



2016

Minturn Council Meeting

Wednesday January 20, 2016

Work Session: **5:00pm**
(Town Center)

Regular Session: **6:30pm**
(Town Center)



Agenda

MEETING OF THE MINTURN TOWN COUNCIL
Minturn Town Center, 302 Pine Street
Minturn, CO 81645 • (970) 827-5645

Wednesday January 20, 2016

Work Session – 5:00pm
Regular Session – 6:30pm

MAYOR – Gordon “Hawkeye” Flaherty
MAYOR PRO TEM – George Brodin

COUNCIL MEMBERS:

Shelley Bellm
Earle Bidez
John Rosenfeld
Matt Scherr
Jason Osborne

These minutes are formally submitted to the Town of Minturn Town Council for approval as the official written record of the proceedings at the identified Council Meeting. Additionally, all Council meetings are tape-recorded and are available to the public for listening at the Town Center Offices from 8:30am – 2:00 pm, Monday through Friday, by contacting the Town Clerk at 970/827-5645 302 Pine St. Minturn, CO 81645.

Work Session – 5:00pm

- VVTC 2016 update from a representative – Powell
- Discussion about ballot language and referring the question to the voters of Term Limits for Mayor, Council, and Planning Commission seats – Sawyer/Powell/Brunvand Pg 4
- Eagle River Fire Protection District training facility options – Powell Pg 10

Regular Session – 6:30pm

1. Call to Order

- Roll Call
- Pledge of Allegiance

2. Approval of Agenda

- Items to be Pulled or Added

3. Approval of Minutes

- January 6, 2016 Pg 16

4. Liquor License Authority

- Magustos Annual Renewal of a Hotel & Restaurant License; 101 Main St.; Eric Oregon Owner/Pres – Brunvand Pg 22

5. Public comments on items, which are NOT on the agenda (5 minute time limit per person)

6. Special Presentations

- Committee Report

PUBLIC HEARINGS AND ACTION ITEMS

7. Public Hearing/Discussion/Action Item: Consideration of Resolution 04 – Series 2016 an Resolution approving the Preliminary Subdivision Plat for Applicant Intermountain Landscape & Maintenance, Inc. for property owned by the Union Pacific Railroad – Hawkinson Pg 26

8. Discussion/Action Item: Consideration of Resolution 05 – Series 2016 a Resolution approving an Intergovernmental Agreement with the Colorado Dept of Transportation regarding the Transportation Alternatives Grant (TAP Grant) and affirming Minturn has appropriated and budgeted the local match – Powell/Hawkinson Pg 72

9. Discussion/Action Item: Consideration of Resolution No. __ – Series 2016 A Resolution approving ballot language and referring to the voters the question of Term Limits for Mayor, Council, and Planning Commission seats – Sawyer Pg 4

10. Discussion/Action Item: Consideration of Resolution No. 06 – Series 2016 A Resolution approving an IGA for an Operations Agreement between the Eagle River Water and Sanitation District and the Town of Minturn. – Brunvand Pg 132

COUNCIL AND STAFF REPORTS

11. Town Planner

12. Town Manager

- Manager’s Report Pg 139
- Action Report Pg 140

13. Town Council Comments

14. Town Attorney

FUTURE AGENDA ITEMS

15. Next Meeting – February 3, 2016

- Work session: consideration of approving retail sales of marijuana – Powell/Sawyer/Brunvand 2/3/16
- Consideration of Resolution No. 2 – Series 2016 A Resolution appointing individuals to the Planning Commission – Hawkinson

16. Future Meetings:

- Work Session – Review of Job Descriptions - Powell
- Work Session on housing – Hawkinson 2/17/16

17. Set Future Meeting Dates

a) Council Meetings:

- February 3, 2016
- February 17, 2016
- March 2, 2016

b) Planning & Zoning Commission Meetings:

18. Other Dates:

19. Adjournment

Sander N. Karp*
James S. Neu
Karl J. Hanlon
Michael J. Sawyer
James F. Fosnaught
Jeffrey J. Conklin
Andrew A. Mueller

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Labor and Employment
Lawyers

Matthew L. Trinidad
Patrick L. Barker
Jon T. Hoistad
Delphine F. Janey

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Richard I. Zuber**
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***All correspondence should be sent to the
Glenwood Springs office

January 14, 2016

TO: Mayor and Town Council, Town of Minturn

FROM: Karp Neu Hanlon, P.C.

RE: **Council Term Limits—Referred Measure Process**

In response to Council's recent discussions about a potential referred measure regarding Council term limits in the Town of Minturn ("Minturn" or the "Town"), we have reviewed relevant law to establish the process and timeline for referred measures. If Council decides to include a ballot measure on this issue, it can do so to either amend the Town Charter or add a provision to the Town Code. Each is discussed below.

The Town Council may submit any charter amendment to the voters during any election held at least 30 days after the effective date of the ordinance or resolution submitting the amendment. Colo. Const. art. 20 § 5. Any charter amendment adopted through this process cannot be amended or repealed, except electoral vote. *Id.* The Minturn Charter does not provide specific process for charter amendment, except to say that the Town Charter "may be amended at any time and in the manner provided by statute." Minturn Charter § 12.6. Alternatively, language in the Town Code adopted through vote on a referred measure may not be amended or repealed by action of the Council for a period of six (6) months following the election date. Minturn Charter § 3.4.

"Any proposed or adopted ordinance or resolution or any question" may be submitted to a vote of Minturn's electors. C.R.S. § 31-11-111(2). The resolution should fix a Ballot Title for the measure that will allow for a clear, general understanding of the result of a "yes" or "no" vote, or do so itself. *Id.* Copies of the referred measure must be made available to the public before the election. Minturn Charter § 3.3. As a practical matter, the actual language of the Charter amendment or the Town Code may serve as the Ballot Title.

Following the fixing of the Ballot Title, notice for the election follows the same requirements of any municipal election as described in the Municipal Election Code. C.R.S. § 31-10-101 *et seq.* The Town will not have to accept written public comment or summarize public comments for inclusion in the "blue book" ballot issue notice packet, as it would if the referred measure involved a potential raise in taxes under TABOR.

Citizens may contest a ballot including a referred measure or “ballot question” if the contest is submitted through verified petition filed in district court within five days of Council’s resolution. C.R.S. §§ 31-10-1308, 1-11-203.5. The grounds for contest are limited. *Id.* A contestee would have to challenge the order or form of the ballot and propose an alternative. *Id.*

Basic review of the relevant law shows two primary considerations if Council decides to put term limits to the voters. First, Council must decide if the term limit language should go in the Charter or the Code. Section 4.7 of the Town Charter establishes the terms of office for the Town Council. The only Code provision simply refers back to the same Charter section.

Second, the difficulty in amending or repealing the provision once it is in the Charter, relative to doing the same if enacted in the Town Code, should not be overlooked. Should the current or a future Council find, for whatever reason, that term limits are no longer necessary or desirable or create an unforeseen problem, lack of voter interest or political discord may prevent action on the matter.

Review of a number of other home rule municipalities shows a general preference against term limits. Neither the Eagle, Carbondale, Golden, Lafayette, Boulder, Denver, Thornton, nor Glenwood Springs councils are term limited, Basalt (by referred measure), Rifle (initiated by petition), and Vail are. Basalt has incorporated council term limits into its charter. Basalt Charter § 3.12. No person is permitted to serve more than two consecutive terms in the same office, whether it is Mayor or Councilor. *Id.* These offices are considered separate, thereby allowing a single individual to serve indefinitely on the Basalt Council if that person is able to move between a general council position and being mayor every two terms. *Id.* Similarly, Rifle’s council term limitation is in its charter. Rifle Charter § 3.4. It allows no more than two consecutive four year terms. *Id.* There is no differentiation between mayor and general council members. *Id.* Finally, Vail incorporates a term limit into both its charter and municipal code. Vail Charter § 3.2; VMC § 1-5-2. No councilmember in Vail is allowed to serve more than eight consecutive years. *Id.* This apparently includes the town mayor. *Id.*

Basalt Home Rule Charter Section 3.12 - Term Limits

- (A) No person shall serve more than two consecutive terms in the same office, that is, the office of Mayor or the office of Town Councilor.
- (B) For the purposes of this section, the office of Mayor and the office of Town Councilor are to be considered separate and distinct offices.
- (C) For the purposes of this section, terms are considered consecutive unless they are at least four years apart.
- (D) A person is deemed to have completed a full term of office if such person resigns prior to expiration of the term.
- (E) When a person is appointed or elected to fill a vacancy, such partial term shall not be counted toward the limitation of subsection (A) or (D).

Rifle Home Rule Charter 3.4 - TERMS OF OFFICE

Terms of the newly elected Councilmen shall begin at 8:00 P.M. on the first Monday following the regular municipal election.

In order to broaden the opportunities for public service and to ensure the City Council is representative of the citizens of the City of Rifle, no City Council Member shall serve more than two consecutive terms of four years each. This limitation on the number of terms shall apply to terms of office beginning on or after September 9, 2009. Any person appointed or elected to fill a vacancy on the City Council and who serves at least one-half of a term of office for that vacancy shall be considered to have served a term in that office. Terms are considered consecutive unless they are two years apart.

In the event of vacancies, additional Councilmen shall be elected to fill any unexpired terms created by a vacancy. At each election when there are vacancies, those who receive the highest number of votes shall be elected for the three or four, four year terms. The next highest vote, or votes, shall be elected to fill the vacancy, or vacancies.

Vail Home Rule Charter Section 3.2 - Terms Of Office:

The terms of office for councilmembers shall be four (4) years provided, however, that no councilmember shall serve for more than eight (8) consecutive years. In the regular municipal election to be held in 1973, the three (3) candidates receiving the highest number of votes shall be elected for four-year terms and the four (4) candidates receiving the fourth, fifth, sixth and seventh highest number of votes shall serve for two-year terms. In the municipal election to be held in 1975 and thereafter, the highest number of votes shall be elected for four-year terms and the candidate receiving the fourth highest number of votes shall be elected for a two-year term. If a vacancy exists, those candidates receiving the fifth, sixth, and seventh highest number of votes, depending upon the number of vacancies to be filled, shall be elected for two-year terms.

(this language is identical to that found in the Vail Municipal Code)

**TOWN OF MINTURN, COLORADO
RESOLUTION NO. XX – SERIES 2016**

**A RESOLUTION REFERRING A MEASURE TO THE
VOTERS OF THE TOWN OF MINTURN AND FIXING A
BALLOT TITLE TO DETERMINE IF THE HOME RULE
CHARTER/TOWN CODE SHOULD BE AMENDED TO
LIMIT THE TERMS FOR OFFICERS OF THE TOWN.**

WHEREAS, the Town of Minturn (“Minturn” or the “Town”) is a home rule town pursuant to Article XX of the Colorado Constitution; and

WHEREAS, by and through Amendment 17 (the “Colorado Term Limits Act”), the voters of the State of Colorado amended the Colorado Constitution with the addition of Article XVIII, Section 11 limiting the terms of elected officials in the State; and

WHEREAS, Article XVIII of the Colorado Constitution authorizes the voters of any political subdivision to lengthen, shorten, or eliminate term limits within their jurisdictions; and

WHEREAS, Article XX, Section 5 of the Colorado Constitution/Section 31-11-111, C.R.S., authorizes the Town Council to submit a charter amendment/proposed ordinance to amend the town code to the voters of the Town; and

WHEREAS, C.R.S. § 31-11-111 requires the Town Council to fix a Ballot Title to any referred measure sufficient to allow for a clear identification of the result of a “yes” or “no” vote; and

WHEREAS, a general municipal election is scheduled to be held on the 5th day of April 2016; and

WHEREAS, the Minturn Town Council believes it is appropriate to refer to the voters of the Town a ballot measure to consider amending the Minturn Home Rule Charter/Town Code to limit the term of Councilmembers.

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

1. The foregoing recitals are hereby incorporated as findings.
2. At the general municipal election scheduled for April 5, 2016, there shall be referred to the eligible electors of the Town of Minturn, Colorado a measure to determine if the Minturn Home Rule Charter/Town Code should be amended to limit the terms of the elected officers of the Town.

3. This Resolution shall set the Ballot Title pursuant to C.R.S §§ 31-11-111 and 1-11-203.5 as shown on the attached **Exhibit A**, incorporated herein by this reference.
4. Any contest to this Resolution regarding the order or form of the Ballot Title by an eligible elector of the Town shall be made within five days of this Resolution's adoption.
5. If any section, clause, paragraph, or provision of this Resolution is determined to be invalid by a court of competent jurisdiction, such section, clause, paragraph, or provision shall be deemed severable and stricken herefrom, and the remainder of the Resolution shall remain in effect.

INTRODUCED, READ, APPROVED, ADOPTED AND RESOLVED this 20th day of January, 2016.

TOWN OF MINTURN

By: _____
Mayor

ATTEST:

Town Clerk

Exhibit A

Referred Measure XX

SHALL THE TOWN OF MINTURN, COLORADO Home Rule Charter/Town Code be amended by adding a new section providing term limits for the elected officials of the Town as follows:

Section 4.11(if Charter)/2-2-60(if Code). - Term Limits.

YES _____

NO _____



TOWN OF MINTURN
P.O. Box 309 (302 Pine Street)
Minturn, Colorado 81645-0309
970-827-5645 Fax: 970-827-5545
treasurer@minturn.org

**FROM THE DESK OF
JAY BRUNVAND, CLERK/TREASURER/FINANCE**

MEMORANDUM

TO: Willy Powell, Town Manager
FROM: Jay Brunvand, Treasurer/Clerk
CC:
DATE: January 13, 2016
RE: Lease Lot Report

BackGround:

Over the past summer, the Staff has extended the dirt berm and subdivided the land known as the Lease Lot per Council direction. This was done in order to increase the Town revenues in the General Fund through land leases on the property to impact commercial use. As part of this Council direction, the Town also rezoned the land to be used as light industrial area in future Town plans. The upper area (Chadwick quarry) is zoned for recreation.

Proposal:

Recently the Town has received a request from the Eagle River Fire Protection District (ERFPD) to develop a parcel of the land to build a fireman training center. This would be a two story permanent structure with full access completely around the building by fire trucks and equipment. The request is for a 50 year "no-fee" lease in exchange for all or part of the cost to extend potable water and sewer to the site.

Current Uses:

The area in the immediate vicinity holds uses for the Minturn Public Works facility, and the OldCastle/United Concrete batch plant. Immediately south of the batch plant is the leased site itself which has active leases held by Apeak Asphalt, Wilcon Energy, and Johnies Garden green house. All of these sites have access to seasonal water which has been expressed as meeting their needs.

Additionally land in the upper area is used all winter as a snow dump by Public Works and often fills to capacity during the season. The Town is considerably limited in alternative snowdump sites of which we would not have to pay to lease from such entities as the UPRR. As Public Works hauls the snow from the streets it is dumped and stored there for the winter. Additionally, we use the land for various amounts of commercial snowdump. The commercial snowdump allows companies to dump snow in Minturn for a fee of \$50 for a tandem and \$90 for an end dump. This use resulted in \$2,850 in 2015. In previous years we have earned as much as \$20,000 annually.

Recently, staff received approval from Town Council to submit a grant application for implementation of a beginner bike path directly next to the area in question. As the long-term plan for this area is recreation, the bike path is directly in line with the Town's Master Plan. The lot itself and adjacent areas could be considered as a terrain park for mountain bikers.

Calculations:

Assumptions: a four-season water and sewer line would be extended under the bridge and under the railroad for approximately 1500 feet at an approximate cost of \$225,000. Note, this number is somewhat "fuzzy" as I have seen numbers of under \$100,000 and over \$300,000 as well as over a longer distance. Alignment under the bridge is cheaper and more ecologically friendly than under the river.

\$225,000 amortized over 50 years is \$4,500 per year.

The land proposed to be used by the ERFPD encompasses approximately 57,500sqft of the lease lot area. Although this land could be leased for a negotiated rate, using our standard of \$2-2.50/sq foot we would be looking at an annual lease of between \$115,200 to \$144,000. Because of the size of this leased area and would be comparable in size to the batch plant which runs about \$75,000 annually depending on production.

Considerations:

This would be a win for the Town in that we would receive water and sewer to an area that we currently do not have service.

Although we do not have water/sewer in the area, current need is not sufficient to warrant the extension. We currently have potable seasonal water to entire area. The Public Works facility is on the Cemetery well/septic. The other users are not inclined to cost share for water service as opposed to making due as they currently are.

The ERFPD had proposed to pay all of the water/sewer line. Once they had a chance to prepare for Council this was changed to partial payment; Staff remains unsure of the specifics or total participation.

All of our current leases have built in cost escalators and are in five year increments at best. This is a 50 year lease with no escalators

It was directed by Council that ERFPD meet with staff to iron out some of the concerns expressed prior to the next meeting; this meeting has not occurred.

Based on the lease revenue alone of the ERFPD land use we would pay off a water/sewer line in three years.

Recommendation:

As the Treasurer, I do not recommend this venture as proposed. Leased on a fifty year term at \$75,000yr with no cost escalators the Town stands to lose a minimum of over \$3.5 million on just the area proposed for the site. It is noted the Post Office will pay \$2,820,000 over twenty years for their lease.

Alternative:

Hawkeye requested Janet to recommend alternative sites. A map has been included identifying a site closer to the park and railroad tracks.

Minturn Public Use Site

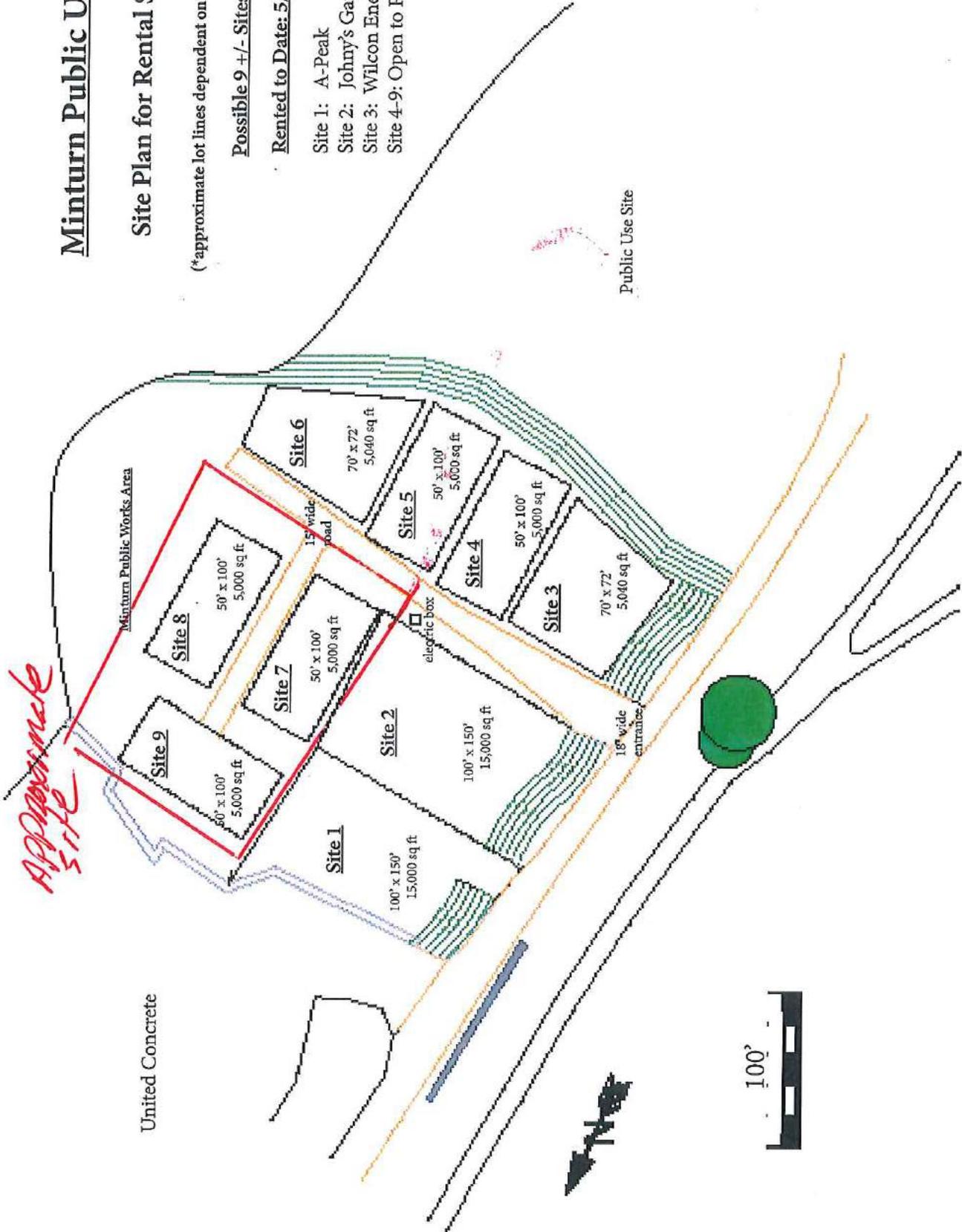
Site Plan for Rental Spaces

(*approximate lot lines dependent on tenants needs)

