



**TOWN BOARD REGULAR MEETING**  
January 25, 2016 - 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.

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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
  - Mayor Pro Tem Baker – Water & Sewer Board; North Front Range/MPO alternate
  - Town Board Member Morgan – Parks, Recreation & Culture; Great Western Trail Authority
  - Town Board Member Melendez – Downtown Development Authority; Chamber of Commerce
  - Town Board Member Rose – Clearview Library Board
  - Town Board Member Bishop-Cotner – Historic Preservation Commission; Planning Commission
  - Town Board Member Adams – Tree Board; Poudre River Trail Corridor Board
  - Mayor Vazquez – Windsor Housing Authority; North Front Range/MPO

5. 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 January 11, 2016 Regular Town Board Meeting – K. Eucker
2. Advisory Board Appointments – P. Garcia
3. Resolution No. 2016-06 – A Resolution Approving and Accepting a Deed of Easement for Water Line Facility in the Windsor Commons Second Filing, Lot 3, in the Town of Windsor, Colorado – J. Olhava
4. Resolution No. 2016-08 - A Resolution Approving an Intergovernmental Agreement between the Town of Windsor and the Colorado Department of Transportation with Respect to Improvements being Undertaken by the Great Western Trail Corridor Authority – I. McCargar

C. BOARD ACTION

1. Ordinance No. 2016-1516 – An Ordinance Fixing the Compensation of the Municipal Court Judge and Municipal Court Clerk for the Town of Windsor in Compliance with Sections 13-10-107 and 13-10-108, C.R.S., and Section 2-4-90 of the *Windsor Municipal Code*  
*Super-majority vote required for adoption on second reading*
  - Second Reading
  - Legislative action
  - Staff presentation: Ian McCargar, Town Attorney
2. Ordinance No. 2016-1517 - Repealing, Amending and Readopting Article XV, Chapter 17 of the Windsor Municipal Code regarding Road Impact Fees  
*Super-majority vote required for adoption on second reading*
  - Second Reading
  - Legislative action
  - Staff Presentation: Scott Ballstadt, Director of Planning
3. Ordinance No. 2016-1518 - Repealing, Amending and Readopting Section 16-10-20 of the Windsor Municipal Code and Adopting Section 16-7-85 of the Windsor Municipal Code regarding Home Occupations involving tutoring or instruction  
*Super-majority vote required for adoption on second reading*
  - Second Reading
  - Legislative action
  - Staff Presentation: Paul Hornbeck, Senior Planner
4. Resolution No. 2016-07 – A Resolution Approving an Intergovernmental Agreement Between the Town of Windsor and the RainDance Metropolitan District No. 1 Regarding Improvements to New Liberty Road, and Authorizing the Mayor to Execute Same
  - Legislative action
  - Staff presentation: Kelly Arnold, Town Manager
5. Community Development Report
  - Staff presentation: Scott Ballstadt, Director of Planning
6. Land Use Development Project Workflows
  - Staff presentation: Josh Olhava, Senior Planner

D. COMMUNICATIONS

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

E. ADJOURN



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MINUTES

A. CALL TO ORDER

Mayor Vazquez called the regular meeting to order at 7:03 p.m.

1. Roll Call	Mayor		John Vazquez Christian Morgan Kristie Melendez Robert Bishop-Cotner Ivan Adams
	Mayor Pro Tem	Absent Absent	Myles Baker Jeremy Rose

Also Present:	Town Manager	Kelly Arnold
	Town Attorney	Ian McCargar
	Town Clerk/Assistant to Town Manager	Patti Garcia
	Communications/Assistant to Town Manager	Kelly Unger
	Chief of Police	John Michaels
	Director of Engineering	Dennis Wagner
	Associate Planner	Paul Hornbeck
	Chief Planner	Carlin Barkeen
	Director of Planning	Scott Ballstadt
	Assistant Town Attorney/Town Prosecutor	Kim Emil
	Deputy Town Clerk	Krystal Eucker

2. Pledge of Allegiance

Mr. Vazquez asked the Boy Scouts in the audience to lead the 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

**Town Board Member Melendez motioned to approve the agenda as presented. Town Board Member Bishop-Cotner seconded the motion. Roll call on the vote resulted as follows: Yeas – Morgan, Melendez, Bishop-Cotner, Adams, Vazquez; Nays- None; Motion passed.**

4. Board Liaison Reports

- Mayor Pro Tem Baker – Water & Sewer Board; North Front Range/MPO alternate  
Mayor Pro Tem Baker – Absent
- Town Board Member Morgan – Parks, Recreation & Culture; Great Western Trail Authority  
Town Board Member Morgan reported the Parks, Recreation & Culture Board was not able to meet in January due to a lack of a quorum. Mr. Morgan encouraged individuals interested in serving on an advisory board to apply for the positions.

Mr. Morgan reported the Great Western Trail Authority met in December and recapped the 2015 year. There was not much discussion on official business. The meeting in January was geared more towards the business meeting discussing the budget, elected presiding officers and reviewing the bylaws. The Great Western Trail Authority was not awarded the 16 in 16 Governor's Award.

- Town Board Member Melendez – Downtown Development Authority; Chamber of Commerce

Town Board Member Melendez had no report for the DDA.

Ms. Melendez reported the Chamber of Commerce met on January 6, 2016 and seated five new board members. The board retreat is scheduled for February 18, 2016 at which time the election of officers will take place.

- Town Board Member Rose – Clearview Library Board

Town Board Member Rose - Absent

- Town Board Member Bishop-Cotner – Historic Preservation Commission; Planning Commission

Town Board Member Bishop-Cotner reported the Historic Preservation Commission meeting was cancelled.

Mr. Bishop-Cotner reported the Planning Commission had contention towards the home occupation ordinance amendment and voted unanimously to turn it down.

- Town Board Member Adams – Tree Board; Poudre River Trail Corridor Board

Town Board Member Adams reported the Tree Board did not meet.

Mr. Adams report the Poudre River Trail Board met and discussion pertained to land acquisition along the trail and the disposition of the Go NoCO grant. The trail does need some work done due to flooding so the board asked for \$30,000 to complete the work and it was approved. The Trail-A-Thon has been scheduled for May.

- Mayor Vazquez – Windsor Housing Authority; North Front Range/MPO  
Mayor Vazquez was not able to attend the meeting.

5. Invited to be Heard

Mayor Vazquez opened the meeting for public comment to which there was none.

B. CONSENT CALENDAR

1. Minutes of the December 14, 2015 Regular Town Board Meeting – K. Eucker
2. Resolution No. 2016-01 – A Resolution Designating a Public Place for the Posting of Notices Concerning Public Meetings – P. Garcia
3. Resolution No. 2016-02 - Resolution Approving and Accepting a Deed of Dedication for Public Use as a Perpetual Right of Way for Street, Transportation and Utility Purposes Concerning the Northeast Corner of 7th Street and Eastman Park Drive, in the Town of Windsor, Colorado – I.
4. List of Bills December 2015 – D. Moyer

Mr. Morgan asked for clarification of item number 3.

Mr. McCargar stated Item 3.B is approving and accepting a Deed of Dedication from a property owner that gives temporary easement for construction of the round-a-bout scheduled for instillation at 7<sup>th</sup> and Eastman Park Drive and also a permeant easement to

occupy that space perpetually for the round- a-bout. It is voluntary transaction with the land owner and the resolution is the formal action to accept the deed.

**Town Board Member Adams motioned to approve the consent calendar as presented; Town Board Member Morgan seconded the motion. Roll call on the vote resulted as follows: Yeas – Morgan, Melendez, Bishop-Cotner, Adams, Vazquez; Nays- None; Motion passed.**

#### C. BOARD ACTION

1. Ordinance No. 2015-1515 – An Ordinance Repealing, Amending and Readopting Article VII, Section 11-7-10 of the Windsor Municipal Code with respect to the Snow and Ice Removal Lien Process

*Super-majority vote required for adoption on second reading*

- Second Reading
- Legislative action
- Staff presentation: Kimberly Emil, Assistant Town Attorney

**Town Board Member Melendez motioned to approve Ordinance No. 2015-1515 – An Ordinance Repealing, Amending and Readopting Article VII, Section 11-7-10 of the Windsor Municipal Code with respect to the Snow and Ice Removal Lien Process; Town Board Member Adams seconded the motion.**

Assistant Town Attorney Kimberly Emil stated on December 14, 2015 the Town Board approved on first reading an amendment to the Windsor Municipal Code, known generally as the Snow and Ice Removal Code which will correct a clerical error. There have been no changes since first reading.

**Roll call on the vote resulted as follows: Yeas –Morgan, Melendez, Bishop-Cotner, Adams, Vazquez; Nays- None; Motion passed.**

2. Ordinance No. 2016-1516 – An Ordinance Fixing the Compensation of the Municipal Court Judge and Municipal Court Clerk for the Town of Windsor in Compliance with Sections 13-10-107 and 13-10-108, C.R.S., and Section 2-4-90 of the Windsor Municipal Code

- First Reading
- Legislative action
- Staff presentation: Ian McCargar, Town Attorney

**Town Board Member Melendez motioned to approve Ordinance 2016-1516 – An Ordinance Fixing the Compensation of the Municipal Court Judge and Municipal Court Clerk for the Town of Windsor in Compliance with Sections 13-10-107 and 13-10-108, C.R.S., and Section 2-4-90 of the Windsor Municipal Code; Town Board Member Morgan seconded the motion.**

Town Attorney Ian McCargar stated the statutes governing qualified municipal courts of record require that the compensation of the Municipal Judge and Office of the Municipal Court Clerk be set by ordinance. This requirement has also been incorporated into the Town's Municipal Code. The Town Board has previously approved the 2016 Annual Budget, within which compensation

for the Municipal Judge and Municipal Court Clerk's Office has been fixed. However, in order to comply with the requirements of state law and the Code, an Ordinance approving those appropriations is required.

The Ordinance Fixing the Compensation of the Municipal Court Judge and Municipal Court Clerk incorporates the appropriations for these offices from the 2016 Annual Budget, thus satisfying the requirements of law.

**Roll call on the vote resulted as follows: Yeas –Morgan, Melendez, Bishop-Cotner, Adams, Vazquez; Nays- None; Motion passed.**

3. Public Hearing – Ordinance No. 2016-1517 - Repealing, Amending and Readopting Article XV, Chapter 17 of the Windsor Municipal Code regarding Road Impact Fees
  - Staff presentation: Scott Ballstadt, Director of Planning

**Town Board Member Adams motioned to open the public hearing; Town Board Member Morgan seconded the motion. Roll call on the vote resulted as follows: Yeas –Morgan, Melendez, Bishop-Cotner, Adams, Vazquez; Nays- None; Motion passed.**

Director of Planning Scott Ballstadt stated road impact fees are typically collected upon the issuance of a building permit that will result in increased traffic-generating development. However, the code also requires payment of road impact fees based on increased traffic generation and the historic use of the property whether or not the new use involves changes to the building or property which has been referred to as the look back provision. The look back provision has been met with some consternation from the business community.

The proposed ordinance amendment does not affect the road impact fees collected on new buildings or if a building is expanded to add square footage which could in turn increase traffic. The ordinance proposes to eliminate the look back provision so that when a building is built, the road impact fees will be collected at that time, but as uses change over time, the Town will not collect additional fees. Not only has the look back provision been a disincentive to reinvest in existing buildings, it has become an administrative problem to track uses as they change. The look back provision constitutes a very small portion of the overall road impact fees that are collected.

The proposed ordinance will also change the rate of interest paid on refunds to the prime rate.

The proposed ordinance is in conformance with the Comprehensive Plan, the Vision 2025 document and the Strategic Plan.

Staff recommends approval of the ordinance.

Ms. Melendez inquired about clarification on a current business owner that is underutilizing space, sells the business and a new owner comes in with increased occupancy, the new owner will be exempt from road impact fees at that point. At what point would the increased traffic be addressed if that should become a problem.

Mr. Ballstadt stated that is correct; if the footprint is not expanding or adding additional square footage there would be no additional road impact fee.

Mr. Morgan inquired if that process would also give refunds on business that decreases intensity.

Mr. Ballstadt stated refunds would not be issued. If a building sits vacant for a period of time, a road impact fee would be assessed.

Mr. Morgan inquired if there is an appeal process that a business owner can go through regarding the road impact fee assessment.

Mr. Ballstadt stated a business can order an independent impact fee analysis.

Mr. Vazquez requested all documentation and information presented be entered into the record.

**Town Board Member Melendez motioned to close the public hearing; Town Board Member Adams seconded the motion. Roll call on the vote resulted as follows: Yeas –Morgan, Melendez, Bishop-Cotner, Adams, Vazquez; Nays- None; Motion passed.**

4. Ordinance No. 2016-1517 - Repealing, Amending and Readopting Article XV, Chapter 17 of the Windsor Municipal Code regarding Road Impact Fees
  - First Reading
  - Legislative action
  - Staff Presentation: Scott Ballstadt, Director of Planning

**Town Board Member Melendez motioned to approve Ordinance No. 2016-1517 - Repealing, Amending and Readopting Article XV, Chapter 17 of the Windsor Municipal Code regarding Road Impact Fees; Town Board Member Morgan seconded the motion.**

Mr. Ballstadt stated a question that was asked in a previous work session was what the total amount of road impact fees that were collected in 2015 and how that relates to the look back provision. Through November of 2015, \$940,000 was collected in road impact fees and of that \$14,595 was look back fees that were waived.

**Roll call on the vote resulted as follows: Yeas –Morgan, Melendez, Bishop-Cotner, Adams, Vazquez; Nays- None; Motion passed.**

5. Public Hearing – Ordinance No. 2016-1518 - Repealing, Amending and Readopting Section 16-10-20 of the Windsor Municipal Code and Adopting Section 16-7-85 of the Windsor Municipal Code regarding Home Occupations involving tutoring or instruction
  - Staff presentation: Paul Hornbeck, Senior Planner

**Town Board Member Melendez motioned to open the public hearing; Town Board Member Morgan seconded the motion. Roll call on the vote resulted as follows: Yeas –Morgan, Melendez, Bishop-Cotner, Adams, Vazquez; Nays- None; Motion passed.**

Senior Planner Paul Hornbeck stated the Municipal Code currently allows residents to operate home-based businesses under the Home Occupations provisions of Sec. 16-10-20. When a home occupation involves tutoring or instruction, the Code currently limits the number of students to no more than two at any one time. Two residents have requested that the Town consider increasing the number of students allowed from two to eight to accommodate the type of curriculum they use in teaching music lessons.

The proposed code amendment would keep the current regulations in place for home occupations with two or fewer students while requiring a Conditional Use Grant approval by the Town Board for home occupations with more than two students at any one time. The code amendment also includes a number of additional criteria that home occupations would be subject to if there are more than two students. The additional requirements were developed based on feedback from the Planning Commission and Town Board at work sessions.

Any conditional use grant for instruction or tutoring of more than two (2) students shall:

- Be limited to tutoring or instruction of children under the age of eighteen (18) years;
- Not exceed eight (8) students present at the dwelling unit at any one (1) time;
- Have available one (1) on-site parking space for every two (2) students present at the dwelling at any one (1) time;
- Be limited to hours of operation between 7:00 a.m. and 8:00 p.m.;
- Be limited to no more than fifteen (15) hours per week of instruction;
- Comply with all State of Colorado child care licensing requirements, including requirements for licensing exemption status; and
- Be subject to inspection in order to ensure that all applicable building and fire codes are met.

Planning Commission recommended denial of the ordinance with two main concerns; the first is having commercial businesses in residential neighborhoods and the second was giving an unfair advantage to home based businesses compared to businesses in commercial locations.

Mr. Morgan inquired about the age limit on the conditions as most seniors in high school are age 18.

Mr. Hornbeck stated the age limit could be modified.

Mr. McCargar stated this is a legislative act so changes can be accommodated if needed. If there are many changes, it may be requested to continue formal action to make certain the code is compliant.

Mr. Adams requested to express his opinion on the current issue. This amendment has come before the Town Board a couple times during the last year. The code currently allows up to two students and the Town Board requested staff to make reasonable changes to the code which they did and that includes the conditional use grant provision. The two principles in this matter attended the previous meetings and were in agreement with the conditions of the conditional use grant as presented. The Planning Commission considered the matter and according to the ordinance presented states the Planning Commission recommended adoption of the ordinance. However at their January 6, 2016 meeting, the Planning Commission was concerned about having commercial businesses in residential neighborhoods and about giving an unfair advantage to home based businesses compared to businesses in commercial locations. The

Planning Commission therefore forwarded a recommendation of denial of the proposed code amendment to the Town Board. Mr. Adams stated there are already existing businesses in residential neighborhood such as hair salons and independent consultant businesses. Mr. Adams also brought up the point of a family having three or four students being home schooled. Mr. Adams stated he fully supports the amendment to the ordinance.

Mr. Bishop-Cotner stated the recommendation was denied at the Planning Commission.

Mr. Vazquez stated this issue was discussed at a work session and the applicant came before the Town Board with a request which led to the discussion of modifying the ordinance to begin with and bringing some clarification. The proposal from staff is that we will modify the policy to include the conditional use grant process and that process will include seven conditions. The Planning Commission does not agree with the conditional use grant.

Mr. Bishop-Cotner stated the issue with the Planning Commission is that fundamentally the tutoring should stay no more than two students; the issue is tutoring and nothing else.

Mr. Vazquez inquired if the discussion is narrowed to just tutoring, how is that fair to home tutoring when independent consultants could have multiple individuals in the home at one time for a sales opportunity.

Mr. Bishop-Cotner stated the ordinance is specifically talking about tutoring.

Mr. Adams inquired if the Planning Commission discussed the difference between home schooling and tutoring.

Mr. Bishop-Cotner stated home schooling is a different topic and issue because it is being done in the home by the parents.

Mr. Hornbeck stated the concern from the Planning Commission was unfair competition with music based teaching or tutoring. There are commercially licensed businesses in commercial zones that teach and tutor music lessons so the Planning Commission's concern was the competition to those businesses.

Mr. Bishop-Cotner stated the commercially licensed businesses in commercial zones are paying overhead, electricity, heating and other expenses.

Mr. Vasquez inquired about any individuals that came out and were opposed to the ordinance amendment.

Mr. Bishop-Cotner stated there had been as the reason the issue was brought forward is due to an individual in that neighborhood who is opposed to the amount of traffic and the parking situation in that neighborhood.

Mr. Vazquez stated this ordinance would then provide due process for a home owner to use their personal property as they best see fit for their best interest. If there is a concerned resident they will be heard as part of the conditional use grant process. By denying the amendment, that homeowner is then denied due process.

Mr. Bishop-Cotner stated the homeowner can go open up the business in a commercial zone.

Mr. Adams inquired if the Planning Commission meeting on January 6, 2016 was before the ordinance was written and presented for the Town Board's consideration.

Mr. Hornbeck stated the ordinance before the Town Board was the same ordinance that was presented to the Planning Commission.

Mr. Adams stated in the ordinance it states the Planning Commission did approve the ordinance as presented.

Mr. Hornbeck stated there were work sessions on the topic and that the first Planning Commission work session they may have expressed some support for the amendment.

Mr. Adams recited the whereas clause that was included in the ordinance presented to the Town Board regarding the Planning Commission forwarding a recommendation of approval to the Town Board.

Mr. McCargar stated the ordinance that was included in the packet was prepared before the Planning Commission meeting. That recital is incorrect as it assumed the Planning Commission would be recommending approval.

Mr. Morgan inquired if the CUG was granted could it be revoked and would it be reviewed year by year.

Mr. Hornbeck stated the conditions can be set as needed and if there are complaints, those can be brought before the Town Board.

Mr. Vazquez stated he likes the process that has been created as it is not an automatic approval or denial.

Mr. Hornbeck stated there is no applicant as there are two people that are advocating for the amendment. Since this is a legislative matter there is no applicant per se.

Robin Flores, 4630 Free Hold Drive, Windsor, CO and Kim Seyboldt, 1014 Brisas Court, Windsor, CO addressed the Town Board.

Ms. Melendez inquired if the conditions listed in the conditional use grant are acceptable to Ms. Flores and Ms. Seyboldt.

Ms. Seyboldt stated out of the seven conditions listed the only one not being done at this time is the inspection on the homes. Ms. Flores stated they are in need of clarification on what type of inspection was needed and how that needed to be done. Also, the letter of exemption is still needed.

Mr. Bishop-Cotner inquired if they have four parking spaces available on site.

Ms. Seyboldt stated she has about 10 spaces.

Ms. Melendez inquired if the music model they use is intended to be a home business.

Ms. Seyboldt stated the curriculum is designed for home teaching for purposes of research that was done to prepare the curriculum as to the comfort level of children and repetitions that best cement those concepts.

Ms. Flores stated they are required to purchase licensing through Let's Play Music and are required to charge more if they hold sessions in commercial establishments. In turn, that would put them out of business as there are teachers in Fort Collins that are able to teach in their homes for a lower price.

Ms. Melendez inquired if the program only allows them to teach students up to age 18.

Ms. Flores stated the program is designed to go to age eight.

Ms. Seyboldt stated once children reach age eight, they are then referred to other music programs and lessons.

Mr. Bishop-Cotner inquired as to the possibility to be able to teach this curriculum in a commercial setting and raising the prices.

Ms. Flores stated if an individual is not able to teach in their home they can do so in a commercial establishment but will charge more.

Mr. Bishop-Cotner inquired about the overhead of the current businesses.

Ms. Seyboldt inquired if the Planning Commission spoke with the other music businesses in town to see if they had any concerns with the amendment.

Mr. Bishop-Cotner asked Ms. Seyboldt and Ms. Flores what their overhead is.

Ms. Flores stated they have to pay for equipment such as keyboards, licensing fees, a fee to the company to use their curriculum each year. There are other expenses to run this business beside heat and electricity.

Mr. Morgan commented to the Ms. Flores and Ms. Seyboldt that they are not required to answer the question regarding individual's overhead.

Mr. Bishop-Cotner stated the Planning Commission's concern is that in the commercial business they have all the expenses and if the business is done in the home those expenses are lessened.

Ms. Flores stated there is a piano and guitar studio on Main Street and they have several teachers in one location so in order for Ms. Flores and Ms. Seyboldt to be comparable to them, they would need to open up a studio with three to four teachers and work out hours that are convenient for families and currently the hours for teaching are very part time; one to two days a week for a couple hours. The comparison may not be exactly the same as the overhead is not the same either.

Mr. Bishop-Cotner stated that their response answers the questions regarding overhead and was a good explanation.

Mr. Vazquez stated it is not the job of the Town Board to fix problems that they do not know exist. The Town Board is unaware of the feelings of the music businesses along Main Street and they could be in favor of this program and embrace it as a feeder program. The conditional use

grant process will give due process and the ability to allow individuals in favor or against the use to be heard.

Many individuals from the public appeared in support of the business Let's Play Music. Parents, grandparents, child and graduates of the program spoke of the benefits of the affordable home based music program formatted for group teachings. Some of the comments included:

- This program lets children be creative.
- The program is filling a gap that the arts program in public schools is lacking.
- The program is a feeder program to teach children before moving into commercial music lessons.
- The programs helps introverted children open up in a group setting.

A former student of the program that has graduated stated the program was very helpful for her as she learn a lot before starting orchestra and understands music theory. Younger children sometimes get nervous when they first go to school but the home environment puts children at ease.

Mr. Bishop-Cotner inquired as to when she left the program.

The former student left the program at about eight years old because she finished the program and moved on to other music programs.

Mr. Bishop-Cotner inquired as to what finishing the program actually means.

The former student stated it is a three year program

Ms. Seyboldt stated they are then referred to private piano teachers, or they move onto orchestra or other similar classes.

Mr. Vazquez inquired as to children not having an opportunity to start music lessons at a young age if this program did not exist.

Ms. Seyboldt stated that is correct. Most private piano teachers require that children are able to know and read their letters and have a certain finger strength which comes more at age seven or eight. Ms. Seyboldt stated in those three years, they touch on high school music theory with the seven and eight year olds.

Mr. Bishop-Cotner stated one of the misconceptions has been that it was a program from age four to age 18. The program was designed intentionally for younger students to feed into other programs. Essentially the argument regarding overheard is mute as this program is not similar to traditional music lessons.

Mr. Morgan reminded colleagues that this ordinance is not business specific as it is not written for them so consideration needs to be for what is written. Although the Let's Play Music program normally ends at age eight, the ordinance is written up to age 18 and there may be other opportunities for individuals.

Mr. Bishop-Cotner stated he agreed with the mayor regarding the idea of due process.

Some additional comments of support include:

- The program is intended to be a three year program but it provides some pre-school classes as well.
- The ordinance amendment supports neighborliness and safety.
- The program not only brings children together but it also brings parents together.
- The home base business feels safer in a neighborhood than parking in a parking lot.
- The program thrives best in group participation classes.

Direct neighbors of the Flores residence stepped forward and stated they would be the ones who would have direct impact from the music program but they are in support of the music program Ms. Flores is teaching. The neighbors inquired as to what would happen if another neighbor got upset and came up with a reason to challenge the conditional use grant or try to get them to discontinue their teaching based on a personal matter.

Mr. Vazquez stated as long as there is a conditional use grant that is approved and the individuals are in compliance they should be fine to continue.

**Town Board Member Melendez motioned to close the public hearing; Town Board Member Morgan seconded the motion. Roll call on the vote resulted as follows: Yeas –Morgan, Melendez, Bishop-Cotner, Adams, Vazquez; Nays- None; Motion passed.**

6. Ordinance No. 2016-1518 - Repealing, Amending and Readopting Section 16-10-20 of the Windsor Municipal Code and Adopting Section 16-7-85 of the Windsor Municipal Code regarding Home Occupations involving tutoring or instruction
- First Reading
  - Legislative action
  - Staff Presentation: Paul Hornbeck, Senior Planner

**Town Board Member Adams motioned to approve Ordinance No. 2016-1518 - Repealing, Amending and Readopting Section 16-10-20 of the Windsor Municipal Code and Adopting Section 16-7-85 of the Windsor Municipal Code regarding Home Occupations involving tutoring or instruction; Town Board Member Morgan seconded the motion.**

Mr. Hornbeck had nothing further to add.

Mr. McCargar will change the recital within the ordinance to reflect the Planning Commission's actual position on the ordinance as well as changing the age in the conditional use grant conditions to no greater than the age of 18.

**Roll call on the vote resulted as follows: Yeas –Morgan, Melendez, Bishop-Cotner, Adams, Vazquez; Nays- None; Motion passed.**

7. Site Plan Presentation – Valley Center Subdivision, Lot F – Agrifab – Alan Highstreet, Agrifab Colorado, LLC applicant/ Josh Erramouspe, Olsson Associates, applicant's representative
- Staff presentation: Paul Hornbeck, Senior Planner

Senior Planner Paul Hornbeck stated the applicant is proposing to construct a new building in the Limited Industrial (I-L) zoning district in the Valley Center Subdivision; 9231 Eastman Park Drive. A building was previously located on the site but was destroyed by the tornado in 2008. Some infrastructure remains in place from that building which the applicant intends to utilize.

Site characteristics include:

- 1.67 Acre Property.
- 6,000 square foot metal building;
- Outdoor storage;
- Off-street parking; and
- Landscaped area of 16% of the property

The current presentation is intended for the Town Board's information. Should the Town Board have any comments or concerns pertaining to this project, please refer such comments to staff during the presentation so that they may be addressed during staff's review of the project. The site plan will be reviewed and approved administratively by staff.

The application is in conformance with the Comprehensive Plan as well as the Vision 2025 document.

Ms. Melendez inquired as to the nature of the business.

Mr. Erramouspe stated it is a construction company that specializes in agricultural construction and acts as a general contractor working from the ground up front dirt work into the development stage.

Mr. Vazquez inquired if the materials will be stored within the building.

Mr. Erramouspe stated most of the materials will be directly shipped to the project site. The building will general be used for a home base for tools, equipment and small supplies that should not be stored outside.

Mr. Vazquez inquired if there are any conditions that seem unusual.

Mr. Hornbeck stated there are no unusual conditions.

8. Resolution No. 2016-03 – A Resolution Authorizing the Town Manager to Waive a Portion of Windsor Use Tax for the Benefit of the Windsor Housing Authority's Windsor Meadows Project, Phase II

- Legislative action
- Staff presentation: Kelly Arnold, Town Manager

**Town Board Member Melendez motioned to approve Resolution No. 2016-03; Town Board Member Morgan seconded the motion.**

Town Manager Kelly Arnold stated John Moore, President of the Windsor Housing Authority is in the audience as well as Sam Betters representing the management and the operations of the Windsor Housing Authority. Last month Mr. Betters notified the Town of Windsor of a new

interpretation by the State of Colorado regarding what is exempt for housing authorities on construction and development projects. Previous interpretation has been that all taxes were exempt for such developments statewide. Recently a new individual with the Department of Revenue reinterpreted the exemption and came to the conclusion that housing authorities are not exempt for purposes of taxes, use taxes particularly for construction of a low to moderate income facility. As a result, a use tax exemption cannot be ascertained and approximately \$98,000 is now due to the Town of Windsor to continue with Phase II.

Staff recommends waiving 3% of the 3.95% Windsor Use Tax. The .95% collected is the portion that is dedicated to the financing and operation of the original Community Recreation Center (.20%) and the expansion of the Community Recreation Center (.75%). The amount due to the Town would be \$23,750 if the Resolution is approved.

Mr. Vazquez stated through 2015 the bond debt has surpassed collections of the community center tax, it is necessary to impose the .95 to the housing authority so could waiving the whole amount be considered.

Ms. Melendez stated the .20% is from the original CRC tax and the .75% is the new piece that was added for the expansion.

Ms. Melendez inquired if there is an appeal process with the Department of Revenue.

Mr. Betters stated currently there is a bill that will be introduced by Representative KC Becker that would amend the current language that is in the state statute that is 29.4-227. It will be a clarification of language and that is how this situation has been brought up is an interpretation from a different individual. Ms. Becker's bill will attempt to clarify what the intent was of the original bill. To address Ms. Melendez's question, there is not an appeal process but there is a legislative process to amend the language.

Ms. Melendez inquired how that would affect the Windsor Housing Authority and are they able to retroactively refund taxes collected.

Mr. Betters stated that is a provision of the bill.

Mr. Moore stated the Windsor Housing Authority is small in comparison to other housing authorities that are affected by this. A housing authority in Boulder is looking at a \$1 million hit on this interpretation.

Mr. Betters stated the \$1 million gap is all the taxes that are do for both the stated and the City of Boulder.

Mr. Melendez inquired if the use taxes are waived, the Town of Windsor is still liable to make this payment to the Department of Revenue.

Mr. Arnold stated it will be that or they will have to come back and make a request for the fees.

Mr. Betters stated as he understands as a home rule town, this specific piece of 3.95% is the Town of Windsor's option to waive or collect and also believes no money will be owed to the state.

Ms. Melendez inquired as to how much the Windsor Housing Authority owes the Department of Revenue.

Mr. Betters stated about \$145,000.

Mr. McCargar stated the measures that were approved to build the recreation center and to expand the recreation center pledged that fractional amount of both sales tax and use tax. We have pledged those two fractional amounts to build the recreation center and expand the recreation center. Given that, waiving the tax becomes an issue because the Town of Windsor has actually included in documents for the benefit of the bond holders set that aside and made that a priority for those fractional amounts of sales tax and use tax. If the state issues a certification of exemption for use tax it applies both to the state and the municipality. The use tax that is being discussed is the Town's use tax on this project.

Mr. Adams inquired how TABOR would come into play in this issue.

Mr. McCargar stated the tax increase was approved by the voters for a particular purpose and legislatively it may not be a good idea to reach into that in this particular case and determine that tax increase will not be collected. Mr. McCargar is more concerned about the representations to the bond holders that the .95% is sacred for those two layers of bonds.

Mr. Vazquez inquired if the \$23,000 will have a major impact to the Windsor Housing Authority.

Mr. Betters stated it would not and the entire Windsor Housing Authority Board voted in support of the Windsor Community Recreation Center Expansion. The \$23,000 will be taken out of contingency funds as it is early in the project.

Mr. Vazquez inquired if the bill that was mentioned earlier advances through the next session and ultimately approved, then there will be a provision for the Windsor Housing Authority to come back to the Town of Windsor and ask for a refund of the \$23,000.

Mr. Betters stated that option would be available.

Mr. Vazquez inquired if the legislation does advance and there is an allowance for a refund, how will that affect the Town's obligations and commitment to the bond holders.

Mr. McCargar stated the .95% payment would be required. If the state legislature then comes in and reaffirms the earlier interpretation and says these transactions are exempt, then the .95% that the Town required the housing authority to pay would also be returned assuming the legislation is retroactive.

**Roll call on the vote resulted as follows: Yeas –Morgan, Melendez, Bishop-Cotner, Adams, Vazquez; Nays- None; Motion passed.**

9. Resolution No. 2016-04 – A Resolution Approving and Authorizing the Execution of an Intergovernmental Agreement with the Larimer County Board of County Commissioners for Ongoing Maintenance of Crossroads Boulevard in the Vicinity of County Line Road
  - Legislative action
  - Staff presentation: Dennis Wagner, Director of Engineering

**Town Board Member Morgan motioned to approve Resolution No. 2016-04; Town Board Member Melendez seconded the motion.**

Director of Engineering Dennis Wagner stated items nine and ten on the agenda this evening are in regard to the traffic light being installed on County Line Road/County Road 13 and Crossroads Boulevard. Early in 2015, Windsor contracted with the consulting team of Interwest Consulting Group and ELB Engineering to study traffic at that location. The team determined that a traffic signal is warranted at that intersection and design of the signal followed shortly thereafter. The design is completed and is out for bid with the bid opening February 4, 2016. Because the intersection is on County Line Road, authority over the roads approaching the intersection are split between Windsor, Weld County and Larimer County. Within the intersection itself, the west half of the intersection is in unincorporated Larimer County and the east half is in Windsor.

The engineer's estimate of cost for the signal system is \$276,000. By way of the Intergovernmental Agreement (IGA), Larimer County Board of Commissioners have approved financial contribution toward constructing the signal equal to one-third of the cost, not to exceed \$100,000.

In exchange for that contribution, Larimer County is proposing an IGA in which Windsor will assume future maintenance of the 1-mile section of Crossroads Boulevard between LCR 3 and County Line Road. That section of road was widened and paved in 2000 by the owner of the Windsor development adjacent to the north side of the road and Larimer County just last year resurfaced the road.

Mr. Vazquez inquired about the small strip of Crossroads Boulevard that is in Larimer County's jurisdiction. It is one thing to maintain it but another to own it. Since Loveland's jurisdiction goes from County Road 3 to I-25, would the Town want that right of way.

Mr. Wagner stated the property owners on the south side of the road are in unincorporated Larimer County. Their property ownership actually goes to the section line which is the center of the road. A few years after the improvements Windsor pursued annexation of the right of way so it would be the Town's and the property owners were not interested. It stayed in unincorporated Larimer County.

Mr. Vazquez inquired if there was a patent easement or right of way on that section of land as it seems back in the 1870's they did that when the county lines and sections were mapped out.

Mr. Wagner stated there is but their property still goes to the section line.

Mr. Arnold stated the section in Larimer County's jurisdiction has recently been overlaid.

If the Town Board agrees to this resolution, it will be requested that the mayor send a letter to Weld County making a similar offer for that section that is in Weld County's jurisdiction.

Ms. Melendez inquired as to how the property turned out the way it is on Crossroads with the small portion in Weld County's jurisdiction.

Mr. Arnold stated the Weld County portion has been a bit of concern.

Mr. Ballstadt stated there is a recorded exemption of about 10 acres on Crossroads that is excluded from annexation.

Mr. Vazquez inquired if the annexation is approved, would the section of road be with it.  
Mr. Ballstadt stated it would not as the frontage is owned by a separate property owner.

Mr. Vazquez commented that he was contacted by an adjacent landowner and they were very appreciative that they were contacted as to aesthetics regarding the colored poles.

**Roll call on the vote resulted as follows: Yeas –Morgan, Melendez, Bishop-Cotner, Adams, Vazquez; Nays- None; Motion passed.**

10. Resolution No. 2016-05 – A Resolution Approving and Authorizing the Execution of an Intergovernmental Agreement with the Larimer County Board of County Commissioners for Financing of Traffic Control Improvements to the Intersection of Crossroads Boulevard and County Line Road

- Legislative action
- Staff presentation: Dennis Wagner, Director of Engineering

**Town Board Member Adams motioned to approve Resolution No. 2016-05; Town Board Member Morgan seconded the motion.**

Mr. Wagner had nothing further.

**Roll call on the vote resulted as follows: Yeas –Morgan, Melendez, Bishop-Cotner, Adams, Vazquez; Nays- None; Motion passed.**

#### D. COMMUNICATIONS

1. Communications from the Town Attorney  
None
2. Communications from Town Staff  
None
3. Communications from the Town Manager  
Mr. Arnold stated he and Ms. Melendez attended Building a Better Colorado. The efforts of the organization are to look at several issues from how initiatives are able to come forth to amend the state constitution to funding state government. The event was in Loveland and attended by about 50 individuals with most being over the age of 60. The organization has made presentations state wide. This group is considering laying out some initiatives for November.
4. Communications from Town Board Members  
None

#### E. ADJOURN

**Town Board Member Adams motioned to adjourn; Town Board Member Morgan seconded the motion. Roll call on the vote resulted as follows: Yeas –Morgan, Melendez, Bishop-Cotner, Adams, Vazquez; Nays- None; Motion passed.**

The meeting was adjourned at 9:21 pm.

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Krystal Eucker, Deputy Town Clerk



## MEMORANDUM

**Date:** January 25, 2016  
**To:** Mayor and Town Board  
**Via:** Kelly Arnold, Town Manager  
**From:** Patti Garcia, Town Clerk/Assistant to Town Manager  
**Re:** Advisory Board Appointments  
**Item #:** B.2.

### **Background / Discussion:**

On January 20, 2016 Town Board Members Morgan and Adams conducted advisory board interviews. Pursuant to those interviews, the following individuals have been recommended for appointment:

#### **Parks, Recreation & Culture**

Kelly Hall; term expiring September 2016  
John Nuspl; term expiring September 2018  
Sandy Brug; term expiring September 2019

#### **Planning Commission**

Charles Schinner; full member term expiring March 2018  
Jerry Bushelman; alternate member term expiring March 2016

#### **Water & Sewer Board**

Jeff D'Agosta; term expiring March 2019

### **Relationship to Strategic Plan:**

1.B. Provide opportunities for residents to be involved and informed in town governance and in community service.

### **Recommendation:**

For Town Board consideration.

### **Attachments:**

Applications of those recommended for appointment.



1/20/16  
12:55 PM  
5:30 PM

Advisory Board/Commission Application

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Qualifications: All positions require residency within the Town of Windsor and some positions require a particular area of experience or vocation.

Additional information can be found on the Town's website under Boards and Commissions or contact the Town Clerk's office at (970) 674-2400.

Candidates will be invited to an interview with the Town Board and appointments are made by the Town Board as a whole.

