

TOWN OF AVON, COLORADO
REGULAR COUNCIL MEETING FOR TUESDAY, JANUARY 13, 2009
MEETING BEGINS AT 5:30 PM
AVON TOWN HALL, ONE LAKE STREET



PRESIDING OFFICIALS

MAYOR RON WOLFE
MAYOR PRO TEM BRIAN SIPES
COUNCILORS RICHARD CARROLL, DAVE DANTAS, KRISTI FERRARO
AMY PHILLIPS, ALBERT "BUZ" REYNOLDS, JR.

TOWN STAFF

TOWN ATTORNEY: ERIC HEIL TOWN MANAGER: LARRY BROOKS TOWN CLERK: PATTY MCKENNY

ALL REGULAR MEETINGS ARE OPEN TO THE PUBLIC EXCEPT EXECUTIVE SESSIONS
COMMENTS FROM THE PUBLIC ARE WELCOME DURING CITIZEN AND COMMUNITY INPUT AND PUBLIC HEARINGS
PLEASE VIEW AVON'S WEBSITE, [HTTP://WWW.AVON.ORG](http://www.avon.org), FOR MEETING AGENDAS AND MEETING MATERIALS
AGENDAS ARE POSTED AT AVON MUNICIPAL BUILDING AND RECREATION CENTER, ALPINE BANK, AND AVON LIBRARY
THE AVON TOWN COUNCIL MEETS ON THE SECOND AND FOURTH TUESDAYS OF EVERY MONTH

- 1. CALL TO ORDER AND ROLL CALL**
- 2. INQUIRY OF THE PUBLIC FOR COMMENT AND APPROVAL OF AGENDA**
- 3. DISCLOSURE OF POTENTIAL CONFLICT OF INTEREST**
- 4. COMMUNITY INPUT**
- 5. NEW BUSINESS**
 - a. Selection of Independent Auditor (Scott Wright, Assistant Town Manager Finance) Auditor selection team reviewed the proposals and a recommendation made (Engagement Letter on Consent Agenda)
- 6. CONSENT AGENDA**
 - a. Minutes from December 9, 2008
 - b. Resolution No. 09-01, Series of 2009, Resolution Approving the Locations for Posting Notices of Public Meetings (Patty McKenny, Town Clerk) Action addressing the locations to be used for posting public notices for the Town of Avon
 - c. Rocky Mountain Rail Authority Membership (Larry Brooks, Town Manager) Membership documents for the Rocky Mountain Rail Authority
 - d. Victor Mark Donaldson Architects Proposal for Town Hall Front Office Remodel (Shane Pegram, Engineer II) Proposal for basic architectural services
 - e. Wiss Janey Elstner Proposal for Recreation Center Investigation and Construction Plans (Shane Pegram, Engineer II) Proposal for additional services
 - f. Avon Zoning Code Amendment (Eric Heil, Town Attorney) Revisions to the vested rights regulations in the Avon Zoning Code initiated by Town Council motion and in accordance with Section 17.28.020
 - g. McMahan and Associates Auditor's Engagement Letter (Scott Wright, Assistant Town Manager Finance) Proposal for auditing services of Avon's 2008 Financial Statements
- 7. UNFINISHED BUSINESS**
 - a. Revisions to Intergovernmental Agreement for Eagle County Animal Control Service (Brian Kozak, Police Chief) Review of reductions in animal control service due to personnel and budget shortfalls
- 8. APPEALS FROM OR RECOMMENDATIONS OF PLANNING & ZONING COMMISSION**
- 9. ORDINANCES**
- 10. RESOLUTIONS**

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11. OTHER BUSINESS

12. TOWN MANAGER REPORT

13. TOWN ATTORNEY REPORT

14. MAYOR REPORT


15. FUTURE AGENDA DATES & ITEMS:

January 27, 2009:

- Recreation Trails Master Plan
- Follow up to Joint meeting with P&Z Commission for Pre Application for Wildridge Parcel, Tract B, Block 1, (lot immediately adjacent to the Fire House)
- First Reading on Ordinance No. 09-01 Approving the Rezoning of Lots 1A, 1B, 2, Swift Gulch Addition, and Tract AA, Mountain Star, from Planned Unit Development (PUD) to the Government, Park, and Employee Housing (GPEH) Zone District
- Public Hearing with considerations of Ordinance / Resolution for Red House Annexation
- New 3.2% Beer License for 7-Eleven Store @ 008 Nottingham Road

16. ADJOURNMENT

Memo

To: Honorable Mayor and Town Council
Thru: Larry Brooks, Town Manager
From: Scott Wright, Asst. Town Manager - Finance Director 
Date: January 8, 2009
Re: Selection of Independent Auditor

Summary:

In November, an RFP for auditing services was sent to several CPA firms in Colorado that specialize in local governmental audits. Proposals were received from five different firms, including the Town's current auditors. An auditor selection team consisting of myself, Valerie Barry, Rich Carroll and Amy Phillips reviewed the proposals for completeness with the proposal requirements and evaluated the proposals based on such factors as qualifications, demonstrated ability with similar governmental entities, firm workload and availability, experience, audit team credentials, and cost.