Possible 9 +/- Sites

Rented to Date: 5/14/2015

- Site 1: A-Peak
- Site 2: Johnny's Gardens
- Site 3: Wilcon Energy
- Site 4-9: Open to Rent

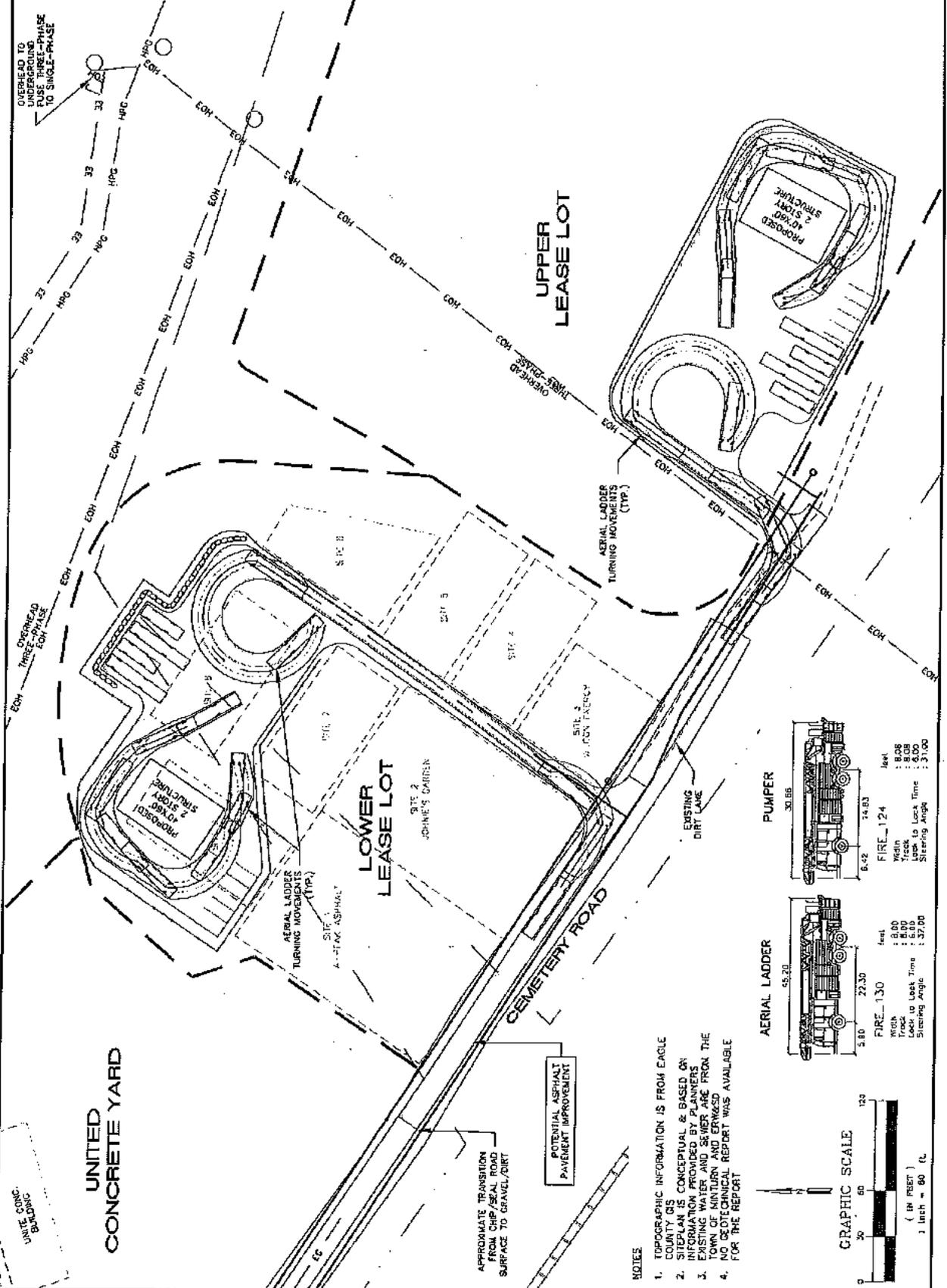




**TOWN OF MINTURN
EAGLE RIVER FIRE
PROTECTION DISTRICT
CONCEPTUAL LOT SITE PLAN**

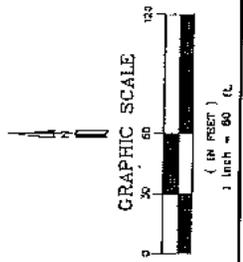
DATE	12/29/25
DESIGNED BY	DR
CHECKED BY	DR
DATE	
REVISIONS	

**SHEET
1**



AERIAL LADDER	58.20	22.30	feet
FIRE_130	6.42	14.83	feet
Width			: 8.00
Track			: 8.00
Lock to Lock Time			: 5.00
Steering Angle			: 37.00

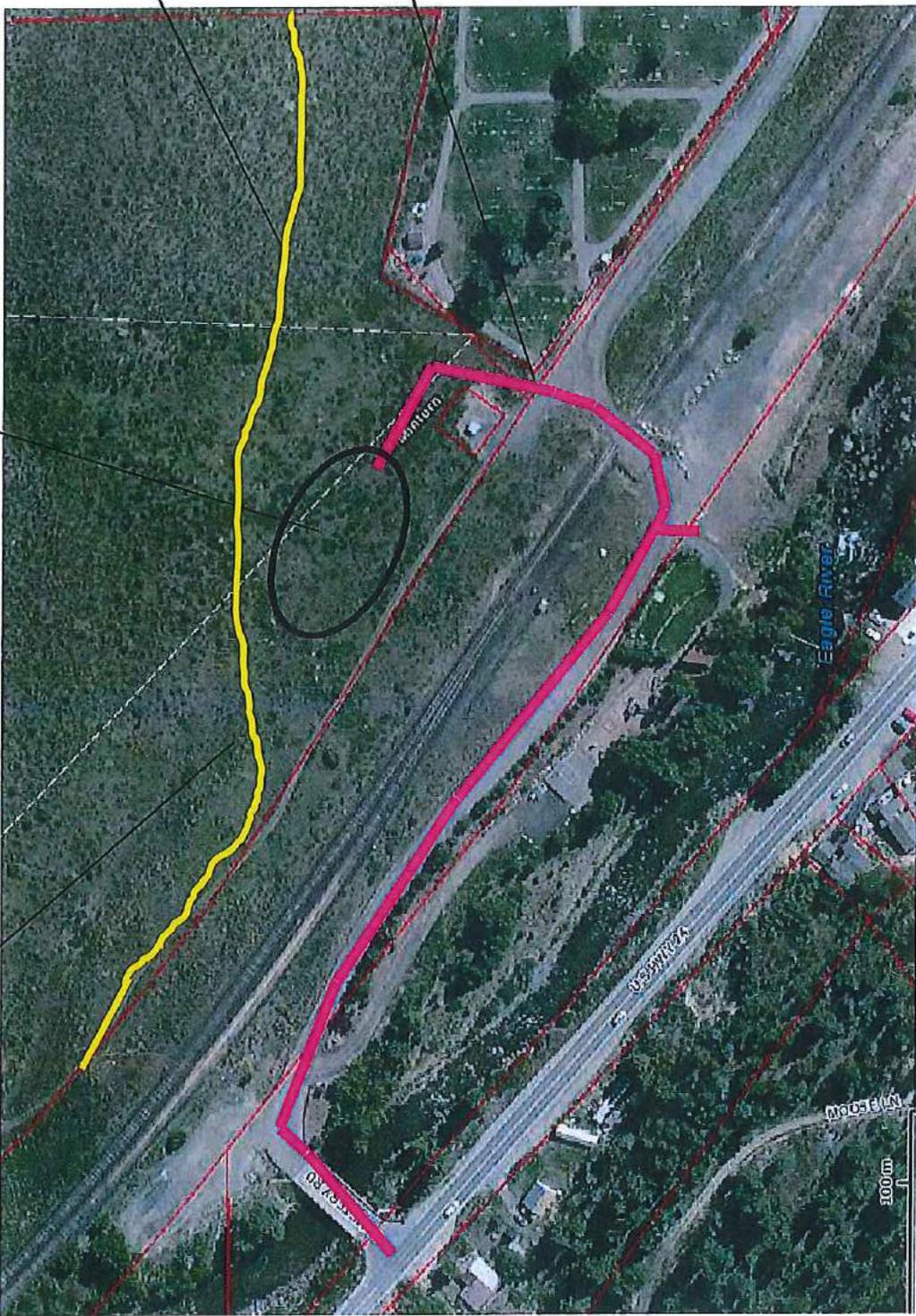
PUMPER	30.65	14.83	feet
FIRE_124	6.42	14.83	feet
Width			: 8.00
Track			: 8.00
Lock to Lock Time			: 6.00
Steering Angle			: 31.00



- NOTES**
1. TOPOGRAPHIC INFORMATION IS FROM EAGLE COUNTY GIS
 2. SITE PLAN IS CONCEPTUAL & BASED ON EXISTING INFORMATION PROVIDED BY PLANNERS
 3. EXISTING UTILITIES AND OBSTACLES FROM THE TOWN OF MINTURN AND DISTRICT ARE FROM THE BEST AVAILABLE INFORMATION
 4. NO GEOTECHNICAL REPORT WAS AVAILABLE FOR THE REPORT

Minturn Lot

Alternative Site for Eagle River Training Area



Proposed Mtn Bike Trail

New Water & Sewer Line to Training Site and top of Little Beach Park (for Americas next best restrooms)

January 13, 2016

Janet Hawkinson, MLAP
Minturn Planning Dir.

Staff Report:

**Alternative site
location for Eagle
River Fire Protection
District Training Area**



This lot is owned by
Minturn

Alternate Training Site
would need to grade and
put in short road from
Cemetery Road

Existing Seasonal Water
line serving Public Works,
LB Park & Concrete Plant

***water & sewer not needed
at this time all the way to
Public Works or Lease Lot -
only needed at LB Park

January 13, 2016

Janet Hawkinson, MLAP
Minturn Planning Dir.



Official Minutes

MEETING OF THE MINTURN TOWN COUNCIL
Minturn Town Center, 302 Pine Street
Minturn, CO 81645 • (970) 827-5645

Wednesday January 6, 2016

Work Session – 5:30pm
Regular Session – 6:30pm

MAYOR – Gordon “Hawkeye” Flaherty
MAYOR PRO TEM – George Brodin

COUNCIL MEMBERS:

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Work Session – 5:30pm

- Eagle River Fire Protection District training facility options – Powell Council asked for a second worksession (January 20) which delves into:
 - Future alternative lease revenue
 - Best use of the land, where might it best fit in the area
 - True need of water and sewer service in the area.
 - Effects of this project added to the current project and funding workload of other projects.
- Council questions regarding the Resolutions

Regular Session – 6:30pm

1. Call to Order

The meeting was called to order by Mayor Hawkeye F. at 6:31pm.

- Roll Call

Those present included: Mayor Hawkeye Flaherty and Town Council members, George Brodin, John Rosenfeld, Matt Scherr, Earle Bidez, Jason Osborne, and Shelley Bellm.

Staff present: Town Attorney Mike Sawyer, Town Manager Willy Powell, Town Clerk/Treasurer Jay Brunvand, and Town Planner Janet Hawkinson.

- Pledge of Allegiance

2. Approval of Agenda

- Items to be Pulled or Added

Motion by Shelley B., second by Ozzy O., to approve the agenda as presented. Motion passed 7-0.

3. Approval of Minutes

- December 16, 2015

Motion by Shelley B., second by Ozzy O., to approve the minutes of December 16, 2015 as presented. Motion passed 7-0.

4. Liquor License Authority

- Golden Aspen Leaf, Inc dba Gourmet Cowboy approval of a Temporary Liquor License Permit Application; 455 Main St; Clifford A Dorn, III Owner/President – Brunvand

Jay B. outlined the issues for the Council and introduced Mr. Clifford Dorn, III. Mr. Dorn stood for questions.

Public hearing opened.

Mr. Dorn stated the use will remain as a catering company and at this time they do not see any change in the business plan.

Public hearing closed.

Motion by Ozzy O., second by Earle B., to approve the Golden Aspen Leaf, Inc dba Gourmet Cowboy Temporary Liquor License Permit Application; 455 Main St; Clifford A Dorn, III Owner/President as presented. Motion passed 7-0.

5. Public comments on items, which are NOT on the agenda (5 minute time limit per person)

Mr. Matt Giblon, owner and developer of 1973 Main (Quintana Butcher Block property), introduced himself to the Council. He stated the project is moving forward at staff level.

Mr. Tim McGuire, BMR Resorts, reminded the Council of the upcoming special meeting on Saturday January 23, 2016 from 8am-noon in the Council Chambers.

6. Special Presentations

- Committee Report

Deputy Phillip Cusick, Minturn Police/ECSO Department, presented the police status data. Discussion ensued as to the report, identified issues and concerns in Town, and the general changes in the department for the betterment of the Town. Council requested this report be made public on the Town's website.

Shelley B. noted the scholarship application is on the Town website and available for completion. The deadline submittal is pending and Shelley B. will notify the Town in order to update the website and application.

PUBLIC HEARINGS AND ACTION ITEMS

7. Discussion/Action Item: Consideration of Resolution 1 – Series 2016 A Resolution setting the official posting sites for the Town of Minturn – Brunvand

Motion by John R., second by George B., to approve Resolution 1 – Series 2016 A Resolution annually setting the official posting sites for the Town of Minturn as presented. Motion passed 7-0.

8. Discussion/Action Item: Consideration of Resolution 2 – Series 2016 A Resolution appointing individuals to the Planning Commission – Hawkinson

Janet H. requested this be moved to the February 3, 2016 meeting.

Motion by John R., second by Shelley B., to continue Resolution No. 02 – Series 2016 A Resolution appointing individuals to the Planning Commission to the Feb 3. 2016 Council Meeting as presented. Motion passed 7-0.

9. Discussion/Action Item: Consideration of Resolution 3 – Series 2016 A Resolution approving an employment agreement between Willy Powell and the Town of Minturn – Powell

Michael S. stated this is an agreement developed from prior Council discussion and Staff recommends approval. The agreement is acceptable by both parties.

Motion by Earle B., second by Ozzy O., to approve Resolution 03 – Series 2016 A Resolution approving an employment agreement between Willy Powell and the Town of Minturn as presented. Motion passed 6-1 (Nay Shelley B.)

COUNCIL AND STAFF REPORTS

10. Town Planner

11. Town Manager

Willy P noted a brochure provided by CDOT regarding establishing speed limits. Willy P. recommended Staff work with CDOT and investigate our options prior to spending money on studies.

TAP Grant Request for Qualifications

- Six proposals received
- Jason, Willy, Jeff reviewed proposals on Jan. 5
- Four shortlisted for reference check and interview
- IGA received from CDOT on Jan 4
- Will need resolution for IGA funding—Jan. 20 meeting

Bolts Ditch Legislation

- Have County support letter
- Likely will have River District letter at their Jan. meeting
- Meeting with UEVWSD Jan. 7
 - Hawkeye, Willy, Tom G. will lobby in DC next week—Senators Bennet and Gardner, FS staff, legislative staffs and others

Employee Performance Evaluations

- All are complete
- Employees very appreciative of raises given by Council

100 Block Engineering

- Currently experiencing some difficulties with CDOT review
 - Meeting with CDOT tomorrow—Eagle and Region 3 representatives

Matt S. asked about the Town sign; the batteries are dead and new have been ordered. The sign light should be up again soon.

Matt S. asked about sidewalk shoveling; the Police are following up and warnings are being issued as needed.

Discussion ensued as to baseline speed in the “S” curve area and the need to keep the new curb clear and visible.

12. Town Council Comments

Shelley B. asked the Council to consider term limits for Council and Planning Commission. She stated that she had been approached by citizens and felt it was needed. There is not sufficient time to put this on the ballot by citizen initiative.

Mike S. outlined the process of a citizen initiative and confirmed Shelley B. was correct there was insufficient time. He will work with Staff to propose a question for the Council to consider at the January 20 meeting.

John R. thanked the community and various police and fire agencies that helped to pull together the Christmas gift program.

Matt S. noted the upcoming election and encouraged interested persons to pull a petition for the Council or Mayor seat.

Ozzy O. asked for a future project consideration to realign Taylor, Rail Road Ave, and Minturn Road as he feels the current alignment is unsafe.

13. Town Attorney

EXECUTIVE SESSION

14. Executive Session: An executive session for the purpose of conferencing with the Town Manager for the purposes of receiving direction and advice on the purchase, acquisition, lease, transfer or sale of any real property or other property under C.R.S. Section 24-6-402(4)(a) and for the purpose of discussing specific legal questions with the attorney for the purposes of receiving legal advice under C.R.S. Section 24-6-402(4)(b), and for the purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and/or instructing negotiators under C.R.S. Section 24-6-402(4)(e) and for the purpose of discussing personnel matters and instruction of negotiators related to manager contract under C.R.S. Section 24-6-402(4)(f) – Town Manager review, Dowd Junction, and Entryway Project – Powell/Sawyer

Direction given as a result of the Executive Session:

FUTURE AGENDA ITEMS

15. Next Meeting – January 20, 2016

- ERFPD continuation of discussion Worksession – Powell 1/20/16
- Term limit discussion worksession and Action Item – 1/20/16

16. Future Meetings:

- Discussion/Action Item: Consideration of Resolution No. 02 – Series 2016 A Resolution appointing individuals to the Planning Commission – Hawkinson 02/03/16
- Work Session – Review of Job Descriptions – Powell
- Work session: consideration of approving retail sales of marijuana – Powell/Sawyer/Brunvand 02/03/16
- Work Session on housing – Hawkinson 2/17/16

17. Set Future Meeting Dates

a) Council Meetings:

- January 20, 2016
- February 3, 2016
- February 17, 2016

b) Planning & Zoning Commission Meetings:

18. Other Dates:

19. Adjournment

Motion by John R., second by Ozzy O., to adjourn at 8:00pm.

Mayor Hawkeye Flaherty

ATTEST:

Town Clerk, Jay Brunvand

P.O. Box 309 ♦ 302 Pine Street
Minturn, CO 81645
Phone: 970-827-5645
Fax: 970-827-5545
Jay Brunvand, Treasurer/Clerk
Email: treasurer@minturn.org



Town Council
Mayor – Gordon “Hawkeye” Flaherty
Mayor Pro Tem – George Brodin
Councilmember – Shelley Bellm
Councilmember – Earle Bidez
Councilmember – John Rosenfeld
Councilmember – Jason Osborne
Councilmember – Matt Scherr

AGENDA ITEM COVER SHEET

AGENDA TITLE: The Magustos, LLC Annual Renewal of a Hotel and Restaurant Liquor License; 101 Main St.; Eric Cregon, Owner
MEETING DATE: January 20, 2016
PRESENTER: Brunvand
BACKGROUND: This is an application for annual renewal of a Hotel and Restaurant liquor license. The application has been reviewed and an on-site review of the premises was conducted by the Clerk and no issues have been found. The application has been reviewed by the Town Attorney and an investigation of the police records has been conducted by the Eagle County Sheriff’s Office and no issues that would preclude approval were found. Staff is recommending approval of this renewal by Council.
CORE ISSUES:
BUDGET/FINANCE IMPLICATIONS: An annual renewal fee of \$125.00 has been paid to the Town.
STAFF RECOMMENDATION/MOTION: “Motion to approve the Magustos, LLC Annual Renewal of a Hotel and Restaurant Liquor License; 101 Main St.; Eric Cregon, Owner as presented.”