Name of Board or Commission: Parks and Recreation and Culture Advisory Board

Name: Kelly Hall

Address: 1006 Teton Court

Day Phone: 970 686 5592 Night Phone: same

E-Mail Address: mkellyhall@yahoo.com

How long have you been a resident in Windsor? 18 years

Current Occupation: marketing operations Employer: Hewlett Packard Enterprise

Do you currently serve, or have you served previously, on a board or commission? If so, which one(s)?  
Library Board previously. Currently Library Foundation Board and Windsor Housing Authority Board

Why do you want to become a member of this particular board or commission? I believe Windsor is a great community and I should do my part to keep it working well.

Briefly explain what you believe are the two most important issues facing this board or commission, and how do you believe this board or commission should address each issue?

1) I wouldn't presume to know the issues the Board faces without attending meetings and listening. I expect the expansion was a big issue but it may (or may not) be simply an on-going project now. There are always issues dealing with the public. The Board can't please all constituents but I expect it does its best to be transparent and proactive addressing concerns.

2)

List any abilities, skills, licenses, certificates, specialized training, or interests you have which are applicable to this board or commission:

Nothing specific beyond being a willing adult with previous Board experience.

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Please specify any activities which might create a conflict of interest that would prevent you from official action if you should be appointed to this board or commission:

None

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Have you attended a meeting of the board or commission you are applying to or talked to anyone currently on the board? Yes  No

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If not appointed at this time, would you be interested in serving on any other advisory boards or commissions at the Town of Windsor? If so, please list any preferences: sure

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*All applicants are strongly encouraged to attend a regularly scheduled meeting of the board or commission for which they are applying.*

*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 for assistance.*

I certify that all statements on this form are true and complete. I further understand that false statements shall be sufficient cause for rejection of this application or for grounds to apply the penalty provisions of the Code of Ethics.

Signature: Margaret K Hill Date: 15 JAN 2016



Rec'd 1/11/16  
1/20/16 5:45P

Advisory Board/Commission Application

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Qualifications: All positions require residency within the Town of Windsor and some positions require a particular area of experience or vocation.

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Candidates will be invited to an interview with the Town Board and appointments are made by the Town Board as a whole.

Name of Board or Commission: Parks, Recreation, & Culture

Name: John J. Nuspl

Address: 5211 Kempton Drive Windsor, CO 80550

Day Phone: 970-301-0472 Night Phone: 970-669-6640

E-Mail Address: lpsunj@aol.com

How long have you been a resident in Windsor? 2 yrs. +

Current Occupation: retired educator Employer: Eaton Schools (former)

Do you currently serve, or have you served previously, on a board or commission? If so, which one(s)?  
previously on Eaton School Board after I retired

Why do you want to become a member of this particular board or commission? We relocated to Windsor for its outstanding quality of life, and I feel I should repay for this by contributing to our community in this manner.

Briefly explain what you believe are the two most important issues facing this board or commission, and how do you believe this board or commission should address each issue?

1) To provide a variety of appropriate programs and services for the community within the budgetary constraints of the town of Windsor.

2) To be available & receptive to suggestions from the community-at-large for programs and services as Windsor continues to grow and prosper in this dynamic era of change.

List any abilities, skills, licenses, certificates, specialized training, or interests you have which are applicable to this board or commission: As a retired school administrator and former school board member, I have served in numerous leadership capacities. As a result I have a working knowledge of meeting procedures, legal matters, personnel issues, etc. Hopefully I would require minimal training. I am an active individual with many leisure time interests.

Please specify any activities which might create a conflict of interest that would prevent you from official action if you should be appointed to this board or commission:

None that I know.

Have you attended a meeting of the board or commission you are applying to or talked to anyone currently on the board? Yes  No

Comments: I just read about the board vacancies in Sunday's Windsor Beacon, therefore, no meeting will occur prior to the January 15th application deadline.

If not appointed at this time, would you be interested in serving on any other advisory boards or commissions at the Town of Windsor? If so, please list any preferences: Possibly, if the vacancy was in an area of interest.

All applicants are strongly encouraged to attend a regularly scheduled meeting of the board or commission for which they are applying.

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 for assistance.

I certify that all statements on this form are true and complete. I further understand that false statements shall be sufficient cause for rejection of this application or for grounds to apply the penalty provisions of the Code of Ethics.

Signature: John J. Truopl Date: 1/11/16



Rec'd 1/13/16  
1/20/16 6 pm

Advisory Board/Commission Application

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Qualifications: All positions require residency within the Town of Windsor and some positions require a particular area of experience or vocation.

Additional information can be found on the Town's website under Boards and Commissions or contact the Town Clerk's office at (970) 674-2400.

Candidates will be invited to an interview with the Town Board and appointments are made by the Town Board as a whole.

Name of Board or Commission: Parks, Recreation and Cultural Advisory Board

Name: Sandy Brug

Address: 512 Walnut St., Windsor, CO 80550

Day Phone: 970-686-2122 Night Phone: 970-686-2122

E-Mail Address: sbrug@live.com

How long have you been a resident in Windsor? 51 years

Current Occupation: retired - admin. pro Employer: Colorado State University Libraries

Do you currently serve, or have you served previously, on a board or commission? If so, which one(s)?  
No

Why do you want to become a member of this particular board or commission? I'm an avid participant and user of parks and recreation activities and I'm particularly interested in the Cultural area I volunteer at the Museum weekly and at special events I believe that it is an important part of enriching the lives of all Town residents  
I'm an avid participant and user of parks

Briefly explain what you believe are the two most important issues facing this board or commission, and how do you believe this board or commission should address each issue?

1) see attached

2) see attached

List any abilities, skills, licenses, certificates, specialized training, or interests you have which are applicable to this board or commission:

I'm a member of the Windsor-Severance Historical Society and I have a huge interest in the cultural aspect of this Board. We work hard to preserve our culture and heritage and this Board is an important one in helping us all work together to achieve our goals. I've served on many committees at CSU including the Presidential Selection Advisory Committee and I served two terms as Chair of the CSU Classified Personnel Council, a body that represents 2,000 CSU Employees.

Please specify any activities which might create a conflict of interest that would prevent you from official action if you should be appointed to this board or commission:

None.

Have you attended a meeting of the board or commission you are applying to or talked to anyone currently on the board? Yes  No

Comments: When the Windsor-Severance Historical Society began the process of raising money to place a bronze statue at Boardwalk Park, our first step in the process was to meet with this Board and get their blessing. We attended a meeting and our artist actually brought the mock up of the statue to one of their meetings.

If not appointed at this time, would you be interested in serving on any other advisory boards or commissions at the Town of Windsor? If so, please list any preferences: Yes. Library or Historic Preservation

*All applicants are strongly encouraged to attend a regularly scheduled meeting of the board or commission for which they are applying.*

*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 for assistance.*

I certify that all statements on this form are true and complete. I further understand that false statements shall be sufficient cause for rejection of this application or for grounds to apply the penalty provisions of the Code of Ethics.

Signature: Sandy Brug

Date: 01-12-16

Briefly explain what you believe are the two most important issues facing this board or commission, and how do you believe this board or commission should address each issue?

- 1) Windsor's population and diversity is constantly growing and changing. I believe that it's important to provide quality parks and recreational activities that meet the needs of the residents. When someone is making a decision to live in Windsor or to open a business in Town, one of the selling points is the quality and availability of parks and recreation. Town budgets are tight and it's important to offer these activities within these limited budgets. I've worked in education my whole life and I believe that it's important to provide opportunities for people to continue learning and growing at a reasonable cost and a healthy and active Parks, Recreation and Cultural Advisory Board is a great way to do it. The Board needs to stay abreast of the latest topics of interest and make sure that the offerings match the interests of the residents. Talking and listening to residents and getting feedback on current activities is an important way to keep current and responsive.
- 2) The addition to the Community Center will be completed soon and I think it will be important for this Board to make sure that everything works and to talk to and to listen to the residents when they provide feedback about the addition. The taxpayers were very kind to approve the addition and I think it's extremely important to get it started on the right foot.



Rec'd 12/4/15 3:30pm  
1/20/16 6:45pm

Advisory Board/Commission Application

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Additional information can be found on the Town's website under Boards and Commissions or contact the Town Clerk's office at (970) 674-2400.

Candidates will be invited to an interview with the Town Board and appointments are made by the Town Board as a whole.

Name of Board or Commission: Planning

Name: Charles Schinner

Address: 239 Mallard Ct, Windsor, CO

Day Phone: 970.371.3437 Night Phone: 970.371.3437

E-Mail Address: ceschinner@gmail.com

How long have you been a resident in Windsor? 15

Current Occupation: Sanitation Engineer Employer: Self

Do you currently serve, or have you served previously, on a board or commission? If so, which one(s)?  
Planning commission - alternate

Why do you want to become a member of this particular board or commission?  
To serve the community

Briefly explain what you believe are the two most important issues facing this board or commission, and how do you believe this board or commission should address each issue?

1) Road infrastructure capable of handling the increase in growth.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

2) Road infrastructure capable of handling the increase in growth.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

List any abilities, skills, licenses, certificates, specialized training, or interests you have which are applicable to this board or commission:

Program Management Professional - PMP - certified

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Systems engineering background

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Please specify any activities which might create a conflict of interest that would prevent you from official action if you should be appointed to this board or commission:

None

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Have you attended a meeting of the board or commission you are applying to or talked to anyone currently on the board? Yes  No

Comments: \_\_\_\_\_

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If not appointed at this time, would you be interested in serving on any other advisory boards or commissions at the Town of Windsor? If so, please list any preferences: \_\_\_\_\_

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*All applicants are strongly encouraged to attend a regularly scheduled meeting of the board or commission for which they are applying.*

*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 for assistance.*

I certify that all statements on this form are true and complete. I further understand that false statements shall be sufficient cause for rejection of this application or for grounds to apply the penalty provisions of the Code of Ethics.

Signature: Charles Schinner

Date: 12/4/15

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REC'D 1-24-2015

4:30pm

1/20/16 7pm

Advisory Board/Commission Application

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Qualifications: All positions require residency within the Town of Windsor and some positions require a particular area of experience or vocation.

Additional information can be found on the Town's website under Boards and Commissions or contact the Town Clerk's office at (970) 674-2400.

Candidates will be invited to an interview with the Town Board and appointments are made by the Town Board as a whole.

Name of Board or Commission: PLANNING COMMISSION, WATER & SEWER BOARD

Name: P. GERALD BUSHELMAN (JERRY)

Address: 715 SHIPMAN MOUNTAIN CT., WINDSOR, CO 80550

Day Phone: 307 287 5091 Night Phone: SAME

E-Mail Address: JBUSH304@GMAIL.COM

How long have you been a resident in Windsor? 15 YEARS

Current Occupation: RETIRED Employer:

Do you currently serve, or have you served previously, on a board or commission? If so, which one(s)?

NO

Why do you want to become a member of this particular board or commission? TO BECOME INVOLVED IN THE CITY WHERE I LIVE & USE MY EXPERIENCE TO HELP

Briefly explain what you believe are the two most important issues facing this board or commission, and how do you believe this board or commission should address each issue?

1) DON'T KNOW

2)

List any abilities, skills, licenses, certificates, specialized training, or interests you have which are applicable to this board or commission:

LICENSED ENGINEER - COLORADO (CIV. I) - 6 YRS DESIGN EXPERIENCE;  
33 YEARS - HIGHWAY CONST. ESTIMATOR -> PRESIDENT  
IN PAST DEALT WITH PLANNING & ZONING BOARDS FOR APPROVAL OF PITS & PLOTS

Please specify any activities which might create a conflict of interest that would prevent you from official action if you should be appointed to this board or commission:

NONE KNOWN

Have you attended a meeting of the board or commission you are applying to or talked to anyone currently on the board? Yes  No

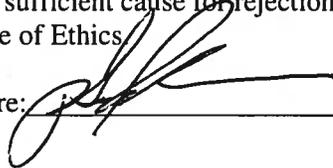
Comments: \_\_\_\_\_

If not appointed at this time, would you be interested in serving on any other advisory boards or commissions at the Town of Windsor? If so, please list any preferences: YES, DON'T KNOW

*All applicants are strongly encouraged to attend a regularly scheduled meeting of the board or commission for which they are applying.*

*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 for assistance.*

I certify that all statements on this form are true and complete. I further understand that false statements shall be sufficient cause for rejection of this application or for grounds to apply the penalty provisions of the Code of Ethics.

Signature:  Date: 12/4/2015

Rec'd 1/12/16  
1/20/16 6:15 PM



Advisory Board/Commission Application

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Qualifications: All positions require residency within the Town of Windsor and some positions require a particular area of experience or vocation.

Additional information can be found on the Town's website under Boards and Commissions or contact the Town Clerk's office at (970) 674-2400.

Candidates will be invited to an interview with the Town Board and appointments are made by the Town Board as a whole.

Name of Board or Commission: Water and Sewer

Name: Jeff D'Agosta

Address: 2029 Shoreline Court

Day Phone: (303) 514-2015 Night Phone: (303) 514-2015

E-Mail Address: jeffdagosta@gmail.com

How long have you been a resident in Windsor? 15 years

Current Occupation: General Counsel Employer: MWH Global, Inc.

Do you currently serve, or have you served previously, on a board or commission? If so, which one(s)?  
No

Why do you want to become a member of this particular board or commission?  
To volunteer for public service

Briefly explain what you believe are the two most important issues facing this board or commission, and how do you believe this board or commission should address each issue?

1) (1) Addressing the water demands of a rapidly growing community where water resources are scarce, and (2) smartly developing water/waste water infrastructure in a manner that is efficient and cost effective for ratepayers.

2) ~~(1) Addressing the water demands of a rapidly growing community where water resources~~

List any abilities, skills, licenses, certificates, specialized training, or interests you have which are applicable to this board or commission:

I am the general counsel for the No.1 water/waste water engineering company in the country, and have worked with municipalities of every size regarding the development, engineering, financing and construction of water/waste water facilities.

Please specify any activities which might create a conflict of interest that would prevent you from official action if you should be appointed to this board or commission:

None. My company does not currently provide any engineering or construction services for the town of Windsor.

Have you attended a meeting of the board or commission you are applying to or talked to anyone currently on the board? Yes  No

Comments: \_\_\_\_\_

If not appointed at this time, would you be interested in serving on any other advisory boards or commissions at the Town of Windsor? If so, please list any preferences: Maybe

*All applicants are strongly encouraged to attend a regularly scheduled meeting of the board or commission for which they are applying.*

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I certify that all statements on this form are true and complete. I further understand that false statements shall be sufficient cause for rejection of this application or for grounds to apply the penalty provisions of the Code of Ethics.

Signature: \_\_\_\_\_

*Jeff Alagata*

Date: \_\_\_\_\_

*January 11, 2015*



## MEMORANDUM

**Date:** January 25, 2016  
**To:** Mayor and Town Board  
**Via:** Kelly Arnold, Town Manager  
Scott Ballstadt, AICP, Director of Planning  
**From:** Josh Olhava, AICP, Senior Planner  
**Subject:** Resolution No. 2016-06 – A Resolution Approving and Accepting a Deed of Easement for Water Line Facility in the Windsor Commons Second Filing, Lot 3, in the Town of Windsor, Colorado  
**Item:** B.3

### **Background:**

As part of the Windsor Commons Subdivision Second Filing, Lot 2 site plan (Windsor Commons Self-storage expansion), the applicant is installing fire hydrants throughout the site to provide fire support for the self-storage units. The enclosed Resolution and Deed of Easement for Water Line Facility allows for access to and maintenance of the fire hydrants and fire line that loops throughout the site along the internal driveways.

**Recommendation:** Staff recommends that the Town Board approve Resolution No. 2016-06 as presented

**Enclosures:** Resolution No. 2016-06

TOWN OF WINDSOR

RESOLUTION NO. 2016 - 06

A RESOLUTION APPROVING AND ACCEPTING A DEED OF EASEMENT FOR WATER LINE FACILITY IN THE WINDSOR COMMONS SECOND FILING, LOT 3, IN THE TOWN OF WINDSOR, COLORADO

WHEREAS, the Town of Windsor (“Town”) is a home rule municipality with all powers and authority granted pursuant to Colorado law; and

WHEREAS, the Town is responsible for a system of water utilities within its corporate limits; and

WHEREAS, in keeping with sound land use practices, the Town is requiring the dedication of an easement for a water line facility in conjunction with the site plan approval for development of Windsor Commons Subdivision, 2nd Filing, Lot 3; and

WHEREAS, the dedication of the easement is intended to facilitate utilities service within this commercial area; and

WHEREAS, the developer has tendered a Deed of Easement for Water Line Facility dated (“Deed of Easement”), a copy of which is attached hereto and incorporated herein by this reference as if set forth fully; and

WHEREAS, the Town Board has reviewed the Deed of Easement and has concluded that its approval and acceptance is in the public interest.

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

**Section 1.** The attached Deed of Easement for Water Line Facility is hereby approved and accepted.

**Section 2.** The Mayor is hereby authorized to execute the Acceptance section of the attached Deed Of Easement on behalf of the Town.

Upon motion duly made, seconded and carried, the foregoing Resolution was adopted this 25<sup>th</sup> day of January, 2016.

TOWN OF WINDSOR, COLORADO

By: \_\_\_\_\_  
John S. Vazquez, Mayor

ATTEST:

\_\_\_\_\_  
Patti Garcia, Town Clerk

**DEED OF EASEMENT**  
**FOR**  
**WATER LINE FACILITY**

This Deed of Easement for Water Line Facility (this "Agreement"), made and entered this 3<sup>RD</sup> day of NOVEMBER, 2015, by and between WILKENING STORAGE, LLC, a Colorado limited liability company (the "Grantor"), and the TOWN OF WINDSOR, COLORADO, a home rule municipality (the "Grantee").

In consideration of the covenants and agreements herein set forth, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Grantor grants to Grantee, its successors and assigns, a non-exclusive easement and permanent right to enter, re-enter, occupy and use the Easement Area (defined below) to construct, maintain, inspect, repair, replace, enlarge and operate one or more water line facilities, and other related facilities, for the transmission of treated water and all underground and surface appurtenances related thereto, over, across, under and upon the real property legally described and depicted on **Exhibit A** attached hereto and incorporated herein by this reference (the "Easement Area").

Grantor further grants to Grantee:

1. The right of ingress to and egress from the Easement Area over and across said lands of the Grantor by means of roads and lanes thereon; provided, however, that said right of ingress and egress on said portion shall be confined as nearly as practicable to such dedicated roads and highways.
2. The right to inspect, enlarge, improve, reconstruct, relocate, and replace any water line facilities, or other structures constructed hereunder, either in the original location or at any alternate locations within the Easement Area.
3. The right to install, maintain and use gates in all fences which now cross or shall hereafter cross the Easement Area.
4. The right to mark the location of the Easement Area by suitable markers set in the ground, provided that said markers shall be placed in locations which shall not interfere with any reasonable use Grantor shall make of the Easement Area.

Grantor reserves the right to use the Easement Area for purposes which will not interfere with Grantee's full employment of the rights granted hereby.

Grantor agrees not to take any of the following actions within the Easement Area unless agreed to in writing by Grantee: (i) erect or construct any building or other structure, (ii) drill or operate any well, (iii) construct any reservoir or other obstruction, (iv) add more than 3 feet to or remove more than 0.5 feet from the ground level, or (v) grant any other easements or right of ways for

DEED OF EASEMENT  
FOR  
WATER LINE FACILITY

utilities within the Easement Area to any party other than the Town of Windsor, without the Town's prior written consent.

Grantor shall not deposit, or permit or allow to be deposited, rubbish, debris, or any other substance or material, whether combustible or non-combustible within the Easement Area.

Grantee agrees to indemnify, defend and hold Grantor harmless against any loss or damage which shall be caused by the exercise of its rights under this Agreement, or by any wrongful or negligent act or omission of Grantee or its agents or employees in the course of their employment.

Whenever used herein, the singular number shall include the plural and the plural the singular. The use of any gender shall be applicable to all genders.

The terms, conditions, covenants and agreements of this Agreement shall be construed as covenants touching and concerning, running with and appurtenant to the Easement Area. All of the covenants contained herein shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, personal representatives, successors, and assigns.

**IT WITNESS WHEREOF**, Grantor and Grantee have executed this Agreement as of the day and year first written above.

Grantor:

Grantee:

WILKENING STORAGE, LLC, a Colorado limited liability company

ACCEPTED:

THE TOWN OF WINDSOR, COLORADO

By:   
Name: Garry A. Wilkening  
Title: Member

By: \_\_\_\_\_  
John S. Vazquez, Mayor

Attest:

By: \_\_\_\_\_  
Patti Garcia, Town Clerk

DEED OF EASEMENT  
FOR  
WATER LINE FACILITY

NOTARY ACKNOWLEDGEMENT

STATE OF COLORADO )  
 ) ss.  
\_\_\_\_\_ COUNTY OF Jefferson )

The foregoing Deed of Easement was acknowledged before me this 3<sup>rd</sup> day of November, 2015, by Garry A. Wilkening, Member of Wilkening Storage, LLC.  
My commission expires: September 18, 2019

Robert Charles Chapin III  
Notary Public

[Seal]



DEED OF EASEMENT  
FOR  
WATER LINE FACILITY

EXHIBIT

**PARCEL DESCRIPTION**

A parcel of land, being part of Lot 3, Windsor Commons Subdivision Second Filing as recorded December 20, 2001 as Reception No. 2911019 of the Records of the Weld County Clerk and Recorder, located in the Southwest Quarter (SW1/4) of Section Twenty-two (22), Township Six North (T.6N.), Range Sixty-seven West (R.67W.) of the Sixth Principal Meridian (6th P.M.), Town of Windsor, County of Weld, State of Colorado, said centerline being more particularly described as follows:

COMMENCING at the Southwest corner of said Lot 3 and assuming the West line of said Lot 3 as bearing North 00°13'14" West, as platted, a distance of 376.21 feet and with all other bearings contained herein relative thereto;

THENCE North 00°13'14" West along the West line of said Lot 3 a distance of 45.06 feet to the POINT OF BEGINNING;

THENCE North 00°13'14" West continuing along said West line a distance of 20.00 feet;  
THENCE North 90°00'00" East a distance of 246.47 feet;  
THENCE North 00°00'00" East a distance of 281.86 feet;  
THENCE North 67°30'00" West a distance of 85.29 feet;  
THENCE South 22°30'00" West a distance of 18.85 feet;  
THENCE North 89°59'31" West a distance of 8.81 feet;  
THENCE North 67°30'00" West a distance of 11.86 feet;  
THENCE North 22°30'00" East a distance of 22.22 feet;  
THENCE North 67°30'00" West a distance of 31.15 feet;  
THENCE North 90°00'00" West a distance of 121.14 feet to the West line of said Lot 3, said point being a point on a curve, said curve being non-tangent to aforesaid line;  
THENCE along the arc of a curve concave to the East a distance of 20.05 feet, having a Radius of 467.65 feet, a Delta of 2°27'22" and is subtended by a Chord that bears North 03°48'58" East a distance of 20.04 feet;  
THENCE North 90°00'00" East along a line non-tangent to aforesaid curve a distance of 123.79 feet;  
THENCE South 67°30'00" East a distance of 153.78 feet;  
THENCE South 00°00'00" East a distance of 183.06 feet;  
THENCE North 90°00'00" East a distance of 27.58 feet;  
THENCE South 00°00'00" East a distance of 14.00 feet to the South line of said Lot 3;  
THENCE North 89°25'55" West along said South line a distance of 16.55 feet to the East line of said Lot 3;  
THENCE South 00°11'56" East along said East line a distance of 6.16 feet;  
THENCE North 90°00'00" West a distance of 11.05 feet;  
THENCE South 00°00'00" East a distance of 112.16 feet;

THENCE North 90°00'00" West a distance of 222.35 feet;  
THENCE South 00°00'00" East a distance of 20.64 feet;  
THENCE North 90°00'00" West a distance of 20.00 feet;  
THENCE North 00°00'00" East a distance of 20.64 feet;  
THENCE North 90°00'00" West a distance of 24.05 feet to the POINT OF BEGINNING.

Said described parcel of land contains 17,747 Square Feet or 0.407 Acres, more or less (±), and may be subject to any rights-of-way or other easements of record or as now existing on said described parcel of land.

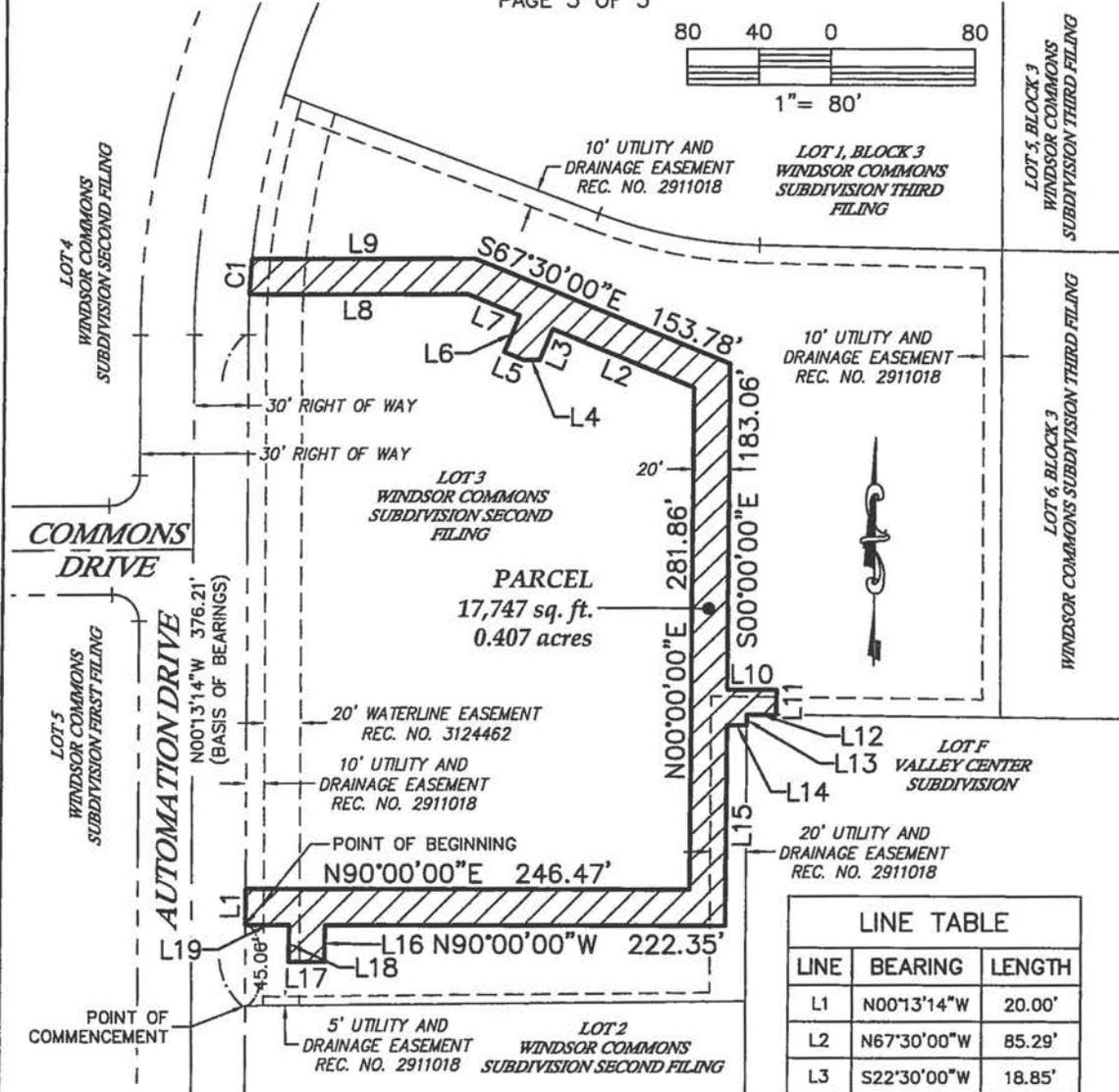
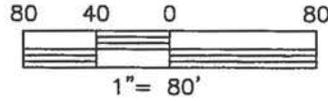
**SURVEYOR'S STATEMENT**

I, Lawrence S. Pepek, a Colorado Licensed Professional Land Surveyor do hereby state that this Parcel Description was prepared under my personal supervision and checking and that it is true and correct to the best of my knowledge and belief.

  
Lawrence S. Pepek - on behalf of King Surveyors  
Colorado Licensed Professional  
Land Surveyor #33642



**KING SURVEYORS**  
650 Garden Drive  
Windsor, Colorado 80550  
(970) 686-5011



LINE TABLE		
LINE	BEARING	LENGTH
L1	N00°13'14"W	20.00'
L2	N67°30'00"W	85.29'
L3	S22°30'00"W	18.85'
L4	N89°59'31"W	8.81'
L5	N67°30'00"W	11.86'
L6	N22°30'00"E	22.22'
L7	N67°30'00"W	31.15'
L8	N90°00'00"W	121.14'
L9	N90°00'00"E	123.79'
L10	N90°00'00"E	27.58'
L11	S00°00'00"E	14.00'
L12	N89°25'55"W	16.55'
L13	S00°11'56"E	6.16'
L14	N90°00'00"W	11.05'
L15	S00°00'00"E	112.16'
L16	S00°00'00"E	20.64'
L17	N90°00'00"W	20.00'
L18	N00°00'00"E	20.64'
L19	N90°00'00"W	24.05'

CURVE TABLE					
CURVE	LENGTH	RADIUS	DELTA	CHORD	CH BEARING
C1	20.05'	467.65'	2°27'22"	20.04'	N03°48'58"E

NOTE: This exhibit drawing is not intended to be a monumented land survey. It's sole purpose is as a graphic representation to aid in the visualization of the written property description which it accompanies. The written property description supersedes the exhibit drawing.

*Lawrence S. Pepek*  
 Lawrence S. Pepek - On Behalf of King Surveyors  
 Colorado Registered Professional Land Surveyor #33642

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

PROJECT NO: 2013329  
 DATE: 10/30/2015  
 CLIENT: WINDSOR COMMONS  
 DWG: 2013329EXH-2  
 DRAWN: CDL CHECKED: LSP



## MEMORANDUM

**Date:** January 25, 2016  
**To:** Mayor and Town Board  
**Via:** Regular meeting packets  
**From:** Ian D. McCargar, Town Attorney  
**Re:** Resolution approving IGA with CDOT (Great Western Trail Authority Project)  
**Item #:** B.4.

### **Background / Discussion:**

At the request of the Great Western Trail Corridor Authority Board, the Town applied for grant funding available through the Colorado Department of Transportation, the purpose of which was to support the Trail Authority's plans for improvements to the Great Western Trail between Severance and Eaton. The Trail Authority proposed that the Town would receive the grant funds, and then pass them through to the Trail Authority for the project without cost or contribution.

CDOT has approved the grant application, and has presented us with its standard form contract for grant administration. In order to implement their project, the Trail Authority Board has asked us to approve the CDOT agreement. Although the Town is taking on the responsibilities for grant administration, the Town is not committing any funding to the project. The Town's Finance Department will work closely with the Trail Authority to assure compliance with CDOT's administrative requirements.

### **Financial Impact:**

	<b>Budget</b>	<b>Proposed</b>	<b>Note</b>
<b>Revenue</b>	\$0	\$550,000	Pass-through
<b>Expense</b>	\$0	\$550,000	Pass-through
<b>Net</b>		\$0	No impact

**Relationship to Strategic Plan:** Develop and Maintain Effective Infrastructure

**Recommendation:** Approve attached Resolution upon motion; simple majority required.

### **Attachments:**

CDOT Agreement with Town of Windsor (IGA), with all referenced attachments

Resolution No. 2016-08 – A Resolution Approving an Intergovernmental Agreement Between the Town of Windsor and the Colorado Department of Transportation With Respect to Improvements Being Undertaken by the Great Western Trail Corridor Authority

TOWN OF WINDSOR

RESOLUTION NO. 2016-08

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF WINDSOR AND THE COLORADO DEPARTMENT OF TRANSPORTATION WITH RESPECT TO IMPROVEMENTS BEING UNDERTAKEN BY THE GREAT WESTERN TRAIL CORRIDOR AUTHORITY

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

WHEREAS, at the request of the Great Western Trail Corridor Authority (“Trail Authority”) Board of Directors, the Town applied for grant funding available through the Colorado Department of Transportation (“CDOT”), the purpose of which was to make improvements to the Great Western Trail between Severance and Eaton (“Project”); and

WHEREAS, the Town’s application for CDOT grant funding was approved, and the Trail Authority wishes to proceed with the Project; and

WHEREAS, CDOT has presented to the Town its standard form Agreement for administration of the grant funding, a copy of which is attached hereto and incorporated herein by this reference; and

WHEREAS, the Town’s approval and execution of the attached Agreement is necessary to support the Trail Authority Project; and

WHEREAS, the Town Board wishes to approve the attached Agreement; and

WHEREAS, the Town Board wishes to make clear that no Town funds have been directly appropriated for the Project.

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

1. The attached Agreement between the Town of Windsor and the Colorado Department of Transportation is hereby approved.
2. The Mayor is hereby authorized to execute the attached Agreement on the Town’s behalf.
3. In accordance with the understandings between the Town and the Trail Authority, no Town funds shall be directly expended on the Project unless and until expressly appropriated by the Town Board by resolution duly adopted.

Upon motion duly made, seconded and carried, the foregoing Resolution was adopted this 25<sup>th</sup> day of January, 2016.

TOWN OF WINDSOR, COLORADO

By: \_\_\_\_\_  
John S. Vazquez, Mayor

ATTEST:

\_\_\_\_\_  
Patti Garcia, Town Clerk

**STATE OF COLORADO**  
**Department of Transportation**  
**Agreement**  
**with**  
**TOWN OF WINDSOR**

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## 1. PARTIES

THIS AGREEMENT is entered into by and between TOWN OF WINDSOR (hereinafter called the “Local Agency”), and the STATE OF COLORADO acting by and through the Department of Transportation (hereinafter called the “State” or “CDOT”).

## 2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY

This Agreement shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or their designee (hereinafter called the “Effective Date”). The State shall not be liable to pay or reimburse the Local Agency for any performance hereunder, including, but not limited to costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

## 3. RECITALS

### A. Authority, Appropriation, and Approval

Authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment and the required approval, clearance and coordination have been accomplished from and with appropriate agencies.

#### i. Federal Authority

Pursuant to Title I, Subtitle A, Section 1108 of the “Transportation Equity Act for the 21st Century” of 1998 (TEA-21) and/or the “Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users” (SAFETEA-LU) of 2005 and to applicable provisions of Title 23 of the United States Code and implementing regulations at Title 23 of the Code of Federal Regulations, as may be amended, (collectively referred to hereinafter as the “Federal Provisions”), certain federal funds have been and are expected to continue to be allocated for transportation projects requested by the Local Agency and eligible under the Surface Transportation Improvement Program that has been proposed by the State and approved by the Federal Highway Administration (“FHWA”).

#### ii. State Authority

Pursuant to CRS §43-1-223 and to applicable portions of the Federal Provisions, the State is responsible for the general administration and supervision of performance of projects in the Program, including the administration of federal funds for a Program project performed by a Local Agency under a contract with the State. This Agreement is executed under the authority of CRS §§29-1-203, 43-1-110; 43-1-116, 43-2-101(4)(c) and 43-2-104.5.

### 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 Agreement.

### C. Purpose

The purpose of this Agreement is to disburse Federal funds to the Local Agency pursuant to CDOT’s Stewardship Agreement with the FHWA.

### D. References

All references in this Agreement 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. Agreement or Contract

“Agreement” or “Contract” means this Agreement, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this Agreement, and any future modifying agreements, exhibits, attachments or references that are incorporated pursuant to Colorado State Fiscal Rules and Policies.

### B. Agreement Funds

“Agreement Funds” means funds payable by the State to Local Agency pursuant to this Agreement.

### C. Budget

“Budget” means the budget for the Work described in **Exhibit C**.

### D. Consultant and Contractor

“Consultant” means a professional engineer or designer hired by Local Agency to design the Work and  
“Contractor” means the general construction contractor hired by Local Agency to construct the Work.

**E. Evaluation**

“Evaluation” means the process of examining the Local Agency’s Work and rating it based on criteria established in §6 and **Exhibits A and E**.

**F. Exhibits and Other Attachments**

The following exhibit(s) are attached hereto and incorporated by reference herein: **Exhibit A** (Scope of Work), **Exhibit B** (Resolution), **Exhibit C** (Funding Provisions), **Exhibit D** (Option Letter), **Exhibit E** (Checklist), **Exhibit F** (Certification for Federal-Aid Funds), **Exhibit G** (Disadvantaged Business Enterprise), **Exhibit H** (Local Agency Procedures), **Exhibit I** (Federal-Aid Contract Provisions), **Exhibit J** (Federal Requirements) and **Exhibit K** (Supplemental Federal Provisions).

**G. Goods**

“Goods” means tangible material acquired, produced, or delivered by the Local Agency either separately or in conjunction with the Services the Local Agency renders hereunder.

**H. Oversight**

“Oversight” means the term as it is defined in the Stewardship Agreement between CDOT and the Federal Highway Administration (“FHWA”) and as it is defined in the Local Agency Manual.

**I. Party or Parties**

“Party” means the State or the Local Agency and “Parties” means both the State and the Local Agency

**J. Work Budget**

Work Budget means the budget described in **Exhibit C**.

**K. Services**

“Services” means the required services to be performed by the Local Agency pursuant to this Contract.

**L. Work**

“Work” means the tasks and activities the Local Agency is required to perform to fulfill its obligations under this Contract and **Exhibits A and E**, including the performance of the Services and delivery of the Goods.

**M. Work Product**

“Work Product” means the tangible or intangible results of the Local Agency’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 AND EARLY TERMINATION**

The Parties’ respective performances under this Agreement shall commence on the Effective Date. This Agreement shall terminate after five (5) years of state controllers signature in section 27, unless sooner terminated or completed as demonstrated by final payment and final audit.

**6. SCOPE OF WORK**

**A. Completion**

The Local Agency shall complete the Work and other obligations as described herein in **Exhibit A**. Work performed prior to the Effective Date or after final acceptance shall not be considered part of the Work.

**B. Goods and Services**

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

**C. Employees**

All persons employed hereunder by the Local Agency, or any Consultants or Contractors shall be considered the Local Agency’s, Consultants’, or Contractors’ employee(s) for all purposes and shall not be employees of the State for any purpose.

**D. State and Local Agency Commitments**

**i. Design**

If the Work includes preliminary design or final design or design work sheets, or special provisions and estimates (collectively referred to as the “Plans”), the Local Agency shall comply with and be responsible for satisfying the following requirements:

- a) Perform or provide the Plans to the extent required by the nature of the Work.