Discussion:

Based on the evaluation criteria above, the selection team's recommendation is McMahan and Associates, LLC.

McMahan and Associates is a long-time Avon-based CPA firm with extensive experience auditing local governments, including a number of resort municipalities in the Rocky Mountain region. In addition, they have experience with several transit agencies, affordable housing and "63-20" corporations.

Financial Implications:

An engagement letter with McMahan and Associates for the 2008 calendar year audit is included in the Town's consent agenda. The engagement letter is in the standard form recommended by the AICPA for local government engagements. The 2008 audit will be billed to the Town based on actual hours spent at standard rates with a not-to-exceed cost of \$29,950. This figure is well within the amount budgeted for audit services in the Finance Department's budget.

Town Manager Comments:

**MINUTES OF THE REGULAR MEETING OF THE AVON TOWN COUNCIL
HELD DECEMBER 9, 2008**

A regular meeting of the Town of Avon, Colorado was held at the Avon Municipal Building, One Lake Street, Avon, Colorado in the Council Chambers.

Mayor Ron Wolfe called the meeting to order at 5:40 PM. A roll call was taken and Council members present were Rich Carroll, Dave Dantas, Kristi Ferraro, Amy Phillips, Buz Reynolds, and Brian Sipes. Also present were Town Attorney Eric Heil, Town Manager Larry Brooks, Director Administrative Services Patty McKenny, Town Engineer Justin Hildreth, Assistant Town Manager Community Development Eric Heidemann, Police Chief Brian Kozak and Public Works and Transportation Director Jenny Strehler as well as members of the public.

APPROVAL OF AGENDA AND DISCLOSURE OF POTENTIAL CONFLICT OF INTEREST

There were no conflicts of interest identified. It was noted that the Resolution addressing the Incentive Policy would be discussed separately from the vote on the consent agenda.

COMMUNITY INPUT

Amy Phillips, Councilor and Jill Paradise presented information related to the Sister City International Program, the value of participating in such a program and the prospects of becoming a sister city with Pragalato Italy. Council appreciated receiving the information and asked that additional information about the small town of Pragalato be submitted for their review.

John Curutchet, Recreation Superintendent, presented a Recreation Center Special Events Update with a focus on a preview of Icing on the Lake Event on December 20th.

NEW BUSINESS

At this time, Mayor Wolfe presented Resolution No. 08-54, Series of 2008, Resolution to Adopt an Economic Incentive Policy and highlighted some of the earlier discussion on the topic as follows:

- ✓ Is it a stand alone document or part of master plan or municipal code
- ✓ Plan outlines financial possibilities between public & private partnerships
- ✓ Is the document helping to position the town for redevelopment

Eric Heidemann made several suggestions as to how to move forward with the resolution and guidelines as follows:

- ✓ Adopt resolution and document that stands alone for the first year so that if necessary, revisions can be made
- ✓ The document could be adopted then as a part of the comprehensive plan in 2010.
- ✓ The suggested revisions are not enough to delay adopting the resolution

There was some discussion about the need to adopt the resolution now and it was noted that if it were adopted at this time, it might provide some guidance for developers and an opportunity to see how the process might work with potential partnerships. It was suggested to continue to review the document throughout the next year for any modifications. Councilor Dantas moved to approve Resolution No. 08-54, Series of 2008, Resolution to Adopt an Economic Incentive Policy; Councilor Phillips seconded the motion and it passed unanimously.

CONSENT AGENDA

Mayor Wolfe asked for a motion on the consent agenda. Mayor Pro Tem Sipes moved to approve the consent; Councilor Phillips seconded the motion and it passed unanimously.

