_City», «Mailing\_State» «Mailing\_Postal»

Re: Failure to File Notice for Account #«Account\_Number»

Dear Taxpayer:

As of the date of this letter we still have not received your tax return for:

**Tax Return**

**Due Date**

Your tax return must be filed and paid in full within ten (10) days of the date of this letter or the Town will have no alternative other than to proceed to collect the appropriate tax through other means, which may include an assessment of estimated tax based on prior filings.

Returns filed after the due date are considered delinquent and will be assessed a penalty of either \$15.00 or 10% of the delinquent tax, whichever is greater, plus a 1.5% per month interest charge.

If no tax is owed for a particular period, a return must still be filed by the due date indicating that no tax is owed. Zero (\$0) tax returns not filed by the due date are considered delinquent.

**Avon encourages online filing.** Please file and pay your tax return online at [www.Avon.org](http://www.Avon.org). If you need assistance registering your account online, please contact MUNIRevs Support at 888-751-1911. If you prefer to file your return by any method other than electronic, please contact the Finance Department at 970-748-4019.

Should you have any questions regarding this notice, you may contact me by phone to (970) 748-4019 or by email to [salestax@avon.org](mailto:salestax@avon.org).

Sincerely,

 Kelly

Beth Johnston  
Accounting Assistant II

EXHIBIT 4



FTF (2)

DATE

«Business\_Name»  
«DBA\_Name»  
«Mailing\_Address\_1»  
«Mailing\_Address\_2»  
«Mailing\_City», «Mailing\_State» «Mailing\_Postal»

Sent to Eric 12/31  
mailed 1/13/16

Re: FINAL NOTICE – FAILURE TO FILE for Account #«Account\_Number»

Dear Taxpayer:

The Town of Avon recently sent you a letter regarding your delinquent tax return for the following period(s). No response to that letter has been received, your account remains delinquent, and the matter has now been referred to me for further action.

**Tax Return**

«Task\_Detail»  
«Task\_Detail1»

**Due Date**

«Task\_Due\_Date»  
«Task\_Due\_Date1»

As of the date of this letter, you are seriously delinquent in the filing of your return. If the Town does not receive your delinquent return and payment in full from you within five (5) days of the date of this letter, a summons will be issued charging you with the violation of the Town's tax ordinance and requiring your appearance in the Town of Avon Municipal Court. The Town may also proceed to collect the tax through other avenues available including the filing of tax liens and the issuance of distraint warrants. Please note that the penalty for negligent or intentional disregard of the Town of Avon's tax regulations includes an additional ten percent (10%) of the total amount of the deficiency as well as interest in the amount if one and one-half percent (1 ½%) of the total amount of the deficiency in accordance with Section 3.08.140 and/or 3.28.080 of the Avon Municipal Code. Additional penalties may be assessed in accordance with Section 3.08.310 and/or 3.28.090 and Section 1.08.010 of the Avon Municipal Code, which penalties can include fines up to \$1000 per offense.

If no tax is owed for a particular period, a return must still be filed by the due date indicating that no tax is owed. **Avon encourages online filing.** Please file and pay your tax return online at [www.Avon.org](http://www.Avon.org). If you prefer to file your return by any method other than electronic, please contact the Finance Department at 970-748-4019.

Should you have any questions regarding this notice, you may contact me by phone to (970) 748-4019 or by email to [salestax@avon.org](mailto:salestax@avon.org).

Sincerely,

A handwritten signature in dark ink, appearing to read "Eric J. Heil".

Eric J. Heil  
Town Attorney

# RatingsDirect®

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## Summary:

### Avon, Colorado; Appropriations

**Primary Credit Analyst:**

Bryan A Moore, San Francisco (1) 415-371-5077; bryan.moore@standardandpoors.com

**Secondary Contact:**

Daniel J Zuccarello, New York (1) 212-438-7414; daniel.zuccarello@standardandpoors.com

## Table Of Contents

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Rationale

Outlook

Related Criteria And Research



**Summary:****Avon, Colorado; Appropriations****Credit Profile**

US\$5.93 mil certs of part ser 2014A due 12/01/2039

*Long Term Rating*

A+/Stable

New

**Rationale**

Standard & Poor's Ratings Services assigned its 'A+' rating to Avon, Colo.'s series 2014A certificates of participation (COPs). At the same time, Standard & Poor's affirmed its 'A+' rating on the town's COPs outstanding. The outlook is stable.

The series 2014A COPs represent an interest in lease payments made by the town of Avon, Colo., as lessee, to UMB Bank, N.A., as lessor, for the use and possession of the leased assets. The lessor assigns all sublease payments to the trustee, UMB Bank N.A. The debt service payments will be on June 1 and Dec. 1 of each fiscal year, and the lease payments will be due on the 15th of the prior month. The lease is subject to annual renewal by the town. The town also has the option to purchase the property and terminate the lease. The town may not abate lease payments in the event of damage to or the destruction of the assets.

The rating reflects our assessment of the following factors for Avon:

- We believe the town has adequate income levels and valuation, with a projected per capita effective buying income at 86% of the U.S. level and per capita market value of \$205,300. Avon, with a population of approximately 7,100, is a residential community located about 100 miles west of Denver and eight miles west of Vail along the Interstate 70 corridor in Eagle County. Because the Vail, Beaver Creek, and Arrowhead ski resorts are all located within 10 miles of Avon, the local economy is based largely in the tourism and ski industries. Eagle County's 2013 unemployment rate was 6.6%, above state and national levels.
- In our opinion, the town's budgetary flexibility is very strong. Reserves were above 30% of expenditures for fiscal 2013, and management estimates that they will remain about the same for the next two years. Audited available fiscal 2013 reserves were \$4.8 million, or 41.5% of expenditures, and management is projecting to have balanced operations in fiscal 2014.
- Avon's budgetary performance is adequate, in our opinion, with a surplus of 11.1% for the general fund and a deficit of 5% for the total governmental funds in fiscal 2013. Management attributes the large surplus in part to improved sales tax revenues, which represent approximately 50% of general fund revenue. Sales tax revenue rose 11% in fiscal 2013 from fiscal 2012. For fiscal 2014, sales tax revenue is currently up 7% year over year. Management projects having balanced general fund operations in fiscal 2015 and fiscal 2016. Also, the town settled a pending lawsuit that will generate roughly \$650,000 of additional revenues annually and result in reduced legal fees going forward.
- We believe strong liquidity supports Avon's finances, with total government available cash to government fund expenditures and cash to debt service at 22% and 88% of debt service coverage, respectively. Based on past issuance of debt, we believe that the issuer has strong access to capital markets to provide for liquidity needs if necessary.