**LIQUOR OR 3.2 BEER LICENSE
 RENEWAL APPLICATION**

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

MAGUSTOS
 PO BOX 1043
 MINTURN CO 81645-1043

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

PLEASE VERIFY & UPDATE ALL INFORMATION BELOW

RETURN TO CITY OR COUNTY LICENSING AUTHORITY BY DUE DATE

Licensee Name MAGUSTOS LLC		DBA MAGUSTOS	
Liquor License # 15787460000	License Type Hotel & Restaurant (city)	Sales Tax License # 15787460000	Expiration Date 2/15/2016
Street Address 101 MAIN ST MINTURN CO 81645			Due Date 1/1/2016
Mailing Address PO BOX 1043 MINTURN CO 81645-1043			Phone Number (970) 390 7194
Operating Manager ERIC CREGON	Date of Birth 10-07-1970	Home Address 152 MAIN ST MINTURN CO 81645	Phone Number 970 390 7194

- Do you have legal possession of the premises at the street address above? YES NO
 Is the premises owned or rented? Owned Rented* *If rented, expiration date of lease 12/31/28
- Since the date of filing of the last annual application, has there been any change in financial interest (new notes, loans, owners, etc.) or organizational structure (addition or deletion of officers, directors, managing members or general partners)? If yes, explain in detail and attach a listing of all liquor businesses in which these new lenders, owners (other than licensed financial institutions), officers, directors, managing members, or general partners are materially interested. YES NO
NOTE TO CORPORATION, LIMITED LIABILITY COMPANY AND PARTNERSHIP APPLICANTS: If you have added or deleted any officers, directors, managing members, general partners or persons with 10% or more interest in your business, you must complete and return immediately to your Local Licensing Authority, Form DR 8177: Corporation, Limited Liability Company or Partnership Report of Changes, along with all supporting documentation and fees.
- Since the date of filing of the last annual application, has the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) been convicted of a crime? If yes, attach a detailed explanation. YES NO
- Since the date of filing of the last annual application, has the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) been denied an alcohol beverage license, had an alcohol beverage license suspended or revoked, or had interest in any entity that had an alcohol beverage license denied, suspended or revoked? If yes, attach a detailed explanation. YES NO
- Does the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) have a direct or indirect interest in any other Colorado liquor license, including loans to or from any licensee or interest in a loan to any licensee? If yes, attach a detailed explanation. YES NO
- SOLE PROPRIETORSHIPS, HUSBAND-WIFE PARTNERSHIPS AND PARTNERS IN GENERAL PARTNERSHIPS:** Each person must complete and sign the DR 4679: Affidavit – Restriction on Public Benefits (available online or by calling 303-205-2300) and attach a copy of their driver's license, state-issued ID or valid passport.

AFFIRMATION & CONSENT

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

Type or Print Name of Applicant/Authorized Agent of Business ERIC CREGON	Title owner
Signature 	Date 1-4-16

REPORT & APPROVAL OF CITY OR COUNTY LICENSING AUTHORITY

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

Local Licensing Authority For	Date
Signature	Title
	Attest

OFFICE OF THE SECRETARY OF STATE
OF THE STATE OF COLORADO

CERTIFICATE OF FACT OF GOOD STANDING

I, Wayne W. Williams, as the Secretary of State of the State of Colorado, hereby certify that, according to the records of this office,

Magustos LLC

is a

Limited Liability Company

formed or registered on 11/22/2010 under the law of Colorado, has complied with all applicable requirements of this office, and is in good standing with this office. This entity has been assigned entity identification number 20101638608 .

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 01/06/2016 that have been posted, and by documents delivered to this office electronically through 01/07/2016 @ 13:52:18 .

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, and issued this official certificate at Denver, Colorado on 01/07/2016 @ 13:52:18 in accordance with applicable law. This certificate is assigned Confirmation Number 9444404 .



A handwritten signature in cursive script that reads 'Wayne W. Williams'.

Secretary of State of the State of Colorado

*****End of Certificate*****

Notice: A certificate issued electronically from the Colorado Secretary of State's Web site is fully and immediately valid and effective. However, as an option, the issuance and validity of a certificate obtained electronically may be established by visiting the Validate a Certificate page of the Secretary of State's Web site, <http://www.sos.state.co.us/biz/CertificateSearchCriteria.do> entering the certificate's confirmation number displayed on the certificate, and following the instructions displayed. Confirming the issuance of a certificate is merely optional and is not necessary to the valid and effective issuance of a certificate. For more information, visit our Web site, <http://www.sos.state.co.us/> click "Businesses, trademarks, trade names" and select "Frequently Asked Questions."



TOWN OF MINTURN
P.O. Box 309 (302 Pine Street)
Minturn, Colorado 81645-0309
970-827-5645 Fax: 970-827-4049
treasurer@minturn.org

**FROM THE DESK OF
JAY BRUNVAND, TREASURER/FINANCE**

MEMORANDUM

To: Mike Sawyer, Attorney
Phillip Cusick, ECSO/Minturn
CC:
Date: 1/7/16 1:09 PM
RE: Liquor License

Attached please find a copy of the Annual Liquor License Renewal Application for a Hotel Restaurant Liquor License for Magustos, LLC, Eric Cregon, Owner/President located at 101 S Main St. I have reviewed the application and conducted an onsite inspection and found no issues. Further although I have asked the ECSO to review the application, I am not aware of any concerns that might have occurred at the location during the past year. I am forwarding it on to you for further review and your report.

Please let me know if you have any questions or concerns, which I may be able to answer.

Thanks, jay

**TOWN OF MINTURN, COLORADO
RESOLUTION NO 04 – SERIES 2016**

A resolution of the Town of Minturn, Colorado, approving a preliminary subdivision plat for property located along Highway 24 near the Meadow Mountain Business Park.

WHEREAS, the Local Government Land Use Control Enabling Act of 1974, §§29-20-101, et seq., C.R.S.; Article 23 of Title 31, C.R.S.; and other applicable laws grant broad authority to the Town of Minturn, Colorado ("Town") to plan for and regulate the development and use of land on the basis of the impact thereof on the community and surrounding areas; and

WHEREAS, the Town has adopted as Chapters 16 and 17 of the Minturn Town Code regulations governing the zoning and subdivision of properties within the Town; and

WHEREAS, Intermountain Landscaping & Maintenance Inc. is under contract to purchase a portion of property owned by the Union Pacific Railroad Company as depicted on **Exhibit A** hereto (the "Property"); and

WHEREAS, the Property is currently zoned as a PUD holding area, but an application to rezone the Property as commercial in the Grouse Creek Character Area has been submitted; and

WHEREAS, at its January 13, 2016 meeting, the Planning and Zoning Commission determined that the proposed preliminary subdivision plat is consistent with the requirements imposed by the Minturn Code, the Town's land use goals and plans, and recommended approval of the preliminary subdivision plat subject to certain conditions; and

WHEREAS, at its January 20, 2016 meeting, the Town Council of the Town of Minturn conducted a public hearing on the application.

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

Section 1. Findings of Fact. The Council incorporates the foregoing recitals as findings and determinations, and conclusively makes all of the Findings of Fact, Determinations, and Conclusions contained herein.

Section 2. Approval of Preliminary Subdivision Plat. The Council hereby approves the preliminary subdivision plat for the Property attached hereto as **Exhibit A**.

Section 3. Conditions of Preliminary Plat Approval. Approval of the preliminary subdivision plat is expressly made subject to the following terms and conditions which must be satisfied prior to the approval of a final subdivision plat for the Property:

1. That all statements made by the applicant in the application and in meetings before the Planning & Zoning Commission and the Town Council be considered conditions of approval, unless modified in the following recommendations;
2. Applicant shall process its application to rezone the Property to commercial in the Grouse Creek Character Area;
3. As part of an application for approval of a final subdivision plat, applicant will submit to the Town a pro-forma title commitment for the Property together with a letter from a Title Officer or Attorney who has examined the mineral estate owners for the Property, as required by C.R.S. § 24-65.5-103;
4. As part of an application for approval of a final subdivision plat, applicant will submit to the Town a detailed landscape plan for the Property that adequately screens the site from Highway 24;
5. That within 90 days from approval of the final plat, Lot 2 will be conveyed to the Meadow Mountain Business Park and an application will be filed with the Town merging Lot 2 into the common property owned by the Meadow Mountain Business Park.

Section 4. All Other Laws Applicable. Except as hereinabove provided, all provisions of the zoning, subdivision and other ordinances or regulations of the Town shall apply to the Property.

Section 5. Severability. If any section, subsection, clause, phrase or provision of this Resolution, or the application thereof to any person or circumstance, shall to any extent, be held by a courts of competent jurisdiction to be invalid, void or unconstitutional, the remaining sections, subsections, clauses, phrases and provisions of this Resolution, or the application thereof to any person or circumstance, shall remain in full force and shall in no way be affected, impaired or invalidated.

INTODUCED, READ, APPROVED AND ADOPTED THIS 20TH DAY OF JANUARY, 2016.

TOWN OF MINTURN, COLORADO

Hawkeye Flaherty, Mayor

ATTEST:

By: _____

Jay Brunvand, Town Clerk



Town of Minturn
302 Pine Street, Minturn, CO 81632

Planning Commission Approval
January 13, 2016

Planning Commission Report January 13, 2016 for the approval of the following preliminary subdivision application:

Intermountain Preliminary Type A Subdivision Application for the subdivision of the Union Pacific Railroad Property on Highway 24, Minturn, CO

Planning Commission Recommendation to Town Council:

Upon review of the application, the Planning Commission voted in favor of the preliminary application subdivision and zoning change with the following 2 motions:

- to approve the Zoning Change from Game Creek Character Area (PUD Holding Zone) to Grouse Creek Character Area (Commercial)
-contingent on Intermountain Landscape submitting a landscape design plan for screening of site from Highway 24 for Design Review and approval by both CDOT and the Planning Commission.
- To approve the Preliminary Subdivision Application



Planner Report

Town of Minturn
302 Pine Street
Minturn, Colorado
81654
970-827-5645

1/13/16

J Hawkinson, Planning Director

- APPLICANT:** Intermountain Landscaping & Maintenance, Inc.
- PREPARED BY:** Pylman & Associates - 137 Main St, C107W, Edwards, CO
Rick Pylman - 970-926-6065
- REQUEST:** Subdivide Lot and Change Zoning
- LOCATION:** Township 5 South - Range 81 West, Highway 24 - Minturn, CO
- DATE SUBMITTED:** December 11, 2015
- ZONING:** Commercial - Grouse Creek Character Area
- change zoning from a PUD in Game Creek Character Area
- PUBLIC NOTICE:** Agenda posted at Town Hall and on website - certified letters sent to residents 250 feet from site - sign posted on site - 14 days in advance of hearings.
- SITE ANALYSIS:**
- BUILDING HEIGHT:** No Buildings - a site to store landscape supplies & equipment
- VARIANCE:** none
- LOT AREA:** 2 acres = 87,120 sq ft
-zoning code: minimum lot size 5,000sq ft
- 40% MAXIMUM BUILDING LOT COVERAGE:** N/A
- SETBACKS:** Meets required setbacks: -20' front -10' side yards -10' rear -30' river
- SNOW STORAGE:** Required: 4356 sq ft Actual: 4356 sq ft
*Upon approval of this subdivision - applicant agrees not to plow snow or remove snow from lot into the river
- LANDSCAPING REQUIREMENTS:** Install native trees to screen equipment and storage yard from Highway 24 - the river side is presently screened with Colorado Spruce

ENVIRONMENTAL

PHASE 1 REPORT: The applicant performed both a wetlands report and a vegetation assessment report performed by Western Ecological Resource, Inc. No clean-up is needed.

STAFF REPORTS:

PLANNING DIRECTOR:

Approve Application upon:

- landscape buffer between Highway 24 & lot - recommend native trees & grass (there is a buffer between lot and river view with blue spruce and willows)
- designated snow storage area and agreement not to push snow into the river
- CDOT Permit for driveway
- Construction Easement Permit for driveway

PUBLIC WORKS:

- snow removal is not a concern
- it is recommended to install a fire hydrant
- approval of water line size and location of meter to be approved upon construction
- snow is not allowed to be pushed into the Eagle River from site
- location of snow plow dump area

TOWN ENGINEER

- the driveway is shown built next to property line - will need a construction easement
- the vertical curve is needed on final subdivision plat
- recommends to design road grade to 7.9% instead of 8% - room for error

EAGLE RIVER FIRE:

- the entrance, road width and turn are adequate
- it is recommended to install a fire hydrant

WATER TAP: water is being brought to the site - a water tap will need to be purchased



November 23, 2015

Ms. Janet Hawkinson
Town Planner
Town of Minturn
PO Box 309.
Minturn, CO 81645

Re: Intermountain Landscaping & Maintenance

Dear Janet:

Please accept this letter and the attachments as a formal application for a minor subdivision and re-zoning for a parcel of land under purchase contract to Intermountain Landscaping and Maintenance. The subject of these applications is a two-acre parcel of Union Pacific Railroad ("UPRR") owned land that is located west of the Eagle River along Highway 6 & 24 just south of the Meadow Mountain Business Park. The minor subdivision will separate this land from the larger UPRR property east of the Eagle River and the rezoning will allow for the commercial use of the Grouse Creek Character Area.

If this process also requires a preliminary plan subdivision we would request that the preliminary plan and minor subdivision be reviewed concurrently.

Under cover of this letter please find:

- One executed application form for a Preliminary Plan, Minor Subdivision and Rezoning.
- Two copies of a project narrative that describes the proposed use and addresses the Town of Minturn Municipal Code requirements for an Environmental Analysis and the criteria for review of both a minor subdivision and rezoning request.
- Two full size paper copies of the plat
- One copy each of a Wetlands Delineation Report and a Vegetation Assessment.
- One copy of a current title report.
- Two copies of the adjacent owners list on mailing labels.
- A letter of authorization from the Union Pacific Railroad.

Alpine Engineering Inc. has reviewed the CDOT highway access code and designed the access drive to the code specifications to the best of their interpretation. We have now formally engaged a traffic engineer to initiate the CDOT Highway Access Permit process. We will update this application as CDOT provides more information.

I did not see a fee schedule for these applications on the Town website and have therefore not included any application fees at this time. If you would please let us know the appropriate amount due we will submit fees as soon as possible.

If you have any questions or require additional information please contact me at your convenience. I will provide you with a digital copy of all of these materials and will also provide any additional hard copies as requested. I will coordinate with you regarding the public notice mailing and sign requirements when a meeting date has been determined.

On behalf of Intermountain Landscaping and Maintenance we look forward to working with you on this application.

Sincerely,

Rick Pylman



LAND DEVELOPMENT APPLICATION

TOWN OF MINTURN PLANNING AND ZONING DEPARTMENT

P.O. Box 309 302 Pine Street

Minturn, Colorado 81645-0309

Phone: 970-827-5645

Fax: 970-827-5545

Email: planner@minturn.org

APPLICANT:	ADDRESS:	SIGNATURE:
INTERMOUNTAIN LANDSCAPING & MAINTENANCE INC.	20 EAGLE ROAD SUITE 140 AVON CO 81620	
	PHONE: 970 390 5467 FAX:	NAME:
	EMAIL: intermntn@vail.net	TITLE:
OWNER(S) OF RECORD:	ADDRESS:	SIGNATURE: see letter
UPRR	1400 DOUGLASS STREET STOP 1690 COWAY NEBRASKA	
	PHONE: 402 544 8552 FAX:	NAME:
	EMAIL:	TITLE:
DEVELOPER:	ADDRESS:	CONTACT PERSON:
	PHONE: FAX:	
	EMAIL:	
ENGINEERING FIRM:	ADDRESS:	CONTACT PERSON:
PYLMAN & ASSOCIATES	137 MAIN STREET C107W EDWARDS CO 81632	RICK PYLMAN
	PHONE: 970 926 6065 FAX:	
	EMAIL: rick@pylman.com	
Presubmittal Date	Presubmittal Planner:	
Parcel ID Number	(Example: 210326325001) from your full card printout	
Address or Intersection		
Brief Legal Description		
Subdivision Name & Filing #		
Project Description		

	Existing	Proposed:
Zoning:	GAME CREEK	GAME CREEK - COMMERCIAL
Land Use:	VACANT	LANDSCAPE YARD
Total Acres:	2.019 ACRES	2.019 ACRES
F.A.R./Density:	N/A	N/A
Project Name:	INTERMOUNTAIN LANDSCAPING	
Related Case #'s:		

CASE TYPE			
PUD CDP: Concept Dev. Plan	PP: Prelim. Subdivision Plat	<input checked="" type="checkbox"/> DRB - P: Des. Rev. Bd. Prelim	A-FP: Fence Permit
PUD PDP: Prelim. Dev. Plan	FP: Final Subdivision Plat	<input checked="" type="checkbox"/> DRB - F: Des. Rev. Bd. Final	A-MOD: Modification/Add
PUD FDP: Final Dev. Plan	MS: Minor Subdivision	<input checked="" type="checkbox"/> ADM: Admin. Des. Review	A-MIN: Minor Ext. Mod.
PUD ASP: Admin. Site Plan	ASR: Admin. Subdivision Replat	A-SIGN: Admin. Sign Review	ANNEX: Annexation
PUD FDP A: Amendment	V: Vacation of Easement	A-DIG: Admin. Dig Permit	TU: Temporary Use
LU-V: Land Use - Variance	R.O.W. Vacation	A-DEMO: Admin. Demo Per.	CU: Conditional Use
NU -V: Non Use - Variance	REZ -Rezoning -Straight Zoned	<input checked="" type="checkbox"/> A-LTD: Admin. Limited Use	APPLS: Appeals

This section for OFFICE USE ONLY

Case No:	Case Mgr.	Case Eng.
Fees Paid Y N \$	Dates Referred Out	
Dates to be Returned	Planning Comm Date:	

This development application shall be accompanied with the applicable fee and shall not be considered valid until the total application fee is received. Submittal of this application does not mean you will receive automatic approval, nor does it establish a vested property right in accordance with C.R.S. 24-68-105(1). Further processing and review of this application may require additional information, and/or meetings, as outlined in the Town of Minturn Zoning and Development Code



October 1, 2015
Folder 2393-27

Town of Minturn
Attn: Janet Hawkinson
302 Pine Street
Minturn, CO 81645

RE: Proposed Grouse Creek Subdivision, Lots 1 & 2, Minturn, Colorado

Dear Ms. Hawkinson:

This letter is to advise the Town of Minturn that Union Pacific Railroad Company ("UPRR") and Intermountain Landscaping & Maintenance, Inc. ("Intermountain") have entered into a Purchase and Sale Agreement date May 13, 2015 covering Intermountain's purchase of a parcel of land in Minturn owned by UPRR ("Property"). UPRR has authorized Intermountain, at its sole cost and expense, to use commercially reasonable efforts to obtain all necessary governmental approvals required to constitute the Property as a legal lot.

If you have any questions regarding the above, please call me to discuss.

Sincerely,

A handwritten signature in blue ink, appearing to read "Gregg A. Larsen".

Gregg A. Larsen
Senior Manager - Real Estate
(402) 544-8552

Intermountain
Landscaping
&
Maintenance

Application for a Type A Minor Subdivision and a zone
change from Game Creek Character Area to Grouse Creek
Character Area

Intermountain
Landscaping
&
Maintenance

Application for PUD Concept Development Plan and a
Type A Minor Subdivision

Prepared for: Intermountain Landscaping and Maintenance
20 Eagle Road Suite 140
Avon, Colorado 81620

Prepared by: Pylman & Associates, Inc.
137 Main Street C107W
Edwards Colorado 81632

Introduction

The purpose of this report is to provide information relative to a request for a Type A Minor Subdivision and a zone change for a parcel of land located within the Game Creek Character Area PUD Holding Zone immediately adjacent and south of the Meadow Mountain Business Park.

As the land area proposed for this application is currently a part of the larger railroad holdings a Type A Minor Subdivision approval will be required to create a separate land parcel. The proposed use fits within the commercial uses listed in the Grouse Creek Character Area. The existing PUD designation is meant as a “holding” zone until a development plan is proposed.

The intent of this application is to present information that will facilitate a discussion of potential opportunities and issues related to the operation of a small-scale landscape maintenance yard on this property.

Game Creek PUD Holding Zone

The Union Pacific Railroad Company has extensive land holdings in Minturn that are not currently necessary for railroad operations. The majority of these holdings are designated by the Town as a part of the Game Creek Character Area and classified as a PUD Holding Zone. The intent of this holding zone, should the railroad determine to develop or sell this property, is to allow for the eventual master planning of the entire area. These lands have been identified by the Community Plan as an area that is appropriate for an expansion of the downtown area and as a “potential Town Center”.

The Game Creek PUD Holding Zone is graphically depicted on the Town of Minturn Zoning map (See Figure 1, Town Zoning Map) and further described in Section 16-12-30 of the Minturn Municipal Code. The map and narrative description indicate this area as the core area lands currently owned by the Union Pacific Railroad.