- a. Minutes from November 11, 2008 and December 2, 2008
- b. Resolution No. 08-53, Series of 2008, Resolution to Approve a Request for Allocation of PEG Funds Appropriated in the Town of Avon 2008 Budget (Scott Wright, Assistant Town Manager Finance) Review of request for funding from Public Access 5 Television for upgrades to system
- d. Consent and Waiver of Conflict of Interest (Eric Heil, Town Attorney) Information related attorney professional conduction issue that addresses in writing conflict of interest when representing multiple clients
- e. Service Agreement with Eagle River Fire Protection District (Dan Higgins, Fleet Manager)
- f. Service Agreement with Eagle County Hazmat Team (Dan Higgins, Fleet Manager)
- g. Service Agreement with Town of Redcliff (Dan Higgins, Fleet Manager)
- h. Service Agreement with Western Eagle County Ambulance District (Dan Higgins, Fleet Manager)
- i. Service Agreement with Town of Minturn (Dan Higgins, Fleet Manager)
- j. Service Agreement with Beaver Creek Metro District Public Works (Dan Higgins, Fleet Manager)
- k. Service Agreement with Eagle County Ambulance District (Dan Higgins, Fleet Manager)
- l. Service Agreement with Greater Eagle Fire Protection District (Dan Higgins, Fleet Manager)
- m. Service Agreement with Eagle River Water & Sanitation District (Dan Higgins, Fleet Manager)
- n. Service Agreement with Vail Valley Foundation (Dan Higgins, Fleet Manager)
- o. Letters related to Village at Avon pending litigation (This item was added to the agenda).

ORDINANCES

Brian Kozak, Police Chief, presented Ordinance No. 08-11, Series of 2008, Second Reading, An Ordinance Amending Title 10 Of The Avon Municipal Code To Enact A Schedule Of Fines For Parking Violations, Enact Authority To Boot And Impound Vehicles With Parking Violations, And Establish A Commercial Core For Increased Parking Fines. Chief Kozak noted that the Parking ordinance revisions are to help designate a commercial core area in Avon with enhanced penalties. He highlighted the content of the ordinance as outlined in the council packet memo. It was noted that a public relations effort would be underway the first of the year with the hiring of a new staff member in the police department; the position is a civilian officer and will assist with the enforcement of the ordinance. Mayor Wolfe opened the public hearing, no comments were made, the hearing was closed. Councilor Ferraro moved to approve Ordinance No. 08-11, Series of 2008, Second Reading, An Ordinance Amending Title 10 Of The Avon Municipal Code To Enact A Schedule Of Fines For Parking Violations, Enact Authority To Boot And Impound Vehicles With Parking Violations, And Establish A Commercial Core For Increased Parking Fines. Councilor Phillips seconded the motion and it passed unanimously.

RESOLUTIONS

Shane Pegram, Engineer II, presented Resolution 08-51, Series of 2008, Resolution Approving the Final Plat, A Resubdivision of Lot 69, Block 4, Wildridge, Town of Avon, Eagle County, Colorado (5351 Ferret Lane). He noted that this Final Plat resubdivides Lot 69, Block 4, Wildridge into two distinct lots, Lot 69A and 69B, and creates an access easement across 69B for the benefit of 69A. With no further comments, Councilor Ferraro moved to approved Resolution 08-51, Series of 2008, Resolution Approving the Final Plat, A Resubdivision of Lot 69, Block 4, Wildridge, Town of Avon, Eagle County, Colorado (5351 Ferret Lane). Councilor Carroll seconded the motion and it passed unanimously.

Matt Gennett, Planning Manager, presented Resolution No. 08-52, Series of 2008, Resolution Adopting a new Master Plan for the Harry A. Nottingham Park. Pedro Campos from VAg, Inc. reviewed the master plan document. It was noted that the plan was reorganized to include phasing, with three tiers of recommendations.

Mayor Pro Tem Sipes moved to approve Resolution No. 08-52, Series of 2008, Resolution Adopting a new Master Plan for the Harry A. Nottingham Park; Councilor Ferraro seconded the motion and it passed unanimously.

TOWN MANAGER REPORT

Larry Brooks, Town Manager, noted that the town would be becoming a member of the Rocky Mountain Rail Authority, an organization whose mission is to establish a structure and opportunity for the member to define, promote and implement mass transportation services and solutions to Colorado's growing transportation infrastructure needs and to facilitate rail service. The documents would be included on the January 13th agenda.

TOWN ATTORNEY REPORT

Eric Heil provided updates to the suits pending with the Village at Avon. He noted that a response to the TCMD has been filed as of last Thursday. As related to the vested rights suit, mediation continues with a deadline of December 19th. He noted there are still pending past due invoices with TCMD for the Nottingham Puder Ditch maintenance costs. The Town communicated with TCMD to move forward with the improvements to E. Beaver Creek Blvd; they will likely respond with financial information and ability to pay for those improvements. The construction of the water tank agreements between the ERWSD, the town, were drafted, however, the town has not yet heard any comments back from the Village at Avon, Traer Creek. And the subdivision expires in June 2009. Snow will be stored on the ERFPD site; confirmed with an email. It was also noted that a certified letter was sent to the Village at Avon stating that they are in violation of the agreement with the parking that has been occurring on RMF 1.

