TOWN BOARD REGULAR MEETING
October 28, 2013 - 7:00 P.M.
Town Board Chambers, 301 Walnut Street, Windsor, CO 80550

The Town of Windsor will make reasonable accommodations for access to Town services, programs, and activities and will make special communication arrangements for persons with disabilities. Please call (970) 674-2400 by noon on the Thursday prior to the meeting to make arrangements.

AGENDA

A. CALL TO ORDER

1. Roll Call

2. Pledge of Allegiance

3. Review of Agenda by the Board and Addition of Items of New Business to the Agenda for Consideration by the Board

4. Board Liaison Reports
   - Town Board Member Baker – Parks, Recreation & Culture Advisory Board; Cache La Poudre Trail Board Alternate
   - Town Board Member Thompson – Planning Commission; Tree Board; Great Western Trail Authority
   - Mayor Pro-Tem Melendez – Downtown Development Authority; Chamber of Commerce; North Front Range/MPO Alternate
   - Town Board Member Rose – Water & Sewer Board; Windsor Housing Authority, Planning Commission Alternate
   - Town Board Member Bishop-Cotner – Historic Preservation Commission; Clearview Library Board
   - Town Board Member Adams – Cache La Poudre Trail Board; Student Advisory Leadership Team (SALT)
   - Mayor Vazquez – North Front Range/MPO

5. Public Invited to be Heard

   Individuals wishing to participate in Public Invited to be Heard (non-agenda item) are requested to sign up on the form provided in the foyer of the Town Board Chambers. When you are recognized, step to the podium, state your name and address then speak to the Town Board.

   *Individuals wishing to speak during the Public Invited to be Heard or during Public Hearing proceedings are encouraged to be prepared and individuals will be limited to three **(3) minutes**. Written comments are welcome and should be given to the Deputy Town Clerk prior to the start of the meeting.*

B. CONSENT CALENDAR

1. Minutes of the October 14, 2013 Regular Town Board Meeting – M. Lee
2. Resolution No. 2013-58 - A Resolution approving an Intergovernmental Agreement Between the Town of Windsor and the Department of Local Affairs with Respect to the Energy Impact Assistance Grant Funding for a Feasibility Study Regarding a Public Works and Maintenance Facility within the Town of Windsor, Colorado – K. Unger
3. Resolution No. 2013-59 - A Resolution Approving a Letter Agreement dated October 8, 2013 between the Town and Cave Consulting Group, Inc., for Project Management Services Relating to Repairs and Restoration of Town Facilities – T. Walker
4. Resolution No. 2013-60 – A Resolution Approving an Intergovernmental Agreement between the Town of Windsor, Colorado, and the State of Colorado Department of Public Health and Environment with Respect to Grant Funding for the Evaluation, Design and Construction of Improvements to the Town of Windsor's Wastewater Treatment Plant – T. Walker

5. Resolution No. 2013-61 – A Resolution Approving a Professional Services Agreement Between the Town of Windsor, Colorado, and Farnsworth Group, Inc., with Respect to the Evaluation, Design and Construction of Improvements to the Town of Windsor's Wastewater Treatment Plant – T. Walker
6. Ratify Request of Historic Preservation Commission to Remove Alternate Member, Mr. Tyler Rossman from Historic Preservation Commission – J. Olhava

BOARD ACTION

1. Ordinance No. 2013-1462 - An Ordinance Annexing and Zoning Certain Territory known as the Providence Farm Annexation to the Town of Windsor, Colorado – Stanley K. Everitt Grandchildren's Trust, applicant/ Stan and Sara Everitt, applicant's representatives
   Super-majority vote required for adoption on second reading
   - Second Reading
   - Legislative Action
   - Staff Presentation: Josh Olhava, Associate Planner

2. Resolution No. 2013-62 - A Resolution Approving an Annexation Agreement between the Town of Windsor and the Stanley K. Everitt Grandchildren's Trust with Respect to the Providence Farm Annexation to the Town of Windsor, Colorado – Stanley K. Everitt Grandchildren's Trust, applicant/ Stan and Sara Everitt, applicant's representatives
   - Legislative Action
   - Staff Presentation: Josh Olhava, Associate Planner

3. Ordinance No. 2013-1463 – An Ordinance Pursuant to Section 3.1 of the Town of Windsor Home Rule Charter Approving a Revision to the Boundaries of Municipal Election Districts within the Town of Windsor, Colorado
   - First Reading
   - Legislative Action
   - Staff Presentation: Patti Garcia, Town Clerk/Assistant to Town Manager

4. Public Hearing – Conditional Use Grant for a temporary off-premises sign located in the General Commercial (GC) zoning district at Eagle Crossing Subdivision, Second Filing, Lot 2, Block 1 – Greg Meeter, Lend Lease, applicant; Eagle Crossing Windsor LLC, property owner
   - Quasi-judicial action
   - Staff Presentation: Brett Walker, Associate Planner

5. Conditional Use Grant for a temporary off-premises sign located in the General Commercial (GC) zoning district at Eagle Crossing Subdivision, Second Filing, Lot 2, Block 1 – Greg Meeter, Lend Lease, applicant; Eagle Crossing Windsor LLC, property owner
   - Quasi-judicial action
   - Staff Presentation: Brett Walker, Associate Planner

6. Financial Report for September
   - Staff Presentation – Dean Moyer, Director of Finance

C. COMMUNICATIONS

1. Communications from the Town Attorney
2. Communications from Town Staff
3. Communications from the Town Manager
4. Communications from Town Board Members

D. ADJOURN

TOWN BOARD REGULAR MEETING
October 14, 2013 - 7:00 P.M.
Town Board Chambers, 301 Walnut Street, Windsor, CO 80550

Minutes

A. CALL TO ORDER

Mayor Vazquez called the regular meeting to order at 6:32 p.m.

1. Roll Call was taken at the Executive Session prior to the start of the regular meeting

Mayor John Vazquez	
Mayor Pro-Tem Kristie Melendez	
Myles Baker	
Don Thompson	
Jeremy Rose	
Robert Bishop-Cotner	
Ivan Adams	

Also present:	Town Manager	Kelly Arnold
	Town Attorney	Ian McCargar
	Management Assistant	Kelly Unger
	Town Clerk	Patti Garcia
	Economic Development Manager	Stacy Johnson
	Director of Finance	Dean Moyer
	Director of Planning	Joe Plummer
	Director of Human Resources	Mary Robins
	Director of Engineering	Dennis Wagner
	Director of Public Works	Terry Walker
	Associate Planner	Josh Olhava

Item E. was moved to the top of the agenda.

E. EXECUTIVE SESSION

An executive session pursuant to § 24-6-402 (4) (e), C.R.S., for the purpose of determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators. Economic inducements for new development (Stacy Johnson, Kelly Arnold, Ian McCargar)

Town Board Member Thompson motioned to go into an executive session pursuant to § 24-6-402 (4) (e), C.R.S., for the purpose of determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators. Economic inducements for new development; Mayor Pro-Tem Melendez seconded the motion. Roll call on the vote resulted as follows:
Yeas – Baker, Thompson, Rose, Melendez, Bishop-Cotner, Adams, Vazquez
Nayes – None. Motion passed.

Upon returning to the regular meeting, Mayor Vazquez advised that if any participants in the Executive Session believed the session contained any substantial discussion of any matters not included in the motion to convene the Executive Session, or believed any improper action occurred during the Session in violation of the Open Meetings Law, such concerns should now be stated. Hearing none, the Regular Meeting resumed.

Upon a motion duly made, the Regular Meeting resumed at 7:01 p.m.

2. Pledge of Allegiance
Town Board Member Thompson led the Pledge of Allegiance.

DRAFT

3. Review of Agenda by the Board and Addition of Items of New Business to the Agenda for Consideration by the Board
Town Board Member Thompson moved to approve the agenda as presented; Town Board Member Baker seconded the motion. Roll call on the vote resulted as follows:
Yeas – Baker, Thompson, Rose, Melendez, Bishop-Cotner, Adams, Vazquez
Nayes – None. Motion passed.

4. Board Liaison Reports
   - Town Board Member Baker – Parks, Recreation & Culture Advisory Board; Cache La Poudre Trail Board Alternate
     Mr. Baker reported PReCAB met on October 1 to review the Master Plan goals and Museum Strategic Plan Draft. They will meet again on November 5.

   - Town Board Member Thompson – Planning Commission; Tree Board; Great Western Trail Authority
     Mr. Thompson told the Board a Planning Commission Work Session was held to review rental vehicle agencies in General Commercial zoning districts, however more discussion is needed to develop a recommendation. The Commission also forwarded recommendations of approval on Items C 4-6 of this evening's agenda.

     The 2014 Tree Board Calendars will be available for distribution by Thanksgiving. The 2014 Tree Sale will be held on April 19.

     The Great Western Trail Authority will meet again on October 16.

   - Mayor Pro-Tem Melendez – Downtown Development Authority; Chamber of Commerce; North Front Range/MPO Alternate
     Mayor Pro-Tem Melendez reported the DDA will meet on October 16 and is preparing for budget talks with the Town Board on October 28.

     The Chamber of Commerce, DDA and the Town of Windsor are planning Windsor Wonderland on December 7, with a guest appearance from Santa. The Chamber is planning several changes for 2014, including new membership levels, and exciting new activities.

   - Town Board Member Rose – Water & Sewer Board; Windsor Housing Authority, Planning Commission Alternate
     Mr. Rose reported the Water and Sewer Board met on October 9, but he was unable to attend.

   - Town Board Member Bishop-Cotner – Historic Preservation Commission; Clearview Library Board
     Mr. Bishop-Cotner shared the HPC adopted the 2013-15 Work Plan at its October 9 meeting. They have requested a joint work session with the Town Board to discuss their goals and progress.

     The Clearview Library Board will meet next on October 31.

   - Town Board Member Adams – Cache La Poudre Trail Board; Student Advisory Leadership Team (SALT)

Mr. Adams told of plans of the Cache La Poudre Trail Board to replace or refurbish mile markers along the trail, work on easements all along the trail route, and complete the bid for the picnic center. The Trail Board will hold a retreat on October 17.

SALT has been busy making preparations for the Haunted House scheduled for October 25. The group will be using items from the late Michael Kelly who was "famous" for his Halloween displays. Ms. Susan Kelly has generously offered to loan items to SALT for their event.

- Mayor Vazquez – North Front Range/MPO
  Mayor Vazquez informed the Board the MPO did not meet last month in light of the flooding emergency mitigation.

5. Recognition of Dr. Otto "Gene" Hoehne for 16 years of service on the Water & Sewer Board; Plaque Presentation to Cindy Hoehne
   Mayor Vazquez introduced Cindy Hoehne, wife of the late Dr. Hoehne, and Kenton Brunner, Chair of the Water and Sewer Board. Ms. Hoehne also introduced her son Eric. Mr. Brunner expressed his gratitude for Dr. Hoehne's dedicated service from 1997 until his death in 2013. Those in attendance shared that expression of gratitude with a standing ovation in honor of Dr. Hoehne.

6. Colorado Parks and Recreation Association; Award Presentation to Bobby Warner – K. Arnold
   Mr. Arnold announced Bobby Warner has been named the Colorado Association of Recreational Athletics Professional of the Year. Mr. Warner was nominated for this award by Marc Radamacher, Sports Supervisor for the City of Fort Collins. In his nomination, Mr. Radamacher stated Bobby is involved in every event CARA hosts. Mr. Warner thanked staff for allowing him the opportunity to participate in CARA events, noting CARA looks to Windsor for its leadership in the Recreation field in Colorado.

7. Public Invited to be Heard
   There was no public comment.

B. CONSENT CALENDAR

1. Minutes of the September 23, 2013 Regular Town Board Meeting – M. Lee
2. List of Bills – D. Moyer
   Town Board Member Thompson moved to approve the Consent Calendar as presented; Town Board Member Adams seconded the motion. Roll call on the vote resulted as follows:
   Yeas – Baker, Thompson, Rose, Melendez, Bishop-Cotner, Adams, Vazquez
   Nayes – None. Motion passed.

C. BOARD ACTION

1. Ordinance No. 2013-1459 – An Ordinance Amending Chapter 8 of the Windsor Municipal Code for the Purpose of Allowing Greater Neighborhood Involvement in the Setting of Speed Limits within Residential Areas of the Town of Windsor, Colorado
   Super-majority vote required for adoption on second reading
   - Second Reading
   - Legislative action
   - Staff Presentation: Kelly Unger, Management Assistant & Ian McCargar, Town Attorney

Mayor Pro-Tem Melendez moved to approve Ordinance 2013-1459; Town Board Member Thompson seconded the motion.

Ms. Unger reminded the Board this Ordinance would allow Home Owners Associations and Metro Districts to lower speed limits on local streets to 25 mph if approved via application to the Town. Applications could be available by the end of November if the Ordinance is approved. She added there have been no changes since first reading. There were no public comments.
Roll call on the vote resulted as follows:
Yeas – Baker, Thompson, Melendez, Vazquez
Nayes – Rose, Bishop-Cotner, Adams. Motion failed.

2. Ordinance No. 2013-1460 – An Ordinance Amending Section 8-6-20(b)(2) of the Windsor Municipal Code with Respect to Eligible Applicants for Golf Car Permits within the Town of Windsor, Colorado
Super-majority vote required for adoption on second reading
- Second Reading
- Legislative action
- Staff Presentation: Ian McCargar, Town Attorney

Mayor Pro-Tem Melendez moved to approve Ordinance 2013-1460; Town Board Member Baker seconded the motion.

Mr. McCargar noted this is a small change to the existing golf cart ordinance that will add Metropolitan Districts as an entity that can support an individual's application for a golf cart permit. He added there have been no changes since first reading.
Roll call on the vote resulted as follows:
Yeas – Baker, Thompson, Rose, Melendez, Bishop-Cotner, Adams, Vazquez
Nayes – None. Motion passed.

3. Ordinance No. 2013-1461 – Rezoning certain property known as Windsor Commons Subdivision Second Filing, Lot 3 – 1101 Automation Drive – Karin Adams, JAKA Properties LLC, applicant/Garry A. Wilkening, Wilkening Storage LLC and Michael Kortendick, AICP, Landform, Inc., applicant's representatives
Super-majority vote required for adoption on second reading
- Second Reading
- Quasi-judicial
- Staff Presentation: Josh Olhava, Associate Planner

Mayor Pro-Tem Melendez moved to approve Ordinance 2013-1461; Town Board Member Baker seconded the motion.

Mr. Olhava reviewed the details of the rezoning request, highlighting the location, use, surrounding zoning, and future plans for the site. Mr. Wilkening told the Board he has no objections to the conditions of approval.

NOTE: the official record of this evening's proceedings shall include the applications, staff memos and recommendations, packet materials and supporting documents, and all testimony received.

Roll call on the vote resulted as follows:
Yeas – Baker, Thompson, Rose, Melendez, Bishop-Cotner, Adams, Vazquez
Nayes – None. Motion passed.

4. Public Hearing – Ordinance No. 2013-1462 - Annexing and Zoning Certain Territory known as the Providence Farm Annexation to the Town of Windsor, Colorado – Stanley K. Everitt Grandchildren's Trust, applicant/ Stan and Sara Everitt, applicant's representatives
   - Legislative action
   - Staff Presentation: Josh Olhava, Associate Planner

   Town Board Member Adams moved to open the public hearing; Town Board Member Thompson seconded the motion. Roll call on the vote resulted as follows:
   Yeas – Baker, Thompson, Rose, Melendez, Bishop-Cotner, Adams, Vazquez
   Nayes – None. Motion passed.

   Mr. Olhava reiterated the details of the annexation review, including location, density, surrounding zoning, location of the conservation easement on the property, annexation procedures and an overview of the Ordinance / Resolution requirements. Mr. McCargar also spoke briefly to clarify these requirements. Mr. Baker asked what would happen if the property was not annexed into the Town. Mr. McCargar responded the property could still be developed but would remain in unincorporated Weld County not the Town of Windsor. Mr. Adams asked if part of the conservation easement would ever be included in the Poudre Trail. Mr. Olhava noted that would be difficult to determine at this time, but most likely not.

   There were no comments or questions from the public.

   NOTE: the official record of this evening's proceedings shall include the applications, staff memos, recommendations, packet materials and supporting documents, and all testimony received.

   Town Board Member Thompson moved to close the public hearing; Mayor Pro-Tem Melendez seconded the motion. Roll call on the vote resulted as follows:
   Yeas – Baker, Thompson, Rose, Melendez, Bishop-Cotner, Adams, Vazquez
   Nayes – None. Motion passed.

5. Resolution No. 2013-57 - A Resolution Making Certain Findings and Conclusions Pursuant to Section 31-12-110 C.R.S., Concerning the Providence Farm Annexation to the Town of Windsor, Colorado
   - Legislative Action
   - Staff Presentation: Josh Olhava, Associate Planner

   Mayor Pre-Tem Melendez moved to approve Resolution 2013-57; Town Board Member Thompson seconded the motion.

   Mr. Olhava stated he had no additional information to present.

   Roll call on the vote resulted as follows:
   Yeas – Baker, Thompson, Rose, Melendez, Bishop-Cotner, Adams, Vazquez
   Nayes – None. Motion passed.

6. Ordinance No. 2013-1462 - An Ordinance Annexing and Zoning Certain Territory known as the Providence Farm Annexation to the Town of Windsor, Colorado – Stanley K. Everitt Grandchildren's Trust, applicant/ Stan and Sara Everitt, applicant's representatives
   - First Reading
   - Legislative Action
   - Staff Presentation: Josh Olhava, Associate Planner

   Town Board Member Thompson moved to approve Ordinance 2013-1462; Town Board Member Bishop-Cotner seconded the motion.

Mr. Olhava again noted he had no additional information to present at this time.

Roll call on the vote resulted as follows:
Yeas – Baker, Thompson, Rose, Melendez, Bishop-Cotner, Adams, Vazquez
Nayes – None. Motion passed.

D. COMMUNICATIONS

1. Communications from the Town Attorney
   Mr. McCargar reported an agreement has been reached regarding the zoning code violation. The agreement includes improvements to parking and traffic. He noted an invoice for services should be received by the first week in November.

2. Communications from Town Staff
   There were no communications from the staff.

3. Communications from the Town Manager
   Mr. Arnold thanked Board Members for participation in the budget discussions held on October 12. He reminded the Board that next month there will be a Work Session on bonding and partnership information with regard to the Community Recreation Center expansion study. Mr. Thompson inquired if information was available on the impact of projects like this one on the private sector. Mr. Arnold replied Ms. Chew is investigating that concern and will report her findings to the Board at a later date.

4. Communications from Town Board Members

E. EXECUTIVE SESSION

An executive session pursuant to § 24-6-402 (4) (e), C.R.S., for the purpose of determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators. Economic inducements for new development (Stacy Johnson, Kelly Arnold, Ian McCargar)

The Executive Session was held immediately preceding this meeting.

F. ADJOURN

Town Board Member Thompson moved to adjourn; Mayor Pre-Tem Melendez seconded the motion. All members voted yes. The meeting was adjourned at 7:52 p.m.

M E M O R A N D U M

Date: October 28th, 2013
To: Mayor and Town Board
From: Kelly Unger, Management Assistant
Re: Public Works/Parks Service Center Feasibility Study

Background/Discussion:
The proposed joint Public Works/Maintenance facility will address our current needs for additional enclosed vehicle storage and repair, open yard storage for vehicles and bulk materials, along with additional office space. Due to the aging facility and recent growth, the existing facility no longer meets our needs.

On August 27th, 2013 Windsor received a $10,300 matching grant from the Department of Local Affairs to assist with a design and feasibility study for the Public Works Maintenance/Park & Recreation Maintenance Facility. Attached is the contract between the Department of Local Affairs and the Town of Windsor to execute the project.

In addition to the grant contract, staff has also developed a Professional Service Agreement with the consultants, Aller • Lingle • Massey Architects P.C. Their firm was selected to serve as consultants to develop the feasibility study and preliminary design for the public works maintenance facility.

Financial Impact:
Energy & Mineral Impact Assistance Grant: $10,300
Town Match: $10,300

Recommendation:
Approve Resolution NO. 2013-58 A resolution approving an intergovernmental agreement between the Town of Windsor and the Colorado Department of Local Affairs with respect to the Energy Impact Assistance Grant funding for a feasibility study regarding Public Works and Maintenance Facility within the Town of Windsor, Colorado.

Approve the Professional Service Agreement between the Town of Windsor and the consultants Aller • Lingle • Massey Architects P.C. to develop the feasibility study and preliminary design for the public works maintenance facility.

Attachments:

- Resolution NO. 2013-58
- Professional Service Agreement between Aller • Lingle • Massey Architects P.C and Town of Windsor
- Grant Agreement between State of Colorado Department of Local Affairs and Town of Windsor

TOWN OF WINDSOR

RESOLUTION NO. 2013-58

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF WINDSOR AND THE COLORADO DEPARTMENT OF LOCAL AFFAIRS WITH RESPECT TO ENERGY IMPACT ASSISTANCE GRANT FUNDING FOR A FEASIBILITY STUDY REGARDING A PUBLIC WORKS AND MAINTENANCE FACILITY WITHIN THE TOWN OF WINDSOR, COLORADO

WHEREAS, the citizens of Windsor place high value on the maintenance of public works facilities; and

WHEREAS, the Town's Department of Public Works is presently sharing its maintenance facility with the Weld RE-4 School District under an agreement between the Town and School District; and

WHEREAS, the Town Board has directed the Town Manager to evaluate the feasibility of a new stand-alone Public Works maintenance facility; and

WHEREAS, the Town Manager has secured a grant through the Energy Impact Assistance Fund administered by the Colorado Department of Local Affairs ("DOLA"), under which funding for a feasibility study is available; and

WHEREAS, DOLA requires the Town to enter into a Grant Agreement confirming the terms under which the grant funds will be disbursed, reported and applied; and

WHEREAS, the proposed Grant Agreement, together with all exhibits thereto, is attached hereto and incorporated herein; and

WHEREAS, the Town Board has reviewed the attached Grant Agreement and finds that it is proper in all respects.

NOW, THEREFORE, IT IS FOUND AND RESOLVED BY THE TOWN BOARD OF THE TOWN OF WINDSOR, COLORADO, AS FOLLOWS:

1. The attached Grant Agreement between the Town of Windsor and the Colorado Department of Local Affairs is hereby approved.

2. The Mayor is hereby authorized to execute the said Agreement on the Town's behalf.

Upon motion duly made, seconded and carried, the foregoing Resolution was adopted this 28th day of October, 2013.

TOWN OF WINDSOR, COLORADO

_____

John S. Vazquez, Mayor

ATTEST:

_____

Patti Garcia, Town Clerk

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into the day and year set forth below by and between THE TOWN OF WINDSOR, COLORADO, a Colorado Home Rule Municipal Corporation ("Town"), and ALLER LINGLE MASSEY ARCHITECTS, PC, a Colorado professional corporation ("Consultant").

WITNESSETH:

WHEREAS, The Town is in need of an independent design consultant to develop a feasibility study and preliminary design work for a proposed public works maintenance facility ("Project"); and

WHEREAS, Consultant has the time, expertise and personnel available, and is willing to undertake the Project according to the terms of this Agreement; and

WHEREAS, the State of Colorado Department of Local Affairs ("DOLA") has approved matching grant funding to defray the cost of the Project, and has entered into a Grant Agreement with the Town, within which the grant award is referred to numerically as "EIAF 7337" ("DOLA Grant Agreement"); and

WHEREAS, the parties to this Agreement acknowledge that certain terms of the DOLA Grant Agreement apply to Consultant as if Consultant were a signatory to the DOLA Grant Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereto agree as follows:

1. SCOPE OF SERVICES. The Consultant agrees to provide services with respect to the Project as described in the attached Proposal for Architectural/Master Planning Services dated June 12, 2013, revised July 17, 2013, which is incorporated herein by this reference and labeled Exhibit "A". In addition, to the extent Consultant is deemed a "sub-grantee" under the DOLA Grant Agreement, Consultant agrees to conform to all programmatic and grant requirements of sub-grantees as stated in said DOLA Grant Agreement.

2. THE WORK SCHEDULE. The services to be performed pursuant to this Agreement shall be performed and completed during the first quarter of 2014, but in no event later than sixteen (16) weeks following instructions to proceed by the Town.

3. TIME OF COMMENCEMENT AND COMPLETION OF SERVICES. The services to be performed pursuant to this Agreement shall be undertaken by Consultant upon notification to proceed by the Town. Time is of the essence. Any extensions of any time limit must be agreed upon in writing by the parties hereto.

4. EARLY TERMINATION BY TOWN/NOTICE. Notwithstanding the time periods contained herein, the Town may terminate this Agreement at any time with or without cause by providing written notice of termination to the Consultant. Such notice shall be delivered at least fifteen (15) days prior to the termination date contained in said notice unless otherwise agreed in writing by the parties. All notices provided under this agreement shall be effective when mailed, postage prepaid and sent to the following address:

Consultant:	Town:	With copy to:
712 Whalers Way	Wade Willis	_____
Building B, Suite 100	301 Walnut Street	_____
Fort Collins, CO 80525	Windsor, CO 80550	_____

In the event of any such early termination by the Town, the Consultant shall be paid on an hourly basis for services rendered prior to the date of termination as set forth in the "Additional Services" section of Exhibit A, not to exceed $20,600.00, and subject to the satisfactory performance of the Consultant's obligations under this Agreement. Such payment shall be the Consultant's sole right and remedy for such termination.

5. INSURANCE

(i) The Consultant agrees to procure and maintain, at its own cost, the following policy or policies of insurance. The Consultant shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Agreement by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

(ii) Consultant shall procure and maintain, and shall cause each Subcontractor of the Consultant to procure and maintain or insure the activity of Consultant's Subcontractors in Consultant's own policy, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the Town. All coverages shall be continuously maintained from the date of commencement of services hereunder. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

(iv) Workers' Compensation insurance as required by State statute, and Employer's Liability Insurance covering all of Consultant's and Consultant's sub-contractors' employees acting within the course and scope of their employment.

(v) Comprehensive General Liability insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows: (a) $1,000,000 each occurrence; (b) $1,000,000 general aggregate; (c) $1,000,000 products and completed operations aggregate; and (d) $50,000 any one fire. The policy shall contain a severability of interests provision.

(vi) Comprehensive Automobile Liability insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of $1,000,000 each accident combined single limit.

(vii) Professional Liability insurance in the minimum amount of $1,000,000 per occurrence and $2,000,000 in the aggregate, written on an occurrence form, that provides coverage for its work undertaken pursuant to this Agreement. If a policy written on an occurrence form is not commercially available, the claims-made policy shall remain in effect for the duration of this Agreement and for at least two years beyond the completion and acceptance of the work under this Agreement, or, alternatively, a two year extended reporting period must be purchased. The Consultant and Consultant's sub-contractors shall be responsible for all claims, damages, losses or expenses, including attorney's fees, arising out of or resulting from such party's negligent performance of professional services under this Agreement, or any subcontract.

(viii) The policies required above, except for the Workers' Compensation insurance, Employers' Liability insurance, and Professional Liability insurance, shall be endorsed to include the Town, and its officers and employees, as additional insureds. Every policy required above shall be primary insurance, and any insurance carried by the Town, its officers, or its employees, shall be excess and not contributory insurance to that provided by Consultant. The additional insured endorsement for the Comprehensive General Liability insurance required above shall not contain any exclusion for bodily injury or property damage arising from completed operations. The Consultant shall be solely responsible for any deductible losses under each of the policies required above.

(ix) Certificates of insurance shall be completed by the Consultant's insurance agent as evidence that policies providing the required coverage, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by the Town. Each certificate shall identify the Project and shall provide that the coverage afforded under the policies shall not be cancelled, terminated or materially changed until at least 30 days prior written notice has been given to the Town. If the words "endeavor to" appear in the portion of the certificate addressing cancellation, those words shall be stricken from the certificate by the agent(s) completing the certificate. The Town reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

(x) Failure on the part of the Consultant to procure or maintain policies providing the required coverage, conditions, and minimum limits shall constitute a material breach of contract upon which the Town may immediately terminate the contract, or at its discretion may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the Town shall be repaid by Consultant to the Town upon demand, or the Town may offset the cost of the premiums against any monies due to Consultant from the Owner.

(xi) The parties hereto understand and agree that the Town is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently $150,000 per person and $600,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, § 24-10-101 et seq., 10 C.R.S., as from time to time amended, or otherwise available to the Town, its officers, or its employees.

6. INDEMNIFICATION

To the fullest extent permitted by law, the Consultant agrees to indemnify and hold harmless the Town, and its officers and its employees, from and against all liability, claims, and demands, on account of any injury, loss, or damage, which arise out of or are connected with the services hereunder, if such injury, loss, or damage, or any portion thereof, is caused by, or claimed to be caused by, the negligent or intentional act, omission, or other fault of the Consultant or any subcontractor of the Consultant, or any officer, employee, or agent of the Consultant or any subcontractor, or any other person for whom Consultant is responsible. The Consultant shall investigate, handle, respond to, and provide defense for and defend against any such liability, claims, and demands, and to bear all other costs and expenses related thereto, including court costs and attorneys' fees. The Consultant's indemnification obligation shall not be construed to extend to any injury, loss, or damage which is caused by the act, omission, or other fault of the Town.

7. COMPENSATION. In consideration of services to be performed pursuant to this Agreement, the Town agrees to pay Consultant the total sum of $20,600.00. Final payment shall be made following acceptance of the work by the Town. Upon final payment, all designs, plans, reports, specifications, drawings, and other services rendered by the Consultant shall become the sole property of the Town.

8. TOWN REPRESENTATIVE. The Town designates Wade Willis as its project representative who shall make, within the scope of his authority, all necessary and proper decisions with reference to the project. All requests for contract interpretations, change orders, and other clarification or instruction shall be directed to Mr. Willis.

9. PROJECT DRAWINGS. Upon conclusion of the Project and before final payment, the Consultant shall provide the Town with digital reproducible drawings of the Project containing accurate information as PDF and Autocad drawing formats, generated by Consultant's in-house Computer-Aided Design and Drafting (CAD) systems, using AutoCAD Version 2013 and/or Revit 2013 software. If requested by the Town, drawings shall be provided on archival quality material, prepared on stable mylar base material using a non-fading process to prove for long storage and high quality reproduction.

10. MONTHLY REPORT. Commencing thirty (30) days after notification to proceed by the Town, and every thirty days thereafter, Consultant shall provide the Town Representative with a written report of the status of the work, any revisions to the work schedule and other material information.

11. INDEPENDENT CONTRACTOR. The services to be performed by Consultant are those of an independent contractor and not of an employee of the Town of Windsor. The Town shall not be responsible for withholding any portion of Consultant's compensation hereunder for the payment of FICA, Workers' Compensation, other taxes or benefits or for any other purpose.

12. PERSONAL SERVICES. It is understood that the Town enters into this Agreement based on the special abilities of the Consultant and that this Agreement shall be considered as an agreement for personal services. Accordingly, the Consultant shall neither assign any responsibilities nor delegate any duties arising under this Agreement without the prior written consent of the Town.

13. ACCEPTANCE NOT WAIVER. The Town's approval of drawings, designs, plans, specifications, reports, and incidental work or materials furnished hereunder shall not in any way relieve the Consultant of responsibility for the quality or technical accuracy of the work. The Town's approval or acceptance of, or payment for, any of the services shall not be construed to operate as a waiver of any rights or benefits provided to the Town under this Agreement.

14. DEFAULT. Each and every term and condition hereof shall be deemed to be a material element of this Agreement. In the event either party should fail or refuse to perform according to the terms of this agreement, such party may be declared in default.

15. REMEDIES. In the event a party has been declared in default, such defaulting party shall be allowed a period of ten (10) days within which to cure said default. In the event the default remains uncorrected, the party declaring default may elect to (a) terminate the Agreement and seek damages; (b) treat the Agreement as continuing and require specific performance; or (c) avail himself of any other remedy at law or equity. If the Town commences and is successful in legal or equitable actions against the Consultant under this Agreement, the Consultant shall be liable to the Town for the Town's reasonable attorney fees and costs incurred as a result of the default.

16. BINDING EFFECT. This writing, together with Exhibit A hereto, constitutes the entire agreement between the parties and shall be binding upon said parties, their officers, employees, agents and assigns and shall inure to the benefit of the respective survivors, heirs, personal representatives, successors and assigns of said parties.

17. LAW/SEVERABILITY/VENUE. The laws of the State of Colorado shall govern the construction, interpretation, execution and enforcement of this Agreement. Venue for any litigation

involving interpretation or enforcement of this Agreement shall be in the state courts of Colorado, sitting in Weld County. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

18. CONSULTANT'S CERTIFICATION PURSUANT TO SECTION 8-17.5-101, C.R.S., et. seq.:

Consultant certifies and represents that at this time:

(i) Consultant does not knowingly employ or contract with an illegal alien who will perform work under this Agreement; and

(ii) Consultant will participate in the E-VERIFY program authorized under 8 U.S.C., Section 1324(a), jointly administered by the United States Department of Homeland Security and the Social Security Administration, or its successor program (hereinafter, "E-VERIFY Program"), or the Colorado Department of Labor and Employment program established under § 8-17.5-102 (5) (c), C.R.S., in order to confirm the employment eligibility of all employees who are newly-hired for employment within the United States.

Unless the E-VERIFY Program has been discontinued as of the date of this certification, Consultant has confirmed the employment eligibility of all employees who are newly hired for employment in the United States through participation in the E-VERIFY program.

Consultant is prohibited from using the E-VERIFY Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

If Consultant obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Consultant shall:

(i) Notify such subcontractor and the Town within three days that Consultant has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

(ii) Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to this section the subcontractor does not cease employing or contracting with the illegal alien; except that Consultant shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

Consultant shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation that the Colorado Department of Labor and Employment undertakes or is undertaking pursuant to the authority established in Subsection 8-17.5-102 (5), C.R.S.

If Consultant violates any provision of this Agreement pertaining to the duties imposed by Subsection 8-17.5-102, C.R.S. the Town may terminate this Agreement. If this Agreement is so terminated, Consultant shall be liable for actual and consequential damages to the Town arising out of Consultant's violation of Subsection 8-17.5-102, C.R.S.

Consultant acknowledges the enforcement provisions of § 8-2-124, C.R.S., and further acknowledges that employment of illegal aliens in violation thereof may result in loss of Consultant's "business license" as

defined therein, together with such other enforcement measures as authorized by law.

19. TABOR DISCLAIMER. To the extent this Agreement contemplates payment to Consultant in future fiscal years, any such payment shall be subject to appropriation and availability of funds. Nothing herein shall be construed to be in the nature of a multiple fiscal year obligation of the Town.

TOWN OF WINDSOR, COLORADO	ALLER LINGLE MASSEY ARCHITECTS, P.C.
By: _____	By: _____
Kelly Arnold, Town Manager	David B. Lingle, AIA, LEED AP

GRANT AGREEMENT

Between

STATE OF COLORADO
DEPARTMENT OF LOCAL AFFAIRS

And

TOWN OF WINDSOR

Summary

Award Amount: $10,300.00

Identification #s:

Encumbrance #: F14S7337 *(DOLA's primary identification #)*
Contract Management System #: 60865 *(State of Colorado's tracking #)*

Project Information:

Project/Award Number: EIAF 7337
Project Name: Windsor Public Works Maintenance Feasibility Study
Performance Period: Start Date: _____ End Date: 05/31/14
Brief Description of Project / Assistance: The Project is the development of a feasibility and preliminary design study of a public works maintenance facility in Windsor, Colorado.

Program & Funding Information:

Program Name: Energy & Mineral Impact Assistance Fund
Funding source: State Funds
Catalog of Federal Domestic Assistance (CFDA) Number (if federal funds): n/a
Funding Account Codes: 152 FBA0 127 5110

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1. PARTIES

This Agreement (hereinafter called "Grant") is entered into by and between the **TOWN OF WINDSOR** (hereinafter called "Grantee"), and the STATE OF COLORADO acting by and through the Department of Local Affairs for the benefit of the Division of Local Government (hereinafter called the "State" or "DOLA").

2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY.

This Grant shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (hereinafter called the "Effective Date"). The State shall not be liable to pay or reimburse Grantee for any performance hereunder, including, but not limited to costs or expenses incurred, or be bound by any provision hereof prior to *(see checked option(s) below):*

A. ☒ The Effective Date.

B. ☐ The Effective Date; provided, however, that all Project costs, if specifically authorized by the federal funding authority, incurred on or after March 1, 20XX, may be submitted for reimbursement as if incurred after the Effective Date.

C. ☐ insert date for authorized Pre-agreement Costs (as such term is defined in **§4)** , if specifically authorized by the funding authority . Such costs may be submitted for reimbursement as if incurred after the Effective Date.

3. RECITALS

A. Authority, Appropriation, and Approval

Authority to enter into this Grant exists in C.R.S. 24-32-106 and 29-3.5-101 and funds have been budgeted, appropriated and otherwise made available pursuant to C.R.S. 39-29-110 (Local Government Severance Tax Fund) and a sufficient unencumbered balance thereof remains available for payment. Required approvals, clearance and coordination have been accomplished from and with appropriate agencies.