## EXHIBIT 5

Summary: Avon, Colorado; Appropriations

- In our opinion, Avon's management conditions are adequate with "standard" financial practices under our Financial Management Assessment (FMA) methodology. An FMA of "standard" indicates our opinion that the government maintains adequate policies in some, but not all, key areas. The town builds its budget assumptions using a third-party source and has a reserve policy of keeping 25% of expenditures in the general fund. The town does not have a debt management policy.
- In our opinion, Avon's debt and contingent liabilities profile is very weak, with total governmental funds debt service at 25.3% of total governmental funds expenditures and with net direct debt at 72.3% of total government revenues. Avon participates in a defined contribution pension plan through the Town of Avon General Employees Retirement plan and the Town of Avon Police Officers Money Purchase retirement plan to provide pension benefits for employees. It has contributed 100% of the annual required contribution (ARC) in each of the past three years. The combined ARC pension costs for fiscal 2013 were less than 10% of expenditures, and we don't expect these costs will increase substantially in the near term. We also understand that the town is issuing series 2014B COPs as a private placement with UMB Bank N.A. We understand that there are no acceleration or greater nation clauses in the documents.
- We consider the institutional framework score for Colorado cities as strong. See Institutional Framework score for Colorado.

### Outlook

The stable outlook reflects our view of Avon's continued consistent financial performance and underlying adequate economy supported by good management. We do not expect to change the rating during our two-year outlook horizon due to our expectation that the town will maintain very strong financial flexibility.

### Related Criteria And Research

#### Related Criteria

- USPF Criteria: Local Government GO Ratings Methodology And Assumptions, Sept. 12, 2013
- USPF Criteria: Appropriation-Backed Obligations, June 13, 2007

#### Related Research

- S&P Public Finance Local GO Criteria: How We Adjust Data For Analytic Consistency, Sept. 12, 2013
- Institutional Framework Overview: Colorado Local Governments

#### Ratings Detail (As Of October 17, 2014)

Avon Twn rfdg certs of part

*Long Term Rating*

A+/Stable

Affirmed

Complete ratings information is available to subscribers of RatingsDirect at [www.globalcreditportal.com](http://www.globalcreditportal.com). All ratings affected by this rating action can be found on Standard & Poor's public Web site at [www.standardandpoors.com](http://www.standardandpoors.com). Use the Ratings search box located in the left column.



## EXHIBIT 5

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## Moody's assigns Aa3 rating to Town of Avon, CO's COPs

Global Credit Research – 14 October 2013

**\$11.9 million in debt affected; Aa2 issuer rating affirmed**

Municipality  
CO

### Moody's Rating

ISSUE		RATING
Certificates of Participation, Series 2014		Aa3
<b>Sale Amount</b>	\$5,930,000	
<b>Expected Sale Date</b>	10/22/2014	
<b>Rating Description</b>	Lease	

### Opinion

Moody's Investors Service has assigned an Aa3 rating to the Town of Avon, Colorado's Certificates of Participation, Series 2014. At this time, Moody's affirms the Aa3 rating on the district's outstanding \$6.0 million in outstanding parity certificates of participation, as well as the town's Aa2 issuer rating. Proceeds from the current issue will be used to finance the acquisition and improvement of a building that will serve as the town's primary administrative facility. The COPs will be secured by annually appropriated base rental payments on the building.

### RATING RATIONALE

The Aa2 issuer rating reflects the town's modestly-sized tax base with an economy that is dependent upon winter tourism and sports activity, sound finances that are buffered by the presence of a substantial amount of available reserves outside the general fund, a debt burden that is somewhat high as a function of general fund revenues, and no pension liabilities.

The Aa3 COP rating primary reflects the lease structure including an annual appropriation of base rental payments, the critical nature of the leased asset, and adequate collateralization. The somewhat high total lease burden and absence of a debt service reserve fund are weaknesses that are mitigated by the legal availability of Capital Projects Fund reserves to make base rental payments, as well as substantial available reserves outside the general fund.

### STRENGTHS

- Sound financial operations with a substantial amount of available reserves
- No pension liabilities



## EXHIBIT 6

### CHALLENGES

- Somewhat small tax base with limited local economy
- Somewhat high aggregate lease burden

### DETAILED CREDIT DISCUSSION

#### ANNUAL APPROPRIATION PLEDGE WITH ADEQUATE TIMING AND LEGAL PROVISIONS

Moody's believes that the essential nature of the leased assets significantly reduces the risk of nonpayment. The leased asset is the "Skier Building," a 16,273 square foot structure located on a 10,840 square foot parcel that the town will acquire and improve with certificate proceeds. The parcel is adjacent to a town-owned parking lot, adding value to the facility unavailable to other potential purchasers. Given the limited number of appropriate comparables, the asset's assessed value is somewhat speculative; however, the replacement cost of the asset, including the adjacent town-owned parking lot, is estimated at \$7.1 million. The certificates are secured by the town's pledge to annually appropriate base rental payments equal to debt service under an annually renewable lease purchase agreement between the town and UMB Bank, N.A., which is both the trustee and lessor. Under the lease agreement, the town must include in its annual budget the lease payments for the ensuing fiscal year, with funds due to the trustee 15 days prior to scheduled debt service payments. Base rental payments are not abatable once appropriated by the town. In the event that on or before December 31<sup>st</sup> the town does not budget and appropriate moneys sufficient to pay all lease payments coming due for the next fiscal year, then an event of non-appropriate shall be deemed to have occurred by the first business day of February. The town will have 30 days from the receipt of notice from the trustee to cure any event of non-appropriate. If the event of non-appropriation is not cured, the district shall vacate or surrender possession of the leased property by March 1<sup>st</sup>. The district may also occupy the leased asset as a tenant on a month-to-month basis under which the district would pay the equivalent of one-sixth of the interest and one-twelfth of principal payments for the COPs.

The current issue will not have a funded debt service reserve fund, a credit weakness that is mitigated by the essentiality of the pledged asset as well as substantial available reserves.

#### SMALL SKI RESORT TOWN WEST OF VAIL

The town, located 114 miles west of Denver (Aaa) and eight miles east of Vail (Aa1), covers just 8.25 square miles in the Rocky Mountains along Interstate 70. Although the full-time resident population is small at just 6,434, the winter and summer time populations increase substantially due to the town's proximity to the Beaver Creek and Vail resorts. Skiing is a popular local activity, and in 2015 the town will host the World Alpine Ski Championship. Like most Colorado resort towns, Avon suffered a substantial decline in property values during the recession. The town's current \$1.6 billion market valuation is down from its pre-recession peak of \$2.1 billion. However, local officials report significant market activity being reflected in real-estate transfer tax revenues, and estimate that the town's next valuation will likely see a 10% or greater increase. The town's ten largest taxpayers are primarily developers, and comprise a moderate 17.5% of assessed value. Wealth measures in the town are average, with median family income at just 81.8% of the US, according to data from the Census Bureau. However, full value per capita, a better proxy measure of wealth given the nature of the tax base, is strong at \$244,925. Unemployment in the region is low, with July 2014 data from the Bureau of Labor Statistics showing just a 4.7% unemployment rate.