MAYOR REPORT

Mayor Wolfe asked about 09 committee assignments and whether or not there should be assigned a council member to serve as a liaison to that group. Town Attorney Heil noted that it would be appropriate but that those parties should be mindful of the litigation pending. This item would be scheduled for discussion at the January 13th meeting. The topic of the need for a new revenue source for transportation was raised especially in light of proposed bus service to Wildridge and Village at Avon. It was noted that staff would need to identify the status of the unresolved issue with the school site location and the Village at Avon. And finally he noted that the Eagle Valley Land Exchange continued to be addressed by all parties and hopefully soon there will be a plan and architecture of the deal.

--SIGNATURE PAGE FOLLOWS:--

There being no further business to come before the Council, the meeting was adjourned at 7:15 PM.

RESPECTFULLY SUBMITTED:

Patty McKenny, Town Clerk

APPROVED:

Rich Carroll _____

Dave Dantas _____

Kristi Ferraro _____

Amy Phillips _____

Albert "Buz" Reynolds _____

Brian Sipes _____

Ron Wolfe _____

Memo

To: Honorable Mayor and Town Council
Thru: Larry Brooks, Town Manager
From: Patty McKenny, Town Clerk
Date: January 7, 2009
Re: Resolution No. 09-01, Series of 2009

Summary: Resolution No. 09-01, Series 2009 is presented to Council for their approval of the four locations used for posting the notices of public meetings.

Previous Council Action: The Town Council adopts this type of resolution on an annual basis as required by Colorado Revised Statutes.

Background: The four locations have been as follows:

- ✓ Avon Town Hall, One Lake Street, Bulletin Board
- ✓ Avon Recreation Center, 325 Benchmark Road, Bulletin Board
- ✓ Alpine Bank, 10 W. Beaver Creek Boulevard, Bulletin Board
- ✓ Avon Public Library, 200 Benchmark Road, Front Area Bulletin Board

Discussion: Colorado Revised Statutes, Subsection 24-6-402 addresses the specific guidelines involved with the open meetings law and posting notices. Notices must be posted at least 24 hours prior to each meeting. Regular council meeting notices and planning & zoning meeting notices are posted on the Friday before the meeting and emailed to Avon's distribution list of several hundred-email addresses. In addition to the posting, the regular council meeting agendas are published in the Vail Daily on the Monday before the Tuesday meeting. These posting locations are also used for special meeting notices and public hearing notices for ordinances.

Town Manager Comments:



**TOWN OF AVON, COLORADO
RESOLUTION NO. 09-01
SERIES OF 2008**

**A RESOLUTION APPROVING THE LOCATIONS
FOR POSTING THE NOTICES OF PUBLIC MEETINGS**

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

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

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

Avon Town Hall, One Lake Street, Bulletin Board
Avon Recreation Center, 325 Benchmark Road, Bulletin Board
Alpine Bank, 10 W. Beaver Creek Boulevard, Bulletin Board
Avon Public Library, 200 Benchmark Road, Front Area Bulletin Board

ADOPTED THIS 13TH DAY OF JANUARY 2009.

**TOWN COUNCIL
TOWN OF AVON, COLORADO**

Ronald C. Wolfe, Mayor

Attest:

Patty McKenny, Town Clerk



Town of Avon
P.O. Box 975
400 Benchmark Road
Avon, Colorado 81620
970-748-4005

Office of the Town Manager

To: Honorable Mayor and Town Council

From: Larry Brooks, Town Manager

Date: January 5th, 2009

A handwritten signature in black ink, appearing to be "Larry Brooks", written over the "From" line.

Regarding: Membership with Rocky Mountain Rail Authority

Attached please find the contract documents for the 2009 Rocky Mountain Rail Authority membership. This membership entitles the Town to a seat with both the Steering Committee and the Board meeting that occurs on the 4th Friday of each month at the Jefferson County buildings in Golden. Meetings last all day with the Steering Committee meetings in the morning and the Board meeting in the afternoon. The dues for this membership are \$500, with project completion scheduled for August of 2009.

The agreement has been reviewed by the Town Attorney as acceptable. As noted in the agreement, any member may withdraw at any time and there is no individual liability for the financial obligations of the Authority.

When completed this project should serve to determine the feasibility of the Front Range and I-70 mountain corridor for high speed passenger rail. A positive determination from this study could result in the national designation as the 11th high speed corridor in the country, making us eligible for Federal funds when they become available.