B. Consideration

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Grant.

C. Purpose

The purpose of this Grant is described in **Exhibit B**.

D. References

All references in this Grant to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

4. DEFINITIONS

The following terms as used herein shall be construed and interpreted as follows:

A. Budget

"Budget" means the budget for the Project and/or Work described in **Exhibit B**.

B. Closeout Certification

"Closeout Certification" means the Grantee's certification of completion of Work submitted on a form provided by the State.

C. Evaluation

"Evaluation" means the process of examining Grantee's Work and rating it based on criteria established in **§6** and **Exhibit B.**

D. Exhibits and other Attachments

The following are attached hereto and incorporated by reference herein:

- **i.** Exhibit A (Applicable Laws)
- **ii.** Exhibit B (Scope of Project)
- **iii.** Exhibit E (Project Performance Plan)
- **iv.** Exhibit G (Form of Option Letter)

E. Goods

"Goods" means tangible material acquired, produced, or delivered by Grantee either separately or in conjunction with the Services Grantee renders hereunder.

F. Grant

"Grant" means this agreement, its terms and conditions, attached exhibits, documents incorporated by reference pursuant to the terms of this Grant, and any future modifying agreements, exhibits, attachments or references incorporated herein pursuant to Colorado State law, Fiscal Rules, and State Controller Policies.

G. Grant Funds

"Grant Funds" means available funds payable by the State to Grantee pursuant to this Grant.

H. Party or Parties

"Party" means the State or Grantee and "Parties" means both the State and Grantee.

I. Pay Request(s)

"Pay Request(s)" means the Grantee's reimbursement request(s) submitted on form(s) provided by the State.

J. Pre-agreement costs

"Pre-agreement costs," when applicable, means the costs incurred on or after the date as specified in **§2** above, and prior to the Effective Date of this Grant. Such costs shall have been detailed in Grantee's grant application and specifically authorized by the State and incorporated herein pursuant to **Exhibit B**.

K. Project
"Project" means the overall project described in **Exhibit B**, which includes the Work.

L. Project Closeout
"Project Closeout" means the submission by the Grantee to the State of an actual final Pay Request, a final Status Report and a Closeout Certification.

M. Program
"Program" means the grant program specified on the first page of this Grant that provides the funding for this Grant.

N. Review
"Review" means examining Grantee's Work to ensure that it is adequate, accurate, correct and in accordance with the criteria established in **§6** and **Exhibit B.**

O. Services
"Services" means the required services to be performed by Grantee pursuant to this Grant.

P. Status Report(s)
"Status Report(s)" means the Grantee's status report(s) on the Work/Project submitted on form(s) provided by the State.

Q. Subcontractor
"Subcontractor" means third-parties, if any, engaged by Grantee to carry out specific vendor related services.

R. Subgrantee
"Subgrantee" means third-parties, if any, engaged by Grantee to aid in performance of its obligations. Subgrantee is bound by the same overall programmatic and grant requirements as Grantee.

S. Subject Property
"Subject Property" means the real property, if any, for which Grant Funds are used to acquire, construct, or rehabilitate.

T. Substantial Progress in the Work
"Substantial Progress in the Work" means Grantee meets all deliverables and performance measures within the time frames specified in **Exhibit E**.

U. Work
"Work" means the tasks and activities Grantee is required to perform to fulfill its obligations under this Grant and **Exhibit B**, including the performance of the Services and delivery of the Goods.

V. Work Product
"Work Product" means the tangible or intangible results of Grantee's Work, including, but not limited to, software, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or work product of any type, including drafts.

5. TERM.

A. Initial Term-Work Commencement
Unless otherwise permitted in **§2** above, the Parties' respective performances under this Grant shall commence on the Effective Date. This Grant shall terminate on **May 31, 2014** unless sooner terminated or further extended as specified elsewhere herein.

B. Two Month Extension
The State, at its sole discretion upon written notice to Grantee as provided in **§16,** may unilaterally extend the term of this Grant for a period not to exceed two months if the Parties are negotiating a replacement Grant (and not merely seeking a term extension) at or near the end of any initial term or any extension thereof. The provisions of this Grant in effect when such notice is given, including, but not limited to prices, rates, and delivery requirements, shall remain in effect during the two month extension. The two-month extension shall immediately terminate when and if a replacement Grant is approved and signed by the Colorado State Controller.

6. STATEMENT OF PROJECT

A. Completion

Grantee shall complete the Work and its other obligations as described herein and in **Exhibit B**. Except as specified in **§2** above, the State shall not be liable to compensate Grantee for any Work performed prior to the Effective Date or after the termination of this Grant.

B. Goods and Services

Grantee shall procure Goods and Services necessary to complete the Work. Such procurement shall be accomplished using the Grant Funds and shall not increase the maximum amount payable hereunder by the State.

C. Employees

All persons employed by Grantee or Subgrantees shall be considered Grantee's or Subgrantees' employee(s) for all purposes hereunder and shall not be employees of the State for any purpose as a result of this Grant.

7. PAYMENTS TO GRANTEE

The State shall, in accordance with the provisions of this **§7**, pay Grantee in the following amounts and using the methods set forth below:

A. Maximum Amount

The maximum amount payable under this Grant to Grantee by the State is **$10,300.00 (TEN THOUSAND THREE HUNDRED and XX/100 DOLLARS)**, as determined by the State from available funds. Grantee agrees to provide any additional funds required for the successful completion of the Work. Payments to Grantee are limited to the unpaid obligated balance of the Grant as set forth in **Exhibit B**.

B. Payment

i. Advance, Interim and Final Payments

Any advance payment allowed under this Grant or in **Exhibit B** shall comply with State Fiscal Rules and be made in accordance with the provisions of this Grant or such Exhibit. Grantee shall initiate any payment requests by submitting invoices to the State in the form and manner set forth and approved by the State.

ii. Interest

The State shall not pay interest on Grantee invoices. The State shall fully pay each invoice within 45 days of receipt thereof if the amount invoiced represents performance by Grantee previously accepted by the State.

iii. Available Funds-Contingency-Termination

The State is prohibited by law from making fiscal commitments beyond the term of the State's current fiscal year. Therefore, Grantee's compensation is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions, set forth below. If federal funds are used with this Grant in whole or in part, the State's performance hereunder is contingent upon the continuing availability of such funds. Payments pursuant to this Grant shall be made only from available funds encumbered for this Grant and the State's liability for such payments shall be limited to the amount remaining of such encumbered funds. If State or federal funds are not fully appropriated, or otherwise become unavailable for this Grant, the State may immediately terminate this Grant in whole or in part to the extent of funding reduction without further liability in accordance with the provisions herein.

iv. Erroneous Payments

At the State's sole discretion, payments made to Grantee in error for any reason, including, but not limited to overpayments or improper payments, and unexpended or excess funds received by Grantee, may be recovered from Grantee by deduction from subsequent payments under this Grant or other grants or agreements between the State and Grantee or by other appropriate methods and collected as a debt due to the State. Such funds shall not be paid to any person or entity other than the State.

C. Use of Funds

Grant Funds shall be used only for eligible costs identified herein and/or in **Exhibit B**.

i. **Budget Line Item Adjustments.**
Modifications to uses of such Grant Funds shall be made in accordance with **§4.4** of **Exhibit B**. For line item adjustments over 10% but less than 24.99% (a "**Minor Line Item Adjustment**") which are approved, the State shall provide written notice to Grantee in a form substantially equivalent to **Exhibit G** (each an "**Option Letter**"). If exercised, the provisions of the Option Letter shall become part of and be incorporated into this Grant.

ii. **Overall Budget Adjustments.**
Modifications to the overall Budget shall be made in accordance with **§4.5** of **Exhibit B**. For overall Budget adjustments less than 24.99% (a "**Minor Budget Adjustment**") which are approved, the State shall provide written notice to Grantee in an Option Letter. If exercised, the provisions of the Option Letter shall become part of and be incorporated into this Grant.

iii. **Setting Final Initial Budget.**
All requests by the Grantee to align the initial overall Budget with current market conditions shall be made in accordance with **§4.5.1.1** of **Exhibit B**. If such True-up Budget Proposal (as such term is defined in **§4.5.1.1** of **Exhibit B**) is approved, the State shall provide written notice to Grantee in an Option Letter. If exercised, the provisions of the Option Letter shall become part of and be incorporated into this Grant.

D. Matching/Leveraged Funds
Grantee shall provide matching and/or leveraged funds in accordance with **Exhibit B**.

8. REPORTING - NOTIFICATION

Reports, Evaluations, and Reviews required under this **§8** shall be in accordance with the procedures of and in such form as prescribed by the State and in accordance with **§19**, if applicable.

A. Performance, Progress, Personnel, and Funds
State shall submit a report to the Grantee upon expiration or sooner termination of this Grant, containing an Evaluation and Review of Grantee's performance and the final status of Grantee's obligations hereunder. In addition, Grantee shall comply with all reporting requirements, if any, set forth in **Exhibit B.**

B. Litigation Reporting
Within 10 days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Grant or which may affect Grantee's ability to perform its obligations hereunder, Grantee shall notify the State of such action and deliver copies of such pleadings to the State's principal representative as identified herein. If the State's principal representative is not then serving, such notice and copies shall be delivered to the Executive Director of DOLA.

C. Noncompliance
Grantee's failure to provide reports and notify the State in a timely manner in accordance with this **§8** may result in the delay of payment of funds and/or termination as provided under this Grant.

D. Subgrants/Subcontracts
Copies of any and all subgrants and subcontracts entered into by Grantee to perform its obligations hereunder shall be submitted to the State or its principal representative upon request by the State. Any and all subgrants and subcontracts entered into by Grantee related to its performance hereunder shall comply with all applicable federal and state laws and shall provide that such subgrants be governed by the laws of the State of Colorado.

9. GRANTEE RECORDS

Grantee shall make, keep, maintain and allow inspection and monitoring of the following records:

A. Maintenance
Grantee shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder. Grantee shall maintain such records (the "Record Retention Period") until the last to occur of the following:

(i) a period of five years after the date this Grant is completed or terminated, or final payment is made hereunder, whichever is later, or
(ii) for such further period as may be necessary to resolve any pending matters, or
(iii) if an audit is occurring, or Grantee has received notice that an audit is pending, then until such audit has been completed and its findings have been resolved.

B. Inspection

Grantee shall permit the State, the federal government (if Grant Funds include federal funds) and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe Grantee's records related to this Grant during the Record Retention Period for a period of five years following termination of this Grant or final payment hereunder, whichever is later, to assure compliance with the terms hereof or to evaluate Grantee's performance hereunder. The State reserves the right to inspect the Work at all reasonable times and places during the term of this Grant, including any extension. If the Work fails to conform to the requirements of this Grant, the State may require Grantee promptly to bring the Work into conformity with Grant requirements, at Grantee's sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the State may require Grantee to take necessary action to ensure that future performance conforms to Grant requirements and exercise the remedies available under this Grant, at law or in equity in lieu of or in conjunction with such corrective measures.

C. Monitoring

Grantee shall permit the State, the federal government (if Grant Funds include federal funds), and other governmental agencies having jurisdiction, in their sole discretion, to monitor all activities conducted by Grantee pursuant to the terms of this Grant using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other procedures. All monitoring controlled by the State shall be performed in a manner that shall not unduly interfere with Grantee's performance hereunder.

D. Final Audit Report

Grantee shall provide a copy of its audit report(s) to DOLA as specified in **Exhibit B.**

10. CONFIDENTIAL INFORMATION-STATE RECORDS

Grantee shall comply with the provisions of this **§10** if it becomes privy to confidential information in connection with its performance hereunder. Confidential information, includes, but is not necessarily limited to, state records, personnel records, and information concerning individuals.

A. Confidentiality

Grantee shall keep all State records and information confidential at all times and comply with all laws and regulations concerning confidentiality of information. Any request or demand by a third party for State records and information in the possession of Grantee shall be immediately forwarded to the State's principal representative. Except as otherwise provided in this Grant, Grantee shall keep all tenant, patient and offender information confidential.

B. Notification

Grantee shall notify its agent, employees, Subgrantees, and assigns who may come into contact with State records and confidential information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before they are permitted to access such records and information.

C. Use, Security, and Retention

Confidential information of any kind shall not be distributed or sold to any third party or used by Grantee or its agents in any way, except as authorized by this Grant or approved in writing by the State. Grantee shall provide and maintain a secure environment that ensures confidentiality of all State records and other confidential information wherever located. Confidential information shall not be retained in any files or otherwise by Grantee or its agents, except as permitted in this Grant or approved in writing by the State.

D. Disclosure-Liability

Disclosure of State records or other confidential information by Grantee for any reason may be cause for legal action by third parties against Grantee, the State or their respective agents. Grantee shall, to the extent

permitted by law, indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Grantee, or its employees, agents, Subgrantees, or assignees pursuant to this **§10.**

E. Health Insurance Portability and Accountability Act of 1996 (HIPAA)

DOLA is not a covered entity under HIPAA for purposes of this Grant. If the Grantee is a covered entity under HIPAA, it shall comply with the requirements of HIPAA, and in all instances shall comply with all other federal and state laws protecting the confidentiality of patient information.

11. CONFLICTS OF INTEREST

Grantee shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of Grantee's obligations hereunder. Grantee acknowledges that with respect to this Grant, even the appearance of a conflict of interest is harmful to the State's interests. Absent the State's prior written approval, Grantee shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Grantee's obligations to the State hereunder. If a conflict or appearance exists, or if Grantee is uncertain whether a conflict or the appearance of a conflict of interest exists, Grantee shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict constitutes a breach of this Grant.

12. REPRESENTATIONS AND WARRANTIES

Grantee makes the following specific representations and warranties, each of which was relied on by the State in entering into this Grant.

A. Standard and Manner of Performance

Grantee shall perform its obligations hereunder in accordance with the highest standards of care, skill and diligence in the industry, trades or profession and in the sequence and manner set forth in this Grant.

B. Legal Authority – Grantee and Grantee's Signatory

Grantee warrants that it possesses the legal authority to enter into this Grant and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Grant, or any part thereof, and to bind Grantee to its terms. If requested by the State, Grantee shall provide the State with proof of Grantee's authority to enter into this Grant within 15 days of receiving such request.

C. Licenses, Permits, Etc.

Grantee represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it shall have, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorization required by law to perform its obligations hereunder. Grantee warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Grant, without reimbursement by the State or other adjustment in Grant Funds. Additionally, all employees and agents of Grantee performing Services under this Grant shall hold all required licenses or certifications, if any, to perform their responsibilities. Grantee, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for Grantee to properly perform the terms of this Grant shall be deemed to be a material breach by Grantee and constitute grounds for termination of this Grant.

13. INSURANCE

Grantee and its Subgrantees shall obtain and maintain insurance as specified in this section at all times during the term of this Grant: All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to Grantee and the State.

A. Grantee

i. Public Entities

If Grantee is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended (the "GIA"), then Grantee shall maintain at all times during the term of this Grant such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. Grantee shall show proof of such insurance satisfactory to the State, if requested by the State. Grantee shall require each subgrant with Subgrantees that are public entities, providing Goods or Services hereunder, to include the insurance requirements necessary to meet Subgrantee's liabilities under the GIA.

ii. Non-Public Entities

If Grantee is not a "public entity" within the meaning of the GIA, Grantee shall obtain and maintain during the term of this Grant insurance coverage and policies meeting the same requirements set forth in **§13(B)** with respect to Subgrantees that are not "public entities".

B. Grantees, Subgrantees and Subcontractors

Grantee shall require each subgrant with Subgrantees and each contract with Subcontractors, other than those that are public entities, providing Goods or Services in connection with this Grant, to include insurance requirements substantially similar to the following:

i. Workers' Compensation

Workers' Compensation Insurance as required by State statute, and Employer's Liability Insurance covering all of Grantee, Subgrantee and Subcontractor employees acting within the course and scope of their employment.

ii. General Liability

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows: **(a)** $1,000,000 each occurrence; **(b)** $1,000,000 general aggregate; **(c)** $1,000,000 products and completed operations aggregate; and **(d)** $50,000 any one fire.

iii. Automobile Liability

Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of $1,000,000 each accident combined single limit.

iv. Malpractice/Professional Liability Insurance

This section ☒ shall | ☐ shall not apply to this Grant.

Grantee, Subgrantees and Subcontractors shall maintain in full force and effect a Professional Liability Insurance Policy in the minimum amount of $1,000,000 per occurrence and $3,000,000 in the aggregate, written on an occurrence form, that provides coverage for its work undertaken pursuant to this Grant. If a policy written on an occurrence form is not commercially available, the claims-made policy shall remain in effect for the duration of this Grant and for at least two years beyond the completion and acceptance of the work under this Grant, or, alternatively, a two year extended reporting period must be purchased. The Grantee, Subgrantee or Subcontractor shall be responsible for all claims, damages, losses or expenses, including attorney's fees, arising out of or resulting from such party's negligent performance of professional services under this Grant, a subcontract or subgrant.

v. Umbrella Liability Insurance

For construction projects exceeding $10,000,000, Grantee, Subgrantees and Subcontractors shall maintain umbrella/excess liability insurance on an occurrence basis in excess of the underlying insurance described in **§13B(i)-(iv)** above. Coverage shall follow the terms of the underlying insurance, included the additional insured and waiver of subrogation provisions. The amounts of insurance required in subsections above may be satisfied by the Grantee, Subgrantee and Subcontractor purchasing coverage for the limits specified or by any combination of underlying and umbrella limits, so long as the total amount of insurance is not less than the limits specified in each section previously mentioned. The insurance shall have a minimum amount of $5,000,000 per occurrence and $5,000,000 in the aggregate.

vi. Property Insurance

This subsection shall apply if Grant Funds are provided for the acquisition, construction, or rehabilitation of real property.

Insurance on the buildings and other improvements now existing or hereafter erected on the premises and on the fixtures and personal property included in the Subject Property against loss by fire, other hazards covered by the so called "all risk" form of policy and such other perils as State shall from time to time require with respect to properties of the nature and in the geographical area of the Subject Property, and to be in an amount at least equal to the replacement cost value of the Subject Property. Grantor will at its sole cost and expense, from time to time and at any time, at the request of State provide State with evidence satisfactory to State of the replacement cost of the Subject Property**.**

vii.Flood Insurance

If the Subject Property or any part thereof is at any time located in a designated official flood hazard area, flood insurance insuring the buildings and improvements now existing or hereafter erected on the Subject Property and the personal property used in the operation thereof in an amount equal to the lesser of the amount required for property insurance identified in **§vi** above or the maximum limit of coverage made available with respect to such buildings and improvements and personal property under applicable federal laws and the regulations issued thereunder.

viii. Builder's Risk Insurance

The subsection shall apply if Grant Funds are provided for construction or rehabilitation of real property.

Grantee, Subgrantee and/or Subcontractor shall purchase and maintain property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial construction/rehabilitation costs, plus value of subsequent modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than the property owner has an insurable interest in the property.

a) The insurance shall include interests of the property owner, Grantee, Subgrantee, Subcontractors in the Project as named insureds.

b) All associated deductibles shall be the responsibility of the Grantee, Subcontractor and Subgrantee. Such policy may have a deductible clause but not to exceed $10,000.

c) Property insurance shall be on an "all risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Grantee's, Subgrantee's and Subcontractor's services and expenses required as a result of such insured loss.

d) Builders Risk coverage shall include partial use by Grantee and/or property owner.

e) The amount of such insurance shall be increased to include the cost of any additional work to be done on the Project, or materials or equipment to be incorporated in the Project, under other independent contracts let or to be let. In such event, Subgrantee and Subcontractor shall be reimbursed for this cost as his or her share of the insurance in the same ratio as the ratio of the insurance represented by such independent contracts let or to be let to the total insurance carried.

ix. Pollution Liability Insurance

This subsection shall apply if Grant Funds are provided for the construction or rehabilitation of real property.

If Grantee and/or its Subgrantee or Subcontractor is providing directly or indirectly work with pollution/environmental hazards, they must provide or cause those conducting the work to provide Pollution Liability Insurance coverage. Pollution Liability policy must include contractual liability

coverage. The policy limits shall be in the amount of $1,000,000 with maximum deductible of $25,000 to be paid by the Grantee's Subcontractor and/or Subgrantee.

C. Miscellaneous Insurance Provisions

Certificates of Insurance and/or insurance policies required under this Grant shall be subject to the following stipulations and additional requirements:

i. **Deductible.** Any and all deductibles or self-insured retentions contained in any Insurance policy shall be assumed by and at the sole risk of the Grantee, its Subgrantees or Subcontractors,

ii. **In Force.** If any of the said policies shall fail at any time to meet the requirements of the Grant as to form or substance, or if a company issuing any such policy shall be or at any time cease to be approved by the Division of Insurance of the State of Colorado, or be or cease to be in compliance with any stricter requirements of the Grant, the Grantee, its Subgrantee and its Subcontractor shall promptly obtain a new policy.

iii. **Insurer**. All requisite insurance shall be obtained from financially responsible insurance companies, authorized to do business in the State of Colorado and acceptable to Grantee,

iv. **Additional Insured**
Grantee and the State shall be named as additional insureds on the Commercial General Liability and Automobile Liability Insurance policies (leases and construction Grants require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent).

v. **Primacy of Coverage**
Coverage required of Grantee, Subgrantees and Subcontractors shall be primary over any insurance or self-insurance program carried by Grantee or the State.

vi. **Cancellation**
The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 45 days prior notice to the Grantee and Grantee shall forward such notice to the State in accordance with **§16** (Notices and Representatives) within seven days of Grantee's receipt of such notice.

vii. **Subrogation Waiver**
All insurance policies in any way related to this Grant and secured and maintained by Grantee or its Subgrantees and Subcontractors as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against Grantee or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

D. Certificates

Grantee, Subgrantee and Subcontractor shall provide certificates showing insurance coverage required hereunder to the State within seven business days of the Effective Date of this Grant or of their respective subcontract or subgrant. No later than 15 days prior to the expiration date of any such coverage, Grantee, Subgrantee and Subcontractor shall deliver to the State or Grantee certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this Grant, subgrant or subcontract, Grantee, Subgrantee and Subcontractor shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this **§13**.

14. BREACH

A. Defined

In addition to any breaches specified in other sections of this Grant, the failure of either Party to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner, constitutes a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Grantee, or the appointment of a receiver or similar officer for Grantee or any of its property, which is not vacated or fully stayed within 20 days after the institution or occurrence thereof, shall also constitute a breach.

B. Notice and Cure Period

In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party in the manner provided in **§16**. If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence, the State may exercise any of the remedies set forth in **§15**. Notwithstanding anything

to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Grant in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

15. REMEDIES

If Grantee is in breach under any provision of this Grant or if the State terminates this Grant pursuant to **§15(B)**, the State shall have the remedies listed in this **§15** in addition to all other remedies set forth in other sections of this Grant following the notice and cure period set forth in **§14(B)**, if applicable. The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

A. Termination for Cause and/or Breach

If Grantee fails to perform any of its obligations hereunder with such diligence as is required to ensure its completion in accordance with the provisions of this Grant and in a timely manner, the State may notify Grantee of such non-performance in accordance with the provisions herein. If Grantee thereafter fails to promptly cure such non-performance within the cure period, the State, at its option, may terminate this entire Grant or such part of this Grant as to which there has been delay or a failure to properly perform. Exercise by the State of this right shall not be deemed a breach of its obligations hereunder. Grantee shall continue performance of this Grant to the extent not terminated, if any.

i. Obligations and Rights

To the extent specified in any termination notice, Grantee shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders and subgrants/subcontracts with third parties. However, Grantee shall complete and deliver to the State all Work, Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within this Grant's terms. At the sole discretion of the State, Grantee shall assign to the State all of Grantee's right, title, and interest under such terminated orders or subgrants/subcontracts. Upon termination, Grantee shall take timely, reasonable and necessary action to protect and preserve property in the possession of Grantee in which the State has an interest. All materials owned by the State in the possession of Grantee shall be immediately returned to the State.

ii. Payments

The State shall reimburse Grantee only for accepted performance up to the date of termination. If, after termination by the State, it is determined that Grantee was not in breach or that Grantee's action or inaction was excusable, such termination shall be treated as a termination in the public interest and the rights and obligations of the Parties shall be the same as if this Grant had been terminated in the public interest, as described herein.

iii. Damages and Withholding

Notwithstanding any other remedial action by the State, Grantee also shall remain liable to the State for any damages sustained by the State by virtue of any breach under this Grant by Grantee and the State may withhold any payment to Grantee for the purpose of mitigating the State's damages, until such time as the exact amount of damages due to the State from Grantee is determined. The State may withhold any amount that may be due to Grantee as the State deems necessary to protect the State, including loss as a result of outstanding liens or claims of former lien holders, or to reimburse the State for the excess costs incurred in procuring similar goods or services.

B. Early Termination in the Public Interest

The State is entering into this Grant for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or Courts. If this Grant ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Grant in whole or in part. Exercise by the State of this right shall not constitute a breach of the State's obligations hereunder. This subsection shall not apply to a termination of this Grant by the State for cause or breach by Grantee, which shall be governed by **§15(A)** or as otherwise specifically provided for herein.

i. Method and Content

The State shall notify Grantee of such termination in accordance with **§16**. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Grant.

ii. Obligations and Rights
Upon receipt of a termination notice, Grantee shall be subject to and comply with the same obligations and rights set forth in **§15(A)(i)**.

iii. Payments
If this Grant is terminated by the State pursuant to this **§15(B)**, Grantee shall be paid an amount which bears the same ratio to the total reimbursement under this Grant as the Services satisfactorily performed bear to the total Services covered by this Grant, less payments previously made. Additionally, if this Grant is less than 60% completed, the State may reimburse Grantee for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this Grant) incurred by Grantee which are directly attributable to the uncompleted portion of Grantee's obligations hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Grantee hereunder.

C. Termination for No Substantial Progress in the Work
The State may elect to terminate this Grant upon receipt and review of any Quarterly Progress Report, submitted per the time periods defined in **Exhibit E** – Project Performance Plan, if such Quarterly Progress Report fails to evidence Substantial Progress in the Work as directed, defined and expected under **Exhibit B**. Further, the State may elect to terminate this Grant if the Grantee fails to complete Project Closeout within **three months** of completion of the Work. Exercise by the State of this right shall not be deemed a breach of its obligations hereunder.

i. Obligations and Rights
To the extent specified in any termination notice, Grantee shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders and subgrants/subcontracts with third parties. However, Grantee shall complete and deliver to the State all Work, Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within this Grant's terms. At the sole discretion of the State, Grantee shall assign to the State all of Grantee's right, title, and interest under such terminated orders or subgrants/subcontracts. Upon termination, Grantee shall take timely, reasonable and necessary action to protect and preserve property in the possession of Grantee in which the State has an interest. All materials owned by the State in the possession of Grantee shall be immediately returned to the State.

ii. Payments
The State shall reimburse Grantee only for accepted performance up to the date of termination.

iii. Damages and Withholding
Notwithstanding any other remedial action by the State, Grantee also shall remain liable to the State for any damages sustained by the State by virtue of any breach under this Grant by Grantee and the State may withhold any payment to Grantee for the purpose of mitigating the State's damages, until such time as the exact amount of damages due to the State from Grantee is determined. The State may withhold any amount that may be due to Grantee as the State deems necessary to protect the State, including loss as a result of outstanding liens or claims of former lien holders, or to reimburse the State for the excess costs incurred in procuring similar goods or services.

D. Remedies Not Involving Termination
The State, at its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:

i. Suspend Performance
Suspend Grantee's performance with respect to all or any portion of this Grant pending necessary corrective action as specified by the State without entitling Grantee to an adjustment in price/cost or performance schedule. Grantee shall promptly cease performance and incurring costs in accordance with the State's directive and the State shall not be liable for costs incurred by Grantee after the suspension of performance under this provision.

ii. Withhold Payment
Withhold payment to Grantee until corrections in Grantee's performance are satisfactorily made and completed.

iii. Deny Payment
Deny payment for those obligations not performed, that due to Grantee's actions or inactions, cannot be performed or, if performed, would be of no value to the State; provided, that any denial of payment shall be reasonably related to the value to the State of the obligations not performed.

iv. Removal
Demand removal of any of Grantee's employees, agents, or Subgrantees whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Grant is deemed to be contrary to the public interest or not in the State's best interest.

v. Intellectual Property
If Grantee infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Grant, Grantee shall, at the State's option **(a)** obtain for the State or Grantee the right to use such products and services; **(b)** replace any Goods, Services, or other product involved with non-infringing products or modify them so that they become non-infringing; or, **(c)** if neither of the foregoing alternatives are reasonably available, remove any infringing Goods, Services, or products and refund the price paid therefore to the State.

16. NOTICES and REPRESENTATIVES

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

A. State:

Chantal Unfug, Division Director
Division of Local Government
Colorado Department of Local Affairs
1313 Sherman Street, Room 521
Denver, Colorado 80203
Email: chantal.unfug@state.co.us

B. Grantee:

John Vasquez, Mayor
Town of Windsor
301 Walnut Street
Windsor, Colorado 80550
Email: jvasquez@windsorgov.com

17. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

This section ☐ shall | ☒ shall not apply to this Grant.

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or Work Product of any type, including drafts, prepared by Grantee in the performance of its obligations under this Grant shall be the exclusive property of the State and, all Work Product shall be delivered to the State by Grantee upon completion or termination hereof. The State's exclusive rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works. Grantee shall not use, willingly allow, cause or permit such Work Product to be used for any purpose other than the performance of Grantee's obligations hereunder without the prior written consent of the State.

18. GOVERNMENTAL IMMUNITY

Notwithstanding any other provision to the contrary, nothing herein shall constitute a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the GIA. Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions,

agencies, boards, officials, and employees is controlled and limited by the provisions of the GIA and the risk management statutes, CRS §24-30-1501, et seq., as amended.

19. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Grantee under this Grant is greater than $100,000 either on the Effective Date or at anytime thereafter, this **§19** applies.

Grantee agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state Grants and inclusion of Grant performance information in a statewide Contract Management System.
Grantee's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Grant, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of Grantee's performance shall be part of the normal Grant administration process and Grantee's performance will be systematically recorded in the statewide Contract Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Grantee's obligations under this Grant shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Grantee's obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Grant term. Grantee shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.
Should the final performance Evaluation and Review determine that Grantee demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the Department of Local Affairs, and showing of good cause, may debar Grantee and prohibit Grantee from receiving future grants and bidding on future contracts. Grantee may contest the final Evaluation, Review and Rating by: **(a)** filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or **(b)** under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Grantee, by the Executive Director, upon a showing of good cause.

20. RESTRICTION ON PUBLIC BENEFITS

This section ☐ shall | ☒ shall not apply to this Grant.

Grantee must confirm that any individual natural person is lawfully present in the United States pursuant to CRS §24-76.5-101 et seq. when such individual applies for public benefits provided under this Grant by requiring the applicant to:

- **A.** Produce an identification document in accordance with §2.1.1 through §2.1.3 of Colorado Department of Revenue's Rule #1 CCR 201-17, Rule for Evidence of Lawful Presence, as amended.
- **B.** Execute an affidavit herein attached as **Form 1**, Residency Declaration, stating
  - **i.** That he or she is a United States citizen or legal permanent resident; or
  - **ii.** That he or she is otherwise lawfully present in the United States pursuant to federal law.

[The following applies if Grant is funded with federal funds].
Notwithstanding the foregoing, to the extent that there is any conflict with the provisions above or those set forth in the Residency Declaration attached hereto as **Form 1** and any provision of federal law, the provisions of federal law shall prevail.

21. GENERAL PROVISIONS

A. Assignment and Subgrants

Grantee's rights and obligations hereunder are personal and may not be transferred, assigned or subgranted without the prior, written consent of the State. Any attempt at assignment, transfer, or subgranting without such consent shall be void. All assignments, subgrants, or subcontracts approved by Grantee or the State are subject to all of the provisions hereof. Grantee shall be solely responsible for all aspects of subgranting and subcontracting arrangements and performance.

B. Binding Effect

Except as otherwise provided in **§21(A)**, all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

C. Captions

The captions and headings in this Grant are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

D. Counterparts

This Grant may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

E. Entire Understanding

This Grant represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or effect whatsoever, unless embodied herein.

F. Indemnification-General

Grantee shall, to the extent permitted by law, indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Grantee, or its employees, agents, Subgrantees, or assignees pursuant to the terms of this Grant; however, the provisions hereof shall not be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the GIA, or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.

G. Jurisdiction and Venue

All suits, actions, or proceedings related to this Grant shall be held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

H. List of Selected Applicable Laws

At all times during the performance of this Grant, Grantee shall comply with all applicable Federal and State laws and their implementing regulations, currently in existence and as hereafter amended, including without limitation those set forth on **Exhibit A**, Applicable Laws. Grantee also shall require compliance with such laws and regulations by subgrantees under subgrants permitted by this Grant.

I. Use Covenants

This section ☐ shall | ☒ shall not apply to this Grant:

For Subject Property that is owned by Grantee upon execution of this Grant, Grantee shall record a Use Covenant substantially equivalent to **Exhibit F** with the county in which the property resides as soon as reasonably practicable after execution of this Grant. For Subject Property acquired by Grantee using Grant Funds, Grantee shall record a Use Covenant substantially equivalent to **Exhibit F** with the county in which the property resides as soon as reasonably practicable after acquisition of such property.

J. Modification

i. By the Parties

Except as specifically provided in this Grant, modifications of this Grant shall not be effective unless agreed to in writing by the Parties in an amendment hereto, properly executed and approved in accordance with applicable Colorado State law, State Fiscal Rules, and Office of the State Controller Policies, including, but not limited to, the policy entitled MODIFICATION OF CONTRACTS - TOOLS AND FORMS. Changes to the Grant shall be authorized to be approved by the following State or DOLA parties:

a) Approval by Division Director

The Division Director of DOLA or his delegee shall have authority to approve changes to the Responsible Administrator and Key Personnel specified in **§5** of **Exhibit B** and the Principal Representative in **§16**.

b) Approval by DOLA Controller

The DOLA Controller shall have authority to approve all changes to the Grant which are not reserved to the Division Director above.

ii. By Operation of Law

This Grant is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Grant on the effective date of such change, as if fully set forth herein.

K. Order of Precedence

The provisions of this Grant shall govern the relationship of the Parties. In the event of conflicts or inconsistencies between this Grant and its exhibits and attachments including, but not limited to, those provided by Grantee, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

i. Exhibit A (Applicable Laws)
ii. Colorado Special Provisions
iii. The provisions of the main body of this Grant (excluding the cover page)
iv. Any executed Option Letters
v. Exhibit B (Scope of Project)
vi. Exhibit E (Project Performance Plan)
vii. The cover page of this Grant

L. Severability

Provided this Grant can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof.

M. Survival of Certain Grant Terms

Notwithstanding anything herein to the contrary, provisions of this Grant requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if Grantee fails to perform or comply as required.

N. Taxes

The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under CRS §§39-26-101 and 201 et seq. Such exemptions apply when materials are purchased or services rendered to benefit the State; provided however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the State. Grantee shall be solely liable for paying such taxes as the State is prohibited from paying for or reimbursing Grantee for them.

O. Third Party Beneficiaries

Enforcement of this Grant and all rights and obligations hereunder are reserved solely to the Parties, and not to any third party. Any services or benefits which third parties receive as a result of this Grant are incidental to the Grant, and do not create any rights for such third parties.

P. Waiver

Waiver of any breach of a term, provision, or requirement of this Grant, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

Q. CORA Disclosure

To the extent not prohibited by federal law, this Grant and the performance measures and standards under CRS §24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, CRS §24-72-101, et seq.