While the Municipal Code is clear that the preference is to master plan this area at one time there is a statement that is applicable to this particular outlying portion of the railroad property. That statement reads as follows: “ *If circumstances arise that do not provide for the submittal of a PUD master plan for the entire Game Creek PUD Holding Zone, the owners may apply to the Town for a Planned Unit Development on a portion of the property or may apply for a special review use permit for consideration of a temporary use.*”

The majority of the land designated as the Game Creek PUD Holding Zone is east of the Eagle River and forms a large contiguous area that would make a logical extension to the town center. The two-acre parcel of land that is the subject of this

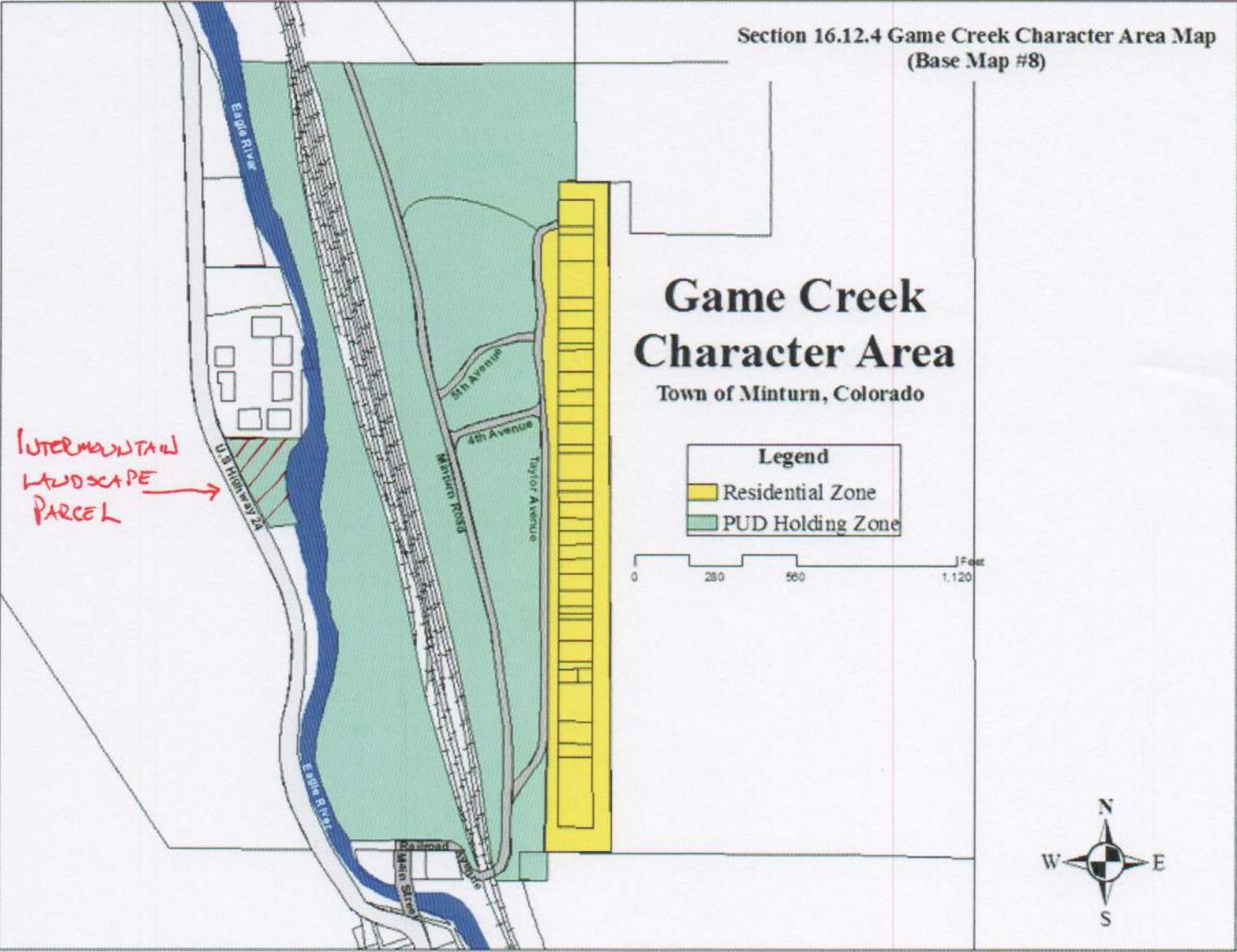


Figure 1
Town Zoning Map

CERTIFICATE OF DEDICATION AND OWNERSHIP

I, Union Pacific Railroad Company, a Delaware Corporation, the owner in fee simple of all that real property described as follows:

A parcel of land lying in the NW Quarter of Section 26, Township 5 South, Range 81 West of the Sixth Principal Meridian, Eagle County, Colorado, being more particularly described as follows: Beginning at a Point on the easterly right-of-way line of U.S. Highway No. 24 whence the NW corner of said Section 26 bears N 08°57'37" W a distance of 1,379.01 feet; thence departing said right-of-way line and along the southerly property line of Meadow Mountain Business Park Condominiums S 90°00'00" E a distance of 250.00 feet; thence N 00°00'00" E a distance of 240.00 feet; thence N 90°00'00" E a distance of 20.00 feet to the centerline of the Eagle River; thence along said centerline of the Eagle River S 14°11'16" E a distance of 109.44 feet; thence S 00°26'26" E a distance of 92.61 feet; thence S 26°07'40" W a distance of 45.63 feet; thence S 23°54'09" W a distance of 134.07 feet; thence S 12°14'00" E a distance of 634.58 feet; thence departing said centerline S 80°00'00" W a distance of 49.29 feet to the easterly right-of-way line of U.S. Highway No. 24; thence along said easterly right-of-way line N 08°30'27" W a distance of 137.85 feet; thence S 87°23'48" W a distance of 13.07 feet to the point of curvature of a non-tangent curve, concave to the west, having a radius of 704.00 feet a central angle of 20°23'28", and a chord of 249.23 feet bearing N 17°41'16" W; thence North along said curve, a distance of 250.55 feet; thence N 27°53'00" W a distance of 423.40 feet to the point of curvature of a tangent curve, concave to the northeast, having a radius of 686.20 feet and a central angle of 00°20'01"; thence Northwest along said curve, a distance of 4.00 feet, curving to the left to the Point of Beginning, County of Eagle, State of Colorado. Said parcel containing a total of 1.982 acres more or less

have by these presents laid out, platted and subdivided the same into lots as shown on this plat and designate the same as the Grouse Creek Subdivision, a subdivision in the Town of Minturn.

EXECUTED this _____ day of _____, 20__.

Owner: Union Pacific Railroad Company, a Delaware Corporation
1400 Douglas St - STOP 1690
Omaha, NE 68179-1690

By: _____ as _____

Name: _____ Title: _____

STATE OF COLORADO)
) §
COUNTY OF EAGLE)

The foregoing Certificate of Dedication and Ownership was acknowledged before me this _____ day of _____, 20__, by _____ as _____ of Union Pacific Railroad Company, a Delaware Corporation.

Witness my hand and official seal. _____ (SEAL)
Notary Public

My commission expires: _____

FINAL PLAT

GROUSE CREEK SUBDIVISION

TOWN OF MINTURN - COUNTY OF EAGLE - STATE OF COLORADO

TITLE CERTIFICATE

_____ does hereby certify that it has examined the title to all lands shown upon this Plat and that title to such lands is vested in Union Pacific Railroad Company, a Delaware Corporation, free and clear of all liens, and encumbrances, except as follows:

DATED this _____ day of _____, 20__.

Agent: _____

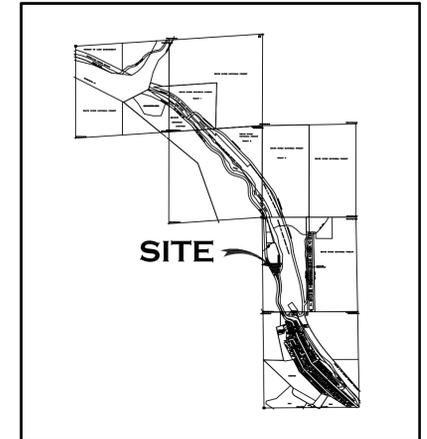
CERTIFICATE OF TAXES PAID

I, the undersigned, do hereby certify that the entire amount of taxes and assessments due and payable as of _____ upon all parcels of real estate described on this Plat are paid in full.

Dated this _____ day of _____, A.D., 20__.

NOTES:

- 1) The purpose of this Final Plat is create Lot 1 and Lot 2 within the the Town of Minturn.
- 2) BASIS OF BEARING: N90°00'00" E for the northerly line between found monuments, as shown hereon.
- 3) Survey Date: September, 2015.
- 4) Legal description, location of improvements, lot lines, record easements and rights of way are based upon the Stewart Title (File Number: 01330-60908) Commitment dated May 18, 2015 and survey monuments found at the time of this survey as shown hereon.
- 5) According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten years from the date of the certification hereon.



VICINITY MAP - 1" = 3000'
TOWNSHIP 5 SOUTH - RANGE 81 WEST

MINTURN TOWN CERTIFICATE

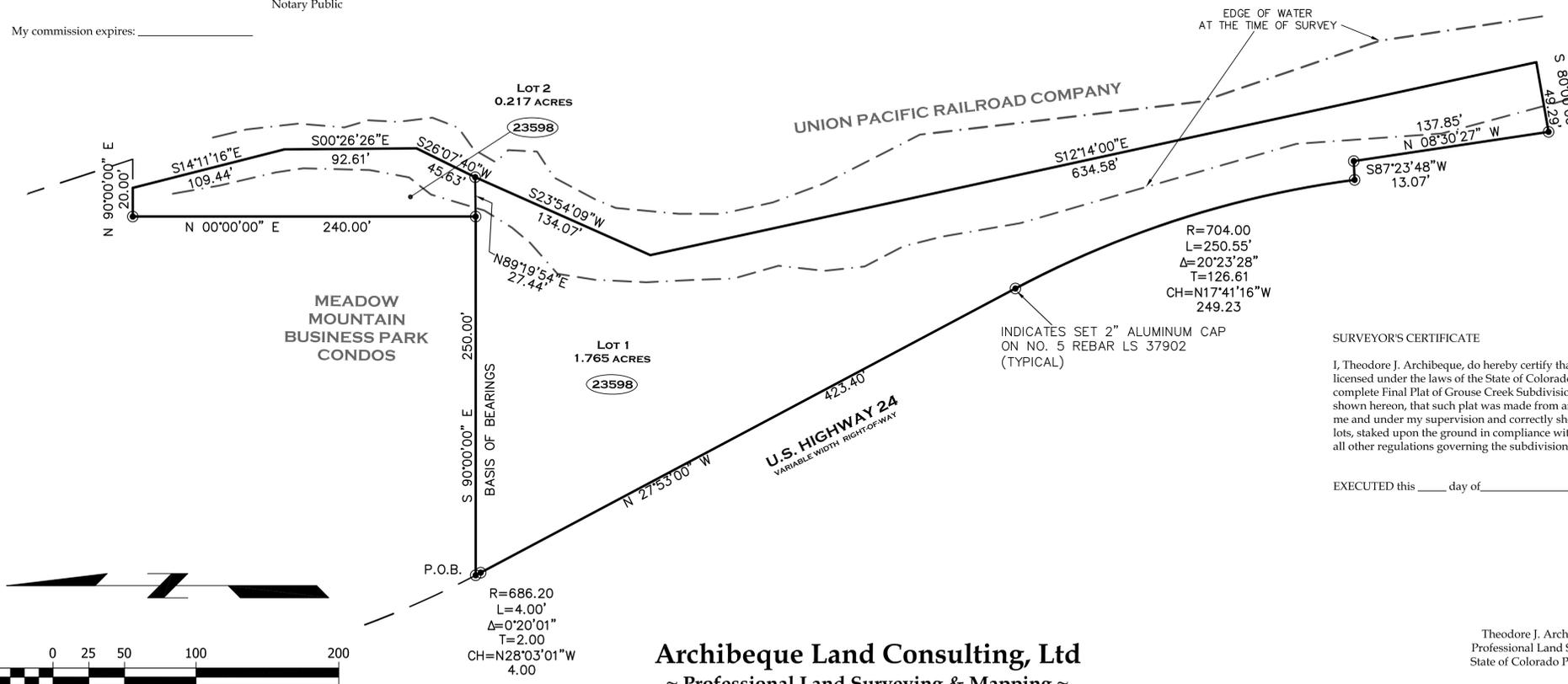
This Plat approved by the Town Council of the Town of Minturn, Colorado, this _____ day of _____, 20__ for filing with the Clerk and Recorder of Eagle County, Colorado, and for conveyance or dedication to the Town of the public dedications shown herein; subject to the provisions that approval in no way obligates the Town of Minturn for financing or constructing of improvements on said lands, streets or easements dedicated to the public, except as specifically agreed to by the Town Council of the Town of Minturn.

TOWN OF MINTURN, COLORADO

By: _____
Mayor

Witness my hand and seal of the Town of Eagle, Colorado.

ATTEST: _____
Town Clerk



SURVEYOR'S CERTIFICATE

I, Theodore J. Archibeque, do hereby certify that I am a professional land surveyor licensed under the laws of the State of Colorado, that this plat is a true, correct, and complete Final Plat of Grouse Creek Subdivision, as laid out, platted, dedicated and shown hereon, that such plat was made from an accurate survey of said property by me and under my supervision and correctly shows the location and dimensions of the lots, staked upon the ground in compliance with 38-51-105 C.R.S., as amended, and all other regulations governing the subdivision of land.

EXECUTED this _____ day of _____, A.D. 20__.

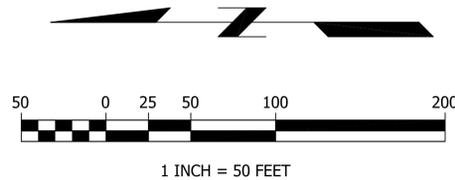
Theodore J. Archibeque
Professional Land Surveyor
State of Colorado PLS 37902

EAGLE COUNTY CLERK AND RECORDER CERTIFICATE

This Plat was filed for record in the office of the Eagle County Clerk and Recorder at _____ o'clock ____M. on the _____ day of _____, 20__, and is duly recorded in Reception No. _____

EAGLE COUNTY CLERK & RECORDER

By: _____
Deputy



Archibeque Land Consulting, Ltd
~ Professional Land Surveying & Mapping ~
115 Broadway, Suite 5 - P.O. Box 3893 - Eagle, Colorado 81631
970.328.6020 Office 970.328.6021 Fax
INFO@PROLANDSURVEY.COM

REVISED 12-16-2015 CAP UPDATED BOUNDARY
REVISED 11-24-2015 TJA CERTS
REVISED 10-8-2015 TJA ADDED LOT 2

FINAL PLAT		
GROUSE CREEK		
SUBDIVISION		
TOWN OF MINTURN - COUNTY OF EAGLE		
STATE OF COLORADO		
DRAWN BY: TJA	JOB NUMBER: 15215	DRAWING NAME: 15215-FP2.dwg
SHEET 1 OF 1	DATE: 09-25-2015	CHECKED BY: MSS

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application is the only portion of PUD Holding Zone that is located west of the Eagle River. These two acres are physically separated from the area that is a logical extension of the town center. The separation from the eastern railroad lands and the distance along Highway 6 from the existing town center make this property very unlikely to be included in any expansion of the town core area.

As an outlying parcel with direct access from Highway 6 the master plan statement quoted above is particularly applicable and indicates that this land may be reviewed as a separate application.

The UPRR has determined that this land west of the river is not a functional portion of their contiguous land area to the east of the river and has listed the property for sale.

This application proposes to change the land west of the river to the Grouse Creek commercial zone.

Description of the property and proposed plan

The proposed parcel is 2.019 acres in size and is bounded on the west and south by Highway 6 & 24 and on the north by the Meadow Mountain Business Park. The centerline of the Eagle River will become the east boundary of the parcel.

A small portion of the proposed parcel extends behind the Meadow Mountain Business Park (“MMBP”). As this land is immediately adjacent to the MMBP parcel and functions as a part of that property this application proposes to create that area as a separate parcel. The intent is to convey that parcel to the MMBP association. The accompanying plat describes this area as Lot 2 and the Intermountain parcel as Lot 1. (See Figure 2, Plat Map)

In June of 2015 Intermountain Landscaping and Maintenance entered into a purchase contract with the UPRR to purchase the land described by the proposed plat. Intermountain Landscape and Maintenance was established in the mid-1980’s by Ziggy Gosiewski and is operated by Ziggy and his two adult children, Rob and Katie. The company operates on a seasonal basis, generally from May until late November. The company currently offices in the Warner Building in EagleVail and has a long term lease on a contractor’s yard in the Ute Creek Industrial Park in Wolcott, near the county landfill, which is used for long term and large equipment storage. The company has leased a yard area on Highway 6 in the EagleVail Business District for the past 12 years and conducts the seasonal day-to-day operations from that site. As of 2016 that lease is no longer available and the company has a need for a centrally located yard area. The company currently employs approximately twenty-five to thirty-five people in the summer season and runs a fleet of approximately twenty-three vehicles. Generally, about seventeen of

these vehicles park overnight in the yard and six vehicles go home with supervisory employees.

The footprint of the useable area measures approximately 0.52 acres with most of the remainder of the total site area consisting of river, undisturbed river setback and riparian area. The property will be used for summer seasonal storage of flowers, plants, soils, mulches, tools and vehicles. Employees will arrive here in the morning to park, receive their work assignments, and pick up company vehicles, tools and materials and head out to jobsites. Intermittent daily traffic will be in and out picking up and dropping off tools and materials.

There would be, at least in the short-term future, no permanent buildings on-site. Storage containers and a seasonal 60' by 20' greenhouse would be the only structures. A screened port-a potty would be placed on site during the summer season. Water and electric service are the only utility extensions that would be made immediately. (See Figure 3, Conceptual Site Plan)

Future plans include the development of a small building on site that would include a bathroom, storage and a small office space. Sanitary sewer service would be extended to the site to serve this building.

An access drive would be constructed towards the south end of the site in accordance with CDOT design standards and regulations. Prior to any construction on-site a CDOT Access permit will be required and access improvements will be made in accordance with this CDOT approval. The preliminary design indicates that Highway 6 & 24 would be widened to accommodate left and right turn lane bays.

Access

Alpine Engineering, Inc. has analyzed a possible access point into the property from Highway 24 through the State Highway Access Code requirements. Per the CDOT code, a left turn deceleration bay is required if the peak hour volume exceeds 25 vehicles per hour. Based on the estimated traffic counts provided by the applicant, a peak hour volume of approximately 23 VPH, will be generated during the A.M. Peak Hour. Based on our experience with CDOT access permits, they may require the left turn bay due to the high background volume on Highway 24. The proposed auxiliary lanes appear to fit well on the existing highway platform width and will require minor widening through the area where mainflow traffic has been redirected and the turn lane bay is at its full width. The improvements shown on Figure 4, Access Plan) are schematic and based on the current CDOT code assuming a left turn bay is required. A traffic study and access permit application prepared by a registered professional Traffic Engineer will be submitted to CDOT to determine all of the requirements for lane improvements associated with a new access point prior to any site construction.



INTERMOUNTAIN LANDSCAPING & MAINTENANCE, INC.

Date: 11/23/15

CONCEPTUAL SITE PLAN

Minturn, Colorado



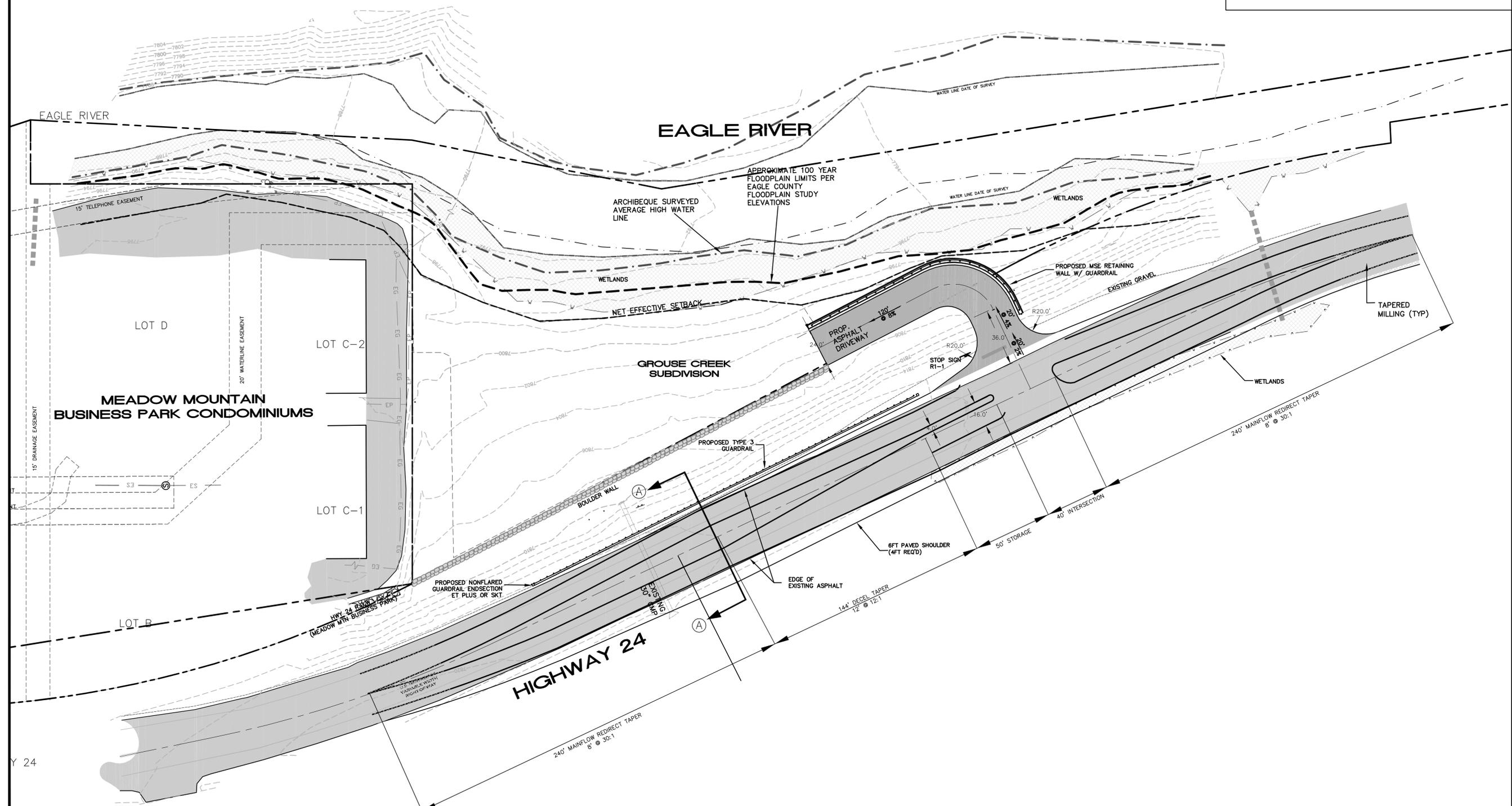
Prepared by: PYLMAN & ASSOCIATES

DENVER WESTERN AND RIO GRANDE RAILROAD

PRELIMINARY PLAN
November 18, 2015
NOT FOR CONSTRUCTION

GRAPHIC SCALE
(IN FEET)
1 inch = 30 ft.