**Establishing Contract
For
The Rocky Mountain Rail Authority**

Recitals

Whereas, those regions of the State of Colorado adjacent to and served by Interstate 25 and Interstate 70, as well as the State as a whole, contemplate increased population growth and attendant increases in vehicular traffic and transportation demands; and

Whereas, it is in the best interest of the public, and its health, safety and welfare, to provide a transportation alternative to existing modes of transportation in the form of high-speed rail; and

Whereas, various political subdivisions of the State of Colorado desire to bring focus to their interest in development of high-speed rail in the transportation corridors of Colorado; and

Whereas, those political subdivisions desire to create an authority for the purpose of investigating, encouraging, developing and bringing into being high-speed rail in the State of Colorado; and

Whereas, the parties desire to establish a cooperative mechanism among themselves, other governmental entities and others interested in developing high-speed rail service in the State of Colorado, and to define and implement various transportation facilities, programs, services, improvements and entities to facilitate and accomplish the establishment of high-speed rail in the State of Colorado; and

Whereas, the parties are political subdivisions of the State of Colorado whose separate powers include all powers invested into this Authority, and

Whereas, it is the intent of the parties to hereby create and establish the Authority for the purposes recited and enumerated herein.

Establishing Covenants

Now, therefore, be it resolved that the parties hereto do, by this contract (hereinafter "this Contract"), create and establish the Rocky Mountain Rail Authority for the purposes and with the powers and obligations set forth herein. The parties agree and covenant that the Authority shall be a body corporate and politic, a political subdivision of the State of Colorado and a separate governmental entity of the State of Colorado, pursuant to Section 18 of Article XIV of the Constitution of the State of Colorado, and Section 29-1-203 of the Colorado Revised Statutes. The parties hereby agree and further covenant as follows.

Terms and Conditions

- 1.01 Name.** The name of the entity hereby established shall be the Rocky Mountain Rail Authority (hereinafter "the Authority").
- 1.02 Purpose and Objectives.** The purpose of the Authority shall be to establish a structure and opportunity for the parties to this Contract (hereinafter "the Members"), both the initial Members and those political subdivisions which may become Members in the future, to define, promote and implement mass transportation services and solutions to Colorado's growing transportation infrastructure needs, to facilitate rail service, both passenger and freight in Colorado. Existing rail tracks have established the current transportation corridors, and the interstate highways have generally been built in those corridors, e.g., I-25, I-70 and I-76. Using, generally, those existing rail rights of way north and south and east and west, the Authority will facilitate a passenger rail service that will operate at an average speed that will qualify for Federal designation as a high-speed corridor. The objectives of the Authority shall be:
- 2.1** To plan and encourage rail infrastructure in or adjacent to the Authority's area of activity, Colorado, for a passenger and freight rail system that can be designated by the Federal Railroad Administration as a high-speed rail corridor.
 - 2.2** To interface and cooperate with other transit entities, including but not limited to other states, railroads, Amtrak and others within and adjacent to the Authority's boundaries to maximize the convenience, safety, speed and operating costs of rail transportation in Colorado.
 - 2.3** To encourage and support the establishment of such state, regional and local governmental entities and to cooperate with such non-profit and for-profit entities as are necessary and appropriate to establish the necessary transit infrastructure that will maximize the usage of the rail system.
 - 2.4** To seek funds to advance the Authority's purpose and objectives from federal, state, regional, and local governmental agencies and from the private sector.
- 1.03 Powers and Functions.** To accomplish its purpose and objections, the Authority shall have the following powers and functions to the fullest extent permitted by law and the conditions and requirements set forth in this Establishing Contract, and such inherent or implied powers as these powers and functions may suggest:
- 3.1** To plan, support and facilitate transportation systems, services, programs, facilities, improvements, including without limitation transportation of all types.
 - 3.2** To acquire, hold, lease, sell and dispose of legal and equitable interests in personal property of all kinds necessary or useful for the purposes of the Authority.

- 3.3 To seek, acquire, sell, lease, dispose of and exchange all types of personal property, licenses, certificates and permits.
- 3.4 To conduct such business and affairs for the benefit of its Members, their constituents and the public as may be appropriate, all in the discretion of the Authority's Board of Directors.
- 3.5 To enter into, make and perform contracts of every kind with the public and private entities of every type and kind in furtherance of the purpose of this Contract.
- 3.6 To employ employees, contractors and consultants and to appoint agents.
- 3.7 To act and operate as an "enterprise" within the meaning of the Colorado Constitution, Article X, Section 20, and to contract for and supply for payment services desired by Members which services are in furtherance of and related to the Authority's purposes.
- 3.8 To buy, lease, construct, appropriate, contract for, invest in and otherwise acquire, own, maintain, operate, manage, improve, develop, deal in, sell, lease, exchange, transfer, convey and dispose of, and to hypothecate and encumber personal property (tangible and intangible).
- 3.9 To sue and be sued.
- 3.10 To have and use a corporate seal.
- 3.11 To solicit, acquire, collect, receive and use gifts, grants, donations and pledges of any type, whether from public or private sources.
- 3.12 To have and exercise all rights and powers necessary or incidental or implied from these powers.
- 3.13 To budget and appropriate funds.