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22. COLORADO SPECIAL PROVISIONS

A. The Special Provisions apply to all Grants except where noted in *italics*.

i. **CONTROLLER'S APPROVAL. CRS §24-30-202 (1).**
This Grant shall not be deemed valid until it has been approved by the Colorado State Controller or designee.

ii. **FUND AVAILABILITY. CRS §24-30-202(5.5).**
Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

iii. **GOVERNMENTAL IMMUNITY.**
No term or condition of this Grant shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

iv. **INDEPENDENT CONTRACTOR**
Grantee shall perform its duties hereunder as an independent Grantee and not as an employee. Neither Grantee nor any agent or employee of Grantee shall be deemed to be an agent or employee of the State. Grantee and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Grantee or any of its agents or employees. Unemployment insurance benefits shall be available to Grantee and its employees and agents only if such coverage is made available by Grantee or a third party. Grantee shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Grant. Grantee shall not have authorization, express or implied, to bind the State to any Grant, liability or understanding, except as expressly set forth herein. Grantee shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.

v. **COMPLIANCE WITH LAW.**
Grantee shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

vi. **CHOICE OF LAW.**
Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this grant. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Grant, to the extent capable of execution.

vii. **BINDING ARBITRATION PROHIBITED**.
The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Grant or incorporated herein by reference shall be null and void.

viii. **SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.**
State or other public funds payable under this Grant shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Grantee hereby certifies and warrants that, during the term of this Grant and any extensions, Grantee has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Grantee is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Grant, including, without

limitation, immediate termination of this Grant and any remedy consistent with federal copyright laws or applicable licensing restrictions.

ix. **EMPLOYEE FINANCIAL INTEREST. CRS §§24-18-201 and 24-50-507.**
The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Grant. Grantee has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Grantee's services and Grantee shall not employ any person having such known interests.

x. **VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4.**
[*Not applicable to intergovernmental agreements*] Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

xi. **PUBLIC GRANTS FOR SERVICES. CRS §8-17.5-101.**
[*Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental Agreements, or information technology* services *or products and services*] Grantee certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who shall perform work under this Grant and shall confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Grant, through participation in the E-Verify Program or the State program established pursuant to CRS §8-17.5-102(5)(c), Grantee shall not knowingly employ or contract with an illegal alien to perform work under this Grant or enter into a grant with a Subgrantee that fails to certify to Grantee that the Subgrantee shall not knowingly employ or contract with an illegal alien to perform work under this Grant. Grantee (a) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Grant is being performed, (b) shall notify the Subgrantee and the granting State agency within three days if Grantee has actual knowledge that a Subgrantee is employing or contracting with an illegal alien for work under this Grant, (c) shall terminate the Subgrant if a Subgrantee does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Grantee participates in the State program, Grantee shall deliver to the granting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Grantee has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If Grantee fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the granting State agency, institution of higher education or political subdivision may terminate this Grant for breach and, if so terminated, Grantee shall be liable for damages.

xii. **PUBLIC GRANTS WITH NATURAL PERSONS. CRS §24-76.5-101.**
Grantee, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the Effective Date of this Grant.

(Special Provisions - effective 1/1/09)

SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS GRANT

*** Persons signing for Grantee hereby swear and affirm that they are authorized to act on Grantee's behalf and acknowledge that the State is relying on their representations to that effect.**

GRANTEE TOWN OF WINDSOR	STATE OF COLORADO John W. Hickenlooper, GOVERNOR DEPARTMENT OF LOCAL AFFAIRS
By: _____ Name of Authorized Individual (print) Title: _____ Official Title of Authorized Individual _____ *Signature Date: _____	By:_____ Reeves Brown, Executive Director Date: _____
	PRE-APPROVED FORM CONTRACT REVIEWER By:_____ Bret Hillberry, State Grants Program Manager Date: _____

ALL GRANTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State grants. This Grant is not valid until signed and dated below by the State Controller or delegate. Grantee is not authorized to begin performance until such time. If Grantee begins performing prior thereto, the State of Colorado is not obligated to pay Grantee for such performance or for any goods and/or services provided hereunder.

STATE CONTROLLER
Robert Jaros, CPA

By:_____
Barbara M. Casey, CPA, Controller Delegate

Date:_____

M E M O R A N D U M

Date: October 28, 2013
To: Mayor and Town Board
Via: Regular meeting packets
From: Ian D. McCargar, Town Attorney
Re: Resolution approving project management services, Cave Consulting Group
Item #: B.3.

Background / Discussion:

Attached to this Memorandum is a Resolution approving a Letter Agreement between the Town and Cave Consulting Group, Inc., for project management services. The project involves repairs to Town-owned facilities damaged by the August 3, 2013, hail storm. The Facilities Division, in conjunction with Risk Management, has worked with CIRSA to confirm insurance coverage for this claim, which is approximately $500,000. The Town will pay its deductible of $25,000, but the remainder of the restoration costs will be paid by CIRSA.

Cave Consulting Group is familiar to Town staff, as Robert Cave was involved in the management of repairs to the Art and Cultural Center (Old Town Hall) following the tornado. Although the work will take place in 2014, we have entered into the attached Letter Agreement dated October 8, 2013, so that the bidding and contract award services can get under way. The Resolution simply approves and ratifies the Letter Agreement.

	Budget (2014)	Proposed	Note
Revenue	$0	$0	
Expense	$25,000	$25,000	
Net	<$25,000>	<$25,000>	

Relationship to Strategic Plan: Maintain infrastructure

Recommendation: Adopt Resolution Approving a Letter Agreement Dated October 8, 2013, Between the Town and Cave Consulting Group, Inc., for Project Management Services Relating to Repairs and Restoration of Town Facilities. Simple majority required.

Attachments:

- ✓ Resolution Approving a Letter Agreement Dated October 8, 2013, Between the Town and Cave Consulting Group, Inc., for Project Management Services Relating to Repairs and Restoration of Town Facilities
- ✓ Letter Agreement for Restoration Services, Cave Consulting Group, Inc., October 8, 2013

TOWN OF WINDSOR

RESOLUTION NO. 2013-59

A RESOLUTION APPROVING A LETTER AGREEMENT DATED OCTOBER 8, 2013, BETWEEN THE TOWN AND CAVE CONSULTING GROUP, INC., FOR PROJECT MANAGEMENT SERVICES RELATING TO REPAIRS AND RESTORATION OF TOWN FACILITIES

WHEREAS, the Town of Windsor is a Colorado home rule municipality, with all powers and authority vested under Colorado law; and

WHEREAS, on August 3, 2013, a severe hail storm caused significant damage to Town-owned facilities, including but not limited to roof damage, siding damage and exterior paint damage ("Hail Damage"); and

WHEREAS, the Town's property and casualty insurance agency, ("CIRSA") has approved indemnification for the Hail Damage, with the exception of the required deductible; and

WHEREAS, given the widespread nature of the Hail Damage and the need for specific project management services, the Town has negotiated a Letter Agreement for Restoration Services with Cave Consulting Group, Inc., a copy of which is attached hereto and incorporated herein by this reference ("Letter Agreement"); and

WHEREAS, the Town has worked with Cave Consulting Group, Inc., in the past, and has full confidence that Cave Consulting Group, Inc., is qualified and capable of providing project management services as needed to address repairs to Town facilities brought about by the Hail Damage; and

WHEREAS, the Town Board has reviewed the attached Letter Agreement, and wishes to approve it.

NOW, THEREFORE, IT IS FOUND AND RESOLVED BY THE TOWN BOARD OF THE TOWN OF WINDSOR, COLORADO, as follows:

1. The attached Letter Agreement is hereby approved by the Town Board.

2. The Town Board hereby ratifies the Town Manager's signature on the attached Letter Agreement on behalf of the Town.

3. The Town Board acknowledges that the proposed 2014 Town of Windsor Budget contains an appropriation for the deductible associated with the insurance claim approved by CIRSA.

Upon motion duly made, seconded and carried, the foregoing Resolution was adopted this 28th day of October, 2013.

TOWN OF WINDSOR, COLORADO

_____

John S. Vazquez, Mayor

ATTEST:

_____

Patti Garcia, Town Clerk

LETTER AGREEMENT
FOR
RESTORATION SERVICES

DATE: October 8, 2013

Mr. Kelly Arnold, Town Manager
Town of Windsor
301 Walnut Street
Windsor, CO 80550

RE: Proposal for Roofing Design and Contract Administration for Restoring Various Buildings ("Project") for the Town of Windsor ("Town")

Dear Mr. Arnold:

Confirming our recent discussion, Cave Consulting Group, Inc. ("Cave Consulting") would be pleased to provide design and contract administration services to restore portions of the Project, generally described as roofing, siding and painting necessary to restore Town-owned facilities damaged during the hail storm of August 3, 2013. We will provide the following services to accomplish the restoration.

- Produce the construction documents for restoration that include detailed drawings, technical specifications, and the inclusion of your front-end requirements all to be used to bid the Project.

- Produce up to 20 sets of construction documents in paper or digital format as you may direct for you and for the potential bidders.

- Provide assistance in pre-qualifying contractors to bid the work.

- Attend all meetings pertinent to the Project including a pre-bid meeting with the contractors to bid the work and a pre-construction meeting with the successful bidder(s) for the Project.

- Work with the Town concerning asbestos, if any, in existing roofing or siding systems.

- Observe, manage and cooperatively direct the restoration work on a daily basis during construction, and address any questions concerning the various Project components for you and for the various contractors.

- Review, verify, process and pre-approve the contractors' pay requests and forward them to you.

- Close out the Project, and each of its components, including a final inspection, and follow up with all pertinent documents delivered to you.

Our consulting fee to provide the services outlined above is seven percent (7%) of the aggregate amount of all bids accepted for the Project from all contractors selected to perform the work. One-half of this fee will be billed and payable when contracts are finalized for the Project, and the remaining one-half will be billed and payable when the Project is fully completed in accordance with all contracts, including delivery of all close-out documents, warranties and other information.

In addition to the foregoing terms, the following terms are applicable to the services provided by Cave Consulting:

Termination. The Town may terminate this agreement for cause upon written notice of not less than seven (7) days, in which event neither party will be under any further obligation to the other, except to the extent that services are completed during such seven (7)-day period. In the event of such termination, the Town shall pay Cave Consulting at the rate of seven percent (7%) applied only to the dollar amount attributable to all work completed by the various contractors as of the date of termination. Nothing herein shall be deemed to be a provision for liquidated damages, and neither party shall be precluded from claiming further damages or offsets arising out of any breach of this agreement.

Employee Benefits. The Town shall not be liable for the direct payment of any salaries, wages, payroll taxes, unemployment benefits, or any and all other forms or types of compensation or benefit to any personnel performing services under this agreement. Cave Consulting acknowledges that neither it nor its employees are covered by the Town's Workers' Compensation policy. Accordingly, the Cave Consulting acknowledges and agrees that it is statutorily required to have in place, make available, and provide Workers' Compensation insurance for all of its employees.

Indemnification of Town. Cave Consulting agrees to indemnify and hold harmless the Town, its officers and employees from and against all liability, claims and demands on account of injury, loss or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss, or damage to the extent caused by the negligent act, omission, or error of Cave Consulting, or any officer, employee, representative or agent of Cave Consulting.

Insurance Requirements. Cave Consulting agrees to procure and maintain, at its own cost, general commercial liability insurance in the amount of $1,000,000 combined single limits, and errors and omissions insurance in the amount of $1,000,000.

Care and Diligence. Cave Consulting shall perform its services with reasonable care, skill and diligence required of other professionals providing similar services under similar conditions.

Choice of Law and Venue. This agreement shall be construed and enforced in accordance with the provisions of Colorado law and the codes, resolutions and ordinances of the Town related to the services covered herein. Venue for any action to enforce or interpret the tems of this agreement shall be in the state courts of Colorado, sitting in Weld County.

Alternative Dispute Resolution. In the event a dispute arises out of or relates to this agreement, or the breach thereof, and if said dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation or some other agreed alternative dispute resolution procedure prior to the initiation of suit. The choice of such procedures shall be made by the parties through counsel.

Entire Agreement. This agreement constitutes the entire and final agreement of the parties hereto with respect to the subject matter hereof.

Non-assignment. The obligations of Cave Consulting shall not be assignable, except with the prior written consent of the Town.

Required immigration certification. Cave Consulting certifies and represents that at this time:

> (i) Cave Consulting does not knowingly employ or contract with an illegal alien who will perform work under this Contract; and
>
> (ii) Cave Consulting will participate in the E-VERIFY program authorized under 8 U.S.C., Section 1324(a), jointly administered by the United States Department of Homeland Security and the Social Security Administration, or its successor program (hereinafter, "E-VERIFY Program"), or the Colorado Department of Labor and Employment program established under § 8-17.5-102 (5) (c), C.R.S., in order to confirm the employment eligibility of all employees who are newly-hired for employment within the United States.

Unless the E-VERIFY Program has been discontinued as of the date of this certification, Cave Consulting has confirmed the employment eligibility of all employees who are newly hired for employment in the United States through participation in the E-VERIFY program.

Cave Consulting is prohibited from using the E-VERIFY Program procedures to undertake pre-employment screening of job applicants while this Contract is being performed.

If Cave Consulting obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with an illegal alien, Cave Consulting shall:

(i) Notify such subcontractor and the Town within three days that Cave Consulting has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

(ii) Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to this section the subcontractor does not cease employing or contracting with the illegal alien; except that Cave Consulting shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

Cave Consulting shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation that the Colorado Department of Labor and Employment undertakes or is undertaking pursuant to the authority established in Subsection 8-17.5-102 (5), C.R.S.

If Cave Consulting violates any provision of this Contract pertaining to the duties imposed by Subsection 8-17.5-102, C.R.S. the Town may terminate this Contract. If this Contract is so terminated, Cave Consulting shall be liable for actual and consequential damages to the Town arising out of Cave Consulting's violation of Subsection 8-17.5-102, C.R.S.

Cave Consulting acknowledges the enforcement provisions of § 8-2-124, C.R.S., and further acknowledges that employment of illegal aliens in violation thereof may result in loss of Cave Consulting's "business license" as defined therein, together with such other enforcement measures as authorized by law.

Thank you for asking my firm for this proposal. We look forward to working with you for their successful completion. If you have any questions, or wish to discuss these projects in more detail, please give me a call.

Sincerely yours,
CAVE CONSULTING GROUP, INC.

Robert D. Cave

RDC:ncj

ACCEPTED AND APPROVED by the Town of Windsor:

_____

Kelly Arnold, Town Manager Date

M E M O R A N D U M

Date: October 28, 2013
To: Mayor and Town Board
Via: Regular meeting packets
From: Ian D. McCargar, Town Attorney; Terry Walker, Director of Public Works
Re: Nutrient 85 regulation compliance; contract documents
Item #: B.4. & B.5.

Background / Discussion:

The recent adoption of new regulations by the Colorado Water Quality Control Division requires that we evaluate systems within our wastewater treatment facilities to assure compliance. The Colorado Department of Public Health and Environment has offered the Town grant funding for evaluation, reporting, design and construction services in the amount of $287,600, with a required Town match of $14,500.

The attached "Intergovernment Contract" with CDPHE sets out the terms for grant funding and project objectives. The attached Professional Service Agreement with Farnsworth Group integrates the CDPHE agreement, but also contains the Town's standard terms for professional services. Under these agreements, the necessary evaluation, study, reporting and design will be completed. The actual construction of the system improvements will not be done under these agreements; performance of these agreements will simply give us the tools needed to evaluate next steps.

Financial Impact: None other than previously budgeted.

Relationship to Strategic Plan: Environmental stewardship

Recommendation: Adopt Resolutions identified below by title. Simple majority required.

Attachments:

Intergovernment Contract dated September 10, 2013 (CDPHE);

Professional Services Agreement (Farnsworth Group, Inc.);

Resolution Approving an Intergovernmental Agreement Between the Town of Windsor, Colorado, and the State Of Colorado Department of Public Health and Environment With Respect to Grant Funding for the Evaluation, Design and Construction of Improvements to the Town of Windsor's Wastewater Treatment Plant;

Resolution Approving a Professional Services Agreement Between the Town of Windsor, Colorado, and Farnsworth Group, Inc., With Respect to the Evaluation, Design and Construction of Improvements to the Town of Windsor's Wastewater Treatment Plant

DEPARTMENT OF PUBLIC HEALTH
AND ENVIRONMENT

ROUTING NO. 14 FAA 61454

INTERGOVERNMENT CONTRACT

STATE:

State of Colorado for the use & benefit of the
Department of Public Health and Environment
Water Quality Control Division
4300 Cherry Creek Drive South
Denver, CO 80246

CONTRACTOR:

Town of Windsor
301 Walnut Street
Windsor, CO 80550

CONTRACT MADE DATE:

09/10/2013

CONTRACTOR ENTITY TYPE:

Colorado Political Subdivision

PO/SC ENCUMBRANCE NUMBER:

PO FAA WQC1461454

BILLING STATEMENTS RECEIVED:

Monthly

TERM:

This contract shall be effective upon approval by the State Controller, or designee, or on 09/15/2013, whichever is later. The contract shall end on 05/31/2016.

STATUTORY AUTHORITY:

House Bill 13-1191

CONTRACT PRICE NOT TO EXCEED:

$287,600

FEDERAL FUNDING DOLLARS: $0.00

STATE FUNDING DOLLARS: $287,600

MAXIMUM AMOUNT AVAILABLE PER FISCAL YEAR:

FY 14-FY 16: $287,600

PROCUREMENT METHOD:

Exempt

BID/RFP/LIST PRICE AGRREMENT NUMBER:

RFA

LAW SPECIFIED VENDOR STATUTE:

Not Applicable

PRICE STRUCTURE:

Cost Reimbursement

STATE REPRESENTATIVE:

Michael S. Beck, Grants & Loans Unit
Water Quality Control Division
4300 Cherry Creek Drive South
Denver, CO 80246

CONTRACTOR REPRESENTATIVE:

Kelly Arnold
Town of Windsor
301 Walnut Street
Windsor, CO 80550

SCOPE OF WORK:

Improve water quality for the customers of the Town of Windsor through compliance with WQCD Regulation #85, Nutrients Management Control Regulation.

EXHIBITS:

The following exhibits are hereby incorporated:

Exhibit A -	Additional Provisions (and any of its Attachments; e.g., A-1, A-2, etc.)
Exhibit B -	Statement of Work (and any of its Attachments; e.g., B-1, B-2, etc.)
Exhibit C -	Budget (and any of its Attachments; e.g., C-1, C-2, etc.)

COORDINATION:

The State warrants that required approval, clearance and coordination has been accomplished from and with appropriate agencies. Section 29-1-203, C.R.S., as amended, encourages governments to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with each other to the fullest extent possible to provide any function, service, or facility lawfully authorized to each of the cooperating or contracting entities.

APPROVAL:

In no event shall this contract be deemed valid until it shall have been approved by the State Controller or his/her designee.

PROCUREMENT:

All State of Colorado contracts with its political subdivisions and other governmental entities are exempt from the State of Colorado's personnel rules and procurement code.

PRICE PROVISIONS:

Payments pursuant to this contract shall be made as earned, in whole or in part, from available funds, encumbered for the purchase of the described services and/or deliverables. The liability of the State at any time for such payments shall be limited to the encumbered amount remaining of such funds.

Authority exists in the laws and funds have been budgeted, appropriated and otherwise made available, and a sufficient unencumbered balance thereof remains available for payment.

Financial obligations of the State of Colorado payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available.

GENERAL PROVISIONS

The following clauses apply to this contract. In some instances, these general clauses have been expanded upon in other sections/exhibits of/to this contract. To the extent that other provisions of the contract provide more specificity than these general clauses, the more specific provision shall control.

1. Governmental Immunity. Notwithstanding any other provision to the contrary, no term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection or other provisions of the Colorado Governmental Immunity Act, Section 24-10-101 et.seq., CRS, as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of Section 24-10-101 et.seq., CRS and the risk management statutes, Section 24-30-1501, et.seq., CRS as now or hereafter amended.

2. Available Funds Contingency

   a. Available Funds. The State is prohibited by law from making commitments beyond the term of the State's current fiscal year; therefore, Contractor's compensation beyond the State's current Fiscal Year is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions. Payments pursuant to this Contract shall be made only from available funds encumbered for this Contract and the State's liability for such payments shall be limited to the available amount remaining of such encumbered funds. In the event that state funds become unavailable for this Contract, as determined by the State, the State may immediately terminate this Contract or amend it accordingly.
   b. Federal Funds Contingency. Payment pursuant to this contract, if in federal funds, whether in whole or in part, is subject to and contingent upon the continuing availability of federal funds for the purposes hereof. In the event that said funds, or any part thereof, become unavailable, as determined by the State, the State may immediately terminate this contract or amend it accordingly without liability including liability for termination costs.

3. Billing Procedures. The State shall establish billing procedures and requirements for payment due the Contractor in providing performance pursuant to this contract. The Contractor shall comply with the established billing procedures and requirements for submission of billing statements. The State shall comply with CRS 24-30-202(24) when paying vendors upon receipt of a correct notice of the amount due for goods or services provided hereunder.

4. Exhibits - Interpretation. Unless otherwise stated, all referenced exhibits are incorporated herein and made a part of this contract. Unless otherwise stated, the terms of this contract shall control over any conflicting terms in any of its exhibits. In the event of conflicts or inconsistencies between this contract and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: 1) the Special Provisions of this Contract; 2) the Additional Provisions **Exhibit A** and its attachments if included; 3) the Contract (other than the Special Provisions); 4) the RFP if applicable and attached; 5) the Scope/Statement of Work **Exhibit B** and its attachments if included; 6) the Contractor's proposal if applicable and attached; 7) other exhibits/attachments in their order of appearance.

   The conditions, provisions, and terms of any RFP attached hereto, if applicable, establish the minimum standards of performance that the Contractor must meet under this Contract. If the Contractor's Proposal, if attached hereto, or any attachments or exhibits thereto, or the Scope/Statement of Work Exhibit B, establish or create standards of performance greater than those set forth in the RFP, then the Contractor shall also meet those standards of performance under this Contract.

5. Notice and Representatives. For the purposes of this contract, the representative for each party is as designated herein. Any notice required or permitted may be delivered in person or sent by registered or certified mail, return receipt requested, to the party at the address provided, and if sent by mail it is effective when posted in a

U.S. Mail Depository with sufficient postage attached thereto. Notice of change of address or change or representative shall be treated as any other notice.

6. Contractor Representations - Qualifications/Licenses/Approvals/Insurance. The Contractor certifies that, at the time of entering into this contract, it and its agents have currently in effect all necessary licenses, certifications, approvals, insurance, etc. required to properly provide the services and/or supplies covered by this contract in the state of Colorado. Proof of such licenses, certifications, approvals, insurance, etc. shall be provided upon the State's request. Any revocation, withdrawal or non-renewal of necessary license, certification, approval, insurance, etc. required for the Contractor to properly perform this contract, shall be grounds for termination of this contract by the State.

   Contractor certifies that it is qualified to perform such services or provide such deliverables as delineated in this contract.

7. Legal Authority. The Contractor warrants that it possesses the legal authority to enter into this contract and that it has taken all actions required by its procedures, by-laws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this contract and bind the Contractor to its terms. The person(s) executing this contract on behalf of the Contractor warrant(s) that such person(s) have full authorization to execute this contract.

8. Insurance – Contractor. The Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act (CGIA), section 24-10-101, *et seq.*, C.R.S., as amended. Therefore, at all times during the initial term of this Contract, and any renewals or extensions hereof, the Contractor shall maintain such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the CGIA. If requested by the State, the Contractor shall provide the State with written proof of such insurance coverage.

9. Rights in Data, Documents and Computer Software or Other Intellectual Property. All intellectual property including without limitation, databases, software, documents, research, programs and codes, as well as all, reports, studies, data, photographs, negatives or other documents, drawings or materials prepared by the Contractor in the performance of its obligations under this contract shall be the exclusive property of the State. Unless otherwise stated, all such material shall be delivered to the State by the Contractor upon completion, termination, or cancellation of this contract. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than the performance of the Contractor's obligations under this contract without the prior written consent of the State. All documentation, accompanying the intellectual property or otherwise, shall comply with the State requirements which include but is not limited to all documentation being in a paper, human readable format which is useable by one who is reasonably proficient in the given subject area. Software documentation shall be delivered by Contractor to the State that clearly identifies the programming language and version used, and when different programming languages are incorporated, identifies the interfaces between code programmed in different programming languages. The documentation shall contain source code which describes the program logic, relationship between any internal functions, and identifies the disk files which contain the various parts of the code. Files containing the source code shall be delivered and their significance to the program described in the documentation. The documentation shall describe error messages and the location in the source code, by page, line number, or other suitable identifier, where the error message is generated. The Contractor warrants that the delivered software will be sufficiently descriptive to enable maintenance and modification of the software. The State's ownership rights described herein shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the works.

   If any material is produced under this Contract and the parties hereto mutually agreed that said material could be copyrighted by Contractor or a third party, then the State, and any applicable federal funding entity, shall, without additional cost, have a paid in full, irrevocable, royalty free, and non-exclusive license to reproduce, publish, or otherwise use, and authorize others to use, the copyrightable material for any purpose authorized by the Copyright Law of the United States as now or hereafter enacted. Upon the written request of the State, the Contractor shall provide the State with three (3) copies of all such copyrightable material.

10. Confidential or Proprietary Information. Subject to the Public (Open) Records Act, section 24-72-101, *et seq.*, C.R.S., as amended, if the Contractor obtains access to any records, files, or other information of the State in connection with, or during the performance of, this Contract, then the Contractor shall keep all such records, files, or other information confidential and shall comply with all laws and regulations concerning the confidentiality of all such records, files, or information to the same extent as such laws and regulations apply to the State. Any breach of confidentiality by the Contractor, or third party agents of the Contractor, shall constitute good cause for the State to cancel this Contract, without liability to the State. Any State waiver of an alleged breach of confidentiality by the Contractor, or third party agents of the Contractor, does not constitute a waiver of any subsequent breach by the Contractor, or third party agents of the Contractor. Contractor shall protect the confidentiality of all information used, held, created or received in connection with this Contract and shall insure that any subcontractors or agents of Contractor protect the confidentiality of all information under this Contract. Contractor shall use and disclose confidential information only for purposes of this Contract and for the operation and administration of the Contractor. Contractor shall implement appropriate safeguards as are necessary to prevent the use of disclosure of confidential information and shall maintain a comprehensive written information privacy and security program that includes administrative, technical and physical safeguards for the electronic transmission of confidential information which are appropriate to the size and complexity of the Contractor's operations and the nature and scope of its activities. Contractor shall promptly notify the State if Contractor breaches the confidentiality of any information covered by this Contract.

The Contractor must identify to the State the information that it considers confidential or proprietary. This is a continuing obligation. Confidential or proprietary information for the purpose of this paragraph is information relating to Contractor's research, development, trade secrets, business affairs, internal operations and management procedures and those of its customers, clients or affiliates, but does not include information lawfully obtained by third parties, information which is in the public domain, or information which is or could have been acquired/developed independently by the State or a third party. Notwithstanding the foregoing, the State shall not be in violation of its obligations under this section should it disclose confidential information if such disclosure is, in the sole opinion of the State's legal counsel, required by applicable law and/or legal process (including, but not limited to, disclosures required pursuant to the Colorado (Open) Public Records Act, sections 24-72-201, *et. seq*, C.R.S., as now or hereafter amended). The State shall endeavor to provide notice to the Contractor, as promptly as practicable under the circumstances, of any demand, request, subpoena, court order or other action requiring such disclosure, in order to afford Contractor the opportunity to take such lawful action as it deems appropriate to oppose, prevent or limit the disclosure, solely at its own instance and expense; but nothing herein shall be construed to require the State to refuse or delay compliance with any such law, order or demand.

11. Records Maintenance, Performance Monitoring & Audits. The Contractor shall maintain a complete file of all records, documents, communications, and other materials that pertain to the operation of the program/project or the delivery of services under this contract. Such files shall be sufficient to properly reflect all direct and indirect costs of labor, materials, equipment, supplies and services, and other costs of whatever nature for which a contract payment was made. These records shall be maintained according to generally accepted accounting principles and shall be easily separable from other Contractor records.

The Contractor shall protect the confidentiality of all records and other materials containing personally identifying information that are maintained in accordance with this contract. Except as provided by law, no information in possession of the Contractor about any individual constituent shall be disclosed in a form including identifying information without the prior written consent of the person in interest, a minor's parent, guardian, or the State. The Contractor shall have written policies governing access to, duplication and dissemination of, all such information and advise its agents, if any, that they are subject to these confidentiality requirements. The Contractor shall provide its agents, if any, with a copy or written explanation of these confidentiality requirements before access to confidential data is permitted.

The Contractor authorizes the State, the federal government or their designee, to perform audits and/or inspections of its records, at any reasonable time during the term of this contract and for a period of six (6) years following the termination of this contract, to assure compliance with the state or federal government's terms and/or to evaluate the Contractor's performance. Any amounts the State paid improperly shall be immediately returned to the State or may be recovered in accordance with other remedies.

All such records, documents, communications, and other materials shall be the property of the State unless otherwise specified herein and shall be maintained by the Contractor in a central location as custodian for the State on behalf of the State, for a period of six (6) years from the date of final payment or submission of the final federal expenditure report under this contract, unless the State requests that the records be retained for a longer period, or until an audit has been completed with the following qualification. If an audit by or on behalf of the federal and/or state government has begun but is not completed at the end of the six (6) year period, or if audit findings have not been resolved after a six (6) year period, the materials shall be retained until the resolution of the audit findings.

The Contractor shall permit the State, any other governmental agency authorized by law, or an authorized designee thereof, in its sole discretion, to monitor all activities conducted by the Contractor pursuant to the terms of this contract. Monitoring may consist of internal evaluation procedures, reexamination of program data, special analyses, on-site verification, formal audit examinations, or any other procedures as deemed reasonable and relevant. All such monitoring shall be performed in a manner that will not unduly interfere with contract work.

12. Taxes. The State, as purchaser, is exempt from all federal excise taxes under Chapter 32 of the Internal Revenue Code [No. 84-730123K] and from all state and local government use taxes [C.R.S. 39- 26-114(a) and 203, as amended]. The Contractor is hereby notified that when materials are purchased for the benefit of the State, such exemptions apply except that in certain political subdivisions the vendor may be required to pay sales or use taxes even though the ultimate product or service is provided to the State. These sales or use taxes will not be reimbursed by the State.

13. Conflict of Interest. During the term of this contract, the Contractor shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the Contractor fully performing his/her obligations under this contract.

Additionally, the Contractor acknowledges that, in governmental contracting, even the appearance of a conflict of interest is harmful to the interests of the State. Thus, the Contractor agrees to refrain from any practices, activities or relationships which could reasonably be considered to be in conflict with the Contractor's fully performing his/her obligations to the State under the terms of this contract, without the prior written approval of the State.

In the event that the Contractor is uncertain whether the appearance of a conflict of interest may reasonably exist, the Contractor shall submit to the State a full disclosure statement setting forth the relevant details for the State's consideration and direction. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict shall be grounds for termination of the contract.

Further, the Contractor, and its subcontractors or subgrantees, shall maintain a written code of standards governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent of the Contractor, subcontractor, or subgrantee shall participate in the selection, or in the award or administration of a contract or subcontract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

a. The employee, officer or agent;
b. Any member of the employee’s immediate family;
c. The employee’s partner; or
d. An organization which employees, or is about to employ, any of the above,

has a financial or other interest in the firm selected for award. The Contractor’s, subcontractor’s, or subgrantee’s officers, employees, or agents will neither solicit nor accept gratuities, favors, or anything of monetary value from Contractor’s potential contractors, or parties to subagreements.

14. Inspection and Acceptance (Services) and Contractor Warranty. The State reserves the right to inspect services provided under this contract at all reasonable times and places during the term of the contract. “Services” as used in this clause includes services performed or tangible material produced or delivered in the performance of services. If any of the services do not conform to contract requirements, the State may require the contractor to perform the services again in conformity with contract requirements, with no

additional payment. When defects in the quality or quantity of service cannot be corrected by re-performance, the State may (1) require the contractor to take necessary action to ensure that the future performance conforms to contract requirements and (2) equitably reduce the payment due the contractor to reflect the reduced value of the services performed. These remedies in no way limit the remedies available to the State in the termination provisions of this contract, or remedies otherwise available at law.

Contractor warrants that all supplies furnished under this contract shall be free from defects in materials or workmanship, are installed properly and in accordance with manufacturer recommendations or other industry standards, and will function in a failure-free manner for a period of one (1) year from the date of delivery or installation. Contractor shall, at its option, repair or replace any supplies that fail to satisfy this warranty during the warranty period. Additionally, Contractor agrees to assign to the State all written manufacturer warranties relating to the supplies and to deliver such written warranties to the State.

15. Adjustments in Price. Adjustments to contract prices are allowable only so long as they are mutually agreeable by the parties and so long as they are included within a contract amendment made prior to the effective date of the price adjustments and made pursuant to the State of Colorado Fiscal Rules, signed by the parties, and approved by the State Controller or designee. The Contractor shall provide cost or pricing data for any price adjustment subject to the provisions of the Cost or Pricing Data Section of the Colorado State Procurement Rules. Any adjustment in contract price pursuant to the application of a clause in this contract shall be made in one or more of the following ways:

    a. By agreement on a fixed-price adjustment;
    b. By unit prices specified in the contract;
    c. In such other manner as the parties may mutually agree; or
    d. In the absence of agreement between the parties, by a unilateral determination by the procurement officer of the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee.

16. Contract Modifications. This contract is subject to such modifications as may be required by changes in Federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this contract on the effective date of such change as if fully set forth herein. If either the State or the Contractor desires to modify the terms and conditions of this Contract, then the parties shall execute a standard written amendment to this Contract initiated by the State. The standard written amendment must be executed and approved in accordance with all applicable laws and rules by all necessary parties including the State Controller or delegate.

17. Litigation. The Contractor shall within five (5) calendar days after being served with a summons, complaint, or other pleading which has been filed in any federal or state court or administrative agency notify the State that it is a party defendant in a case which involves services provided under this contract. The Contractor shall deliver copies of such document(s) to the State's Executive Director. The term "litigation" includes an assignment for the benefit of creditors, and filings in bankruptcy, reorganization and/or foreclosure.

18. Notice of Breach and Dispute Resolution: If the State or the Contractor believes in good faith that the other party has failed to timely complete a deliverable, or has otherwise committed a material breach of this Contract, then the non-breaching party shall notify the breaching party in writing of the alleged breach within ten (10) business days of: 1) the date of the alleged breach if the non-breaching party is aware of the breach at the time it occurs; or 2) the date that the non-breaching party becomes aware of the breach.

    Upon receipt of written notice of an alleged breach of the Contract, the breaching party shall have ten (10) business days, or such additional time as may be agreed to in writing between the parties, within which to cure the alleged breach or to notify the non-breaching party in writing of the breaching party's belief that a material breach of this Contract has not occurred. Failure of the breaching party to cure or respond in writing within the above time period shall result in the non-breaching party being entitled to pursue any and all remedies available at law or in equity.

    Except as herein specifically provided otherwise, disputes concerning the performance of this contract which cannot be resolved by the designated contract representatives shall be referred in writing to a senior

departmental management staff designated by the department and a senior manager designated by the Contractor. Failing resolution at that level, disputes shall be presented in writing to the Executive Director and the Contractor's chief executive officer for resolution. This process is not intended to supersede any other process for the resolution of controversies provided by law.

The Contractor and its sureties shall be liable for any damage to the State resulting from the Contractor's breach, whether or not the Contractor's right to proceed with the work is terminated. The State reserves the right, in its sole discretion, to determine whether or not to accept substituted performance tendered by the Contractor or the Contractor's sureties and acceptance is dependent upon completion of all applicable inspection procedures.

19. Remedies: In addition to any other remedies provided for in this contract, and without limiting its remedies otherwise available at law, the State may exercise the following remedial actions if the Contractor substantially fails to satisfy or perform the duties and obligations in this contract. Substantial failure to satisfy the duties and obligations shall be defined to mean significant insufficient, incorrect or improper performance, activities, or inaction by the Contractor. Without limitation, these remedial actions include:

a. withhold payment to Contractor until the necessary services or corrections in performance are satisfactorily completed; and/or
b. require the vendor to take necessary action to ensure that the future performance conforms to contract requirements; and/or
c. request the removal from work on the contract of employees or agents of Contractor whom the State justifies as being incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued employment on the contract the State deems to be contrary to the public interest or not in the best interest of the State; and/or
d. deny payment for those services or obligations which have not been performed and which due to circumstances caused by Contractor cannot be performed, or if performed would be of no value to the State; denial of the amount of payment must be reasonably related to the value of work or performance lost to the State; and/or
e. suspend Contractor's performance pending necessary corrective action as specified by the State without Contractor's entitlement to adjustment in price/cost or schedule; and/or
f. modify or recover payments (from payments under this contract or other contracts between the State and the vendor as a debt due to the State) to correct an error due to omission, error, fraud and/or defalcation; and/or
g. terminate the contract.

These remedies in no way limit the remedies available to the State in the termination provisions of this contract, or remedies otherwise available at law.

20. Termination.

a. Termination for Default. The State may terminate the contract for cause. In the event this contract is terminated for cause, the State will only reimburse the Contractor for accepted work or deliverables received up to the date of termination. In the event this contract is terminated for cause, final payment to the Contractor may be withheld at the discretion of the State until completion of final audit. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for any damages sustained by the State by virtue of any breach of the contract by the Contractor, and the State may withhold any payment to the Contractor for the purposes of mitigating its damages until such time as the exact amount of damages due to the State from the Contractor is determined. If it is determined that the Contractor was not in default then such termination shall be treated as a termination for convenience as described herein. In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the contractor under this contract shall, at the option of the State, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any services and supplies delivered and accepted. The Contractor shall be obligated to return any payment advanced under the provisions of this contract.

b. Termination for Convenience. The State shall have the right to terminate this contract at any time the State determines necessary by giving the Contractor at least twenty (20) calendar days prior written notice. If notice is so given, this contract shall terminate on the expiration of the specified time period, and the liability of the parties hereunder for further performance of the terms of this contract shall thereupon cease, but the parties shall not be released from the duty to perform their obligations up to the date of termination. In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the contractor under this contract shall, at the option of the State, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory services and supplies delivered.