#### SOUND FINANCIAL OPERATIONS WITH SUBSTANTIAL AVAILABLE RESERVES



## EXHIBIT 6

Moody's views the town's financial operations as sound, despite having operating deficits in four of the last five audited fiscal years. The town's primary source of revenue is from sales taxes, which in 2013 comprised 49.7% of general fund revenues, followed by local property taxes (12.6%), and charges for services (10.3%). The town's primary expenses are for culture/recreation (28.9%), general government (24.0%), and public safety (22.1%). At the peak of the recession in 2009, the town's operating deficit was just shy of \$2.0 million, primarily the result of falling sales tax revenues and charges for services. In 2010 and 2011, with revenues improving but still well-below pre-recession peaks, town officials estimate they incurred legal fees of approximately \$1.0 million annually stemming from a dispute with a developer. Beneficially, a final settlement of the lawsuit occurred in August 2014. Despite some expenditure reductions during the recession, including the implementation of a one day a month furlough and a 2% pay cut for employees, declining property tax revenues resulted in a small operating deficit of \$215,000 in 2012. In fiscal 2013, the town delivered an operating surplus of nearly \$1.3 million, the result of a strong return to growth of sales tax revenues, as well as substantial cost savings from vacated management positions that were not filled. Town officials anticipate 2014 financial results to likely exceed budgeted expectations of a small surplus, and expect expenses to be lower than budgeted by as much as 5%. The town does not anticipate significant deviations from this pattern in 2015.

During this period of operating deficits, the town maintained sizeable available reserves, primarily in its general fund but also in other town funds, including the Transit Fund, the Fleet Fund, the Affordable Housing Fund, and the Capital Projects Fund. In aggregate, available reserves hit a high of \$10.4 million in 2008 (73.4% of general fund revenues), falling to a still substantial recession low of \$8.2 million in 2012 (71.1% of general fund revenues). 2013 available reserves were 76.3% of general fund revenues, or \$9.8 million. At these levels, the town's available reserves far exceed those of similarly rated peer medians both in Colorado and across the nation. The town recently changed its 35% general fund reserve policy to a 25% policy that also reflects transfers out to other funds; transfers out of the general fund have averaged 10.4% of revenues over the past five audited fiscal years.

### SOMEWHAT HIGH ANNUAL LEASE BURDEN

The current issuance has a level repayment structure of approximately \$506,000 annually, or a manageable 4.0% of 2013 general fund revenues. The town will also privately place \$3.8 million in additional COPs (Series 2014B) in November, resulting in \$15.7 million in total outstanding COPs. The privately placed COPs have a bullet payment in 2024 of \$1.7 million that the town intends to refinance or pay off. Peak debt service on all of the town's COPs, excluding the 2024 bullet payment, is \$1.2 million in fiscal 2021, representing a somewhat high annual lease burden of approximately 9.4% of the town's 2013 general fund revenues. Positively, moneys in the Capital Projects Fund is also available for repayment. At the end of fiscal 2013, the Capital Projects Fund held \$3.6 million in reserves.

The town's overall net direct debt burden is low at 1.0% of full value and 1.16 times operating revenues (general fund plus debt service fund revenues). In addition to the COPs, the town has \$1.5 million in outstanding general obligation bonds (unrated by Moody's). The town also has a moral obligation pledge to replenish the debt service reserve fund for \$6.8 million in outstanding tax increment revenue bonds issued by the Avon Urban Renewal Authority in 2013. The debt service reserve fund is approximately \$628,000.

In addition the current issuance and the Series 2014B COPs, the town is considering seeking voter approval within the next two years for a \$10 million bond authorization to build a recreation center. A vote put before voters last summer failed by 34 votes.



## EXHIBIT 6

The town offers its employees a defined contribution retirement plan and has no unfunded pension liability.

### WHAT COULD MOVE THE RATING-UP

- Continued trend of strong financial performance with high reserve levels
- Resumption of growth and sustained assessed values
- Reduction in the annual debt burden and overall debt profile of the town

### WHAT COULD MOVE THE RATING-DOWN

- Deterioration in the town's financial position
- Rapid increase in debt burden
- Substantial decline in tax base size

### KEY STATISTICS

Population: 6,434

2013 full valuation: \$1.6 billion

2013 full value per capita: \$244,925

Median family income: 81.8% of U.S.

Available fund balance as % of revenues: 74.32%

5-year dollar change in fund balance as % of revenues: -4.47%

Cash balance as % of revenues: 36.27%

5-year dollar change in cash balance as % of revenues: -9.39%

Institutional framework: Aa

5-year average of operating revenues / operating expenditures (x): 0.98x

Net direct debt burden / full value (%): 0.97%

Net direct debt / operating revenues (x): 1.16x

3-year average of Moody's adjusted net pension liability / full value (%): 0%

3-year average of Moody's adjusted net pension liability / operating revenues (x): 0.00x

Peak general fund burden of COPs: 9.4% of 2013 revenues (2021)

TABLE 1

SALES TAX COLLECTIONS RELATED TO BUILDING MATERIALS  
2010 - 2015

Building Materials NAICS Category	2010		2011		2012		2013		2014		2015	
	Amount	# of Filers	Amount	# of Filers	Amount	# of Filers	Amount	# of Filers	Amount	# of Filers	Amount	# of Filers
Other Foundation, Structure, and Building Exterior Contractors	\$ 2,273.07	3	\$ 2,294.76	4	\$ 8,398.86	4	\$ 9,979.07	4	\$ 3,379.96	4	\$ 32,451.13	8
Other Building Equipment Contractors	14,209.32	15	10,237.09	16	21,712.16	21	19,251.09	33	22,227.27	33	45,839.52	31
Other Building Finishing Contractors	1,818.96	1	2,166.79	1	2,769.98	2	3,348.02	5	46,031.75	7	37,766.96	10
All Other Specialty Trade Contractors	6,340.97	19	10,234.98	17	9,769.90	15	8,709.09	22	92,789.42	33	123,600.94	49
Lumber Merchant Wholesalers	10,393.80	1	21,542.15	2	17,054.55	2	18,983.05	4	30,510.01	4	17,517.59	4
Plumbing & Heating Equip & Supplies Merchant Wholesalers	96,715.12	4	111,142.41	3	122,178.23	3	132,259.19	5	175,269.12	6	174,362.76	5
Floor Covering Stores	-	2	-	0	-	0	-	2	49,140.77	9	73,515.17	10
Window Treatment Stores	-	1	-	1	-	1	1,483.69	3	1,074.50	3	-	2
Household Appliance Stores	-	1	2,064.67	3	57,691.60	3	28,660.05	4	15,958.72	4	18,895.68	4
Home Centers	-	2	-	2	-	2	-	2	63,902.97	3	78,357.71	4
Paint and Wallpaper Stores	-	0	-	0	-	0	-	2	-	1	-	1
Other Building Material Dealers	78,621.58	12	78,444.13	16	91,737.20	14	115,155.11	17	101,512.48	14	40,803.39	11
Total Sales Tax on Building Materials	\$ 210,372.82	61	\$ 238,126.98	65	\$ 331,312.48	67	\$ 337,828.36	103	\$ 601,796.97	121	\$ 643,110.85	139
In Town vs. Out-of-Town Building Materials												
In-Town	\$ 166,153.97	14	\$ 180,253.80	14	\$ 258,564.76	15	\$ 237,766.41	18	\$ 282,975.73	16	\$ 331,502.90	21
Out-of-Town	44,218.85	47	57,873.18	51	72,747.72	52	100,061.95	85	318,821.24	105	311,607.95	118
Total	\$ 210,372.82	61	\$ 238,126.98	65	\$ 331,312.48	67	\$ 337,828.36	103	\$ 601,796.97	121	\$ 643,110.85	139
In Town vs. Out-of-Town - All Categories												
In-Town	\$4,897,186.29	90.59%	\$4,838,603.47	88.87%	\$5,003,178.47	89.58%	\$5,698,370.34	89.58%	\$6,091,583.92	86.19%	\$6,533,511.26	86.56%
Out-of-Town	508,767.08	9.41%	606,209.76	11.13%	582,045.10	10.42%	662,697.53	10.42%	976,175.54	13.81%	1,014,359.53	13.44%
Total	\$5,405,953.37	100.00%	\$5,444,813.23	100.00%	\$5,585,223.57	100.00%	\$6,361,067.87	100.00%	\$7,067,759.46	100.00%	\$7,547,870.79	100.00%