1.04 **No Power of Taxation.** The Authority shall have no power of taxation of any type or kind.

1.05 **Members.** Members of the Authority shall initially be Clear Creek County and the City of Monument, upon their respective execution of this Contract. Additional Members may join the Authority by execution of addenda to this Contract. Only political subdivisions of the State of Colorado and the State of Colorado, through its agencies, may become Members of the Authority. Nothing herein shall be deemed a waiver or surrender by the Members of any of their legal powers or responsibilities.

1.06 **Board of Directors.** All powers and functions of the Authority shall be vested in a Board of Directors consisting of one director designated by each Member of the Authority, all with one equal vote. Each Member may designate one alternate, similarly qualified, to serve in the absence of each Director. Directors and alternates appointed by members with boards, councils or commissions shall be elected or appointed members of those boards, councils or commissions. Vacancies on the Board of Directors shall be filled by the Member whose representative has created the vacancy. Directors shall not be compensated for their services. The Board shall operate as follows:

- 6.1 Regular meetings shall be held as determined by the Board of Directors. Special meetings shall be held as designated by the Chairman or any three Directors. Meetings shall be held in conformance with Colorado's open meetings law, section 24-6-402, C.R.S.
- 6.2 A majority of Directors designated by the Members shall constitute a quorum and a majority of a quorum present (meaning participating in a meeting for purposes of section 24-6-402, C.R.S.) shall constitute an action of the Board of Directors.
- 6.3 The Board's powers, as exercised by a majority of a quorum of Directors in office, shall include:
- (a) Governing the business and affairs of the Authority and establishing its policies.
 - (b) Election of officers, including a chairperson, vice-chairperson, secretary and treasurer.
 - (c) Acting in compliance with all applicable state and federal law to operate the Authority.
 - (d) Maintaining a record of proceedings of the Board.
 - (e) Establishing Board bylaws.
 - (f) Authorizing employment of employees, consultants, contractors and others.
 - (g) Having prepared and submitting an annual audit, as required by State law.
 - (h) Delegating and assigning functions to the Board's officers, employees, contractors and consultants, as not prohibited by law.
 - (i) Exercising all powers which are now or hereafter conferred by law or are essential or necessary to the provision of the Authority's services and accomplishment of its purposes, subject only to the limitations of this Contract and the law.
- 9.1 Any Member may, from time to time, designate, in writing, an Alternate Director, who shall possess the same qualifications as a Director and who shall, in the absence of such Director, be entitled to attend regular or special meetings of the Board and exercise the same powers as such Director.
- 9.2 The Board shall have an executive committee, whose members shall be all the officers of the Authority, plus no more than three Directors elected by the Board. The executive committee shall be empowered to exercise all powers given the Board hereunder, and by law, subject only to prior decisions and instructions of the Board. The Board shall delegate all powers of performance and execution to the executive committee. The Board may delegate the performance and execution of any and all powers and functions to such committees as the Board may deem proper, the membership of which committees shall also be determined by the Board.

- 1.10 Term, Withdrawal and Dissolution.** This Contract shall commence on the date of its execution by any two Members, whether they be initial or additional members, as provided in Section 5.0 hereof. Any Member of the Authority may withdraw at any time. The Authority shall have perpetual existence, subject to dissolution at such time as it has fewer than two Members.
- 1.11 Amendments.** This Contract contains all the terms agreed upon by the Members. Any amendment hereof must be in writing and executed by all Members.
- 1.12 Reliance.** The Members acknowledge and agree that each is relying on the performance of the other(s) under this Contract, and that all actions or changes of positions undertaken pursuant thereto are made in such reliance.
- 1.13 Non-Impairment.** Nothing in this Contract shall be deemed to restrict, modify or otherwise impair the powers of any Member in any manner.
- 1.14 Severability.** If any provision of this Contract or the application thereof to any person, entity or circumstances, is held invalid, such invalidity shall not affect other provisions or applications of this Contract, which can be given effect without the invalid provision or application, and to this end the provisions of this Contract, and each and every provision thereof, are declared to be severable.
- 1.15 Applicable Laws.** This Contract shall be governed by and construed in accordance with the laws of the state of Colorado.
- 1.16 Assignability.** No Member may assign or transfer any of its rights or obligations hereunder without the prior written consent of the Member(s) that is a nonassigning party(ies) to this Contract.
- 1.17 Binding Effect.** The provisions of this Contract shall bind and shall inure to the benefit of the Member(s) and to their respective successors and permitted assigns, if any.
- 1.18 Enforcement.** The Member(s) agree and acknowledge that this Contract may be enforced in law or in equity, by decree of specific performance, and, in the event of a judgment that a breaching Member acted arbitrarily and capriciously, or in bad faith, including an award of appropriate damages, or such other legal and equitable relief as may be available subject to the provisions of the laws of the State of Colorado.