ALPINE ENGINEERING INC
EDWARDS BUSINESS CENTER • P.O. BOX 97
EDWARDS, COLORADO • P.O. BOX 23390
• 970.266.3333 • FAX 970.266.3390

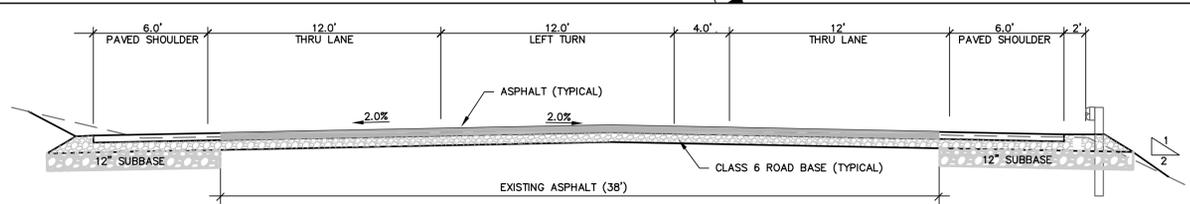


GROUSE CREEK SUBDIVISION
MINTURN, CO
SCHEMATIC ACCESS & SITE PLAN

NO.	DATE	REVISIONS	BY

DESIGNED MCW
DRAWN MCW
CHECKED GIBXAK
JOB NO. _____
DATE 07/01/15

SHEET 1



- AUXILIARY LANE DESIGN CRITERIA**
Per CDOT State Highway Access Code 2002.
- Road- NRB (non rural arterial)
 - Speed Limit-40 mph
 - Access- 2% for 20ft
 - Existing Highway- Grade approx. 1-2%
 - Access Radius- designed for Platform fire truck
 - Driveway- 24' wide for Commercial per Town
 - Sight Distance- 325' Design (275' Min.)

NOTES:

- EXISTING PROPERTY LINES, TOPOGRAPHIC, FLOODPLAIN AND BASE INFORMATION SHOWN ON THIS PLAN ARE FROM EAGLE COUNTY GIS DEPARTMENT DRAWINGS. NO FIELD VERIFIED INFORMATION WAS USED FOR THIS PLAN.
- THE INFORMATION SHOWN FOR THE MEADOW MOUNTAIN BUSINESS PARK CONDOMINIUMS WAS BASED ON THE RECORDED PLAT. A DISCREPANCY BETWEEN THE EAGLE COUNTY GIS BASE DRAWING AND THE PLAT IS NOTED HEREON FOR THE HIGHWAY 24 RIGHT OF WAY.
- THE SCHEMATIC LAYOUT OF THE AUXILIARY HIGHWAY TURN LANES SHOWN ARE BASED ON THE CDOT STATE HIGHWAY ACCESS CODE
- THE APPROXIMATE ORDINARY HIGH WATER LINE AND SUBSEQUENT 30' STREAM SETBACK LINE WERE SKETCHED ON THIS PLAN PER THE EAGLE COUNTY PHOTO PANEL TO PROVIDE SOME GENERAL IDEA OF LOCATION.
- PROPERTY LINES AND EASEMENTS SHOWN ON THIS PLAN ARE APPROXIMATE AND AN UPDATED FIELD SURVEY BASED ON AN UPDATED TITLE COMMITMENT SHOULD BE PREPARED TO DETERMINE IF ANY ADDITIONAL EASEMENTS AFFECT THIS PROPERTY.
- SETBACKS SHOWN ON THIS PLAN ARE BASED ON THE TOWN OF MINTURN LAND USE REGULATIONS.
- THE PROPOSED PARCEL BOUNDARY HAS NOT BEEN DEFINED BY A METES AND BOUND SURVEY OR PLAT. THE PARCEL REPRESENTED HEREON WAS BASED ON A SKETCH PROVIDED BY UP RAILROAD.

P:\MINTURN\1501\dwg\WaterAccessPlan.dwg, 2/4/2015, 11:18:20 AM, 3:26:11 PM, Niles

Site Utilities

a. Water

Based on the Town of Minturn water system plans provided by the Town's consulting engineer, an 8" water main crosses the Eagle River to serve the Meadow Mountain Business Park Condos (MMBPC). According to the plans, the 8" water main runs north of the southeastern most building, runs through the middle of the parking lot and includes two fire hydrants.

b. Sanitary Sewer

Per the ERWSD as built drawings, the sanitary sewer is located in the parking lot of the MMBPC. The applicant is currently in discussion with the MMBPC about extending this existing line to the proposed site. This will require cutting through the existing asphalt parking lot to extend the sewer main to the south. Sewer main extensions are dedicated to Eagle River Water and Sanitation District (ERWSD) and they require easements for access and maintenance of the main.

c. Shallow Utilities

Based on the plans provided by CenturyLink for communications and Excel for gas and electric the shallow utilities are located within the business park property. Additional coordination with the utility providers will be needed at the next level of design to understand if there is adequate capacity to serve the project and to determine the location to connect to the existing infrastructure to extend to the proposed site.

d. Easements

Most of the existing utilities fall within the Meadow Mountain Business Park, therefore utility extensions to the parcel will require agreements with the business park owners for impact, repair and replacement of existing improvements such as parking and landscaping and, the utility providers will require easements be created and dedicated for each respective utility extension for egress and maintenance purposes. The business park owners will be required to convey these easements across the portions of their property to the utility providers as a part of the approval and acceptance process for the utility extensions.

e. Storm Sewer

An existing 30" diameter culvert runs under Highway 24 and discharges directly on to the parcel. The storm flows from this culvert will need to be routed across the site to discharge into the Eagle River. The volume of flow and size of possible piping will need to be further evaluated as a part of the drainage study typically required by the Town and CDOT.

Emergency Services

The Eagle River Fire Protection District and the Eagle County Health Services District will provide fire and medical emergency services. The access drive and site design will accommodate emergency service vehicle access for the appropriate size vehicles.

Town of Minturn services and fiscal impacts:

Water service will be established with the Town. At this time the water service will be limited to irrigation of stored plant materials and greenhouse flowers.

The fiscal impacts and gains to the Town of Minturn will be very moderate. As the property changes ownership and land use is revised the Eagle County tax classification will change to a commercial category. This should provide a minor increase in property tax collections.

The property will require very minimal expenditure in town services. Water service will be extended to the site at the cost of the applicant. There are no new public roads and no requirement for public works services.

Environmental Conditions

Western Ecological Resource Inc. has conducted a Vegetation Assessment report and a Wetlands Delineation report. There is riparian and wetland vegetation located along the riverbank for the length of the property. These areas have been field identified, flagged and located by survey. A net effective no disturbance line has been identified on the site plan that protects the riparian/wetland vegetation and respects the 50-foot Eagle River setback from the average high water line.

The upland area of the property consists of weeds and non-native grasses that have been disturbed by previous activities. There are no identified environmental constraints to the proposed development area. The Wetland and Vegetation Reports are included within the appendix of this report.

Town of Minturn Preliminary Environmental Assessment

When required by the Planning Commission, submission and review of a preliminary environmental assessment on any proposed land development, land use change, Planned Unit Development or subdivision that may affect to any significant degree the quality of the natural, cultural, social or economic environment in the Town shall include a preliminary environmental assessment of whether the proposed project "will," "will not" or "could possibly" affect the environment, either during construction or on a continuing basis in each of the following respects:

(1) By altering an ecological unit or landform, such as a ridgeline, saddle, draw, ravine, hillside, cliff, slope, creek, marsh, watercourse or other natural landform feature;

Applicant response: This application will not significantly alter an ecological unit or landform.

(2) By directly or indirectly affecting a wildlife habitat, feeding ground or nesting ground;

Applicant response: This application will not directly affect any wildlife habitat, feeding or nesting ground. The site is adjacent to the Eagle River and all riparian areas and river setbacks will be protected. A grading and drainage plan will be designed to protect water quality from any soils or material runoff.

(3) By altering or removing native grasses, trees, shrubs or other vegetative cover;

Applicant response: The proposed development area of the site consists of non-native vegetation and has been disturbed by previous uses. The development plan will not impact native vegetative cover. The riparian corridor and wetlands vegetation have been identified and the locations surveyed and will be protected from disturbance.

(4) By affecting the appearance or character of a significant scenic area or resource, or involving buildings or other structures that are of a size, bulk or scale that would be in marked contrast to natural or existing cultural features;

Applicant response: The plan for this site consists of low-key storage and parking uses that will not affect the character of the overall area.

(5) By potentially resulting in rock fall, avalanche, landslide, siltation, settlement, flood or other landform change or hazard to health and safety;

Applicant response: There are no apparent natural hazards that will affect health or safety.

(6) By discharging toxic or thermally abnormal substance or involving use of herbicides or pesticides, or emitting smoke, gas, steam, dust or other particulate matter;

Applicant response: There will not be any discharge of toxic, thermal, pesticide or herbicide products.

(7) By involving any process which results in odor that may be objectionable or

damaging;

Applicant response: There will not be any objectionable or damaging odor produced on site.

(8) By requiring any waste treatment, cooling or settlement pond, or requiring transportation of solid or liquid wastes to a treatment or disposal site;

Applicant response: The plan will not require any such treatment or transportation of wastes.

(9) By discharging significant volumes of solid or liquid wastes;

Applicant response: There will not be a discharge of significant volumes of solid or liquid wastes.

(10) By increasing the demand on existing or planned water supply, sewage disposal, storm drainage or other utility systems to a level which is likely to cause an adverse impact on the Town or the environment;

Applicant response: There will not be an impact upon the Town or other utility systems that will cause an adverse impact to the Town or the environment.

(11) By involving any process which generates noise that may be offensive or damaging;

Applicant response: There will not be a generation of noise that may be offensive or damaging.

(12) By either displacing significant numbers of people or resulting in a significant increase in population;

Applicant response: There will not be any displacement of people or an increase in population as a result of this application.

(13) By preempting a site that is desirable for recreational uses or planned open space;

Applicant response: This plan will not preempt a recreational or open space site.

(14) By altering local traffic patterns or causing an increase in traffic volume or transit service need; and/or

Applicant response: This plan will not alter local traffic patterns or cause an increase in traffic volume or transit service need.

(15) By being a part of a larger project that, at any future stage, may involve any of the impacts listed above.

Applicant response: This application is not part of a larger project.

Zone Change

The property is currently designated as part of the Game Creek PUD Holding Zone. This application proposes to amend the Town of Minturn Zoning Map to remove this parcel from the Game Creek Character Area and expand the adjacent Grouse Creek Character Area to include the parcel.

The following criteria are listed in the Town of Minturn Code as the standards for evaluation of a zone change. Each individual criteria is listed below and underlined with an applicant response provided:

(1) Consistency with Master Plan. Whether and the extent to which the proposed amendment is consistent with the purposes, goals, policies and Character Area Zoning Map of the Master Plan.

Applicant response: The proposed use is commercial in nature and is consistent with the uses found along Highway 6 & 24 north of the town center. The proposed use is compatible with the adjacent lands designation of Grouse Creek Character Area.

(2) Compatible with surrounding uses. Whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject land and is the appropriate Character Area and zone district for the land, considering its consistency with the purpose and standards of the proposed zone district.

Applicant response: As stated above, the proposed use is commercial in nature and is consistent with the uses found along Highway 6 & 24 north of the town center. The proposed use is compatible with the adjacent lands designation of Grouse Creek Character Area.

(3) Changed conditions. Whether and the extent to which there are changed conditions that require an amendment to modify the use, density or intensity.

Applicant response: The existing character area designation is meant as a holding zone until a development plan is proposed. The UPRR has decided to sell this portion of their holdings, which creates a changed condition and the opportunity to create a development plan for the parcel.

(4) Effect on natural environment. Whether and the extent to which the proposed

amendment would result in significantly adverse impacts on the natural environment, including but not limited to water, air, noise, stormwater management, wildlife habitat, vegetation and wetlands.

Applicant response: This application includes an analysis of the existing and proposed environmental conditions that finds no reason that the proposed use should not be supported. A comprehensive vegetation and wetlands analysis and a soils analysis have been completed and are included with this report.

(5) **Community need.** Whether and the extent to which the proposed amendment addresses a demonstrated community need.

Applicant response: The above narrative describes the proposed use of the property and identifies the applicant's need for such use. There is no other available land in Minturn or the greater Eagle River Valley community that will support this use.

(6) **Development patterns.** Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern and not constitute spot zoning, and whether the resulting development can logically be provided with necessary public facilities and services.

Applicant response: There is commercial zoning with similar land uses along the Highway 6 & 24 corridor in close proximity to this location. The property immediately adjacent to this parcel, the Meadow Mountain Business Park, is zoned commercial. This proposal does represent logical and orderly growth and does not constitute spot zoning. The development can be logically provided with the necessary public facilities and services.

(7) **Public interest.** Whether and the extent to which the area to which the proposed amendment would apply has changed or is changing to such a degree that it is in the public interest to encourage a new use or density in the area

Applicant response: The ownership conditions of this property are changing as the UPRR has determined that this parcel no longer serves their needs as any part of their future operations. Putting this property to a beneficial use serves a general public benefit.

Subdivision

This proposal includes a Minor Type A Subdivision application. The land proposed for this re-zoning and subdivision is currently part of a much larger parcel of land that is owned by the UPRR. The subdivision will create a property line down the center of the river that will separate this parcel from the remainder of the railroad lands east of the river. The southern boundary of the Meadow Mountain Business Park will form on side and the Highway 6 & 24 road right of way will form the

western and southern boundaries of the parcel.

As a fairly simple subdivision request the applicant has proposed combining the Preliminary and Final Plat review process together under this application.

The following standards are listed in the Town of Minturn Code as the review standards for a Type A Minor Subdivision. Each individual standard is listed below (underlined) and an applicant response is provided.

a. Consistent with Chapter 16. The proposed subdivision shall comply with all of the standards of this Section and all other provisions of Chapter 16 of this Code, including but not limited to the applicable standards of Article 3 and Article 16.

Applicant response: The proposed application, which includes a companion zone change request, complies with all relevant standards of Chapter 16, which is the Zoning Chapter of the Town Code. Article 3 references the Character Area and Zones. The property is located in the Game Creek Character PUD Holding Zone and this application includes a request to re-zone the parcel to the Grouse Creek Character Area. A description of this holding zone and the application compliance with this section of code is articulated above in the narrative and the zone change evaluation criteria.

Article 16 references the Off-Street Parking standards. While there is no specific standard within the code for the proposed use the site plan has been specifically designed to accommodate the parking needs of the applicant.

b. Spatial pattern shall be efficient. The proposed subdivision shall be located and designed to avoid creating spatial patterns that cause inefficiencies in the delivery of public services, required duplication or premature extension of public facilities or result in a leapfrog pattern of development.

Applicant response: This application meets this standard. The subdivision of the parcel does not create any inefficiency in public services nor does it create any duplication or extension of services. The pattern of development is infill and does not meet any definition of leapfrog development.

c. Utility and road extensions. Proposed utility extensions shall be consistent with the utility's service plan or shall require prior Town approval of an amendment to the service plan. Proposed road extensions shall be consistent with the Town Road Capital Improvements Plan.

Applicant response: Utility extensions have been reviewed by each provider and are described in this narrative and indicated on the attached graphics. There is no required road extension.

d. Service ultimate population. Utility lines shall be sized to serve the planned

ultimate population of the service area in order to both avoid future land disruption and the necessity of upgrading under-sized lines.

Applicant response: The utility line extensions have been sized for the appropriate use of the property. There does not appear to be any need or reason to extend the utility lines beyond this property.

e. Suitability for development. The property proposed to be subdivided shall be suitable for development, considering its topography, environmental resources and natural or man-made hazards that may affect the potential development of the property, and existing and probable future improvements to the area.

Applicant response: The property is suitable for the proposed level of development. Topography, environmental conditions, access and potential hazards have been reviewed and are discussed elsewhere within this narrative. There do not appear to be any physical constraints to development of the proposed plan.

f. Compatible with surrounding uses. The proposed subdivision shall be compatible with the character of existing land uses in the area and shall not adversely affect the future development of the surrounding area.

Applicant response: The proposed use is compatible with surrounding uses and compatible with the character of adjacent and nearby land uses.

g. Improvements agreements. The adequacy of the proposed improvements agreement, where applicable.

Applicant response: A proposed improvements agreement has not been made a part of this application.

h. Conformance with final plat requirements. Its conformance with the final plat requirements and other applicable regulations, policies, standards and guidelines.

Applicant response: The documents presented conform to the Town of Minturn requirements to the best of the applicant's knowledge. The Town staff will review the proposed plat and provide input and request modifications as appropriate. The applicant will make all required plat revisions prior to filing of the document.

Summary

The intent of this application is to provide the relevant information necessary to review the subdivision of this land and to review a zone change from the Game Creek Character Area PUD Holding Zone to the Grouse Creek Character Area, which will allow for the commercial use proposed for the property. The application meets

the master plan and PUD zone district criteria for the Town of Minturn, has no significant environmental impacts and is compatible with adjacent land uses.

stewart title[®]

View your transaction progress 24/7 via [Stewart Online](#)
Ask us about your login today!

Stewart Title - Edwards
97 Main Street, Ste W-201
Edwards, CO 81632

Date: May 18, 2015
File Number: 01330-60908
Property: 00 unknown, Minturn, CO 81645

Please direct all Closing inquiries to:

Cindy Denney
Phone: (970) 766-0232 **Fax:** (970) 926-0235
Email Address: cdenney@stewart.com

SELLER:

Union Pacific Railroad Company, a Delaware Corporation
Delivery Method: Emailed

LISTING AGENT:

Slifer Smith & Frampton Real Estate
230 Bridge St
Vail, CO 81657
Contact: Hillary McSpadden
Phone: (970) 476-2421
Fax: (970) 476-2658
Email: hmcspadden@slifer.net

Delivery Method: Emailed

LENDER:

To Be Determined
CO

Please direct all Title inquiries to:

Linda Williams
Phone: (970) 766-0234
Email Address: lwilliam3@stewart.com

BUYER:

Intermountain Landscaping and Maintenance, Inc., a
Colorado Corporation
Delivery Method: Emailed

SELLING AGENT:

Access Properties of Vail
500 S Frontage Rd E
Ste 112
Vail, CO 81657
Contact: Kurt Davis
Phone: (970) 476-8610
Fax: (970) 476-8637
Email: kdavis@vail.net

Delivery Method: Emailed

WIRED FUNDS ARE REQUIRED ON ALL CASH PURCHASE TRANSACTIONS. THE WIRING INSTRUCTIONS ARE INCLUDED IN THIS TITLE COMMITMENT OR FEEL FREE TO CONTACT THE ESCROW OFFICE AS NOTED ON THIS PAGE.