Notes:

(1) In those instances where there is less than 3 filers in a category, the sales tax amounts have been added to the category titled "Other Building Material Dealers" in order to maintain confidentiality.

**TABLE 2****COMMERCIAL AND RESIDENTIAL CONSTRUCTION  
LAST TEN FISCAL YEARS**

Year	Total Permits Issued	Commercial Construction		Residential Construction		Total Building Construction Value
		Square Footage	Value	No. of Units	Value	
2006	146	26,639	\$ 114,860,200	12	\$ 13,980,955	\$ 128,841,155
2007	166	19,242	25,248,538	93	10,970,648	36,219,186
2008	145	11,416	2,525,749	15	11,165,780	13,691,529
2009	91	-	725,000	3	8,683,371	9,408,371
2010	112	16,517	3,215,036	7	9,806,550	13,021,586
2011	125	2,210	922,600	9	8,412,190	9,334,790
2012	126	54,250	11,400,000	8	2,448,500	13,848,500
2013	159	217,293	27,121,876	12	9,027,760	36,149,636
2014	156	-	1,500,000	10	13,735,900	15,235,900
2015	163	179,149	16,207,000	25	18,792,261	34,999,261

**Source:** Town of Avon Community Development Department



## **FISCAL YEAR 2015 FINANCIAL REPORT**

**February 23, 2016**

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1. Fiscal Year 2015 Financial Report Cover Memo
2. Sales and Accommodations Tax Reports - December 2015
3. Real Estate Transfer Tax Report and Monthly Detail – January 2016
4. General Fund Year-To-Date Expenditures - January 2016
5. Fleet Maintenance Fund Year-To Date Expenditures - January 2016
6. Transit Fund Year-To Date Expenditures - January 2016



## TOWN COUNCIL REPORT

**To:** Honorable Mayor Jennie Fancher and Avon Town Council

**From:** Kelly Huitt, Budget Analyst

**Date:** February 17, 2016

**Re:** Fiscal Year 2015/2016 Financial Report – December / January

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### **Revenues:**

#### **SALES TAX**

- Sales tax revenue for the month of December is down \$62,104 or -5.09% compared to December 2014, and down -10.06% compared to the budget. This decrease includes \$52,454 from new businesses, and after adjusting for new business growth, -9.38% is the loss in revenue from existing business for the month. Final 2015 year-to-date sales tax totals \$480,337 more than 2014, and is \$89,374 over the revised budget. New businesses make up a whopping 80.63% of this total growth.
- December sales tax collections are up for Accommodations at 16.54%, Restaurants/Bars at 8.34%, Grocery and Health stores are up 8.06%, and Home/Garden increased 5.10% compared to December 2014. However, a few categories had major declines: Miscellaneous Retail decreased -22.34%, Other businesses are down -22.63%, and Service Related entities declined -73.03%. The decrease in existing business growth from Miscellaneous Retail can be partially attributed to two entities being re-categorized. The large decrease in the Service Related category is due to wide variances in returns from interior design and architecture businesses which were unusually high in December 2014. The Other business category is down from the reclassification of a few businesses combined with some large construction related returns in December 2014.

Sales Tax Monthly Totals - December 2015			
Category	2014/2015	Growth	Growth
	Variance	Existing Business	New Business
Home/Garden	3,567.17	-5.90%	11.00%
Grocery, Specialty, Health	25,094.02	5.63%	2.43%
Liquor Stores	554.19	1.23%	0.00%
Sporting Goods Retail/Rental	3,358.03	1.99%	0.00%
Miscellaneous Retail	(10,823.37)	-22.90%	0.56%
Accommodations	28,649.17	13.18%	3.37%
Restaurants/Bars	10,214.02	3.90%	4.44%
Other	(37,281.63)	-36.04%	13.41%
Service Related	(85,435.13)	-76.09%	3.05%
<b>Total</b>	<b>(\$62,103.53)</b>	<b>-9.38%</b>	<b>4.30%</b>



Sales Tax Annual Totals - 2015			
Category	New Business	Growth	Total Growth
Home/Garden	58,323.12	(25,843.52)	32,479.60
Grocery, Specialty, Health	27,128.25	112,572.85	139,701.10
Liquor Stores	216.56	15,840.65	16,057.21
Sporting Goods Retail/Rental	16,462.14	50,703.56	67,165.70
Miscellaneous Retail	19,198.07	(28,623.73)	(9,425.66)
Accommodations	19,868.38	108,400.30	128,268.68
Restaurants/Bars	13,218.63	63,354.37	76,573.00
Other	202,392.03	(122,212.32)	80,179.71
Service Related	30,505.52	(81,167.41)	(50,661.89)
<b>Total</b>	<b>\$387,312.70</b>	<b>\$93,024.75</b>	<b>\$480,337.45</b>

#### ACCOMMODATIONS TAX

- Accommodations tax revenue for December is up \$29,476, or 17.45% compared to December 2014, and up 8.36% compared to the monthly budget. Final year-to-date accommodations tax totals \$137,035 more than 2014, and is \$53,513 over the revised budget.
- December 2015 accommodations tax collections are up for all lodging types compared to December 2014: Hotels are up 10.83%, Vacation Rentals increased 17.08%, and Timeshare units improved by 39.89%.