In the event that the State terminates this contract under the Termination for Convenience provisions, the Contractor is entitled to submit a termination claim within ten (10) days of the effective date of termination. The termination claim shall address and the State shall consider paying the following costs:

I. the contract price for performance of work, which is accepted by the State, up to the effective date of the termination;
II. reasonable and necessary costs incurred in preparing to perform the terminated portion of the contract;
III. reasonable profit on the completed but undelivered work up to the date of termination;
IV. the costs of settling claims arising out of the termination of subcontracts or orders, not to exceed 30 days pay for each subcontractor;
V. reasonable accounting, legal, clerical, and other costs arising out of the termination settlement.

In no event shall reimbursement under this clause exceed the contract amount reduced by amounts previously paid by the State to the Contractor.

c. Immediate Termination. This contract is subject to immediate termination, in whole or in part, by the State without further liability in all of the following circumstances:

I. In the event that the State determines that the health, safety, or welfare of persons receiving services may be in jeopardy;
II. Upon verifying that the Contractor has engaged in or is about to participate in fraudulent or other illegal acts; or
III. If State or federal funds are not appropriated, or otherwise become unavailable to fund this Contract.

21. Stop Work Order. Upon written approval by the State Procurement Officer or delegee, the State may, by written order to the Contractor, at any time, and without notice to any surety, require the Contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period after the order is delivered to the Contractor. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the incurring of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, as legally extended, the State Procurement Officer or delegee shall either:

a. Cancel the stop work order; or
b. Terminate the work covered by such order; or
c. Terminate the contract.

If a stop work order issued under this clause is properly canceled, the Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the contract shall be modified accordingly in writing pursuant to the terms of this contract dealing with contract modifications, if:

a. The stop work order results in increased time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

b. The Contractor asserts claim for such an adjustment within thirty (30) days after the end of the period of work stoppage.

If the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise and such adjustment shall be in accordance with the Price Adjustment Clause of this contract.

22. Venue. The parties agree that exclusive venue for any action related to performance of this contract shall be in the City and County of Denver, Colorado.

23. Understanding of the Parties.

a. Complete Integration. This contract is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written contract executed and approved pursuant to the State Fiscal Rules.

b. Severability. To the extent that this contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the contract, the terms of this contract are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

c. Binding Agreement. Except as herein specifically provided otherwise, it is expressly understood and agreed that this contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. All rights of action relating to enforcement of the terms and conditions shall be strictly reserved to the State and the named Contractor. Nothing contained in this agreement shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the State and the Contractor that any such person or entity, other than the State or the Contractor, receiving services or benefits under this agreement shall be deemed an incidental beneficiary only.

d. Waiver. The waiver of any breach of a term hereof shall not be construed as a waiver of any other term, or the same term upon subsequent breach.

e. Continuing Obligations. The State and the Contractor's obligations under this contract shall survive following termination or expiration to the extent necessary to give effect to the intent and understanding of the parties.

f. Assignment and Change In Ownership, Address, Financial Status. Except as herein specifically provided otherwise, the rights, duties and obligations of the Contractor arising hereunder cannot be assigned, delegated, subgranted or subcontracted except with the express prior written consent of the State, which consent shall not be unreasonably withheld. In the case of assignment or delegation, Contractor and the State shall execute the standard State novation agreement prior to the assignment or delegation being effective against the State. The subgrants and subcontracts permitted by the State shall be subject to the requirements of this contract. The Contractor is responsible for all subcontracting arrangements, delivery of services, and performance of any subgrantor or subcontractor. The Contractor warrants and agrees that any subgrant or subcontract, resulting from its performance under the terms and conditions of this contract, shall include a provision that the said subgrantor or subcontractor shall abide by the terms and conditions hereof. Also, the Contractor warrants and agrees that all subgrants or subcontracts shall include a provision that the subgrantor or subcontractor shall indemnify and hold harmless the State. The subgrantors or subcontractors must be certified to work on any equipment for which their services are obtained.

This provision shall not be construed to prohibit assignments of the right to payment to the extent permitted by section 4-9-318, CRS, provided that written notice of assignment adequate to identify the rights assigned is received by the controller for the agency, department, or institution executing this contract. Such assignment shall not be deemed valid until receipt by such controller – as distinguished from the State Controller – and the Contractor assumes the risk that such written notice of assignment is received by the controller for the agency, department, or institution involved.

The Contractor is required to formally notify the State prior to, or if circumstances do no allow prior notification then immediately following, any of the following:

I. change in ownership;
II. change of address;
III. the filing of bankruptcy.

g. Force Majeure. Neither the Contractor nor the State shall be liable to the other for any delay in, or failure of performance of, any covenant or promise contained in this contract, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by "force majeure." As used in this contract "force majeure" means acts of God; acts of the public enemy; acts of the State and any governmental entity in its sovereign or contractual capacity; fires; floods, epidemics; quarantine restrictions, strikes or other labor disputes; freight embargoes; or unusually severe weather.

h. Changes In Law. This contract is subject to such modifications as may be required by changes in applicable federal or State law, or their implementing rules, regulations, or procedures. Any such required modification shall automatically be incorporated into and be part of this contract on the effective date of such change as if fully set forth herein. Except as provided above, no modification of this contract shall be effective unless agreed to in writing by both parties in the form of a written amendment to this Contract that has been previously executed and approved in accordance with applicable law.

i. Media or Public Announcements. Unless otherwise provided for in this Contract, the Contractor shall not make any news release, publicity statement, or other public announcement, either in written or oral form that concerns the work provided under this Contract, without the prior written approval of the State. The Contractor shall submit a written request for approval to the State no less than ten (10) business days before the proposed date of publication. The State shall not unreasonably withhold approval of the Contractor's written request to publish. Approval or denial of the Contractor's request by the State, shall be delivered to the Contractor in writing within six (6) business days from the date of the State's receipt of Contractor's request for approval.

If required by the terms and conditions of a federal or state grant, the Contractor shall obtain the prior approval of the State and all necessary third parties prior to publishing any materials produced under this Contract. If required by the terms and conditions of a federal or state grant, the Contractor shall also credit the State and all necessary third parties with assisting in the publication of any materials produced under this Contract. It shall be the obligation of the Contractor to inquire of the State as to whether these requirements exist and obtain written notification from the State as Contractor deems appropriate.

24. Intellectual Indemnity. Contractor shall defend, at its sole expense, any claim(s) or suit(s) brought against the State alleging that the use by the State of any product(s), or any part thereof, supplied by Contractor under this agreement constitutes infringement of any patent, copyright, trademark, or other proprietary rights, provided that the State gives Contractor written notice within twenty (20) days of receipt by the State of such notice of such claim or suit, provides assistance and cooperation to Contractor in connection with such action, and Contractor has sole authority to defend or settle the claim. Contractor shall consult the State regarding such defense and the State may, at its discretion and expense, participate in any defense. Should the State not choose to participate, Contractor shall keep the State advised of any settlement or defense.

Contractor shall have liability for all such claims or suits, except as expressly provided herein, and shall indemnify the State for all liability incurred by the State as a result of such infringement. Contractor shall pay all reasonable out-of-pocket costs and expenses, and damages finally awarded by a court of competent jurisdiction, awarded or agreed to by Contractor regarding such claims or suits.

If the product(s), or any part thereof, become the subject of any claim, suit or proceeding for infringement of any patent, trademark or copyright, or in the event of any adjudication that the product(s), or any part thereof, infringes any patent, trademark or copyright, or if the sub-license or use of the product(s), or any part thereof, is enjoined, Contractor, after consultation with the State, shall do one of the following at Contractor's expense:

a. produce for the State the right under such patent, trademark or copyright to use or sub-license, as appropriate, the product or such part thereof; or

b. replace the product(s), or part thereof, with other suitable products or parts conforming to the original license and State specifications; or

c. suitably modify the products, or part thereof.

Except as otherwise expressly provided herein, Contractor shall not be liable for any costs or expenses incurred without its prior written authorization.

Contractor shall have no obligation to defend against or to pay any costs, damages or attorney's fees with respect to any claim based upon:

a. the use of an altered release if Contractor had not consented to the alteration; or

b. the combination, operation or use of the product(s) with programs or data which were not furnished by Contractor, if such infringement would have been avoided if the programs or data furnished by persons or entities other than Contractor had not been combined, operated or used with the product(s); or

c. the use of product(s) on or in connection with equipment or software not permitted under this contract if such infringement would have been avoided by not using the product(s) on or in connection with such other equipment or software.

25. Conformance with Law. If this Contract involves federal funds or compliance is otherwise federally mandated, the Contractor and its agent(s) shall at all times during the term of this contract strictly adhere to all applicable federal laws, state laws, Executive Orders and implementing regulations as they currently exist and may hereafter be amended. Without limitation, these federal laws and regulations include:

a. Office of Management and Budget Circulars A-21, A-87, A-102, A-110, A-122, A-133, and The Common Rule for Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, as applicable;

b. the “Hatch Act” (5 U.S.C. 1501-1508) and Public Law 95-454, Section 4728. These federal statutes declare that federal funds cannot be used for partisan political purposes of any kind by any person or organization involved in the administration of federally-assisted programs;

c. the “Davis-Bacon Act” (40 U.S.C. 276A-276A-5). This federal Act requires that all laborers and mechanics employed by contractors or subcontractors to work on construction projects financed by federal assistance must be paid wages not less than those established for the locality of the project by the Secretary of Labor;

d. 42 U.S.C. 6101 *et seq.*, 42 U.S.C. 2000d, 29 U.S.C. 794. These federal Acts mandate that no person shall, on the grounds of race, color, national origin, age, or disability, be excluded from participation in or be subjected to discrimination in any program or activity funded, in whole or in part, by federal funds;

e. the “Americans with Disabilities Act” (Public Law 101-336; 42 U.S.C. 12101, 12102, 12111 - 12117, 12131 - 12134, 12141 - 12150, 12161 - 12165, 12181 - 12189, 12201 - 12213 and 47 U.S.C. 225 and 47 U.S.C. 611);

f. if the Contractor is acquiring an interest in real property and displacing households or businesses in the performance of this Contract, then the Contractor is in compliance with the “Uniform

Relocation Assistance and Real Property Acquisition Policies Act", as amended, (Public Law 91-646, as amended, and Public Law 100-17, 101 Stat. 246 - 256);

g. when applicable, the Contractor shall comply with the provisions of the "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" (Common Rule);

h. Section 2101 of the Federal Acquisition Streamlining Act of 1994, Public Law 103-355, which prohibits the use of federal money to lobby the legislative body of a political subdivision of a State; and

i. If the Contractor is a covered entity under the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d – 1320d-8, the Contractor shall comply with applicable HIPAA requirements. **If Contractor is a business associate under HIPAA, Contractor hereby agrees to, and has an affirmative duty to, execute the State's current HIPAA Business Associate Agreement. In this case, Contractor must contact the State's representative and request a copy of the Business Associate Agreement, complete the agreement, have it signed by an authorized representative of the Contractor, and deliver it to the State.**

j. The Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6062 of Public Law 110-252, including without limitation all data reporting requirements required thereunder. This Act is also referred to as FFATA.

6. Contractor Affirmation. If this Contract involves federal funds or compliance is otherwise federally mandated, then by signing and submitting this Contract the Contractor affirmatively avers that:

a. the Contractor is in compliance with the requirements of the "Drug-Free Workplace Act" (Public Law 100-690 Title V, Subtitle D, 41 U.S.C. 701 et seq.);

b. the Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency; the Contractor shall comply with all applicable regulations pursuant to Executive Order 12549, including, Debarment and Suspension and Participants' Responsibilities, 29 C.F.R. 98.510 (1990); and,

c. the Contractor shall comply with all applicable regulations pursuant to Section 319 of Public Law 101-121, Guidance for New Restrictions on Lobbying, including, Certification and Disclosure, 29 C.F.R. 93.110(1990).

27. Annual Audits. If the Contractor expends federal funds from all sources (direct or from pass-through entities) in an amount of $500,000 or more during its fiscal year, then the Contractor shall have an audit of that fiscal year in accordance with Office of Management and Budget (OMB) Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations). If the Contractor expends federal funds received from the State in an amount of $500,000 or more during its fiscal year, then the Contractor shall furnish one (1) copy of the audit report(s) to the State's Internal Audit Office within thirty (30) calendar days after the Contractor's receipt of its auditor's report or nine (9) months after the end of the Contractor's audit period, whichever is earlier. If (an) instance(s) of noncompliance with federal laws and regulations occurs, then the Contractor shall take all appropriate corrective action(s) within six (6) months of the issuance of (a) report(s).

If the Contractor submits an annual indirect cost proposal to the State for review and approval, then the Contactor's auditor shall audit the proposal in accordance with the requirements of OMB Circulars A-21 (Cost Principles for Educational Institutions), A-87 (Cost Principles for State, Local, and Tribal Governments), or A-122 (Cost Principles for Non-Profit Organizations), whichever is applicable.

28. Holdover. In the event that the State desires to continue the services provided for in this Contract and a replacement contract has not been fully executed by the expiration date of the Contract, this Contract may be extended unilaterally by the State for a period of up to two (2) months upon written notice to the Contractor under the same terms and conditions of the original Contract including, but not limited to, prices, rates, and service delivery requirements. However, this extension terminates when the replacement contract becomes effective when signed by the State Controller or an authorized delegate.

29. Survival of Certain Contract Terms. Notwithstanding anything in this contract to the contrary, the parties understand and agree that all terms and conditions of this contract which may require continued performance, compliance, or effect beyond the termination date of the contract and shall survive such termination date and shall be enforceable by the State as provided herein in the event of failure to perform or comply by the Contractor.

30. **STATEWIDE CONTRACT MANAGEMENT SYSTEM** *[This section shall apply when the Effective Date is on or after July 1, 2009 and the maximum amount payable to Contractor hereunder is $100,000 or higher]*

By entering into this Contract, Contractor agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state contracts and inclusion of contract performance information in a statewide contract management system.

Contractor's performance shall be evaluated in accordance with the terms and conditions of this Contract, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation of Contractor's performance shall be part of the normal contract administration process and Contractor's performance will be systematically recorded in the statewide Contract Management System. Areas of review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Contractor's obligations under this Contract shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of the Statement of Project of this Contract. Such performance information shall be entered into the statewide Contract Management System at intervals established in the Statement of Project and a final review and rating shall be rendered within 30 days of the end of the Contract term. Contractor shall be notified following each performance and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance evaluation determine that Contractor demonstrated a gross failure to meet the performance measures established under the Statement of Project, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the Colorado Department of Public Health and Environment and showing of good cause, may debar Contractor and prohibit Contractor from bidding on future contracts. Contractor may contest the final evaluation and result by: (i) filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or (ii) under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Contractor, by the Executive Director, upon showing of good cause.

SPECIAL PROVISIONS

These Special Provisions apply to all contracts except where noted in *italics*.

1. **CONTROLLER'S APPROVAL**. **CRS §24-30-202(1)**. This contract shall not be valid until it has been approved by the Colorado State Controller or designee.
2. **FUND AVAILABILITY**. **CRS §24-30-202(5.5)**. Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
3. **GOVERNMENTAL IMMUNITY**. No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.
4. **INDEPENDENT CONTRACTOR**. Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this contract. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall **(a)** provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, **(b)** provide proof thereof when requested by the State, and **(c)** be solely responsible for its acts and those of its employees and agents.
5. **COMPLIANCE WITH LAW**. Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.
6. **CHOICE OF LAW**. Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this contract, to the extent capable of execution.
7. **BINDING ARBITRATION PROHIBITED.** The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contact or incorporated herein by reference shall be null and void.
8. **SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00**. State or other public funds payable under this contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.
9. **EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST**. **CRS §§24-18-201 and 24-50-507**. The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.
10. **VENDOR OFFSET**. **CRS §§24-30-202 (1) and 24-30-202.4**. [***Not Applicable to intergovernmental agreements***] Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept

system for debts owed to State agencies for: **(a)** unpaid child support debts or child support arrearages; **(b)** unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; **(c)** unpaid loans due to the Student Loan Division of the Department of Higher Education; **(d)** amounts required to be paid to the Unemployment Compensation Fund; and **(e)** other unpaid debts owing to the State as a result of final agency determination or judicial action.

11. PUBLIC CONTRACTS FOR SERVICES. **CRS §8-17.5-101**. [***Not Applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services***] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this contract, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor **(a)** shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, **(b)** shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract, **(c)** shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and **(d)** shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this contract for breach and, if so terminated, Contractor shall be liable for damages.

12. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101. Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she **(a)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(b)** shall comply with the provisions of CRS §24-76.5-101 et seq., and **(c)** has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this contract.

Revised 1-1-09

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

*** Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the State is relying on their representations to that effect.**

CONTRACTOR:

Town of Windsor
Legal Name of Contracting Entity

_____
Signature of Authorized Officer

_____
Print Name of Authorized Officer

_____
Print Title of Authorized Officer

STATE OF COLORADO:
John W. Hickenlooper, GOVERNOR

By: _____
For Executive Director

Department of Public Health and Environment

Department Program Approval:

By: _____

LEGAL REVIEW
John W. Suthers, Attorney General

By: _____

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.

STATE CONTROLLER:
Robert Jaros, CPA, MBA, JD

By: _____

Date: _____

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ADDITIONAL PROVISIONS
To Contract Dated 09/10/2013 - Contract Routing Number 14 FAA 61454

These provisions are to be read and interpreted in conjunction with the provisions of the contract specified above.

1. To receive compensation under the Contract, the Contractor shall submit a signed monthly CDPHE Reimbursement Invoice Form. This form is accessible from the CDPHE internet website http://www.colorado.gov/cs/Satellite/CDPHE-Main/CBON/1251622941228. CDPHE will provide technical assistance in accessing and completing the form. The CDPHE Reimbursement Invoice Form and Expenditure Details page must be submitted within **forty-five (45)** calendar days of the end of the billing period for which services were rendered. Expenditures shall be in accordance with the Statement of Work and Budget.

   The Contractor shall provide the following documentation with the completed invoice; all applicable invoices to substantiate the amount being requested. This supporting documentation shall be submitted with the completed CDPHE Reimbursement Invoice Form and Expenditure Details page.

   Scan the completed and signed CDPHE Reimbursement Invoice Form and supporting documentation into an electronic document. Email the scanned invoice and Expenditure Details page and supporting documentation to: Nicole Rollo, GLU Administrative Assistant, nicole.rollo@state.co.us. Also, courtesy copy your GLU project manager.

   Final billings under the Contract must be received by the State within a reasonable time after the expiration or termination of the Contract; but in any event no later than **forty-five (45)** calendar days from the effective expiration or termination date of the Contract.

   Unless otherwise provided for in the Contract, "Local Match," if any, shall be included on all invoices as required by funding source.

2. Time Limit for Acceptance of Deliverables.

   The State shall follow the review goals and timelines outlined within existing regulations, where applicable. Examples of existing review processes include the site location application and design review processes as described within the *Site Location and Design Approval Regulations for Domestic Wastewater Treatment Works 5 CCR 1002-22* and the *State of Colorado Design Criteria for Domestic Wastewater Treatment Works WPC-DR-1*. Processing of all deliverables not identified through other existing regulatory authorities, the State and the Contractor shall adhere to the following:

   a. Initial Evaluation Period. The State shall have ninety **(90)** calendar days from the date a deliverable is delivered to the State by the Contractor to initially evaluate that deliverable, except for those deliverables that have a different time negotiated by the State and the Contractor.

   b. Notice of Defect. If the State believes in good faith that a deliverable fails to meet the design specifications for that particular deliverable, or is otherwise deficient, then the State shall notify the Contractor of the failure or deficiencies, in writing, within **thirty (30)** calendar days of the date the State becomes aware of the failure or deficiency. The above time frame shall apply to all deliverables except for those deliverables that have a

different time negotiated by the State and the Contractor in writing pursuant to the State's fiscal rules

c. Time to Correct Defect. Upon receipt of timely written notice of an objection to a completed deliverable, the Contractor shall have a reasonable period of time, not to exceed **thirty (30)** calendar days, to correct the noted deficiencies.

3. Health Insurance Portability and Accountability Act (HIPAA) Business Associate Determination. The State and the Contractor have determined that Contractor is not a business associate under HIPAA.

4. The contractor shall request pre-approval from CDPHE Project Manager for budget activity redistribution over $5,000.

STATEMENT OF WORK
To Contract Dated 9/10/2013 - Contract Routing Number 14 FAA 61454

These provisions are to be read and interpreted in conjunction with the provisions of the contract specified above.

I. **Entity Name:** Town of Windsor
Term: September 15, 2013 – May 31, 2016

II. **Project Description:**
This project serves to improve water quality for the customers of the Town of Windsor. Improvements will be achieved through compliance with WQCD Regulation #85, Nutrients Management Control Regulation. This project provides development of a nutrients engineering report to evaluate biological nitrogen control options, design documentation, and construction of recommended facility improvements.

III. **Definitions:**

1. BNR – Biological Nutrient / Nitrogen Removal
2. BOD – Biochemical Oxygen Demand (as in BOD reduction)
3. CDPHE – Colorado Department of Public Health and Environment
4. COD – Chemical Oxygen Demand (as in soluble COD)
5. Contractor and/or Vendor – Any party to which a purchase order is issued.
6. ERU - Engineering Review Unit
7. GLU - Grants and Loans Unit
8. NCS – Nutrient Compliance Study
9. NER- Nutrient Engineering Report
10. NGP- Nutrients Grant Program
11. PDR- Process Design Report
12. PELs - Preliminary Effluent Limits
13. PER - Preliminary Engineering Report
14. POTW- Publicly Owned Treatment Works
15. RAS- Return Activated Sludge
16. SOW - Statement of Work
17. SRT- Solids Retention Time
18. Start up & Commissioning – Initiating and operating facility improvements
19. TIN-Total Inorganic Nitrogen
20. TP- Total Phosphorous
21. TSS- Total Suspended Solids
22. WQIF – Water Quality Improvement Fund
23. WRF – Water Reclamation Facility
24. WWTF- Wastewater Treatment Facility

IV. **Performance (Work Plan and Requirements):**

Goal #1: To improve water quality in Colorado by meeting requirements of Regulation #85, Nutrients Management Control Regulation.	
Objective #1: No later than June 1, 2014 determine operational measures or plant upgrades needed to meet future nitrogen effluent limits at the WWTF.	
	Budget

Primary Activity #1	The Contractor shall develop a Nutrients Engineering Report to evaluate alternative approaches to biological nitrogen control.	$57,600
Sub-Activities:	1. The Contractor shall gather data on existing plant infrastructure, operating data, and influent and effluent wastewater characteristics. 2. The Contractor shall analyze the existing plant to determine if it can meet the proposed nutrient limits. 3. The Contractor shall model the existing plant and unit process modifications necessary to meet the proposed nutrient limits. 4. The Contractor shall evaluate the cost of plant modification alternatives and determine the lowest cost alternatives that meet the Regulation 85 limits.	
Expected Results of the Activity	1. Operational and/or plant upgrades will be identified to meet effluent limits as required by Regulation #85, Nutrients Management Control Regulation.	
Standards and Requirements	1. The Contractor shall utilize a registered licensed Professional Engineer to complete and certify the Nutrients Engineering Report. 2. The Contractor shall complete a *Nutrient Engineering Report* in accordance with the *State Revolving Fund Waste Water Preliminary Engineering Report Guidance and Review Checklist Form.* These documents are incorporated and made part of the SOW by reference. The documents can be accessed at http://www.colorado.gov/cs/Satellite/CDPHE-WQ/CBON/1251640440472 3. The Contractor shall complete the *Environmental Assessment Checklist*. This document is incorporated and made part of the SOW by reference. The documents can be accessed at: http://www.colorado.gov/cs/Satellite/CDPHE-WQ/CBON/1251599775930 4. The content of the electronic documents and information contained on CDPHE websites may be updated periodically during the contract term. The contractor shall monitor documents and website content for updates and comply with all updates. 5. The contractor shall notify the WQIF Nutrients administrator via email if the website links are broken.	
Measurement of Expected Results	1. Data contained in the Nutrients Engineering Report that indicates a selected alternative that complies with Regulation #85.	
		Completion Date
Deliverables	1. The Contractor shall submit the Nutrient Engineering Report via email to the Project Manager and engineering section manager bret.icenogle@state.co.us.	No later than June 1, 2014
	2. The Contractor shall submit a quarterly progress report form, as provided by CDPHE, identifying progress made on the nutrients engineering report via email to the Project Manager.	No later than: October 10; January 10; April 10.
	3. The Contractor shall submit all subcontractor agreements via email to the Project Manager	No later than 30 days after contracts signed.

Goal #1: To improve water quality in Colorado by meeting requirements of Regulation #85, Nutrients Management Control Regulation.

Objective #2: No later than December 31, 2015 design and construct process and facility improvements identified in the Nutrients Engineering Report to meet future effluent limitations of Regulation #85 Nutrients Management Control Regulation.

		Budget
Primary Activity #1	The contractor shall complete a preliminary effluent limit (PEL) application.	$1,300
Primary Activity #2	The contractor shall prepare site application for the recommended facility improvements.	$5,900
Primary Activity #3	The contractor shall prepare a process design report for the recommended facility improvements.	$11,500
Primary Activity #4	The contractor shall prepare final engineering design documents for the recommended facility improvements as identified in the Preliminary Engineering Report.	$18,400
Sub-Activities:	1. The contractor shall complete final drawings for the recommended improvements. 2. The contractor shall complete final project technical specifications for the recommended improvements.	
Primary Activity #5	The Contractor shall construct 24% of the improvements identified in the Nutrients Engineering Report.	$192,900
Sub-Activities:	1. The contractor shall advertise project for bid submittals. 2. The contractor shall award construction contract. 3. The contractor shall manage construction including project technical submittals. 4. The contractor shall startup and commission the equipment recommended in the Nutrients Engineering Report. 5. The contractor shall complete a discharge permit application.	
Expected Results of the Activity	1. The wastewater facility will procure all required approvals necessary for construction. 2. Facility improvements completed to meet nutrient effluent limits.	
Standards and Requirements	1. The Contractor shall utilize a registered licensed Professional Engineer to complete and certify the process design report and construction documents. 2. The Contractor must have PELs, site amendment approval, process design report, and final design approval prior to construction of the facility improvements. 3. The Contractor shall utilize the *State of Colorado Design Criteria for Wastewater Treatment Works.* This document is incorporated and made part of this SOW by reference and is available on the following website http://www.colorado.gov/cs/Satellite/CDPHE-WQ/CBON/1251629028615 4. The Contractor shall comply with the *Site Location and Design Approval Regulations for Domestic Wastewater Treatment Works (Regulation No. 22)* when upgrading facilities. This document is incorporated and made part of this SOW by reference and is available on the following website http://www.colorado.gov/cs/Satellite/CDPHE-WQ/CBON/1251629028615 5. The Contractor shall utilize the *Regulation 22 Application Form*. This document is incorporated and made part of this SOW by reference and is available on the following website http://www.colorado.gov/cs/Satellite/CDPHE-WQ/CBON/1251629028615	

	6. The Contractor shall utilize the *Process Design Report Submittal Checklist*. This document is incorporated and made part of this SOW by reference and is available on the following website http://www.colorado.gov/cs/Satellite/CDPHE-WQ/CBON/1251629028615. 7. The Contractor shall utilize the *Wastewater Design Form* when submitting the engineering design documents. This document is incorporated and made part of this SOW by reference and is available on the following website http://www.colorado.gov/cs/Satellite/CDPHE-WQ/CBON/1251629028615 8. The Contractor shall include in the project technical specifications for the recommended improvements, the State of Colorado Construction Bidding Requirements for State Revolving Fund (SRF) Loan Projects. This document is incorporated and made part of this SOW by reference and is available on the following website http://www.colorado.gov/cs/Satellite/CDPHE-WQ/CBON/1251640440472 9. The Site Location Amendment approval by the North Front Range Water Quality Planning Association (NFRWQPA). 10. The Contractor shall invite the project manager from CDPHE, Grants and Loans Unit to any pre-bid and pre-construction meetings related to construction of the facility upgrades. 11. CDPHE will conduct a final inspection of the construction sites. CDPHE will provide the contractor with a copy of the final inspection report. 12. The content of the electronic documents and information contained on CDPHE websites may be updated periodically during the contract term. The contractor shall monitor documents and website content for updates and comply with all updates. 13. The Contractor shall notify the WQIF Nutrients administrator via email if the website links are broken.	
Measurement of Expected Results	1. CDPHE site location approval for wastewater treatment facility upgrades. 2. CDPHE Process Design Report approval for wastewater treatment facility upgrades. 3. Design documents that incorporate the approved Nutrients Engineering Report and process design report selective alternative. 4. Design documents are in compliance with the State of Colorado Design Criteria for Wastewater Treatment Works. 5. Construction is in accordance with CDPHE issued design approval.	
		Completion Date
Deliverables	1. The Contractor shall submit a completed site application for the facility upgrade via email to the CDPHE engineering section manager bret.icenogle@state.co.us and the Project Manager.	No later than June 30, 2014
	2. The Contractor shall submit the Process Design Report via email to the CDPHE engineering section manager bret.icenogle@state.co.us.	No later than August 30, 2014
	3. The Contractor shall submit final engineering design documents via email to the CDPHE engineering section manager bret.icenogle@state.co.us and the Project Manager.	No later than January 31, 2015
	4. The Contractor shall submit all subcontractor agreements via email to the Project Manager.	No later than 30 days after agreements are signed.
	5. The Contractor shall submit a quarterly progress report form, as provided by CDPHE, identifying progress made on the design and	No later than: October 10; January 10; April 10; and July 10.

	construction via email to the Project Manager.	
	6. The Contractor shall submit a final report including photo summary, as provided by CDPHE, on completed construction via email to the Project Manager.	No later than 30 days following final completion

V. Monitoring:

CDPHE's monitoring of this contract for compliance with performance requirements will be conducted throughout the contract period by the CDPHE Project Manager. Methods used will include a review of documentation determined by CDPHE to be reflective of performance to include progress reports and other fiscal and programmatic documentation as applicable. The Contractor's performance will be evaluated at set intervals and communicated to the contractor. A Final Contractor Performance Evaluation will be conducted at the end of the life of the contract.

VI. Resolution of Non-Compliance:

The Contractor will be notified in writing within **10** calendar days of discovery of a compliance issue. Within **30** calendar days of discovery, the Contractor and the State will collaborate, when appropriate, to determine the action(s) necessary to rectify the compliance issue and determine when the action(s) must be completed. The action(s) and time line for completion will be documented in writing and agreed to by both parties. If extenuating circumstances arise that requires an extension to the time line, the Contractor must email a request to the CDPHE Project Manager and receive approval for a new due date. The State will oversee the completion/implementation of the action(s) to ensure time lines are met and the issue(s) is resolved. If the Contractor demonstrates inaction or disregard for the agreed upon compliance resolution plan, the State may exercise its rights under the provisions of this contract.

Budget
To Contract Dated 9/10/2013 – Contract Routing Number 14 FAA 61454

These provisions are to be read and interpreted in conjunction with the provisions of the contract specified above.

Entity Name: Town of Windsor

Planning Project Activity	**Budget**
1. Develop nutrients engineering report.	$57,600
Design and Construction Project Activity	**Budget**
1. Complete preliminary effluent limit application.	$1,300
2. Prepare site application.	$5,900
3. Prepare process design report.	$11,500
4. Prepare final engineering design documentation.	$18,400
5. Construct	$192,900
Total Project Cost:	**$287,600**

TOWN OF WINDSOR

RESOLUTION NO. 2013-60

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF WINDSOR, COLORADO, AND THE STATE OF COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT WITH RESPECT TO GRANT FUNDING FOR THE EVALUATION, DESIGN AND CONSTRUCTION OF IMPROVEMENTS TO THE TOWN OF WINDSOR'S WASTEWATER TREATMENT PLANT

WHEREAS, the Town of Windsor ("Town") is a Colorado home rule municipality with all powers and authority provided by Colorado law; and

WHEREAS, the Town's waste water utility enterprise is responsible for sound planning and treatment of waste water through the State-authorized operations of its Waste Water Treatment Plant ("WWTP"); and

WHEREAS, the Town has been informed that, in order to achieve compliance with the Colorado Water Quality Control Division's Nutrients Management Control Regulation #85, professional evaluation, design and construction services are required; and

WHEREAS, the State of Colorado Department Public Heath and Environment ("CDPHE") has awarded to the Town a grant in the amount of $287,600.00 ("Grant"), which funds will be devoted to the evaluation, design and construction of improvements to the WWTP; and

WHEREAS, CDPHE requires the Town to enter into a written agreement containing the terms under which the Grant funds will be administered, applied and accounted for; and

WHEREAS, the Town Manager has participated in negotiations with CDPHE with respect to the written agreement required by CDPHE, and has arrived at the attached "Intergovernment Contract" ("IGA"); and

WHEREAS, the attached IGA will enable the use of the Grant funding for the evaluation, design and construction of improvements to the WWTP, which will assure the Town's continued compliance with applicable water quality regulations; and

WHEREAS, Part 2 of Article 1 of Title 29, C.R.S. authorizes governments to cooperate and contract with one another to provide any function, service or facility lawfully authorized to each, including the sharing of costs; and

WHEREAS, the Town Board wishes to approve the attached IGA, and to authorize the Town Manager to execute it on the Town's behalf.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN BOARD OF THE TOWN OF WINDSOR, COLORADO, AS FOLLOWS:

1. The attached Intergovernment Contract between the Town of Windsor and the Colorado Department of Public Health and Environment, incorporated herein by this reference as if set forth fully, is hereby approved by the Windsor Town Board.

2. The Town Manager is hereby authorized to execute the attached Intergovernment Contract on behalf of Windsor.

3. The Town Attorney is authorized to make necessary revisions to the Agreement in keeping with its essential purposes.

Upon motion duly made, seconded and carried, the foregoing Resolution was adopted this 28th day of October, 2013.

TOWN OF WINDSOR, COLORADO

By:_____
John S. Vazquez, Mayor

ATTEST:

_____
Patti Garcia, Town Clerk

TOWN OF WINDSOR

RESOLUTION NO. 2013-61

A RESOLUTION APPROVING A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE TOWN OF WINDSOR, COLORADO, AND FARNSWORTH GROUP, INC., WITH RESPECT TO THE EVALUATION, DESIGN AND CONSTRUCTION OF IMPROVEMENTS TO THE TOWN OF WINDSOR'S WASTEWATER TREATMENT PLANT

WHEREAS, the Town of Windsor ("Town") is a Colorado home rule municipality with all powers and authority provided by Colorado law; and

WHEREAS, the Town's waste water utility enterprise is responsible for sound planning and treatment of waste water through the State-authorized operations of its Waste Water Treatment Plant ("WWTP"); and

WHEREAS, the Town has been informed that, in order to achieve compliance with the Colorado Water Quality Control Division's Nutrients Management Control Regulation #85, professional evaluation, design and construction services are required; and

WHEREAS, the State of Colorado Department Public Heath and Environment ("CDPHE") has awarded to the Town a grant in the amount of $287,600.00 ("Grant"), which funds will be devoted to the evaluation, design and construction of improvements to the WWTP; and

WHEREAS, in order to carry out the evaluation, reporting and design work contemplated under the Grant, the Town has negotiated a Professional Services Agreement with Farnsworth Group, Inc., a civil engineering firm specializing in waste water facility improvements; and

WHEREAS, the attached Professional Services Agreement has been reviewed by counsel and the Town's Director of Public Works; and

WHEREAS, the attached Professional Services Agreement will enable the use of the Grant funding for the evaluation, design and construction of improvements to the WWTP, which will assure the Town's continued compliance with applicable water quality regulations; and

WHEREAS, the Town Board wishes to approve the attached Professional Services Agreement, and to authorize the Director of Public Works to execute it on the Town's behalf.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN BOARD OF THE TOWN OF WINDSOR, COLORADO, AS FOLLOWS:

1. The attached Professional Services Agreement between the Town of Windsor and Farnsworth Group, Inc., incorporated herein by this reference as if set forth fully, is hereby approved by the Windsor Town Board.

2. The Director of Public Works is hereby authorized to execute the said Professional Services Agreement on behalf of the Town.

3. The Town Attorney is authorized to make necessary revisions to the Agreement in keeping with its essential purposes.

Upon motion duly made, seconded and carried, the foregoing Resolution was adopted this 28th day of October, 2013.

TOWN OF WINDSOR, COLORADO

By:_____
John S. Vazquez, Mayor

ATTEST:

_____
Patti Garcia, Town Clerk

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is dated this _____ day of October, 2013, by and between THE TOWN OF WINDSOR, COLORADO, a Colorado home rule municipal corporation ("Town"), and THE FARNSWORTH GROUP, INC., an Illinois corporation ("Professional").