- b) Prepare final design in accordance with the requirements of the latest edition of the American Association of State Highway Transportation Officials (AASHTO) manual or other standard, such as the Uniform Building Code, as approved by the State.
- c) Prepare provisions and estimates in accordance with the most current version of the State's Roadway and Bridge Design Manuals and Standard Specifications for Road and Bridge Construction or Local Agency specifications if approved by the State.
- d) Include details of any required detours in the Plans in order to prevent any interference of the construction Work and to protect the traveling public.
- e) Stamp the Plans produced by a Colorado Registered Professional Engineer.
- f) Provide final assembly of Plans and all other necessary documents.
- g) Be responsible for the Plans' accuracy and completeness.
- h) Make no further changes in the Plans following the award of the construction contract to contractor unless agreed to in writing by the Parties. The Plans shall be considered final when approved in writing by CDOT and when final they shall be incorporated herein.

**ii. Local Agency Work**

- a) Local Agency shall comply with the requirements of the Americans With Disabilities Act (ADA), and applicable federal regulations and standards as contained in the document "ADA Accessibility Requirements in CDOT Transportation Projects".
- b) Local Agency shall afford the State ample opportunity to review the Plans and make any changes in the Plans that are directed by the State to comply with FHWA requirements.
- c) Local Agency may enter into a contract with a Consultant to perform all or any portion of the Plans and/or of construction administration. Provided, however, if federal-aid funds are involved in the cost of such Work to be done by such Consultant, such Consultant contract (and the performance/provision of the Plans under the contract) must comply with all applicable requirements of 23 C.F.R. Part 172 and with any procedures implementing those requirements as provided by the State, including those in Exhibit H. If the Local Agency enters into a contract with a Consultant for the Work:
  - (1) Local Agency shall submit a certification that procurement of any Consultant contract complies with the requirements of 23 C.F.R. 172.5(1) prior to entering into such Consultant contract, subject to the State's approval. If not approved by the State, the Local Agency shall not enter into such Consultant contract.
  - (2) Local Agency shall ensure that all changes in the Consultant contract have prior approval by the State and FHWA and that they are in writing. Immediately after the Consultant contract has been awarded, one copy of the executed Consultant contract and any amendments shall be submitted to the State.
  - (3) Local Agency shall require that all billings under the Consultant contract comply with the State's standardized billing format. Examples of the billing formats are available from the CDOT Agreements Office.
  - (4) Local Agency (and any Consultant) shall comply with 23 C.F.R. 172.5(b) and (d) and use the CDOT procedures described in Exhibit H to administer the Consultant contract.
  - (5) Local Agency may expedite any CDOT approval of its procurement process and/or Consultant contract by submitting a letter to CDOT from the Local Agency's attorney/authorized representative certifying compliance with Exhibit H and 23 C.F.R. 172.5(b) and (d).
  - (6) Local Agency shall ensure that the Consultant contract complies with the requirements of 49 CFR 18.36(i) and contains the following language verbatim:
    - (a) The design work under this Agreement shall be compatible with the requirements of the contract between the Local Agency and the State (which is incorporated herein by this reference) for the design/construction of the project. The State is an intended third-party beneficiary of this agreement for that purpose.
    - (b) Upon advertisement of the project work for construction, the consultant shall make available services as requested by the State to assist the State in the evaluation of construction and the resolution of construction problems that may arise during the construction of the project.

- (c) The consultant shall review the Construction Contractor's shop drawings for conformance with the contract documents and compliance with the provisions of the State's publication, Standard Specifications for Road and Bridge Construction, in connection with this work.
- (d) The State, in its sole discretion, may review construction plans, special provisions and estimates and may require the Local Agency to make such changes therein as the State determines necessary to comply with State and FHWA requirements.

### iii. Construction

If the Work includes construction, the Local Agency shall perform the construction in accordance with the approved design plans and/or administer the construction in accordance with **Exhibit E**. Such administration shall include Work inspection and testing; approving sources of materials; performing required plant and shop inspections; documentation of contract payments, testing and inspection activities; preparing and approving pay estimates; preparing, approving and securing the funding for contract modification orders and minor contract revisions; processing Construction Contractor claims; construction supervision; and meeting the Quality Control requirements of the FHWA/CDOT Stewardship Agreement, as described in the Local Agency Contract Administration Checklist.

- a) If the Local Agency is performing the Work, the State may, after providing written notice of the reason for the suspension to the Local Agency, suspend the Work, wholly or in part, due to the failure of the Local Agency or its Contractor to correct conditions which are unsafe for workers or for such periods as the State may deem necessary due to unsuitable weather, or for conditions considered unsuitable for the prosecution of the Work, or for any other condition or reason deemed by the State to be in the public interest.
- b) The Local Agency shall be responsible for the following:
  - (1) Appointing a qualified professional engineer, licensed in the State of Colorado, as the Local Agency Project Engineer (LAPE), to perform engineering administration. The LAPE shall administer the Work in accordance with this Agreement, the requirements of the construction contract and applicable State procedures.
  - (2) For the construction of the Work, advertising the call for bids upon approval by the State and awarding the construction contract(s) to the low responsible bidder(s).
    - (a) All advertising and bid awards, pursuant to this agreement, by the Local Agency shall comply with applicable requirements of 23 U.S.C. §112 and 23 C.F.R. Parts 633 and 635 and C.R.S. § 24-92-101 et seq. Those requirements include, without limitation, that the Local Agency and its Contractor shall incorporate Form 1273 (**Exhibit I**) in its entirety verbatim into any subcontract(s) for those services as terms and conditions therefore, as required by 23 C.F.R. 633.102(e).
    - (b) The Local Agency may accept or reject the proposal of the apparent low bidder for Work on which competitive bids have been received. The Local Agency must accept or reject such bid within three (3) working days after they are publicly opened.
    - (c) As part of accepting bid awards, the Local Agency shall provide additional funds, subject to their availability and appropriation, necessary to complete the Work if no additional federal-aid funds are available.
  - (3) The requirements of this §6(D)(iii)(c)(2) also apply to any advertising and awards made by the State.
  - (4) If all or part of the Work is to be accomplished by the Local Agency's personnel (i.e. by force account) rather than by a competitive bidding process, the Local Agency shall perform such work in accordance with pertinent State specifications and requirements of 23 C.F.R. 635, Subpart B, Force Account Construction.
    - (a) Such Work will normally be based upon estimated quantities and firm unit prices agreed to between the Local Agency, the State and FHWA in advance of the Work, as provided for in 23 C.F.R. 635.204(c). Such agreed unit prices shall constitute a commitment as to the value of the Work to be performed.
    - (b) An alternative to the preceding subsection is that the Local Agency may agree to participate in the Work based on actual costs of labor, equipment rental, materials supplies and supervision necessary to complete the Work. Where actual costs are used, eligibility of cost items shall be evaluated for compliance with 48 C.F.R. Part 31.

- (c) If the State provides matching funds under this Agreement, rental rates for publicly owned equipment shall be determined in accordance with the State's Standard Specifications for Road and Bridge Construction §109.04.
- (d) All Work being paid under force account shall have prior approval of the State and/or FHWA and shall not be initiated until the State has issued a written notice to proceed.

**E. State's Commitments**

- a) The State will perform a final project inspection of the Work as a quality control/assurance activity. When all Work has been satisfactorily completed, the State will sign the FHWA Form 1212.
- b) Notwithstanding any consents or approvals given by the State for the Plans, the State shall not be liable or responsible in any manner for the structural design, details or construction of any major structures designed by, or that are the responsibility of, the Local Agency as identified in the Local Agency Contract Administration Checklist, **Exhibit E**.

**F. ROW and Acquisition/Relocation**

- a) If the Local Agency purchases a right of way for a State highway, including areas of influence, the Local Agency shall immediately convey title to such right of way to CDOT after the Local Agency obtains title.
- b) Any acquisition/relocation activities shall comply with all applicable federal and state statutes and regulations, including but not limited to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended and the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs as amended (49 C.F.R. Part 24), CDOT's Right of Way Manual, and CDOT's Policy and Procedural Directives.
- c) The Parties' respective compliance responsibilities depend on the level of federal participation; provided however, that the State always retains Oversight responsibilities.
- d) The Parties' respective responsibilities under each level in CDOT's Right of Way Manual (located at [http://www.dot.state.co.us/ROW\\_Manual/](http://www.dot.state.co.us/ROW_Manual/)) and reimbursement for the levels will be under the following categories:
  - (1) Right of way acquisition (3111) for federal participation and non-participation;
  - (2) Relocation activities, if applicable (3109);
  - (3) Right of way incidentals, if applicable (expenses incidental to acquisition/relocation of right of way – 3114).

**G. Utilities**

If necessary, the Local Agency shall be responsible for obtaining the proper clearance or approval from any utility company which may become involved in the Work. Prior to the Work being advertised for bids, the Local Agency shall certify in writing to the State that all such clearances have been obtained.

- a) Railroads
  - If the Work involves modification of a railroad company's facilities and such modification will be accomplished by the railroad company, the Local Agency shall make timely application to the Public Utilities commission requesting its order providing for the installation of the proposed improvements and not proceed with that part of the Work without compliance. The Local Agency shall also establish contact with the railroad company involved for the purpose of complying with applicable provisions of 23 C.F.R. 646, subpart B, concerning federal-aid projects involving railroad facilities and:
- b) Execute an agreement setting out what work is to be accomplished and the location(s) thereof, and which costs shall be eligible for federal participation.
- c) Obtain the railroad's detailed estimate of the cost of the Work.
- d) Establish future maintenance responsibilities for the proposed installation.
- e) Proscribe future use or dispositions of the proposed improvements in the event of abandonment or elimination of a grade crossing.
- f) Establish future repair and/or replacement responsibilities in the event of accidental destruction or damage to the installation.

**H. Environmental Obligations**

The Local Agency shall perform all Work in accordance with the requirements of the current federal and state environmental regulations including the National Environmental Policy Act of 1969 (NEPA) as applicable.

## **I. Maintenance Obligations**

The Local Agency shall maintain and operate the Work constructed under this Agreement at its own cost and expense during their useful life, in a manner satisfactory to the State and FHWA, and the Local Agency shall provide for such maintenance and operations obligations each year. Such maintenance and operations shall be conducted in accordance with all applicable statutes, ordinances and regulations pertaining to maintaining such improvements. The State and FHWA may make periodic inspections to verify that such improvements are being adequately maintained.

## **7. OPTION LETTER MODIFICATION**

An option letter may be used to add a phase without increasing total budgeted funds, increase or decrease the encumbrance amount as shown on **Exhibit C**, and/or transfer funds from one phase to another. Option letter modification is limited to the specific scenarios listed below. The option letter shall not be deemed valid until signed by the State Controller or an authorized delegate.

### **A. Option to add a phase and/or increase or decrease the total encumbrance amount.**

The State may require the Local Agency to begin a phase that may include Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous (this does not apply to Acquisition/Relocation or Railroads) as detailed in **Exhibit A** and at the same terms and conditions stated in the original Agreement, with the total budgeted funds remaining the same. The State may simultaneously increase and/or decrease the total encumbrance amount by replacing the original funding exhibit (**Exhibit C**) in the original Agreement with an updated **Exhibit C-1** (subsequent exhibits to **Exhibit C-1** shall be labeled **C-2**, **C-3**, etc.). The State may exercise this option by providing a fully executed option to the Local Agency within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to **Exhibit D**. If the State exercises this option, the Agreement will be considered to include this option provision.

### **B. Option to transfer funds from one phase to another phase.**

The State may require or permit the Local Agency to transfer funds from one phase (Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous) to another as a result of changes to state, federal, and local match. The original funding exhibit (**Exhibit C**) in the original Agreement will be replaced with an updated **Exhibit C-1** (subsequent exhibits to **Exhibit C-1** shall be labeled **C-2**, **C-3**, etc.) and attached to the option letter. The funds transferred from one phase to another are subject to the same terms and conditions stated in the original Agreement with the total budgeted funds remaining the same. The State may unilaterally exercise this option by providing a fully executed option to the Local Agency within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to **Exhibit D**. Any transfer of funds from one phase to another is limited to an aggregate maximum of 24.99% of the original dollar amount of either phase affected by a transfer. A bilateral amendment is required for any transfer exceeding 24.99% of the original dollar amount of the phase affected by the increase or decrease.

### **C. Option to do both Options A and B.**

The State may require the Local Agency to add a phase as detailed in **Exhibit A**, and encumber and transfer funds from one phase to another. The original funding exhibit (**Exhibit C**) in the original Agreement will be replaced with an updated **Exhibit C-1** (subsequent exhibits to **Exhibit C-1** shall be labeled **C-2**, **C-3**, etc.) and attached to the option letter. The addition of a phase and encumbrance and transfer of funds are subject to the same terms and conditions stated in the original Agreement with the total budgeted funds remaining the same. The State may unilaterally exercise this option by providing a fully executed option to the Local Agency within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to **Exhibit D**.

## **8. PAYMENTS**

The State shall, in accordance with the provisions of this §8, pay the Local Agency in the amounts and using the methods set forth below:

### **A. Maximum Amount**

The maximum amount payable is set forth in **Exhibit C** as determined by the State from available funds. Payments to the Local Agency are limited to the unpaid encumbered balance of the Contract set forth in **Exhibit C**. The Local Agency shall provide its match share of the costs as evidenced by an appropriate ordinance/resolution or other authority letter which expressly authorizes the Local Agency the authority to

enter into this Agreement and to expend its match share of the Work. A copy of such ordinance/resolution or authority letter is attached hereto as **Exhibit B**.

**B. Payment**

**i. Advance, Interim and Final Payments**

Any advance payment allowed under this Contract or in **Exhibit C** shall comply with State Fiscal Rules and be made in accordance with the provisions of this Contract or such Exhibit. The Local Agency shall initiate any payment requests by submitting invoices to the State in the form and manner, approved by the State.

**ii. Interest**

The State shall fully pay each invoice within 45 days of receipt thereof if the amount invoiced represents performance by the Local Agency previously accepted by the State. Uncontested amounts not paid by the State within 45 days shall bear interest on the unpaid balance beginning on the 46th day at a rate not to exceed one percent per month until paid in full; provided, however, that interest shall not accrue on unpaid amounts that are subject to a good faith dispute. The Local Agency shall invoice the State separately for accrued interest on delinquent amounts. The billing shall reference the delinquent payment, the number of days interest to be paid and the interest rate.

**iii. Available Funds-Contingency-Termination**

The State is prohibited by law from making commitments beyond the term of the State's current fiscal year. Therefore, the Local Agency'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. The State's performance hereunder is also contingent upon the continuing availability of federal funds. 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 amount remaining of such encumbered funds. If State or federal funds are not appropriated, or otherwise become unavailable to fund this Contract, the State may terminate this Contract immediately, in whole or in part, without further liability in accordance with the provisions hereof.

**iv. Erroneous Payments**

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

**C. Use of Funds**

Contract Funds shall be used only for eligible costs identified herein.

**D. Matching Funds**

The Local Agency shall provide matching funds as provided in **§8.A.** and **Exhibit C**. The Local Agency shall have raised the full amount of matching funds prior to the Effective Date and shall report to the State regarding the status of such funds upon request. The Local Agency's obligation to pay all or any part of any matching funds, whether direct or contingent, only extend to funds duly and lawfully appropriated for the purposes of this Agreement by the authorized representatives of the Local Agency and paid into the Local Agency's treasury. The Local Agency represents to the State that the amount designated "Local Agency Matching Funds" in **Exhibit C** has been legally appropriated for the purpose of this Agreement by its authorized representatives and paid into its treasury. The Local Agency does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year debt of the Local Agency. The Local Agency shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by the Local Agency's laws or policies.

**E. Reimbursement of Local Agency Costs**

The State shall reimburse the Local Agency's allowable costs, not exceeding the maximum total amount described in **Exhibit C** and **§8**. The applicable principles described in 49 C.F.R. 18 Subpart C and 49 C.F.R. 18.22 shall govern the State's obligation to reimburse all costs incurred by the Local Agency and submitted to the State for reimbursement hereunder, and the Local Agency shall comply with all such principles. The

State shall reimburse the Local Agency for the federal-aid share of properly documented costs related to the Work after review and approval thereof, subject to the provisions of this Agreement and Exhibit C. However, any costs incurred by the Local Agency prior to the date of FHWA authorization for the Work and prior to the Effective Date shall not be reimbursed absent specific FHWA and State Controller approval thereof. Costs shall be:

**i. Reasonable and Necessary**

Reasonable and necessary to accomplish the Work and for the Goods and Services provided.

**ii. Net Cost**

Actual net cost to the Local Agency (i.e. the price paid minus any items of value received by the Local Agency that reduce the cost actually incurred).

**9. ACCOUNTING**

The Local Agency shall establish and maintain accounting systems in accordance with generally accepted accounting standards (a separate set of accounts, or as a separate and integral part of its current accounting scheme). Such accounting systems shall, at a minimum, provide as follows:

**A. Local Agency Performing the Work**

If Local Agency is performing the Work, all allowable costs, including any approved services contributed by the Local Agency or others, shall be documented using payrolls, time records, invoices, contracts, vouchers, and other applicable records.

**B. Local Agency-Checks or Draws**

Checks issued or draws made by the Local Agency shall be made or drawn against properly signed vouchers detailing the purpose thereof. All checks, payrolls, invoices, contracts, vouchers, orders, and other accounting documents shall be on file in the office of the Local Agency, clearly identified, readily accessible, and to the extent feasible, kept separate and apart from all other Work documents.

**C. State-Administrative Services**

The State may perform any necessary administrative support services required hereunder. The Local Agency shall reimburse the State for the costs of any such services from the Budget as provided for in Exhibit C. If FHWA funding is not available or is withdrawn, or if the Local Agency terminates this Agreement prior to the Work being approved or completed, then all actual incurred costs of such services and assistance provided by the State shall be the Local Agency's sole expense.

**D. Local Agency-Invoices**

The Local Agency's invoices shall describe in detail the reimbursable costs incurred by the Local Agency for which it seeks reimbursement, the dates such costs were incurred and the amounts thereof, and shall not be submitted more often than monthly.

**E. Invoicing Within 60 Days**

The State shall not be liable to reimburse the Local Agency for any costs unless CDOT receives such invoices within 60 days after the date for which payment is requested, including final invoicing. Final payment to the Local Agency may be withheld at the discretion of the State until completion of final audit. Any costs incurred by the Local Agency that are not allowable under 49 C.F.R. 18 shall be reimbursed by the Local Agency, or the State may offset them against any payments due from the State to the Local Agency.

**F. Reimbursement of State Costs**

CDOT shall perform Oversight and the Local Agency shall reimburse CDOT for its related costs. The Local Agency shall pay invoices within 60 days after receipt thereof. If the Local Agency fails to remit payment within 60 days, at CDOT's request, the State is authorized to withhold an equal amount from future apportionment due the Local Agency from the Highway Users Tax Fund and to pay such funds directly to CDOT. Interim funds shall be payable from the State Highway Supplementary Fund (400) until CDOT is reimbursed. If the Local Agency fails to make payment within 60 days, it shall pay interest to the State at a rate of one percent per month on the delinquent amounts until the billing is paid in full. CDOT's invoices shall describe in detail the reimbursable costs incurred, the dates incurred and the amounts thereof, and shall not be submitted more often than monthly.

**10. REPORTING - NOTIFICATION**

Reports, Evaluations, and Reviews required under this §10 shall be in accordance with the procedures of and in such form as prescribed by the State and in accordance with §18, if applicable.

**A. Performance, Progress, Personnel, and Funds**

The Local Agency shall submit a report to the State upon expiration or sooner termination of this Agreement, containing an Evaluation and Review of the Local Agency's performance and the final status of the Local Agency's obligations hereunder.

**B. Litigation Reporting**

Within 10 days after being served with any pleading related to this Agreement, in a legal action filed with a court or administrative agency, the Local Agency 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 or its principal representative is not then serving, such notice and copies shall be delivered to the Executive Director of CDOT.

**C. Noncompliance**

The Local Agency's failure to provide reports and notify the State in a timely manner in accordance with this §10 may result in the delay of payment of funds and/or termination as provided under this Agreement.

**D. Documents**

Upon request by the State, the Local Agency shall provide the State, or its authorized representative, copies of all documents, including contracts and subcontracts, in its possession related to the Work.

**11. LOCAL AGENCY RECORDS**

**A. Maintenance**

The Local Agency 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. The Local Agency shall maintain such records until the last to occur of the following: (i) a period of three years after the date this Agreement is completed or terminated, or (ii) three years after final payment is made hereunder, whichever is later, or (iii) for such further period as may be necessary to resolve any pending matters, or (iv) if an audit is occurring, or the Local Agency has received notice that an audit is pending, then until such audit has been completed and its findings have been resolved (collectively, the "Record Retention Period").

**B. Inspection**

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

**C. Monitoring**

The Local Agency also shall permit the State, the federal government or any other duly authorized agent of a governmental agency, in their sole discretion, to monitor all activities conducted by the Local Agency pursuant to the terms of this Agreement 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 such monitoring shall be performed in a manner that shall not unduly interfere with the Local Agency's performance hereunder.

**D. Final Audit Report**

If an audit is performed on the Local Agency's records for any fiscal year covering a portion of the term of this Agreement, the Local Agency shall submit a copy of the final audit report to the State or its principal representative at the address specified herein.

## **12. CONFIDENTIAL INFORMATION-STATE RECORDS**

The Local Agency shall comply with the provisions of this §12 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. Nothing in this §12 shall be construed to require the Local Agency to violate the Colorado Open Records Act, C.R.S. §§ 24-72-1001 et seq.

### **A. Confidentiality**

The Local Agency shall keep all State records and information confidential at all times and to 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 the Local Agency shall be immediately forwarded to the State's principal representative.

### **B. Notification**

The Local Agency shall notify its agents, employees 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 the Local Agency or its agents in any way, except as authorized by the Agreement and as approved by the State. The Local Agency 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 the Local Agency or its agents, except as set forth in this Agreement and approved by the State.

### **D. Disclosure-Liability**

Disclosure of State records or other confidential information by the Local Agency for any reason may be cause for legal action by third parties against the Local Agency, the State or their respective agents. The Local Agency is prohibited from providing indemnification to the State pursuant to the Constitution of the State of Colorado, Article XI, Section 1, however, the Local Agency shall be responsible for 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 the Local Agency, or its employees, agents, or assignees pursuant to this §12.

## **13. CONFLICT OF INTEREST**

The Local Agency 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 the Local Agency's obligations hereunder. The Local Agency acknowledges that with respect to this Agreement even the appearance of a conflict of interest is harmful to the State's interests. Absent the State's prior written approval, the Local Agency shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of the Local Agency's obligations to the State hereunder. If a conflict or appearance exists, or if the Local Agency is uncertain whether a conflict or the appearance of a conflict of interest exists, the Local Agency 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 Agreement.

## **14. REPRESENTATIONS AND WARRANTIES**

The Local Agency makes the following specific representations and warranties, each of which was relied on by the State in entering into this Agreement.

### **A. Standard and Manner of Performance**

The Local Agency shall perform its obligations hereunder, including in accordance with the highest professional standard of care, skill and diligence and in the sequence and manner set forth in this Agreement.

### **B. Legal Authority – The Local Agency and the Local Agency's Signatory**

The Local Agency warrants that it possesses the legal authority to enter into this Agreement 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 Agreement, or any part thereof, and to bind the Local Agency to its terms. If requested by the State, the Local Agency shall provide the State with proof of the Local Agency's authority to enter into this Agreement within 15 days of receiving such request.

**C. Licenses, Permits, Etc.**

The Local Agency 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. The Local Agency warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Agreement, without reimbursement by the State or other adjustment in Agreement Funds. Additionally, all employees and agents of the Local Agency performing Services under this Agreement shall hold all required licenses or certifications, if any, to perform their responsibilities. The Local Agency, 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 the Local Agency to properly perform the terms of this Agreement shall be deemed to be a material breach by the Local Agency and constitute grounds for termination of this Agreement.

**15. INSURANCE**

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

**A. The Local Agency**

**i. Public Entities**

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

**ii. Non-Public Entities**

If the Local Agency is not a "public entity" within the meaning of the Governmental Immunity Act, the Local Agency shall obtain and maintain during the term of this Agreement insurance coverage and policies meeting the same requirements set forth in §15(B) with respect to sub-contractors that are not "public entities".

**B. Contractors**

The Local Agency shall require each contract with Contractors, Subcontractors, or Consultants, other than those that are public entities, providing Goods or Services in connection with this Agreement, to include insurance requirements substantially similar to the following:

**i. Worker's Compensation**

Worker's Compensation Insurance as required by State statute, and Employer's Liability Insurance covering all of the Local Agency's Contractors, Subcontractors, or Consultant's 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 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. If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, contractors, subcontractors, and consultants shall immediately obtain

additional insurance to restore the full aggregate limit and furnish to the Local Agency a certificate or other document satisfactory to the Local Agency showing compliance with this provision.

**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. Additional Insured**

The Local Agency and the State shall be named as additional insured on the Commercial General Liability policies (leases and construction contracts require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent).

**v. Primacy of Coverage**

Coverage required of the Consultants or Contractors shall be primary over any insurance or self-insurance program carried by the Local Agency 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 Local Agency and the State by certified mail.

**vii. Subrogation Waiver**

All insurance policies in any way related to this Agreement and secured and maintained by the Local Agency's Consultants or Contractors as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against the Local Agency or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

**C. Certificates**

The Local Agency and all Contractors, subcontractors, or Consultants shall provide certificates showing insurance coverage required hereunder to the State within seven business days of the Effective Date of this Agreement. No later than 15 days prior to the expiration date of any such coverage, the Local Agency and each contractor, subcontractor, or consultant shall deliver to the State or the Local Agency certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this Agreement or any sub-contract, the Local Agency and each contractor, subcontractor, or consultant shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this §15.

**16. DEFAULT-BREACH**

**A. Defined**

In addition to any breaches specified in other sections of this Agreement, 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.

**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 §18. 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 §17. 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 Agreement in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

**17. REMEDIES**

If the Local Agency is in breach under any provision of this Agreement, the State shall have all of the remedies listed in this §17 in addition to all other remedies set forth in other sections of this Agreement following the notice and cure period set forth in §16(B). 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 the Local Agency 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 Agreement and in a timely manner, the State may notify the Local Agency of such non-performance in accordance with the provisions herein. If the Local Agency thereafter fails to promptly cure such non-performance within the cure period, the State, at its option, may terminate this entire Agreement or such part of this Agreement 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. The Local Agency shall continue performance of this Agreement to the extent not terminated, if any.

**i. Obligations and Rights**

To the extent specified in any termination notice, the Local Agency shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders and sub-Agreements with third parties. However, the Local Agency 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 Agreement's terms. At the sole discretion of the State, the Local Agency shall assign to the State all of the Local Agency's right, title, and interest under such terminated orders or sub-Agreements. Upon termination, the Local Agency shall take timely, reasonable and necessary action to protect and preserve property in the possession of the Local Agency in which the State has an interest. All materials owned by the State in the possession of the Local Agency shall be immediately returned to the State. All Work Product, at the option of the State, shall be delivered by the Local Agency to the State and shall become the State's property.

**ii. Payments**

The State shall reimburse the Local Agency only for accepted performance received up to the date of termination. If, after termination by the State, it is determined that the Local Agency was not in default or that the Local Agency'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 Agreement had been terminated in the public interest, as described herein.

**iii. Damages and Withholding**

Notwithstanding any other remedial action by the State, the Local Agency also shall remain liable to the State for any damages sustained by the State by virtue of any breach under this Agreement by the Local Agency and the State may withhold any payment to the Local Agency for the purpose of mitigating the State's damages, until such time as the exact amount of damages due to the State from the Local Agency is determined. The State may withhold any amount that may be due to the Local Agency 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. The Local Agency shall be liable for excess costs incurred by the State in procuring from third parties replacement Work, Services or substitute Goods as cover.

**B. Early Termination in the Public Interest**

The State is entering into this Agreement 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 Agreement ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Agreement 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 Agreement by the State for cause or breach by the Local Agency, which shall be governed by §17(A) or as otherwise specifically provided for herein.

**i. Method and Content**

The State shall notify the Local Agency of the termination in accordance with §18, specifying the effective date of the termination and whether it affects all or a portion of this Agreement.

**ii. Obligations and Rights**

Upon receipt of a termination notice, the Local Agency shall be subject to and comply with the same obligations and rights set forth in §17(A)(i).

**iii. Payments**

If this Agreement is terminated by the State pursuant to this §17(B), the Local Agency shall be paid an amount which bears the same ratio to the total reimbursement under this Agreement as the Services satisfactorily performed bear to the total Services covered by this Agreement, less payments previously made. Additionally, if this Agreement is less than 60% completed, the State may reimburse the Local Agency for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this Agreement) incurred by the Local Agency which are directly attributable to the uncompleted portion of the Local Agency's obligations hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to the Local Agency hereunder.

**C. Remedies Not Involving Termination**

The State, its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:

**i. Suspend Performance**

Suspend the Local Agency’s performance with respect to all or any portion of this Agreement pending necessary corrective action as specified by the State without entitling the Local Agency to an adjustment in price/cost or performance schedule. The Local Agency 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 the Local Agency after the suspension of performance under this provision.

**ii. Withhold Payment**

Withhold payment to the Local Agency until corrections in the Local Agency’s performance are satisfactorily made and completed.

**iii. Deny Payment**

Deny payment for those obligations not performed that due to the Local Agency’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 the Local Agency’s employees, agents, or contractors whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Agreement is deemed to be contrary to the public interest or not in the State’s best interest.

**v. Intellectual Property**

If the Local Agency infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Agreement, the Local Agency shall, at the State’s option (a) obtain for the State or the Local Agency 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.

**18. 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. If to State:**

CDOT Region: 04  
Jake Schuch  
Project Manager  
1420 2nd St  
Greeley, CO 80631  
970-350-2205

**B. If to the Local Agency:**

TOWN OF WINDSOR  
Dean Moyer  
Director of Finance  
301 WALNUT STREET  
WINDSOR, CO 80550  
970-674-2418

**19. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE**

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or work product of any type, including drafts, prepared by the Local Agency in the performance of its obligations under this Agreement shall be the exclusive property of the State and all Work Product shall be delivered to the State by the Local Agency 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. The Local Agency shall not use, willingly allow, cause or permit such Work Product to be used for any purpose other than the performance of the Local Agency’s obligations hereunder without the prior written consent of the State.

**20. 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 Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended. 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 and of the Local Agency is controlled and limited by the provisions of the Governmental Immunity Act and the risk management statutes, CRS §24-30-1501, et seq., as amended.

## **21. STATEWIDE CONTRACT MANAGEMENT SYSTEM**

If the maximum amount payable to the Local Agency under this Agreement is \$100,000 or greater, either on the Effective Date or at any time thereafter, this §21 applies.

The Local Agency 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 agreements/contracts and inclusion of agreement/contract performance information in a statewide contract management system.

The Local Agency's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Agreement, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of the Local Agency's performance shall be part of the normal Agreement administration process and the Local Agency's performance will be systematically recorded in the statewide Agreement 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 the Local Agency's obligations under this Agreement shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of the Local Agency'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 Agreement term. The Local Agency 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 the Local Agency 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 CDOT, and showing of good cause, may debar the Local Agency and prohibit the Local Agency from bidding on future Agreements. The Local Agency 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 the Local Agency, by the Executive Director, upon showing of good cause.

## **22. FEDERAL REQUIREMENTS**

The Local Agency and/or their contractors, subcontractors, and consultants shall at all times during the execution of this Agreement strictly adhere to, and comply with, all applicable federal and state laws, and their implementing regulations, as they currently exist and may hereafter be amended.

## **23. DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

The Local Agency will comply with all requirements of **Exhibit G** and the Local Agency Contract Administration Checklist regarding DBE requirements for the Work, except that if the Local Agency desires to use its own DBE program to implement and administer the DBE provisions of 49 C.F.R. Part 26 under this Agreement, it must submit a copy of its program's requirements to the State for review and approval before the execution of this Agreement. If the Local Agency uses any State- approved DBE program for this Agreement, the Local Agency shall be solely responsible to defend that DBE program and its use of that program against all legal and other challenges or complaints, at its sole cost and expense. Such responsibility includes, without limitation, determinations concerning DBE eligibility requirements and certification, adequate legal and factual bases for DBE goals and good faith efforts. State approval (if provided) of the Local Agency's DBE program does not waive or modify the sole responsibility of the Local Agency for use of its program.

## **24. DISPUTES**

Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement shall be decided by the Chief Engineer of the Department of

Transportation. The decision of the Chief Engineer will be final and conclusive unless, within 30 calendar days after the date of receipt of a copy of such written decision, the Local Agency mails or otherwise furnishes to the State a written appeal addressed to the Executive Director of CDOT. In connection with any appeal proceeding under this clause, the Local Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Local Agency shall proceed diligently with the performance of this Agreement in accordance with the Chief Engineer's decision. The decision of the Executive Director or his duly authorized representative for the determination of such appeals shall be final and conclusive and serve as final agency action. This dispute clause does not preclude consideration of questions of law in connection with decisions provided for herein. Nothing in this Agreement, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

## **25. GENERAL PROVISIONS**

### **A. Assignment**

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

### **B. Binding Effect**

Except as otherwise provided in §25(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 Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

### **D. Counterparts**

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

### **E. Entire Understanding**

This Agreement 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 addition, deletion, or other amendment hereto shall not have any force or affect whatsoever, unless embodied herein.

### **F. Indemnification - General**

If Local Agency is not a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., the Local Agency shall 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 the Local Agency, or its employees, agents, subcontractors or assignees pursuant to the terms of this Agreement. This clause is not applicable to a Local Agency that is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq.

### **G. Jurisdiction and Venue**

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

### **H. Limitations of Liability**

Any and all limitations of liability and/or damages in favor of the Local Agency contained in any document attached to and/or incorporated by reference into this Agreement, whether referred to as an exhibit, attachment, schedule, or any other name, are void and of no effect. This includes, but is not necessarily limited to, limitations on (i) the types of liabilities, (ii) the types of damages, (iii) the amount of damages, and (iv) the source of payment for damages.

### **I. Modification**

- i. By the Parties

Except as specifically provided in this Agreement, modifications of this Agreement shall not be effective unless agreed to in writing by both parties in an amendment to this Agreement, 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 MODIFICATIONS OF AGREEMENTS - TOOLS AND FORMS.

**ii. By Operation of Law**

This Agreement 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 Agreement on the effective date of such change, as if fully set forth herein

**J. Order of Precedence**

The provisions of this Agreement shall govern the relationship of the State and the Local Agency. In the event of conflicts or inconsistencies between this Agreement and its exhibits and attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- i.** Colorado Special Provisions,
- ii.** The provisions of the main body of this Agreement,
- iii.** **Exhibit A** (Scope of Work),
- iv.** **Exhibit B** (Local Agency Resolution),
- v.** **Exhibit C** (Funding Provisions),
- vi.** **Exhibit D** (Option Letter),
- vii.** **Exhibit E** (Local Agency Contract Administration Checklist),
- viii.** Other exhibits in descending order of their attachment.

**K. Severability**

Provided this Agreement 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.

**L. Survival of Certain Agreement Terms**

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

**M. 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. The Local Agency shall be solely liable for paying such taxes as the State is prohibited from paying for or reimbursing the Local Agency for them

**N. Third Party Beneficiaries**

Enforcement of this Agreement 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 Agreement are incidental to the Agreement, and do not create any rights for such third parties.

**O. Waiver**

Waiver of any breach of a term, provision, or requirement of this Agreement, 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.

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## **26. COLORADO SPECIAL PROVISIONS**

The Special Provisions apply to all Agreements except where noted in italics.

### **A. CONTROLLER'S APPROVAL. CRS §24-30-202 (1).**

This Agreement shall not be deemed valid until it has been approved by the Colorado State Controller or designee.

### **B. 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.

### **C. GOVERNMENTAL IMMUNITY.**

No term or condition of this Agreement 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.

### **D. INDEPENDENT CONTRACTOR.**

The Local Agency shall perform its duties hereunder as an independent contractor and not as an employee. Neither The Local Agency nor any agent or employee of The Local Agency shall be deemed to be an agent or employee of the State. The Local Agency 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 The Local Agency or any of its agents or employees. Unemployment insurance benefits shall be available to The Local Agency and its employees and agents only if such coverage is made available by The Local Agency or a third party. The Local Agency shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Agreement. The Local Agency shall not have authorization, express or implied, to bind the State to any Agreement, liability or understanding, except as expressly set forth herein. The Local Agency 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.

### **E. COMPLIANCE WITH LAW.**

The Local Agency 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.

### **F. CHOICE OF LAW.**

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. 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 Agreement, to the extent capable of execution.

### **G. 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 contract or incorporated herein by reference shall be null and void.

### **H. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.**

State or other public funds payable under this Agreement shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. The Local Agency hereby certifies and warrants that, during the term of this Agreement and any extensions, The Local Agency has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that The Local Agency is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Agreement, including, without limitation,

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

**I. 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 Agreement. The Local Agency has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of The Local Agency's services and The Local Agency shall not employ any person having such known interests.

**J. 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.

**K. 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]*. The Local Agency certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who shall perform work under this Agreement and shall confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Agreement, through participation in the E-Verify Program or the State program established pursuant to CRS §8-17.5-102(5)(c). The Local Agency shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into a contract with a subcontractor that fails to certify to The Local Agency that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. The Local Agency (a) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed, (b) shall notify the subcontractor and the contracting State agency within three days if The Local Agency has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this Agreement, (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 The Local Agency participates in the State program, The Local Agency shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that The Local Agency has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If The Local Agency 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 Agreement for breach and, if so terminated, The Local Agency shall be liable for damages.

**L. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101.**

The Local Agency, 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 Agreement.