#### REAL ESTATE TRANSFER TAX

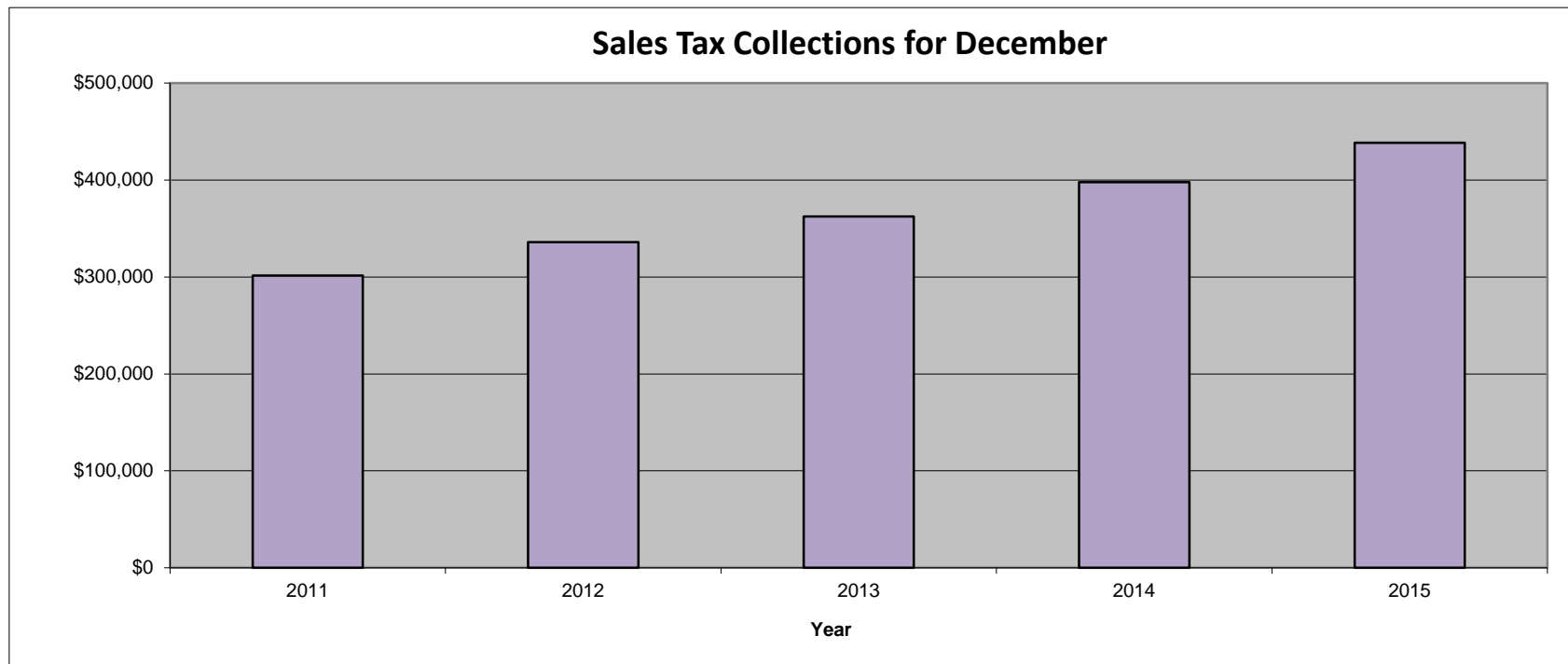
- 2016 real estate transfer tax collections for January equal \$64,422, which is a \$15,782 increase over January 2015.

#### **Expenditures:**

- General Fund expenditures through January 2016 total 11.44% of the total 2016 budget. These expenditures include the Town's annual insurance premium, \$40,000 for the Winter Wondergrass event, \$25,000 toward the writer's conference, and \$87,110 encumbered for community grants.
- Fleet expenditures for January are at 10.13% of the total budget. These costs include blanket encumbrances for stock parts and ongoing expenditures such as regularly purchased shop supplies and monthly copier charges.
- Transit funds are 22.29% expended compared to the 2016 budget. These expenditures include a \$135,000 encumbrance for the 2015 people mover bus purchase, as well as \$176,000 for the Town's half of the 2016 gondola operations.

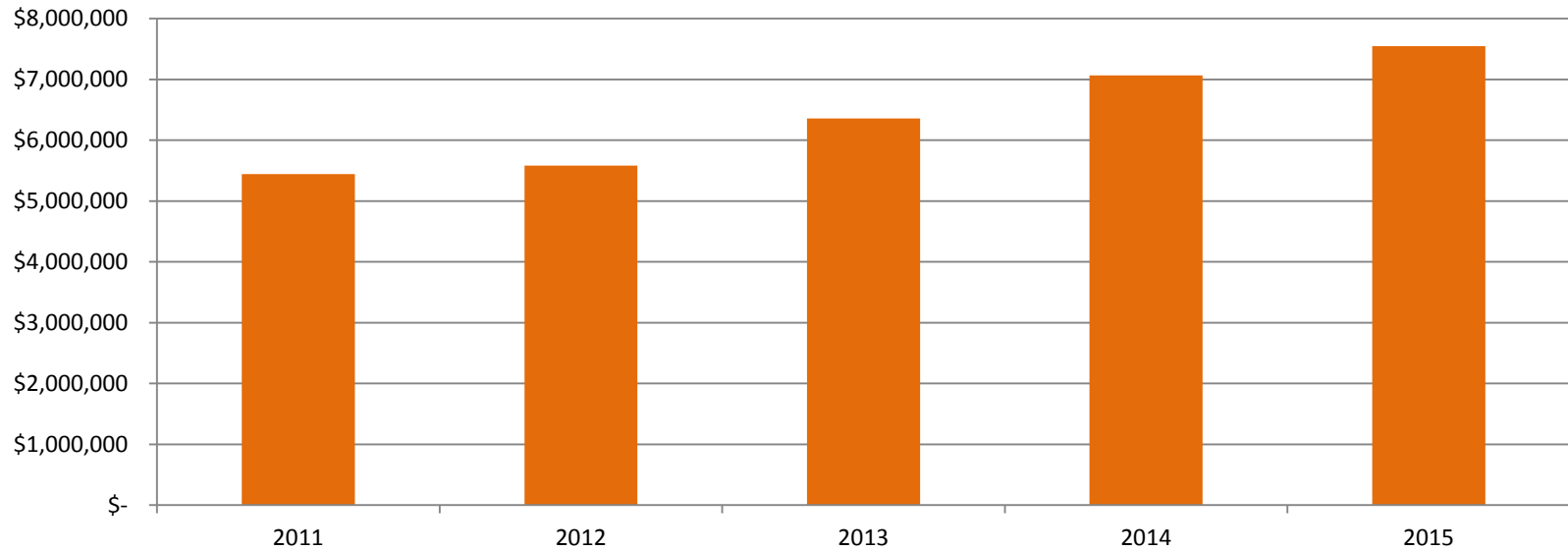
**TOWN OF AVON**  
**SALES TAX**  
**2015 Actual vs. Budget**

	Actual Collections					Budget	YTD Collections	Budget	% of change
	2010	2011	2012	2013	2014	2015	2015	Variance	from 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	438,315.55	18,367.81	10.15%
December	818,360.74	921,815.61	852,868.64	981,917.79	1,221,263.98	1,288,820	1,159,160.45	(129,659.55)	-5.09%
Total	<u>\$ 5,105,953.37</u>	<u>\$ 5,444,813.23</u>	<u>\$ 5,585,223.57</u>	<u>\$ 6,361,067.87</u>	<u>\$ 7,067,759.46</u>	<u>\$ 7,458,723</u>	<u>\$ 7,548,096.91</u>	<u>\$ 89,373.91</u>	<u>6.80%</u>