WITNESSETH:

WHEREAS, the Town is undertaking the development of a Nutrients Engineering Report to evaluate alternative approaches to biological nitrogen control under the requirements of the Colorado Water Quality Control Division’s Regulation #85, Nutrients Management Control Regulation, pursuant to an Intergovenment Contract between the Town and the Colorado Department of Public Health and Environment (“Project”); and

WHEREAS, in conjunction with the Project, the Town is in need of professional services of the type and quality Professional represents it is capable of providing; and

WHEREAS, Professional has offered to provide the services described herein, subject to the applicable provisions of the Intergovernment Contract the form of which attached hereto and incorporated herein as Exhibit A, and as set forth below; and

WHEREAS, the parties wish to memorialize the terms and conditions under which services will be provided by Professional.

NOW, THEREFORE, in consideration of the mutual covenants and obligations set forth herein, the parties agree as follows:

1. Scope of Services. The Professional agrees to provide professional services in accordance with Primary Activities # 1 through 4 of Exhibit B to the Town’s Intergovernment Contact with the Colorado Department of Public Health and Environment (“Work”), which Exhibit B is incorporated herein by this reference as if set forth fully. Professional is not retained under this Agreement to undertake Primary Activity #5 of Exhibit B at this time, although nothing herein shall prevent the parties from entering into a separate agreement for such work, upon such terms and conditions as may be negotiated in the future.

2. Time of Commencement, Schedule and Completion of Services. The Work shall be sequenced, scheduled, initiated and completed as specified in Exhibit B. Time is of the essence. Any extensions of time must be agreed upon in writing by the parties hereto.

3. Compensation. Professional shall be compensated for the Work in an amount not to exceed $72,000.00. Professional will present payment requests to the Town not more frequently than monthly, and the Town will render payment within thirty (30) days of receipt. The Town reserves the right to require verification and documentation supporting any payment request from Professional. To the extent the Colorado Department of Public Health and Environment reimburses any of the costs associated with Professional's services, such reimbursements shall be retained by the Town.

4. Early Termination by Town/Notice. The Town may terminate this Agreement at any time for cause by providing written notice of termination to the Professional. Unless otherwise agreed by the parties, such termination shall be effective fifteen (15) days following delivery of such written notice. All notices provided under this Agreement shall be deemed delivered three (3) days following mailing, first-class postage prepaid, to the following addresses:

Professional:	Town:	With copy to:
Need contact info and address here	Terry Walker Director of Public Works 301 Walnut Street Windsor, CO 80550	Ian D. McCargar Town Attorney 301 Walnut Street Windsor, CO 80550

In the event of any such early termination by the Town, the Professional shall be paid for services rendered prior to the effective date of termination subject only to the satisfactory performance of the Professional's obligations under this Agreement. Such payment shall be the Professional's sole right and remedy for early termination.

5. Design, Project Insurance and Insurance Responsibility. The Professional shall be responsible for the professional quality, technical accuracy, timely completion and the coordination of all services rendered by the Professional, including but not limited to designs, plans, reports, specifications, and drawings. As an agent of the Town performing the Work, and to the extent required of sub-contractors and sub-grantees by Exhibit A, Professional shall adhere to the requirements of the said Intergovernment Contract as if a party thereto. Professional shall, without additional compensation, promptly remedy and correct any errors, omissions, or other deficiencies upon notification thereof by the Town. Professional shall indemnify, save and hold harmless the Town its officers and employees, in accordance with Colorado law, from all damages whatsoever claimed by third parties against the Town and for the Town's costs and reasonable attorney's fees arising directly or indirectly out of the Professional's negligent performance of any of the services furnished under this

Agreement.

Professional shall procure and maintain, at its own cost, the policy or policies of insurance listed below. The Professional shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Agreement by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types

Professional shall procure and maintain, and shall cause each subcontractor of the Professional to procure and maintain or insure the activity of Professional's subcontractors in Professional's own policy, the minimum insurance coverage listed below. Such coverage shall be procured and maintained with forms and insurers acceptable to the Town. All coverage shall be continuously maintained from the date of commencement of services hereunder. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

Workers' Compensation insurance to cover obligations imposed by the Workers' Compensation Act of Colorado and any other applicable laws for any employee engaged in the performance of Work under this contract, and Employers' Liability insurance with minimum limits of FIVE HUNDRED THOUSAND DOLLARS ($500,000) each accident, FIVE HUNDRED THOUSAND DOLLARS ($500,000) disease - policy limit, and FIVE HUNDRED THOUSAND DOLLARS ($500,000) disease - each employee.

Comprehensive General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS ($1,000,000) each occurrence and TWO MILLION DOLLARS ($2,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision.

Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS ($1,000,000) each accident with respect to each of Professional's owned, hired and/or non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision.

Professional Liability insurance with minimum limits of ONE MILLION DOLLARS ($1,000,000) each occurrence and ONE MILLION DOLLARS ($1,000,000).

6. Town Representative. The Town designates Dennis Markham as its project representative who shall make, within the scope of his authority, all necessary and proper decisions with reference to the Project. All requests for

contract interpretations, change orders, and other clarification or instruction shall be directed to Mr. Markham.

7. Project Drawings. Upon conclusion of the Project and before final payment, the Professional shall provide the Town with reproducible drawings of the project containing accurate information on the project as constructed in a digital format prescribed by the Town. Any paper drawings shall be of archival quality, prepared on stable mylar base material using a non-fading process to provide for long storage and high quality reproduction.

8. Monthly Report. Commencing thirty (30) days after Notice to Proceed is given on the Work, and every thirty days thereafter, Professional shall provide the Town Representative with a written report of the status of the Work with respect to each Primary Activity. Failure to provide any required monthly report may, at the option of the Town, suspend the processing of any payment request by Professional.

9. Independent Contractor. The services to be performed by Professional are those of an independent contractor and not of an employee of the Town of Windsor. The Town shall not be responsible for withholding any portion of Professional's compensation hereunder for the payment of FICA, Workers' Compensation, other taxes or benefits or for any other purpose.

10. Personal Services. It is understood that the Town enters into this Agreement based on the special abilities of the Professional and that this Agreement shall be considered as an agreement for personal services. Accordingly, the Professional shall neither assign any responsibilities nor delegate any duties arising under this Agreement without the prior written consent of the Town.

11. Acceptance Not Waiver. The Town's approval of drawings, designs, plans, specifications, reports, and incidental work or materials furnished hereunder shall not in any way relieve the Professional of responsibility for the quality or technical accuracy of the work. The Town's approval or acceptance of, or payment for, any of the services shall not be construed to operate as a waiver of any rights or benefits provided to the Town under this Agreement.

12. Default. Each and every term and condition hereof shall be deemed to be a material element of this Agreement. In the event either party should fail or refuse to perform according to the terms of this agreement, such party may be declared in default.

13. Remedies, Venue. In the event a party has been declared in default, such defaulting party shall be allowed a period of ten (10) days within which to cure said default. In the event the default remains uncorrected, the party declaring default may elect to (a) terminate the Agreement and seek

damages; (b) treat the Agreement as continuing and require specific performance; or (c) avail itself of any other remedy at law or equity. If the Town commences legal or equitable actions against the Professional, the Professional shall be liable to the Town for the Town's reasonable attorney fees and costs incurred as a result of Professional's default. Venue for any litigation arising out of this Agreement shall be the Colorado state courts sitting in Weld County, Colorado.

14. Binding Effect, No Third-party Beneficiaries. This writing, together with the exhibits hereto, constitutes the entire agreement between the parties and shall be binding upon said parties, their officers, employees, agents and assigns and shall inure to the benefit of the respective survivors, heirs, personal representatives, successors and assigns of said parties. No person other than the signatories below shall claim any right, benefit or entitlement under this Agreement.

15. Law/Severability. The laws of the State of Colorado shall govern the construction, interpretation, execution and enforcement of this Agreement. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

16. Professional's Certification Pursuant To Section 8-17.5-101, C.R.S., *et. seq.*:

Professional certifies and represents that at this time:

(a) Professional does not knowingly employ or contract with an illegal alien who will perform work under this Contract; and

(b) Professional will participate in the E-VERIFY program authorized under 8 U.S.C., Section 1324(a), jointly administered by the United States Department of Homeland Security and the Social Security Administration, or its successor program (hereinafter, "E-VERIFY Program"), or the Colorado Department of Labor and Employment program established under § 8-17.5-102 (5) (c), C.R.S., in order to confirm the employment eligibility of all employees who are newly-hired for employment within the United States.

Unless the E-VERIFY Program has been discontinued as of the date of this certification, Professional has confirmed the employment eligibility of all employees who are newly hired for employment in the United States through participation in the E-VERIFY program.

Professional is prohibited from using the E-VERIFY Program procedures to undertake pre-employment screening of job applicants while this Contract is being performed.

If Professional obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with an illegal alien, Professional shall:

(c) Notify such subcontractor and the Town within three days that Professional has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

(d) Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to this section the subcontractor does not cease employing or contracting with the illegal alien; except that Professional shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

Professional shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation that the Colorado Department of Labor and Employment undertakes or is undertaking pursuant to the authority established in Subsection 8-17.5-102 (5), C.R.S.

If Professional violates any provision of this Contract pertaining to the duties imposed by Subsection 8-17.5-102, C.R.S. the Town may terminate this Contract. If this Contract is so terminated, Professional shall be liable for actual and consequential damages to the Town arising out of Professional's violation of Subsection 8-17.5-102, C.R.S.

Professional acknowledges the enforcement provisions of § 8-2-124, C.R.S., and further acknowledges that employment of illegal aliens in violation thereof may result in loss of Professional's "business license" as defined therein, together with such other enforcement measures as authorized by law.

THE TOWN OF WINDSOR, COLORADO	FARNSWORTH GROUP, INC.
By: _____	By:
_____ Terry Walker, Director of Public Works	[name and title]

M E M O R A N D U M

Date: October 28, 2013
To: Mayor and Town Board
Via: Kelly Arnold, Town Manager
Joseph P. Plummer, AICP, Director of Planning
From: Josh Olhava, Associate Planner
Subject: Ordinance No. 2013-1462 Annexing and Zoning Certain Territory known as the Providence Farm Annexation to the Town of Windsor, Colorado – Stanley K. Everitt Grandchildren's Trust, applicant/ Stan and Sara Everitt, applicant's representatives – Second Reading
Resolution No. 2013-62 - A Resolution Approving an Annexation Agreement between the Town of Windsor and the Stanley K. Everitt Grandchildren's Trust with Respect to the Providence Farm Annexation to the Town of Windsor, Colorado – Stanley K. Everitt Grandchildren's Trust, applicant/ Stan and Sara Everitt, applicant's representatives
Location: South of Covenant Park and southeast of Southwood Lane
Item #: C.1.C.2.

Background:

This item was presented to the Town Board at the October 14, 2013 regular meeting. A public hearing was held, and the Town Board approved the attached ordinance on first reading. Please see the enclosed Ordinance No. 2013-1462

The applicant, the Stanley K. Everitt Grandchildren's Trust, represented by Mr. and Mrs. Stan & Sara Everitt, are requesting to annex approximately 50.3 acres south of Covenant Park and southeast of Southwood Lane. The applicant is requesting High Density Estate (E-2) zoning for all of the property. Additionally, the plat identifies a Conservation Easement on the southern half of the property which has been recorded at Rec. No. 3140703.

Following the Town Board's action on Ordinance No. 2013-1496, the Town Board may review Action Item C.2. which is Resolution No. 2013-62, approving an Annexation Agreement between the Town of Windsor and the Stanley K. Everitt Grandchildren's Trust for the Providence Farm Annexation?

Conformance with Comprehensive Plan: The proposed use is consistent with the Annexation Goals and Policies of the Comprehensive Plan:

Goal: Ensure the logical extension of the Town boundaries so that Windsor may expand in a directed, logical and fiscally responsible manner.

Conformance with Vision 2025: The proposed application is consistent with the "Growth and Land Use Management" elements of the Vision 2025 document.

Recommendation: Approval of the Ordinance on Second Reading

Notification: July 1, 2013 – Staff posted large Annexation Sign on property off Southwood Lane
August 30, 2013 – Staff submitted Legal Ad to the Paper to run for 4 consecutive weeks

- September 6, 2013 – Paper ran the first week Legal Ad
- September 13, 2013 – Paper ran the second week Legal Ad
- September 20, 2013 – Paper ran the third week Legal Ad
- September 27, 2013 – Paper ran the fourth week Legal Ad

July 15, 2013 – Staff mailed Certified Packets to relevant taxing districts

Enclosures: Ordinance No. 2013-1462
Resolution No. 2013-62
Annexation Agreement
2013 Annexation Plat
PowerPoint Presentation

pc: Stanley K. Everitt Grandchildren's Trust, applicants
Stan & Sara Everitt, applicant's representatives

TOWN OF WINDSOR, COLORADO

ORDINANCE NO. 2013- 1462

AN ORDINANCE ANNEXING CERTAIN TERRITORY KNOWN AS THE "PROVIDENCE FARM ANNEXATION" TO THE TOWN OF WINDSOR, COLORADO

WHEREAS, the Town of Windsor ("Town") is a Colorado home rule municipality, with all powers and authority attendant thereto; and

WHEREAS, pursuant to the Municipal Annexation Act of 1965 and the *Windsor Municipal Code*, an annexation petition has been filed with the Town Clerk requesting the annexation of certain territory more particularly described herein; and

WHEREAS, the Town Board has found and concluded that the aforementioned annexation petition meets the requirements set forth in § 31-12-104 and § 31-12-105, C.R.S.; and

WHEREAS, pursuant to the requirements of law, public hearings on the aforementioned annexation petition were held before the Windsor Planning Commission on October 9, 2013, and before the Windsor Town Board on October 14, 2013; and

WHEREAS, a community of interest exists between the territory to be annexed and the Town; and

WHEREAS, not less than one-sixth of the perimeter of the area to be annexed is contiguous to the Town's existing corporate limits; and

WHEREAS, the territory to be annexed is urban or will be urbanized in the near-future, and has been integrated or is capable of being integrated within the Town; and

WHEREAS, the Town Board finds that all requirements of the Municipal Annexation Act of 1965 have been complied with; and

WHEREAS, the petitioner has agreed to comply with all of the ordinances of the Town and to pay all fees set out in those ordinances in connection with this annexation.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN BOARD OF THE TOWN OF WINDSOR, COLORADO, AS FOLLOWS:

Section 1. The territory to be annexed is located in the County of Weld, State of Colorado, and is precisely described in "Exhibit A" attached hereto and incorporated herein by this reference as if set forth fully.

Section 2. The property described in Exhibit A is hereby annexed to the Town of Windsor, and shall henceforth be referred to as the "Providence Farm Annexation" to the Town of Windsor, Colorado.

Section 3. The annexation of the aforesaid territory shall be deemed complete on the effective date of this Ordinance, except for the purposes of general property taxes pursuant to § 31-12-113, C.R.S.

Section 4. The territory to be annexed shall be zoned with an Estate Residential E-2 zoning district classification, with such zoning classification thereafter being shown on the Official Annexation Map on file in the office of the Director of Planning for the Town.

Section 5. The Town's Official Zoning District Map shall be changed in accordance with this Ordinance and in accordance with the zoning classification assigned to the subject property following the effective date of this annexation on said Official Annexation Map, and entries shall be made thereon noting the annexation of the aforementioned territory. Such entries, together with a brief description of the nature of the change, shall be signed by the Mayor, attested to by the Town Clerk, and properly filed with the Weld County Clerk and Recorder.

Section 6. The Annexor is directed to comply with the requirements of Windsor Municipal Code Section 15-1-60 within 30 days of the effective date of this Ordinance.

Introduced, passed on first reading, and ordered published this 14th day of October, 2013.

TOWN OF WINDSOR, COLORADO

By_____
John S. Vazquez, Mayor

ATTEST:

_____
Patti Garcia, Town Clerk

Introduced, passed on second reading, and ordered published this 28th day of October, 2013.

TOWN OF WINDSOR, COLORADO

By_____
John S. Vazquez, Mayor

ATTEST:

_____
Patti Garcia, Town Clerk

EXHIBIT "A"
LEGAL DESCRIPTION

A parcel of land in the TOWN OF WINDSOR, County of Weld, Colorado, located in the Southwest Quarter of Section Twenty (20), Township Six North (T.6N), Range Sixty-seven West (R.67W.) of the Sixth Principal Meridian (6th P.M.) and more particularly described as follows:

Lot B, Recorded Exception No. 0807-20-3 RE-3124 recorded January 2, 2002 at Reception No. 2913015 of the Records of Weld County, Colorado.

Containing 50.326 acres more or less.

TOWN OF WINDSOR

RESOLUTION NO. 2013-62

A RESOLUTION APPROVING AN ANNEXATION AGREEMENT BETWEEN THE TOWN OF WINDSOR AND THE STANLEY K. EVERITT GRANDCHILDREN'S TRUST WITH RESPECT TO THE PROVIDENCE FARM ANNEXATION TO THE TOWN OF WINDSOR, COLORADO

WHEREAS, the Windsor Town Board has approved for final adoption Ordinance No. 2013-1462, under which the annexation of certain real property proposed as the "Providence Farm Annexation" has been accomplished; and

WHEREAS, pursuant to longstanding policy, the Town has entered into the attached Providence Farm Annexation Agreement ("Agreement"), the terms of which are incorporated herein by this reference as if set forth fully; and

WHEREAS, the Town Board finds that it has the statutory authority to require the terms set forth in the Agreement as a condition of annexation; and

WHEREAS, the Town Board wishes to approve the Agreement in order that future development of the property is achieved through sound land use planning.

NOW, THEREFORE, IT IS FOUND AND RESOLVED BY THE TOWN BOARD OF THE TOWN OF WINDSOR, COLORADO, AS FOLLOWS:

1. The attached Providence Farm Annexation Agreement is hereby approved.

2. The Mayor is hereby authorized to execute the said Agreement on the Town's behalf.

Upon motion duly made, seconded and carried, the foregoing Resolution was adopted this 28th day of October, 2013.

TOWN OF WINDSOR, COLORADO

_____
John S. Vazquez, Mayor

ATTEST:

_____
Patti Garcia, Town Clerk

PROVIDENCE FARM ANNEXATION AGREEMENT

THIS PROVIDENCE FARM ANNEXATION AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 2013, by and between the TOWN OF WINDSOR, COLORADO, a Colorado home rule municipal corporation ("Town"), and the STANLEY K. EVERITT GRANDCHILDREN'S TRUST (collectively, "Annexor").

WITNESSETH:

WHEREAS, Annexor is the owner of the property more fully described in Exhibit "A", attached hereto and incorporated herein by this reference, and shall be known as the Providence Farm Annexation to the Town of Windsor, Colorado ("Property"); and

WHEREAS, Annexor has filed an annexation petition for the annexation of the Property; and

WHEREAS, the Town has approved and accepted the petition for annexation of the Property to the Town; and

WHEREAS, by the terms and conditions of this Annexation Agreement, the parties have provided for zoning of the property consistent with the comprehensive plan of the Town and have provided for certain requirements for the subsequent development of the Property; and

NOW, THEREFORE, for the benefits to be derived by each, and in exchange of the mutual covenants and performances of the parties hereto,

NOW, THEREFORE, IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS:

I. PREAMBLE

The parties agree that the recitals contained in the preamble set forth above are true and correct and that those recitals are hereby incorporated into the body of this Annexation Agreement.

II. ZONING

The Town agrees that upon annexation, the Property shall be zoned in conformance with the designations set forth on the Providence Farm Annexation maps filed in the office of the Director of Planning, with said zoning designations, annexation maps and annexation petition for the Providence Farm Annexation being incorporated herein by this reference. It is further understood and agreed that the aforesaid zoning designations do not waive the authority of the Annexor or the Town to initiate rezoning of the land in accordance with the ordinances of the Town and the laws of the State of Colorado.

III. PUBLIC IMPROVEMENTS

Prior to subdivision of the Property, Annexor acknowledges that it will be required to enter into an agreement for the construction and maintenance of public improvements. The terms and conditions of this Annexation Agreement shall not limit the subject matter of any subsequent agreement for public improvements and shall not be construed to prohibit or in any way limit the Town from requiring performance of reasonable requirements by the Annexor prior to approving any development plan.

IV. STREETS

Street Standards and Improvements. Annexor understands and agrees that concurrently with subdivision of the Property, the Annexor shall be solely responsible for dedicating to the Town all necessary rights-of-way for the full width of all proposed streets within the Property or on the exterior boundaries of the Property, without cost to the Town. The Annexor shall be solely responsible for the cost to install all streets within the Property. The Annexor further understands and agrees to fully construct and improve, at its sole expense, all such streets in conformity with the applicable ordinances, rules, regulations, and engineering specifications of the Town in effect at the time of any development proposal.

V. FEES

As part of subdivision of the Property, or concurrent with the application for any building permit for improvements on the Property, Annexor agrees to comply with all of the development and/or construction requirements of the Town in effect at the time subdivision of the property occurs or building permits are requested including, but not limited to, all applicable land dedication requirements, cash-in-lieu of land dedication requirements, all building permit fees in effect at the time the building permit application is deemed complete, all impact fees, including but not limited to, fees for schools, parks, roads, storm drainage, and water and sewer plant investment fees. Annexor hereby acknowledges the legality, necessity and validity of the aforesaid development requirements.

VI. WATER SERVICES

A. As part of the subdivision of the Property, Annexor agrees to install, at its sole expense, such water lines and facilities as may be required by the Town. Additionally, and as agreed to by the parties either through the subdivision platting process or by a separate agreement, Annexor further agrees to obtain and dedicate at its sole expense all necessary unobstructed rights-of-ways for utility easements needed for water lines and facilities to allow service to the Property or for transmission through the Property, in sizes and capacities as prescribed by the Town.

B. Upon subdivision of the Property, Annexor shall design and install, at its sole expense, water lines, fire hydrants and related appurtenances within the Property in accordance with all of the requirements and specifications of the Windsor-Severance Fire Protection District

and the Town, and the Annexor shall provide evidence of compliance to the Town prior to the issuance of any building permits for the Property.

C. Prior to the subdivision of the Property, Annexor shall be entitled to connect to existing water lines adjacent or in proximity to the Property for the purpose of installing at its sole expense one (1) residential water tap, so long as applicable Town fees are paid as required.

VII. WATER RIGHTS

Annexor agrees that prior to the issuance of any residential building permits for the Property and solely at its expense, to dedicate to the Town all such raw water rights in accordance with the *Windsor Municipal Code* in effect at the time of application for the first residential building permit within the Property.

VIII. SANITARY SEWER SERVICES

A. As part of the subdivision of the Property, Annexor agrees to install, at its sole expense, such sanitary sewer lines and facilities as may be required by the Town to serve each residential site within the proposed subdivision. Additionally, and as agreed to by the parties either through the subdivision platting process or by a separate agreement, Annexor further agrees to obtain and dedicate at its sole expense all necessary unobstructed rights-of-way for utility easements needed for sanitary sewer lines and facilities to allow service to the Property or for transmission through the Property, in sizes and capacities as prescribed by the Town.

B. Prior to the subdivision of the Property, Annexor shall be entitled to connect to an existing sanitary sewer line adjacent to the Property for the purpose of installing at its sole expense one (1) sewer tap, so long as applicable Town fees are paid and sewer lift station capacity units are available for each residence as required.

IX. STORM DRAINAGE

A. As part of any residential building permit issued within the Property, Annexor agrees to install, at its sole expense, storm drainage improvements and facilities necessary to serve the property as may be required by the Town. Additionally, and as agreed to by the parties either through the subdivision platting process or by a separate agreement, Annexor further agrees to obtain and dedicate at its sole expense all necessary unobstructed rights-of-way and easements for storm sewer to serve the Property or for transmission of historic storm water flows through the Property, in sufficient sizes and widths for such facilities and maintenance as prescribed by the Town.

B. All storm drainage improvements and facilities shall be constructed concurrently with any development of the Property in a manner that shall minimize flooding in developed areas. Upon review and recommendation by the Town Engineer, the Annexor shall participate in and provide for the required improvements and facilities to implement the Town's Drainage Master Plan.

X. NON-POTABLE IRRIGATION SYSTEM

The Annexor understands and agrees to all of the following terms and conditions pertaining to the establishment of a non-potable irrigation system for the Property.

A. Prior to the application for any residential building permits for the Property and pursuant to applicable provisions of the *Windsor Municipal Code*, Annexor shall construct a non-potable irrigation system for the Property.

B. It is expressly understood and agreed that the non-potable system shall be fully operational and unconditionally approved by the Town prior to the issuance of any residential building permits for the Property.

XI. FLOOD PLAIN, DREDGING, FILLING AND/OR EXCAVATING

In the event any work within the boundaries of the Property requires any excavations relative to dredging and/or filling activities, either temporary or permanent, which will be associated with the waters or wetlands within the Property, as part of the first development proposal for the Property and solely at its expense the Annexor agrees to contact the United States Department of the Army Corps of Engineers for proper permits and/or to ascertain information pertaining to changes in permit requirements pursuant to § 404 of the United States Clean Water Act.

The Annexor further understands and agrees that prior to the commencement of any such dredging and/or filling activities the Annexor shall provide the Town Engineer with copies of all such permits and/or information pertaining to any such activities, and, where applicable and when deemed appropriate by the Town Engineer, the Annexor must receive written approval from the Town Engineer for commencement of any applicable dredging and/or filling activities.

Annexor shall assure that the development of the Property shall be in accordance with all Federal, State and Town drainage and floodplain regulations. In connection with any proposed future development of the Property, the Annexor shall rely upon the best available floodplain information for any such development to protect the health and safety of the community. Documentation showing the impacts to the historic drainage patterns created by any such proposed development shall be submitted to the Town prior to construction of any structures within the Property, including the outbuilding (barn) referred to in Section XVII below.

XII. SCHOOL DISTRICT REQUIREMENTS

As part of the subdivision of the Property and in accordance with all of the terms and conditions of the Intergovernmental Agreement between the Town and the Weld County RE-4 School District ("School District"), the Annexor agrees to provide a written statement from the School District to the Town's Director of Planning which acknowledges that all of the requirements for cash payments in-lieu-of land dedication requirements as required by the School District have been met to the satisfaction of the School District. Moreover, for purposes of calculating any cash payments in lieu of land dedication under this Section XII, the size of all

such future school sites shall be measured in net acres, with this net acreage being exclusive of any other land to be dedicated for any street rights-or-way, railroad rights-of-way, detention areas, trail easements, etc., as determined by the School District and the Town.

XIII. PUBLIC PARK SITE REQUIREMENTS

As part of the subdivision of the Property, the Annexor agrees at its own expense to satisfy Town requirements for cash-in-lieu payments or the donation of one or more public park sites, the sizes and locations of which shall be determined based upon (a) the amount of residential lots, sites and housing types that will be platted on the preliminary plat for the proposed development, (b) the usability of all such park land, and (c) the Developer's compliance with all park land dedication criteria, ordinances and land use requirements in effect at the time the proposal for development is submitted for the Property. Moreover, for all purposes under this Section XIII, the size of all such future park sites shall be measured in net acres, with this net acreage being exclusive of any other land to be dedicated for any street rights-or-way, railroad rights-of-way, detention areas, trail easements, community garden space, etc., as determined by the Town.

The Annexor further understands and agrees that as a condition of approval of the subdivision of the Property, the Annexor shall enter into an agreement with the Town concerning the delivery of non-potable water to any public park sites within the Property at a cost agreeable to both parties for the irrigation of grass and all other vegetation on all such public park sites.

XIV. CONSERVATION EASEMENT

It is understood that a portion of the Property is currently subject to a conservation easement recorded at Reception #3140703 on December 31, 2003 ("Conservation Easement"), the purpose of which is to preserve in perpetuity the unique agricultural, natural habitat, historic, scenic and open space character of the affected portions of the Property. A copy of the said Conservation Easement is attached hereto for reference as Exhibit B. The parties agree that the Conservation Easement assures in perpetuity that the affected portions of the Property may continue their existing agricultural uses and character, notwithstanding any subsequent zoning designation which may be applied by the Town with respect to such affected portions. Accordingly, notwithstanding any zoning designation applied with respect to the portions of the Property affected by said Conservation Easement, the uses permitted under said Conservation Easement shall be deemed a legally non-conforming use under *Windsor Municipal Code* § 16-8-50 (4).

XV. AGRICULTURAL USE

The parties recognize that portions of the Property are currently being used for agricultural purposes. The continuation of agricultural activities within those portions of the Property affected by the Conservation Easement, as well as those other lands within the Property but not within the area affected by the Conservation Easement, shall be managed in accordance with the provisions of Section XIV above. The Town agrees that, with respect to portions of the Property not included within the Conservation Easement area, Annexors may undertake and

continue agricultural activities, so long as such activities are consistent with the agricultural uses currently taking place within the Conservation Easement area, and so long as the size and scope of the agricultural activities are not enlarged, expanded or supplemented in any manner which is not in compliance with the Conservation Easement, Town ordinances, rules, regulations, and other applicable codes of the Town in effect at the time of the Annexation.

With respect to agricultural activities within the Property, it is further understood that subdivision of the Property may result in additional restrictions or the elimination of agricultural activities upon the lots or tracts created by said subdivision. However, notwithstanding anything to the contrary, that portion of the Property affected by the Conservation Easement, along with any additional lands contained in a lot that includes the Conservation Easement area, may continue the historic agricultural uses as contemplated in Exhibit B. Accordingly, notwithstanding any zoning designation applied with respect to the portions of the Property being used for agricultural purposes in accordance with this Section XV, said uses shall be deemed a legally non-conforming use under Windsor Municipal Code § 16-8-50(4).

If at any time, and in its sole discretion, the Windsor Town Board concludes that agricultural uses within any portion of the Property not affected by the Conservation Easement are contrary to the health, safety or welfare of the public, the Town Board reserves the right to order that all such agricultural activities cease and desist.

XVI. HUNTING

It is understood and agreed that pursuant to the Windsor Municipal Code, the Town Board may allow waterfowl hunting by shotgun in the Town subject to the regulations of the Colorado Division of Wildlife. Waterfowl hunting by shotgun shall be allowed on the Property until such time as the Property is subdivided and a residential building permit is issued on any new lot within the Property, at which time all hunting shall be discontinued within the Property, including any portions of the property affected by the Conservation Easement, unless expressly allowed by the Town. Notwithstanding any approval to the contrary, if at any time and in its sole discretion the Windsor Town Board concludes that hunting upon the Property is contrary to the health, safety or welfare of the public, the Town Board reserves the right to order that all such hunting activities cease and desist.

XVII. CONSTRUCTION OF RESIDENCE AND OUTBUILDING (BARN) ON THE PROPERTY

Given the historic use of the Property for agricultural purposes, Annexor intends to construct a residence, barn and associated facilities on the Property to manage the agricultural activities within the Property as described in Section XV above. The parties agree that Annexor shall be entitled to construct said improvements within the Property in conformance with all applicable building codes, zoning ordinances or other rules and regulations that may be applicable, except the barn construction may precede the construction of other said improvements. The purpose of said barn shall be limited to providing shelter strictly associated with agricultural activity within the Property including, but not limited to, the storage of equipment, supplies, animals, animal feed, and associated human activity. Only the following

persons may store tangible personal property within the barn: Settlors/Trustees of the Stanley K. Everitt Grandchildren's Trust, its named beneficiaries, owners of the lot upon which the said barn is located or residents of any home constructed upon the lot upon which the barn is located.

In the event the Property is subdivided, all said improvements built prior to subdividing shall be located on a single subdivision lot and said lot shall include all areas in which agricultural activities as described in Section XV above will take place, including any area in which agricultural activity is taking place pursuant to the Conservation Easement.

XVIII. PUBLIC TRAILS

A. It is understood that, if an alternate public trail route cannot be established, a public trail may be constructed upon portions of the Property to connect the Town's Covenant Park and the Poudre River Trail. At such time as the conditions set forth in Section C of this Article are satisfied by the Town, Annexor will dedicate to the Town an easement for the construction and maintenance of a ten-foot wide public trail within the Property. The size, scope and location of any such public trail easement shall be later mutually determined with due regard for then-existing improvements within the Property and the limitations set forth in the Conservation Easement. The cost of the final legal description, survey, construction, maintenance and management of the public trail and the easement area, as well as all dedication documents and recording fees, shall be the sole responsibility of the Town. The trail easement dedication shall be granted by Annexor without compensation or consideration to the Town, and shall be exclusive of any cash-in-lieu of land dedications for the School District Requirements and Public Park Sites Requirements in Articles XII and XIII above.

B. Annexor shall have no obligation to participate in the construction of the public trail, or any elements of the trail, or obtaining easements outside of the Property, modifying any irrigation facilities or patterns, constructing any fences or granting and/or dedicating additional easements associated with the public trail. Furthermore, the Town shall: (1) ensure that appropriate fencing is constructed along the public trail sufficient to delineate private property and to discourage trespassers; (2) install all ditches, culverts or other improvements necessary to avoid interruption of the irrigation, farming and other uses of the Property; and (3) maintain the historic drainage patterns over and on the Property at no cost to Annexor.

C. The Annexor shall dedicate the public trail easement called for in this Article XVIII upon the occurrence of the following events:

> The Town has secured all other physical and legal elements for completion of said public trail, including but not limited to easements across adjoining properties, ditch crossing permission, permission to construct a bridge or bridges across the Cache la Poudre River, written permission of the Grantee under the Conservation Easement for location, construction and surfacing of the trail, and other arrangements necessary to assure completion of the trail connection.

D. The obligation to dedicate the trail easement shall expire, and any trail easement dedicated by Annexor pursuant to this Article shall expire and shall be released in writing by the Town, upon the first occurrence of either of the following events:

> The Town secures all easements, permissions and entitlements necessary for the construction of an alternate public recreational trail connecting Covenant Park to the Poudre River Trail, the northern terminus of which lies within one (1) block of the southeast corner of Covenant Park;
>
> or
>
> The Town has not completed the recreational trail within the Property on or before twentieth (20th) anniversary of the date of this Agreement.

XIX. BRIDGE POLICY

Annexor agrees that in the event the Town determines that as part of any development of the Property, one or more bridges are required to serve pedestrian and/or vehicular traffic crossing any of the water courses within the Property, Annexor shall at its sole expense provide for the costs and construction thereof. Such bridge construction shall meet all of the Town's requirements for bridge construction.

XX. OTHER PUBLIC LAND DEDICATIONS

As part of the subdivision of the Property and solely at its expense, the Annexor agrees to dedicate to the Town such other public lands within the Property in addition to all of the School District Requirements and Public Trail Requirements outlined above in Sections XII and XIII, respectively, which may be necessary to service the Property for other open space and other public improvements including, but not limited to, easements or conveyances for storm water drainage ways, water lines and facilities, and sewer lines and facilities.

Upon dedication and conveyance of the land as aforesaid, Annexor shall be deemed to have fully satisfied all land dedication requirements under the Town's proposed land dedication ordinance as may then be in effect. It is further understood and agreed that the land dedication required herein is a condition of annexation and, should no land dedication ordinance be in effect at the time Annexor proposes development, this condition of annexation shall nonetheless be deemed fully enforceable.

XXI. NOTICE TO MINERAL ESTATE OWNERS AND CERTIFICATION THEREOF

Annexor acknowledges that as a condition of approval of any application for subdivision of the Property, Annexor must comply with the notification requirements of §10-11-123, C.R.S., as amended, by providing notification to mineral estate owners, and by thereafter certifying to the Town, pursuant to § 24-65.5-103, C.R.S., as amended, that such notice has been provided.

XXII. MINERAL EXTRACTION, OIL AND GAS ACTIVITY

Annexor agrees that, prior to any mineral extraction or oil and gas exploration activity, Annexor will comply with all Town requirements for Conditional Use Grant approval for such activity.

XXIII. MYLAR DRAWINGS AND ELECTRONIC COPY OF DRAWINGS

Prior to the Annexation Ordinance for the Property being placed on a Town Board agenda for consideration of approval on second reading, the Annexor shall comply in full with both of the following conditions:

A. Mylar Drawings: The Annexor shall provide to the Director of Planning the required number of copies of the translucent original mylar drawings of the Annexation map pursuant to the Windsor Municipal Code to be recorded in the office of the County Clerk and Recorder. The mylars shall include signatures as required. Reproduction mylars, dark-colored or tinted mylars and sepias will not be accepted.

B. Electronic Copy of Drawings: The Developer shall provide to the Director of Planning a certified copy of a compact disc (CD) or other electronic data storage format as approved by the Town which shall contain the information exactly as is contained within the Annexation map as finally approved by the Town. The CD shall be (1) formatted and certified in accordance with the Town's requirements, and (2) first approved by the Town's Geographic Information Systems (GIS) technician. Any Compact Disc (CD) or other approved digital media submitted pursuant to this Article shall conform to all requirements of the Town's then-current Electronic Document Submittal Standards, a copy of which are maintained by the Director of Planning. Incomplete or inaccurate CDs and CDs that are not certified will not be accepted.