SPs Effective 1/1/09

**THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK**

**27. SIGNATURE PAGE**

Agreement Routing Number: **15-HA4-XC-00115**

**THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT**

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

<p style="text-align: center;"><b>THE LOCAL AGENCY TOWN OF WINDSOR</b></p> <p>Print: _____</p> <p>Title: _____</p> <p>_____</p> <p style="text-align: center;">*Signature</p> <p>Date: _____</p>	<p style="text-align: center;"><b>STATE OF COLORADO John W. Hickenlooper, GOVERNOR Colorado Department of Transportation Shailen Bhatt, Executive Director</b></p> <p>By: Joshua Laipply, P.E., <b>Chief Engineer</b></p> <p>Date: _____</p>
<p style="text-align: center;">2nd Local Agency Signature if needed</p> <p>Print: _____</p> <p>Title: _____</p> <p>_____</p> <p style="text-align: center;">*Signature</p> <p>Date: _____</p>	<p style="text-align: center;"><b>LEGAL REVIEW Cynthia H. Coffman, Attorney General</b></p> <p>By: _____</p> <p style="text-align: center;">Signature - Assistant Attorney General</p> <p>Date: _____</p>

**ALL AGREEMENTS REQUIRE APPROVAL BY THE STATE CONTROLLER**

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

<p style="text-align: center;"><b>STATE CONTROLLER Robert Jaros, CPA, MBA, JD</b></p> <p>By: _____</p> <p style="text-align: center;">Colorado Department of Transportation</p> <p>Date: _____</p>
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## 28. EXHIBIT A – SCOPE OF WORK

<b>COLORADO DEPARTMENT OF TRANSPORTATION</b> <b>DESIGN DATA</b>		Orig.Date: 12/15/2014 Rev.Date: Revision #: 0 Region #: 04		Project Code # (SA#): 20613    STIP#: SNF5094	
Page 1 to 3 Status: <input checked="" type="checkbox"/> Preliminary <input type="checkbox"/> Final <input type="checkbox"/> Revised		Submitted By PM: SCHUCHM    Approved by Program Engineer: Date:		Project #: TAP M377-006 PE Project Code:	
Revised by: Date:		Project Description: Great Western Trail - Windsor County: 123 Municipality: Windsor System Code: Z-Not on any Federal-Aid Highway Oversight By: Delegated/Locally Administered Planned Length: 7.000			
Geographic Location: GREAT WESTERN TRAIL FROM EATON TO SEVERANCE					
Type of Terrain: Plains Description of Proposed Construction/Improvement(Attach map showing site location) CONSTRUCT TRAIL					
<b>1 Project Characteristics (Proposed)</b>			Median (Type): <input type="checkbox"/> Depressed <input type="checkbox"/> Painted <input type="checkbox"/> Raised <input type="checkbox"/> None		
<input type="checkbox"/> Lighting <input type="checkbox"/> Handicap Ramps <input type="checkbox"/> Curb and Gutter <input type="checkbox"/> Curb Only <input type="checkbox"/> Sidewalk Width= <input type="checkbox"/> Bikeway Width= <input type="checkbox"/> Parking Lane Width= <input type="checkbox"/> Detours			<input type="checkbox"/> Traffic Control Signals <input type="checkbox"/> Striping <input type="checkbox"/> Left-Turn Slots <input type="checkbox"/> Continuous                      Width= <input type="checkbox"/> Right-Turn Slots <input type="checkbox"/> Continuous                      Width= <input type="checkbox"/> Signing <input type="checkbox"/> Construction <input type="checkbox"/> Permanent		
<input type="checkbox"/> Landscaping requirements (description):			<input checked="" type="checkbox"/> Other (description): Crusher fine trail		
<b>2 Right of Way</b>		Yes/No    Est. #	<b>3 Utilities</b> (list names of known utility companies)		
ROW &/or Perm. Easement Required    No    _____ Relocation Required    No    _____ Temporary Easement Required:    No    _____ Changes in Access:    No    _____ Changes to Connecting Roads:    No    _____					
<b>4 Railroad Crossings</b>		# of Crossings:			
Recommendations :					
<b>5 Environmental</b>		Type: None	Approved On: / /	Project Code # Cleared Under:	Project # Cleared Under:
Comments:					
<b>6 Coordination</b>					
<input type="checkbox"/> Withdrawn Lands (Power Sites, Reservoirs, Etc.) Cleared through BLM or Forest Service Office				Irrigation Ditch Name:	
<input type="checkbox"/> New Traffic Ordinance Required <input type="checkbox"/> Modify Schedule of Existing Ordinance				Municipality: Windsor	
Other:					
<b>7 Construction Method</b>		Advertised By: Local	NoAd Reason:	Entity / Agency Contact Name: Vicki Miller	Phone #: 970-674-2400
<b>8 Safety Considerations</b>			Project Under:		Guardrail meets current standards:    No
<input checked="" type="checkbox"/> Variance in Minimum Design Standards Required			<input type="checkbox"/> Safety project not all standards addressed		Comments:
<input type="checkbox"/> Justification Attached <input type="checkbox"/> Request to be Submitted <input type="checkbox"/> Bridge(see item 12) <input type="checkbox"/> See Remarks					
<input type="checkbox"/> Stage Construction (explain in remarks) 3R projects Safety Evaluation Complete (date):					

Page 2 of 3	Project Code #(SA#): 20613	Project #: TAP M377-006	Revise date:
Use Columns A, B, C, D and/or E to identify facility described below			
A =		B =	
C =		D =	
E =			
<b>9 Traffic</b>			
Current Year	ADT		
	DHV		
Future Year	DHV % Trucks		
	ADT		
	DHV		
Facility Location	<input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Residential <input type="checkbox"/> Other	<input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Residential <input type="checkbox"/> Other	<input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Residential <input type="checkbox"/> Other
<b>10 Roadway Class</b>			
Route			
Refpt	0.000		
Endrpt	0.000		
Functional Classification	N		
Facility type	0		
Rural Code	R		
<b>11 Design Standards</b>			
	Standard	Existing	Proposed
	Ultimate	Standard	Existing
	Proposed	Ultimate	Standard
	Ultimate	Proposed	Ultimate
Design Variance Required (substandard items are identified with an * in 1 <sup>st</sup> column & clarify as design variance with CDOT Form #464)			
Width of Travel Lanes			
Shoulder width ft/outside			
Shoulder width ft/outside			
Design Speed			
Cross Slope			
Max. superelevation rate			
Min. Radius			
Min. Horizontal SSD			
Min. Vertical SSD			
Max Grade			
Design Decision Letter Required (substandard items are identified with an * in 1 <sup>st</sup> column & clarify with decision letter)			
Typical Section Type			
# of Travel Lanes			
Side Slope Dist. ("x")			
Median Width			
Posted Speed			

Page 3 of 3	Project Code #(SA#): 20613	Project #: TAP M377-006	Revise Date:	
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**12 Major Structures** S= to stay, R= to be removed, P= proposed new structure

Structure ID#	Length	Reference Point	Feature Intersected	Standard Width	Structure Roadway	Structural Capacity	Horizontal Clearance	Vertical Clearance	Year Built
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Proposed Treatment of Bridges to Remain in Place(address bridge rail, capacity, and allowable surfacing thickness):

**13 Remarks**

The Colorado Department of Transportation (#CDOT#) will oversee the Town of Windsor when the Town of Windsor designs and constructs the following: Great West Trail from Couty Road 37 in Eaton to County Road 23 in Severance. (Hereinafter referred to as #this work#) CDOT and the Town of Windsor believe it will be beneficial to perform this work because the proposed section will provide a connection between Eaton and Severance and tie into the existing trail section that runs from Windsor to Severance. The proposed section will provide additional recreational opportunities for regional and tourism benefits to the community. This work will be located from Weld County Road 37 in Eaton to Weld County Road 23 in Severance.

This work will contain the following features: 10' wide trail, 4" crusher fines over weed barrier blanket. This work will conform to all applicable state and federal rules and regulations including but not limited to ADA requirements. The design phase of the work will begin in the spring of 2015. The design phase will identify more exact requirements, qualities, and attributes for this work. (Herein after referred to as #the exact work#) The exact work shall be used to complete the construction phase of the project. The construction phase of the contract shall begin as soon as reasonably possible.

**29. EXHIBIT B – LOCAL AGENCY RESOLUTION**

LOCAL AGENCY  
ORDINANCE  
or  
RESOLUTION

**30. EXHIBIT C – FUNDING PROVISIONS**

**A. Cost of Work Estimate**

The Local Agency has estimated the total cost the Work which is to be funded as follows:

<b>1 BUDGETED FUNDS</b>				
a. Federal Funds				
(80.00% of Participating Costs)				\$550,000.00
b. Local Agency Matching Funds				
(20.00% of Participating Costs)				\$137,500.00
<b>TOTAL BUDGETED FUNDS</b>				<b>\$687,500.00</b>
<b>2 ESTIMATED CDOT-INCURRED COSTS</b>				
a. Federal Share				\$0.00
(0% of Participating Costs)				
b. Local Share				
Local Agency Share of Participating Costs		\$0.00		
Local Agency Share of Non-Participating Costs		\$0.00		
Estimated to be Billed to Local Agency				\$0.00
<b>TOTAL ESTIMATED CDOT-INCURRED COSTS</b>				<b>\$0.00</b>
<b>3 ESTIMATED PAYMENT TO LOCAL AGENCY</b>				
a. Federal Funds Budgeted (1a)				\$550,000.00
b. Less Estimated Federal Share of CDOT-Incurred Costs (2a)				\$0.00
c. State Funds Budgeted (1c)				\$0.00
<b>TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY</b>				<b>\$550,000.00</b>
<b>FOR CDOT ENCUMBRANCE PURPOSES</b>				
<i>*Note - \$0.00 is currently available. Funds and/or Local Agency Overmatch will be added in the future either by Option Letter or Amendment.</i>				
Net to be encumbered as follows:				\$0.00
	WBS Element 20613.10.30	Design	3020	\$0.00
	WBS Element 20613.20.10	Construc.	3301	\$0.00

## **B. Matching Funds**

The matching ratio for the federal participating funds for this Work is 80.00% federal-aid funds (CFDA #20 2050) to 20.00% Local Agency and State funds, it being understood that such ratio applies only to the \$687,500 that is eligible for federal participation, it being further understood that all non-participating costs are borne by the Local Agency at 100%. If the total participating cost of performance of the Work exceeds \$687,500 and additional federal funds are made available for the Work, the Local Agency shall pay 20.00% of all such costs eligible for federal participation and 100% of all non-participating costs; if additional federal funds are not made available, the Local Agency shall pay all such excess costs. If the total participating cost of performance of the Work is less than \$687,500, then the amounts of State and federal-aid funds will be decreased in accordance with the funding ratio described herein. The performance of the Work shall be at no cost to the State.

## **C. Maximum Amount Payable**

The maximum amount payable to the Local Agency under this Agreement shall be \$550,000.00 (For CDOT accounting purposes, the federal funds of \$550,000.00, State funds of \$0.00, Local Agency matching funds of \$137,500.00, and Local Agency Overmatch funds of \$0.00 will be encumbered for a total encumbrance of \$687,500), unless such amount is increased by an appropriate written modification to this Agreement executed before any increased cost is incurred. **\*\*\* Note - \$0.00 is currently available. Funds and/or Local Agency Overmatch will be added in the future either by Option Letter or Amendment \*\*\*** It is understood and agreed by the parties hereto that the total cost of the Work stated hereinbefore is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and that such cost is subject to revisions (in accord with the procedure in the previous sentence) agreeable to the parties prior to bid and award.

## **D. Single Audit Act Amendment**

All state and local government and non-profit organization Sub-The Local Agencies receiving more than \$750,000 from all funding sources defined as federal financial assistance for Single Audit Act Amendment purposes, shall comply with the audit requirements of OMB Circular A-133 (Audits of States, Local Governments and Non-Profit Organizations) see also, 49 C.F.R. 18.20 through 18.26. The Single Audit Act Amendment requirements applicable to Sub-The Local Agencies receiving federal funds are as follows:

### **i. Expenditure less than \$750,000**

If the Sub-The Local Agency expends less than \$750,000 in Federal funds (all federal sources, not just Highway funds) in its fiscal year then this requirement does not apply.

### **ii. Expenditure exceeding than \$750,000-Highway Funds Only**

If the Sub-The Local Agency expends more than \$750,000 in Federal funds, but only received federal Highway funds (Catalog of Federal Domestic Assistance, CFDA 20.205) then a program specific audit shall be performed. This audit will examine the "financial" procedures and processes for this program area.

### **iii. Expenditure exceeding than \$750,000-Multiple Funding Sources**

If the Sub-The Local Agency expends more than \$750,000 in Federal funds, and the Federal funds are from multiple sources (FTA, HUD, NPS, etc.) then the Single Audit Act applies, which is an audit on the entire organization/entity.

### **iv. Independent CPA**

Single Audit shall only be conducted by an independent CPA, not by an auditor on staff. An audit is an allowable direct or indirect cost.

**31. EXHIBIT D – OPTION LETTER**

**SAMPLE IGA OPTION LETTER**

(This option has been created by the Office of the State Controller for CDOT use only)

*NOTE: This option is limited to the specific contract scenarios listed below*

*AND may be used in place of exercising a formal amendment.*

<b>Date:</b>	<b>State Fiscal Year:</b>	<b>Option Letter No.</b>	<b>Option Letter CMS Routing #</b>
			<b>Option Letter SAP #</b>
<b>Original Contract CMS #</b>		<b>Original Contract SAP #</b>	

**Vendor name:** \_\_\_\_\_

**SUBJECT:**

- A.** Option to unilaterally authorize the Local Agency to begin a phase which may include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous ONLY (*does not apply to Acquisition/Relocation or Railroads*) and to update encumbrance amounts(a new Exhibit C must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.).
- B.** Option to unilaterally transfer funds from one phase to another phase (a new Exhibit C must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.).
- C.** Option to unilaterally do both A and B (a new Exhibit C must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.).

**REQUIRED PROVISIONS:**

**Option A** (*Insert the following language for use with the Option A*):

In accordance with the terms of the original Agreement (*insert CMS routing # of the original Agreement*) between the State of Colorado, Department of Transportation and (*insert the Local Agency's name here*), the State hereby exercises the option to authorize the Local Agency to begin a phase that will include (*describe which phase will be added and include all that apply – Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous*) and to encumber previously budgeted funds for the phase based upon changes in funding availability and authorization. The encumbrance for (*Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous*)is (*insert dollars here*). A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**. (*The following is a NOTE only, please delete when using this option. Future changes for this option for Exhibit C shall be labled as follows: C-2, C-3, C-4, etc.*).

**Option B** (*Insert the following language for use with Option B*):

In accordance with the terms of the original Agreement (*insert CMS # of the original Agreement*) between the State of Colorado, Department of Transportation and (*insert the Local Agency's name here*), the State hereby exercises the option to transfer funds from (*describe phase from which funds will be moved*) to (*describe phase to which funds will be moved*) based on variance in actual phase costs and original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**. (*The following is a NOTE only so please delete when using this option: future changes for this option for Exhibit C shall be labeled as follows: C-2, C-3, C-4, etc.; and no more than 24.99% of any phase may be moved using this option letter. A transfer greater than 24.99% must be*

made using an formal amendment)..

**Option C** (Insert the following language for use with Option C):

In accordance with the terms of the original Agreement (insert CMS routing # of original Agreement) between the State of Colorado, Department of Transportation and (insert the Local Agency's name here), the State hereby exercises the option to 1) release the Local Agency to begin a phase that will include (describe which phase will be added and include all that apply – Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous); 2) to encumber funds for the phase based upon changes in funding availability and authorization; and 3) to transfer funds from (describe phase from which funds will be moved) to (describe phase to which funds will be moved) based on variance in actual phase costs and original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**. (The following is a NOTE only so please delete when using this option: future changes for this option for **Exhibit C** shall be labeled as follows: **C-2, C-3, C-4, etc.**; and no more than 24.99% of any phase may be moved using this option letter. A transfer greater than 24.99% must be made using an formal amendment).

(The following language must be included on ALL options):

The total encumbrance as a result of this option and all previous options and/or amendments is now (insert total encumbrance amount), as referenced in **Exhibit (C-1, C-2, etc., as appropriate)**. The total budgeted funds to satisfy services/goods ordered under the Agreement remains the same: (indicate total budgeted funds) as referenced in **Exhibit (C-1, C-2, etc., as appropriate)** of the original Agreement.

The effective date of this option letter is upon approval of the State Controller or delegate.

**APPROVALS:**

**State of Colorado:**

John W. Hickenlooper, Governor

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Executive Director, Colorado Department of Transportation

**ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER**

**CRS §24-30-202 requires the State Controller to approve all State Contracts. This Agreement 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 the Local Agency begins performing prior thereto, the State of Colorado is not obligated to pay the Local Agency for such performance or for any goods and/or services provided hereunder.**

**State Controller  
Robert Jaros, CPA, MBA, JD**

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

Date: \_\_\_\_\_

**32. EXHIBIT E – LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST**

COLORADO DEPARTMENT OF TRANSPORTATION <b>LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST</b>			
Project No. TAP M377-006	STIP No. XXXXXX	Project Code 20613	Region 04
Project Location WCR 37 to WCR 23			Date 4/13/2015
Project Description Great Western Trail			
Local Agency Town of Windsor	Local Agency Project Manager Tom Jones		
CDOT Resident Engineer Long Nguyen	CDOT Project Manager Jake Schuch		
<p><b>INSTRUCTIONS:</b>            This checklist shall be utilized to establish the contract administration responsibilities of the individual parties to this agreement. The checklist becomes an attachment to the Local Agency agreement. Section numbers correspond to the applicable chapters of the <i>CDOT Local Agency Manual</i>.</p> <p>The checklist shall be prepared by placing an "X" under the responsible party, opposite each of the tasks. The "X" denotes the party responsible for initiating and executing the task. When neither CDOT nor the Local Agency is responsible for a task, not applicable (NA) shall be noted. In addition, a "#" will denote that CDOT must concur or approve.</p> <p>Tasks that will be performed by Headquarters staff will be indicated. The Regions, in accordance with established policies and procedures, will determine who will perform all other tasks that are the responsibility of CDOT.</p> <p>The checklist shall be prepared by the CDOT Resident Engineer or the CDOT Project Manager, in cooperation with the Local Agency Project Manager, and submitted to the Region Program Engineer. If contract administration responsibilities change, the CDOT Resident Engineer, in cooperation with the Local Agency Project Manager, will prepare and distribute a revised checklist.</p>			

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
<b>TIP / STIP AND LONG-RANGE PLANS</b>			
2-1	Review Project to ensure consistency with STIP and amendments thereto		X
<b>FEDERAL FUNDING OBLIGATION AND AUTHORIZATION</b>			
4-1	Authorize funding by phases (CDOT Form 418 - Federal-aid Program Data. Requires FHWA concurrence/involvement)		X
<b>PROJECT DEVELOPMENT</b>			
5-1	Prepare Design Data - CDOT Form 463		X
5-2	Prepare Local Agency/CDOT Inter-Governmental Agreement (see also Chapter 3)		X
5-3	Conduct Consultant Selection/Execute Consultant Agreement	X	
5-4	Conduct Design Scoping Review meeting	X	X
5-5	Conduct Public Involvement	X	
5-6	Conduct Field Inspection Review (FIR)	NA	
5-7	Conduct Environmental Processes (may require FHWA concurrence/involvement)	X	
5-8	Acquire Right-of-Way (may require FHWA concurrence/involvement)	NA	NA
5-9	Obtain Utility and Railroad Agreements	NA	
5-10	Conduct Final Office Review (FOR)	X	
5-11	Justify Force Account Work by the Local Agency	X	#
5-12	Justify Proprietary, Sole Source, or Local Agency Furnished items	X	#
5-13	Document Design Exceptions - CDOT Form 464	X	#
5-14	Prepare Plans, Specifications and Construction Cost Estimates	X	#
5-15	Ensure Authorization of Funds for Construction		X



NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
	Provide competent, experienced staff who will ensure the Contract work is constructed in accordance with the plans and specifications	X	
	Construction inspection and documentation	X	
8-6	Approve Shop Drawings	X	
8-7	Perform Traffic Control Inspections	X	#
8-8	Perform Construction Surveying	X	
8-9	Monument Right-of-Way	X	
8-10	Prepare and Approve Interim and Final Contractor Pay Estimates	X	
	Provide the name and phone number of the person authorized for this task.  Tom Jones 970-686-7325 Local Agency Representative Phone number		
8-11	Prepare and Approve Interim and Final Utility/Railroad Billings	NA	
8-12	Prepare Local Agency Reimbursement Requests	X	
8-13	Prepare and Authorize Change Orders	X	#
8-14	Approve All Change Orders		X
8-15	Monitor Project Financial Status	X	
8-16	Prepare and Submit Monthly Progress Reports	NA	
8-17	Resolve Contractor Claims and Disputes	X	
8-18	Conduct Routine and Random Project Reviews		X
	Provide the name and phone number of the person responsible for this task.  Long Nguyen 970-350-2126 CDOT Resident Engineer Phone number		
<b>MATERIALS</b>			
9-1	Discuss Materials at Preconstruction Meeting -Buy America documentation <b>prior</b> to installation of steel	X	
9-2	Complete CDOT Form 250 - Materials Documentation Record • Generate form, which includes determining the minimum number of required tests and applicable material submittals for all materials placed on the project • Update the form as work progresses • Complete and distribute form after work is completed	X X	X
9-3	Perform Project Acceptance Samples and Tests	X	
9-4	Perform Laboratory Verification Tests	X	
9-5	Accept Manufactured Products	X	
	Inspection of structural components: • Fabrication of structural steel and pre-stressed concrete structural components • Bridge modular expansion devices (0" to 6" or greater) • Fabrication of bearing devices	X X X	
9-6	Approve Sources of Materials	X	
9-7	Independent Assurance Testing (IAT), Local Agency Procedures <input checked="" type="checkbox"/> CDOT Procedures <input type="checkbox"/> • Generate IAT schedule • Schedule and provide notification • Conduct IAT	X X	X
9-8	Approve Mix Designs • Concrete • Hot Mix Asphalt	NA NA	
9-9	Check Final Materials Documentation	X	
9-10	Complete and Distribute Final Materials Documentation	X	

<b>CONSTRUCTION CIVIL RIGHTS AND LABOR COMPLIANCE</b>			
10-1	Fulfill Project Bulletin Board and Pre-construction Packet Requirements	X	
10-2	Process CDOT Form 205b - Sublet Permit Application Review and sign completed CDOT Form 205 for each subcontractor, and submit to EEO/Civil Rights Specialist	X	
10-3	Conduct Equal Employment Opportunity and Labor Compliance Verification Employee Interviews. Complete CDOT Form 280	X	
10-4	Monitor Disadvantaged Business Enterprise Participation to Ensure Compliance with the "Commercially Useful Function" requirements	X	
10-5	Conduct Interviews When Project Utilizes On-the-Job Trainees. Complete CDOT Form 200 - OJT Training Questionnaire	X	
10-6	Check Certified Payrolls (Contact the Region EEO/Civil Rights Specialists for training requirements.)	X	#
10-7	Submit FHWA Form 1391 - Highway Construction Contractor's Annual EEO Report	X	
<b>FINALS</b>			
11-1	Conduct Final Project Inspection. Complete and submit CDOT Form 1212 - Final Acceptance Report (Resident Engineer with mandatory Local Agency participation.)		X
11-2	Write Final Project Acceptance Letter	X	
11-3	Advertise for Final Settlement	X	
11-4	Prepare and Distribute Final As-Constructed Plans	X	
11-5	Prepare EEO Certification	X	
11-6	Check Final Quantities, Plans and Pay Estimate; Check Project Documentation; and submit Final Certifications	X	
11-7	Check Material Documentation and Accept Final Material Certification (See Chapter 9)	X	
11-8	Obtain CDOT Form 1419 - Contractor DBE Payment Certification from the Contractor and submit to the Resident Engineer (Quarterly)	X	
11-9	Obtain FHWA Form 47 - Statement of Materials and Labor Used ... from the Contractor		NA
11-10	Process Final Payment	X	
11-11	Complete and Submit CDOT Form 950 - Project Closure		X
11-12	Retain Project Records for Six Years from Date of Project Closure	X	X
11-13	Retain Final Version of Local Agency Contract Administration Checklist	X	X

cc: CDOT Resident Engineer/Project Manager  
CDOT Region Program Engineer  
CDOT Region EEO/Civil Rights Specialist  
CDOT Region Materials Engineer  
CDOT Contracts and Market Analysis Branch  
Local Agency Project Manager

### **33. EXHIBIT F – CERTIFICATION FOR FEDERAL-AID CONTRACTS**

The Local Agency certifies, by signing this Agreement, to the best of its knowledge and belief, that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, Agreement, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or of Congress, or an employee of a Member of Congress in connection with this Federal contract, Agreement, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agree by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.

Required by 23 CFR 635.112

### **34. EXHIBIT G – DISADVANTAGED BUSINESS ENTERPRISE**

#### **SECTION 1. Policy.**

It is the policy of the Colorado Department of Transportation (CDOT) that disadvantaged business enterprises shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement, pursuant to 49 CFR Part 26. Consequently, the 49 CFR Part IE DBE requirements the Colorado Department of Transportation DBE Program (or a Local Agency DBE Program approved in advance by the State) apply to this agreement.

#### **SECTION 2. DBE Obligation.**

The recipient or its the Local Agency agrees to ensure that disadvantaged business enterprises as determined by the Office of Certification at the Colorado Department of Regulatory Agencies have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all participants or contractors shall take all necessary and reasonable steps in accordance with the CDOT DBE program (or a Local Agency DBE Program approved in advance by the State) to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of CDOT assisted contracts.

#### **SECTION 3 DBE Program.**

The Local Agency (sub-recipient) shall be responsible for obtaining the Disadvantaged Business Enterprise Program of the Colorado Department of Transportation, 1988, as amended, and shall comply with the applicable provisions of the program. (If applicable).

A copy of the DBE Program is available from and will be mailed to the Local Agency upon request:

Business Programs Office

Colorado Department of Transportation

4201 East Arkansas Avenue, Room 287

Denver, Colorado 80222-3400

Phone: (303) 757-9234

revised 1/22/98

Required by 49 CFR Part 26

## **35. EXHIBIT H – LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES**

### **THE LOCAL AGENCY SHALL USE THESE PROCEDURES TO IMPLEMENT FEDERAL-AID PROJECT AGREEMENTS WITH PROFESSIONAL CONSULTANT SERVICES**

Title 23 Code of Federal Regulations (CFR) 172 applies to a federally funded local agency project agreement administered by CDOT that involves professional consultant services. 23 CFR 172.1 states “The policies and procedures involve federally funded contracts for engineering and design related services for projects subject to the provisions of 23 U.S.C. 112(a) and are issued to ensure that a qualified consultant is obtained through an equitable selection process, that prescribed work is properly accomplished in a timely manner, and at fair and reasonable cost” and according to 23 CFR 172.5 “Price shall not be used as a factor in the analysis and selection phase.” Therefore, local agencies must comply with these CFR requirements when obtaining professional consultant services under a federally funded consultant contract administered by CDOT.

CDOT has formulated its procedures in Procedural Directive (P.D.) 400.1 and the related operations guidebook titled "Obtaining Professional Consultant Services". This directive and guidebook incorporate requirements from both Federal and State regulations, i.e., 23 CFR 172 and CRS §24-30-1401 et seq. Copies of the directive and the guidebook may be obtained upon request from CDOT's Agreements and Consultant Management Unit. [Local agencies should have their own written procedures on file for each method of procurement that addresses the items in 23 CFR 172].

Because the procedures and laws described in the Procedural Directive and the guidebook are quite lengthy, the subsequent steps serve as a short-hand guide to CDOT procedures that a local agency must follow in obtaining professional consultant services. This guidance follows the format of 23 CFR 172. The steps are:

1. The contracting local agency shall document the need for obtaining professional services.
2. Prior to solicitation for consultant services, the contracting local agency shall develop a detailed scope of work and a list of evaluation factors and their relative importance. The evaluation factors are those identified in C.R.S. 24-30-1403. Also, a detailed cost estimate should be prepared for use during negotiations.
3. The contracting agency must advertise for contracts in conformity with the requirements of C.R.S. 24-30-1405. The public notice period, when such notice is required, is a minimum of 15 days prior to the selection of the three most qualified firms and the advertising should be done in one or more daily newspapers of general circulation.
4. The request for consultant services should include the scope of work, the evaluation factors and their relative importance, the method of payment, and the goal of 10% for Disadvantaged Business Enterprise (DBE) participation as a minimum for the project.
5. The analysis and selection of the consultants shall be done in accordance with CRS §24-30-1403. This section of the regulation identifies the criteria to be used in the evaluation of CDOT pre-qualified prime consultants and their team. It also shows which criteria are used to short-list and to make a final selection.

The short-list is based on the following evaluation factors:

- a. Qualifications,
- b. Approach to the Work,
- c. Ability to furnish professional services.
- d. Anticipated design concepts, and
- e. Alternative methods of approach for furnishing the professional services.

Evaluation factors for final selection are the consultant's:

- a. Abilities of their personnel,
  - b. Past performance,
  - c. Willingness to meet the time and budget requirement,
  - d. Location,
  - e. Current and projected work load,
  - f. Volume of previously awarded contracts, and
  - g. Involvement of minority consultants.
6. Once a consultant is selected, the local agency enters into negotiations with the consultant to obtain a fair and reasonable price for the anticipated work. Pre-negotiation audits are prepared for contracts expected to be greater than \$50,000. Federal reimbursements for costs are limited to those costs allowable under the cost principles of 48 CFR 31. Fixed fees (profit) are determined with consideration given to size, complexity, duration, and degree of risk involved in the work. Profit is in the range of six to 15 percent of the total direct and indirect costs.
  7. A qualified local agency employee shall be responsible and in charge of the Work to ensure that the work being pursued is complete, accurate, and consistent with the terms, conditions, and specifications of the contract. At the end of Work, the local agency prepares a performance evaluation (a CDOT form is available) on the consultant.
  8. Each of the steps listed above is to be documented in accordance with the provisions of 49 CFR 18.42, which provide for records to be kept at least three years from the date that the local agency submits its final expenditure report. Records of projects under litigation shall be kept at least three years after the case has been settled.

CRS §§24-30-1401 through 24-30-1408, 23 CFR Part 172, and P.D. 400.1, provide additional details for complying with the preceding eight (8) steps.

# 36. EXHIBIT I – FEDERAL-AID CONTRACT PROVISIONS

FHWA-1273 -- Revised May 1, 2012

## REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

### ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

#### I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

#### II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

**1. Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

**2. EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

**3. Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

**4. Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

**5. Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

**6. Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

**8. Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

**9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

**10. Assurance Required by 49 CFR 26.13(b):**

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

**11. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

### III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

### IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

#### 1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (ii) The classification is utilized in the area by the construction industry; and
- (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

## 2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## 3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 5;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### 4. Apprentices and trainees

##### a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly

rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

##### b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

**6. Subcontracts.** The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

**7. Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**10. Certification of eligibility.**

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

**1. Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**2. Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

**3. Withholding for unpaid wages and liquidated damages.** The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

**4. Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

## VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

## VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

## VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

#### **IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

#### **X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

##### **1. Instructions for Certification – First Tier Participants:**

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

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## **2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:**

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

### **2. Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

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**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Participants:**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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**XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

### **37. EXHIBIT J – FEDERAL REQUIREMENTS**

Federal laws and regulations that may be applicable to the Work include:

#### **A. Uniform Administrative Requirements for Agreements and Cooperative Agreements to State and Local Governments (Common Rule)**

The "Uniform Administrative Requirements for Agreements and Cooperative Agreements to State and Local Governments (Common Rule), at 49 Code of Federal Regulations, Part 18, except to the extent that other applicable federal requirements (including the provisions of 23 CFR Parts 172 or 633 or 635) are more specific than provisions of Part 18 and therefore supersede such Part 18 provisions. The requirements of 49 CFR 18 include, without limitation: the Local Agency/Contractor shall follow applicable procurement procedures, as required by section 18.36(d); the Local Agency/Contractor shall request and obtain prior CDOT approval of changes to any subcontracts in the manner, and to the extent required by, applicable provisions of section 18.30; the Local Agency/Contractor shall comply with section 18.37 concerning any sub-Agreements; to expedite any CDOT approval, the Local Agency/Contractor's attorney, or other authorized representative, shall also submit a letter to CDOT certifying Local Agency/Contractor compliance with section 18.30 change order procedures, and with 18.36(d) procurement procedures, and with 18.37 sub-Agreement procedures, as applicable; the Local Agency/Contractor shall incorporate the specific contract provisions described in 18.36(i) (which are also deemed incorporated herein) into any subcontract(s) for such services as terms and conditions of those subcontracts.

#### **B. Executive Order 11246**

Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60) (All construction contracts awarded in excess of \$10,000 by the Local Agencies and their contractors or the Local Agencies).

#### **C. Copeland "Anti-Kickback" Act**

The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and sub-Agreements for construction or repair).

#### **D. Davis-Bacon Act**

The Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of \$2,000 awarded by the Local Agencies and the Local Agencies when required by Federal Agreement program legislation. This act requires that all laborers and mechanics employed by contractors or sub-contractors 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).

#### **E. Contract Work Hours and Safety Standards Act**

Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by the Local Agency's in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers).

#### **F. Clear Air Act**

Standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act (33 U.S.C. 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (contracts, subcontracts, and sub-Agreements of amounts in excess of \$100,000).

#### **G. Energy Policy and Conservation Act**

Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

#### **H. OMB Circulars**

Office of Management and Budget Circulars A-87, A-21 or A-122, and A-102 or A-110, whichever is applicable.

**I. Hatch Act**

The Hatch Act (5 USC 1501-1508) and Public Law 95-454 Section 4728. These statutes state 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.

**J. Nondiscrimination**

42 USC 6101 et seq. 42 USC 2000d, 29 USC 794, and implementing regulation, 45 C.F.R. Part 80 et. seq. These acts require that no person shall, on the grounds of race, color, national origin, age, or handicap, be excluded from participation in or be subjected to discrimination in any program or activity funded, in whole or part, by federal funds.

**K. ADA**

The Americans with Disabilities Act (Public Law 101-336; 42 USC 12101, 12102, 12111-12117, 12131-12134, 12141-12150, 12161-12165, 12181-12189, 12201-12213 47 USC 225 and 47 USC 611.

**L. Uniform Relocation Assistance and Real Property Acquisition Policies Act**

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). (If the contractor is acquiring real property and displacing households or businesses in the performance of the Agreement).

**M. Drug-Free Workplace Act**

The Drug-Free Workplace Act (Public Law 100-690 Title V, subtitle D, 41 USC 701 et seq.).

**N. Age Discrimination Act of 1975**

The Age Discrimination Act of 1975, 42 U.S.C. Sections 6101 et. seq. and its implementing regulation, 45 C.F.R. Part 91; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, as amended, and implementing regulation 45 C.F.R. Part 84.

**O. 23 C.F.R. Part 172**

23 C.F.R. Part 172, concerning "Administration of Engineering and Design Related Contracts".

**P. 23 C.F.R Part 633**

23 C.F.R Part 633, concerning "Required Contract Provisions for Federal-Aid Construction Contracts".

**Q. 23 C.F.R. Part 635**

23 C.F.R. Part 635, concerning "Construction and Maintenance Provisions".

**R. Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973**

Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973. The requirements for which are shown in the Nondiscrimination Provisions, which are attached hereto and made a part hereof.

**S. Nondiscrimination Provisions:**

In compliance with Title VI of the Civil Rights Act of 1964 and with Section 162(a) of the Federal Aid Highway Act of 1973, the Contractor, for itself, its assignees and successors in interest, agree as follows:

**i. Compliance with Regulations**

The Contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Agreement.

**ii. Nondiscrimination**

The Contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color, sex, mental or physical handicap or national origin in the selection and retention of Subcontractors, including

procurement of materials and leases of equipment. The Contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix C of the Regulations.

**iii. Solicitations for Subcontracts, Including Procurement of Materials and Equipment**

In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurement of materials or equipment, each potential Subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, sex, mental or physical handicap or national origin.

**iv. Information and Reports**

The Contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the State, or the FHWA as appropriate and shall set forth what efforts have been made to obtain the information.

**v. Sanctions for Noncompliance**

In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Agreement, the State shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to: **a.** Withholding of payments to the Contractor under the contract until the Contractor complies, and/or **b.** Cancellation, termination or suspension of the contract, in whole or in part.

**T. Incorporation of Provisions §22**

The Contractor will include the provisions of paragraphs A through F in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto. The Contractor will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the State to enter into such litigation to protect the interest of the State and in addition, the Contractor may request the FHWA to enter into such litigation to protect the interests of the United States.

## 38. EXHIBIT K – SUPPLEMENTAL FEDERAL PROVISIONS

**State of Colorado**  
**Supplemental Provisions for**  
**Federally Funded Contracts, Grants, and Purchase Orders**  
**Subject to**  
**The Federal Funding Accountability and Transparency Act of 2006 (FFATA), As Amended**  
**Revised as of 3-20-13**

The contract, grant, or purchase order to which these Supplemental Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Supplemental Provisions, the Special Provisions, the contract or any attachments or exhibits incorporated into and made a part of the contract, the provisions of these Supplemental Provisions shall control.

1. **Definitions.** For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.
  - 1.1. **“Award”** means an award of Federal financial assistance that a non-Federal Entity receives or administers in the form of:
    - 1.1.1. Grants;
    - 1.1.2. Contracts;
    - 1.1.3. Cooperative agreements, which do not include cooperative research and development agreements (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710);
    - 1.1.4. Loans;
    - 1.1.5. Loan Guarantees;
    - 1.1.6. Subsidies;
    - 1.1.7. Insurance;
    - 1.1.8. Food commodities;
    - 1.1.9. Direct appropriations;
    - 1.1.10. Assessed and voluntary contributions; and
    - 1.1.11. Other financial assistance transactions that authorize the expenditure of Federal funds by non-Federal Entities.

Award *does not* include:

    - 1.1.12. Technical assistance, which provides services in lieu of money;
    - 1.1.13. A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;
    - 1.1.14. Any award classified for security purposes; or
    - 1.1.15. Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).
  - 1.2. **“Contract”** means the contract to which these Supplemental Provisions are attached and includes all Award types in §1.1.1 through 1.1.11 above.
  - 1.3. **“Contractor”** means the party or parties to a Contract funded, in whole or in part, with Federal financial assistance, other than the Prime Recipient, and includes grantees, subgrantees, Subrecipients, and borrowers. For purposes of Transparency Act reporting, Contractor does not include Vendors.
  - 1.4. **“Data Universal Numbering System (DUNS) Number”** means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet’s website may be found at: <http://fedgov.dnb.com/webform>.
  - 1.5. **“Entity”** means all of the following as defined at 2 CFR part 25, subpart C;
    - 1.5.1. A governmental organization, which is a State, local government, or Indian Tribe;
    - 1.5.2. A foreign public entity;
    - 1.5.3. A domestic or foreign non-profit organization;

- 1.5.4. A domestic or foreign for-profit organization; and
  - 1.5.5. A Federal agency, but only a Subrecipient under an Award or Subaward to a non-Federal entity.
- 1.6. **“Executive”** means an officer, managing partner or any other employee in a management position.
- 1.7. **“Federal Award Identification Number (FAIN)”** means an Award number assigned by a Federal agency to a Prime Recipient.
- 1.8. **“FFATA”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. FFATA, as amended, also is referred to as the “Transparency Act.”
- 1.9. **“Prime Recipient”** means a Colorado State agency or institution of higher education that receives an Award.
- 1.10. **“Subaward”** means a legal instrument pursuant to which a Prime Recipient of Award funds awards all or a portion of such funds to a Subrecipient, in exchange for the Subrecipient’s support in the performance of all or any portion of the substantive project or program for which the Award was granted.
- 1.11. **“Subrecipient”** means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term “Subrecipient” includes and may be referred to as Subgrantee.
- 1.12. **“Subrecipient Parent DUNS Number”** means the subrecipient parent organization’s 9-digit Data Universal Numbering System (DUNS) number that appears in the subrecipient’s System for Award Management (SAM) profile, if applicable.
- 1.13. **“Supplemental Provisions”** means these Supplemental Provisions for Federally Funded Contracts, Grants, and Purchase Orders subject to the Federal Funding Accountability and Transparency Act of 2006, As Amended, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institution of higher education.
- 1.14. **“System for Award Management (SAM)”** means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>.
- 1.15. **“Total Compensation”** means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year and includes the following:
  - 1.15.1. Salary and bonus;
  - 1.15.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;
  - 1.15.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
  - 1.15.4. Change in present value of defined benefit and actuarial pension plans;
  - 1.15.5. Above-market earnings on deferred compensation which is not tax-qualified;
  - 1.15.6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.
- 1.16. **“Transparency Act”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. The Transparency Act also is referred to as FFATA.
- 1.17. **“Vendor”** means a dealer, distributor, merchant or other seller providing property or services required for a project or program funded by an Award. A Vendor is not a Prime Recipient or a Subrecipient and

is not subject to the terms and conditions of the Federal award. Program compliance requirements do not pass through to a Vendor.