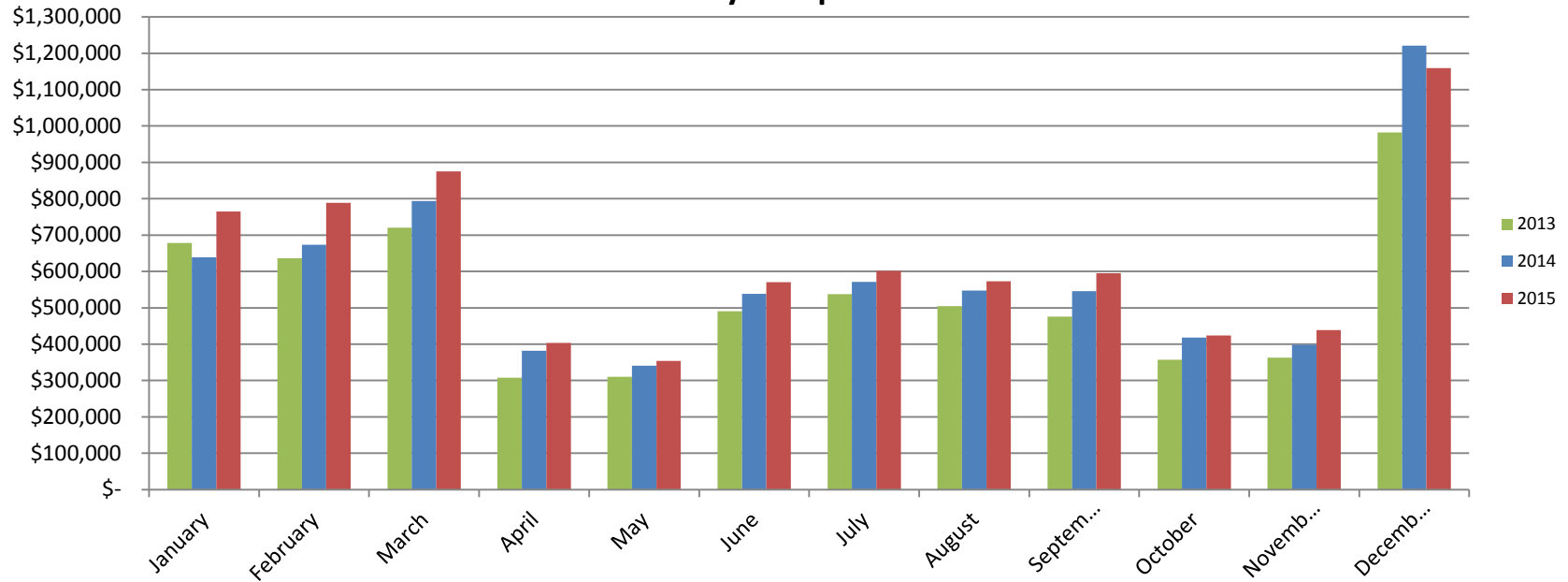


**TOWN OF AVON  
SALES TAX  
2015 Actual vs. Budget**

**YTD Sales Tax Comparison January - December**

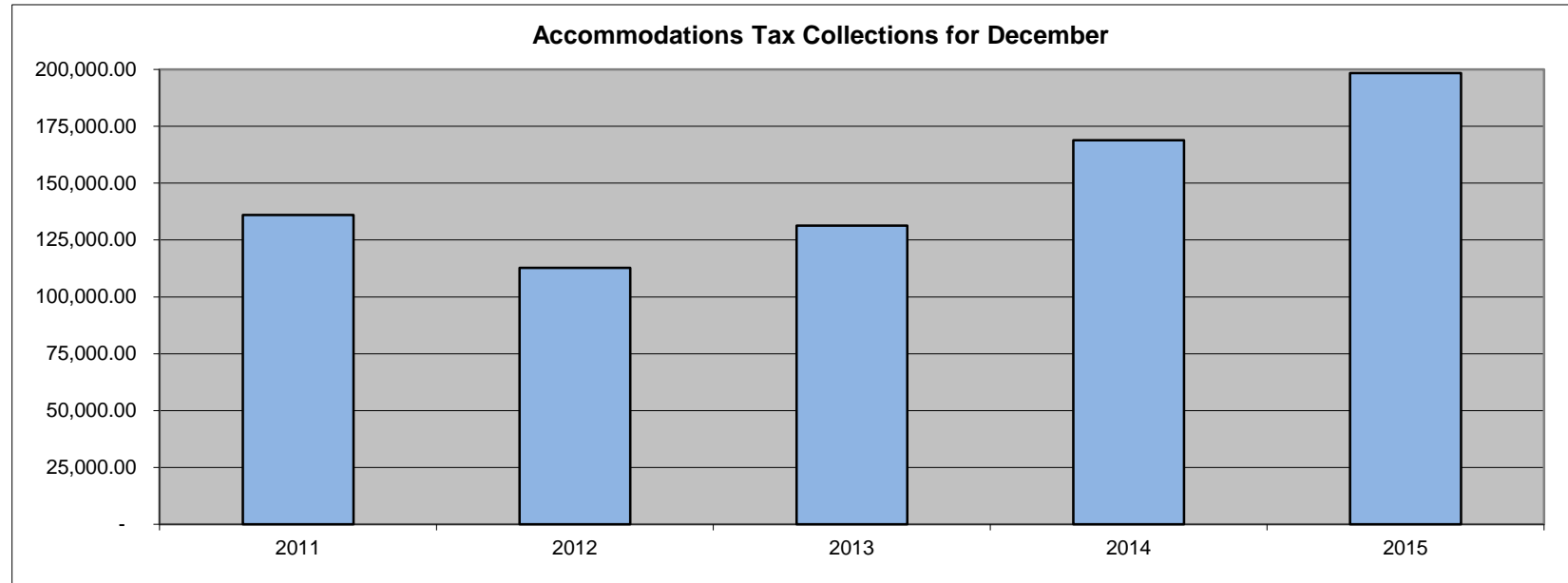


**Sales Tax Monthly Comparison 2013-2015**



**TOWN OF AVON  
ACCOMMODATIONS TAX  
2015 Actual vs. Budget**

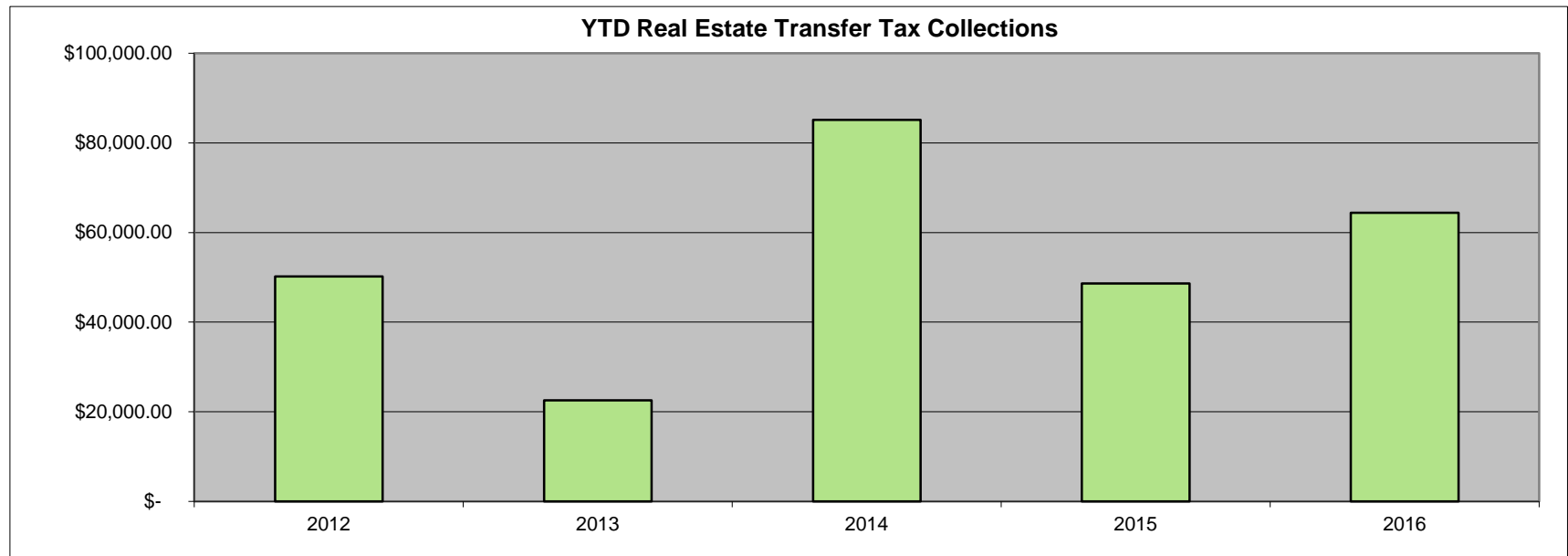
	Actual Collections					Budget	YTD Collections	Budget	% change
	2010	2011	2012	2013	2014	2015	2015	Variance	2014
January	\$ 87,938.84	\$ 85,233.73	\$ 90,118.88	\$ 108,508.43	\$ 129,851.78	\$ 140,746	\$ 164,361.04	\$ 23,615.12	26.58%
February	99,336.34	114,035.90	106,016.32	137,503.61	150,317.06	162,928	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	34,328.47	(425.62)	7.06%
December	98,561.90	135,984.00	112,759.02	131,361.43	168,944.85	183,119	198,421.26	15,302.49	17.45%
Total	<u>\$ 627,781.55</u>	<u>\$ 746,026.17</u>	<u>\$ 733,397.32</u>	<u>\$ 888,866.77</u>	<u>\$ 995,540.41</u>	<u>\$ 1,079,063</u>	<u>\$ 1,132,575.91</u>	<u>\$ 53,512.91</u>	<u>13.76%</u>



**Town of Avon**  
**Real Estate Transfer Tax**  
**2016 Actual vs. Budget**

	Actual Collections					Budget 2016	YTD Collections 2016	\$ change 2015	% of change 2015
	2011	2012	2013	2014	2015				
January	\$ 57,540.00	\$ 50,204.00	\$ 22,535.00	\$ 85,126.74	\$ 48,640.40	\$ 50,539	\$ 64,422.00	\$ 15,781.60	32.45%
February	230,705.50	41,750.07	55,872.69	562,219.70	85,479.08	186,812			
March	187,099.47	84,760.49	125,927.64	50,375.06	168,744.22	118,076			
April	249,482.30	219,195.80	144,437.80	197,656.36	125,266.30	179,158			
May	187,668.62	270,170.12	121,784.12	183,745.60	237,971.08	191,657			
June	49,606.58	169,040.47	90,309.74	220,009.15	294,434.84	157,600			
July	46,707.37	71,057.40	386,434.78	141,051.52	396,838.68	199,457			
August	106,785.21	232,505.93	97,579.70	154,032.32	152,380.93	142,265			
September	140,876.56	96,389.34	157,010.67	267,886.92	291,223.61	182,479			
October	64,005.33	176,889.62	169,839.80	178,044.24	172,855.22	145,777			
November	98,057.44	150,549.86	112,491.82	122,582.66	169,328.38	124,987			
December	198,448.03	145,134.57	83,382.60	1,598,062.92	175,552.42	421,193			
Total	<u>\$ 1,616,982.41</u>	<u>\$ 1,707,647.67</u>	<u>\$ 1,567,606.36</u>	<u>\$ 3,760,793.19</u>	<u>\$ 2,318,715.16</u>	<u>\$ 2,100,000</u>	<u>\$ 64,422.00</u>	<u>\$ 15,781.60</u>	<u>32.45%</u>

Budget 2,100,000.00  
Variance, Favorable (Unfavorable) \$ (2,035,578.00)



# General Fund

## January 2016 Expenditures to Date

### Department Expenditure Summaries

Dept./Div. Number	Description	2016 Budget	Encumbrances Outstanding	Year To Date Expenditures	Available Balance	YTD/Budget
<b>General Government:</b>						
111	Mayor and Town Council	\$ 210,907	\$ 8,874	\$ 27,324	\$ 174,709	17.16%