XXIII. MASTER PLAN AND SUBDIVISION REQUIREMENT

The Annexor acknowledges that the approval of the Annexation and approval of the within Agreement does not result in approval for any Master Plan or subdivision within the Property. Annexor further understands and agrees that prior to or concurrently with the second residential building permit application for construction within the Property, Annexor shall submit a complete master plan application and applicable subdivision application in accordance with all Town requirements.

XXIV. IRRIGATION DITCH MAINTENANCE

Given the intended agricultural use of the Property pursuant to the Conservation Easement referenced in Section XIV above, and the need for continued transportation of water via lateral irrigation ditches currently established therein, Annexor shall be entitled to use fire to control vegetation within such established lateral irrigation ditches or other areas within the Property. Prior to any use of fire for vegetation control as contemplated herein, Annexor shall obtain any permits required under § 10-4-200 (a) of the *Windsor Municipal Code*, and shall notify both the Windsor-Severance Fire Protection District and the Town of the date(s) during

which fire will be used for vegetation control. Notwithstanding any permissions contained in this Section, Annexor shall not use fire for vegetation control within the Property if at such time there are in effect any wildfire protection restrictions on open fires within the Town, Weld County or the State which are applicable to the Property.

XXV. JUDICIAL REVIEW

In the event any persons or entities seek judicial review of the annexation of the Property pursuant to § 31-12-116, C.R.S., as amended, Annexor agrees that it shall assume, pay and be responsible for all of the Town's costs in connection with the defense of such petition including, but not limited to, attorney fees and costs.

XXVI. BINDING EFFECT

This Annexation Agreement shall inure to the benefit of, and be binding upon, the parties, their respective legal representatives, successors, heirs, and assigns. This Annexation Agreement shall be deemed a covenant running with the land.

XXV. GOVERNING LAW

This Annexation Agreement shall be interpreted in accordance with Colorado Law.

IN WITNESS WHEREOF, the parties hereto have executed this Annexation Agreement the day and year first written above.

TOWN OF WINDSOR, COLORADO

By: _____
John S. Vazquez, Mayor

ATTEST:

_____
Patti Garcia, Town Clerk

ANNEXOR: THE STANLEY K. EVERITT GRANDCHILDREN'S TRUST

By: Sara A. Everitt
Sara A. Everitt, Trustee

ANNEXOR:

EXHIBIT "A"
LEGAL DESCRIPTION

A parcel of land in the TOWN OF WINDSOR, County of Weld, Colorado, located in the Southwest Quarter of Section Twenty (20), Township Six North (T.6N), Range Sixty-seven West (R.67W.) of the Sixth Principal Meridian (6th P.M.) and more particularly described as follows:

Lot B, Recorded Exception No. 0807-20-3 RE-3124 recorded January 2, 2002 at Reception No. 2913015 of the Records of Weld County, Colorado.

Containing 50.326 acres more or less.

EXHIBIT B

CONSERVATION EASEMENT RECORDED DECEMBER 31, 2003
RECEPTION # 3140703

PROVIDENCE FARM ANNEXATION

TO THE TOWN OF WINDSOR

Lot B, Recorded Exemption No. 0807-20-3 RE-3124,
Situate In The Southwest Quarter Of Section 20, Township 6 North, Range 67 West Of The 6th P.M.,
County Of Weld, State Of Colorado

DESCRIPTION

A plat of a parcel of land in the TOWN OF WINDSOR, County of Weld, Colorado, located in the Southwest Quarter of Section Twenty (20), Township Six North (T.6N), Range Sixty-seven West (R.67W.) of the Sixth Principal Meridian (6th P.M.) and more particularly described as follows:

Lot B, Recorded Exception No. 0807-20-3 RE-3124 recorded January 2, 2002 at Reception No. 2913015 of the Records of Weld County, Colorado.

Containing 50.326 acres more or less.

ACKNOWLEDGEMENT OF OWNERSHIP INTEREST

Know all men by these presents that the undersigned, being all the owners, lienholders, and holders of any ownership interest as defined by the Town of Windsor, of the land described hereon, have caused such land to be annexed as indicated on this plat under the name of PROVIDENCE FARM ANNEXATION. In compliance with Town of Windsor regulations and by contractual agreement, the landowners shall bear all expenses involved in improvements.

In witness whereof, we have hereunto set our hands and seals this the _____ day of

_____, 20 _____.

By: _____ As: _____
Stanley K. Everitt Grandchildren's Trust

NOTARIAL CERTIFICATE

STATE OF _____)
ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me by _____,

this _____ day of _____, 20 _____.

My commission expires _____ _____ (SEAL)
Notary Public

ENGINEERING DEPARTMENT APPROVAL

Approved this the _____ day of _____, 20 _____.

_____
Director of Engineering

PLANNING COMMISSION APPROVAL

Approved this the _____ day of _____, 20 _____.

_____
Chairman,
Windsor Planning Commission

PUBLIC WORKS DEPARTMENT APPROVAL

Approved this the _____ day of _____, 20 _____.

_____
Director of Public Works

MAYOR'S CERTIFICATE

This is to certify that an annexation map of the property described herein was approved by

Ordinance No. _____ of the Town of Windsor passed and adopted on the _____ day

of _____, 20 _____, A.D. and that the Mayor of the Town of Windsor, as authorized by said ordinance, on behalf of the Town of Windsor, hereby acknowledges and adopts the said annexation map upon which this certificate is endorsed for all purposes indicated thereon.

_____ ATTEST: _____
Mayor Town Clerk

NOTICE OF OTHER DOCUMENTS

All persons take notice that certain documents have been executed pertaining to this development, which create certain rights and obligations of the development, the developer and/or subsequent owners of all or portions of the development site, many of which obligations constitute promises and covenants that run with the land. These documents are of record and are on file with the director of planning of the Town of Windsor and should be closely examined by all persons interested in purchasing any portion of the development site.

BASIS OF BEARINGS AND LINEAL UNIT DEFINITION

Assuming the West line of Lot B, RE-3124, as bearing North 00°56'32" West a distance of 1769.57 feet with all other bearings contained herein relative thereto.

The lineal dimensions as contained herein are based upon the "U.S. Survey Foot."

NOTE

According to Colorado law, you must commence any legal action based upon any defect in this survey within three years after you discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten years after the date of the certificate shown hereon. (13-80-105 C.R.S.)

TITLE COMMITMENT NOTE

This survey does not constitute a title search by King Surveyors Inc. to determine ownership or easements of record. For all information regarding easements, rights-of-way and title of records, King Surveyors Inc. relied upon Title Commitment Number 580-F0381617-383-JNB dated June 15, 2011 as prepared by Fidelity National Title Insurance Company to delineate the aforesaid information.

NOTE

Conservation Easement Recorded at Reception #3140703 on December 31, 2003 in Weld County. The purpose of which is to preserve in perpetuity the unique agricultural, natural habitat, historic, scenic and open space character of the affected portions of the Property. A copy of the said Conservation Easement is attached to the annexation agreement as an Exhibit. Approximately 20 acres.

TOWN MANAGER'S APPROVAL

Approved this the _____ day of _____, 20 _____.

_____
Town Manager

PLANNING DEPARTMENT APPROVAL

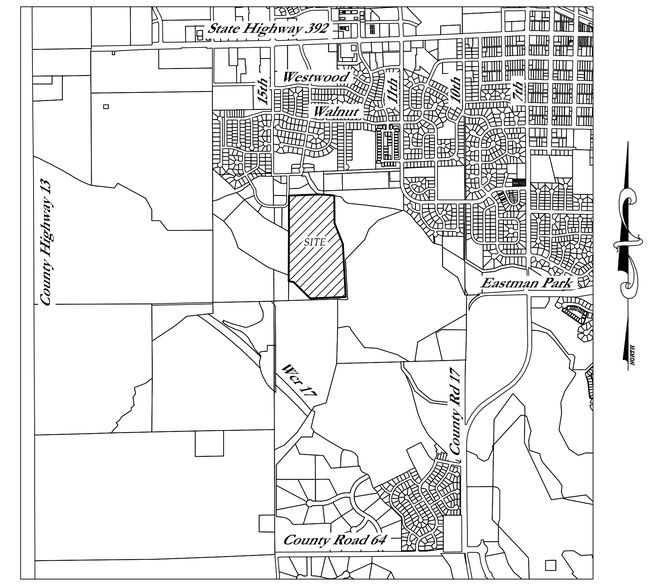
Approved this the _____ day of _____, 20 _____.

_____
Director of Planning

SURVEYOR'S CERTIFICATE

I certify that this plat accurately represents the results of a survey made by me or under my direct supervision.

_____
Lawrence S. Pepek-On Behalf Of King Surveyors Inc.
Colorado Registered Professional
Land Surveyor #33642



VICINITY MAP
(NOT TO SCALE)

CONTIGUOUS BOUNDARY = 2264.26 L.F.
TOTAL BOUNDARY = 6172.68 L.F.
RATIO = 1:2.726
AREA = 50.326 NET ACRES

//////// DENOTES CONTIGUOUS BOUNDARY

DATE: 10/12/2010
FILE NAME: 2010162ANX
SCALE: 1"=100'
DRAWN BY: CSK
CHECKED BY: LSP

KING SURVEYORS, INC.
650 E. Garden Drive | Windsor, Colorado 80550
phone: (970) 686-5011 | fax: (970) 686-5821

REVISIONS:		DATE:
ADDRESS TOWN COMMENTS		01-09-13
REVISE PER TOWN COMMENTS	CSK	3-20-13

PROVIDENCE FARM ANNEXATION
FOR
STANLEY K. EVERITT GRANDCHILDREN'S TRUST
695 SOUTHWOOD LANE
WINDSOR, CO 80550

PROJECT #: 2010162

1

SHEET 1 OF 2

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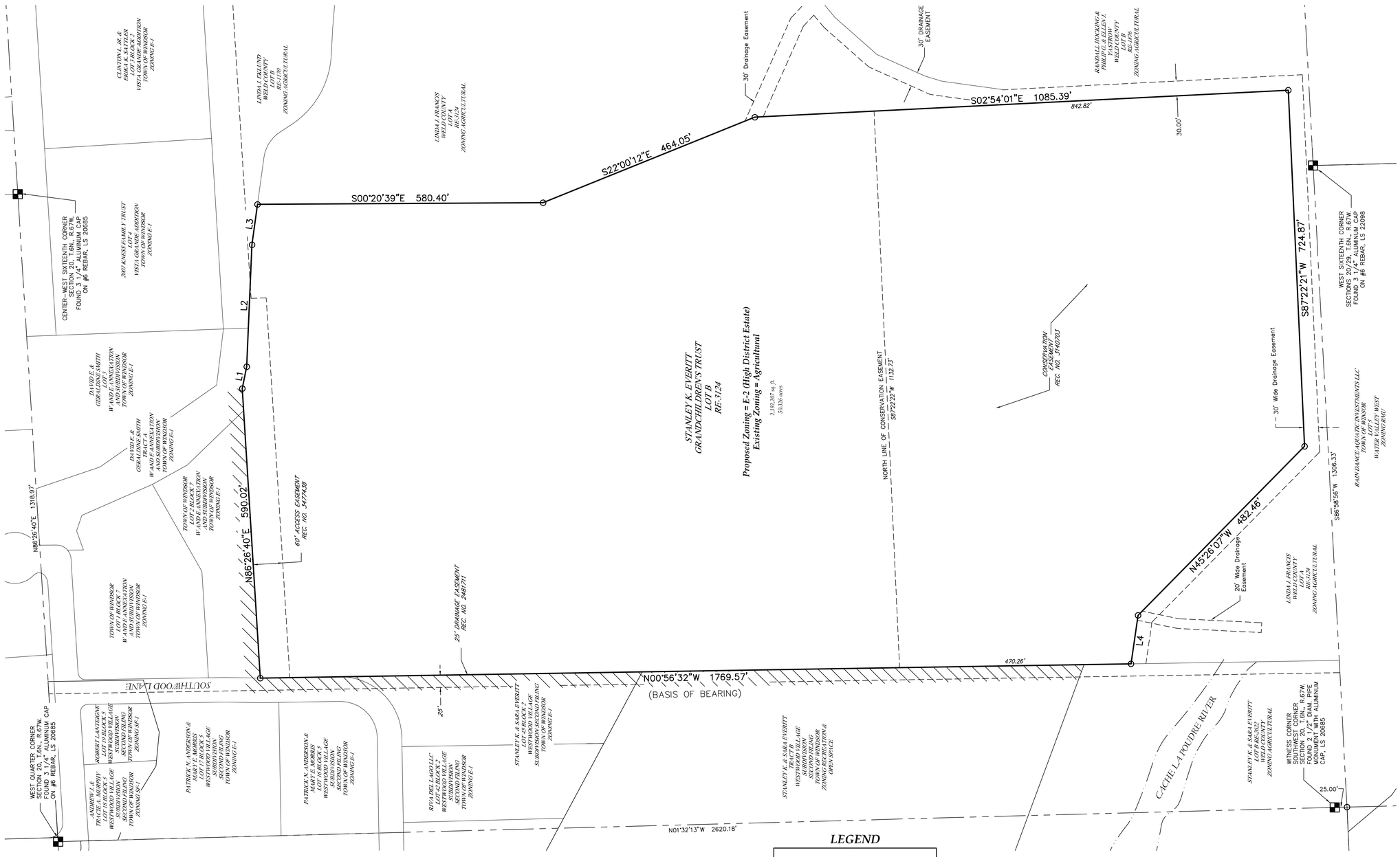
PROVIDENCE FARM ANNEXATION

TO THE TOWN OF WINDSOR

Lot B, Recorded Exemption No. 0807-20-3 RE-3124,
Situate In The Southwest Quarter Of Section 20, Township 6 North, Range 67 West Of The 6th P.M.,
County Of Weld, State Of Colorado



LINE TABLE		
LINE	BEARING	LENGTH
L1	S78°30'30"E	45.37'
L2	S87°31'17"E	248.18'
L3	S82°15'41"E	82.75'
L4	N81°44'52"W	99.64'

Lawrence S. Pepek – On Behalf Of King Surveyors, Inc.
Colorado Registered Professional
Land Surveyor #33642

DATE:	10/12/2010
FILE NAME:	2010162ANX
SCALE:	1"=100'
DRAWN BY:	CSK
CHECKED BY:	LSP

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PROVIDENCE FARM ANNEXATION
FOR
STANLEY K. EVERITT GRANDCHILDREN'S TRUST
695 SOUTHWOOD LANE
WINDSOR, CO 80550

PROJECT #: 2010162

2

SHEET 2 OF 2

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PROVIDENCE FARM ANNEXATION

SECOND READING

Josh Olhava, Associate Planner
October 28, 2013

Town Board

Item C.1.C.2.

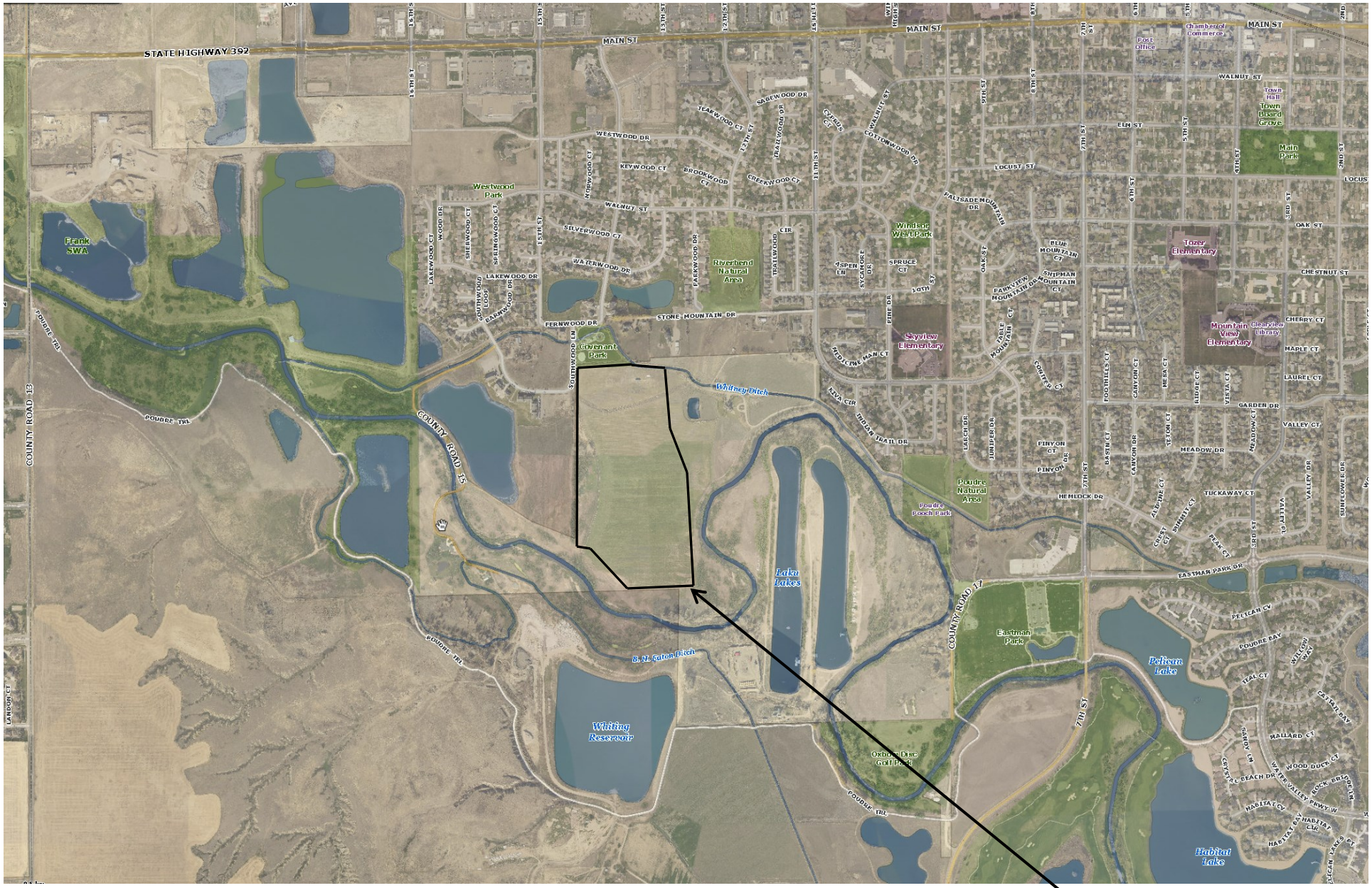
ANNEXATION

Article I of Chapter 1 of the Municipal Code outlines the purposes of the Annexation process, including:

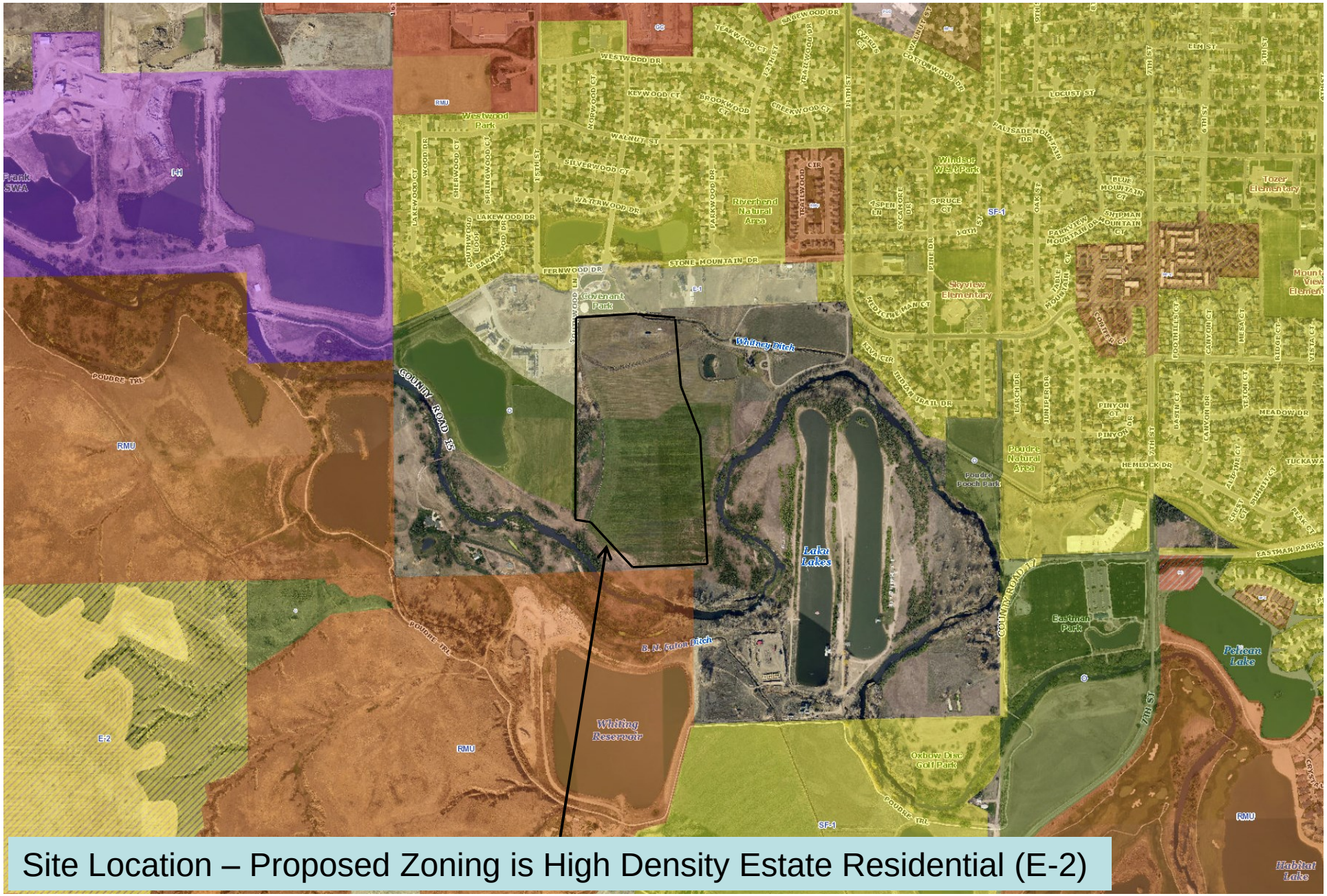
Sec. 15-1-10. Purpose.

The purpose of this Article is to establish a procedure to bring land under the jurisdiction of the Town in compliance with the Colorado Municipal Annexation Act of 1965, as amended.

SITE VICINITY MAP



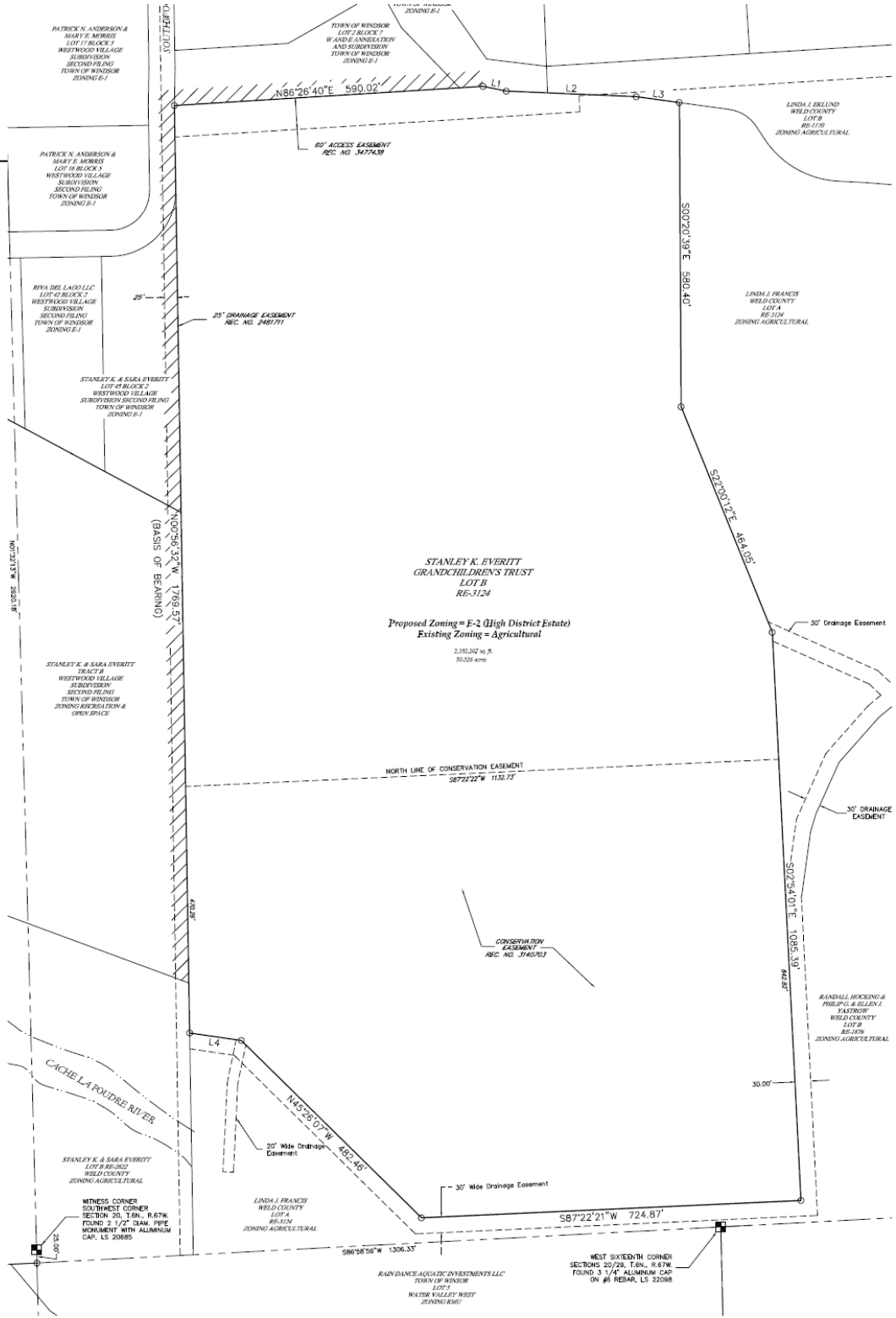
SITE PROXIMITY ZONING MAP



Site Location – Proposed Zoning is High Density Estate Residential (E-2)

TOWN OF WINDSOR
COLORADO

ANNEXATION PLAT



RECOMMENDATION

Staff Recommends that the Town Board approve the Ordinance on Second Reading.

ANNEXATION REQUEST

Staff requests that the following be entered into the record:

- Staff memorandum and supporting documents
- Recommendation

M E M O R A N D U M

Date: October 28, 2013
To: Mayor and Town Board
Via: Kelly Arnold, Town Manager
From: Patti Garcia, Town Clerk/Assistant to Town Manager
Re: Redistricting Map
Item #: C.3.

Background / Discussion:

At the October 14, 2013 work session, background information and a draft map were provided to the Town Board regarding Charter requirements related to review of the election districts. The districts are to be reviewed every two years, but the Town can only redistrict once every six years unless such change is necessary to conform to constitutional apportionment requirements. At least 180 days before the biennial election, the Town Clerk is to determine if the number of registered electors in the district containing the lowest number of registered electors is less than eighty-five (85) percent of the number of registered electors in the District containing the highest number. The geographic districts are based on the number of registered electors for each district, and are not expressly tied to raw population. Current registered elector data was received by both Weld and Larimer counties and it was found that the districts were not in compliance with the Charter requirements listed at Section 3.1 and that redistricting would be required.

Below is a breakdown of the number current registered elector numbers in each district using the current district map; District 6 is the highest with 3,181. Using the formula in the Charter, only Districts 1 and 6 are in compliance.

Number of registered electors in each district using the current district map:

	District 1	District 2	District 3	District 4	District 5	District 6
Electors	2,880	2,279	2,619	2,089	1,992	3,181

In order to come into compliance for the 2014 municipal election, the Town's GIS department was tasked with creating the attached revised district map using the current voter registration data; the current district map and potential growth areas in Windsor were also taken into account. The revised district map for consideration was reviewed by the Town Board on October 14, 2013 and meets the 85% requirement set by the Charter with only minor changes to the district lines.

Number of registered electors using the revised district map:

	District 1	District 2	District 3	District 4	District 5	District 6
Electors	2,452	2,560	2,381	2,673	2,653	2,332

The largest district in the revised map is District 4; which provides for all districts to be in compliance with the Charter requirements.

The timeframe for redistricting is as follows:

October 28, 2013	1st reading of redistricting ordinance
November 12, 2013	2nd reading of redistricting ordinance
November 25, 2013	New districts in place

Attachment:

Ordinance 2013-1403
Revised district map
Current district map

TOWN OF WINDSOR, COLORADO

ORDINANCE NO. 2013-1463

AN ORDINANCE PURSUANT TO SECTION 3.1 OF THE TOWN OF WINDSOR HOME RULE CHARTER APPROVING A REVISION TO THE BOUNDARIES OF MUNICIPAL ELECTION DISTRICTS WITHIN THE TOWN OF WINDSOR, COLORADO

WHEREAS, the Town of Windsor ("Town") is a Colorado home rule municipality, with all powers and authority conferred under Colorado law; and

WHEREAS, effective in 2008 and pursuant to the directives of Section 3.1 of the Windsor Home Rule Charter, a citizen committee established six (6) contiguous voting districts from which each of the six (6) non-mayoral Town Board Members is elected; and

WHEREAS, Section 3.1 of the Windsor Home Rule Charter requires that in advance of each municipal election, the Town Clerk shall determine whether the number of registered voters within the election district with the least registered voters is within fifteen percent (15%) of the election district with the most registered voters; and

WHEREAS, Section 3.1 of the Windsor Home Rule Charter further requires the Town Clerk to make a recommendation to the Town Board for re-districting if necessary to assure that each election district contains a substantially-equal number of registered voters; and

WHEREAS, the Town Clerk has undertaken the comparative analysis required of her and has recommended that the district boundaries be adjusted to assure a substantially-equal number of registered voter within all six districts; and

WHEREAS, the Town Clerk's voting district recommendations are depicted within the attached Exhibit A, a map entitled "Voting Districts, Effective April, 2014", which is incorporated herein by this reference as if set forth fully; and

WHEREAS, pursuant to the legislative powers vested in it, the Town Board wishes to approve the revised voting districts depicted in Exhibit A for use in all municipal elections, commencing April, 2014.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN BOARD OF THE TOWN OF WINDSOR, COLORADO, AS FOLLOWS:

1. The attached Exhibit A is hereby adopted and approved as the Official Voting District Map for the Town of Windsor, Colorado.

2. The Town Clerk is directed to obtain a detailed and specific description which verbally plots every voting district line contained within the attached Exhibit A, shall retain copies for distribution to the public, and shall keep said description on file for reference purposes.

3. The voting districts approved herein shall remain in effect until such time as the provisions of the Home Rule Charter require re-districting in accordance with its terms.

Introduced, passed on first reading and ordered published this 28th day of October, 2013.

TOWN OF WINDSOR, COLORADO

_____
John S. Vazquez, Mayor

ATTEST:

_____
Patti Garcia, Town Clerk

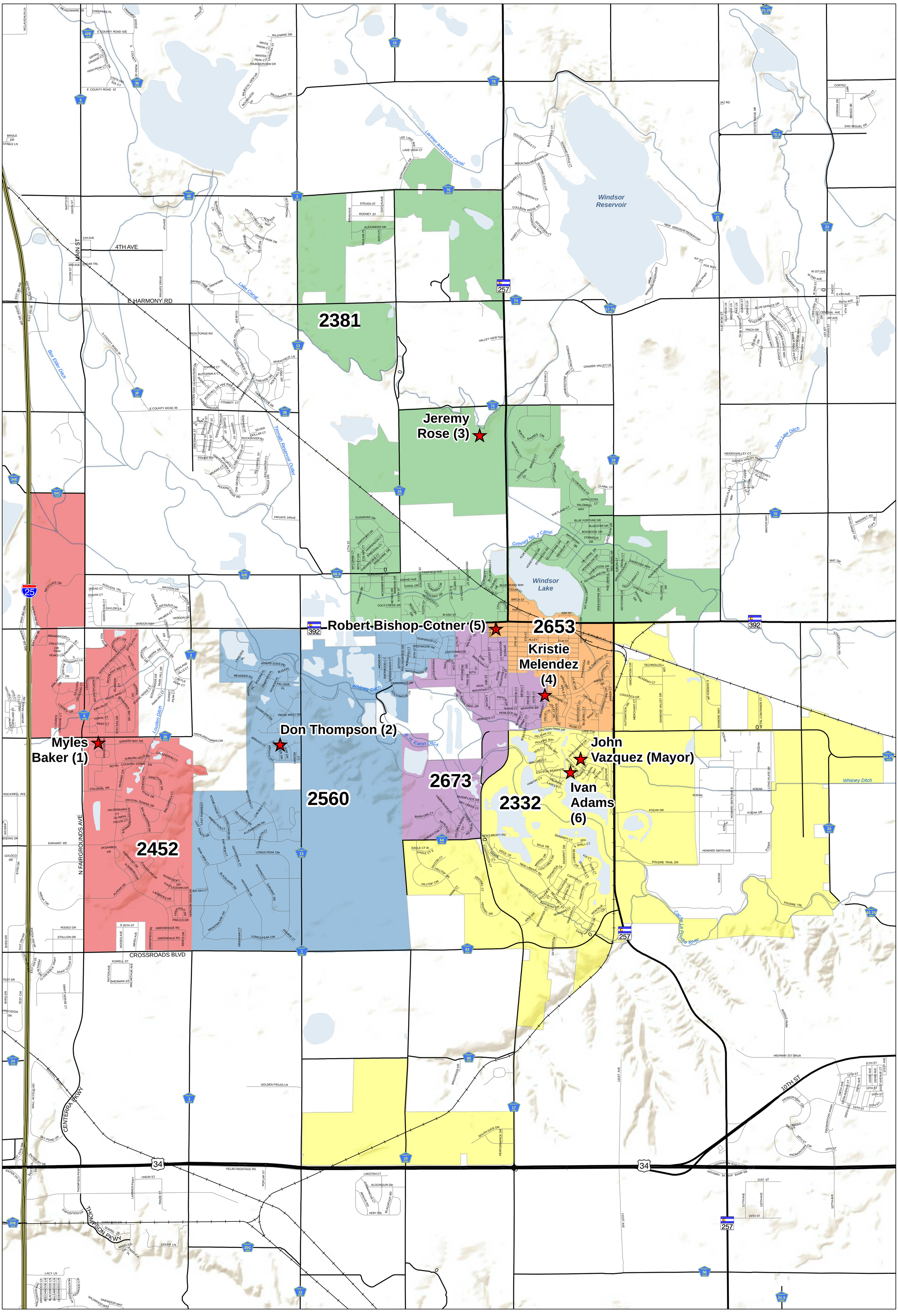
Passed on second reading, and ordered published this 12th day of November, 2013.

TOWN OF WINDSOR, COLORADO

_____
John S. Vazquez, Mayor

ATTEST:

_____
Patti Garcia, Town Clerk



Re-Districting Scenario 1

TOWN OF WINDSOR COLORADO

★ TB_Members

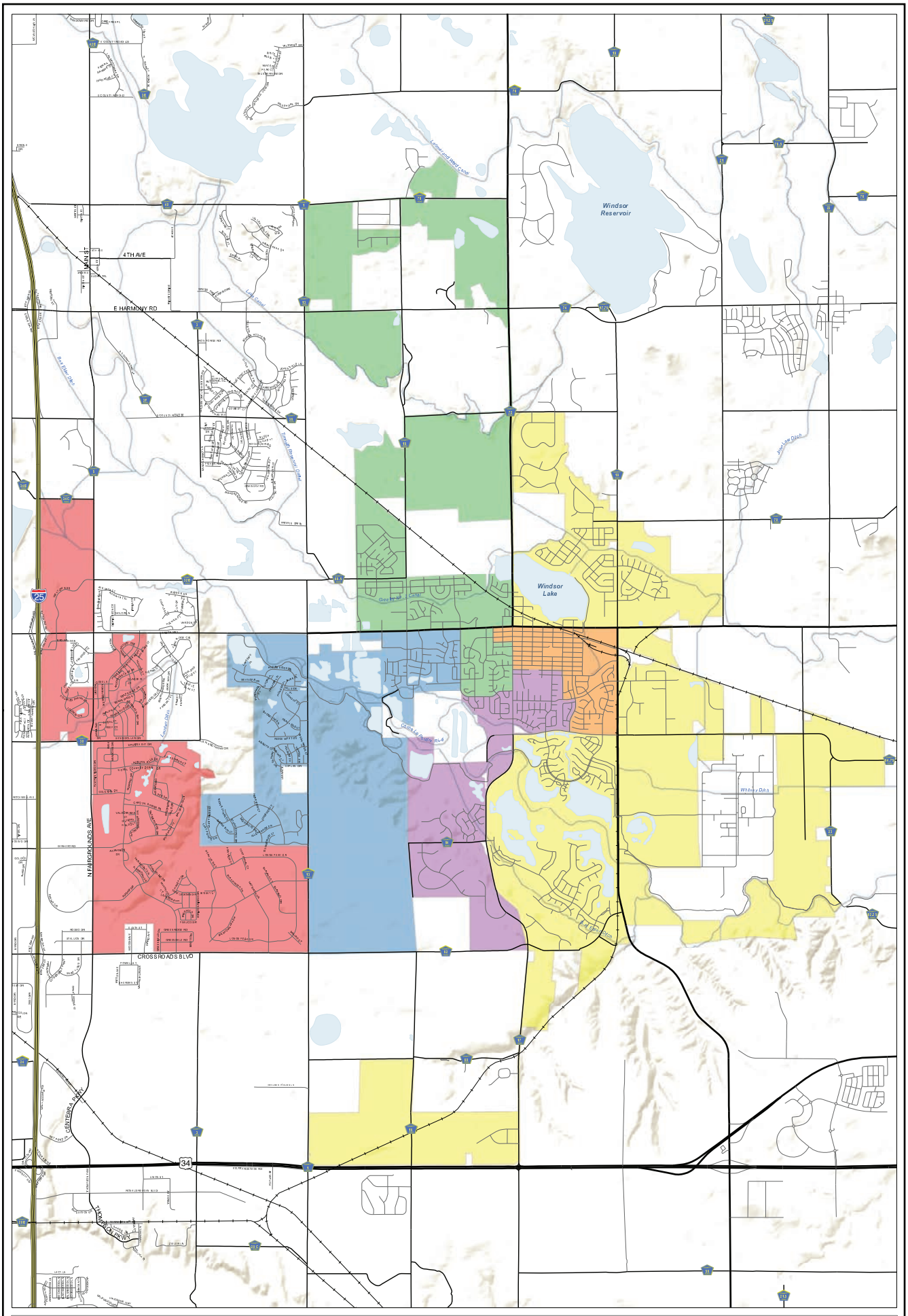
District # 1 2 3 4 5 6

0 0.225 0.45 0.9 Miles

1:25,000

This map was created for illustrative purposes only. Any repercussions from the misuse or misrepresentation of this map or its contents, whether intentional or not, are the sole responsibility of the user.