- 2. Compliance.** Contractor shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, including but not limited to these Supplemental Provisions. Any revisions to such provisions or regulations shall automatically become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
- 3. System for Award Management (SAM) and Data Universal Numbering System (DUNS) Requirements.**
  - 3.1. SAM.** Contractor shall maintain the currency of its information in SAM until the Contractor submits the final financial report required under the Award or receives final payment, whichever is later. Contractor shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.
  - 3.2. DUNS.** Contractor shall provide its DUNS number to its Prime Recipient, and shall update Contractor's information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Contractor's information.
- 4. Total Compensation.** Contractor shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:
  - 4.1.** The total Federal funding authorized to date under the Award is \$25,000 or more; and
  - 4.2.** In the preceding fiscal year, Contractor received:
    - 4.2.1.** 80% or more of its annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
    - 4.2.2.** \$25,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
  - 4.3.** The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.
- 5. Reporting.** Contractor shall report data elements to SAM and to the Prime Recipient as required in §7 below if Contractor is a Subrecipient for the Award pursuant to the Transparency Act. No direct payment shall be made to Contractor for providing any reports required under these Supplemental Provisions and the cost of producing such reports shall be included in the Contract price. The reporting requirements in §7 below are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Contract and shall become part of Contractor's obligations under this Contract, as provided in §2 above. The Colorado Office of the State Controller will provide summaries of revised OMB reporting requirements at <http://www.colorado.gov/dpa/dfp/sco/FFATA.htm>.
- 6. Effective Date and Dollar Threshold for Reporting.** The effective date of these Supplemental Provisions apply to new Awards as of October 1, 2010. Reporting requirements in §7 below apply to new Awards as of October 1, 2010, if the initial award is \$25,000 or more. If the initial Award is below \$25,000 but subsequent Award modifications result in a total Award of \$25,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$25,000. If the initial Award is \$25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$25,000, the Award shall continue to be subject to the reporting requirements.
- 7. Subrecipient Reporting Requirements.** If Contractor is a Subrecipient, Contractor shall report as set forth below.

**7.1 ToSAM.** A Subrecipient shall register in SAM and report the following data elements in SAM *for each* Federal Award Identification Number no later than the end of the month following the month in which the Subaward was made:

**7.1.1** Subrecipient DUNS Number;

**7.1.2** Subrecipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;

**7.1.3** Subrecipient Parent DUNS Number;

**7.1.4** Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;

**7.1.5** Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and

**7.1.6** Subrecipient's Total Compensation of top 5 most highly compensated Executives if criteria in §4 above met.

**7.2 To Prime Recipient.** A Subrecipient shall report to its Prime Recipient, upon the effective date of the Contract, the following data elements:

**7.2.1** Subrecipient's DUNS Number as registered in **SAM**.

**7.2.2** Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

## **8. Exemptions.**

**8.1.** These Supplemental Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.

**8.2** A Contractor with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.

**8.3** Effective October 1, 2010, "Award" currently means a grant, cooperative agreement, or other arrangement as defined in Section 1.1 of these Special Provisions. On future dates "Award" may include other items to be specified by OMB in policy memoranda available at the OMB Web site; Award also will include other types of Awards subject to the Transparency Act.

**8.4** There are no Transparency Act reporting requirements for Vendors.

**Event of Default.** Failure to comply with these Supplemental Provisions shall constitute an event of default under the Contract and the State of Colorado may terminate the Contract upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Contract, at law or in equity.



## MEMORANDUM

**Date:** January 25, 2016  
**To:** Mayor and Town Board  
**Via:** Regular meeting packets, January 25, 2016  
**From:** Ian D. McCargar, Town Attorney  
**Re:** Compensation of Municipal Judge and Municipal Court Clerk  
**Item #:** C.1.

### **Background / Discussion:**

The statutes governing qualified municipal courts of record require that the compensation of the Municipal Judge and Office of the Municipal Court Clerk be set by ordinance. This requirement has also been incorporated into the Town's Municipal Code. The Town Board has previously approved the 2016 Annual Budget, within which compensation for the Municipal Judge and Municipal Court Clerk's Office has been fixed. However, in order to comply with the requirements of state law and the Code, an Ordinance approving those appropriations is required.

The attached Ordinance Fixing the Compensation of the Municipal Court Judge and Municipal Court Clerk incorporates the appropriations for these offices from the 2016 Annual Budget, thus satisfying the requirements of law.

**Financial Impact:** Already budgeted for 2016

**Relationship to Strategic Plan:** Safety and security

**Recommendation:** Adopt on second reading the attached Ordinance; super majority required.

### **Attachment:**

Ordinance No. 2016-1516 - Fixing the Compensation of the Municipal Court Judge and Municipal Court Clerk for the Town of Windsor in Compliance with Sections 13-10-107 and 13-10-108, C.R.S., and Section 2-4-90 of the Windsor Municipal Code

TOWN OF WINDSOR

ORDINANCE NO. 2016-1516

AN ORDINANCE FIXING THE COMPENSATION OF THE MUNICIPAL COURT JUDGE AND MUNICIPAL COURT CLERK FOR THE TOWN OF WINDSOR IN COMPLIANCE WITH SECTIONS 13-10-107 AND 13-10-108, C.R.S., AND SECTION 2-4-90 OF THE WINDSOR MUNICIPAL CODE

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

WHEREAS, the Town's Home Rule Charter, at Section 9.2, provides for the establishment of the Windsor Municipal Court (hereinafter, "Court") and the office of Municipal Judge (hereinafter, "Judge"); and

WHEREAS, by Ordinance No. 2010-1392, the Town Board established the Court as a statutory "court of record", subject to the requirements of the Colorado Revised Statutes; and

WHEREAS, § 13-10-107, C.R.S., requires that the compensation of the Municipal Judge and Municipal Court Clerk be fixed by ordinance; and

WHEREAS, Windsor Municipal Code Section 2-4-90 provides:

In conjunction with the annual budgeting process, the Town Board shall on an annual basis by ordinance budget and appropriate such moneys as may be necessary for the proper operation of the Municipal Court. Such appropriations shall include the fixing of compensation for the Municipal Court Judge and any Assistant Judge assigned to the Municipal Court, with due regard for the limitations established in Section 9.2(D) of the Home Rule Charter. Such appropriations shall include the fixing of compensation for the office of the Municipal Court Clerk.

and

WHEREAS, the Town Board has approved the annual budget for fiscal year 2016, in which the compensation for the Judge and Municipal Court Clerk have been approved; and

WHEREAS, the Town Board wishes by this Ordinance to incorporate by reference the previously-budgeted annual compensation for both the Judge and the Municipal Court Clerk in compliance with the within-referenced Code and statutory requirements.

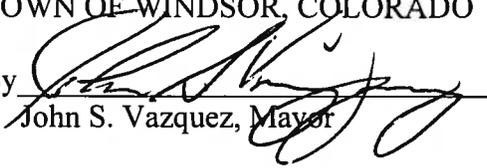
NOW, THEREFORE, BE IT ORDAINED BY THE TOWN BOARD OF THE TOWN OF WINDSOR, COLORADO, AS FOLLOWS:

**Section 1.** The compensation of the Municipal Court Judge and Municipal Court Clerk for the 2016 fiscal year shall be as stated in the 2016 Annual Budget previously approved by the Town Board.

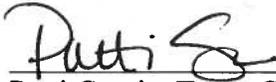
**Section 2.** Nothing herein shall be deemed a waiver or modification of the provisions of Section 9.2 (D) of the Town of Windsor Home Rule Charter.

Introduced, passed on first reading, and ordered published this 11<sup>th</sup> day of January, 2016.

TOWN OF WINDSOR, COLORADO

By   
John S. Vazquez, Mayor

ATTEST:

  
Patti Garcia, Town Clerk



Introduced, passed on second reading, and ordered published this 25<sup>th</sup> day of January, 2016.

TOWN OF WINDSOR, COLORADO

By \_\_\_\_\_  
John S. Vazquez, Mayor

ATTEST:

\_\_\_\_\_  
Patti Garcia, Town Clerk



## MEMORANDUM

**Date:** January 25, 2016  
**To:** Mayor and Town Board  
**Via:** Kelly Arnold, Town Manager  
**From:** Scott Ballstadt, AICP, Director of Planning  
**Subject:** Ordinance No. 2016-1517 Repealing, Amending and Readopting Article XV, Chapter 17 of the Municipal Code regarding Road Impact Fees  
**Items #:** C.2

### **Background/Discussion:**

Article XV of Chapter 17 of the Municipal Code establishes a system for the imposition of road impact fees within the Town to assure that new development contributes its proportionate share of the cost of providing, and benefits from the provision of, road capital improvements within the benefit area. Since the adoption of Ordinance 2001-1092 and subsequent update with Ordinance 2008-1318, road impact fees have been collected and have allowed the Town to improve the Town's major road system as defined in the Municipal Code.

Road impact fees are typically collected upon the issuance of a building permit that will result in increased traffic-generating development. However, the code also requires payment of road impact fees based on increased traffic generation and the historic use of the property whether or not the new use involves changes to the building or property.

For example, if a lower traffic 2,000 square foot sit-down restaurant (road impact fee = \$7,784) were to be converted to a higher traffic fast food restaurant (road impact fee = \$18,644), the Town would charge road impact fees equal to the difference between the fees (\$10,860) for the same 2,000 square foot space. While the methodology regarding increased traffic is sound and works in theory, the "look-back" aspect of the road impact fee ordinance presents somewhat of a disincentive to property owners wishing to utilize existing commercial or industrial space.

Additionally, although these "look-back" situations make up a very small portion of the Town's overall road impact fee collections, the time spent administering this aspect of the road impact fee ordinance does not justify the fees collected. Tracking turnover of existing leasable space in order to collect fees associated with past use of the property has been very problematic and inconsistent in practice. Turnover of existing space can be frequent and the Town is often not contacted when existing buildings are occupied by new tenants. The Town relies on the submittal of a business license and owners are not always aware of the need for a license. When the Town does receive a business license for a higher traffic generating use, the business owner is oftentimes caught unaware that a road impact fee is due.

In cases that do require remodeling of existing space, the "look-back" provisions can be viewed as a disincentive to reinvest in the property. There have also been cases where the Town has been contacted by a new business wishing to locate in an existing building and, when given the road impact fee estimate, they have chosen not to locate in Windsor. In some cases the new business has requested Town Board approval of a waiver of the road impact fees.

The enclosed ordinance will amend Section 17-15-40 by: (a) repealing the definition of “*Existing traffic-generating development*”, and (b) amending the definition of “*Traffic-generating development*” to eliminate the “look-back” language. All of the other definitions in the enclosed ordinance are to remain as they currently exist in the Municipal Code (see enclosed redline version of code changes). Lastly, the ordinance will also amend Section 17-15-90(b)(3) in order to tie the rate of interest paid on road impact fee refunds to the prime rate.

**Financial Impact:** The proposed ordinance will not result in a significant loss of road impact fee revenue, as the vast majority of road impact fees are paid with building permits that result in new square footage, and this is not proposed to change. Rather, the ordinance will eliminate the “look-back” provisions from the Municipal Code, which will allow business owners to reinvest and occupy existing square footage without incurring additional road impact fees.

**Conformance with Comprehensive Plan:** The proposed ordinance is consistent with the following Commercial and Industrial Land Use Goal 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:** The proposed ordinance is consistent with the Vision 2025 Economic Vitality vision and goals.

**Relationship to Strategic Plan:** The proposed ordinance is consistent with Strategic Plan Goal #3A “Foster business attraction tools and promote business retention and expansion program” by removing a disincentive to utilize existing commercial and industrial space.

**Recommendation:**

Approval of the enclosed ordinance on second reading.

**Notification:**

- Notice of January 6, 2016 Planning Commission and January 11, 2016 Town Board public hearings published in December 18, 2015 Greeley Tribune
- Notice of January 6, 2016 Planning Commission and January 11, 2016 Town Board public hearings published on Town website December 18, 2015

**Attachments:** Redline version of code changes  
Draft Ordinance

TOWN OF WINDSOR

ORDINANCE NO. 2016-1517

AN ORDINANCE REPEALING, AMENDING AND READOPTING ARTICLE XV, CHAPTER 17 OF THE *WINDSOR MUNICIPAL CODE* REGARDING ROAD IMPACT FEES

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

WHEREAS, pursuant to Section 2.4 of the Windsor Home Rule Charter, and to the extent applicable, Title 29 of the *Colorado Revised Statutes*, the Town is authorized to impose development requirements and to assess certain fees specifically for the purpose of defraying the cost of providing legitimate governmental services; and

WHEREAS, the Town adopted a Road Impact Fee (“RIF”) Ordinance in 2001 imposing development requirements and assessing road impact fees; and

WHEREAS, the current Ordinance requires the Town “look back” to January, 2002 to determine “existing traffic-generating development” which, in practice, places a large administrative burden on staff to track historic use of property, calculate, negotiate and re-calculate the road impact fees for redevelopment/re-use of existing square footage, and the adjusted fees do not justify the amount of staff time required for such “look back”; and

WHEREAS, upon further review, staff has concluded that the RIF should be calculated only for construction of new square footage and new dwelling units, thereby eliminating the requirement to “look back” to existing traffic-generating development; and

WHEREAS, the Town Board believes that the within Ordinance is necessary to promote development, efficiency and economy, and will minimize the negative impacts that the existing preliminary redevelopment fees can have on developers; and

NOW, THEREFORE, be it ordained by the Town Board for the Town of Windsor, Colorado, as follows:

Section 17-15-40 of the *Windsor Municipal Code* is hereby repealed, amended and re-adopted to read as follows:

Sec. 17-15-40. - Definitions.

Certain words or phrases unique to this Article shall be construed as herein set out, unless it is apparent from the context that they have a different meaning.

*Building permit* means that building permit issued in accordance with this Code before any building or construction activity can be initiated on a parcel of land.

*Capacity* means the maximum number of vehicles that have a reasonable expectation of passing over a given section of a road during an average weekday at the desired LOS, expressed in terms of vehicles per day.

*Expansion of the capacity of a road* includes any widening, intersection improvement, signalization or other capital improvement designed to increase the existing road's capacity to carry vehicles.

*Fee payer* means a person commencing traffic-generating development who is obligated to pay a road impact fee in accordance with the terms of this Article.

*Level of Service (LOS)* means a qualitative measure describing operational conditions, from "A" (best) to "F" (worst), within a traffic stream.

*Major road system* means all major roads located in the Road Impact Fee Benefit Area established in Section 17-15-80 below and depicted in Appendix 17-A, which is incorporated herein by this reference.

*Non-site-related improvements* means road capital improvements that are not site-related improvements.

*Person* means an individual, corporation, governmental agency or body, business trust, estate, trust, partnership, association, two (2) or more persons having a joint or common interest or any other entity.

*Road capital improvement* includes the transportation planning, preliminary engineering, engineering design studies, land surveys, alignment studies, engineering, permitting and construction of all necessary features for any road on the major road system, undertaken to accommodate additional traffic resulting from new traffic-generating development, including but not limited to:

- a. Construction of new through lanes.
- b. Construction of new bridges.
- c. Construction of new drainage facilities in conjunction with new road construction.
- d. Purchase and installation of traffic signals, including new and upgraded signalization.
- e. Construction of curbs, gutters, sidewalks, medians and shoulders.
- f. Relocating utilities to accommodate new road construction.
- g. The construction and reconstruction of intersections.
- h. The widening of existing roads.
- i. Bus turnouts.
- j. Acceleration and deceleration lanes.
- k. Interchanges.

1. Traffic control devices.

*Road Impact Fee Administrator* shall be the Town Manager or a person designated by the Town Manager to be responsible for administering this Article.

*Road Impact Fee Study* refers to the study entitled "Road Impact Fee Study," dated September 2001, as amended and updated by the "Road Impact Fee Update," dated October 2007, or a subsequent similar study that describes the data, assumptions and methodology used to calculate the net cost to accommodate the additional traffic generated by new development on the major road system.

*Site-related improvements* means those road capital improvements and right-of-way dedications that provide direct access to the development. Direct access improvements include, but are not limited to, the following:

- a. Driveways and streets leading to and from the development.
- b. Right- and left-turn lanes leading to those driveways and streets.
- c. Traffic control measures for those driveways.
- d. Internal local streets.

Reimbursement is not provided for site-related improvements under the terms of this Article.

*Traffic-generating development* is land development designed or intended to permit a use of the land that will contain additional dwelling units or additional floor space.

*Traffic-generating development, commencement of*, occurs upon the issuance of a building permit or, if a building permit is not required for the development, upon the approval for any development application that is the last application required prior to development or use of land.

*Trip* means a one-way movement of vehicular travel from an origin (one [1] trip end) to a destination (the other trip end).

*Trip generation* means the attraction or production of trips caused by a certain type of land development.

*Vehicle miles of travel (VMT)* means the combination of the number of vehicles traveling during a given time period and the distance (in miles) that they travel.

Sections 17-15-50 (a) and (b) of the *Windsor Municipal Code* are hereby repealed, amended and re-adopted to read as follows:

Sec. 17-15-50. - Imposition of fee.

- (a) Time of fee obligation and payment. Any person or entity, including any government body, that causes the commencement of traffic-generating development within the incorporated area of the Town shall be obligated to pay a road impact fee pursuant to the terms of this Article. The fee shall be determined and paid to the Road Impact Fee Administrator at the time of issuance of a building permit for the development or, if a building permit is not required for the

development or use, upon the Town's approval of any development or use that is the last application required prior to development or use of the land. The fee shall be computed separately for the amount of construction activity covered by the permit if the building permit is for less than the entire development. The obligation to pay the impact fee shall run with the land.

- (b) Exemptions. The following shall be exempt from the terms of this Article. An exemption must be claimed by the fee payer at the time of application for a building permit.
  - (1) Alterations or expansion of an existing building where no additional dwelling units are created or square footage added.
  - (2) The construction of accessory buildings or structures which do not add dwelling units or square footage to the principal building or use of the land.
  - (3) The replacement of a destroyed or partially destroyed building or structure with a new building or structure of the same square footage or number of dwelling units.

Section 17-15-90 (b)(3) of the *Windsor Municipal Code* is hereby repealed, amended and re-adopted to read as follows:

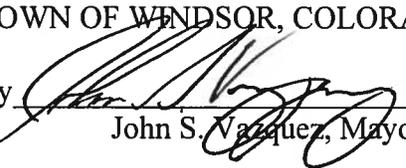
Sec. 17-15-90. - Refund of fees not spent.

- (b) Refund procedure. The refund shall be administered by the Road Impact Fee Administrator and shall be undertaken through the following process:
  - (3) When the Road Impact Fee Administrator determines the refund application is complete, it shall be reviewed within thirty (30) days and shall be approved if it is determined that the fee payer or a successor in interest has paid a fee which has not been spent within the period of time permitted under this Section. The refund shall include the fee paid plus interest at a rate equal to the prime rate as published in the Wall Street Journal or similar reliable finance market source, plus two percent (2%) for the applicable period.

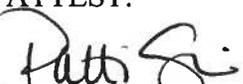
Introduced, passed on first reading, and ordered published this 11<sup>th</sup> day of January, 2016.

TOWN OF WINDSOR, COLORADO

By

  
John S. Vazquez, Mayor

ATTEST:

  
Patti Garcia, Town Clerk



Introduced, passed on second reading, and ordered published this 25<sup>th</sup> day of January, 2016.

TOWN OF WINDSOR, COLORADO

By \_\_\_\_\_  
John S. Vazquez, Mayor

ATTEST:

\_\_\_\_\_  
Patti Garcia, Town Clerk

Sec. 17-15-40. - Definitions.

Certain words or phrases unique to this Article shall be construed as herein set out, unless it is apparent from the context that they have a different meaning.

Building permit means that building permit issued in accordance with this Code before any building or construction activity can be initiated on a parcel of land.

Capacity means the maximum number of vehicles that have a reasonable expectation of passing over a given section of a road during an average weekday at the desired LOS, expressed in terms of vehicles per day.

~~Existing traffic-generating development means the most intense use of land on or after January 1, 2002.~~

Expansion of the capacity of a road includes any widening, intersection improvement, signalization or other capital improvement designed to increase the existing road's capacity to carry vehicles.

Fee payer means a person commencing traffic-generating development who is obligated to pay a road impact fee in accordance with the terms of this Article.

Level of Service (LOS) means a qualitative measure describing operational conditions, from "A" (best) to "F" (worst), within a traffic stream.

Major road system means all major roads located in the Road Impact Fee Benefit Area established in Section 17-15-80 below and depicted in Appendix 17-A, which is incorporated herein by this reference.

Non-site-related improvements means road capital improvements that are not site-related improvements.

Person means an individual, corporation, governmental agency or body, business trust, estate, trust, partnership, association, two (2) or more persons having a joint or common interest or any other entity.

Road capital improvement includes the transportation planning, preliminary engineering, engineering design studies, land surveys, alignment studies, engineering, permitting and construction of all necessary features for any road on the major road system, undertaken to accommodate additional traffic resulting from new traffic-generating development, including but not limited to:

- a. Construction of new through lanes.
- b. Construction of new bridges.
- c. Construction of new drainage facilities in conjunction with new road construction.
- d. Purchase and installation of traffic signals, including new and upgraded signalization.
- e. Construction of curbs, gutters, sidewalks, medians and shoulders.
- f. Relocating utilities to accommodate new road construction.
- g. The construction and reconstruction of intersections.
- h. The widening of existing roads.
- i. Bus turnouts.
- j. Acceleration and deceleration lanes.
- k. Interchanges.
- l. Traffic control devices.

Road Impact Fee Administrator shall be the Town Manager or a person designated by the Town Manager to be responsible for administering this Article.

Road Impact Fee Study refers to the study entitled "Road Impact Fee Study," dated September 2001, as amended and updated by the "Road Impact Fee Update," dated October 2007, or a subsequent similar study that describes the data, assumptions and methodology used to calculate the net cost to accommodate the additional traffic generated by new development on the major road system.

Site-related improvements means those road capital improvements and right-of-way dedications that provide direct access to the development. Direct access improvements include, but are not limited to, the following:

- a. Driveways and streets leading to and from the development.
- b. Right- and left-turn lanes leading to those driveways and streets.
- c. Traffic control measures for those driveways.
- d. Internal local streets.

Reimbursement is not provided for site-related improvements under the terms of this Article.

Traffic-generating development is land development designed or intended to permit a use of the land that will contain ~~or convert to more~~ additional dwelling units or additional floor space. ~~than the most intensive use of the land on or after January 1, 2002.~~

Traffic-generating development, commencement of, occurs upon the issuance of a building permit or, if a building permit is not required for the development, upon the approval for any development application that is the last application required prior to development or use of land.

Trip means a one-way movement of vehicular travel from an origin (one [1] trip end) to a destination (the other trip end).

Trip generation means the attraction or production of trips caused by a certain type of land development.

Vehicle miles of travel (VMT) means the combination of the number of vehicles traveling during a given time period and the distance (in miles) that they travel.

(Ord. 2008-1318; Ord. 2009-1356)

Sec. 17-15-50. - Imposition of fee.

- (a) Time of fee obligation and payment. Any person or entity, including any government body, that causes the commencement of traffic-generating development within the incorporated area of the Town shall be obligated to pay a road impact fee pursuant to the terms of this Article. The fee shall be determined and paid to the Road Impact Fee Administrator at the time of issuance of a building permit for the development or, if a building permit is not required for the development or use, upon the Town's approval of any development or use that is the last application required prior to development or use of the land. The fee shall be computed separately for the amount of construction activity covered by the permit if the building permit is for less than the entire development. ~~If the fee is imposed for a traffic-generating development that increases traffic impact because of a change in use, the fee shall be determined by computing the difference in the fee schedule between the new traffic-generating development and the existing traffic-generating development.~~ The obligation to pay the impact fee shall run with the land.
- (b) Exemptions. The following shall be exempt from the terms of this Article. An exemption must be claimed by the fee payer at the time of application for a building permit.

- (1) Alterations or expansion of an existing building where no additional dwelling units are created ~~or square footage added. , the use is not changed and where no additional vehicular trips will be produced over and above that produced by the existing use.~~
  - (2) The construction of accessory buildings or structures which ~~will do not produce additional vehicular trips over and above that produced by~~ **add dwelling units or square footage** to the principal building or use of the land.
  - (3) The replacement of a destroyed or partially destroyed building or structure with a new building or structure ~~of the same size and use, provided that no additional trips will be produced over and above that produced by the original use of the land.~~ **with a new building or structure of the same square footage or number of dwelling units.**
- (c) Establishment of fee schedule.
- (1) Any person who causes the commencement of traffic-generating development, except those persons exempted or preparing an independent fee calculation study pursuant to Section 17-15-60 below, shall pay a road impact fee in accordance with the following fee schedule. The descriptions of the land use codes in the most current edition of the report titled, "Trip Generation," prepared by the Institute of Transportation Engineers (ITE) shall be used to determine the appropriate land use type.

#### Road Impact Fee Table

Land Use Type	Unit	Fee/Unit
Residential		
Hotel/motel	Room	\$1,524
Mobile home park	Site	1,103
Multi-family	Dwelling	1,483
Single-family detached	Dwelling	2,115
Retail/Commercial		
Auto sales/service	1,000 sq. ft.	\$2,760
Bank	1,000 sq. ft.	4,169
Bldg materials, etc.	1,000 sq. ft.	6,653
Convenience store	1,000 sq. ft.	7,396
Discount store	1,000 sq. ft.	5,061

Furniture store	1,000 sq. ft.	761
Movie theatre	1,000 sq. ft.	5,889
Restaurant, fast food	1,000 sq. ft.	9,322
Restaurant, sit-down	1,000 sq. ft.	3,892
Shopping center/general retail	1,000 sq. ft.	3,476
Office/Institutional		
Day care center	1,000 sq. ft.	\$1,997
Elementary/secondary school	1,000 sq. ft.	346
Hospital	1,000 sq. ft.	3,693
Nursing home	1,000 sq. ft.	1,280
Office, general	1,000 sq. ft.	2,840
Office, medical	1,000 sq. ft.	6,074
Place of worship	1,000 sq. ft.	1,915
Industrial		
General heavy industrial	1,000 sq. ft.	\$ 386
General light industrial	1,000 sq. ft.	1,799
Mini-warehouse	1,000 sq. ft.	645
Oil and gas extraction site	Per State- permitted wellhead	1,032
Warehouse	1,000 sq. ft.	1,279

- (2) If the type of traffic-generating development for which a building permit is requested is not specified on the fee schedule, the Road Impact Fee Administrator shall determine the fee on the basis of the fee applicable to the most nearly comparable type of land use on the fee schedule. The Road Impact Fee Administrator shall be guided in the selection of a comparable type of land use by:
- a. Using trip-generation rates contained in the most current edition of the report titled, "Trip Generation," prepared by the Institute of Transportation Engineers (ITE), articles or reports appearing in the ITE Journal or studies or reports done by the U.S. Department of Transportation or Colorado Department of Transportation and applying the formula set forth in Section 17-15-60 below; or
  - b. Computing the fee by use of an independent fee calculation study as provided in Section 17-15-60 below.
- (d) Predevelopment review impact fee calculation. Any person contemplating establishing a traffic-generating development may request a preliminary determination of the impact fees due from such development. A person requesting a predevelopment review impact fee calculation shall complete and submit to the Road Impact Fee Administrator the proper application form and an application fee. Using the information regarding the proposed traffic-generating land development activity as submitted on the application, the Road Impact Fee Administrator will provide, within fifteen (15) days of the date of submittal of the completed application, a preliminary calculation of the road impact fees due for the proposed traffic-generating development.

(Ord. 2008-1318; Ord. 2009-1356; Reso. 2009-93; Reso. 2010-69; [Ord. 2015-1494, § 1](#))

Sec. 17-15-90. - Refund of fees not spent.

- (a) General. Any fees collected shall be returned to the fee payer or the fee payer's successor in interest, if the fees have not been spent within ten (10) years from the date the building permit for the development was issued, along with interest of five percent (5%) per year. Fees shall be deemed to be spent on the basis of the first fee collected being the first fee spent.
- (b) Refund procedure. The refund shall be administered by the Road Impact Fee Administrator and shall be undertaken through the following process:
  - (1) A refund application shall be submitted within one (1) year following the end of the tenth year from the date on which the building permit was issued on the proposed development. The refund application shall include the following information:
    - a. A copy of the dated receipt issued for payment of the fee.
    - b. A copy of the building permit.
    - c. Evidence that the applicant is the successor in interest to the fee payer.
  - (2) Within ten (10) days of receipt of the refund application, the Road Impact Fee Administrator shall determine if it is complete. If the Road Impact Fee Administrator determines that the application is not complete, a written statement specifying the deficiencies shall be forwarded by mail to the person submitting the application. Unless the deficiencies are corrected, the Road Impact Fee Administrator shall take no further action on the refund application.
  - (3) When the Road Impact Fee Administrator determines the refund application is complete, it shall be reviewed within thirty (30) days and shall be approved if it is determined that the fee payer or a successor in interest has paid a fee which has not been spent within the period of time permitted under this Section. The refund shall include the fee paid plus interest ~~of five percent (5%) per year~~ at a rate equal to the prime rate as published in the Wall Street Journal or similar reliable finance market source, plus two percent (2%) for the applicable period.

- (c) Appeal of refund decision. A fee payer affected by a decision of the Road Impact Fee Administrator may appeal such decision to the Town Board by filing with the Road Impact Fee Administrator, within ten (10) days of the date of the written decision, a written notice stating and specifying briefly the grounds of the appeal. The Road Impact Fee Administrator shall place such appeal on the Town Board's agenda. The Town Board, after a hearing, shall affirm or reverse the decision of the Road Impact Fee Administrator, based on the standards set forth in this Section. If the Town Board reverses the decision of the Road Impact Fee Administrator, it shall direct the Road Impact Fee Administrator to readjust the refund in accordance with its findings. In no event shall the Town Board have the authority to negotiate the amount of the refund. The decision of the Town Board shall be final.

(Ord. 2008-1318)



## MEMORANDUM

**Date:** January 25, 2016  
**To:** Mayor & Town Board  
**Via:** Kelly Arnold, Town Manager  
Scott Ballstadt, AICP, Director of Planning  
**From:** Paul Hornbeck, Senior Planner  
**Subject:** Ordinance 2016-1518 Repealing, Amending and Readopting Section 16-10-20 of the Windsor Municipal Code and Adopting Section 16-7-85 of the Windsor Municipal Code regarding Home Occupations involving tutoring or instruction  
**Item #s:** C.3

### **Background:**

The Municipal Code currently allows residents to operate home-based businesses under the Home Occupations provisions of Sec. 16-10-20. When a home occupation involves tutoring or instruction, the Code currently limits the number of students to no more than two at any one time. Two residents have requested that the Town consider increasing the number of students allowed from two to eight to accommodate the type of curriculum they use in teaching music lessons, which uses a group format of instruction of five to eight students at a time.

The proposed code amendment would keep the current regulations in place for home occupations with two or fewer students while requiring a Conditional Use Grant approval by the Town Board for home occupations with more than two students at any one time. The code amendment also includes a number of additional criteria that home occupations would be subject to if there are more than two students. The additional requirements were developed based on feedback from the Planning Commission and Town Board at work sessions on the topic and attempt to mitigate potential negative impacts to neighborhoods associated with traffic, parking, hours of operation, and other items. Please see the attached ordinance for all criteria.

### **Notification:**

The following notifications were completed in accordance with the Municipal Code:

Public Hearing notifications for Planning Commission and Town Board public hearings were as follows:

- December 18, 2015 – legal notices posted on the Town of Windsor website
- December 18, 2015 – legal ad published in the newspaper

### **Recommendation:**

Approval of the enclosed ordinance on second reading.

**Attachments:** ordinance  
draft Planning Commission minutes  
draft Town Board minutes

pc: Robin Flores  
Kimberly Seyboldt

TOWN OF WINDSOR

ORDINANCE NO. 2016 - 1518

AN ORDINANCE AMENDING CHAPTER 16 OF THE *WINDSOR MUNICIPAL CODE* WITH RESPECT TO HOME OCCUPATIONS INVOLVING TUTORING OR INSTRUCTION

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

WHEREAS, the Town has in place a comprehensive system of regulations governing land use and zoning, the intention of which is to protect the public health, safety and welfare; and

WHEREAS, currently, the *Windsor Municipal Code* (“Code”) limits the number of students tutored in a home occupation setting to no more than two at the dwelling at any one time; and

WHEREAS, the Town has heard public requests and comments urging the adoption of a procedure that, dependent upon the circumstances presented, would allow for additional students to be present in the dwelling unit; and

WHEREAS, upon further review, staff has concluded that a home occupation involving tutoring or instruction limitation of two (2) students at a time could be subjected to Town Board review as a Conditional Use Grant; and

WHEREAS, staff has recommended an amendment to Chapter 16, Article XVI of the Code to reflect this process; and

WHEREAS, the Planning Commission has considered the matter and has recommended denial of this Ordinance; and

WHEREAS, the Town Board believes that this Ordinance is necessary to promote clarity in the requirements of the Code with respect to procedures for tutoring or instruction of additional students in a home occupation setting; and

WHEREAS, the within Ordinance is deemed to promote the public health, safety and welfare.

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

**Section 1.** Section 16-10-20(1)(i) of the *Windsor Municipal Code* is hereby repealed, amended and re-adopted to read as follows:

In the event a home occupation involves tutoring or instruction, no more than two (2) students may be present at the dwelling unit at any one (1) time without prior approval of a Conditional Use Grant in accordance with Article VII of this Chapter.

**Section 2.** Chapter 16, Article VII of the *Windsor Municipal Code* is hereby amended by the addition of a new Section 16-7-85, which shall read as follows:

**Sec. 16-7-85. Home Occupations involving tutoring or instruction.**

Pursuant to Section 16-10-20(1)(i), home occupations involving tutoring or instruction are limited to instructing two (2) students at any one time without the approval of a conditional use grant. Additional students shall be permitted as a conditional use in all residential zoning districts. In addition to those conditions applicable to conditional uses generally as set forth in Section 16-7-50, every conditional use grant for tutoring of more than two (2) students shall be subject to approval by the Town Board of the conditions specifically set forth herein.

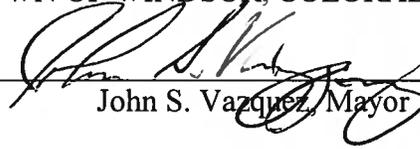
Any conditional use grant for instruction or tutoring of more than two (2) students shall:

- (1) Be limited to tutoring or instruction of persons of no older than the age of eighteen (18) years;
- (2) Not exceed eight (8) students present at the dwelling unit at any one (1) time;
- (3) Have available one (1) on-site parking space for every two (2) students present at the dwelling at any one (1) time;
- (4) Be limited to hours of operation between 7:00 a.m. and 8:00 p.m.;
- (5) Be limited to no more than fifteen (15) hours per week of instruction;
- (6) Comply with all State of Colorado child care licensing requirements, including requirements for licensing exemption status; and
- (7) Be subject to inspection in order to ensure that all applicable building and fire codes are met.

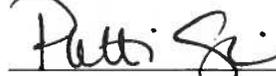
Introduced, passed on first reading, and ordered published this 11<sup>th</sup> day of January, 2016.

TOWN OF WINDSOR, COLORADO

By

  
John S. Vazquez, Mayor

ATTEST:

  
Patti Garcia, Town Clerk



Introduced, passed on second reading, and ordered published this 25<sup>th</sup> day of January, 2016.

TOWN OF WINDSOR, COLORADO

By

\_\_\_\_\_  
John S. Vazquez, Mayor

ATTEST:

\_\_\_\_\_  
Patti Garcia, Town Clerk

4. Public Hearing – An Ordinance Repealing, Amending and Readopting Section 16-10-20 of the Windsor Municipal Code and Adopting Section 16-7-85 of the Windsor Municipal Code regarding Home Occupations involving tutoring or instruction
  - Staff presentation: Paul Hornbeck, Senior Planner

Per Mr. Hornbeck, the Municipal Code currently allows residents to operate home-based businesses under the Home Occupations provisions of Sec. 16-10-20. When a home occupation involves tutoring or instruction, the Code currently limits the number of students to no more than two at any one time. Two residents have requested that the Town consider increasing the number of students allowed from two to eight to accommodate the type of curriculum they use in teaching music lessons.

The proposed code amendment would keep the current regulations in place for home occupations with two or fewer students while requiring a Conditional Use Grant approval by the Town Board for home occupations with more than two students at any one time. The code amendment also includes a number of additional criteria that home occupations would be subject to if there are more than two students. The additional requirements were developed based on feedback from the Planning Commission and Town Board at work sessions.

Any conditional use grant for instruction or tutoring of more than two (2) students shall:

- Be limited to tutoring or instruction of children under the age of eighteen (18) years;
- Not exceed eight (8) students present at the dwelling unit at any one (1) time;
- Have available one (1) on-site parking space for every two (2) students present at the dwelling at any one (1) time;
- Be limited to hours of operation between 7:00 a.m. and 8:00 p.m.;
- Be limited to no more than fifteen (15) hours per week of instruction;
- Comply with all State of Colorado child care licensing requirements, including requirements for licensing exemption status; and
- Be subject to inspection in order to ensure that all applicable building and fire codes are met.

Staff recommends the Planning Commission forward a recommendation of approval of the proposed code amendment to the Town Board.

**Mr. Tallon moved to close the public hearing; Mr. Frelund seconded the motion. Roll call on the vote resulted as follows:**

**Yeas – Schick, Tallon, Scheffel, Vissers, Harding, Frelund**

**Nays – None**

**Motion carried.**

5. Recommendation to Town Board – An Ordinance Repealing, Amending and Readopting Section 16-10-20 of the Windsor Municipal Code and Adopting Section 16-7-85 of the Windsor Municipal Code regarding Home Occupations involving tutoring or instruction

- Legislative action
- Staff Presentation: Paul Hornbeck, Senior Planner

Mr. Hornbeck had nothing further to add.

Mr. Vissers asked to clarify that a vote against the change would result in the ordinance remaining the same and allow only two students per dwelling, but a vote in favor of the change will impose the new conditions for a conditional use grant for up to eight students.

Mr. Hornbeck stated that is correct.

Mr. Scheffel inquired about the proposed changes as the Planning Commission had previously resoundingly voted against any modifications or changes.

Mr. Hornbeck stated the amendment was also presented to the Town Board. There were issues that the Town Board had and the conditions are a result of those issues and concerns.