Stewart Title - Edwards

97 Main Street, Ste W-201
Edwards, CO 81632
(970) 926-0230

Escrow Number: 01330-60908

WIRING INSTRUCTIONS

**US Bank
535 Westminster Mall
Westminster, CA 92683**

**Beneficiary:
STEWART TITLE
ACCOUNT #: 153910695060
Routing/Transit #: 123000848**

PLEASE REFERENCE:

Escrow Number: 01330-60908

Escrow Officer: Cindy Denney

Property Address: 00 unknown
Minturn, CO 81645

Buyer/Borrower: Intermountain Landscaping and Maintenance, Inc., a Colorado Corporation

Please be aware Stewart Title cannot accept ACH'S to our Escrow Account

ALTA Commitment Form
COMMITMENT FOR TITLE INSURANCE
Issued by
STEWART TITLE GUARANTY COMPANY

STEWART TITLE GUARANTY COMPANY, a Texas Corporation ("Company"), for a valuable consideration, commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the Proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest in the land described or referred to in Schedule A, upon payment of the premiums and charges and compliance with the Requirements; all subject to the provisions of Schedules A and B and to the Conditions of this Commitment.

This Commitment shall be effective only when the identity of the Proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A by the Company.

All liability and obligation under this Commitment shall cease and terminate six months after the Effective Date or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue the policy or policies is not the fault of the Company.

The Company will provide a sample of the policy form upon request.

This Commitment shall not be valid or binding until countersigned by a validating officer or authorized signatory.

IN WITNESS WHEREOF, Stewart Title Guaranty Company has caused its corporate name and seal to be affixed by its duly authorized officers on the date shown in Schedule A.

Countersigned by:


Authorized Countersignature

stewart
title guaranty company


Matt Morris
President and CEO

Stewart Title - Edwards
97 Main Street, Ste W-201
Edwards, CO 81632
(970) 926-0230




Denise Carraux
Secretary



CONDITIONS

1. The term mortgage, when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed Insured has or acquired actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions.
3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions and Conditions and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. This Commitment is a contract to issue one or more title insurance policies and is not an abstract of title or a report of the condition of title. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.
5. *The policy to be issued contains an arbitration clause. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. You may review a copy of the arbitration rules at <<http://www.alta.org/>>.*

All notices required to be given the Company and any statement in writing required to be furnished the Company shall be addressed to it at P.O. Box 2029, Houston, Texas 77252.

COMMITMENT FOR TITLE INSURANCE
SCHEDULE A

File No.: **01330-60908**

1. Effective Date: **May 12, 2015, at 8:00 A.M.**

2. Policy or Policies to be issued:	Amount of Insurance
(a) A.L.T.A. Owner's Policy 2006 (Extended)	\$525,000.00
Proposed Insured:	
Intermountain Landscaping and Maintenance, Inc., a Colorado Corporation	
(b) A.L.T.A. Loan Policy 2006 (Standard)	\$0.00
Proposed Insured:	
To Be Determined	

3. The estate or interest in the land described or referred to in this Commitment and covered herein is:

Fee Simple

4. Title to the said estate or interest in said land is at the effective date hereof vested in:

Union Pacific Railroad Company, a Delaware corporation

5. The land referred to in this Commitment is described as follows:

See Attached Legal Description

Purported Address:
00 unknown
Minturn, CO 81645

STATEMENT OF CHARGES

These charges are due and payable
before a policy can be issued

Basic Rate	
2006 Owner's Policy:	\$1569.00
Owner's Extended Coverage:	\$65.00
2006 Loan Policy:	\$150.00
Tax Certificate:	\$25.00

SCHEDULE A

LEGAL DESCRIPTION

A parcel of land lying in the NW Quarter of Section 26, Township 5 South, Range 81 West of the Sixth Principal Meridian, Eagle County, Colorado, being more particularly described as follows:

Beginning at a point on the easterly right-of-way line of U.S. Highway No. 24

Whence the NW corner of said Section 26 bears N 08°57'37" W a distance of 1,379.01 feet;

thence departing said right-of-way line and along the southerly property line of Meadow Mountain Business Park Condominiums S 90°00'00": E a distance of 250.00 feet;

thence N 00°00'00" W a distance of 240.00 feet;

thence S 90°00'00" E a distance of 40.00 feet to the centerline of the Eagle River;

thence departing said southerly property line along said centerline of the Eagle River S 03°00'00" W a distance of 240.00 feet;;

thence S 11°00'00" W a distance of 160.00 feet;

thence S 09°15'00" E a distance of 596.05 feet;

thence departing said centerline S 80°00'00" W a distance of 34.20 feet to the easterly right-of-way line of U.S. Highway No. 24;

thence along said easterly right-of-way line N 08°30'27" W a distance of 137.85 feet;

thence S 87°23'48" W a distance of 13.07 feet to the point of curvature of a non-tangent curve, concave to the west, having a radius of 704.00 feet a central angle of 20°23'28", and a chord of 249.23 feet bearing S 17°41'16" E;

thence North along said curve, a distance of 250.55 feet;

thence N 27°53'00" W a distance of 423.40 feet to the point of curvature of a tangent curve, concave to the northeast, having a radius of 686.20 feet and a central angle of 00°20'01";

thence Northwest along said curve, a distance of 4.00 feet, curving to the right TO THE POINT OF BEGINNING

COUNTY OF EAGLE, STATE OF COLORADO.

NOTE: LEGAL DESCRIPTION IS SUBJECT TO CHANGE UPON SUBMISSION OF A CURRENT SURVEY

COMMITMENT FOR TITLE INSURANCE
SCHEDULE B
PART I

File No.: 01330-60908

The following are the requirements to be complied with:

1. **Payment to or for the account of the grantor(s) or mortgagor(s) of the full consideration for the estate or interest to be insured.**
2. **Proper instrument(s) creating the estate or interest to be insured must be executed and duly filed for record.**
3. Evidence satisfactory to Stewart Title Guaranty Company of payment of all outstanding taxes and assessments as certified by the County Treasurer.
4. Execution of Affidavit as to Debts and Liens and its return to Stewart Title Guaranty Company.

NOTE: If work has been performed on, or in connection with, the subject property (architectural drawings, soils testing, foundation work, installation of materials), please notify the Company's escrow officer within 10 days of receipt of this title commitment.

5. Evidence satisfactory to Stewart Title Guaranty Company that the real estate transfer tax assessed by the Town of Minturn has been paid or that the transaction is exempt from said tax.
6. A SURVEY, meeting the minimum detail standards of the ALTA/ACSM, Survey, prepared by a registered Colorado surveyor, within the last TWO MONTHS, must be presented to Stewart Title Guaranty Company, for its approval prior to the deletion of any survey exceptions from the OWNERS POLICY.
Stewart Title Guaranty reserves the right to take exception to any adverse matters as shown on said survey, or Make further inquiry or requirements relative thereto.
Said Survey, must be certified to Stewart Title of Colorado and/or Stewart Title Guaranty Company
7. Relating to Union Pacific Railroad Company, a Delaware corporation, The Company requires for its review the following:
 - a) A satisfactory resolution of the Board of Directors authorizing the proposed transaction (Shareholders Resolution where applicable)
 - b) Certificate of Good Standing issued by the Delaware Secretary of State.
8. Execution of Statement of Authority pursuant to the provisions of Section 38-30-172 C.R.S., for Union Pacific Railroad Company, as it relates to subject transaction.
9. Relating to Intermountain Landscaping and Maintenance, Inc., a Colorado corporation, The Company requires for its review the following:
 - a) A satisfactory resolution of the Board of Directors authorizing the proposed transaction (Shareholders Resolution where applicable)
 - b) Execution and recordation of Statement of Authority pursuant to the provisions of Section 38-30-172 C.R.S.
Note: The Colorado Secretary of State shows this corporation in good standing.
10. Deed from vested owner(s) vesting fee simple title in the purchaser(s).

NOTE: Notation of the legal address of the grantee must appear on the deed as per 1976 amendment to statute on recording of deeds CRS 38-35-109 (2).
11. Deed of Trust from the Borrower to the Public Trustee for the use of the proposed lender to secure the loan.



COMMITMENT FOR TITLE INSURANCE
SCHEDULE B
PART I

NOTE: The vesting deed is shown as follows: Quit Claim Deed recorded December 2, 2014 [as Reception No. 201420764](#).



COMMITMENT FOR TITLE INSURANCE
SCHEDULE B
PART II

File No.: 01330-60908

Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:

1. Rights or claims of parties in possession, not shown by the public records.
2. Easements, or claims of easements, not shown by the public records.
3. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the title that would be disclosed by an accurate and complete land survey of the Land and not shown by the public records.
4. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
5. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the Effective Date but prior to the date the proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.
6. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) Minerals of whatsoever kind, subsurface and surface substances, in, on, under and that may be produced from the Land, together with all rights, privileges, and immunities relating thereto, whether or not the matters excepted under (a), (b) or (c) are shown by the Public Records or listed in Schedule B.
7. Water rights, claims or title to water.
8. Any and all unpaid taxes and assessments and any unredeemed tax sales.
9. The effect of inclusions in any general or specific water conservancy, fire protection, soil conservation or other district or inclusion in any water service or street improvement area.
10. Reservations or exceptions contained in U.S. Patents, or in Acts authorizing the issuance thereof, recorded May 23, 1923 in [Book 48 at Page 388](#) reserving 1) Rights of the proprietor of a vein or lode to extract and remove his ore therefrom and 2) rights of way for ditches and canals constructed under the authority of the United States.
11. Water pipe together with hydrants, valves, fittings and other appurtenances thereto, and all other matters contained in the Bill of Sale from The Denver and Rio Grande Western Railroad to Town of Minturn recorded May 16, 1985 in [Book 414 at Page 326](#) as Reception 310601.
12. Pipe Line Crossing Agreement between The Denver and Rio Grande Western Railroad Company and the Town of Minturn recorded May 16, 1985 [in Book 414 at Page 327](#) as Reception No. 310602.
NOTE: Upon confirmation by the Town of Minturn, confirming this agreement and the bill of sale relating to it does not effect subject property, exceptions 11 and 12 will be deleted.
13. Easement to Upper Eagle Valley Sanitation District recorded May 10, 1979 [in Book 285 at Page 292](#) .
14. Order of Inclusion in the Eagle River Fire Protection District recorded June 24, 2002 [as Reception No. 799500](#).
15. Underground gas line encroachment by Public Service Company of Colorado [disclosed by unrecorded document](#).
16. As to the Eagle River:



COMMITMENT FOR TITLE INSURANCE
SCHEDULE B
PART II

- (a) All right, title or claim or any character by the United States, state, local government or by the public generally in and to any portion of the land lying within the current or former bed, or below the ordinary high water mark, or between the cut banks of a stream navigable in fact or in law.
- (b) Right of riparian water rights owners to the use and flow of the water.
- (c) The consequence of any past or future change in the location of the bed.

17. Any right of way of U.S. Highway No. 24.

18. Reservation of all minerals and mineral rights , together with the sole, exclusive and perpetual right to explore for, remove and dispose of said minerals by any means or methods but without right of surface entry and further covenants, conditions and restrictions as set forth in the QuitClaim Deed from Union Pacific Railroad Company, a Delaware corporation recorded _____

NOTE: Exceptions 1 and 4 may be deleted from the policies, provided the seller and buyer execute the Company's affidavits, as required herein, and the Company approves such deletions.

If work has been performed on, or in connection with, the subject property (architectural drawings , soils testing, foundation work, installation of materials), and the Company has not reviewed and approved lien waivers and indemnitor financials, Standard Exception 4 (mechanic lien exception) will not be deleted and no mechanic lien coverage will be furnished.

Exceptions 2 and 3 may be deleted from the policies, provided the Company receives and approves the survey or survey affidavit if required herein. Exception 5 will not appear on the policies, provided the Company, or its authorized agent, conducts the closing of the proposed transaction and is responsible for the recordation of the documents.

DISCLOSURES

File No.: 01330-60908

Pursuant to C.R.S. 10-11-122, notice is hereby given that:

- A. THE SUBJECT REAL PROPERTY MAY BE LOCATED IN A SPECIAL TAXING DISTRICT;
- B. A CERTIFICATE OF TAXES DUE LISTING EACH TAXING JURISDICTION SHALL BE OBTAINED FROM THE COUNTY TREASURER OR THE COUNTY TREASURER'S AUTHORIZED AGENT;
- C. INFORMATION REGARDING SPECIAL DISTRICTS AND THE BOUNDARIES OF SUCH DISTRICTS MAY BE OBTAINED FROM THE BOARD OF COUNTY COMMISSIONERS, THE COUNTY CLERK AND RECORDER, OR THE COUNTY ASSESSOR

Note: Colorado Division of Insurance Regulations 3-5-1, Subparagraph (7) (E) requires that "Every title entity shall be responsible for all matters which appear of record prior to the time of recording whenever the title entity conducts the closing and is responsible for recording or filing of legal documents resulting from the transaction which was closed." Provided that Stewart Title - Edwards conducts the closing of the insured transaction and is responsible for recording the legal documents from the transaction, exception number 5 will not appear on the Owner's Title Policy and the Lender's Title Policy when issued.

Note: Affirmative Mechanic's Lien Protection for the Owner may be available (typically by deletion of Exception No. 4 of Schedule B, Section 2 of the Commitment from the Owner's Policy to be issued) upon compliance with the following conditions:

- A. The land described in Schedule A of this commitment must be a single-family residence, which includes a condominium or townhouse unit.
- B. No labor or materials have been furnished by mechanics or materialmen for purposes of construction on the land described in Schedule A of this Commitment within the past 6 months.
- C. The Company must receive an appropriate affidavit indemnifying the Company against unfiled Mechanic's and Materialmen's Liens.
- D. The Company must receive payment of the appropriate premium.
- E. If there has been construction, improvements or major repairs undertaken on the property to be purchased, within six months prior to the Date of the Commitment, the requirements to obtain coverage for unrecorded liens will include: disclosure of certain construction information; financial information as to the seller, the builder and/or the contractor; payment of the appropriate premium; fully executed Indemnity agreements satisfactory to the company; and, any additional requirements as may be necessary after an examination of the aforesaid information by the Company.

No coverage will be given under any circumstances for labor or material for which the insured has contracted for or agreed to pay.

To comply with the provisions of C.R.S. 10-11-123, the Company makes the following disclosure:

- a. That there is recorded evidence that a mineral estate has been severed, leased or otherwise conveyed from the surface estate and that there is a substantial likelihood that a third party holds some or all interest in oil, gas, other minerals, or geothermal energy in the property; and
- b. That such mineral estate may include the right to enter and use the property without the surface owner's permission.

NOTE: THIS DISCLOSURE APPLIES ONLY IF SCHEDULE B, SECTION 2 OF THE TITLE COMMITMENT HEREIN INCLUDES AN EXCEPTION FOR SEVERED MINERALS.

NOTHING HEREIN CONTAINED WILL BE DEEMED TO OBLIGATE THE COMPANY TO PROVIDE ANY OF THE COVERAGES REFERRED TO HEREIN, UNLESS THE ABOVE CONDITIONS ARE FULLY SATISFIED.

STG Privacy Notice Stewart Title Companies

WHAT DO THE STEWART TITLE COMPANIES DO WITH YOUR PERSONAL INFORMATION?

Federal and applicable state law and regulations give consumers the right to limit some but not all sharing. Federal and applicable state law regulations also require us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand how we use your personal information. This privacy notice is distributed on behalf of the Stewart Title Guaranty Company and its title affiliates (the Stewart Title Companies), pursuant to Title V of the Gramm-Leach-Bliley Act (GLBA).

The types of personal information we collect and share depend on the product or service that you have sought through us. This information can include social security numbers and driver's license number.

All financial companies, such as the Stewart Title Companies, need to share customers' personal information to run their everyday business—to process transactions and maintain customer accounts. In the section below, we list the reasons that we can share customers' personal information; the reasons that we choose to share; and whether you can limit this sharing.

Reasons we can share your personal information.	Do we share	Can you limit this sharing?
For our everyday business purposes — to process your transactions and maintain your account. This may include running the business and managing customer accounts, such as processing transactions, mailing, and auditing services, and responding to court orders and legal investigations.	Yes	No
For our marketing purposes — to offer our products and services to you.	Yes	No
For joint marketing with other financial companies	No	We don't share
For our affiliates' everyday business purposes — information about your transactions and experiences. Affiliates are companies related by common ownership or control. They can be financial and non-financial companies. <i>Our affiliates may include companies with a Stewart name; financial companies, such as Stewart Title Company</i>	Yes	No
For our affiliates' everyday business purposes — information about your creditworthiness.	No	We don't share
For our affiliates to market to you — For your convenience, Stewart has developed a means for you to opt out from its affiliates marketing even though such mechanism is not legally required.	Yes	Yes, send your first and last name, the email address used in your transaction, your Stewart file number and the Stewart office location that is handling your transaction by email to optout@stewart.com or fax to 1-800-335-9591.
For non-affiliates to market to you. Non-affiliates are companies not related by common ownership or control. They can be financial and non-financial companies.	No	We don't share

We may disclose your personal information to our affiliates or to non-affiliates as permitted by law. If you request a transaction with a non-affiliate, such as a third party insurance company, we will disclose your personal information to that non-affiliate. [We do not control their subsequent use of information, and suggest you refer to their privacy notices.]

SHARING PRACTICES

How often do the Stewart Title Companies notify me about their practices?	We must notify you about our sharing practices when you request a transaction.
How do the Stewart Title Companies protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer, file, and building safeguards.
How do the Stewart Title Companies collect my personal information?	We collect your personal information, for example, when you <ul style="list-style-type: none"> ▪ request insurance-related services ▪ provide such information to us We also collect your personal information from others, such as the real estate agent or lender involved in your transaction, credit reporting agencies, affiliates or other companies.
What sharing can I limit?	Although federal and state law give you the right to limit sharing (e.g., opt out) in certain instances, we do not share your personal information in those instances.

Contact us: *If you have any questions about this privacy notice, please contact us at: Stewart Title Guaranty Company, 1980 Post Oak Blvd., Privacy Officer, Houston, Texas 77056*

SERVICE

**NOTICE OF
LAND USE PROPOSAL**

For the purposes of California Public Law 434
and the State of California, the following

PUBLIC HEARINGS WILL BE HELD

on the proposed project at the following location:



Official Minutes

MEETING OF THE MINTURN PLANNING COMMISSION

Minturn Town Center, 302 Pine Street
Minturn, CO 81645 • (970) 827-5645

Wednesday, January 13, 2016

Regular Session – 6:30 pm

PLANNING COMMISSION:

Lynn Teach – Chair

Burke Harrington

Bobby Head

Brad Bickerton

Planning Director– Janet Hawkinson

When addressing the Planning Commission, please state your name and your address for the record prior to providing your comments. Please address the Planning Commission as a whole. All supporting documents are available for public review in the Town Offices – located at 302 Pine Street, Minturn CO 81645 – during regular business hours between 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding holidays.

Work Session – 6:30pm

1. Call to Order

The meeting was called to order by Lynn Teach at 6:33 pm.

- Roll Call

Those present included: Chairperson Lynn Teach, and Commission Members Burke Harrington, Bobby Head, and Brad Bickerton.

Staff present included Planning Director Janet Hawkinson and Clerk Cindy Krieg.

- Pledge of Allegiance

2. Approval of Agenda

- Items to be Pulled or Added

Motion by Burke H. to approve, second by Bobby H., to approve the Agenda as presented. Motion passed (4-0).

3. Approval of Minutes

- December 9, 2015

Motion by Burke H., second by Bobby H., to approve the minutes of December 9, 2015. Motion passed (4-0).

4. Public comments on items which are not on the agenda (5 minute time limit per person)

No comments

5. Design Review: Preliminary Subdivision Approval: InterMountain Landscape & Maintenance, Inc., (hereby referred to as IL&M) Lot on Highway 24, Minturn. **Location:** Township 5 South – Range 81 West, Highway 24, Minturn, CO (Neighboring Meadow Mountain Business Park)

Janet H. introduced the Pre subdivision application, and introduced Rick Pylman from IL&M who presented the project details. This project involves 2 parts – a Subdivision of the Lot for purposes of landscape business, and a Zone Change from Game Creek Character Area (classified as a PUD holding zone) to Grouse Creek Character Area (Commercial Zoning). This lot is being sold by Union Pacific Railroad Company to InterMountain Landscape & Maintenance, Inc.

Rick P. introduced the team of InterMountain Landscape and Maintenance, Inc. He then described the Site Analysis, noted as follows:

- Lot area is 2 acres (87,120 sf), however only about ½ acre is usable space.
- No permanent buildings. Site will be used store landscape supplies and equipment
- Setbacks: Lot meets required setbacks of 20' front, 10' side yards, 10' rear, and 30' river set backs
- Snow storage – Upon approval of this subdivision, applicant agrees not to plow snow or remove snow from lot into the river
- Environmental Phase 1 Report – The applicant performed both a wetlands report and a vegetation assessment report performed by Western Ecological Resource, Inc. No clean-up is needed.