Effective November 20, 2006, and executed this 20th day of Dec, 2006, at a regularly scheduled meeting of the Clear Creek Board of County Commissioners.

CLEAR CREEK COUNTY

By and through its
Board of County Commissioners

ATTEST:

By: [Signature]
Kevin J. O'Malley, Chairman

[Signature]
Deputy Clerk and Recorder

APPROVED AS TO FORM:

[Signature]
Robert W. Loeffler, County Attorney

Effective November 20, 2006, and executed this 20th day of November, 2006, at a regularly scheduled meeting of the Monument City Council.

THE TOWN OF MONUMENT

ATTEST:

[Signature]

[Signature]

By: Byron J. Glenn

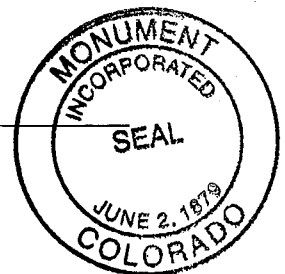
By: Scott Meszaros

Title: Mayor

Title: Town Clerk

Date: 1.5.07

Date: 1.5.07



**First Amendment to the Establishing Contract
For
The Rocky Mountain Rail Authority**

Recitals

Whereas, Clear Creek County and the Town of Monument entered into an intergovernmental Agreement (“the Agreement”) effective November 20, 2006, which created the Rocky Mountain Rail Authority; and

Whereas, pursuant to Section 1.05 of that agreement, the Town of Castle Rock and the Roaring Fork Transportation Authority signed addenda, thereby joining the Rocky Mountain Rail Authority as members; and

Whereas, the members of the Rocky Mountain Rail Authority wish to amend their original agreement; and

Whereas, the intention of the members is that the original intergovernmental agreement signed by the members remain in effect except with regard to the following changes:

Amendments

A. Section 1.05 of the Agreement shall be amended to state as follows:

1.05 Members. Members of the Authority shall initially be Clear Creek County and Town of Monument, upon their respective execution of this Contract.

5.1 Only political subdivisions of the State of Colorado and the State of Colorado, through its agencies, may become Members of the Authority. Additional Members may join the Authority by execution of addenda to this Contract. The addenda may specify any financial contribution to be made by the member jurisdictions.

5.2 All financial contributions promised by member jurisdictions are subject to each jurisdiction’s annual appropriation and any applicable TABOR spending restrictions.

5.3 Individual member jurisdictions are not liable for the financial obligations of the Authority.

B. Section 1.18 of the Agreement regarding enforcement is hereby repealed and is replaced by the following Section 1.18.

1.18 Counterpart Execution. A copy of this document may be executed by each party, separately, each copy of which shall be deemed an original, and when each party has executed a copy thereof, such copies taken together shall be deemed to be one and the same instrument and a full and complete Contract between the parties.

[The remainder of this page is intentionally left blank.]

Effective November 20, 2006 and executed this 11th day of April, 2007, at a regularly scheduled meeting of the Clear Creek Board of County Commissioners.

CLEAR CREEK COUNTY

By and through its
Board of County Commissioners

ATTEST:

By: Joan Drury
Kevin J. O'Malley, Chairman
Joan Drury

[Signature]
Deputy Clerk and Recorder

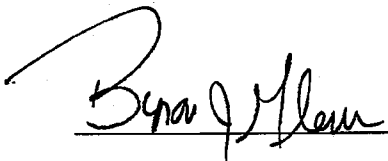
APPROVED AS TO FORM:

[Signature]
Robert W. Loeffler, County Attorney

Effective November 20, 2006, and executed this 26th day of April
2007, at a regularly scheduled meeting of the Monument City Council.

THE TOWN OF MONUMENT

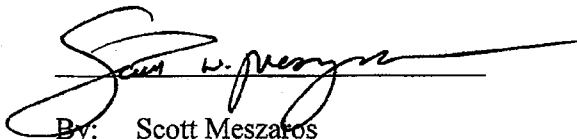
ATTEST:



By: Byron J. Glenn

Title: Mayor

Date: 4.26.07



By: Scott Meszaros

Title: Town Clerk

Date: 4.26.07

Effective November 20, 2006, and executed this 12th day of April 2007.