Mr. Scheffel stated that presents a challenge as the Planning Commission is trying to assess whether or not the existing zoning is appropriate. Also this is a business in a residential area and that seems to directly conflict with zoning. It also presents a competitive advantage over similar businesses with more overhead that are appropriately located in commercial zones.

Mr. Ballstadt stated that some Town Board members were in favor of making allowances for educational opportunities for youth tutoring in the home.

Mr. Scheffel inquired if a Conditional Use Grant was granted is the Planning Department going to check to make sure the conditions are being met.

Mr. Ballstadt stated it would be incumbent on the applicant to maintain compliance with the conditions of approval and if staff received any reports of non-compliance those would be followed up on.

Mr. Scheffel inquired if they apply for the Conditional Use Grant would a sign be posted within the neighborhood.

Mr. Ballstadt stated that is correct.

Mr. Scheffel inquired about the child care licensing requirements.

Mr. Hornbeck stated that was a concern the Assistant Town Attorney brought to the attention of the Planning Department. When there are a certain number of children in a private home that are not related, either the home needs to be a licensed daycare or receive an exemption letter from the state indicating that they are not a daycare but they are approved to have this number of children in the home.

Mr. Bishop-Cotner inquired about the code stating they will need to fall within all the state requirements for a child care licensee.

Mr. Hornbeck stated they would either need to obtain the license or the exemption letter.

Mr. Schick stated with the additional conditions and criteria proposed it seems as if more of an enforcement problem is being created.

Mr. Harding stated he is not in favor of amending the code and feels businesses that are legitimately being operated in a commercial space are being hurt and he does not feel this will benefit the Town of Windsor.

Mr. Vissers stated he sees them being a legitimate business as they are providing services, being paid for those services and paying taxes.

Mr. Harding stated that the Planning Commission does not know if they are paying taxes nor have any ideas how they are being paid; cash or check.

Mr. Frelund inquired how this issue was brought before the Planning Commission.

Mr. Schick stated it was through a neighbor complaint.

Mr. Hornbeck stated it was through a complaint and the applicant moved forward with trying to get the necessary approvals to continue tutoring.

Mr. Frelund stated it is not the goal to restrict additional education to students in the community, but he also believes the zoning laws were enacted to be fair to everyone.

Mr. Vissers stated his view is in two different perspectives; from a business standpoint that an independent business consultant (Avon, Mary Kay) have people come over and they make money on the business, then on the other hand, it seems like the issue is being overly conditioned in the ordinance as it is a bunch of kids getting together to learn music.

Mr. Tallon feels the ordinance is being overly conditioned as well and believes the ordinance should remain as it is currently written.

Mr. Vissers inquired as to how daycare is allowed in the Town.

Mr. Schick stated that individual would need to go through a licensing process.

Mr. Vissers inquired as to how this ordinance amendment would affect daycares.

Mr. Scheffel stated this is related to tutoring and not daycare uses.

Mr. Vissers stated there are still cars coming and going at daycares.

Mr. Bishop-Cotner stated there is a separation between tutoring and other home occupations in residential areas. This ordinance deals with tutoring and a limit of two students. Daycares are a different business and that business is regulated by different state regulations and home occupation criteria in the code.

**Mr. Tallon moved to forward a recommendation to the Town Board for the approval of the ordinance; Mr. Frelund seconded the motion. Roll call on the vote resulted as follows:**

**Yeas – None**

**Nays – Schick, Tallon, Scheffel, Vissers, Harding, Frelund**

**Motion denied.**

Mr. Ballstadt stated that is correct; if the footprint is not expanding or adding additional square footage there would be no additional road impact fee.

Mr. Morgan inquired if that process would also give refunds on business that decreases intensity.

Mr. Ballstadt stated refunds would not be issued. If a building sits vacant for a period of time, a road impact fee would be assessed.

Mr. Morgan inquired if there is an appeal process that a business owner can go through regarding the road impact fee assessment.

Mr. Ballstadt stated a business can order an independent impact fee analysis.

Mr. Vazquez requested all documentation and information presented be entered into the record.

**Town Board Member Melendez motioned to close the public hearing; Town Board Member Adams seconded the motion. Roll call on the vote resulted as follows: Yeas –Morgan, Melendez, Bishop-Cotner, Adams, Vazquez; Nays- None; Motion passed.**

4. Ordinance No. 2016-1517 - Repealing, Amending and Readopting Article XV, Chapter 17 of the Windsor Municipal Code regarding Road Impact Fees
  - First Reading
  - Legislative action
  - Staff Presentation: Scott Ballstadt, Director of Planning

**Town Board Member Melendez motioned to approve Ordinance No. 2016-1517 - Repealing, Amending and Readopting Article XV, Chapter 17 of the Windsor Municipal Code regarding Road Impact Fees; Town Board Member Morgan seconded the motion.**

Mr. Ballstadt stated a question that was asked in a previous work session was what the total amount of road impact fees that were collected in 2015 and how that relates to the look back provision. Through November of 2015, \$940,000 was collected in road impact fees and of that \$14,595 was look back fees that were waived.

**Roll call on the vote resulted as follows: Yeas –Morgan, Melendez, Bishop-Cotner, Adams, Vazquez; Nays- None; Motion passed.**

5. Public Hearing – Ordinance No. 2016-1518 - Repealing, Amending and Readopting Section 16-10-20 of the Windsor Municipal Code and Adopting Section 16-7-85 of the Windsor Municipal Code regarding Home Occupations involving tutoring or instruction
  - Staff presentation: Paul Hornbeck, Senior Planner

**Town Board Member Melendez motioned to open the public hearing; Town Board Member Morgan seconded the motion. Roll call on the vote resulted as follows: Yeas –Morgan, Melendez, Bishop-Cotner, Adams, Vazquez; Nays- None; Motion passed.**

Senior Planner Paul Hornbeck stated the Municipal Code currently allows residents to operate home-based businesses under the Home Occupations provisions of Sec. 16-10-20. When a home occupation involves tutoring or instruction, the Code currently limits the number of students to no more than two at any one time. Two residents have requested that the Town consider increasing the number of students allowed from two to eight to accommodate the type of curriculum they use in teaching music lessons.

The proposed code amendment would keep the current regulations in place for home occupations with two or fewer students while requiring a Conditional Use Grant approval by the Town Board for home occupations with more than two students at any one time. The code amendment also includes a number of additional criteria that home occupations would be subject to if there are more than two students. The additional requirements were developed based on feedback from the Planning Commission and Town Board at work sessions.

Any conditional use grant for instruction or tutoring of more than two (2) students shall:

- Be limited to tutoring or instruction of children under the age of eighteen (18) years;
- Not exceed eight (8) students present at the dwelling unit at any one (1) time;
- Have available one (1) on-site parking space for every two (2) students present at the dwelling at any one (1) time;
- Be limited to hours of operation between 7:00 a.m. and 8:00 p.m.;
- Be limited to no more than fifteen (15) hours per week of instruction;
- Comply with all State of Colorado child care licensing requirements, including requirements for licensing exemption status; and
- Be subject to inspection in order to ensure that all applicable building and fire codes are met.

Planning Commission recommended denial of the ordinance with two main concerns; the first is having commercial businesses in residential neighborhoods and the second was giving an unfair advantage to home based businesses compared to businesses in commercial locations.

Mr. Morgan inquired about the age limit on the conditions as most seniors in high school are age 18.

Mr. Hornbeck stated the age limit could be modified.

Mr. McCargar stated this is a legislative act so changes can be accommodated if needed. If there are many changes, it may be requested to continue formal action to make certain the code is compliant.

Mr. Adams requested to express his opinion on the current issue. This amendment has come before the Town Board a couple times during the last year. The code currently allows up to two students and the Town Board requested staff to make reasonable changes to the code which they did and that includes the conditional use grant provision. The two principles in this matter attended the previous meetings and were in agreement with the conditions of the conditional use grant as presented. The Planning Commission considered the matter and according to the ordinance presented states the Planning Commission recommended adoption of the ordinance. However at their January 6, 2016 meeting, the Planning Commission was concerned about having commercial businesses in residential neighborhoods and about giving an unfair advantage to home based businesses compared to businesses in commercial locations. The

Planning Commission therefore forwarded a recommendation of denial of the proposed code amendment to the Town Board. Mr. Adams stated there are already existing businesses in residential neighborhood such as hair salons and independent consultant businesses. Mr. Adams also brought up the point of a family having three or four students being home schooled. Mr. Adams stated he fully supports the amendment to the ordinance.

Mr. Bishop-Cotner stated the recommendation was denied at the Planning Commission.

Mr. Vazquez stated this issue was discussed at a work session and the applicant came before the Town Board with a request which led to the discussion of modifying the ordinance to begin with and bringing some clarification. The proposal from staff is that we will modify the policy to include the conditional use grant process and that process will include seven conditions. The Planning Commission does not agree with the conditional use grant.

Mr. Bishop-Cotner stated the issue with the Planning Commission is that fundamentally the tutoring should stay no more than two students; the issue is tutoring and nothing else.

Mr. Vazquez inquired if the discussion is narrowed to just tutoring, how is that fair to home tutoring when independent consultants could have multiple individuals in the home at one time for a sales opportunity.

Mr. Bishop-Cotner stated the ordinance is specifically talking about tutoring.

Mr. Adams inquired if the Planning Commission discussed the difference between home schooling and tutoring.

Mr. Bishop-Cotner stated home schooling is a different topic and issue because it is being done in the home by the parents.

Mr. Hornbeck stated the concern from the Planning Commission was unfair competition with music based teaching or tutoring. There are commercially licensed businesses in commercial zones that teach and tutor music lessons so the Planning Commission's concern was the competition to those businesses.

Mr. Bishop-Cotner stated the commercially licensed businesses in commercial zones are paying overhead, electricity, heating and other expenses.

Mr. Vasquez inquired about any individuals that came out and were opposed to the ordinance amendment.

Mr. Bishop-Cotner stated there had been as the reason the issue was brought forward is due to an individual in that neighborhood who is opposed to the amount of traffic and the parking situation in that neighborhood.

Mr. Vazquez stated this ordinance would then provide due process for a home owner to use their personal property as they best see fit for their best interest. If there is a concerned resident they will be heard as part of the conditional use grant process. By denying the amendment, that homeowner is then denied due process.

Mr. Bishop-Cotner stated the homeowner can go open up the business in a commercial zone.

Mr. Adams inquired if the Planning Commission meeting on January 6, 2016 was before the ordinance was written and presented for the Town Board's consideration.

Mr. Hornbeck stated the ordinance before the Town Board was the same ordinance that was presented to the Planning Commission.

Mr. Adams stated in the ordinance it states the Planning Commission did approve the ordinance as presented.

Mr. Hornbeck stated there were work sessions on the topic and that the first Planning Commission work session they may have expressed some support for the amendment.

Mr. Adams recited the whereas clause that was included in the ordinance presented to the Town Board regarding the Planning Commission forwarding a recommendation of approval to the Town Board.

Mr. McCargar stated the ordinance that was included in the packet was prepared before the Planning Commission meeting. That recital is incorrect as it assumed the Planning Commission would be recommending approval.

Mr. Morgan inquired if the CUG was granted could it be revoked and would it be reviewed year by year.

Mr. Hornbeck stated the conditions can be set as needed and if there are complaints, those can be brought before the Town Board.

Mr. Vazquez stated he likes the process that has been created as it is not an automatic approval or denial.

Mr. Hornbeck stated there is no applicant as there are two people that are advocating for the amendment. Since this is a legislative matter there is no applicant per se.

Robin Flores, 4630 Free Hold Drive, Windsor, CO and Kim Seyboldt, 1014 Brisas Court, Windsor, CO addressed the Town Board.

Ms. Melendez inquired if the conditions listed in the conditional use grant are acceptable to Ms. Flores and Ms. Seyboldt.

Ms. Seyboldt stated out of the seven conditions listed the only one not being done at this time is the inspection on the homes. Ms. Flores stated they are in need of clarification on what type of inspection was needed and how that needed to be done. Also, the letter of exemption is still needed.

Mr. Bishop-Cotner inquired if they have four parking spaces available on site.

Ms. Seyboldt stated she has about 10 spaces.

Ms. Melendez inquired if the music model they use is intended to be a home business.

Ms. Seyboldt stated the curriculum is designed for home teaching for purposes of research that was done to prepare the curriculum as to the comfort level of children and repetitions that best cement those concepts.

Ms. Flores stated they are required to purchase licensing through Let's Play Music and are required to charge more if they hold sessions in commercial establishments. In turn, that would put them out of business as there are teachers in Fort Collins are that are able to teach in their homes for a lower price.

Ms. Melendez inquired if the program only allows them to teach students up to age 18.

Ms. Flores stated the program is designed to go to age eight.

Ms. Seyboldt stated once children reach age eight, they are then referred to other music programs and lessons.

Mr. Bishop-Cotner inquired as to the possibility to be able to teach this curriculum in a commercial setting and raising the prices.

Ms. Flores stated if an individual is not able to teach in their home they can do so in a commercial establishment but will charge more.

Mr. Bishop-Cotner inquired about the overhead of the current businesses.

Ms. Seyboldt inquired if the Planning Commission spoke with the other music businesses in town to see if they had any concerns with the amendment.

Mr. Bishop-Cotner asked Ms. Seyboldt and Ms. Flores what their overhead is.

Ms. Flores stated they have to pay for equipment such as keyboards, licensing fees, a fee to the company to use their curriculum each year. There are other expenses to run this business beside heat and electricity.

Mr. Morgan commented to the Ms. Flores and Ms. Seybolt that they are not required to answer the question regarding individual's overhead.

Mr. Bishop- Cotner stated the Planning Commission's concern is that in the commercial business they have all the expenses and if the business is done in the home those expenses are lessened.

Ms. Flores stated there is a piano and guitar studio on Main Street and they have several teachers in one location so in order for Ms. Flores and Ms. Seyboldt to be comparable to them, they would need to open up a studio with three to four teachers and work out hours that are convenient for families and currently the hours for teaching are very part time; one to two days a week for a couple hours. The comparison may not be exactly the same as the overhead is not the same either.

Mr. Bishop-Cotner stated that their response answers the questions regarding overhead and was a good explanation.

Mr. Vazquez stated it is not the job of the Town Board to fix problems that they do not know exist. The Town Board is unaware of the feelings of the music businesses along Main Street and they could be in favor of this program and embrace it as a feeder program. The conditional use

grant process will give due process and the ability to allow individuals in favor or against the use to be heard.

Many individuals from the public appeared in support of the business Let's Play Music. Parents, grandparents, child and graduates of the program spoke of the benefits of the affordable home based music program formatted for group teachings. Some of the comments included:

- This program lets children be creative.
- The program is filling a gap that the arts program in public schools is lacking.
- The program is a feeder program to teach children before moving into commercial music lessons.
- The programs helps introverted children open up in a group setting.

A former student of the program that has graduated stated the program was very helpful for her as she learn a lot before starting orchestra and understands music theory. Younger children sometimes get nervous when they first go to school but the home environment puts children at ease.

Mr. Bishop-Cotner inquired as to when she left the program.

The former student left the program at about eight years old because she finished the program and moved on to other music programs.

Mr. Bishop-Cotner inquired as to what finishing the program actually means.

The former student stated it is a three year program

Ms. Seyboldt stated they are then referred to private piano teachers, or they move onto orchestra or other similar classes.

Mr. Vazquez inquired as to children not having an opportunity to start music lessons at a young age if this program did not exist.

Ms. Seyboldt stated that is correct. Most private piano teachers require that children are able to know and read their letters and have a certain finger strength which comes more at age seven or eight. Ms. Seyboldt stated in those three years, they touch on high school music theory with the seven and eight year olds.

Mr. Bishop-Cotner stated one of the misconceptions has been that it was a program from age four to age 18. The program was designed intentionally for younger students to feed into other programs. Essentially the argument regarding overheard is mute as this program is not similar to traditional music lessons.

Mr. Morgan reminded colleagues that this ordinance is not business specific as it is not written for them so consideration needs to be for what is written. Although the Let's Play Music program normally ends at age eight, the ordinance is written up to age 18 and there may be other opportunities for individuals.

Mr. Bishop-Cotner stated he agreed with the mayor regarding the idea of due process.

Some additional comments of support include:

- The program is intended to be a three year program but it provides some pre-school classes as well.
- The ordinance amendment supports neighborliness and safety.
- The program not only brings children together but it also brings parents together.
- The home base business feels safer in a neighborhood than parking in a parking lot.
- The program thrives best in group participation classes.

Direct neighbors of the Flores residence stepped forward and stated they would be the ones who would have direct impact from the music program but they are in support of the music program Ms. Flores is teaching. The neighbors inquired as to what would happen if another neighbor got upset and came up with a reason to challenge the conditional use grant or try to get them to discontinue their teaching based on a personal matter.

Mr. Vazquez stated as long as there is a conditional use grant that is approved and the individuals are in compliance they should be fine to continue.

**Town Board Member Melendez motioned to close the public hearing; Town Board Member Morgan seconded the motion. Roll call on the vote resulted as follows: Yeas –Morgan, Melendez, Bishop-Cotner, Adams, Vazquez; Nays- None; Motion passed.**

6. Ordinance No. 2016-1518 - Repealing, Amending and Readopting Section 16-10-20 of the Windsor Municipal Code and Adopting Section 16-7-85 of the Windsor Municipal Code regarding Home Occupations involving tutoring or instruction
- First Reading
  - Legislative action
  - Staff Presentation: Paul Hornbeck, Senior Planner

**Town Board Member Adams motioned to approve Ordinance No. 2016-1518 - Repealing, Amending and Readopting Section 16-10-20 of the Windsor Municipal Code and Adopting Section 16-7-85 of the Windsor Municipal Code regarding Home Occupations involving tutoring or instruction; Town Board Member Morgan seconded the motion.**

Mr. Hornbeck had nothing further to add.

Mr. McCargar will change the recital within the ordinance to reflect the Planning Commission's actual position on the ordinance as well as changing the age in the conditional use grant conditions to no greater than the age of 18.

**Roll call on the vote resulted as follows: Yeas –Morgan, Melendez, Bishop-Cotner, Adams, Vazquez; Nays- None; Motion passed.**

7. Site Plan Presentation – Valley Center Subdivision, Lot F – Agrifab – Alan Highstreet, Agrifab Colorado, LLC applicant/ Josh Erramouspe, Olsson Associates, applicant's representative
- Staff presentation: Paul Hornbeck, Senior Planner



## MEMORANDUM

**Date:** January 25, 2016  
**To:** Mayor and Town Board  
**From:** Kelly Arnold, Ian McCargar, Dennis Wagner  
**Re:** Resolution Adopting Intergovernmental Agreement (IGA) with Raindance Metropolitan District for Construction of New Liberty Road  
**Item #:** C.4.

### **Background / Discussion:**

In 2015 the Town Board discussed and prioritized the construction and completion of New Liberty Road. Currently New Liberty Road stops about 750 feet west of Hilltop Drive. This section of New Liberty Road was constructed in 2000 as part of the Hilltop Subdivision. With the advent of Raindance Subdivision development in the near future and the need for completing another east/west arterial street in Windsor, the completion of New Liberty Road to County Line Road (CR 13) became a priority.

This project qualifies for a use of Town Road Impact Fees since it is an expansion of our major road system. The Town Board budgeted the project in the 2016 budget with the understanding that Raindance Metro District would participate in the project at the same time for their primary utilities. The timing of this project is beneficial to both Town and Raindance Metro District because all utilities and infrastructure will be installed at the same time by one contractor.

### **Description of Project**

According to Windsor's Street Master Plan, New Liberty Road is a minor arterial and will provide an important east-west link between County Line Road and Highway 257. The one-mile section of New Liberty Road will be constructed on an alignment that will bring it to an intersection with County Line Road at the existing Steeplechase Drive. Steeplechase Drive is an east-west link from County Line Road to Highland Meadows Parkway.

TST Engineers has the design of the road at about 30%, with a target of putting it out for bid in March. Construction will be this summer. The Town will coordinate the project with TST performing the engineering and construction management.

The road will include curb and gutter, one vehicle lane in each direction, a center landscape median, bicycle lanes in each direction and a 10-foot wide detached bike/ped path. Included in the overall project will be a water line under the road. Upon future development of the adjacent Raindance Subdivision, the developer will construct a 5-foot sidewalk on the side opposite the 10-foot bike/ped path.

The total project to be constructed this summer, including engineering and 13% contingency, is estimated to cost \$2.74 million, with \$434,000 of that for the water line.

### **Description of Funding Elements of the IGA**

The IGA calls for the following cost-sharing allocation:

- **Right of Way Dedication:** Dedicated to the Town by RainDance, LLC, prior to construction.
- **Design Costs:** Prior to construction, the Metropolitan District will pay one-third of the design costs for the entire project.
- **10-foot Recreational Trail:** Paid entirely by the Metropolitan District prior to construction.
- **Water Line:** The Town will initially bear the entire cost of an oversized water line, the oversized portion of which will be the Town's cost without reimbursement. Upon approval of the first subdivision plat in RainDance, the Metropolitan District will pay the remaining water line cost, plus interest at 3.5% interest. This reimbursement (plus accrued interest) will be due in any event no later than July 1, 2025. The interest rate doubles if the reimbursement is not paid in full by July 1, 2025.
- **5-foot Sidewalk:** The Metropolitan District will construct at its expense a five-foot-wide sidewalk as development occurs in RainDance, with full completion no later than January 1, 2020. This responsibility may be assigned to third parties who undertake development in RainDance.
- **Other subdivision improvements:** The Town will bear no expense associated with improvements necessary to serve development in RainDance, except such reimbursements as may be authorized under the *Windsor Municipal Code*.
- **Ongoing maintenance:** The Town will maintain the roadway improvements. The Metropolitan District will maintain the medians and stormwater facilities.

To meet the proposed project schedule, the Resolution and IGA need to be approved soon. Options for the Town Board consideration are:

- Not approve the resolution and not proceed with the project at this time.
- Amend the Resolution and IGA. If the Town Board wants to amend the resolution and IGA, direction should be provided to Town staff and the action on the IGA tabled until a future date so the amendments can be addressed.
- Approve the Resolution and direct staff to proceed with the project (staff recommendation).

**Financial Impact:**

The New Liberty Road project will be funded by the Town Road Impact Fee fund and the \$2,000,000 is budgeted in 2016. The Water Fund will also be impacted by the project since oversizing of the water line will be reimbursed per Town policy.

	Windsor’s Initial Cost	Metro District’s Initial Cost	Metro District’s Deferred Cost	Windsor’s Final Net Cost
Water Line	\$434,022		\$366,998 <sup>1</sup>	\$67,024
Road	\$2,065,054	\$240,584	\$121,024 <sup>2</sup>	\$2,065,054
Total	\$2,499,076	\$240,584	\$488,022	\$2,132,078

<sup>1</sup> Cost of basic water line paid to the town upon approval of the first subdivision in Raindance or July 1, 2025, whichever occurs first. Amount earns 3.5% annual interest until July 1, 2025, and then doubles after that.

<sup>2</sup> Metro District will construct a 5-foot wide sidewalk as development occurs in Raindance, with full completion no later than January 1, 2020.

**Relationship to Strategic Plan:**

This project addresses Goal #4: *Develop and Maintain Effective Infrastructure* and the priority of addressing barriers to traffic flow. New Liberty Road is one of the few remaining significant arterials (Crossroads being the next critical one) that is not complete. This will alleviate east/west traffic flow throughout Windsor.

**Recommendation:**

It is Staff’s recommendation for the Town Board to approve the Resolution and direct staff to proceed on the construction of New Liberty Road project.

**Attachments:**

IGA with Raindance Metro District

TOWN OF WINDSOR

RESOLUTION NO. 2016-07

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF WINDSOR AND THE RAINDANCE METROPOLITAN DISTRICT NO. 1 REGARDING IMPROVEMENTS TO NEW LIBERTY ROAD, AND AUTHORIZING THE MAYOR TO EXECUTE SAME

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

WHEREAS, New Liberty Road is an existing roadway which has long been planned for extension to the east to support the efficient flow of traffic and enable the development of property in the vicinity; and

WHEREAS, the recent approval of the RainDance development has raised the priority for completion of the New Liberty Road extension; and

WHEREAS, the RainDance Metropolitan District No. 1 (“District”) is a quasi- municipal corporation and political subdivision of the State of Colorado, organized under Title 32 of the Colorado Revised Statutes; and

WHEREAS, the approved Service Plan for the District includes financing authority for roadway and related improvements to benefit property within the RainDance development; and

WHEREAS, the Town and the District have undertaken negotiations, the result of which is an Intergovernmental Agreement Regarding New Liberty Road Infrastructure Improvements (“IGA”), a copy of which is attached hereto and incorporated herein by this reference; and

WHEREAS, the Town Board has reviewed the IGA, and has concluded that its terms promote the public health, safety and welfare; and

WHEREAS, the District’s Board of Directors has taken official action to approve the IGA, and has authorized its execution; and

WHEREAS, each party to the IGA has appropriated the necessary funding to carry out the terms of the IGA; and

WHEREAS, the Town Board desires to approve the IGA and authorize its execution.

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

1. The attached Intergovernmental Agreement Regarding New Liberty Road Infrastructure Improvements is hereby approved.
2. The Mayor is hereby authorized to execute the IGA on behalf of the Town.
3. The Town Attorney is authorized to make such revisions and modifications to the form of the IGA to carry out the intentions set forth herein.

Upon motion duly made, seconded and carried, the foregoing Resolution was adopted this 25<sup>th</sup> day of January, 2016.

TOWN OF WINDSOR, COLORADO

By: \_\_\_\_\_  
John S. Vazquez, Mayor

ATTEST:

\_\_\_\_\_  
Patti Garcia, Town Clerk

**INTERGOVERNMENTAL AGREEMENT  
REGARDING  
NEW LIBERTY ROAD INFRASTRUCTURE IMPROVEMENTS**

THIS INTERGOVERNMENTAL AGREEMENT REGARDING NEW LIBERTY ROAD INFRASTRUCTURE IMPROVEMENTS (“Agreement”) is made and entered into this \_\_\_\_\_ day of January, 2016, by and between the TOWN OF WINDSOR, a Colorado home rule municipality (“Town”), and the RAINDANCE METROPOLITAN DISTRICT NO. 1, a quasi-municipal corporation and political subdivision of the State of Colorado (“District”). The Town and the District are referred to collectively herein as the Parties.

**RECITALS**

WHEREAS, the Parties concur that the extension of New Liberty Road westward from its current terminus will provide a needed transportation corridor for the general public, and will serve development of property within the Planned Unit Development known as RainDance (“Property”); and

WHEREAS, the District’s Service Area as defined in its Service Plan as approved by the Town on March 10, 2014, includes the Property, within which the District has the authority to construct, maintain and finance various improvements; and

WHEREAS, the Town seeks to protect the health, safety and general welfare of the community by providing for the completion of various improvements in the vicinity of the Property, thereby promoting its transportation objectives and limiting the harmful effects of substandard or inadequate development; and

WHEREAS, the Town’s Roadway Classification System calls for the establishment of an Urban Minor Arterial roadway extension of New Liberty Road from its current eastern terminus to its intersection with County Line Road (“New Liberty Extension”); and

WHEREAS, the Town has appropriated funding in 2016 to construct the New Liberty Extension to the Town’s Urban Minor Arterial Roadway Classification standard within a one-hundred-ten-foot (110’) right-of-way, which customarily consists of:

- a paved roadway surface, consisting of two (2) thru lanes; and
- associated curb and gutter; and
- a five-foot detached sidewalk on both sides of the paved roadway surface; and

- drainage collection and conveyance infrastructure; and
- medians and left turn lanes at no expense to the Town.

and

WHEREAS, the Town's Trails Master Plan calls for the establishment of a 10-foot wide concrete recreational trail on the side of the roadway opposite the five-foot detached sidewalk ("Recreational Trail"); and

WHEREAS, the Parties understand that RainDance Aquatic Investments, LLC and William F. Larrick, Inc. ("Owner") are prepared to dedicate the one-hundred-ten foot (110-foot) right-of-way to the Town, within which the New Liberty Extension will be constructed; and

WHEREAS, the District desires that the New Liberty Extension contain medians and left turn lanes which are not customarily required by the Town's Urban Minor Arterial Roadway Classification standards ("District Amenities"); and

WHEREAS, the District has presented its cost estimates with respect to the desired improvements to New Liberty Road, a copy of which is attached hereto and incorporated herein as **Exhibit A** ("Cost Estimates"), which cost estimates are being relied upon by the Parties in reaching the undertakings set forth herein; and

WHEREAS, the Parties acknowledge that the District should bear the cost of auxiliary roadway improvements (such as medians, signals, signage, turn lanes, acceleration lanes and deceleration lanes) necessary to serve development within the Property; and

WHEREAS, in addition to the cost of auxiliary roadway improvements, the Parties acknowledge that the cost of the District Amenities should be borne by and credited to the District indirectly through the District's assumption of costs associated with the Recreational Trail and five-foot-wide concrete sidewalk as set forth herein; and

WHEREAS, the Parties acknowledge that a portion of the design costs associated with the New Liberty Road Extension should be borne by the District directly as set forth herein; and

WHEREAS, in conjunction with construction of roadway improvements associated with the New Liberty Extension, a water line ("Water Line") will be constructed by the Town under the paved portion of the roadway; and

WHEREAS, the Town will construct the Water Line to a diameter larger than necessary to serve development within the Property ("Oversized Diameter"); and

WHEREAS, in accordance with the *Windsor Municipal Code*, the Town is prepared to pay the cost for the Oversized Diameter, and the District is prepared to pay the balance of the Water Line costs over time, pursuant to the terms and conditions set forth herein; and

WHEREAS, the District is prepared to pay to the Town the District's share of the cost for the Water Line as development progresses within the Property, and the Town is prepared to accept payment over time; and

WHEREAS, this Agreement is executed for the purpose of assuring the completion of certain infrastructure improvements necessary for general transportation, development of the Property, and the protection of the Town from the ultimate cost of completing the certain infrastructure improvements more-properly borne by the District; and

WHEREAS, this Agreement is not executed for the benefit of materialmen, laborers, or others providing work, services, or material to the New Liberty Extension, or for the benefit of lot buyers within the Property; and

WHEREAS, the mutual promises, covenants, and obligations contained in this Agreement are authorized by the statutes of the State of Colorado and the ordinances of the Town of Windsor; and

WHEREAS, the Parties desire to set forth their understandings with respect to New Liberty Extension design, construction, initial cost and cost reimbursements.

NOW, THEREFORE, in consideration of the mutual promises, covenants, obligations, payments, and performances of the parties, it is mutually agreed as follows:

#### PREAMBLE

The Parties agree that the aforesaid recitals are true and correct, and those recitals are hereby incorporated into the body of this Agreement.

### ARTICLE I

#### NEW LIBERTY EXTENSION INFRASTRUCTURE IMPROVEMENTS

##### **1.1** Dedication of Right-of-Way.

The Town shall have no obligation whatsoever to commence any improvements to the New Liberty Road Extension until the Owner dedicates the required right-of-way to the Town in a form acceptable to the Town.

## **1.2 Roadway Improvements.**

Subject to all conditions set forth in this Agreement, the Town shall construct the following improvements in accordance with the improvement plans accepted by the Town for the project (“Roadway Improvements”):

- a paved roadway surface, consisting of two (2) thru lanes; and
- associated curb and gutter; and
- drainage collection and conveyance infrastructure; and
- erosion control and seeding; and
- the District Amenities; and
- the Recreational Trail, subject to reimbursement as set forth below; and
- street lights.

In addition to the cost of the Roadway Improvements, the Town shall be responsible for the cost of design for the Roadway Improvements, subject to reimbursement as provided in Section 1.6 (a) below.

## **1.3 Water Line Improvements**

Subject to all conditions set forth in this Agreement, the Town shall construct the Water Line in accordance with the improvement plans accepted by the Town for the project. In addition to the cost of the Water Line, the Town shall be responsible for the cost of design for the Water Line, subject to reimbursement as provided in Section 1.6 (c) below.

## **1.4 Prosecution of Work**

The Town shall undertake the project, subject to its appropriation of funding by the Windsor Town Board and shall diligently pursue timely commencement and completion of the Roadway Improvements and the Water Line. In the event the bidding process for the project results in a projected cost that exceeds the project Cost Estimates, the Town shall be under no obligation to appropriate additional funding for the project.

## **1.5 Provision for District-funded Improvements Serving the Property.**

It is understood that the Roadway Improvements are intended to serve general public transportation needs, but will eventually provide arterial access to and from local and collector streets to be constructed within the Property in the future as development occurs. The provision for any other or further public improvements serving subdivisions, tracts, lots or sites within the Property shall be set forth in future Subdivision Development Agreements or Site Plan Development Agreements, as further described in that certain Agreement dated November 23, 2015, between the Town and the Owner, recorded on November 30, 2015, in the books and records of the Weld County Clerk and Recorder at Reception No. 4161427. The Town shall bear no cost associated with such improvements, except those improvements which are customarily reimbursable pursuant to the Town's existing reimbursement policy, and as may be provided for in specific reimbursement agreements in accordance with such policy.

## **1.6 Design Costs, Recreational Trail, District Amenities and Water Line Costs.**

- a. **Costs of Design.** The Town will bear the initial cost of design for the Roadway Improvements, District Amenities and Water Line ("Design Costs"). In addition to the other District costs set forth in this Section, the District shall tender to the Town an amount equal to one-third ( $1/3^{\text{rd}}$ ) of the Design Costs upon the Town's issuance of a Notice to Proceed to the chosen contractor for the project. The District shall have the right to approve the design of the Roadway Improvements.
- b. **Recreational Trail.** In addition to the other District costs set forth in this Section, the District shall pay the full cost associated with construction of the Recreational Trail. Payment for the Recreational Trail shall be tendered to the Town upon the Town's issuance of a Notice to Proceed to the chosen contractor for the project.
- c. **Water Line Costs.** In addition to the other District costs set forth in this Section, the District shall pay the full cost associated with a ten-inch (10") water line within the New Liberty Extension, which payment will be determined, tendered and enforced as provided in Section 2.1 below. It is expressly understood that the Town will bear the initial cost of the Water Line (including the Oversized Diameter), and will recover from the District only that portion associated with a ten-inch (10") water line.

The allocation of estimated costs between the Parties is set forth in the Cost Estimates, indicating which costs will be paid by the Parties, and when such costs are to be paid.

## **1.7 District Maintenance Responsibility.**

The following costs shall be borne by the District, the obligation for payment of which shall be deemed a covenant running with the Property:

- a. **District Amenities Maintenance:** Notwithstanding the dedication of right-of-way and Town construction of the Roadway Improvements, the District shall be responsible for maintenance and upkeep of all District Amenities, including but not limited to median landscaping, median trees, median irrigation systems and median retaining walls.
- b. **Drainage Maintenance:** With respect to storm water detention and infiltration facilities constructed pursuant to this Agreement, the District shall be responsible for maintenance of such facilities in perpetuity. District's maintenance obligation under this sub-section may be assigned to another developer, association, or another special district with the Town's prior written consent, which consent will not be unreasonably withheld or unreasonably conditioned. Maintenance requirements include, but are not limited to maintaining the specified storm water detention/retention volumes, maintaining outlet structures, flow restriction devices and facilities needed to convey flow to the storm water basins. The Town shall have the right to enter properties to inspect said facilities at any time. If these facilities are not properly maintained, such failures may, in addition to any and all available legal and equitable remedies and at the Town's sole election, be addressed pursuant to Chapter 7, Article VIII of the *Windsor Municipal Code*.

## **ARTICLE II**

### **REIMBURSEMENT AND COST RECOVERY**

#### **2.1 District Reimbursement of Town Water Line Costs.**

The District hereby acknowledges its obligation to directly reimburse the Town for the District's share of the cost incurred by the Town associated with construction of the Water Line as specified in Section 1.6 (c) above, which shall be paid, conditioned and enforced as follows:

- a. As a condition of final subdivision or site plan approval for the first subdivision within the Property for which access to New Liberty Road is proposed or required, the District will pay to the Town the District's full share of the cost incurred by the Town associated with construction of the Water Line ("Water Line Reimbursement").
- b. The Water Line Reimbursement shall bear interest at the rate of 3.5% annually. Interest shall commence on the date final payment is issued by the Town for construction of the Water Line and shall continue until the Water Line Reimbursement is paid in full.

- c. No building permit shall issue within any portion of the Property unless the Water Line Reimbursement has been paid in full, together with the interest assessment associated therewith.

Notwithstanding the foregoing, on or before July 1, 2025, the District shall be required to pay in full any outstanding balance of the Water Line Reimbursement, plus interest assessed thereon as provided above. If for any reason the District fails to pay this sum in full on or before July 1, 2025, the rate of interest shall increase to 7% annually, effective July 1, 2025, and shall be assessed until paid in full.

### **ARTICLE III DISTRICT RESPONSIBILITY FOR SIDEWALK**

#### **3.1 District Responsibility.**

The District shall be responsible for completion of the five-foot-wide concrete sidewalk customarily required by the Town's Minor Urban Arterial Roadway Classification standard ("Sidewalk") as development occurs over time within the Property. Town development approval for each filing of development within the Property, to the extent lots or tracts included in such filings are adjacent to any portion of the New Liberty Road Extension right-of-way, will be conditioned upon completion of the Sidewalk for the full extent of the particular filing's adjacency. Under no circumstances will the Town bear any expense associated with completion of the Sidewalk, or any portion thereof.

#### **3.2 Developer Responsibility.**

Notwithstanding the foregoing, if the Owner proposes development within the Property or transfers any portion of the Property to a third party ("Developer") who proposes development within the Property, the Town and the Owner or Developer may enter into agreements for Owner or Developer completion of the Sidewalk associated with said portion of the Property. If the Owner or a Developer enters into an agreement with the Town under which the Owner or Developer assumes responsibility for completion of the Sidewalk, or any portion thereof, upon completion of the Sidewalk or any agreed portion thereof, the District shall be released from its responsibility to complete that portion of the Sidewalk completed by the Owner or a Developer pursuant to an agreement with the Town. In the absence of a Town agreement with the Owner or a Developer to complete the Sidewalk or any portion thereof, the District shall remain responsible for completion of the Sidewalk as set forth in Section 3.1 above. Nothing herein shall require or compel the Town or the Owner or a Developer to enter into any agreements for completion of the Sidewalk or any portion thereof.

### **3.3. Completion Date.**

Notwithstanding the foregoing, the District shall be responsible for completion of the entire Sidewalk by January 1, 2020 (“Completion Date”). This responsibility shall extend to any portion or portions of the Sidewalk not completed by the District, the Owner or a Developer or Developers by the Completion Date. The parties agree that the requirements of this Section are intended to establish a date certain by which the entire Sidewalk shall be completed, regardless of the pace, location or status of development within the Property.