The actual subdivision plat consists of 2 lots – Lot 2 will be conveyed to Meadow Mountain Business Park given the location. Lot 1 would contain: Greenhouse, equipment storage, dump piles, employee parking, staging of company vehicles, staging for employees to pick up assignments and tools for the day before heading out to job sites. Seasonal business, 25 – 35 employees. A turnout lane will also be added to access the lot (working with CDOT to determine appropriate requirements). It was discussed that the project would also include some landscaping for aesthetics. The river side is presently screened with Colorado Spruce.

Ziggy Gosiewski of Vail, CO (owner, InterMountain Landscape and Maintenance, Inc.) fielded questions.

Bobby H. inquired about fuel storage and about more landscaping around the entrance to screen equipment and storage yard.

Ziggy G. stated that there will not be fuel storage on site. Landscaping on property is limited due to CDOT right of way and snow removal needs. Shrubs can be planted at the entrance, but trees may be difficult. Down lower some trees can be planted.

Bobby H. also asked about fencing. Ziggy G. stated that some fencing would be used around the greenhouse, but no chain link fence due to Minturn code (would be wooden fencing).

Burke H. asked about the width of the point of entry.

Ziggy G. stated that it is a 2 lane point of entry – 12 feet per lane, and that they would work within CDOT guidelines.

Brad B. asked about noise pollution and pollution in general.

Pickup trucks, 1 ton dump trucks (smaller class of vehicles) will be used. Excavation is all subbed out (not done on site).

It was expressed by Ziggy C. that there should not be any pollution concerns re. toxic chemicals, noise, traffic, etc.

Brad B. also mentioned that the aesthetics of the entrance are of concern given the current Entryway Project that Minturn is going through.

It was recommended by the members of the Commission, as well as the Planning Director Janet H., that IL&M prepare a landscape buffer design plan (with native trees and grasses between the lot and Highway 24) and present it to CDOT for approval.

Janet H. also inquired about snow removal. Ziggy G. mentioned that the lot would be used very little in the winter, so they could store snow in the lot if needed. The trucks / equipment are primarily stored in Wolcott when not being used (ie, winter season).

Janet H. also mentioned the CDOT Clear Zone (15 ft).

And that ERFPD also recommends a fire hydrant. It is not mandatory, but it is recommended.

Lynn T. inquired as to the hours of operation.

Ziggy G. stated that vehicles would begin arriving around 7am, and would return from the field between 7:30 & 8:30pm.

Lynn T. expressed some concern over traffic during peak times.

Lynn T. also asked about the number of vehicles that would be parked and will there be adequate parking space.

Rick P. said it was measured to fit up to 33 standard parking spaces, but on average they would have 17 – 20 cars parked at any given time, as employees would be dropping off their personal vehicles and taking company vehicles to the job sites.

Lynn T. also asked about dump piles.

Ziggy G: When team members return from the field, there is often excess dirt, soil, gravel, etc, that needs to be stored. It would only be temporarily stored and then moved to Wolcott (on a weekly basis on average).

Planning Commission recessed for 10 minutes.

2 part Motion:

Motion by Brad B., second by Lynn T. to approve the Subdivision Application. All approved. Passed 4-0.

Motion by Brad B., second by Lynn T., to approve the Zoning Change from Game Creek Character Area (PUD Holding Zone) to Grouse Creek Character Area (Commercial).

All approved. Passed 4-0.

The approval of the Zoning Change is contingent upon IL&M submitting a landscape design plan for Design Review and approval to both CDOT and the Planning Commission.

PROJECTS:

6. Town Entrance, Phase 2 – Design Concept for Architectural Feature

Janet H. presented the latest engineering updates involving: CDOT Drainage, ADA guidelines for bulb-out, sidewalks and lighting.

No questions or comments from the group.

7. PLANNER REPORT

1. Applications being accepted for new Planning Commissioner. Janet H. stated that it was being considered to propose an ordinance to revise the requirements to serve on Planning Commission. The ordinance being considered would state that 2 seats of the 5 may be held by Minturn Business Owners. It was suggested by Lynn T. that only 1 seat be open to business owners. Bobby H. also questioned whether certain items could be a conflict of interest with business owners who do not reside in

Minturn. It was discussed that the definition of a business owner should be defined more clearly if this is moved forward (ie, own and operate a business in Minturn – not a "home" business; Also, should it be limited to a business owner who owns their business "property" in Minturn)? More discussion needed, tabled for next meeting?...

- 8. Next Meeting – January 27, 2016.**
- 9. Motion to adjourn by Bobby H., Second by Brad B. All approved.**
- 10. Adjournment – Meeting was adjourned at 8:10 pm.**

**TOWN OF MINTURN, COLORADO
RESOLUTION NO. 05 – SERIES 2016**

**A RESOLUTION APPROVING AN INTERGOVERNMENTAL
AGREEMENT BETWEEN THE TOWN OF MINTURN AND THE
COLORADO DEPARTMENT OF TRANSPORTATION
REGARDING PROJECT US24 MINTURN MALOIT PARK DESIGN
PHASE (TAP) AND SETTING FORTH DETAILS IN REGARD
THERETO**

WHEREAS, The Town of Minturn (the “Town”) in the County of Eagle and State of Colorado is a home rule municipal corporation duly organized and existing under the laws of the State of Colorado and the Town Charter (the “Charter”); and

WHEREAS, The members of the Minturn Town Council of the Town (the “Council”) have been duly elected and qualified; and

WHEREAS, The Town currently has budgeted the required local match; and

WHEREAS, The Federal Highway Administration (the “FHWA”) allocates funds for local transportation projects; and

WHEREAS, The Town is requesting FHWA funds for the design of the project US24 Minturn Maloit park design phase (tap) (the “Project”); and

WHEREAS, The Colorado Department of Transportation (“CDOT”) is responsible for the general administration and supervision of performance by the Town for the Project; and

WHEREAS, The Town and CDOT wish to enter into an Intergovernmental Agreement (the “IGA”) authorizing the design of the Project; and

WHEREAS, The Council finds and determines that the IGA is necessary and will promote the health, safety, and general welfare of the Town; and

WHEREAS, The Council’s approval of Resolution 05 – Series 2016 is required to enter into an IGA.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MINTURN, COLORADO HEREBY AND HEREWITH:

Section 1. The Council hereby approves the IGA and authorizes the Town Manager to enter into the IGA with CDOT, in substantially the same form as attached hereto as Exhibit A and in form approved by the Town Attorney.

Section 2. This Resolution shall take effect immediately upon its passage.

**INTRODUCED, READ, APPROVED, ADOPTED AND RESOLVED this
20th day of January, 2016.**

TOWN OF MINTURN

By: _____
Mayor

ATTEST:

Town Clerk

STATE OF COLORADO
Department of Transportation
Agreement
with
Town of Minturn

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31.	EXHIBIT D – OPTION LETTER
32.	EXHIBIT E – LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST
33.	EXHIBIT F – CERTIFICATION FOR FEDERAL-AID CONTRACTS
34.	EXHIBIT G – DISADVANTAGED BUSINESS ENTERPRISE
35.	EXHIBIT H – LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES
36.	EXHIBIT I – FEDERAL-AID CONTRACT PROVISIONS
37.	EXHIBIT J – FEDERAL REQUIREMENTS
38.	EXHIBIT K – SUPPLEMENTAL FEDERAL PROVISIONS

1. PARTIES

THIS AGREEMENT is entered into by and between Town of Minturn (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/) 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. § 24-72-101 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: 3
Joseph Carter, Project Manager
222 South 6th Street #317
Grand Junction, CO 81501
970-683-6253
joseph.carter@state.co.us

B. If to the Local Agency:

Town of Minturn
Willy Powell, Town Manager
302 Pine Street
Minturn, CO 81645
970-827-5645
manager@minturn.org

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

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 align="center">THE LOCAL AGENCY Town of Minturn</p> <p>Name: _____ (print name)</p> <p>Title: _____ (print title)</p> <p>_____</p> <p align="center">*Signature</p> <p>Date: _____</p>	<p align="center">STATE OF COLORADO John W. Hickenlooper, GOVERNOR Colorado Department of Transportation Shailen P. Bhatt, Executive Director</p> <p>_____</p> <p>By: Joshua Laipply, P.E., Chief Engineer</p> <p>Date: _____</p>
<p align="center">2nd Local Agency Signature if needed</p> <p>Name: _____ (print name)</p> <p>Title: _____ (print title)</p> <p>_____</p> <p align="center">*Signature</p> <p>Date: _____</p>	<p align="center">LEGAL REVIEW Cynthia H. Coffman, Attorney General</p> <p>By: _____</p> <p 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 align="center">STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By: _____</p> <p align="center">Colorado Department of Transportation</p> <p>Date: _____</p>

SCOPE OF WORK

Minturn - US 24 Pedestrian Improvements 100 Block to Maloit Park (Design)

The project consists of Engineering, Surveying and Planning for pedestrian improvements along US 24 through Minturn Colorado from the 100 block to Maloit Park. The approximate length of the project is 10,800 feet.

COLORADO DEPARTMENT OF TRANSPORTATION DESIGN DATA Page 1 to 3	Orig. Date: 08/03/2015	Project Code # (SA#): 21140	STIP#: SR37010
	Rev. Date:	Project #: TAP M890-001	
	Revision #: 0	PE Project Code:	
	Region #: 03	Project Description: US 24 Minturn Maloit Park Design	
Status: <input checked="" type="checkbox"/> Preliminary <input type="checkbox"/> Final <input type="checkbox"/> Revised		County: 037	
Submitted By PM: CARTERJ		Approved by Program Engineer:	
Date:		Municipality: Minturn	
Revised by:		System Code: N-NHS Non-Interstate	
Date:		Oversight By: Delegated/Locally Administered	
		Planned Length: 2.000	
Geographic Location: US 24 100 BLK TO MALOIT MINTURN			
Type of Terrain: Rolling			
Description of Proposed Construction/Improvement(Attach map showing site location) ENGINEERING, SUVEYING AND PLANNING FOR BIKE PED FACILITY			

1 Project Characteristics (Proposed) <input type="checkbox"/> Lighting <input type="checkbox"/> Handicap Ramps <input type="checkbox"/> Curb and Gutter <input type="checkbox"/> Curb Only <input type="checkbox"/> Sidwalk Width= <input type="checkbox"/> Bikeway Width= <input type="checkbox"/> Parking Lane Width= <input type="checkbox"/> Detours <input type="checkbox"/> Landscaping requirements (description):	Median (Type): <input type="checkbox"/> Depressed <input type="checkbox"/> Painted <input type="checkbox"/> Raised <input type="checkbox"/> None <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= Signing <input type="checkbox"/> Construction <input type="checkbox"/> Permanent <input type="checkbox"/> Other (description):
---	--

2 Right of Way Yes/No Est. # ROW &/or Perm. Easement Required No _____ Relocation Required No _____ Temporary Easement Required: No _____ Changes in Access: No _____ Changes to Connecting Roads: No _____	3 Utilities (list names of known utility companies)
--	--

4 Railroad Crossings # of Crossings:	
Recommendations :	

5 Environmental	Type: None	Approved On: / /	Project Code # Cleared Under:	Project # Cleared Under:
Comments:				

6 Coordination <input type="checkbox"/> Withdraw n 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: Minturn Other:	
--	--

7 Construction Method	Advertised By: None	NoAd Reason:	Entity / Agency Contact Name:	Phone #:
------------------------------	------------------------	--------------	-------------------------------	----------

8 Safety Considerations	Project Under:	Guardrail meets current standards: No
<input type="checkbox"/> Variance in Minimum Design Standards Required <input type="checkbox"/> Justification Attached <input type="checkbox"/> Request to be <input type="checkbox"/> Bridge(see item 12) <input type="checkbox"/> See Remarks	<input type="checkbox"/> Safety project not all addressed	Comments:
<input type="checkbox"/> Stage Construction (explain in remarks)		
3R projects Safety Evaluation Complete (date):		

Page 2 of 3	Project Code #(SA#): 21140	Project #: TAP M890-001	Revise date:	
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Use Columns A, B, C, D and/or E to identify facility described below

	A = 024A	B =	C =	D =	E =
--	----------	-----	-----	-----	-----

9 Traffic

Current Year	ADT	7300				
2015	DHV	840				
	DHV %	7.2				
Future Year	ADT	7446				
2035	DHV	856				
Facility Location	<input type="checkbox"/> Industrial <input type="checkbox"/> Commercial		<input type="checkbox"/> Residential <input type="checkbox"/> Other		<input type="checkbox"/> Residential <input type="checkbox"/> Other	

10 Roadway Class

Route	024A			
Refpt	145.211			
Endrefpt	147.123			
Functional	P			
Facility type	U			
Rural Code	1			

11 Design Standards

	Standard	Existing	Proposed	Ultimate																
Design Variance Required (substandard items are identified with an * in 1st column & clarify as design variance with CDOT Form #464)																				
Width of Travel Lanes																				
Shoulder width																				
Shoulder width																				
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 1st column & clarify with decision letter)

	Standard	Existing	Proposed	Ultimate																
Typical Section Type																				
# of Travel Lanes																				
Side Slope Dist. ("z")																				
Median Width																				
Posted Speed																				

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
---------------	---	--------	-----------------	---------------------	----------------	-------------------	---------------------	----------------------	--------------------	------------

Proposed Treatment of Bridges to Remain in Place(address bridge rail, capacity, and allowable surfacing thickness):

13 Remarks

Minturn - US 24 Pedestrian Improvements 100 Block to Maloit Park (Design)

The project consists of Engineering, Surveying and Planning for pedestrian improvements along US 24 through Minturn Colorado from the 100 block to Maloit Park. The approximate length of the project is 10 ,800 feet.

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 of Work to be \$332,600.00, which is to be funded as follows:

1 BUDGETED FUNDS				
a. Federal Funds				\$266,080.00
	(80% of Participating Costs)			
b. State Funds				\$0.00
c. Local Agency Matching Funds				\$66,520.00
	(20% of Participating Costs)			
TOTAL BUDGETED FUNDS				\$332,600.00
2 ESTIMATED CDOT-INCURRED COSTS				
a. Federal Share				\$0.00
	(0% of Participating Costs)			
b. Local Agency				
Local Agency Share of Participating Costs		\$0.00		
Non-Participating Costs (Including Non-Participating Indirects)		\$0.00		
Estimated to be Billed to Local Agency				\$0.00
TOTAL ESTIMATED CDOT-INCURRED COSTS				\$0.00
3 ESTIMATED PAYMENT TO LOCAL AGENCY				
a. Federal Funds Budgeted (1a)				\$266,080.00
b. Less Estimated Federal Share of CDOT-Incurred Costs (2a)				\$0.00
TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY				\$266,080.00
4 FOR CDOT ENCUMBRANCE PURPOSES				
Total Encumbrance Amount				\$332,600.00
Less ROW Acquisition 3111 and/or ROW Relocation 3109				\$0.00
Net to be encumbered as follows:				
NOTE: This project is for Design only. There is no Construction phase to be funded under the Agreement.				
	WBS Element 21140.10.30	Design	3020	\$332,600.00

B. Matching Funds

The matching ratio for the federal participating funds for this Work is 80% federal-aid funds (CFDA #20.205) to 20% Local Agency funds, it being understood that such ratio applies only to the \$332,600.00 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 \$332,600.00, and additional federal funds are made available for the Work, the Local Agency shall pay 20% 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 \$332,600.00, then the amounts of Local Agency 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 \$332,600.00 (for CDOT accounting purposes, the federal funds of \$266,080.00 and the Local Agency matching funds of \$66,520.00 will be encumbered for a total encumbrance of \$332,600.00), unless such amount is decreased as described in Sections B. and C. 1. of this Exhibit C, or increased by an appropriate written modification to this Agreement executed before any increased cost is incurred. **NOTE: This project is for Design only. There is no Construction phase to be funded under the Agreement.** 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.

1. The maximum amount payable shall be reduced without amendment when the actual amount of the Local Agency's awarded contract is less than the budgeted total of the federal participating funds and the local agency matching funds. The maximum amount payable shall be reduced through the execution of an Option Letter as described in Section 7. A. of this contract.

D. Single Audit Act Amendment

All state and local government and non-profit organizations 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 the Local Agency receiving federal funds are as follows:

i. Expenditure less than \$750,000

If 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 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 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.

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.

Date	State Fiscal Year	Option Letter No.	Routing #
Project Code	Original Contract #	PO #	OLA #

Contractor: **THE LOCAL AGENCY NAME**

Option A)

SUBJECT

Option to unilaterally add phasing to include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous and to update encumbrance amount(s) *(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.)*.

Option B)

SUBJECT

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.)*.

Option C)

SUBJECT

Option to unilaterally add phasing to include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous and to transfer funds from one phase to another phase, 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.)*.

REQUIRED PROVISIONS

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

In accordance with the terms of the original Agreement **16-HAA-XA-12345** between the State of Colorado, Department of Transportation and THE LOCAL AGENCY NAME, the State hereby exercises the option to add 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 funds for the phase based on changes in funding availability and authorization. The total encumbrance is now INCREASED by \$\$\$\$\$\$. 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 labeled 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 **16-HAA-XA-12345** between the State of Colorado, Department of Transportation and THE LOCAL AGENCY NAME, 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 **16-HAA-XA-12345** between the State of Colorado, Department of Transportation and THE LOCAL AGENCY NAME, the State hereby exercises the option to 1) add 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 on changes from federal, state, and/or local match; 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 a 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-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-1, C-2, etc., as appropriate).

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

APPROVALS

State of Colorado:

John W. Hickenlooper, Governor

_____ Date: _____

By: (CDOT CHIEF ENGINEER'S NAME), Chief Engineer

For: (CDOT EXECUTIVE DIRECTOR'S NAME), Executive Director, Colorado Department of Transportation

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

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

**State Controller
(STATE CONTROLLER'S NAME)**

By: _____

Date: _____

LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

The following checklist has been developed to ensure that all required aspects of a project approved for Federal funding have been addressed and a responsible party assigned for each task.

After a project has been approved for Federal funding in the Statewide Transportation Improvement Program, the Colorado Department of Transportation (CDOT) Project Manager, Local Agency project manager, and CDOT Resident Engineer prepare the checklist. It becomes a part of the contractual agreement between the Local Agency and CDOT. The CDOT Agreements Unit will not process a Local Agency agreement without this completed checklist. It will be reviewed at the Final Office Review meeting to ensure that all parties remain in agreement as to who is responsible for performing individual tasks.

LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

Project No.	STIP No.	Project Code 21140	Region 3
Project Location Minturn – US 24 - Williams St. to Maloit Park Rd			Date 07-09-15
Project Description Engineering, Surveying and Planning for Bike Pedestrian Infrastructure along US 24 in Minturn (This is a DESIGN ONLY Form 1243 / Separate 1243 Needed for Construction under new subaccount #)			
Local Agency Town of Minturn	Local Agency Project Manager		
CDOT Resident Engineer Karen Berdoulay – 970-328-9934	CDOT Project Manager Joe Carter / 970-683-6253		
<p>INSTRUCTIONS: 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. Only one responsible party should be selected. 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> <p>Note: Failure to comply with applicable Federal and State requirements may result in the loss of Federal or State participation in funding.</p>			

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
TIP / STIP AND LONG-RANGE PLANS			
2.1	Review Project to ensure it is consist with STIP and amendments thereto		X
FEDERAL FUNDING OBLIGATION AND AUTHORIZATION			
4.1	Authorize funding by phases (CDOT Form 418 - Federal-aid Program Data. Requires FHWA concurrence/involvement)		X
PROJECT DEVELOPMENT			
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	
5.5	Conduct Public Involvement	X	
5.6	Conduct Field Inspection Review (FIR)	X	
5.7	Conduct Environmental Processes (may require FHWA concurrence/involvement) WETLAND	X	x
5.8	Acquire Right-of-Way (may require FHWA concurrence/involvement)	X	
5.9	Obtain Utility and Railroad Agreements	X	
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	

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
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
PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE			
6.1	Set Underutilized Disadvantaged Business Enterprise (UBDE) Goals for Consultant and Construction Contracts (CDOT Region EEO/Civil Rights Specialist)		X
6.2	Determine Applicability of Davis-Bacon Act This project <input type="checkbox"/> is <input type="checkbox"/> is not exempt from Davis-Bacon requirements as determined by the functional classification of the project location (Projects located on local roads and rural minor collectors may be exempt.) Martha Miller, P.E., (Eagle Residency) _____ 07-09-15 _____ CDOT Resident Engineer (Signature on File) Date	NA	NA
6.3	Set On-the-Job Training Goals. Goal is zero if total construction is less than \$1 million (CDOT Region EEO/Civil Rights Specialist)	NA	NA
6.4	Title VI Assurances	X	
	Ensure the correct Federal Wage Decision, all required Disadvantaged Business Enterprise/On-the-Job Training special provisions and FHWA Form 1273 are included in the Contract (CDOT Resident Engineer)		X
ADVERTISE, BID AND AWARD			
7.1	Obtain Approval for Advertisement Period of Less Than Three Weeks	X	
7.2	Advertise for Bids	X	
7.3	Distribute "Advertisement Set" of Plans and Specifications	X	
7.4	Review Worksite and Plan Details with Prospective Bidders While Project Is Under Advertisement	X	
7.5	Open Bids	X	
7.6	Process Bids for Compliance		
	Check CDOT Form 715 - Certificate of Proposed Underutilized DBE Participation when the low bidder meets UDBE goals		X
	Evaluate CDOT Form 718 - Underutilized DBE Good Faith Effort Documentation and determine if the Contractor has made a good faith effort when the low bidder does not meet DBE goals		X
	Submit required documentation for CDOT award concurrence	X	
7.7	Concurrence from CDOT to Award		X
7.8	Approve Rejection of Low Bidder		X
7.9	Award Contract	X	
7.10	Provide "Award" and "Record" Sets of Plans and Specifications	X	
CONSTRUCTION MANAGEMENT			
8.1	Issue Notice to Proceed to the Contractor	NA	
8.2	Project Safety	NA	
8.3	Conduct Conferences:		
	Pre-Construction Conference (Appendix B)	NA	
	Pre-survey • Construction staking • Monumentation	NA	
	Partnering (Optional)	NA	
	Structural Concrete Pre-Pour (Agenda is in CDOT Construction Manual)	NA	
	Concrete Pavement Pre-Paving (Agenda is in CDOT Construction Manual)	NA	
	HMA Pre-Paving (Agenda is in CDOT Construction Manual)	NA	
8.4	Develop and distribute Public Notice of Planned Construction to media and local residents	NA	
8.5	Supervise Construction		

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
	A Professional Engineer (PE) registered in Colorado, who will be "in responsible charge of construction supervision." _____ Phone number Local Agency Professional Engineer or CDOT Resident Engineer	NA	
	Provide competent, experienced staff who will ensure the Contract work is constructed in accordance with the plans and specifications	NA	
	Construction inspection and documentation	NA	
8.6	Approve Shop Drawings	NA	
8.7	Perform Traffic Control Inspections	NA	
8.8	Perform Construction Surveying	NA	
8.9	Monument Right-of-Way	NA	
8.10	Prepare and Approve Interim and Final Contractor Pay Estimates Provide the name and phone number of the person authorized for this task. _____ Phone number Local Agency Representative	NA	
8.11	Prepare and Approve Interim and Final Utility and Railroad Billings	NA	
8.12	Prepare and Authorize Change Orders	NA	
8.13	Submit Change Order Package to CDOT	NA	
8.14	Prepare Local Agency Reimbursement Requests	NA	
8.15	Monitor Project Financial Status	NA	
8.16	Prepare and Submit Monthly Progress Reports	NA	
8.17	Resolve Contractor Claims and Disputes	NA	
8.18	Conduct Routine and Random Project Reviews Provide the name and phone number of the person responsible for this task. _____ Phone number CDOT Resident Engineer	NA	
MATERIALS			
9.1	Discuss Materials at Pre-Construction Meeting • Buy America documentation required prior to installation of steel	NA	
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	NA	
9.3	Perform Project Acceptance Samples and Tests	NA	
9.4	Perform Laboratory Verification Tests	NA	
9.5	Accept Manufactured Products 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	NA	
9.6	Approve Sources of Materials	NA	
9.7	Independent Assurance Testing (IAT), Local Agency Procedures <input type="checkbox"/> CDOT Procedures <input checked="" type="checkbox"/> • Generate IAT schedule • Schedule and provide notification • Conduct IAT	NA	
9.8	Approve mix designs • Concrete • Hot mix asphalt	NA	
9.9	Check Final Materials Documentation	NA	
9.10	Complete and Distribute Final Materials Documentation	NA	
		NA	

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
CONSTRUCTION CIVIL RIGHTS AND LABOR COMPLIANCE			
10.1	Fulfill Project Bulletin Board and Pre-Construction Packet Requirements	NA	
10.2	Process CDOT Form 205 - Sublet Permit Application Review and sign completed CDOT Form 205 for each subcontractor, and submit to EEO/Civil Rights Specialist	NA	
10.3	Conduct Equal Employment Opportunity and Labor Compliance Verification Employee Interviews. Complete CDOT Form 280	NA	
10.4	Monitor Disadvantaged Business Enterprise Participation to Ensure Compliance with the "Commercially Useful Function" Requirements	NA	
10.5	Conduct Interviews When Project Utilizes On-the-Job Trainees. Complete CDOT Form 200 - OJT Training Questionnaire	NA	
10.6	Check Certified Payrolls (Contact the Region EEO/Civil Rights Specialists for training requirements.)	NA	
10.7	Submit FHWA Form 1391 - Highway Construction Contractor's Annual EEO Report	NA	
FINALS			
11.1	Conduct Final Project Inspection. Complete and submit CDOT Form 1212 - Final Acceptance Report (Resident Engineer with mandatory Local Agency participation.)	NA	
11.2	Write Final Project Acceptance Letter	NA	
11.3	Advertise for Final Settlement	NA	
11.4	Prepare and Distribute Final As-Constructed Plans	NA	
11.5	Prepare EEO Certification	NA	
11.6	Check Final Quantities, Plans, and Pay Estimate; Check Project Documentation; and submit Final Certifications	NA	
11.7	Check Material Documentation and Accept Final Material Certification (See Chapter 9)	NA	
11.8	Obtain CDOT Form 17 from the Contractor and Submit to the Resident Engineer	NA	
11.9	Obtain FHWA Form 47 - Statement of Materials and Labor Used ... from the Contractor	NA	
11.10	Complete and Submit CDOT Form 1212 - Final Acceptance Report (by CDOT)	NA	
11.11	Process Final Payment	NA	
11.12	Complete and Submit CDOT Form 950 - Project Closure	NA	
11.13	Retain Project Records for Six Years from Date of Project Closure	NA	
11.14	Retain Final Version of Local Agency Contract Administration Checklist	NA	

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 or 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.dcl.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 3;

(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 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 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 contract). "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.

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.

* * * * *

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.

* * * * *

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.

TOWN OF MINTURN, COLORADO

RESOLUTION NO. 06 – SERIES 2016

A RESOLUTION AUTHORIZING THE MAYOR OF THE TOWN OF MINTURN TO SIGN A SERVICE CONTRACT WITH EAGLE RIVER WATER AND SANITATION FOR TOWN WIDE WATER AND TRASH BILLING SERVICES

WHEREAS, the current contract existing between Eagle River Water and Sanitation District and the Town of Minturn continues to be a valuable benefit to both entities, and;

WHEREAS, the Minturn Town Council of the Town of Minturn, Colorado has and continues to enjoy cost savings to the Citizens of Minturn by providing for this agreement, and;

WHEREAS, the Town of Minturn wishes to continue with the benefits of the existing contract with the agreed rate increases as set forth

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MINTURN, COLORADO THAT THE MAYOR OR HIS DESIGNEE IS AUTHORIZED TO SIGN ON BEHALF OF THE TOWN OF MINTURN ANY AND ALL NEGOTIATED DOCUMENTS REQUIRED TO EXECUTE SAID AGREEMENT.

INTRODUCED, READ, APPROVED, ADOPTED AND RESOLVED this 20TH day of JANUARY, 2016.

TOWN OF MINTURN

By: _____
Mayor

ATTEST:

Town Clerk

OPERATIONS AGREEMENT

THIS AGREEMENT entered into this __, day of _____, 201_, by and between TOWN OF MINTURN, a quasi-municipal corporation of the State of Colorado ("Town"), and EAGLE RIVER WATER & SANITATION DISTRICT, a quasi-municipal corporation of the State of Colorado ("District").

WITNESSETH:

WHEREAS, among its other functions Town owns and operates a water treatment and distribution system and provides trash collection services substantially within the boundaries of District; and

WHEREAS, District has sufficient experience, personnel and equipment to perform certain services desired by Town; and

WHEREAS, all previous Agreements dated prior to the date first written above, are superseded by this Agreement;

NOW, THEREFORE, in consideration of the premises, the mutual advantages accruing to the parties hereto and the mutual undertakings herein contained, the parties hereto agree as follows:

ARTICLE 1

GENERAL CONDITIONS

- 1.1 District shall provide in a good and workmanlike manner the services described in this agreement upon the terms and conditions herein stated.
- 1.2 District shall be an independent contractor and nothing herein contained shall be construed to create the relationship of principal and agent or employer and employee between Town and District. Any person or party hired by District shall be the employee, agent, servant or contractor of District.
- 1.3 District shall comply with all applicable local, State and Federal laws, rules and regulations.
- 1.4 District shall provide the services described in Article 2 herein in accordance with the Rules and Regulations of District and any amendments thereto.

ARTICLE 2

SCOPE OF SERVICES TO BE PERFORMED BY DISTRICT

- 2.1 Billing Services. District shall provide qualified personnel who shall perform billing services for monthly water and trash collection service subject to the following:
- 2.1.1 Billings for water service and trash collection shall be issued at the same time and in the same manner as sewer service billings.
 - 2.1.2 All bills, which remain unpaid twenty-five days from the date of mailing of such bills, will have a Late Charge of one percent (1%) of any Balance Forward added thereto which shall be retained by District. Town authorizes District to pursue all collection procedures outlined in District's Rules and Regulations, to include Certification of the unpaid amounts to the Eagle County Treasurer for collection as property taxes annually, as allowed by Eagle County. Such unpaid amounts may include Town's unpaid water and trash collection service charges and District's unpaid sewer service charges.
 - 2.1.3 Town, at the request of District, shall discontinue water and/or trash service to customers following notice of disconnection to such customers as provided in the Rules and Regulations of District.
 - 2.1.4 In the event a customer's service is unable to be discontinued, Town will contract the work to correct any system deficiencies so that the customer's water service is able to be discontinued. The cost of such work may be added to the customer billing as an adjustment.
 - 2.1.5 Approximately one month after the end of each billing period, District shall remit to Town, an amount equal to the total water and sewer services billed, less all amounts due from customers, which have any amounts in Balance Forward on their bills, which have remained unpaid for more than one hundred twenty (120) days.

ARTICLE 3

COMPENSATION AND PAYMENT

- 3.1 Cost of Services. Town shall pay District for services performed according to the following:
- 3.1.1 The cost for billing services to be performed by District is \$12,000 per year, to be paid in monthly installments of \$1,000 each.
 - 3.1.2 Other services provided by District, at the request of Town, shall be billed at rates listed in Exhibit A or for amounts agreed to by District and Town.

- 3.2 Payment. Payment by Town to District shall be made within three (3) days following the approval of District's payment request in the regular meeting of Town Council following the end of the calendar month in which the services were performed.

ARTICLE 4

SPECIAL CONDITIONS

- 4.1 Insurance Requirements. At all times during the term of this Agreement, District shall carry and maintain in full force, at District's expense, the following insurance coverage. Such policies shall include a provision requiring a minimum of thirty (30) days' notice to Town of substantial change or cancellation of coverage or insurance policies.
- 4.1.1 General Comprehensive Liability insurance in an amount of \$350,000 per person and \$990,000 per occurrence, including the following coverage: property damage; underground explosion and collapse hazard; and personal injury.
- 4.1.2 Comprehensive Automobile Liability insurance on all owned vehicles used in connection with the services in an amount of \$350,000 per person and \$990,000 per occurrence combined single limits for Bodily Injury and Property Damage.
- 4.1.3 Worker's Compensation insurance in accordance with the provisions of the Worker's Compensation Act of the State of Colorado for all employees to be engaged in the services.
- 4.2 Certificates of Insurance. Prior to commencement of services, District shall provide Town with Certificate(s) of Insurance evidencing the insurance required by this Article and naming Town as an additional named insured as its interests may appear for all Comprehensive General Liability insurance.
- 4.3 Indemnity. To the extent of the limits of any insurance coverage maintained by District, District further agrees to indemnify and hold Town harmless from, and defend all actions against, all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising from any negligent act or omission on the part of District, its agents, or employees, provided, however, that any claim for negligent acts or omissions must be brought in accordance with and subject to the limitations of the Colorado Governmental Immunity Act, C.R.S. 24-10-101, et. seq., as amended, as the same may now or hereafter exist, and nothing herein shall be deemed or construed to be a waiver of the rights granted hereunder. Town shall provide District with notice of the commencement of any action, subject to this paragraph, not more than five (5) days following receipt by Town of notice of commencement of such action.
- 4.4 Renegotiation. Duties or services to be performed by District may be added or deleted and charges for services may be renegotiated by either party upon thirty (30) days written notice to the other party.

- 4.5 Assignment. Either party without the express written consent of both parties shall make no assignment of its rights and/or obligations under this Agreement.
- 4.6 Term of Agreement. The effective date of this Agreement shall be January 1, 2016 for a period of twelve (12) months. This Agreement shall be automatically extended for successive one (1) year periods with no notice required to either party unless either party provides written notice of intent to terminate or amend not later than sixty (60) days prior to the annual extension of the Agreement.
- 4.7 Termination. The provisions of Section 4.6 notwithstanding, either party shall have the right to terminate this Agreement thirty (30) days after written notice of any election to terminate.

ARTICLE 5 MISCELLANEOUS

- 5.1. Entire Agreement. This Agreement constitutes the entire Agreement between the parties hereto relating to the services, and sets forth the rights, duties, and obligations of each to the other as of this date. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect. This Agreement may not be modified except by a writing executed by both parties.
- 5.2. Binding Agreement. This Agreement shall inure to and be binding upon the parties, their successors, and assigns.
- 5.3. No Waiver. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other of the provisions of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.
- 5.4. Controlling Law. This Agreement shall be governed by and construed in accordance with the law of the State of Colorado.
- 5.5. Subject to Annual Appropriation and Budget. Under no circumstances shall this Agreement constitute, or be considered as, a multiple-fiscal year obligation of either the District or the Town. The Town's and the District's obligations under this Agreement exist subject to annual budgeting and appropriations, and shall remain subject to the same for the entire term of this Agreement.
- 5.6. Governmental Immunity. Nothing in this Agreement shall be construed to constitute a waiver, in whole or in part, of any of either of the parties' rights and protections under the Colorado Governmental Immunity Act, § 24-10-101, et seq., C.R.S., as amended from time to time.
- 5.7. No Third Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the parties and nothing contained in this Agreement shall give or

allow any such claim or right of action by any other third party on such Agreement. It is the express intention of the parties that any person other than parties receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

5.8. Counterpart Execution. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the day and year first above written.

TOWN OF MINTURN

By: _____
Mayor

ATTEST:

Town Clerk

EAGLE RIVER WATER & SANITATION DISTRICT:

By: Frederick L. Sachbender
Chairman

ATTEST:

Debra L. Beatty
Secretary

**EXHIBIT A
 2016 FEE SCHEDULE FOR DISTRICT EQUIPMENT AND PERSONNEL**

Equipment/Labor	In- District Hourly Rates
1 Ton Utility, Duramax	\$45.00
3" Pump	\$25.00
6" Power Prime Pump Trailer	\$50.00
Air Compressor	\$20.00
Backhoe	\$75.00
Chain Saw	\$25.00
Composting Auger	\$30.00
Demo Saw	\$25.00
End Dump Trailer	\$65.00
Fork Lift	\$40.00
Generator	\$50.00
Jackhammer	\$45.00
Large Jetting Truck	\$110.00
Loader	\$75.00
Lowboy Tractor	\$65.00
Lowboy Trailer	\$60.00
Message Board	\$25.00
Meter Test Bench	\$40.00
Mikasa Jumping Jack	\$45.00
Pickup with Plow	\$45.00
Pickup with Plow & Liftgate	\$45.00
Skid Steer	\$60.00
Small Dump Truck	\$35.00
Small Jetting Truck	\$100.00
Small Portable Welder	\$20.00
Steamer	\$20.00
Tandem Dump Truck	\$50.00
TV Van	\$100.00
Utility Trailer	\$30.00
Valve Box Cleaner	\$20.00
Vehicle & Tools	\$35.00
LABOR: Operational Interns/Temps	\$16.00
LABOR: Field Operations Personnel	\$37.00
LABOR: Water & Wastewater Operation	\$36.00
LABOR: Operations Supervisors and Field Operations Leads & Planners	\$46.00
LABOR: Construction Managers	\$50.00
LABOR: Office Administration & Accounting Staff	\$34.00
LABOR: Managers	\$59.00
LABOR: Executive Manager	\$78.00

*Note 1: None of the above equipment includes labor. Labor will be billed in addition to hourly rates for equipment used.
 Note 2: Emergency calls after hours will be charged the above rates times 1.5 for labor only. Equipment will be charged the hourly rate stated above.*

TOWN OF MINTURN
P.O. Box 309 ♦ 302 Pine Street
Minturn, CO 81645
Phone: 970-827-5645 Fax: 970-827-5545

William Powell
Town Manager



Town Council
Mayor – Gordon “Hawkeye” Flaherty
Mayor Pro Tem – George Brodin
Councilmember – Shelley Bellm
Councilmember – Earle Bidez
Councilmember – John Rosenfeld
Councilmember – Jason Osborne
Councilmember – Matt Scherr

MANAGER MEMORANDUM
January 20, 2016 Meeting

TO: Town Council

FROM: Willy Powell
Town Manager

Bolts Ditch Lobbying

The Mayor, Manager and Tom Glass spent Jan. 11—13 lobbying congressmen and staffers to allow authorization for the use and maintenance of the Bolts Ditch within the 450’ of the Holy Cross Wilderness Area. We met with Senators Gardner and Bennet and Representative Polis, congressional staff, legislative staff and USFS legislative staff. We received positive response from all. Senator Gardner has agreed to be the original sponsor and Senator Bennet a co-sponsor. Representative Polis will sponsor on the house side. We also visited with Representative Lamborne’s legislative aide (R-Colorado Springs) to gain their support. We will attempt to meet with Representative Tippet, as his district is to the west and includes the western portion of the wilderness area. Senator Gardner’s office has already sent the legislation to committee. The timetable for any passage is unknown at this time, but we will continue to advocate for early adoption. We have been counseled both houses do not perform as much work during a presidential election year. However, after the election, many legislation bills pass.

George and Willy met with UEVWSD on Jan. 6 and they committed to send letters of support from the two water authorities. We expect to receive a letter of support from the Colorado River Water Conservation District after the governing board meets next week.

TAP Engineering

Willy, Jason and Jeff Spanel met on Jan. 5 to review the six proposals submitted. The committee shortlisted four firms to interview and check references. The interviews were conducted on Jan. 15. We plan to check references Jan. 19 and 20. The committee may have a recommendation of the preferred firm for the Council meeting.

100 Block Engineering

Jeff and Willy met with Eagle CDOT staff on Jan. 7 to discuss the 100 block engineering and stressed the importance of a timely CDOT review so we can keep to schedule. CDOT pledged to work with staff, but we will need to keep the heat on.

ACTION ITEMS REPORT

From: Town Manager
Jan. 20, 2016

Action Item	Responsible staff	Status
Eagle River Park Grant	Hawkinson	sod and basketball net installed Cintas best bathroom award
"History Walk in the Park" and bathrooms		Design for educational portion beginning
Lease Lot cleanup and leasing	Martinez	berm improved, needs seeded
Boneyard	Hawkinson	complete management plan
Little Beach Park	Powell	review improved park plans
Memorialization Guidelines	Metteer	staff presented Jan. 21
Minturn Fitness Center	Powell Rosenfeld Bidez	achieve property tax exemption--application is submitted achieve 501.c.7 non-profit status
Minturn Education Fund	Powell Bellm	achieve 501.c.3 non-profit status Jay has discussed seperation of budget/audit scholarships to be awarded in Spring
Zoning Code Amendments	Hawkinson Powell Sawyer	phase 1 complete and adopted by Council phase 2 schedule to be decided
Guide Sign Plan	Metteer	Submitted to CDOT for review
Water Rate Structure and Rates	Powell water committee	decision on structure and rates made review revenues in 2016
Entryway/100 Block Project Steet Projects	Powell Hawkinson Inter-Mountain Engr.	phase 1 substantially complete by contractor seeding in Spring, decorative fencing to be installed 100 Block plans submitted to CDOT for review
South Minturn Engineering	Powell Osborne Inter-Mountain Engr.	Pre-proposal meeting held on 11/24 proposals to be submitted 12/17 interviews jan 15 with four firms
Bolts Ditch within Wilderness	Powell	confirmed Battle Mtn. will share costs, split to be determined WLG contract approved Mayor, Manager and T. Glass congressmen/staffers Jan11-13
Building Code Adoption--newer codes		place holder