Updated: 10/15/2013
Updated by: stometich
Created:
Created by: stometich
File: Re-districtingScenario1b(22x34-P)



TOWN OF WINDSOR
COLORADO

Voting Districts

District # 1 2 3 4 5 6

0 0.225 0.45 0.9 Miles

1:25,000

This map was created for illustrative purposes only. Any questions arising from the measures, measurements or data may or may not be accurate, whether intentional or not, are the sole responsibility of the user.

Created: 10/28/2009
Updated: 6/1/2011
Prepared By: sigfreeds
File: Map digital Ref gallery 22x34 (P) .prxd

2014 Redistricting Plan

Patti Garcia, Town Clerk/Assistant to Town Manager

October 28, 2013

Town Board
C.3.

Redistricting Methodology

- Comply with Town Charter Section 3.1.C.
- Each district is to be contiguous.
- Boundaries shall not change more than once in six years.
- No change in boundaries shall create a vacancy during the term of a Town Board member.

Formula for Redistricting

- Comply with Town Charter Section 3.1.D.
- Districts to be reviewed no later than 180 days before the election.
- Numbers are based off of registered electors in Windsor.
- Review high and low districts – 85% requirement to be in compliance.

District	Current map	Revised map
1	2,880	2,452
2	2,279	2,560
3	2,619	2,381
4	2,089	2,673
5	1,992	2,653
6	3,181	2,332

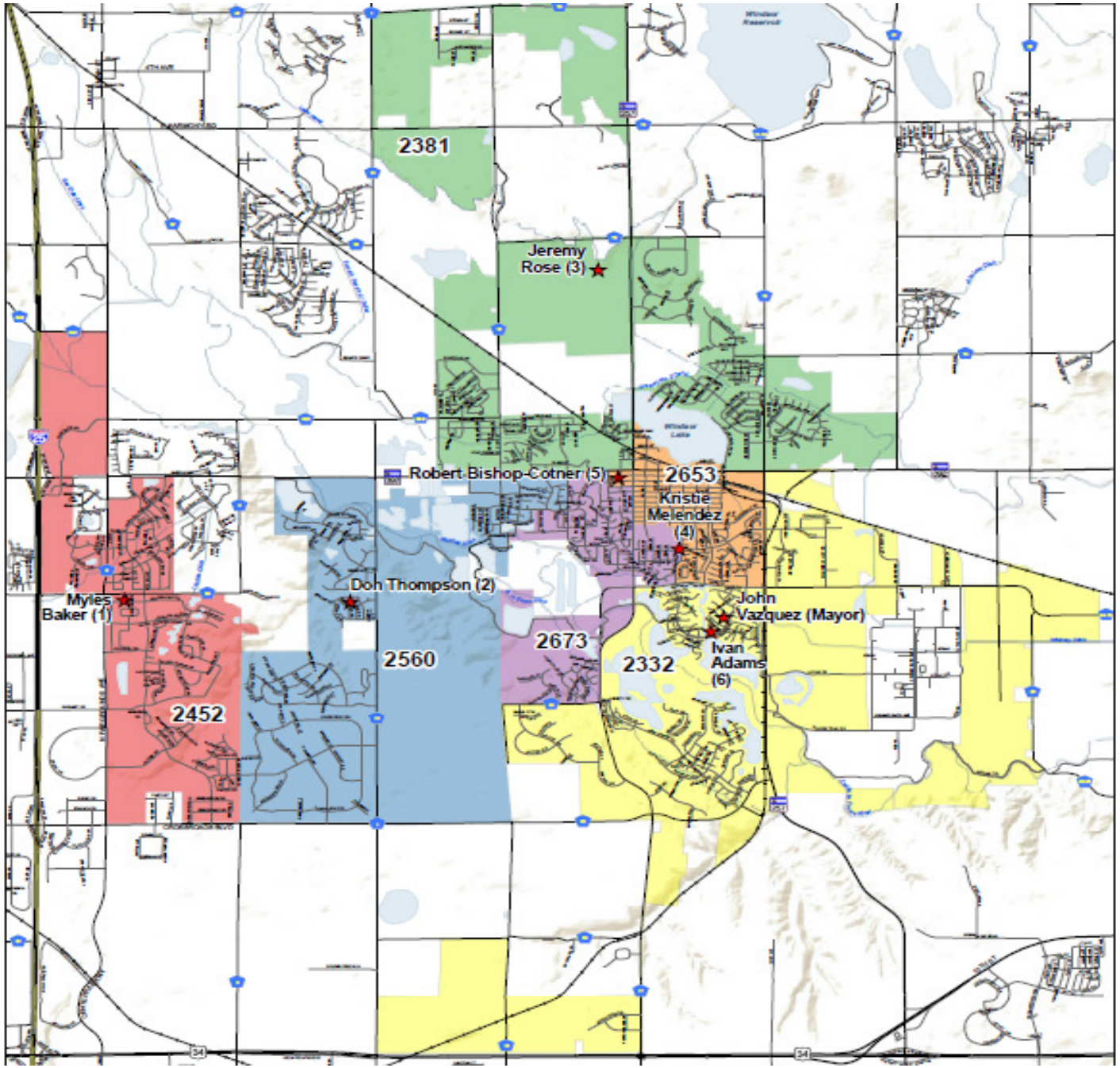
Revised Map Analysis

- Largest district in revised map is District 4 with 2,673 registered voters; smallest is District 6 with 2,332 voters.

- Using the formula in the Charter:

  2,673 * 85% = 2,272

All districts are in compliance


2381
Jeremy Rose (3)
Robert Bishop-Cotner (5)
2653
Kristie Melendez (4)
Doh Thompson (2)
Myles Baker (1)
John Vazquez (Mayor)
Ivan Adams (6)
2673
2332
2560
2452

M E M O R A N D U M

Date: October 28, 2013
To: Mayor and Town Board
Via: Kelly Arnold, Town Manager
Joseph P. Plummer, AICP, Director of Planning
From: Brett Walker, Associate Planner
Subject: Public Hearing and Approval of Conditional Use Grant for a temporary off-premises sign located in the General Commercial (GC) zoning district at Eagle Crossing Subdivision, Second Filing, Lot 2, Block 1 – Greg Meeter, Lend Lease, applicant; Eagle Crossing Windsor LLC, property owner
Location: 4355A Fairgrounds Ave
Item #: C.4 & C.5

Background:

The applicant, Mr. Greg Meeter, Lend Lease, is requesting a Conditional Use Grant (CUG) for a temporary off-premises sign for the recently approved 7-Eleven. A conditional use grant is required pursuant to Windsor Municipal Code Section 16-9-70 (h), which states:

> *Off-premises signs. No outdoor advertising sign, billboard or other advertising media not directly related to the use of the premises on which it is located shall be permitted in any district except as a conditional use in such districts as are hereinafter provided. Any off-premises sign permitted as a conditional use shall be in harmony with the spirit and intent of these regulations. Temporary signs advertising open houses shall be allowed in accordance with Paragraph 16-9-131(2) below.*

A 7-Eleven convenience store and gas station is currently under construction near the intersection of Fairgrounds Ave and Crossroads Blvd. Access to the 7-Eleven from Fairgrounds Avenue is via Stallion Drive. 7-Eleven is requesting the CUG to direct traffic from Fairgrounds Ave to the convenience store. The property owner has indicated that they intend on building a *Shopping center development identification sign(s)* pursuant to Windsor Municipal Code Section 16-9-110 (a) for the commercial lots associated with the Eagle Crossing Subdivision Second Filing. Therefore, this CUG off-premises sign is considered temporary, and a Condition of Approval is recommended to reflect the temporary nature of the proposed sign.

The proposed sign is consistent with Windsor Municipal Code Section 16-9, except for the Sections 16-9-60 (a) and (b).

Section 16-9-60 (a) states the following:

> *Freestanding, ground-mounted signs shall be constructed with a monument-type base consisting of materials that are complementary and compatible with the architectural elements of the project. The height of the monument base of any sign shall not exceed fifty percent (50%) of the overall height of the sign. The width and length of such base shall be at least as wide and long as the bottom edge of the sign area.*

Section 16-9-60 (b) states the following:

> *Freestanding signs shall be incorporated into a landscape planting bed with low landscape elements placed in front of signage to soften the sign and taller landscape placed behind single-sided signs to offer a backdrop.*

This CUG application was presented to the Planning Commission on October 16, 2013. No public comments were presented to the Planning Commission.

Conformance with Comprehensive Plan: The proposed use is consistent with the Commercial and Industrial Land Use Goals and Policies of the Comprehensive Plan:

> **Goal 3:** Windsor should continue to encourage and promote commercial and industrial development, redevelopment and expansions in order to strengthen its tax base, increase revenue sources, and provide high quality employment opportunities for its residents.

Conformance with Vision 2025: N/A

Recommendation: At the October 16, 2013 regular Planning Commission meeting, the Planning Commission recommended that the Town Board approve the CUG, subject to the following conditions, and staff concurs with the Planning Commission's recommendation:

1. The temporary off-premises sign shall be removed when a multi-tenant sign, pursuant to Windsor Municipal Code Section 16-9-110, is constructed, or by October 28, 2016, whichever comes first. Should the applicant/developer wish to keep the temporary off-premises sign beyond October 28, 2016, the applicant/developer shall submit a Conditional Use Grant application and obtain Town Board approval to extend the sign removal deadline. The Conditional Use Grant application shall be submitted by July 28, 2016.

2. The sign dimensions, materials and content shall not be changed without Town approval.

3. The off-premises sign for 7-Eleven shall be removed when Eagle Crossing Subdivision 2nd Filing, Block 1, Lot 2 is developed. The off-premises sign shall be removed prior to issuance of a Certificate of Occupancy for a structure located on Block 1, Lot 2.

Notification: September 26, 2013 – Conditional Use Grant Sign Posted on the Property
September 27, 2013 – Public Hearing Legal Ad Published
September 26, 2013 – Affidavit of Mailing to property owners within 100 feet

Enclosures: Application materials
Presentation Slides

Pc: Greg Meeter, Lend Lease, applicant
Pat McMeekin, Eagle Crossing Windsor LLC, property owner's representative

FEE (Non Refundable): $100.00

APPLICATION FOR CONDITIONAL USE

TOWN OF WINDSOR
301 WALNUT STREET
WINDSOR, CO 80550

Office: (970) 674-2415
Fax: (970) 674-2456
www.windsorgov.com

TOWN OF WINDSOR

For office use only:
DATE: _____ BY: _____
Project ID #: _____
Zoning: _____

TO BE COMPLETED BY APPLICANT: (Type or print in black ink)

Street Address*: Vacant 4355A Fairgrounds Ave Lot: 2 Block: Block 1

Subdivision: Eagle Crossing Subdivision Second Filing

Conditional Use Grant approval is only valid for the applicant(s) who receive the original approval and is not transferable to subsequent occupants of the property.

*Describe the non conforming use or home occupation. Include activity description, average number of clients, need for parking, hours of operation, size of area to be used, justification of continuance of non conforming use and result of any communication with neighbors. (use back or additional sheets if necessary)

Directional sign at corner of Fairgrounds Avenue and Stallion Drive. Supported by Owner of Lot 2. Will be removed when Lot 2 develops.

(continue on back)

Windsor Municipal Code Chapter 16 Article VII and Article XXXI http://www.colocode.com/windsor.html

- Legible, accurate drawings (drawn to an appropriate scale, which cannot be smaller than 1"=30') and specifications necessary for the property consideration of this grant shall be submitted with this application.
- The Planning Department shall provide the proponent with a form of written notice which shall contain the description of the land use proposal in question; the location of the land which is the subject of the hearings; the date, time and location of the hearings; and a recital that public comment will be taken at the public hearing.
- The Planning Department shall provide the proponent with a listing of all property owners within 100' of the subject property.
- No less than ten (10) days prior to the date of any public hearing the applicant shall send such notice by first-class mail, postage prepaid, to all the listing provided by the Planning Department.

*Present use of land:	GC Zoning (Vacant)	Size:	1.6336 Acres
*Present use of structure:	GC Zoning (Vacant)	Size:	N/A
*Proposed use of land:	GC Zoning (Only change is to add an Off-site sign)	Size:	sign is 4.3' x 1.6'
*Proposed use of structure:	Off-site sign	Size:	sign is 4.3' x 1.6'

If granted this conditional use grant, I/We the undersigned, agree to comply with the Code of the Town of Windsor, Colorado and any other stipulations as determined by the Town Board. I hereby depose and state under penalties of perjury that all statements and proposal submitted within this application are true and correct to the best of my knowledge.

Submitted this August day of 27, 20 13

Greg Meeter - Lend Lease
Applicant (please print)

Eagle Crossing Windsor, LLC by Patrick McMeekin, Manager
Property Owner* (please print)

Greg Meeter
Applicant's Signature

Property Owner's Signature*

303.919.4282
Phone (daytime) Fax

970/686-5828 970/686-2768
Phone* (daytime) Fax*

Gregory.Meeter@lendlease.com
Email (If you do not have a email provide a mailing address)

pmcmeekin@watervalley.com
Email* (If you do not have a email provide a mailing address)

Applicant's Representative (if any) Name Same as applicant

Phone _____ Fax _____ Email _____

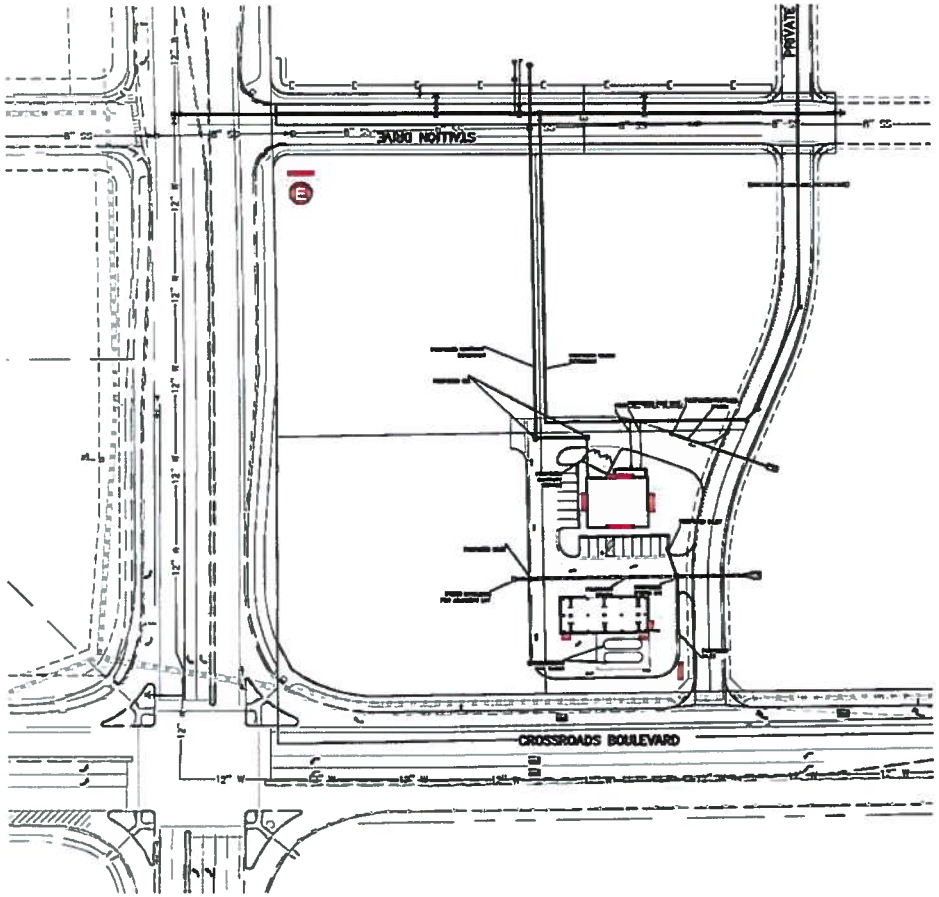
*NOTARY: (all signatures) Subscribed before me this 27th day of August, 20 13

By: Greg Meeter as Applicant and Eagle Crossing Windsor, LLC, Owner, by Patrick McMeekin, Manager (SEAL)
Print name of property owner(s) and applicant(s)

Notary Public Signature

9/9/2016
My commission expires

LARA D WYNN
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID # 20044032091
MY COMMISSION EXPIRES SEPTEMBER 09, 2016



20 Site Plan
NTS

harbinger
sign of the future
5300 SHAD ROAD, JACKSONVILLE, FL 32257 904.268.4681

7-Eleven #35717
6400 Crossroads Blvd.
Windsor, CO 80550

SVE2595-R4

F:\Customers\7 Eleven\Art
\SVE2595-R4 #35717.cdr

Conceptual/Photo Overlay

05.09.13 : ORIGINAL CONCEPT
05.10.13 : R1 - monument, wall signs - tb
06.11.13 : R2 - site plan updated - tb
06.28.13 : R3 - new elevations - gh
07.03.13 : R4 - new elevations & Directional- gh

Salesperson: RC PM: BB Designer: TB Page: 6

customer approval date:

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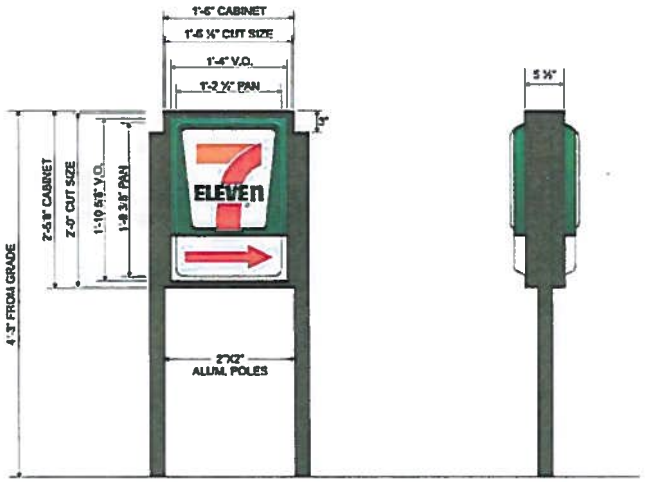

MANUFACTURE & SHIP ONE (1) STANDARD D/F INTERNALLY ILLUMINATED DIRECTIONAL SIGN CABINET. 3/16" THICK PAN & EMBOSSED WHITE ACRYLIC FACE W/ TRANSLUCENT VINYL GRAPHICS APPLIED FIRST SURFACE.
5 ½" DEEP EXTRUDED ALUM. CABINET W/ 1" RETAINERS TO BE PAINTED DURANODIC BRONZE.
CABINET TO BE INTERNALLY ILLUMINATED W/ WHITE LEDS.

3M 3630-44, ORANGE
3M 3630-33, RED
3M 3630-28, GREEN

1B Front Elevation - D/f Directional Sign Cabinet - Sign E
3/4"=1'-0"

DISPLAY SQUARE FOOTAGE: 3.0

harbinger
sign of the future
5300 SHAD ROAD, JACKSONVILLE, FL 32257 904.268.4481

7-Eleven #35717
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Salesperson: RG PM: BB Designer: TB Page: 7

customer approval date:

LISTED MET
E1.49
CSA C22.2 No.207

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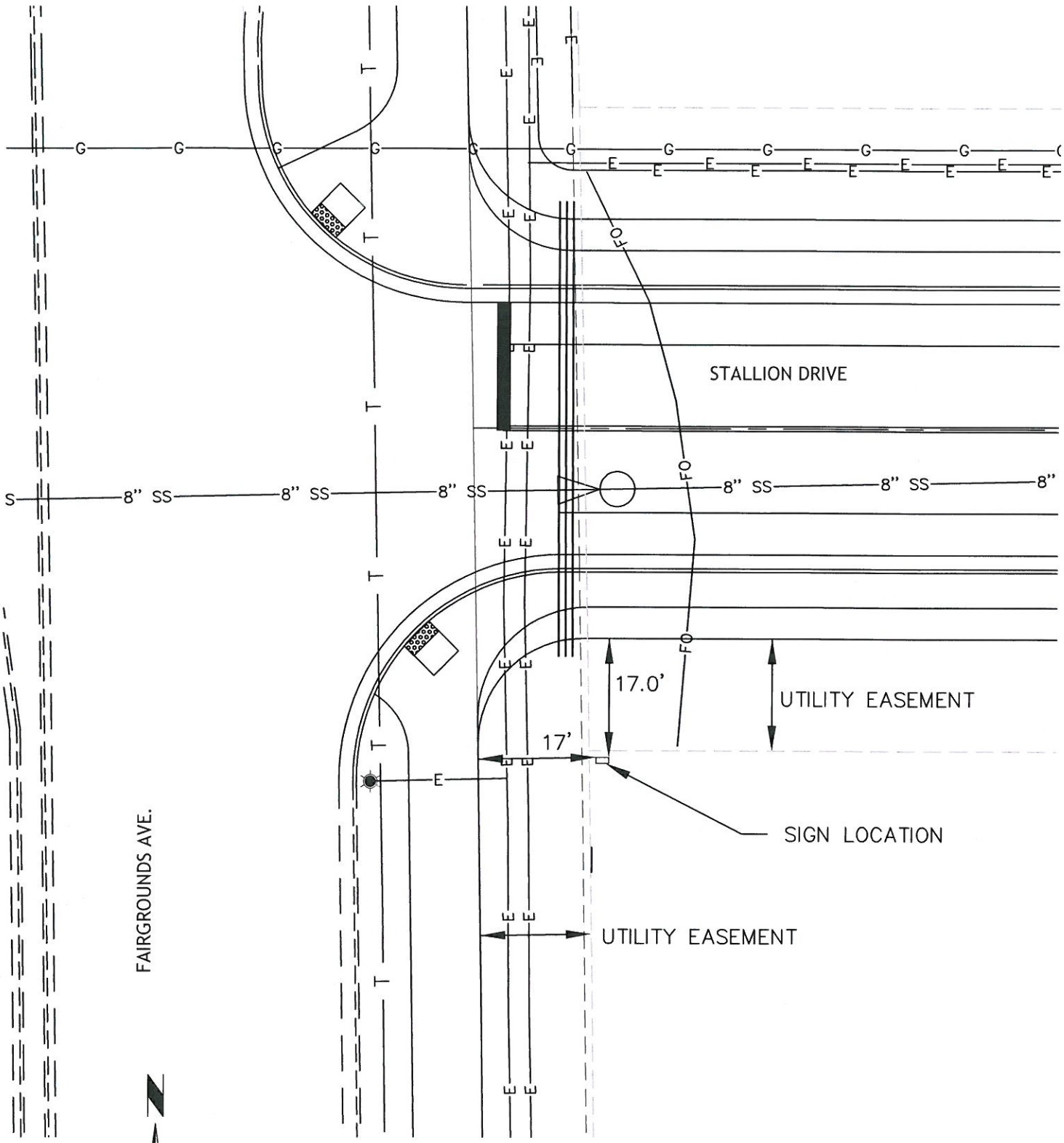
OFFSITE SIGN EXHIBIT



20 10 0 20

scale 1"=20' feet

OFFSITE SIGN
DATE: 9/25/2013
JOB NO. 1200.0001.00
SHEET 1 OF 1

TST, INC. CONSULTING ENGINEERS
760 Whalers Way, Bldg C, Suite 200
Fort Collins, Colorado
Phone: 970.226.0557
Fax: 970.226.0204

K:\732\023.00\dwgs\023_base

APPLICATION FEE: **$50.00**

TOWN OF WINDSOR
SIGN PERMIT APPLICATION
FREESTANDING SIGN

THIS APPLICATION MUST BE ACCOMPANIED WITH THE APPLICATION FEE AND A PICTURE OR DRAWING OF THE PROPOSED SIGN. SEE BACK OF APPLICATION FOR SPECIFIC SIGN SUBMITTAL INSTRUCTIONS AND EXAMPLES. COMPLETE ONE APPLICATION FOR EACH PROPOSED SIGN.

TO BE COMPLETED BY APPLICANT

Applicant Information:

Name of Applicant: YESCO LLC (CHUCK BONCORDO) Phone: 720-458-7104

Mailing Address: 3770 JOLIET ST. Email: CBONCORDO@YESCO.COM

DENVER, CO 80239

Business Information:

Name of Business: 7-ELEVEN Phone: 720-273-9841

Address of Business: 6400 CROSSROADS BLVD Email: ALICIA.RHYMER@7-11.COM

WINDSOR, CO

SIGN and BUILDING INFORMATION

TOTAL SQUARE FOOTAGE OF BUILDING: 3,396 **SQUARE FOOTAGE OF UNIT:** 3,396

LOCATION OF SIGN: OFF SITE PER APPROVED CONDITIONAL USE DOCUMENTS
BUILDING ELEVATION (north, south, east or west)

SIGN SIZE:
Width 1'-6"
X
Height 2'-5/8"

= 3.08 Total Square Feet

MONUMENT SIZE:
Width 1'-10"
Height 4'-3"

VALUATION OF SIGN:

LETTER HEIGHT(S): 12" & 2'4" ELEVEN **TOTAL SIGN HEIGHT** 4'-3" **(Measured from Average Finished Grade to top of sign including monument base)**

LENGTH OF STREET FRONTAGE: 165' ON CROSSROADS

NUMBER OF SIGNS EXISTING ON THIS STREET FRONTAGE: Ø

DISTANCE FROM PROPOSED SIGN TO NEAREST FREESTANDING SIGN ALONG STREET FRONTAGE: NO OTHER SIGN EXIST

SIGN MATERIALS: ALUMINUM, STEEL + PLEXIGLASS

ILLUMINATION TYPE (If Illuminated): INTERNAL WHITE LED'S

LANDSCAPE MATERIALS: N/A

SIGN DISTANCES FROM PROPERTY LINE(S): NORTH 21.5' **EAST** ____ **SOUTH** ____ **WEST** 17'

Owner agrees that if the sign is in need of repair or if the building becomes vacated, owner will repair, replace or remove the sign at the owner's expense.

Signature: Chuck Boncordo Date: 9/11/13

Print Name: CHUCK BONCORDO

Office use only

ZONING:	TENANT CLASSIFICATION (Sec.16-2-20): SQUARE FOOTAGE OF BUILDING:_____ MAJOR TENANT: _____ MINOR TENANT:_____	LANDLORD APPROVAL RECEIVED:
SUBAREA INFORMATION:		TOTAL HEIGHT(S) OF LETTERS:

Conditional use grant
off-premises sign
4355A Fairgrounds Avenue

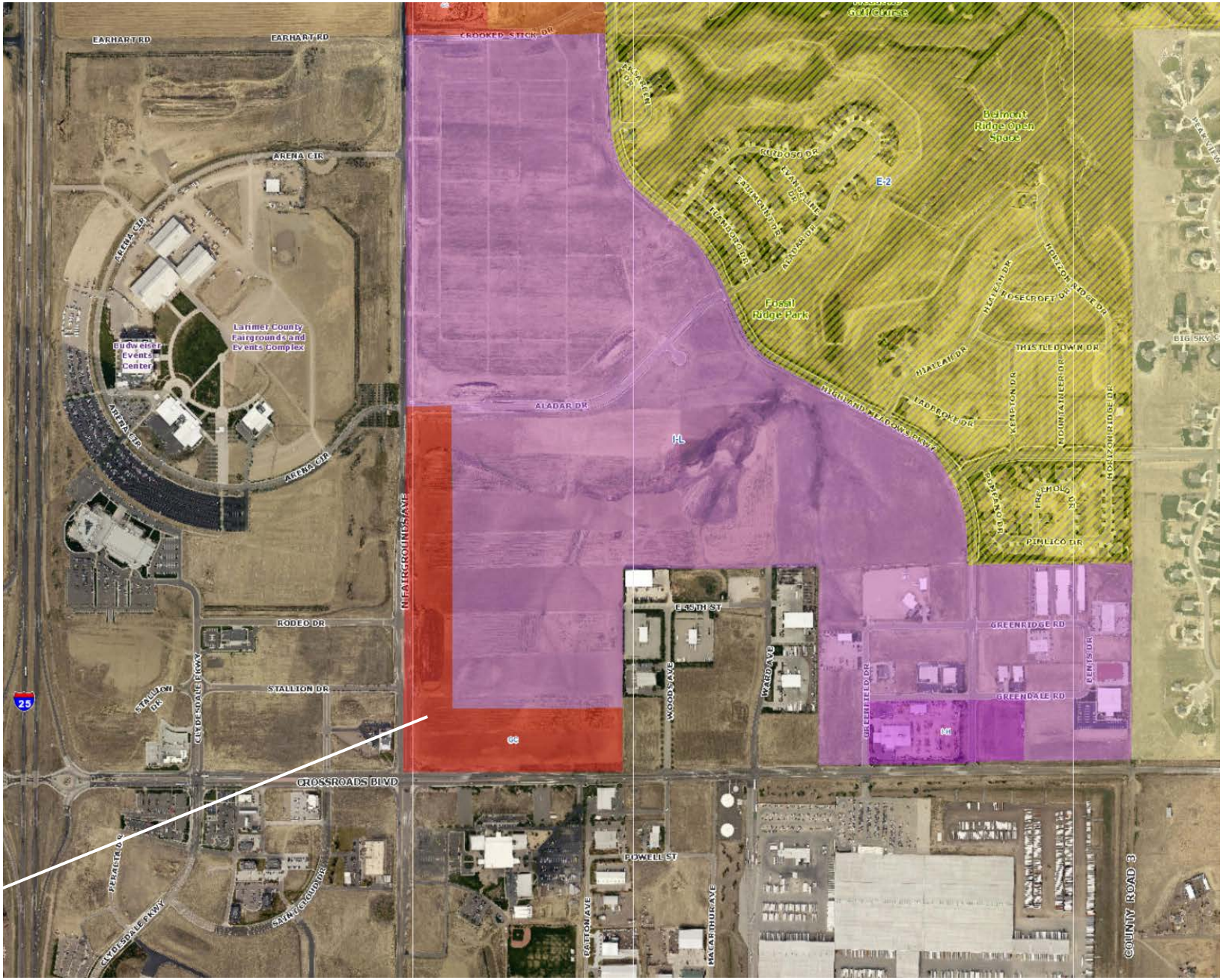
Brett Walker, Associate Planner

October 28, 2013

Town Board

C.4 & C.5

Vicinity Map/Zoning



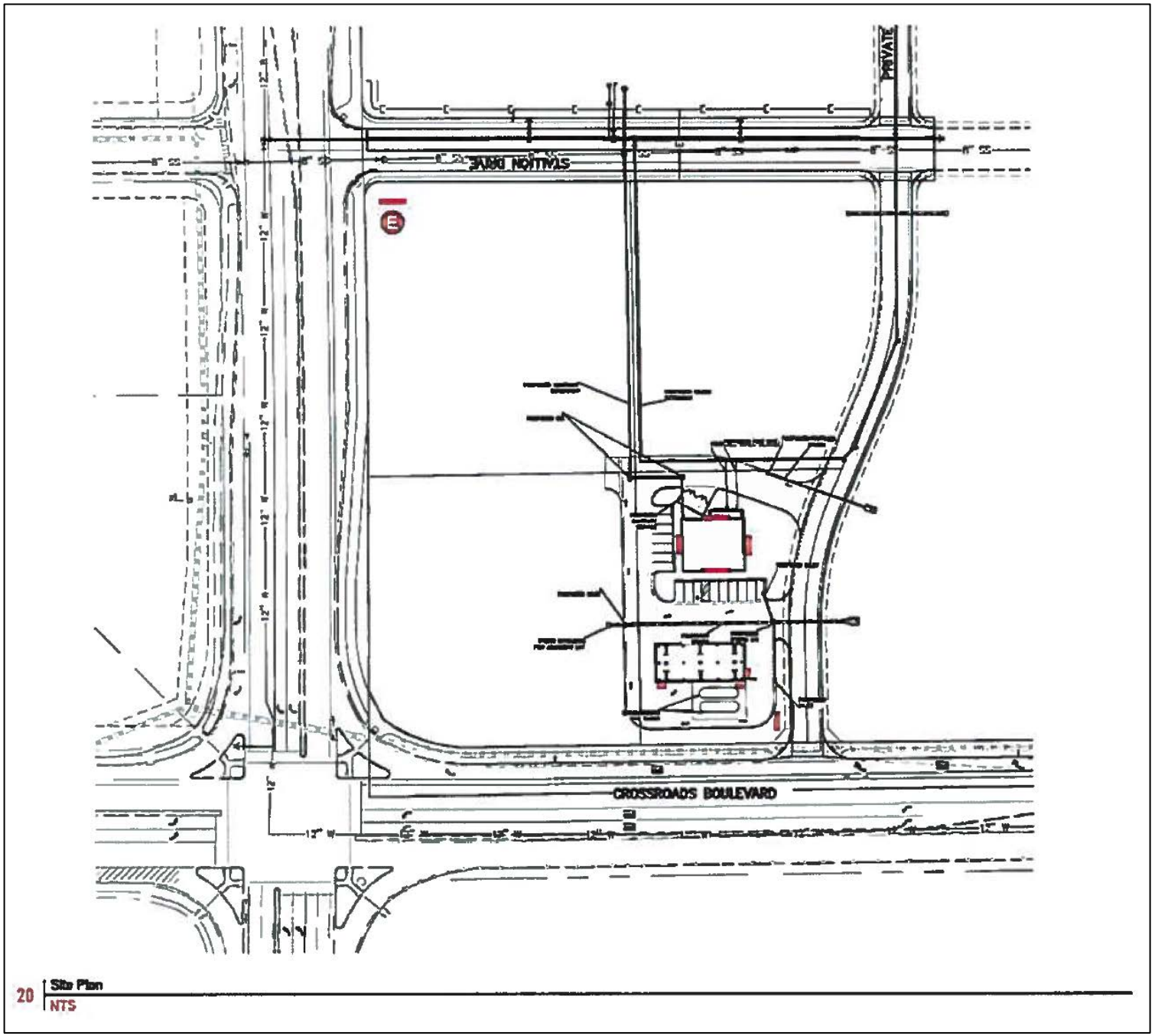
Sign Location

Neighborhood Context

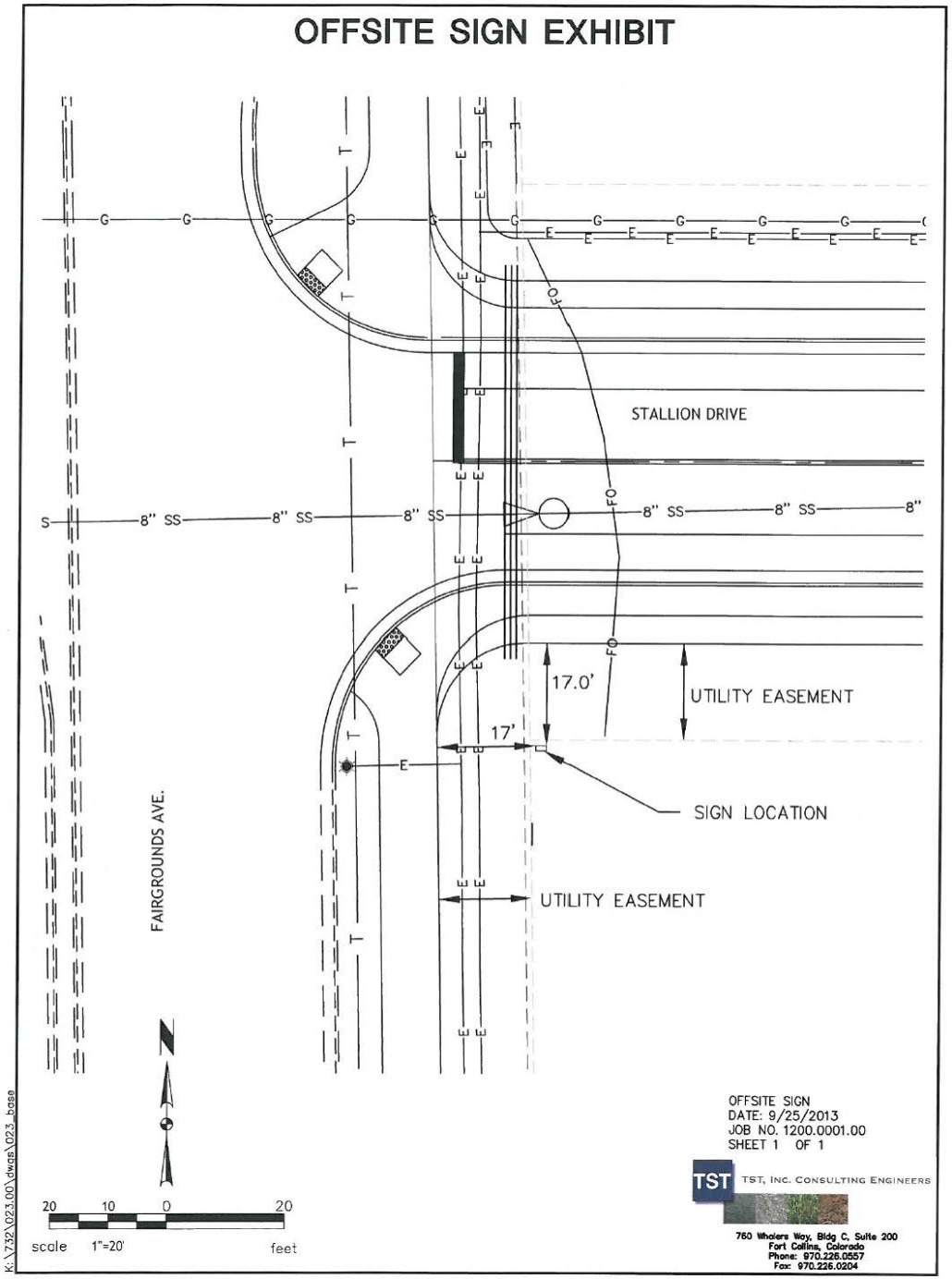
Sign Location

7-11 Location

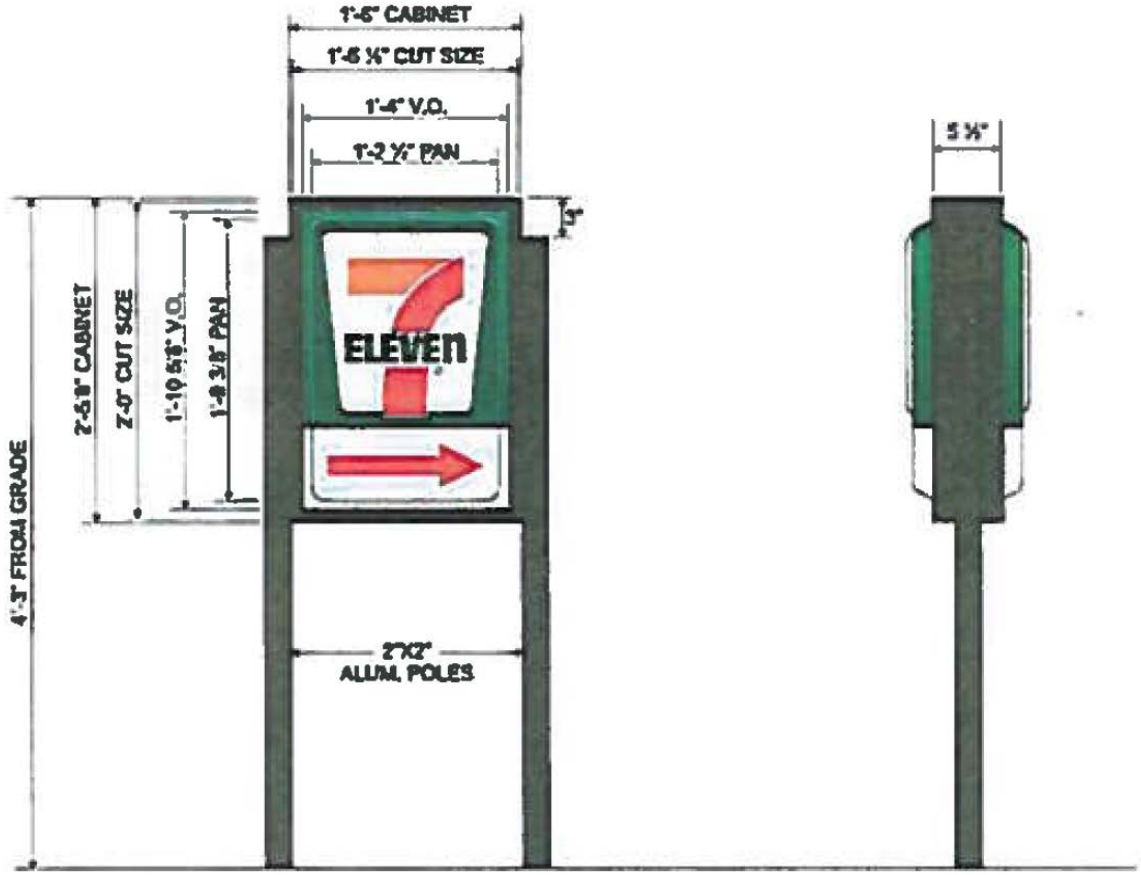
Sign Site Plan



Sign Site Plan



Sign Elevation



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18 Front Elevation - D/f Directional Sign Cabinet - Sign E
3/4"=1'-0"

DISPLAY SQUARE FOOTAGE: 3.0

Recommendation

At the October 16, 2013 regular Planning Commission meeting, the recommended that the Town Board approve the CUG, subject to the following conditions, and staff concurs with the Planning Commission's recommendation:

1. The temporary off-premises sign shall be removed when a multi-tenant sign, pursuant to Windsor Municipal Code Section 16-9-110, is constructed, or by October 28, 2016, whichever comes first. Should the applicant/developer wish to keep the temporary off-premises sign beyond October 28, 2016, the applicant/developer shall submit a Conditional Use Grant application and obtain Town Board approval to extend the sign removal deadline. The Conditional Use Grant application shall be submitted by July 28, 2016.

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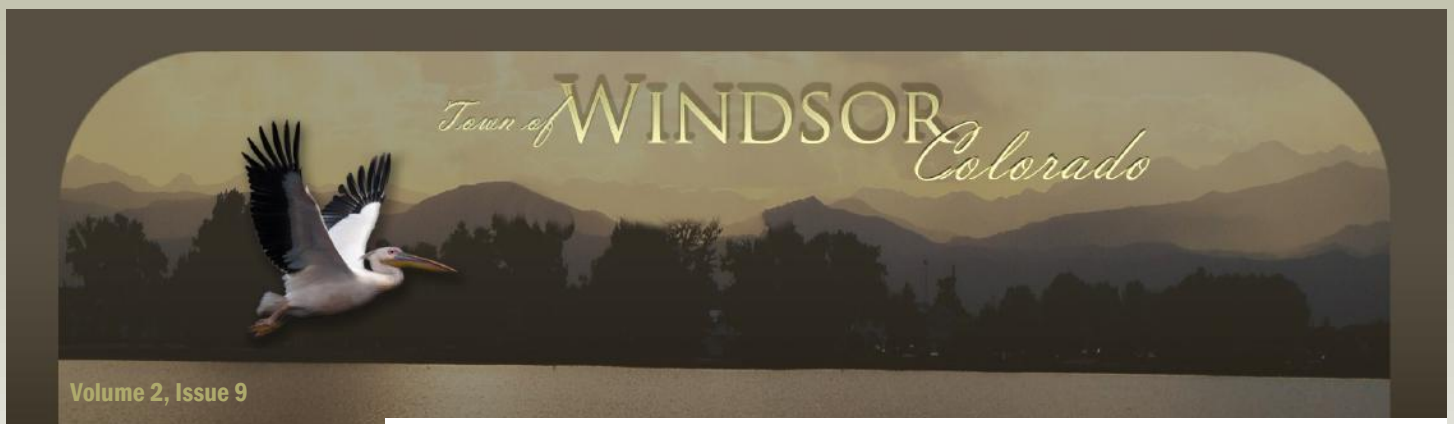
Conditional Use Grant

Staff requests that the following be entered into the record:

- Application and supplemental materials
- Staff memorandum and supporting documents
- Recommendation
- All testimony presented during the Public Hearing



Volume 2, Issue 9

September 2013

2013 Monthly Financial Report

Special points of interest:

- Second highest September sales tax collection on record at $506,393.
- Single Family Residential (SFR) building permits total 286 through the end of September. This is down slightly from the September 2012 number of 350.
- Issued 52 new business licenses in September.

Inside this issue:

Sales, Use and Property Tax	2
Year-to-Date Sales Tax	4
Monthly Sales Tax	5
All Fund Expenditures	6
General Fund Expenditures	7

Highlights and Comments

* We recorded our second highest gross sales tax collection for the single month of September.
* September 2013 year-to-date gross sales tax increased 14% over September 2012.
* Construction use tax through September is 4.49% behind 2012.
* Expenditure charts reflect September operational figures tracking as expected.
* Year-to-date total revenue through September exceeded expenditures by roughly $7.6M, due to capital project postponements.

Street Projects Coming to and End

The 7th Street asphalt overlay from Eastman Park Drive to Riverplace Drive and 4th Street from Main Street to Elm Street were part of the street maintenance projects budgeted at $734,194 and are now complete. 4th Street included a water main replacement budgeted at $150,000. We also completed the installation of the safety guardrail on WCR 17 budgeted at $160,000.

Items of Interest

- Summer street construction projects coming to a close.
- 52 new business licenses issued in September. 33 were roofing companies.
- Visit us at the improved www.windsorgov.com and look for live streaming of Town Board and Planning Commission meetings.

Sales, Use and Property Tax Update

September 2013

Benchmark = 75%	Sales Tax	Construction Use Tax	Property Tax	Combined
Budget 2013	$5,502,998	$1,317,445	$4,096,598	$10,917,041
Actual 2013	$4,943,868	$1,487,650	$3,982,709	$10,414,227
% of Budget	89.84%	112.92%	97.22%	95.39%
Actual Through September 2012	$4,336,507	$1,557,606	$3,938,492	$9,832,605
Change From Prior Year	14.01%	-4.49%	1.12%	5.92%

Ideally through the ninth month of the year you would like to see at least 75% collection rate on your annual budget number. We have reached that benchmark in all three tax categories and have nearly collected our entire year's budget in three quarters.

At this point last year we had collected $3,938,492 in property taxes, or 94.7% of the annual budget. We are slightly ahead of the 2012 pace.

Building Permit Chart

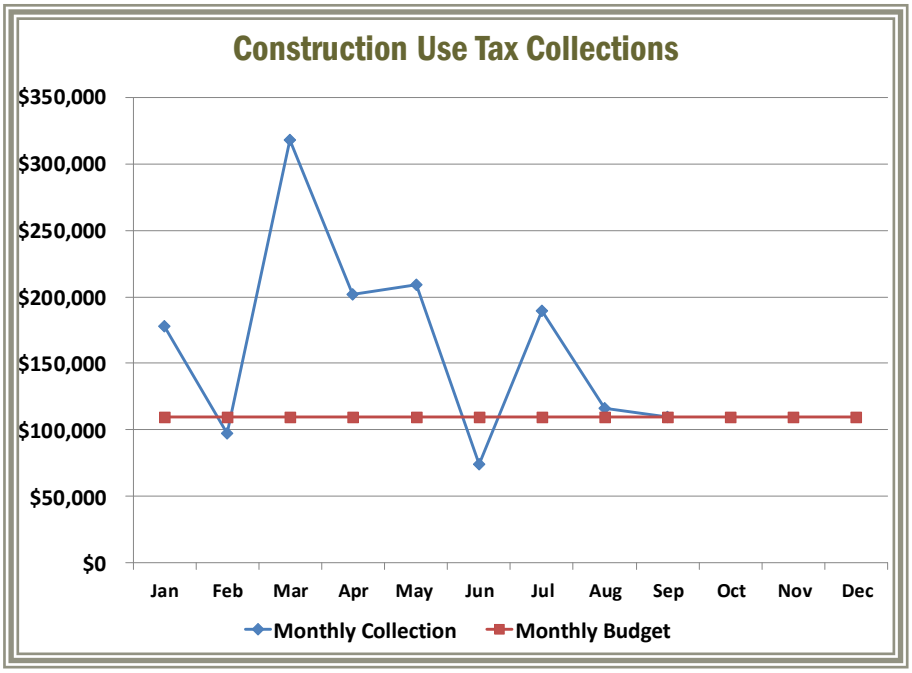
September 2013

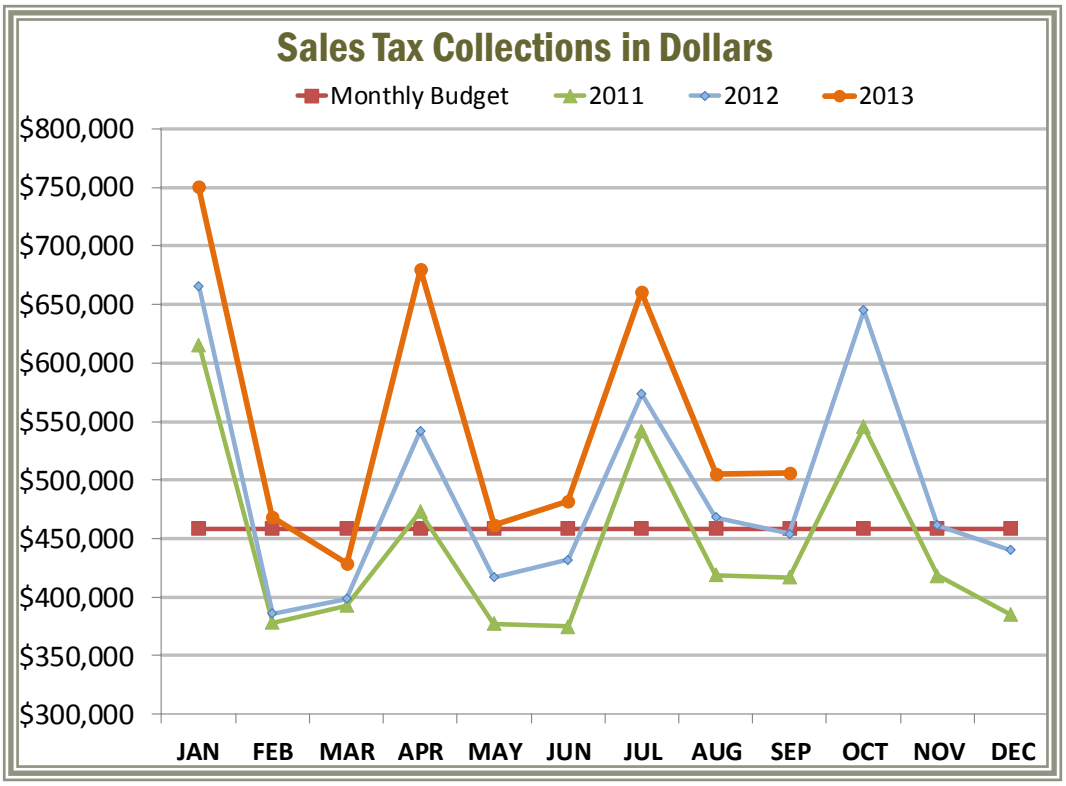
	SFR	Commercial	Industrial	Total
Through September 2013	286	3	4	293
Through September 2012	350	0	2	352
% change from prior year				-16.76%
2013 Budget Permit Total				305
% of 2013 Budget				96.07%

Building Permits and Construction Use Tax

We are showing a 16.76% decrease in number of permits as compared to September 2012. We issued 16 SFR permits in September 2013 as compared to 38 in September of 2012.

Construction use tax is slightly behind last year but has reached the budgeted collections for the entire year of 2013.





Gross Sales tax collections for September 2013 were approximately $50,000 higher than September 2012.

September Facts

September is a "single collection" month, meaning that the collections are for sales made in August. This September was our second highest on record at $506,393 producing roughly $50,000 more in collections over September 2012.

We received a voluntary compliance payment in September of $4,537.

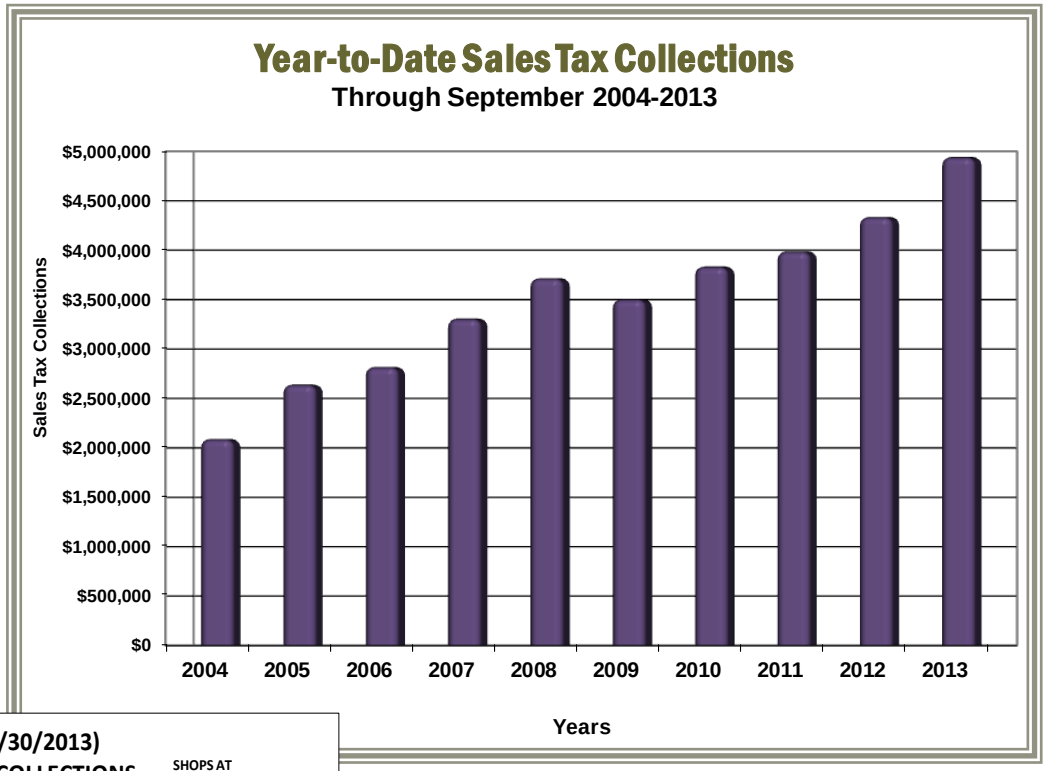
We issued 52 new business licenses in September, 33 of which were roofing contractors.

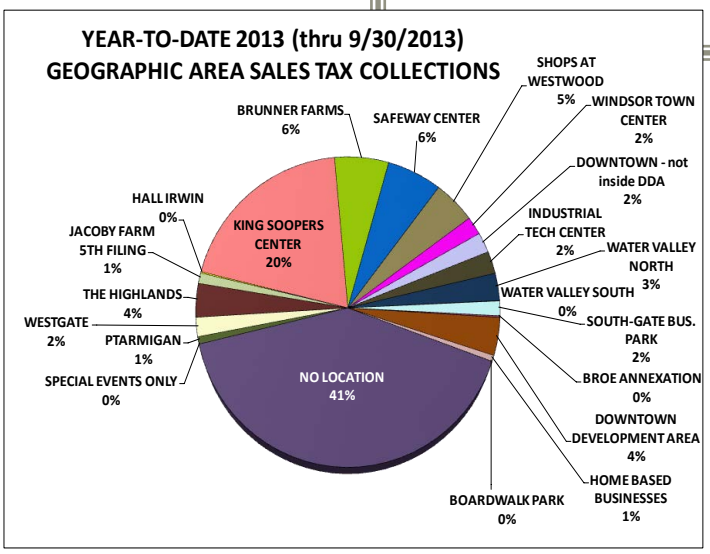
Looking Forward

We budgeted $5.5 M in sales tax for 2013, making our average monthly collection requirement $458,000. We surpassed that mark by $48,393. We have had only one month this year when we have not reached our monthly budget collection.

If we continue at this pace, we are on target to collect $6.5 million in sales tax for 2013. Preliminary budget estimates for 2014 place sales tax collections at $6 million for 2014.

Through September we have collected $4.9M in sales tax. If we maintain this pace, we may end the year in the $6.5M range.



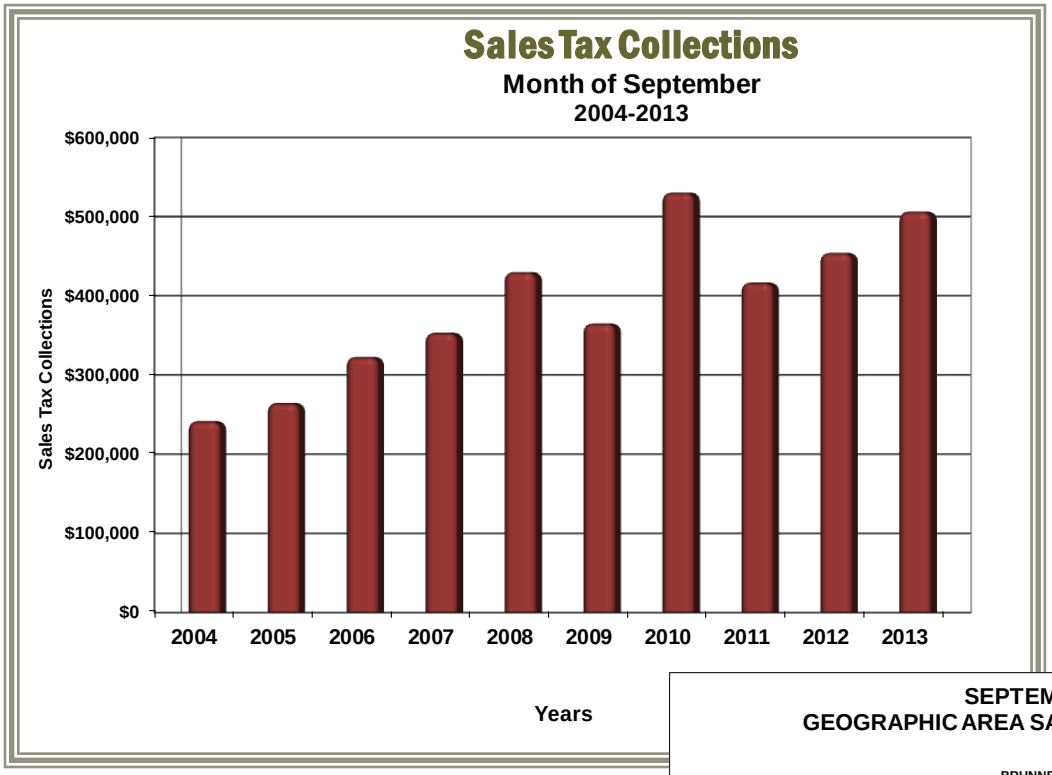


Our sales tax base is still anchored through groceries and utilities.

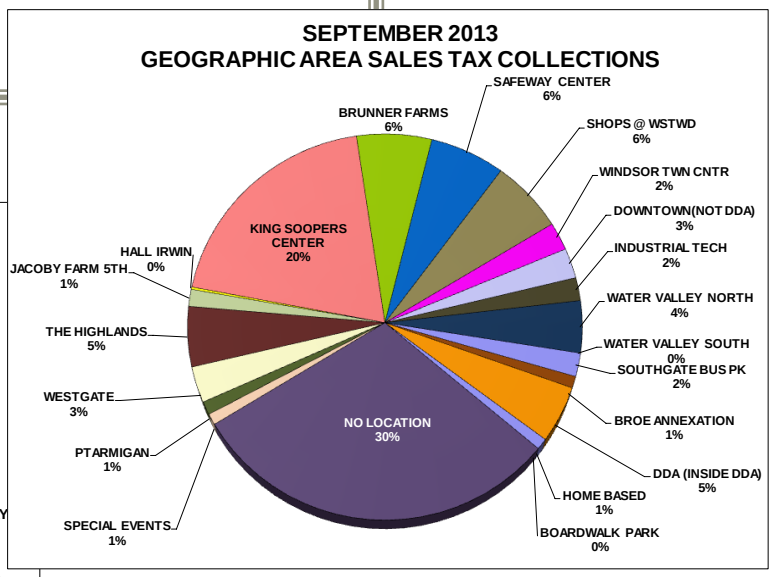
Year-to-Date Sales Tax

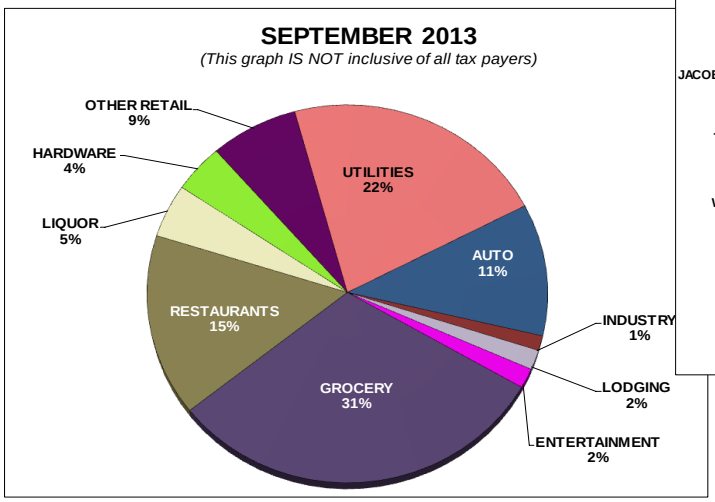
Our sales tax base has not changed a great deal over the past decade, with groceries and utilities leading our industry sectors in sales tax collection. Some of this increase can be attributed to an overall increase in prices and cost of living.

- Groceries, restaurants, liquor, general retail and auto parts all increased collections over September 2012.
- Utility sales tax collections have averaged in the range of $94,000 per month. I expect this will begin to increase as we add more single family homes and move into the heating season.



In September 2013, we have collected $506,393 in sales tax.





Geographic area chart now shows a breakdown between the DDA and the rest of the Downtown

Monthly Sales Tax

- September 2013 gross collections of $506,393 were 11.49% higher than September 2012 collections of $454,220. September 2013 was the second highest September gross sales collection on record, behind September 2010 that was aided by a one time audit collection of $144,892.
- Our sales tax base is necessity driven, as demonstrated in the pie graph above. Necessities of food, utilities and automobiles comprised 79% of our September collections. This base coupled with increased population and housing continue to drive sales tax collections higher.

All Funds Expense Chart

September 2013

Benchmark =75%

General Government	Current Month	YTD Actual	2013 Budget	% of Budget
General Fund	$905,162	$9,256,902	$12,338,917	75%
Special Revenue	$58,571	$1,481,552	$2,753,029	54%
Internal Service	$145,215	$1,594,392	$2,355,908	68%
Other Entities(WBA)	$12,090	$108,815	$145,080	75%
Sub Total Gen Govt Operations	$1,121,038	$12,441,661	$17,592,934	71%
Enterprise Funds				
Water-Operations	$324,627	$2,204,756	$2,700,133	82%
Sewer-Operations	$80,423	$1,042,182	$1,238,601	84%
Drainage-Operations	$30,351	$354,146	$406,995	87%
Non-Potable Operations	$5,038	$111,198	$387,780	29%
Sub Total Enterprise Operations	$440,439	$3,712,282	$4,733,509	78%
Operations Total	**$1,561,477**	**$16,153,943**	**$22,326,443**	**72%**

plus transfers to CIF and Non-Potable for loan

Operations expenditures are tracking where they are expected through the first nine months of the year.

General Govt Capital	Current Month	YTD Actual	2013 Budget	% of Budget
Capital Improvement Fund	$643,160	$1,971,445	$5,080,214	39%
Enterprise Fund Capital				
Water	$0	$82,974	$2,673,542	3%
Sewer	$19,876	$350,081	$787,250	44%
Drainage	$3,359	$3,359	$856,000	0%
Non-Potable	$24,840	$147,648	$380,700	39%
Sub Total Enterprise Capital	$48,075	$584,062	$4,697,492	12%
Capital Total	**$691,235**	**$2,555,507**	**$9,777,706**	**26%**
plus transfer to Non-Potable for loan				
Total Budget	**$2,252,712**	**$18,709,450**	**$32,104,149**	**58%**

Through September, operating and capital expenditures combined to equal 58% of the 2013 Budget.

All Funds Expenditures

As a tracking tool, we would expend no more than 75% of our annual budgeted expenditures through the month of September. Our total expenditures budget is at 58% of the total budget.

The third and fourth quarters usually show the highest capital expenditure cost, as we pay for projects as they are completed. Capital expenditures are starting to increase the percentage of the budget expended, as the construction season is coming to an end. I do not think we will spend all of our budgeted capital money in 2013. Several projects were deliberately rescheduled for future years, while others scheduled to begin earlier this year were delayed and will not be completed until 2014.

General Fund Expense Chart

	Department	Current Month	YTD Actual	2013 Budget	% of Budget
410	Town Clerk/Customer Service	$43,461	$404,608	$527,426	76.7%
411	Mayor & Board	$28,583	$333,016	$470,308	70.8%
412	Municipal Court	$20	$11,392	$19,659	57.9%
413	Town Manager	$21,709	$194,750	$277,826	70.1%
415	Finance	$36,676	$450,266	$579,638	77.7%
416	Human Resources	$25,061	$234,703	$345,699	67.9%
418	Legal Services	$36,265	$305,069	$370,000	82.5%
419	Planning & Zoning	$39,231	$679,962	$809,677	84.0%
420	Economic Development	$10,797	$147,823	$182,527	81.0%
421	Police	$198,659	$2,038,752	$2,685,654	75.9%
428	Recycling	$2,480	$23,304	$41,470	56.2%
429	Streets	$72,715	$712,498	$949,735	75.0%
430	Public Works	$39,469	$305,258	$424,111	72.0%
431	Engineering	$44,711	$455,571	$600,833	75.8%
432	Cemetery	$7,187	$76,504	$112,878	67.8%
433	Community Events	$2,487	$80,871	$106,411	76.0%
450	Forestry	$20,547	$205,198	$309,139	66.4%
451	Recreation Programs	$136,456	$1,226,761	$1,668,558	73.5%
452	Pool/Aquatics	$6,893	$168,802	$189,884	88.9%
454	Parks	$95,114	$847,389	$1,178,951	71.9%
455	Safety/Loss Control	$904	$3,140	$15,510	20.2%
456	Art & Heritage	$18,880	$188,502	$253,595	74.3%
457	Town Hall	$16,857	$162,763	$219,429	74.2%
	Total General Fund Operations	**$905,162**	**$9,256,902**	**$12,338,917**	**75.0%**

General Fund Expenditures

The General Fund represents the bulk of our daily operations budget. Again judging by the nine month, 75% rule of thumb, expenditures are where they should be after nine months.

The planning department expenditures reflect the payment of $307,000 in grant money to the Housing authority. This represents 100% of that particular line item.

Economic development also reflects 100% expenditures in budgeted support for local organizations.

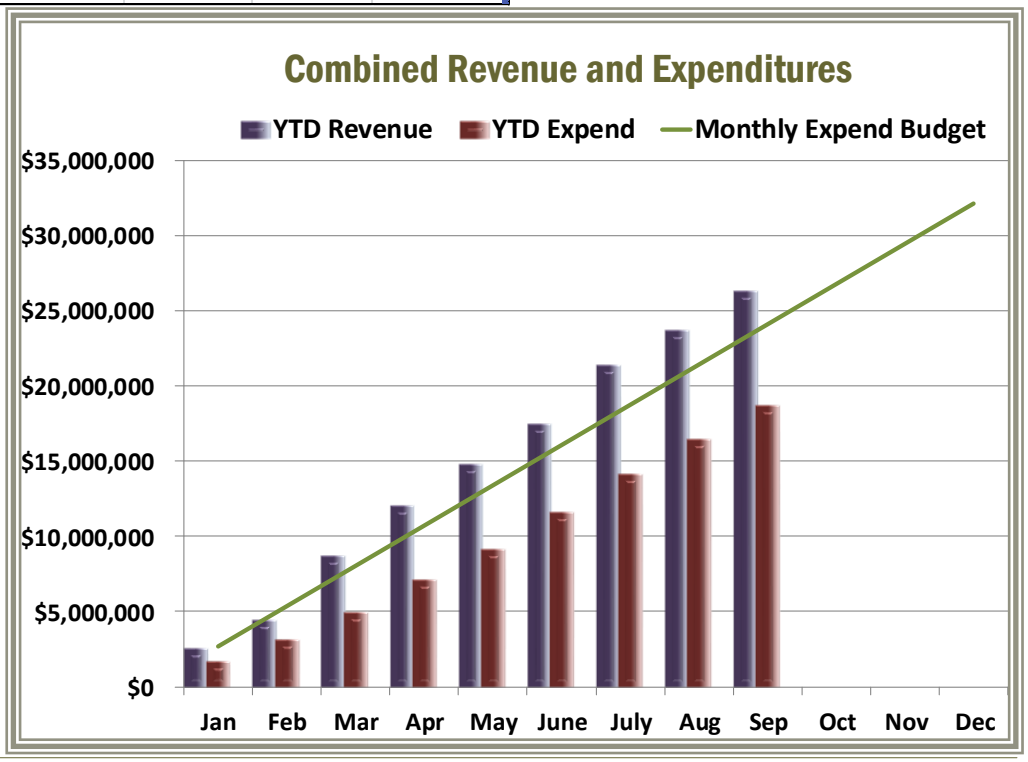
Aquatics are ahead of the 75% benchmark as well. This is to be expected as most of that budget is expended in three to four summer months.

Our monthly operating expenditures should decrease in the next few months as the busier summer months are passed.

Revenue and Expenditure Compared to Budget

The chart on the right shows monthly revenue compared to monthly expenditure as well as a trend line showing the total 2013 budget expended equally over twelve months.

September YTD revenue total exceeded expenditures by roughly $7.6 million. Monthly expenditures spread over 12 months equals $2,675,346 per month. Our total revenue for September was $2,601,995.



Our Vision:

WINDSOR'S hometown feel fosters an energetic COMMUNITY SPIRIT AND PRIDE that makes our town a special place in Northern Colorado.

WINDSOR has a VIBRANT DOWNTOWN AND LAKE which is a community focal point and destination.

WINDSOR has a STRONG LOCAL ECONOMY with diverse business sectors that provide jobs and services for residents.

WINDSOR promotes quality development through MANAGED GROWTH.

WINDSOR residents enjoy a friendly community with HOUSING OPPORTUNITIES, CHOICES for LEISURE, CULTURAL ACTIVITIES, and RECREATION, and MOBILITY for all.

WINDSOR is a GOOD ENVIRONMENTAL STEWARD.

TOWN OF WINDSOR
COLORADO

2013 Monthly Financial Report

Town of Windsor
301 Walnut Street
Windsor, CO 80550

Phone: 970-674-2400
Fax: 970-674-2456

The Town of WINDSOR strengthens community through the fiscally responsible and equitable delivery of services, support of hometown pride, and encourages resident involvement.

The key categories coming forth from the adopted 2013 Budget are:

COMPLETING STARTED OR PROMISED PROJECTS

STEWARDSHIP OF THE COMMUNITY ASSETS

CONTINUING TO PREPARE FOR THE FUTURE

MAINTAINING A MOTIVATED (PRIDE) EMPLOYEE GROUP

We're on the Web

www.windsorgov.com

COMCAST

8000 E. Iliff Ave.
Denver, CO 80231

TB communications

October 16, 2013

VIA FACSIMILE

Kelly Arnold
Town Manager
Town of Windsor
301 Walnut St.
Windsor, CO 80550
Fax No. 970-686-7180

RE: Channel Lineup Changes

Dear Kelly,

Effective November 20, 2013 Comcast will make the following changes to the channel lineup serving your community.

FX (Ch. 39) will move to channel 65
Bloomberg (Ch. 128) will move to channel 39

Should you have any questions regarding this information, please feel free to contact me at 303-603-2012.

Sincerely,

Glenn Walker

Glenn Walker
Government Affairs Manager