## **ARTICLE IV GENERAL TERMS**

### **4.1 Events of Default.**

The following conditions, occurrences or actions shall constitute a default by the District:

- a. The District’s failure to make any reimbursement payment to the Town as provided in Section 2.1 above;
- b. If clearly evidencing the District’s inability to perform under this Agreement, the District’s insolvency, the appointment of a receiver for the District, or the filing of a voluntary or involuntary petition in bankruptcy respecting the District.
- c. If clearly evidencing the District’s inability to perform under this Agreement, foreclosure of any lien against or encumbrance upon the Property, or any portion thereof, or assignment or conveyance of the Property in lieu of foreclosure, unless such assignment or conveyance has been approved by the Town in writing, prior to the transfer and subject to such conditions as the Town may deem appropriate.

The Town may not declare a default until written notice has been given to the District. The District shall have the right to cure any default within 30 days of written notice from the Town.

The following conditions, occurrences or actions shall constitute a default by the Town:

- a. The Town’s failure to perform or observe any of its covenants, agreements, or conditions set forth in this Agreement.

### **4.2 Remedies Upon Default**

In the event of a breach or default of this Agreement by any party, the non-defaulting party shall be entitled to exercise all remedies available at law or in equity, specifically including suits for specific performance and/or monetary damages.

#### **4.3 Governmental Immunity.**

Notwithstanding any other provision of this Agreement, no term or condition of this Agreement 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, §24-10-101, et seq., C.R.S., as now or hereafter amended, as enjoyed by the Town or the District.

#### **4.4 Third Party Beneficiaries.**

It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to the Town and the District. 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 Town and the District that any such person or entity, other than the Town and the District receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

#### **4.5 Severability.**

To the extent that this Agreement may be executed and performance of the obligations of the parties may be accomplished within the intent of the Agreement, the terms of this Agreement 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.

#### **4.6 No Waiver.**

The waiver of any breach of a term, provision or requirement of this Agreement 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.

#### **4.7 Compliance with TABOR.**

It is the intent of the Town and the District to fully comply with the provisions of Article X, Section 20 of the Constitution of the State of Colorado. Therefore, the Parties agree that this Agreement is subject to an annual appropriation by the Windsor Town Board and the Board of Directors of the District, respectively, and that the failure to make such appropriation will relieve the Town and the District of any multi-year fiscal obligations which may be created by the terms of this Agreement.

#### **4.8 Entire Understanding.**

This Agreement is intended as the complete integration of all understandings between the Parties with respect to its subject matter. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or affect whatsoever, unless set forth herein.

#### **4.9 Modification and Amendment.**

Except as provided above, no modification of this Agreement shall be effective unless agreed to in writing by both Parties in an amendment to this Agreement that is properly executed and approved in accordance with applicable law.

#### **4.10 Attorney Fees.**

Should either Party be required to resort to litigation, arbitration, or mediation to enforce the terms of this Agreement, each party shall bear its own costs of suit, including reasonable attorney fees and expert witness fees, regardless of “prevailing party” status.

#### **4.11 Binding Effect.**

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

#### **4.12 Personal Jurisdiction and Venue.**

Personal jurisdiction and venue for any civil action commenced by either party to this Agreement, whether arising out of or relating to this Agreement or the security, shall be deemed proper only if such action is commenced in the District Court for Weld County, Colorado. The Parties expressly waive their right to bring such action in or to remove such action to any other court, whether state or federal.

#### **4.13 Notice.**

Any notice required or permitted by this Agreement shall be deemed effective when personally delivered in writing or three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified, and return receipt requested, and addressed as follows:

IF TO DISTRICT: RainDance Metropolitan District No. 1  
Attn: Patrick McMeekin  
1625 Pelican Lakes Point, Suite 201  
Windsor, CO 80550

With a copy to: White Bear Ankele Tanaka & Waldron  
Attn: William P. Ankele, Jr., Esq.  
2154 E. Commons Ave., Suite 2000  
Centennial, CO 80122

IF TO TOWN:	Town Manager	<i>Copies to:</i>	Director of Planning	Ian D. McCargar, Esq.
	Town of Windsor		Town of Windsor	Town Attorney
	301 Walnut Street		301 Walnut Street	301 Walnut Street
	Windsor, CO 80550		Windsor, CO 80550	Windsor, CO 80550

**4.14 Recordation.**

The Town shall record a copy of this Agreement with the Clerk and Recorder's Office in Weld County, Colorado.

TOWN OF WINDSOR, COLORADO

By: \_\_\_\_\_  
John S. Vazquez, Mayor

ATTEST:

\_\_\_\_\_  
Patti Garcia, Town Clerk

[Seal]

RAINDANCE METROPOLITAN DISTRICT NO. 1

\_\_\_\_\_  
Name:  
Title:

ATTEST:

\_\_\_\_\_

[Seal]

## COMMUNITY DEVELOPMENT NEWSLETTER – JANUARY, 2016

### COMPREHENSIVE PLAN

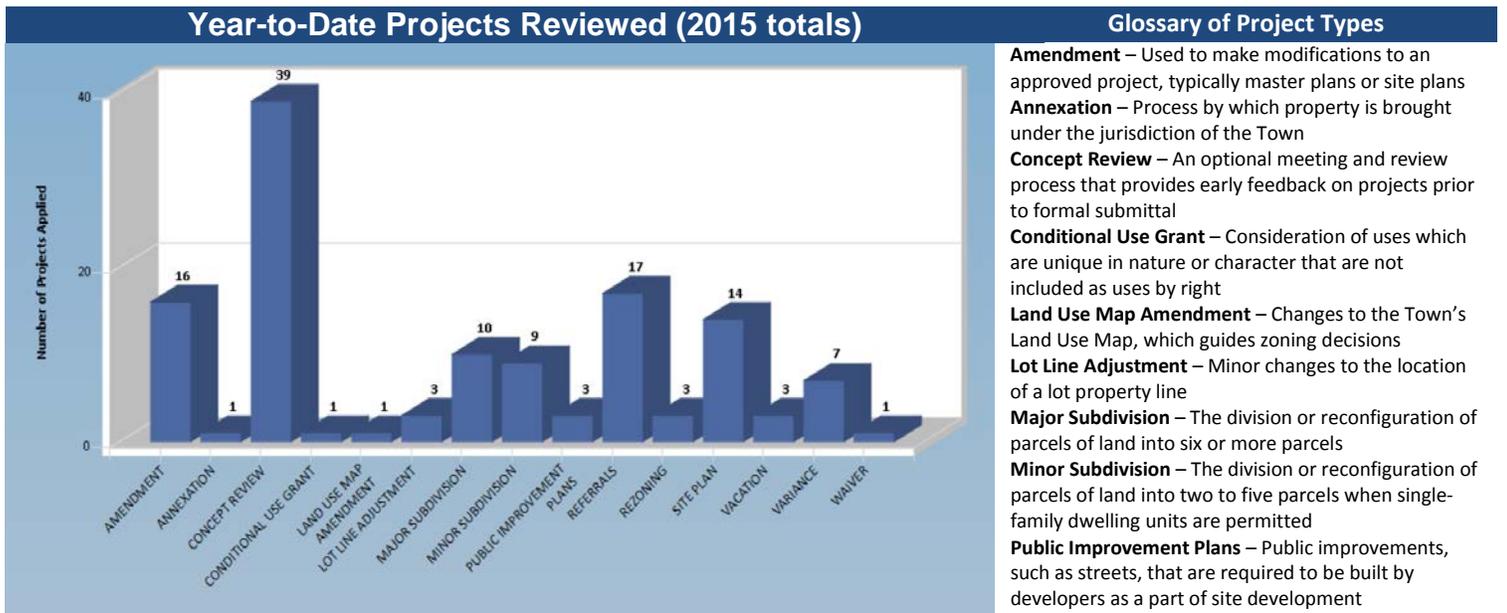
The Town is working with consultant Houseal Lavigne Associates to create a new Comprehensive Plan to guide development and policy decisions over the next 10-20 years. A joint work session with the Town Board and Planning Commission was held on January 18, 2016, to review the draft document. The Advisory Committee met January 19, 2016 to review the document as well. Upcoming Events include the following:

- Community Open House – Date to be determined, likely in February or March
- Planning Commission and Town Board Adoption/Public Hearings – Dates to be determined, likely in February or March

### POLICIES, PROCEDURES, & STANDARDS

- A code amendment to allow up to eight students at any one time in home occupations with a conditional use grant was approved on first reading by Town Board. Second reading is scheduled for January 25, 2016
- An amendment to eliminate the road impact fee “look back” procedure was approved on first reading by Town Board. Second reading is scheduled for January 25, 2016
- I-25/SH 392 Corridor Activity Center (CAC) Community Open House January 21, 2016
- CAC Joint Town Board / Fort Collins City Council work session – February 1, 2016

### PROJECTS & PERMIT SUMMARY



Total Projects: 128

#### Glossary of Project Types

- Amendment** – Used to make modifications to an approved project, typically master plans or site plans
- Annexation** – Process by which property is brought under the jurisdiction of the Town
- Concept Review** – An optional meeting and review process that provides early feedback on projects prior to formal submittal
- Conditional Use Grant** – Consideration of uses which are unique in nature or character that are not included as uses by right
- Land Use Map Amendment** – Changes to the Town’s Land Use Map, which guides zoning decisions
- Lot Line Adjustment** – Minor changes to the location of a lot property line
- Major Subdivision** – The division or reconfiguration of parcels of land into six or more parcels
- Minor Subdivision** – The division or reconfiguration of parcels of land into two to five parcels when single-family dwelling units are permitted
- Public Improvement Plans** – Public improvements, such as streets, that are required to be built by developers as a part of site development
- Referrals** – Town review of certain projects in adjacent jurisdictions, as mandated by state statute or inter-governmental agreement
- Rezoning** – The changing of existing zone classification of a parcel of land
- Site Plan** – Development of land for multifamily, commercial, or industrial uses
- Vacation** – Process in which the Town’s ownership or interest in a right-of-way or easement is abandoned
- Waiver** – Request for specific Commercial Corridor Plan standards to be waived on a site plan

#### Building Permit Summary for December, 2015

	Monthly Total	Monthly Valuation	Year-to-Date Total	Year-to-Date Valuation
New Single Family	20	\$6,773,155	285	\$92,809,489
New Multi-Family	0	\$6,637,531	69	\$14,248,419
New Commercial/Industrial	0	\$4,000,000	4	\$14,691,673

**Major Development Projects Currently Under Review**More Detailed review timeframes can be found at <http://windsorgov.com/DocumentCenter/View/13290>

<b>Project</b>	<b>Description</b>	<b>Status</b>
<b>Burlington Subdivision - Lot 17 (217 2<sup>nd</sup> St)</b>		
Arapahoe Rental Site Plan	New 1,000 s.f. building & landscaping	Reviewing check print
<b>Diamond Valley Subdivision 5<sup>th</sup> - Lots 1 &amp; 2 (9481 Eastman Park Dr)</b>		
Silverline Services Site Plan	Construction of 2,400 s.f. building in first phase	Awaiting mylars from applicant
<b>Fossil Creek Meadows (Northwest of WCR 5 &amp; WCR 32E)</b>		
Amended Master Plan & Preliminary Major Subdivision	Platting of 292 single family lots	Awaiting 2 <sup>nd</sup> submittal
<b>Fossil Ridge Subdivision (Hialeah Dr off of Highland Meadows Pkwy)</b>		
5 <sup>th</sup> Filing Preliminary Plat	10 lot subdivision	Planning Commission 2/3/15
Windsor Highlands Amended Master Plan	Amendment to allow 10 additional lots	Planning Commission 2/3/15
<b>Great Western Industrial Park 2<sup>nd</sup> Annexation (East of HWY 257)</b>		
Amended Master Plan, Land Use Map Amendment & Rezoning to PUD	Proposal of mixed industrial, commercial, and residential development on 745 acres	Awaiting 2 <sup>nd</sup> submittals from applicant
<b>Great Western Industrial Park 3<sup>rd</sup> - Lot 1, Block 1 (11140 Eastman Park Dr)</b>		
Vestas Site Plan – Phase X	Approximately 40,000 s.f. in various additions	Reviewing 4 <sup>th</sup> submittal
<b>Highlands Industrial Park 6<sup>th</sup> (Crossroads Blvd &amp; Greenfield Dr)</b>		
Concrete Equipment Supply Site Plan & Minor Subdivision	New 10,000 s.f. building	Reviewing 2 <sup>nd</sup> submittal
<b>Highland Meadows Golf Course 8<sup>th</sup> - Lot 6 (Crooked Stick Dr &amp; Highland Meadows Pkwy)</b>		
Fitness & Tennis Center Site Plan	40,000 s.f. building with outdoor tennis courts	Awaiting check print from applicant
<b>Labue Farm (North of Crossroads Blvd at WCR 15)</b>		
Annexation	Annexation of 155 acres	Awaiting 2 <sup>nd</sup> submittal
<b>Lakeview Addition 7<sup>th</sup> (Cedar St at Highway 257)</b>		
Preliminary Site Plan	New four unit apartment building	Awaiting Final Site Plan submittal
<b>Poudre Heights Subdivision 3<sup>rd</sup> (Northwest of 7<sup>th</sup> St &amp; New Liberty Rd)</b>		
Preliminary Plat & Preliminary Site Plan	Platting of 392 residential lots including site planning of 125 townhome units	Awaiting 2 <sup>nd</sup> submittal from applicant
<b>The Ridge at Harmony Road (Northeast of CR 74 &amp; WCR 13 intersection)</b>		
Final Major Subdivision	Platting of 418 residential lots in first filing	Awaiting 3 <sup>rd</sup> submittal
<b>Shutts Subdivision 3<sup>rd</sup> (Fairgrounds Ave &amp; LCR 30)</b>		
Preliminary Major Subdivision & Preliminary Site Plan	66 condominiums, 32 townhomes, 37 single family lots, and up to 11,000 s.f. of commercial	Awaiting 2 <sup>nd</sup> submittal from applicant
<b>South Hill Subdivision (Northwest of Crossroads Blvd &amp; 7<sup>th</sup> St)</b>		
Final Plat	210 lots on 124 acres	Awaiting check-prints from applicant
<b>Valley Center Subdivision - Lot F (9231 Eastman Park Dr)</b>		
Agrifab Colorado Site Plan	New 6,000 s.f. building	Awaiting 3 <sup>rd</sup> submittal from applicant
<b>Water Valley South 9<sup>th</sup> - Lots 1 &amp; 2 (South of Crossroads Blvd &amp; HWY 257)</b>		
Self-Storage	Construction of six buildings housing 97 storage units	Awaiting 3 <sup>rd</sup> submittal from applicant
<b>Weakland Annexation – (6461 HWY 392)</b>		
Annexation	Annexation of approximately 10 acres	Reviewing 1 <sup>st</sup> submittal
Site Plan	Construction of new greenhouse & brewing facility	Reviewing 1 <sup>st</sup> submittal
<b>Windshire Park Annexation (North and east of the end of 17<sup>th</sup> St)</b>		
Amended Master Plan	Amendment to change Parcel E designation from Church to Townhomes	Awaiting 2 <sup>nd</sup> submittal from applicant
<b>Windshire Park 4<sup>th</sup> (15<sup>th</sup> St &amp; Windshire Dr)</b>		
Preliminary Major Subdivision & Preliminary Site Plan	58 Townhomes on 8.5 acre tract	Awaiting 2 <sup>nd</sup> submittal from applicant
<b>Windsor Commons Subdivision 2<sup>nd</sup> - Lot 2 (1101 Automation Drive)</b>		
Windsor Commons Self-Storage Site Plan	New 70,000 s.f. building	Awaiting mylars from applicant



## MEMORANDUM

**Date:** January 25, 2016  
**To:** Mayor and Town Board  
**Via:** Kelly Arnold, Town Manager  
Scott Ballstadt, AICP, Director of Planning  
**From:** Josh Olhava, AICP, Senior Planner  
**Subject:** Land Use Development Project Workflows  
**Item:** C.6

### **Background:**

In order to clearly convey the steps in the development review process to applicants and citizens, staff has modernizing the outdated development review workflows (enclosed for your information). Below is a list of the application types that have been updated as the new 'Development Review Guides' (also known as workflows), enclosed.

- Annexation
- Rezoning
- Major Subdivision
- Standard Site Plan
- Qualified Commercial/ Industrial Site Plan
- Administrative Site Plan | Minor Subdivision | Lot Line Adjustment

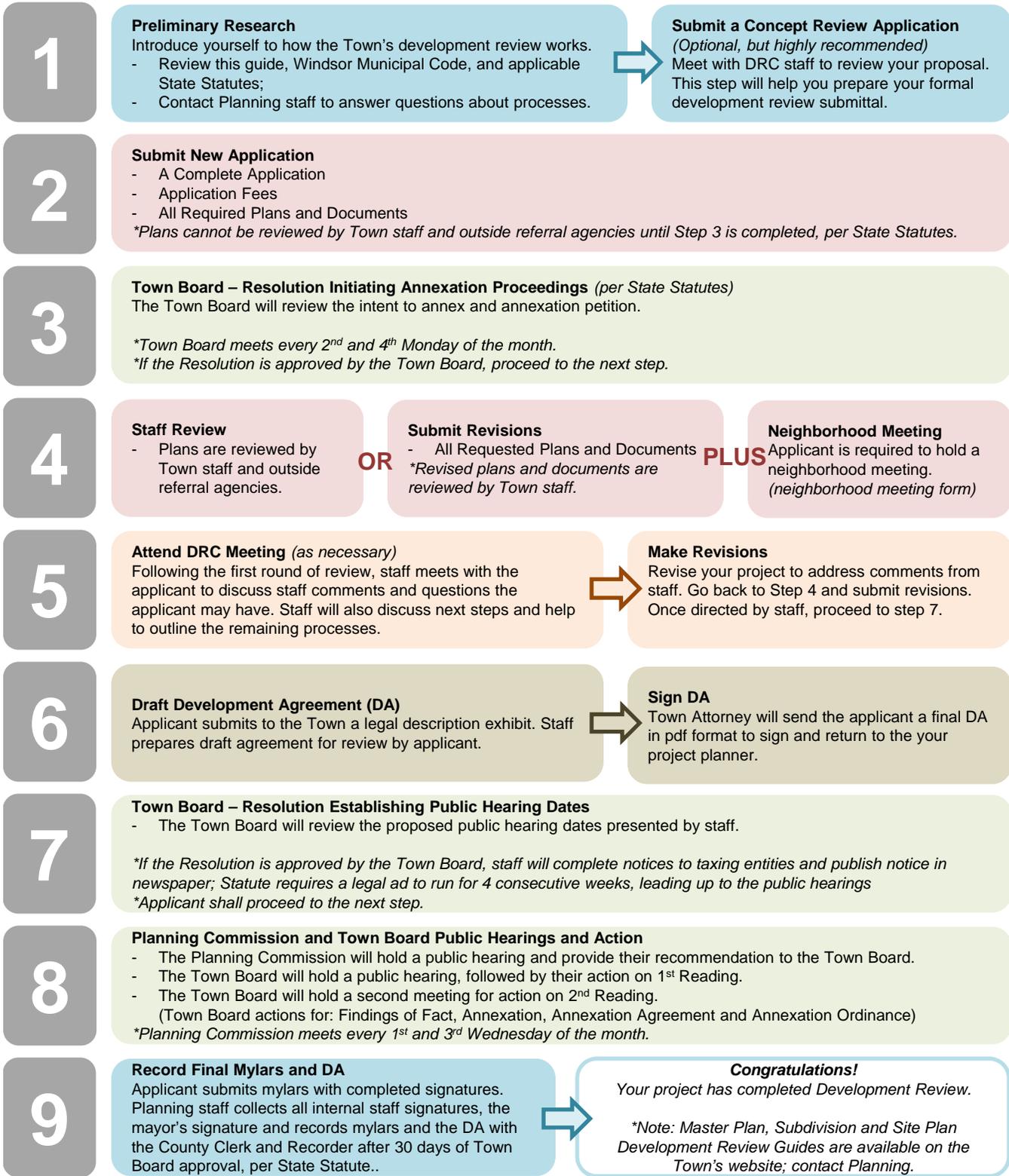
Staff is working on the remaining development review application guides that include: Master Plans, Conditional Use Grants, Telecommunications, Variances/Appeals and Land Use Map Amendments. All of the guides will serve as 'living documents' that are updated as processes or code updates are made. These guides will be housed on the Planning Department's 'Application and Forms' page on the Town website.

**Enclosures:** Development Review Guides (workflows)



# DEVELOPMENT REVIEW GUIDE

## Annexation Applications

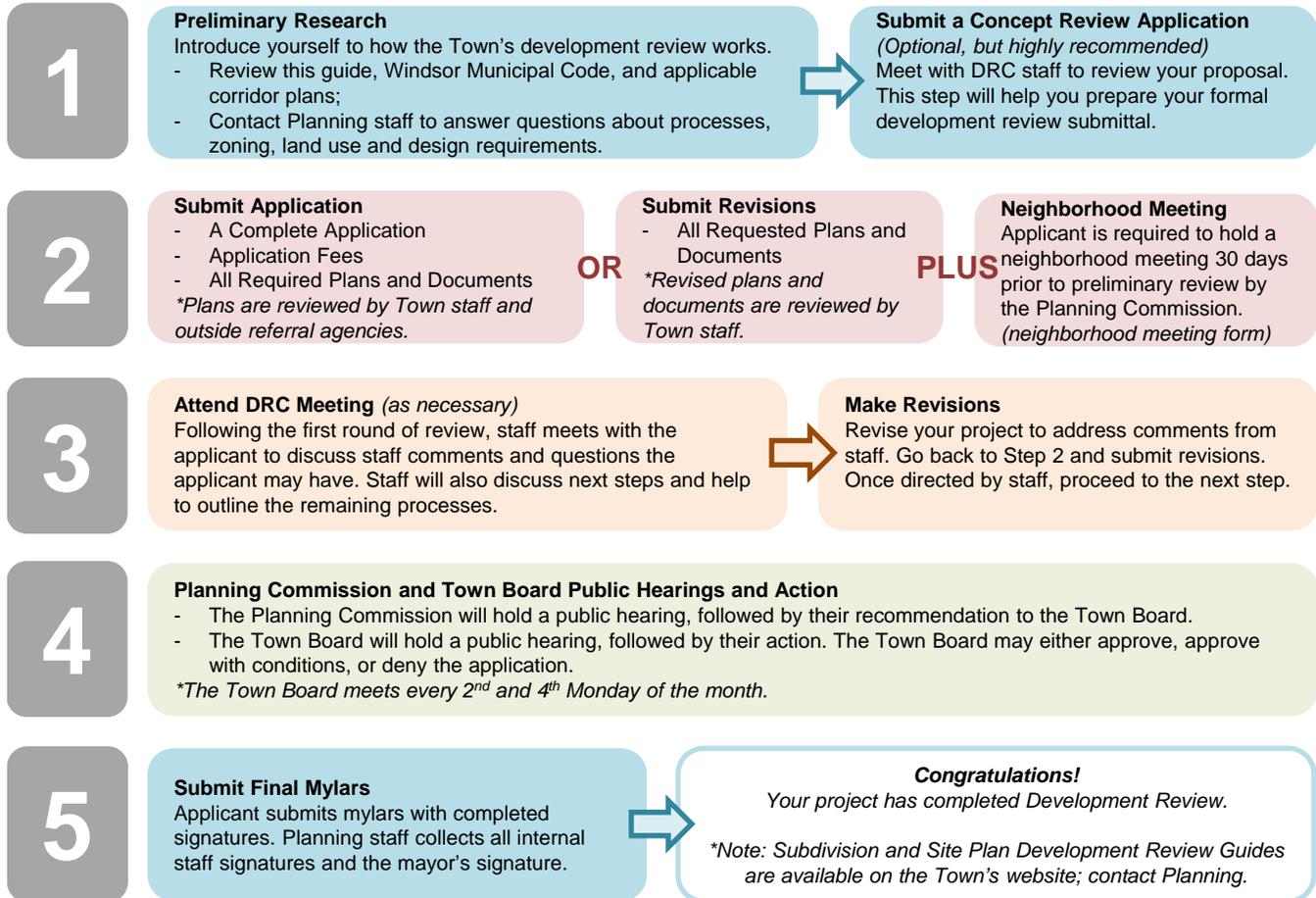


**ACRONYMS:**  
DRC – Development Review Committee (staff from Planning, Engineering, Parks, Fire, Building and Economic Development)  
DA – Development Agreement



# DEVELOPMENT REVIEW GUIDE

## Rezoning Applications



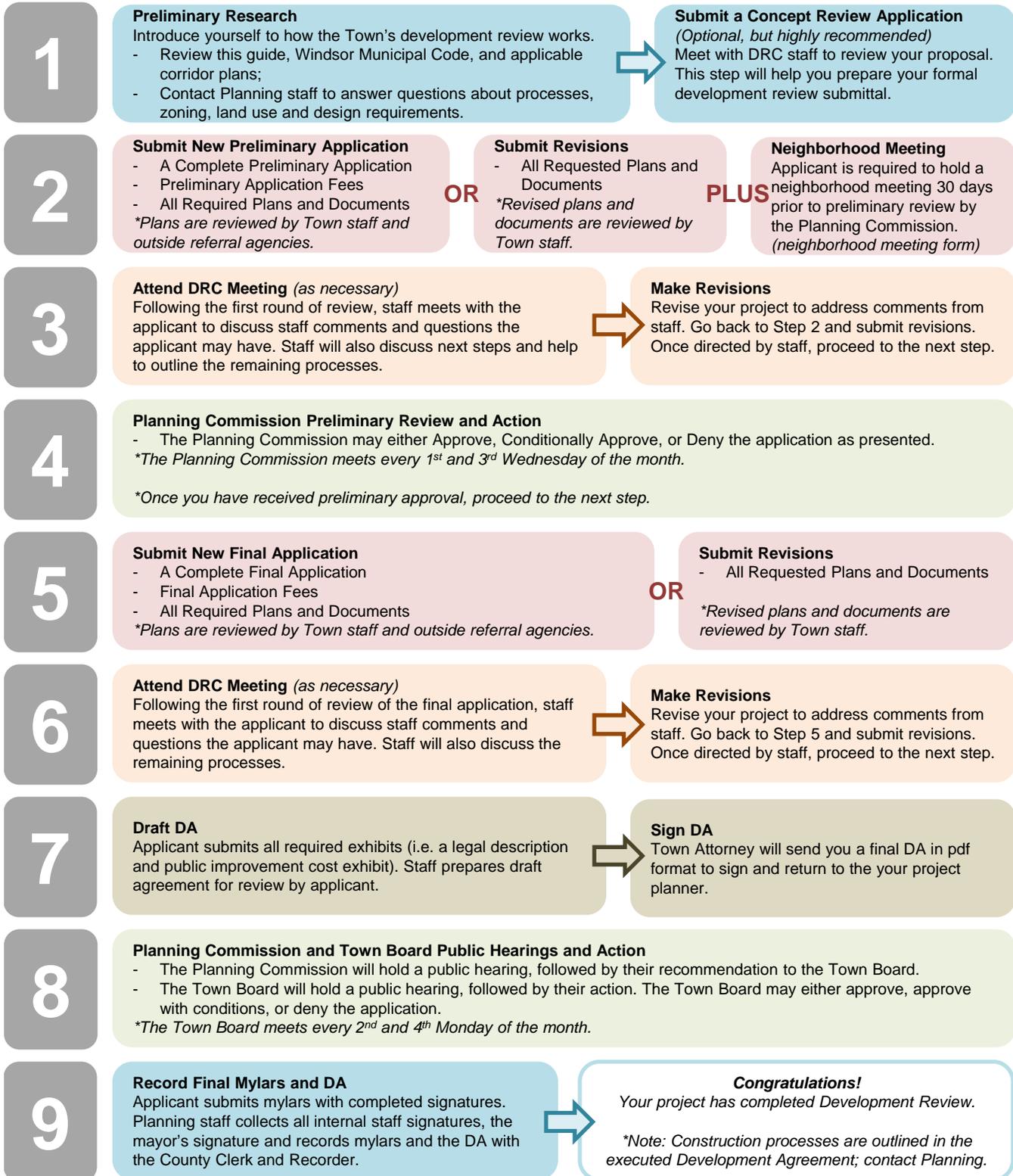
### ACRONYMS:

DRC – Development Review Committee (staff from Planning, Engineering, Parks, Fire, Building and Economic Development)  
DA – Development Agreement



# DEVELOPMENT REVIEW GUIDE

## Major Subdivision Applications



**ACRONYMS:**  
DRC – Development Review Committee (staff from Planning, Engineering, Parks, Fire, Building and Economic Development)  
DA – Development Agreement



# DEVELOPMENT REVIEW GUIDE

## Standard Site Plan Applications

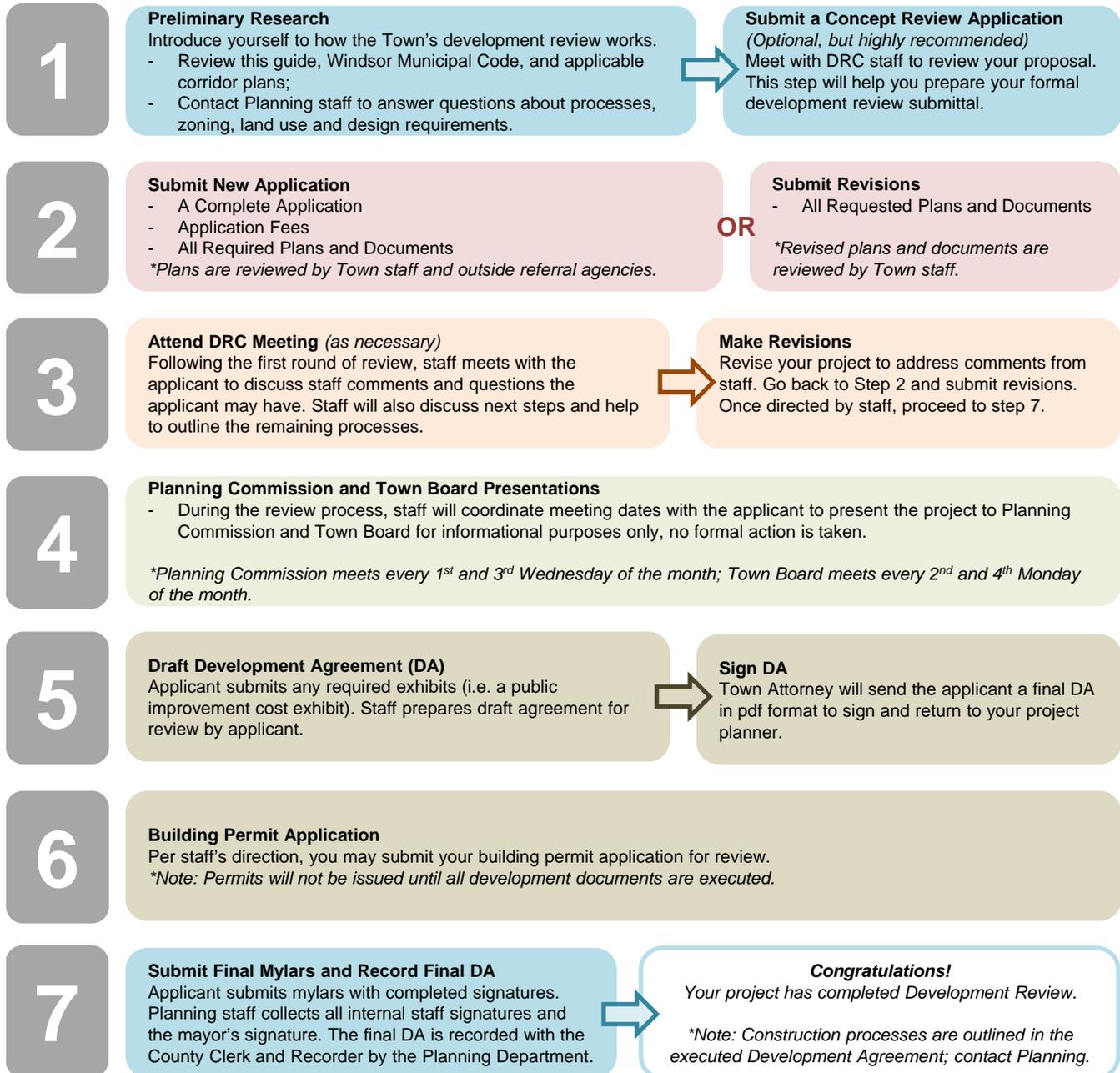


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DA – Development Agreement



# DEVELOPMENT REVIEW GUIDE

## Qualified Commercial/Industrial Site Plan Applications

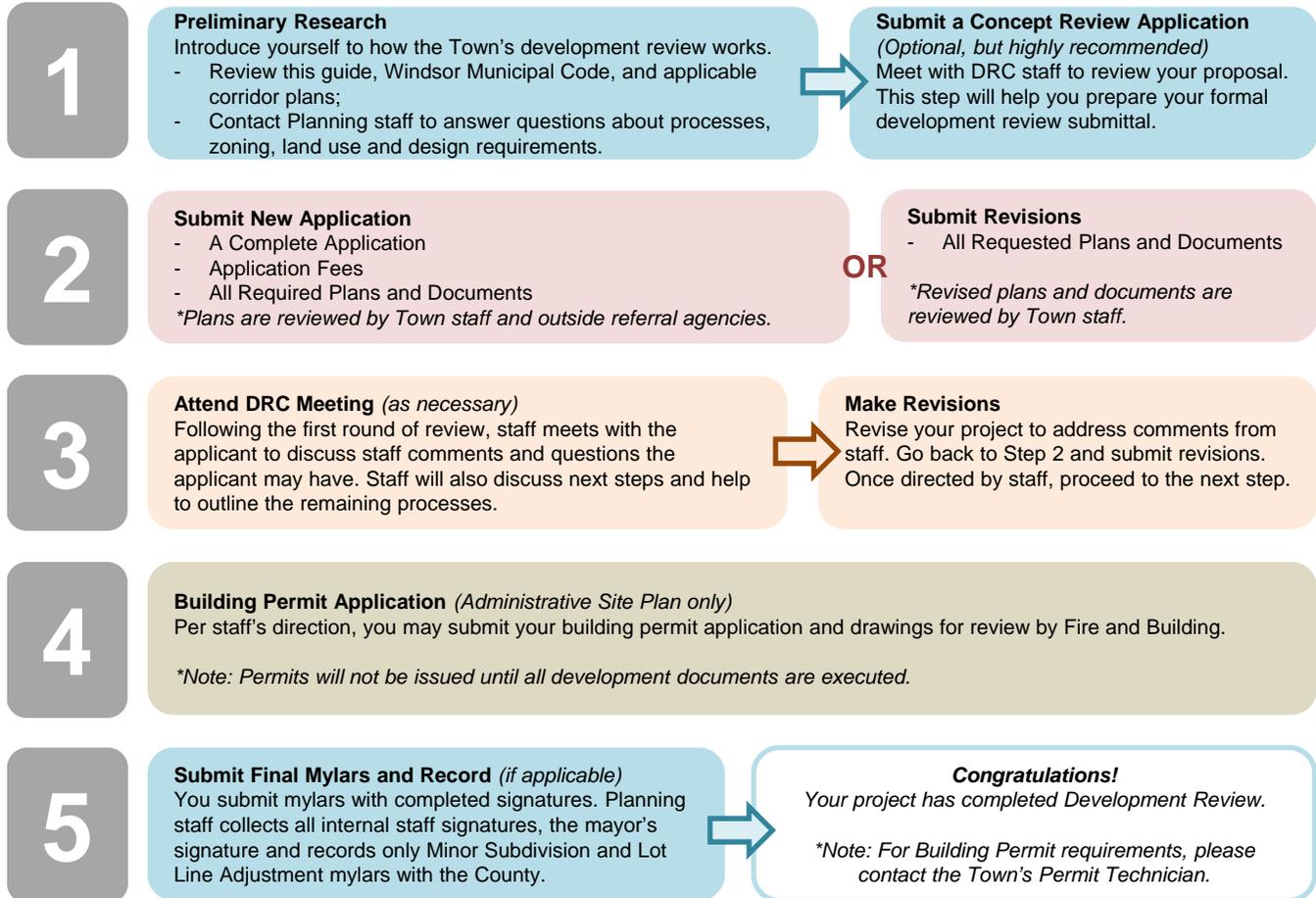


**ACRONYMS:**  
DRC – Development Review Committee (staff from Planning, Engineering, Parks, Fire, Building and Economic Development)  
DA – Development Agreement



# DEVELOPMENT REVIEW GUIDE

## Administrative Site Plan / Minor Subdivision / Lot Line Adjustment



**ACRONYMS:**  
DRC – Development Review Committee (staff from Planning, Engineering, Parks, Fire, Building and Economic Development)



January 20, 2016

Mr. Mike Freeman  
Weld County Commissioner Chair  
P.O. Box 758  
Greeley, CO 80632

Ms. Elizabeth Relford  
Weld County Transportation Manager  
P.O. Box 758  
Greeley, CO 80632

*Re: Traffic Signal @ WCR 13 and Crossroads*

Dear Mike and Elizabeth,

During our 2015 joint work sessions with Weld County Commissioners and Larimer County Commissioners, the Town of Windsor discussed that a new traffic signal was under design and would be constructed in 2016 at the location of WCR 13 and Crossroads Blvd. Windsor staff followed up the discussion with inquiries to Weld and Larimer County staff on assessing the interest in funding proportional shares of the construction of the new traffic signal since the signal is in unincorporated Larimer and Weld County and in Windsor. The interest was brought forth because of the mutual interest by all the three agencies in providing for a safe Crossroads.

Larimer County expressed interest and as a result an Intergovernmental Agreement (IGA) was approved by both Larimer County and Windsor. Larimer County has agreed to fund up to \$100,000 of the \$300,000 construction project and in return Windsor will provide maintenance for a portion of Crossroads that is located in Larimer County and is west of WCR 13.

Informal responses from Weld County was that Weld County would only participate if an Energy Impact Grant was pursued. Windsor has chosen not to seek this grant. But Windsor would be interested in pursuing a similar IGA or arrangement with Weld County for maintenance of a portion of the Weld County maintained Crossroads in exchange for signal funding.

Enclosed is a map of Crossroads and the responsible agencies for maintenance. The map reflects that Weld County maintains a section east of WCR 15. We are offering to maintain this portion of Crossroads in exchange for \$50,000 towards the construction of the traffic signal.

This proposal puts all of Crossroads under Windsor's responsibilities for maintenance. In return, Weld County participates with \$50,000 funding when the signal is operational (late Summer, 2016).

Also enclosed are the IGA's with Larimer County for your review. I look forward to your response. We are nearing completion of design so your attention to this request would be appreciated.