112	Boards and Commissions	15,300	-	1,018	14,282	6.65%
113	Town Attorney	130,000	-	-	130,000	0.00%
115	Town Clerk	135,636	17,465	13,578	104,593	22.89%
121	Municipal Court	124,210	-	7,185	117,025	5.78%
131	Town Manager	366,967	1,158	27,690	338,119	7.86%
133	Community Relations	149,897	10,372	6,178	133,347	11.04%
<b>Total General Government</b>		<b>1,132,917</b>	<b>37,869</b>	<b>82,973</b>	<b>1,012,075</b>	<b>10.67%</b>
<b>Human Resources Department:</b>						
132	Human Resources	411,819	11,924	23,721	376,174	8.66%
<b>Finance &amp; IT Department:</b>						
141	Finance	812,834	16,325	51,892	744,617	8.39%
143	Information Systems	384,846	22,735	14,374	347,737	9.64%
149	Nondepartmental	398,813	46,114	148,231	204,468	48.73%
<b>Total Finance &amp; IT</b>		<b>1,596,493</b>	<b>85,174</b>	<b>214,497</b>	<b>1,296,822</b>	<b>18.77%</b>
<b>Total General Gov't Departments</b>		<b>3,141,229</b>	<b>134,967</b>	<b>321,191</b>	<b>2,685,071</b>	<b>14.52%</b>
<b>Community Development:</b>						
212	Planning	317,767	23,618	7,687	286,462	9.85%
213	Building Inspection	146,758	3,750	8,380	134,628	8.27%
214	Economic Development	40,600	5,113	-	35,487	12.59%
215	Town Produced Events	314,364	-	8,807	305,557	2.80%
216	Signature Event Seed Funding	125,000	31,500	65,000	28,500	77.20%
217	Community Grants	230,150	87,110	-	143,040	37.85%
<b>Total Community Development</b>		<b>1,174,639</b>	<b>151,091</b>	<b>89,874</b>	<b>933,674</b>	<b>20.51%</b>
<b>Police Department:</b>						
311	Administration	658,376	27,506	37,488	593,382	9.87%
312	Patrol	2,331,166	35,174	118,881	2,177,111	6.61%
313	Investigations	263,742	-	15,052	248,690	5.71%
<b>Total Police</b>		<b>3,253,284</b>	<b>62,680</b>	<b>171,421</b>	<b>3,019,183</b>	<b>7.20%</b>
<b>Public Works:</b>						
412	Engineering	273,664	2,626	14,497	256,541	6.26%
413	Roads and Bridges	1,612,864	90,988	64,150	1,457,726	9.62%
415	Parks	1,093,645	26,035	41,772	1,025,838	6.20%
418	Buildings & Facilities	1,109,892	164,209	34,769	910,914	17.93%
<b>Total Public Works</b>		<b>4,090,065</b>	<b>283,858</b>	<b>155,188</b>	<b>3,651,019</b>	<b>10.73%</b>
<b>Recreation Department:</b>						
514	Administration	238,222	15,206	26,295	196,721	17.42%
515	Adult Programs	58,827	590	2,758	55,479	5.69%
516	Aquatics	427,447	10,764	21,966	394,717	7.66%
518	Fitness	132,740	-	3,316	129,424	2.50%
519	Guest Services	292,090	7,500	15,363	269,227	7.83%
521	Youth Programs	132,412	927	5,294	126,191	4.70%
<b>Total Recreation</b>		<b>1,281,738</b>	<b>34,987</b>	<b>74,992</b>	<b>1,171,759</b>	<b>8.58%</b>
<b>TOTAL OPERATING EXPENDITURES</b>		<b>\$ 12,940,955</b>	<b>\$ 667,583</b>	<b>\$ 812,666</b>	<b>11,460,706</b>	<b>11.44%</b>