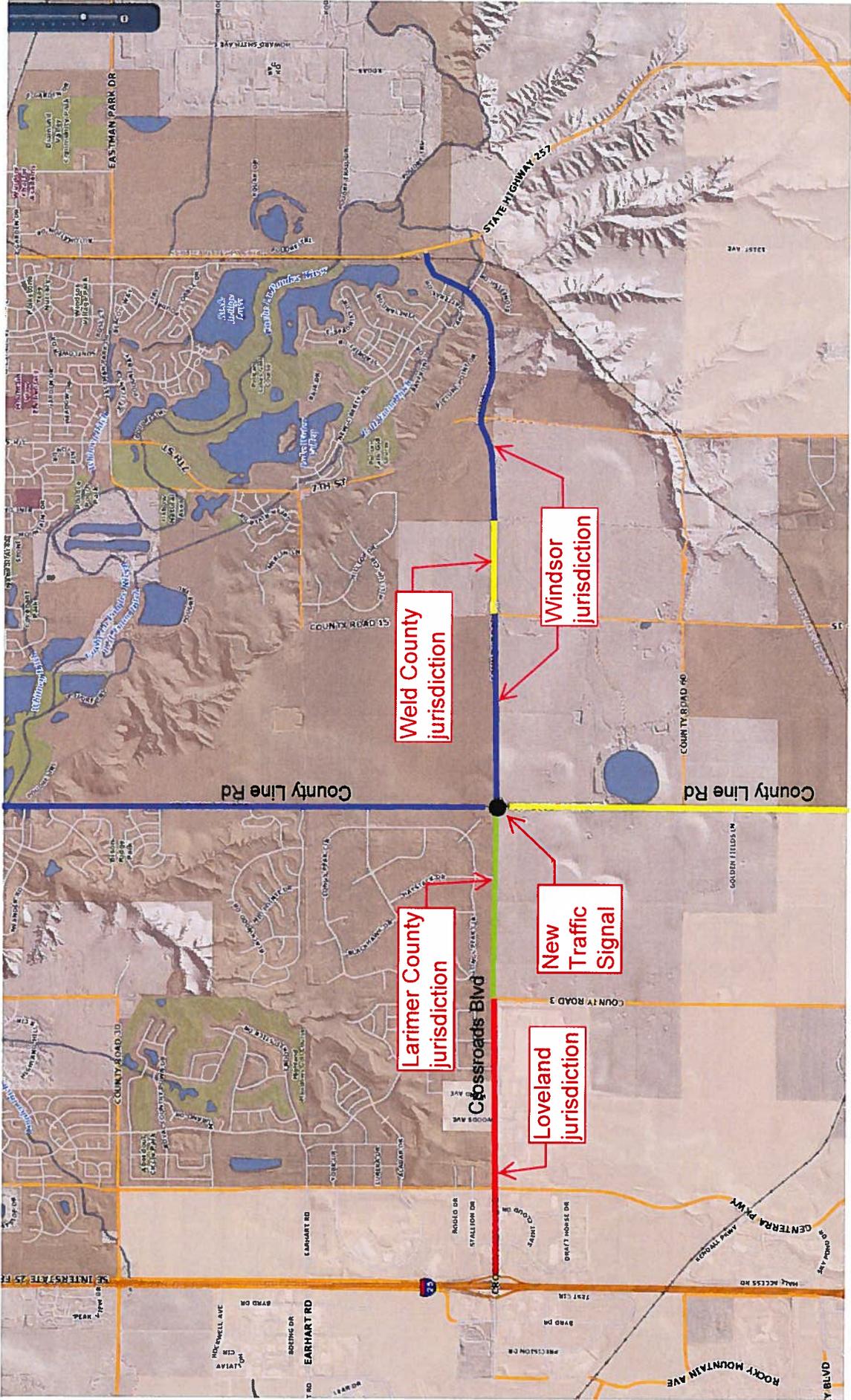
Please contact me or Kelly Arnold, Windsor Town Manager if you have any questions.

Sincerely,

Mayor John Vazquez

Cc: Weld County Commissioners w/ map

# Crossroads Boulevard





## 2015 MONTHLY FINANCIAL REPORT

### Special points of interest:

- CRC expansion sales tax collections surpass budget requirement for the tenth consecutive month.
- Single Family Residential (SFR) building permits total 265 through November 2015. This is up from the November 2014 number of 226.
- 28 business licenses were issued in November, of which 18 were sales tax vendors.



### Inside this issue:

Sales, Use and Property Tax	2
Year-to-Date Sales Tax	4
All Fund Expenditures	5
General Fund Expenditures	6
Capital Project Status	7

### Highlights and Comments

- \* Sales tax collections of the 3.2% sales tax for November was \$550,732.
- \* November 2015 year-to-date gross sales tax increased 3.29% from November 2014.
- \* Construction use tax through November is at 99.49% of the annual budget at \$1,871,769.

### Capital Projects Planned for 2016

#### Engineering Department

- Eastman Pk. Dr / 7th St Roundabout Construction (\$1,085,320) Road Impact Fees
- County Line Road ditch erosion mitigation design (\$50,000)
- 9th Street / Main Street traffic signal (\$180,000)
- SH257 & Walnut Street Left Turn Lane (\$55,000) Road Impact Fees
- Crossroads Blvd / WCR 13 traffic signal (\$340,000)
- Harmony Road / WCR 15 traffic signal design (\$16,000)
- New Liberty Road extension (\$2,000,000) Road Impact Fees
- Street Maintenance - overlay (\$1,500,000)
- Street Maintenance - crack seal, chip seal, and concrete replacement (\$600,000)
- Poudre River maintenance (\$75,000)
- Water line oversizing Winter Farm / Village East (\$28,788)
- Northern Integrated Supply Project (NISP) (\$289,000)
- Kyger Reservoir Pump Station and water supply (\$2,614,281)
- Sewer line oversizing Winter Farm / Village (\$19,362)
- Storm Drainage - Law Basin Master Plan Channel (\$620,171 + \$692,138 FEMA PDM grant + \$685,785 CDBG grant)
- Storm Drainage - Law Basin West Tributary Channel (\$1,050,500)

#### Parks, Recreation & Culture Department

- Community Recreation Expansion Center completion through bond issue (\$7,215,695)
- Boardwalk Performance Venue (\$500,000)
- Boardwalk Trash enclosure (\$40,150)
- Main Park irrigation design (\$9,000)
- Main Park Pickle Ball Court (\$25,100 + \$20,000 GOCO grant)
- Main Park replace shelters (\$53,190)
- Chimney Park south parking lot slurry/stripe (\$15,000)
- Chimney Park north shelter (\$27,310)
- 15th & Walnut Street development (\$100,000)
- Poudre Trail from Westwood Village (\$240,000 + \$10,000 Poudre Heritage Alliance grant)
- Windsor Trail: Easement at BROE (\$5,000); Jacoby road easement acquisition 13 to New Cache ditch (\$20,000); Crossing improvements of CR19 and the #2 ditch (\$23,107); Hwy 392 trail design (\$185,000)
- Museum Interpretive Landscape Ph 3 Planning (\$82,645)
- Eaton House: Assessment (\$5,000+ \$10,000 State Historical grant); Master Plan (\$5,000 + \$20,000 Poudre Heritage Alliance grant)
- Non-Potable Water - Modify Chimney Pk north to Non-Potable service; splitter box East of Chimney Pk (\$132,000)

#### Public Works Department: Railroad crossing improvements CR15 and Hwy 34 (\$40,000)

- CR15 South of Crossroads (\$130,000)
- Water lines rehab/replacement 16" south of Riverbend Park (\$798,000)
- Sewer Nutrient Project \$402,000 paid by Colorado Department of Public Health & Education grant)
- Sewer lift station #4 replacement (\$515,000)

#### Information Technology Department: GIS Asset management software (\$150,000) IT - Studio Equipment upgrade (\$125,000)

### Items of Interest

- The Town of Windsor held its annual budget hearing on November 23. The proposed \$57M 2016 budget was adopted at the Regular Board meeting.
- Visit us at [www.windsorgov.com](http://www.windsorgov.com) and look for live streaming of Town Board and Planning Commission meetings.

### Sales, Use and Property Tax Update

November 2015

Benchmark = 92%	Sales Tax	Construction Use Tax	Property Tax	Combined
Budget 2015	\$7,142,651	\$1,881,336	\$4,200,440	\$13,224,427
Actual 2015	\$7,634,961	\$1,871,769	\$4,156,202	\$13,662,932
% of Budget	106.89%	99.49%	98.95%	103.32%
Actual Through November 2014	\$7,392,040	\$1,280,062	\$4,029,223	\$12,701,325
Change From Prior Year	3.29%	46.22%	3.15%	7.57%
CRC Expansion Budget 2015	\$1,406,250	\$282,565		\$1,688,815
CRC Expansion Actual 2015	\$1,531,159	\$372,802		\$1,903,961
CRC Expansion % of Budget	108.88%	131.93%		112.74%

Ideally at the end of the tenth month of the year you want to see 92% collection rate on your annual budget number. We have exceeded that benchmark in all three tax categories.

At this point last year we had collected \$4,029,223 in property taxes, or 97.18% of the annual budget. This year through November we have collected 98.95% of the annual budget.

### Building Permit Chart

November 2015

	SFR	Commercial	Industrial	Total
Through November 2015	265	2	2	269
Through November 2014	226	3	4	233
% change from prior year				15.45%
2015 Budget Permit Total				279
% of 2015 Budget				96.42%

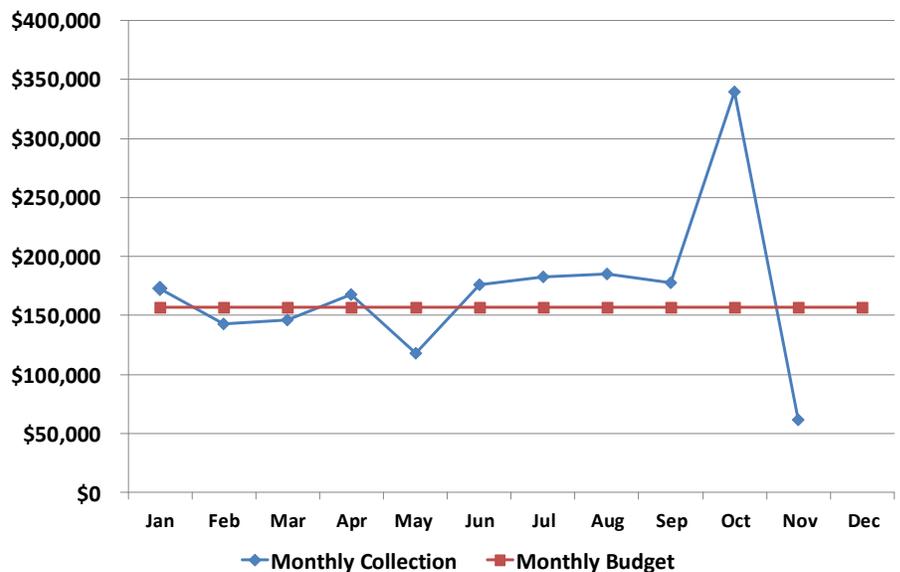
### Building Permits and Construction Use Tax

We are showing a 15.45% increase in number of permits as compared to November 2014. We issued 265 SFR permits through November 2015 as compared to 226 through November of 2014.

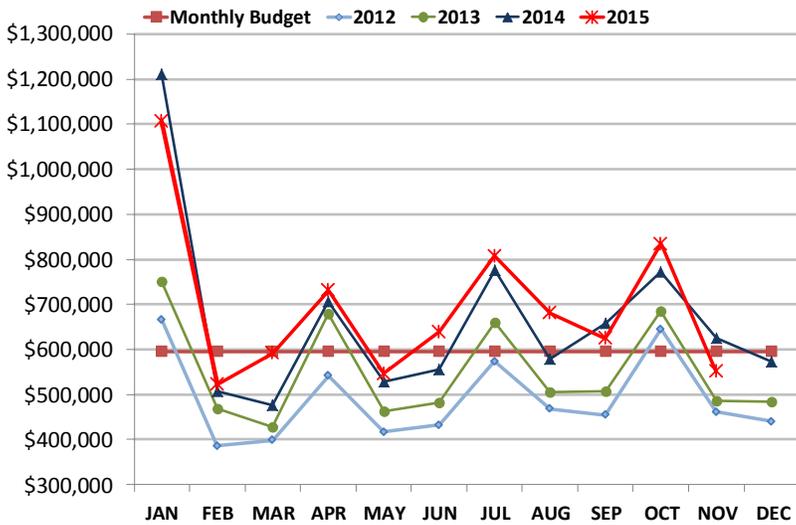
November 2015 construction use tax is below our required monthly collection for the fourth month out of eleven in 2015.

The .75% construction use tax for the CRC expansion is at 131.93% of the annual budget, surpassing the eleven month benchmark of 92%.

### Construction Use Tax Collections - 3.2%



**Sales Tax Collections in Dollars - 3.2%**

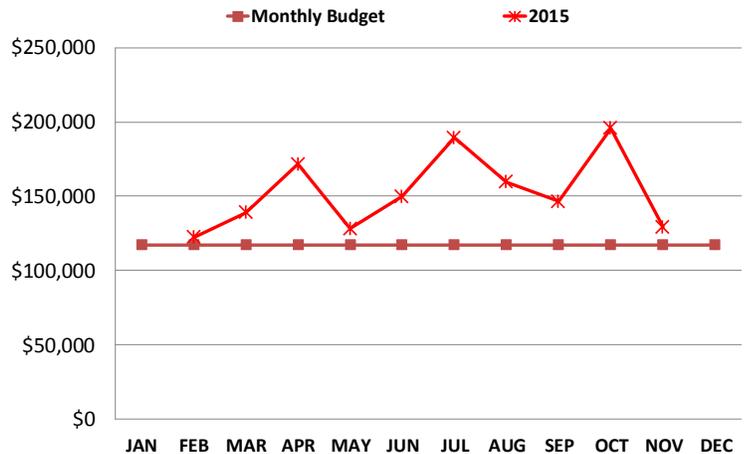


Gross sales tax collections for the month of November 2015 were \$74,421 or 11.9% lower than November 2014.

November 2015 year-to-date collections increased 3.29% from November 2014 year-to-date collections.

CRC Expansion sales tax collection for November 2015 was \$129,184. The required monthly collection to meet the budgeted projections is \$117,188.

**Community Recreation Center Expansion Sales Tax**



**November Highlights**

November is a “single collection” month, meaning that the collections are for sales made in October. November collections decreased over the 2014 number and fell just short of our monthly requirement. The way the calendar fell in November caused us to not receive several large vendor payments until the first week of December. This accounted for the decrease over November 2014. The December 2015 collections will reflect this timing and be higher than December 2014.

**Looking Forward**

3.2% Collections

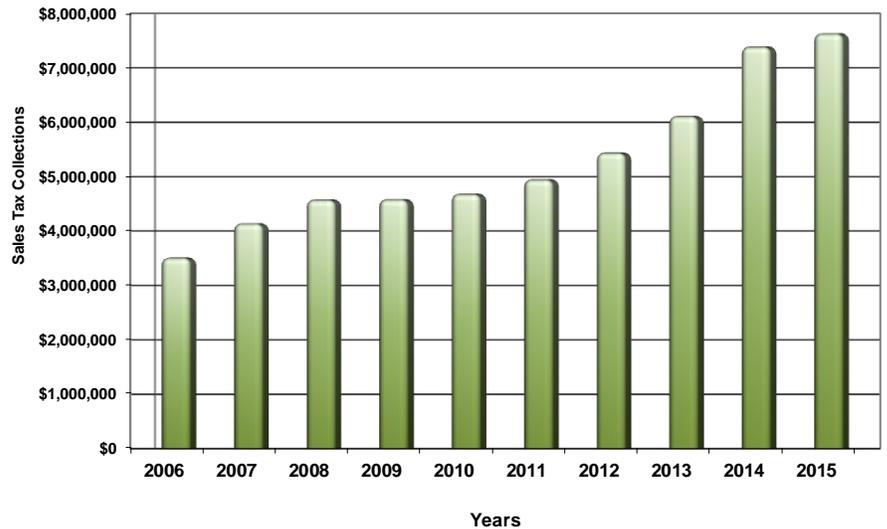
The Town budgeted \$7.1M in sales tax for 2015, making our average monthly collection requirement \$595,221. November collections were below this mark at \$550,732. If we keep the pace through the rest of the year we should collect \$8.5M in this portion of our sales tax.

.75% Collections

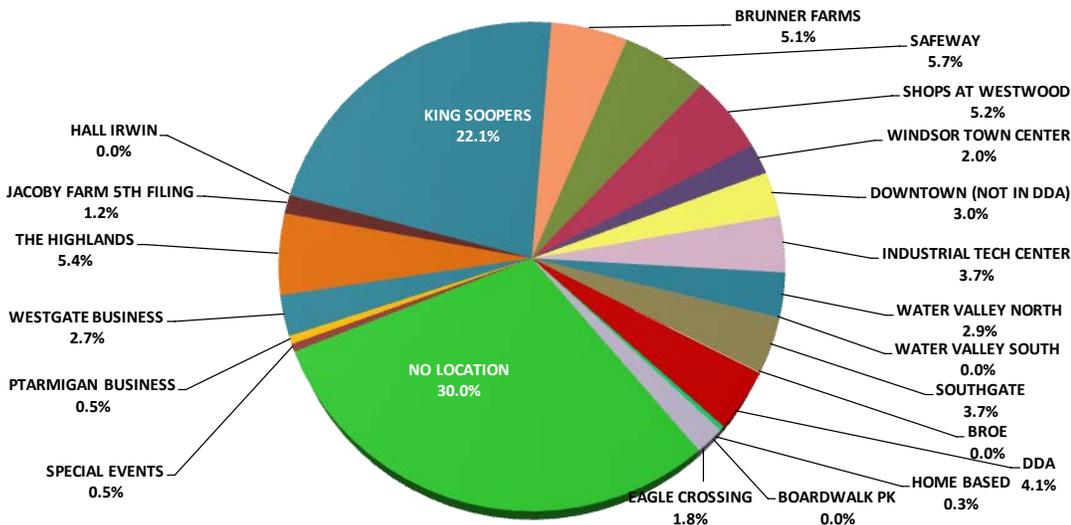
This was the ninth month of collections for the new sales tax rate. Our monthly budget requirement is \$117,188. We collected \$129,184. Our first nine months of this collection exceeded our monthly budget projection requirement. This pace should put us ahead of our annual projection of \$1,406,256.

Through November we have collected \$7.6M in our 3.2% sales tax. In comparison, \$6.6M was the entire year of collections in 2013. The new CRC Expansion tax is an additional \$1,531,159.

### Year-to-Date Sales Tax Collections -3.2% Through November 2006-2015



### Sales Tax Revenue by GEO Code November 2015



The King Soopers Center remains the largest local driving force in sales tax collections.

### 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, estimated at 2.8% for the first half of 2015 in the Denver/Boulder/Greeley area.

- We had 23 sales tax license closures in November 2015 while issuing 18 new licenses.
- The Highlands and Shops at Westwood areas have overtaken the Safeway complex in sales tax percentage of total collections. The Highlands is located north of Crossroads and includes Wagner Equipment. The Shops at Westwood include Loaf & Jug, Ace Hardware, Dairy Queen and Guadalajara Restaurant.
- Between the DDA (3.7%) and the Downtown (2.6%) total of 7.1% also surpassed the Safeway complex.

### All Funds Expense Chart

November 2015

Benchmark = 92%

*Operations expenditures are at 88% of the annual budget.*

*Economic reimbursements for two local businesses caused the "other entities" fund to exceed the 92% benchmark.*

<b>General Government</b>	<b>Current Month</b>	<b>YTD Actual</b>	<b>2015 Budget</b>	<b>% of Budget</b>
General Fund	\$1,042,357	\$12,630,376	\$14,023,349	90%
Special Revenue	\$398,540	\$2,127,567	\$3,059,443	70%
Internal Service	\$139,834	\$2,617,419	\$2,864,572	91%
Other Entities (WBA, Ec Dev Inc)	\$12,090	\$294,504	\$145,080	203%
<b>Sub Total Gen Govt Operations</b>	<b>\$1,592,821</b>	<b>\$17,669,866</b>	<b>\$20,092,444</b>	<b>88%</b>
<b>Enterprise Funds</b>				
Water-Operations	\$573,141	\$3,385,697	\$3,900,156	87%
Sewer-Operations	\$142,017	\$1,590,337	\$1,725,992	92%
Drainage-Operations	\$18,487	\$340,077	\$436,551	78%
<b>Sub Total Enterprise Operations</b>	<b>\$733,645</b>	<b>\$5,316,111</b>	<b>\$6,062,699</b>	<b>88%</b>
<b>Operations Total</b>	<b>\$2,326,466</b>	<b>\$22,985,977</b>	<b>\$26,155,143</b>	<b>88%</b>

*plus transfers to CIF and Non-Potable for loan*

*Through November, operating and capital expenditures combined to equal 65% of the 2015 Budget.*

<b>General Govt Capital</b>	<b>Current Month</b>	<b>YTD Actual</b>	<b>2015 Budget</b>	<b>% of Budget</b>
Capital Improvement Fund	\$841,489	\$3,921,441	\$8,250,711	48%
CRC Expansion Fund	\$1,107,887	\$3,411,319	\$9,485,594	36%
<b>Enterprise Fund Capital</b>				
Water	\$0	\$1,898,446	\$4,129,854	46%
Sewer	\$18,200	\$451,357	\$1,029,630	44%
Drainage	\$575,068	\$1,541,131	\$3,868,144	40%
<b>Sub Total Enterprise Capital</b>	<b>\$593,268</b>	<b>\$3,890,934</b>	<b>\$9,027,628</b>	<b>43%</b>
<b>Capital Total</b>	<b>\$2,542,644</b>	<b>\$11,223,694</b>	<b>\$26,763,933</b>	<b>42%</b>
<b>Total Budget</b>	<b>\$4,869,110</b>	<b>\$34,209,671</b>	<b>\$52,919,076</b>	<b>65%</b>

### All Funds Expenditures

The Town is where it should be at this time of year regarding expenditures. Work on CIP projects is also going strong and payment requests will start to increase in the coming months. We will need to amend the 2015 budget in the economic development area. We did not have money budgeted for expenditures in this fund for 2015, but have made some incentive payments from this fund.

Construction on the CRC Expansion has begun and will increase the pace of capital spending.



### General Fund Expense Chart

Department		Current Month	YTD Actual	2015 Budget	% of Budget
410	Town Clerk/Customer Service	\$49,122	\$554,534	\$639,239	86.7%
411	Mayor & Board	\$32,215	\$463,578	\$566,827	81.8%
412	Municipal Court	\$1,436	\$15,512	\$19,623	79.1%
413	Town Manager	\$30,617	\$373,023	\$411,099	90.7%
415	Finance	\$54,893	\$598,357	\$625,213	95.7%
416	Human Resources	\$34,443	\$315,272	\$401,269	78.6%
418	Legal Services	\$27,864	\$327,878	\$339,035	96.7%
419	Planning & Zoning	\$41,549	\$542,265	\$701,911	77.3%
420	Economic Development	\$32,362	\$360,753	\$408,075	88.4%
421	Police	\$230,497	\$2,928,072	\$3,122,689	93.8%
428	Recycling	\$2,324	\$30,835	\$49,970	61.7%
429	Streets	\$72,042	\$1,071,704	\$1,201,242	89.2%
430	Public Works	\$30,708	\$388,616	\$520,968	74.6%
431	Engineering	\$56,692	\$686,741	\$743,073	92.4%
432	Cemetery	\$7,394	\$99,104	\$128,885	76.9%
433	Community Events	\$8,538	\$150,839	\$214,698	70.3%
450	Forestry	\$26,846	\$272,045	\$322,947	84.2%
451	Recreation Programs	\$131,076	\$1,574,041	\$1,622,163	97.0%
452	Pool/Aquatics	\$3,432	\$185,955	\$189,558	98.1%
454	Parks	\$131,477	\$1,245,449	\$1,264,939	98.5%
455	Safety/Loss Control	\$0	\$4,844	\$16,760	28.9%
456	Art & Heritage	\$18,259	\$225,675	\$270,563	83.4%
457	Town Hall	\$18,571	\$215,284	\$242,603	88.7%
<b>Total General Fund Operations</b>		<b>\$1,042,357</b>	<b>\$12,630,376</b>	<b>\$14,023,349</b>	<b>90.1%</b>

### General Fund Expenditures

General Fund operating expenditures are slightly below the 92% of budget benchmark through November.

Most of the parks, recreation and swimming pool expenditures are concentrated in the summer causing those departments to be ahead of the pace.

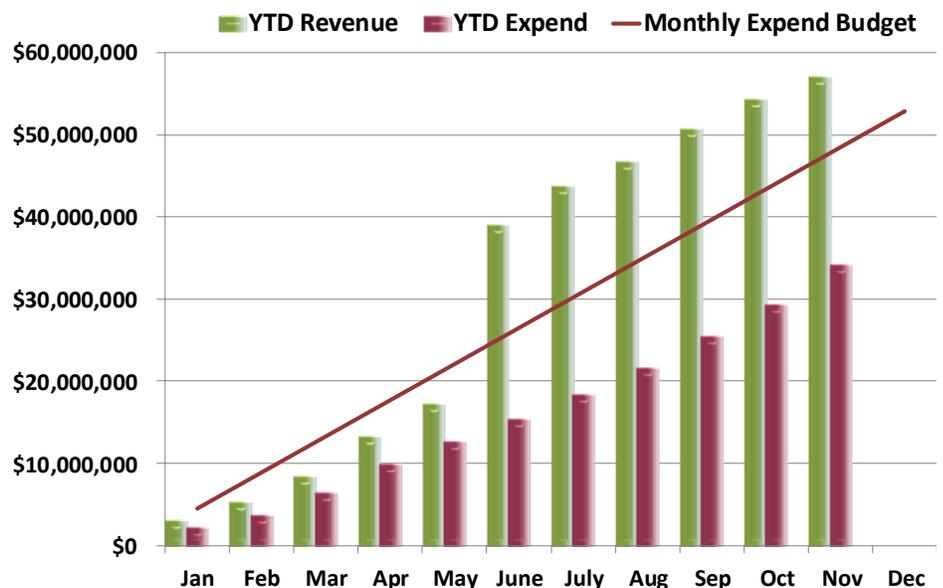
Other departments reflect large one time expenditures paid in the first half of the year.

### Revenue and Expenditure

The chart on the right shows monthly revenue compared to monthly expenditure as well as a trend line showing the total 2015 budget expended equally over twelve months.

Our monthly budgeted total expenditures equal \$4,409,923. In November we collected \$2,768,213 in total revenue. The chart on the right reflects our actual results through November, though somewhat skewed by the bond issue proceeds in June.

### Combined Revenue and Expenditures





**TOWN OF WINDSOR 2015 MAJOR CAPITAL PROJECT STATUS**  
*arranged by reporting department*

2015 Projects	2015 Budget	Spent YTD	Dept.	Multi-Yr	Est. Start Process	Actual Start	% Complete	Est. Complete	Actual Complete
<b>Public Works Maintenance Facility Design</b>	\$330,000	\$116,145	T Mng	2014-2017	Aug 1		2%	Dec 31	2017
GW Railroad Quiet Zone w/grant	\$3,158,305	\$99,466	Eng DB	2014-2016	Aug 1	Sep 1	58%	Aug 2016	2016
Street Maintenance (overlay, crack seal, chip seal)	\$2,100,000	\$1,444,564	Eng CT	2015	Apr 1	Apr 1	90%	Sept 1	
Walnut St / Hwy 257 Turn Lane	\$190,000	\$30,867	Eng DB	2015-2016	Nov 1	Apr 1	45%	2016	2016
Eastman Pk/7th St Roundabout Design	\$70,000	\$28,874	Eng OH	2015-2016	Feb 9	Feb 9	65%	Nov 30	
Windsor Sign I-25	\$64,276	\$60,378	Eng DW	2015	Jan 15	Mar 15	100%	May 1	Jun 1
WCR21 Bridge Replacement w/grant	2014	\$255,672	Eng CT	2013-2015	Feb 2014	Jul '14	99%	Apr 15	
Eaton Ditch Control	\$185,000	\$126,469	Eng DW	2015	Apr 1	Apr 1	100%	Jun 1	May 31
Poudre River Maintenance	\$50,000	\$32,925	Eng	2015	Apr	Apr	100%	EOY	Oct 1
3 M gal. Water Tank w/grant	\$407,100	\$390,537	Eng DW	2012-2015	Mar 2014	Mar '14	100%	Apr 30	Sep 1
Water Line Replacement Study	\$180,000	\$18,020	Eng CT	2015	May 1	May 21	50%	Nov	
Kyger Reservoir Pump Station	\$2,514,325	\$43,879	Eng OH	2014-2016	Nov 1		35%	Feb 2016	2016
Replace Force Main to Gravity Sewer w/grant	2014	\$313,942	Eng CT	2013-2015	Feb 9	Feb	100%	Apr 23	Apr 23
Update Storm Water Study	\$100,000	\$0	Eng DW	2015			0%	2016	2016
Law Basin Master Plan Channel - construction w/ PDM Grant - 2012-2015	\$2,128,069	\$511,483	Eng DR	2012-2015	Sep 1	Oct 1	50%	End Dec	2016
Law Basin West Tributary Channel - 2013-2015	\$1,740,075	\$1,027,432	Eng OH	2013-2016	Sep 1	Oct 1	55%	Mar 2016	2016
Coyote Gulch Park Development	\$1,222,000	\$1,197,207	Eng DB	2014-2015	July	Jul 6	98%	EOY	
Windsor Trail 257 Road Crossing @ Grasslands	\$17,100	\$0	Eng KB	2015	Sept		29%	Mid Oct	2016
Windsor Lake Rip Rap	\$250,000	\$0	Eng DR	2015	Nov 1		0%	Dec 31	2018
Chimney Park North Shelter Replacement	\$57,310	\$0	Eng OH	2015-2016	Nov 1		5%	Apr 2016	2016
Main Park Shelter Replacement (2)	\$113,190	\$0	Eng OH	2015	Nov 1		5%	Apr 2016	2016
Cemetery sidewalks, gate archway & engineering	\$373,414	\$41,920	Eng CT	2015	Jun 1	Jul 1	50%	Oct 1	
Museums -Depot Deck, Railings, Ramp	\$45,000	\$37,774	Eng OH	2015	May	May	100%	mid Sep	mid Sep
Boardwalk Pk-6th St/Cedar landscape, irrigate, design	23,602	\$30,129	Pks/WW	2015	Late Aug	Sep 1	100%	Oct 1	Oct 1
Poudre Trail Concrete at 3 Bells	\$25,000	\$0	Pks/MC	2015	Jul		0%	Oct	Unknown
Windsor Trail Windsor West Connection plan	\$200,000	\$0	Pks/WW	2015-2016	Jun		0%	Dec	Design 2016
Eaton House Master Plan/Structural Assess w/grant	\$40,000	\$0	Pks/AD	2015	Jun		10%	Dec 31	2016
Eastman Pk South Master Plan	\$25,000	\$20,702	Pks/W/T	2015	Jun	Aug 4	99%	Nov 1	
Parks and Recreation Master Plan	\$50,000	\$33,355	Pks/W/T	2015	May	Jul 1	70%	Dec 1	
Non-Potable Water- Construction of pipe encasement east of Universal Forest Products	\$329,409	\$308,387	Pks/Rec	2015	Jan	Jan	100%	Feb 1	Feb 1
Install pump at Covenant Park	\$49,000	\$2,475	Pks/Rec	2014-2015	2014	2014	50%	Jun 15	
Poudre Plan corrections & TH connection to Main Pk	2014	\$410	Pks/Rec	2014-2017	Jan		40%	Sep 1	2017
CRC Expansion	\$9,485,594	\$3,077,990	Pks/Rec	2014-2016	Jul 1	Aug 1	45%	Aug 2016	2016
Sewer Line Rehab	\$78,130	\$0	P Wks	2015	Apr 1	Nov 1	20%	Aug 30	Dec 1
Sewer Nutrient Program w/grant	\$837,000	\$119,205	P Wks	2014-2016	Jul 1	Sep 1	100%	2016	2016
Repl. #3,4,18,29,40,43,45,46,51,104,105,107,115,116, 117,118,120,121,122	\$750,500	\$841,536	P Wks	2015	Jan 1	Jan 1	100%	Jul 1	Oct 23
2 New PD Vehicles/equipped	\$110,000	\$89,794	P Wks	2015	Jan 1	Jan 1	100%	Jul 1	
Color key for funds =	PIF	CTF	CIF	WF	NPWF	SF	SDF	FF	ITF



## 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 STRONG LOCAL ECONOMY with diverse business sectors that provide jobs and services for residents.

WINDSOR promotes QUALITY DEVELOPMENT.

WINDSOR residents enjoy a friendly community with a VIBRANT DOWNTOWN, HOUSING OPPORTUNITIES, CHOICES for LEISURE, CULTURAL ACTIVITIES, RECREATION, and MOBILITY for all.

WINDSOR is a GOOD ENVIRONMENTAL STEWARD.



### *2015 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 2015 Budget continues to focus on fiscal responsibility while building a long-term sustainable community through strategic investments and emphasizing the maintenance of existing infrastructure. In order to achieve these goals, the 2015 Budget emphasizes the importance of funding the key day-to-day tools that lead to success. These tools are employees, technology, and providing services most highly rated by citizens.*

**We're on the Web**

[www.windsorgov.com](http://www.windsorgov.com)

	December 2015				Y.T.D. 2014
	Previous Month	Previous Month's Year to Date	Current Month	Year To Date	
<b>Misdemeanor Complaints</b>					
911 Hang up Calls	23	224	7	231	145
Animal	30	329	20	349	423
Arson	1	2	0	2	4
Assault	1	54	5	59	52
Assist Other Department	10	109	5	114	124
Attempted Suicide	0	7	2	9	15
Checks	0	3	0	3	1
Child Abuse	1	17	5	22	19
Citizen Service	80	894	81	975	707
Civil Complaints	5	94	12	106	100
Contributing Delinq./ Minor	0	0	0	0	0
Crime Against At-Risk Adult	0	1	0	1	2
Criminal Mischief	15	188	8	196	121
Criminal Trespass Premises	3	41	1	42	34
Death	1	19	5	24	18
Drugs	6	34	5	39	36
DUI's	7	79	8	87	61
False Burglar Alarm	13	313	17	330	301
False Imprisonment	0	3	0	3	0
False Reporting	0	4	0	4	1
Found Property	9	114	7	121	133
Harassment	8	100	12	112	106
Indecent Exposure	1	6	1	7	4
A. Curfew	0	0	0	0	3
B. Runaway	3	39	0	39	25
C. Other	2	42	2	44	85
Juvenile Problems (total)	5	81	2	83	113
Liquor Violations	5	6	0	6	13
Lost Property	5	48	1	49	42
Menacing	1	8	1	9	13
MIC / MIP	3	32	19	51	20
Missing Persons	4	20	1	21	28
Obstructing Police	0	4	1	5	12
Obstructing Telephone Service	1	3	1	4	4
Open door	4	92	1	93	77
Ordinance Violations	25	356	31	387	454
Reckless Endangerment	0	1	0	1	0
Repossession	0	0	0	0	0
Sexual Assault	1	14	1	15	16
Sex Offender Violation	0	4	0	4	1
Soliciting	0	9	1	10	11
Suspicious Activity	62	670	37	707	467

	<b>December 2015</b>				
	<u>Previous Month</u>	<u>Previous Month's Year to Date</u>	<u>Current Month</u>	<u>Year To Date</u>	<u>Y.T.D. 2014</u>
<b>Misdemeanor Complaints Cont'd</b>					
Theft	20	184	12	196	164
Theft By Receiving	0	0	0	0	0
Towed - Abandoned	0	2	0	2	16
Towed - Traffic	7	87	10	97	88
Towed (Total)	7	92	10	102	98
Traffic Accidents (total)	35	350	44	394	321
A. Non-injury/Property damage	30	301	37	338	302
B. Injury	4	32	5	37	34
C. Fatal	0	1	0	1	1
D. DUI Accidents	1	16	2	18	12
Underage Possession Marijuana	10	36	4	40	33
Vehicle Laws	188	2041	160	2201	2103
Violation of Restraining Order	5	43	2	45	18
Warrants - WPD	2	7	2	9	6
Warrants - Other Department	12	108	13	121	88
Warrants (Total)	14	115	15	130	94
Weapon Violation	0	7	1	8	6
<b>Felony Complaints</b>					
Armed Robbery	0	2	0	2	0
Arrests	6	73	10	83	71
Arson	1	2	0	2	1
Assault	0	9	0	9	7
Attempted Burglary	0	0	0	0	2
Auto Theft	1	6	0	6	8
Burglary	3	34	1	35	26
Checks	0	0	0	0	2
Child abuse	0	1	0	1	0
Child Neglect	0	0	0	0	0
Contrib./Delinq. of Minor	0	3	0	3	0
Criminal Impersonation	0	0	0	0	0
Criminal Mischief	1	16	0	16	14
Criminal Trespass - Dwelling	2	4	2	6	7
Criminal Trespass - Vehicle	6	60	3	63	83
Drugs	0	12	1	13	21
Forgery	0	9	0	9	5
Fraud	2	112	5	117	109
Homicide	0	1	0	1	0
Identity Theft	0	47	0	47	23
Intimidating Witness/Victim	0	0	0	0	0
Menacing	0	9	1	10	6
Recovery of Stolen Vehicle (ALL)	2	9	0	9	7
Robbery	0	1	0	1	0
Sexual Assault	0	3	0	3	1
Tampering with Evidence	0	1	0	1	0
Theft by Receiving	0	0	0	0	0

	December 2015					Y.T.D. 2014
	<u>Previous Month</u>	<u>Previous Month's Year to Date</u>	<u>Current Month</u>	<u>Year To Date</u>		
Theft	0	41	1	42	62	
Warrant ( Other Department)	0	18	2	20	24	
Weapon Violation	0	1	0	1	0	
Adult Arrest	22	298	32	330	260	
Juvenile Detentions	6	36	4	40	28	
<b>Total Calls for Service</b>	<b>549</b>	<b>6499</b>	<b>474</b>	<b>6973</b>	<b>6112</b>	
A. Criminal	306	3394	257	3651	3486	
B. Non-Criminal	243	3005	217	3222	2626	
Cases Filed (County Penal)	21	276	41	317	177	
County Traffic Citations	55	550	49	599	560	
Municipal Citation	151	1686	122	1808	1856	
A. Traffic	130	1469	109	1578	1570	
B. Ordinances	21	217	13	230	286	
Warnings	343	3302	411	3713	3360	
Juvenile Filings	6	26	2	28	40	
Parking Tickets	30	417	20	437	296	
Juvenile Notification Forms	19	179	31	210	154	
M-1 Holds	5	53	6	59	14	
Misdemeanor Complaints Cleared by Arrest	21	260	26	286	214	
Monetary Loss Misdemeanor Complaints	\$7,008	\$64,672	\$2,726	\$67,398	\$29,556	
Monetary Recovery Misdemeanor Complaints	\$1,009	\$4,802	\$734	\$5,536	\$5,696	
Felony Complaints Cleared by Arrest	6	73	10	83	71	
Monetary Loss Felony Complaints	\$12,000	\$287,459	\$5,000	\$292,459	\$310,596	
Monetary Recovery Felony Complaints	\$12,000	\$40,770	\$0	\$40,770	\$74,855	