# Fleet Maintenance Enterprise Fund

## January 2016 Expenditures to Date

### Expenditure Summary

Dept./Div. Number	Description	2016 Budget	Encumbrances Outstanding	Year To Date Expenditures	Available Balance	YTD/Budget
<b>EXPENDITURES</b>						
Public Works:						
434	Fleet Maintenance	\$ 1,785,969	\$ 70,924	\$ 109,956	\$ 1,605,089	10.13%
	<b>Total Operating Expenditures</b>	<u>1,785,969</u>	<u>70,924</u>	<u>109,956</u>	<u>1,605,089</u>	<u>10.13%</u>
	<b>TOTAL EXPENDITURES</b>	<u>\$ 1,785,969</u>	<u>\$ 70,924</u>	<u>\$ 109,956</u>	<u>\$ 1,605,089</u>	<u>10.13%</u>

# Transit Enterprise Fund

## January 2016 Expenditures to Date

### Expenditure Summary

Dept./Div. Number	Description	2016 Budget	Encumbrances Outstanding	Year To Date Expenditures	Available Balance	YTD/Budget
<b>EXPENDITURES</b>						
431	Transit Administration	\$ 239,797	\$ 11,584	\$ 22,413	\$ 205,800	14.18%
432	Transit Operations	1,549,213	140,450	245,624	1,163,139	24.92%
435	Wash Bay	159,486	10,954	3,310	145,222	8.94%
<b>Total Operating Expenditures</b>		1,948,496	162,988	271,347	1,514,161	22.29%
<b>TOTAL EXPENDITURES</b>		<u>\$ 1,948,496</u>	<u>\$ 162,988</u>	<u>\$ 271,347</u>	<u>\$ 1,514,161</u>	<u>22.29%</u>





## TOWN COUNCIL REPORT

To: Honorable Mayor Jennie Fancher and Town Council  
From: Preston Neill, Executive Assistant to the Town Manager  
Date: February 23, 2016  
Agenda Topic: Town Code Requirement for Gift Reporting and Disclosure Report

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The Town Code of Ethics requires disclosure of any gifts received which exceed \$50 in value. "Gifts" includes any present, or offer of future, individual gift, favor, loan, service or thing of value in excess of \$50.00 and such gift is offered due to such person's status as a Town Officer then such Officer shall report such gift and the estimated value to the Town Clerk. The Avon Municipal Code requires the Town Clerk to disclose through a report any gifts offered to any Town Officer per Section 2.30.170 of the Town Code of Ethics.

Please find attached the Town Clerk Gift Reporting Disclosure Report for February 2016, which lists the following:

- 1) Fourteen (14) 3-day VIP passes to the WinterWonderGrass Music & Brew Festival from February 19<sup>th</sup> through February 21<sup>st</sup>
- 2) Two (2) single-days VIP passes to the WinterWonderGrass Music & Brew Festival on February 19<sup>th</sup>
- 3) One (1) general admission pass to the WinterWonderGrass Music & Brew Festival on February 19<sup>th</sup>
- 4) Six (6) 3-day general admission passes to the WinterWonderGrass Music & Brew Festival from February 19<sup>th</sup> through February 21<sup>st</sup>

Town Council is not required to take any action; however, any Town Council member may request Council consideration of a report gift to determine whether such gift constitutes a conflict of interest.

## **Town of Avon**

### **Town Clerk Disclosure Report**

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In accordance with §7, Article XXIX of the Colorado Constitution and Section 2.30.170, Chapter 2.30 Avon Town Code of Ethics of the Avon Municipal Code, and any other applicable Avon Home Rule Charter provision, ordinance or resolution adopted by the Town of Avon, I, Debbie Hoppe, Town Clerk for Town of Avon, submit the following list of such gifts reported to be received by officers of the Town of Avon:

1. 2016 WinterWonderGrass Music & Brew Festival VIP Passes – The Town Council received fourteen (14) 3-day VIP passes to WinterWonderGrass from February 19<sup>th</sup> through February 21<sup>st</sup>. Each member of the Council received two (2) passes, one provided for the purpose of reviewing the event for production and for any future funding request, and the second provided as a gift for a guest. Each pass is valued at \$299.00.
2. 2016 WinterWonderGrass Music & Brew Festival VIP Passes – Mayor Jennie Fancher received two (2) single-day VIP passes to WinterWonderGrass on February 19<sup>th</sup>, valued at \$286.00.
3. 2016 WinterWonderGrass Music and Brew Festival General Admission Pass – Festival and Special Events Director received one (1) single-day General Admission pass to WinterWonderGrass on February 19<sup>th</sup>, valued at \$74.00.
4. 2016 WinterWonderGrass Music & Brew Festival Three-Day Passes – A Town employee drawing was held for six (6) 3-day general admission passes to WinterWonderGrass from February 19<sup>th</sup> through February 21<sup>st</sup>. Three (3) Town employees were awarded passes as they were given away in pairs. Each pass is valued at \$149.00.

Submitted to the Avon Town Council on February 23, 2016.

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Debbie Hoppe, Town Clerk