For the TOWN OF CASTLE ROCK:

Mark Stevens 4/12/07
Mark Stevens, Town Manager Date

ATTEST:

Sally Misare 4-12-07
Sally Misare, Town Clerk Date

Approved as to form:

Robert J. Slentz 4-12-07
Robert J. Slentz, Town Attorney Date

First Amendment to the Establishing Contract
For
The Rocky Mountain Rail Authority

Recitals

Whereas, Clear Creek County and the Town of Monument entered into an intergovernmental Agreement ("the Agreement") effective November 20, 2006, which created the Rocky Mountain Rail Authority; and

Whereas, pursuant to Section 1.05 of that agreement, the Town of Castle Rock and the Roaring Fork Transportation Authority signed addenda, thereby joining the Rocky Mountain Rail Authority as members; and

Whereas, the members of the Rocky Mountain Rail Authority wish to amend their original agreement; and

Whereas, the intention of the members is that the original intergovernmental agreement signed by the members remain in effect except with regard to the following changes:

Amendments

A. Section 1.05 of the Agreement shall be amended to state as follows:

1.05 Members. Members of the Authority shall initially be Clear Creek County and Town of Monument, upon their respective execution of this Contract.

5.1 Only political subdivisions of the State of Colorado and the State of Colorado, through its agencies, may become Members of the Authority. Additional Members may join the Authority by execution of addenda to this Contract. The addenda may specify any financial contribution to be made by the member jurisdictions.

5.2 All financial contributions promised by member jurisdictions are subject to each jurisdiction's annual appropriation and any applicable TABOR spending restrictions.

5.2 Individual member jurisdictions are not liable for the financial obligations of the Authority.

B. Section 1.18 of the Agreement regarding enforcement is hereby repealed and is replaced by the following Section 1.18.

1.18 Counterpart Execution. A copy of this document may be executed by each party, separately, each copy of which shall be deemed an original, and when each party has executed a copy thereof, such copies taken together shall be deemed to be one and the same instrument and a full and complete Contract between the parties.

Effective November 20, 2006, and executed this 12th day of April 2007, at a regularly scheduled meeting of the Roaring Fork Transportation Authority Board of Directors.

ROARING FORK TRANSPORTATION AUTHORITY

By: Dorothea Farris 4-12-07
Dorothea Farris, Chair Date

ADDENDUM # 1

**TO THE ESTABLISHING CONTRACT FOR THE ROCKY MOUNTAIN RAIL
AUTHORITY AS AMENDED BY THE FIRST AMENDMENT TO THE
ESTABLISHING CONTRACT FOR THE ROCKY MOUNTAIN RAIL AUTHORITY**

Pursuant to Section 1.05 of the Establishing Contract for the Rocky Mountain Rail Authority, entered into by Clear Creek County and the City of Monument, effective November 20, 2006, as amended by the First Amendment thereto (collectively referred to as the "Agreement"), Town of Avon hereby agrees to the terms of the Agreement and approves this addendum in order to become a member of the Rocky Mountain Rail Authority.

Avon's representative on the Rocky Mountain Rail Authority Board of Directors shall be Larry Brooks ; the alternate representative shall be Brian Sipes.

Avon's financial contribution to the Rocky Mountain Rail Authority shall not exceed \$500.

Upon receipt and acceptance by the Rocky Mountain Rail Authority of this addendum, **Town of Avon** will be a party to the Agreement.

Addendum Accepted by:
Town of Avon

Ron Wolfe, Mayor

Date: _____

Addendum Accepted by:
ROCKY MOUNTAIN RAIL AUTHORITY

Harry Dale, Chairperson

Date: _____

Memo

To: Honorable Mayor and Town Council
Thru: Larry Brooks, Town Manager
From: Justin Hildreth, Town Engineer *JH*
Shane Pegram, Engineer II
Date: January 7, 2009
Re: Town of Avon Recreation Center - Wiss, Janey, Elstner Associates, Inc. Additional Services Proposal

Summary: Town staff requested that Wiss, Janey, Elstner Associates, Inc. (WJE) provide an additional service proposal (Exhibit A) for investigation and remediation efforts at the Avon Recreation Center. WJE's October 9, 2008 report details their observations and recommendations for remediation. Staff recommends approving the January 5, 2009 Additional Services Proposal in the amount of \$27,000.

Background: The existing masonry façade on the Town of Avon Recreation Center has begun to deteriorate. A walkthrough of the structure was conducted by WJE and Engineering staff during the month of July to determine a plan for investigation of what has caused the deterioration. The walkthrough revealed efflorescence, spalling and erosion of the CMU in several locations. Discoloration and corrosion of the existing metal soffit in several locations was also noted. The worst locations are adjacent to the pool area. The efflorescence, spalling and erosion of the CMU indicate that excess moisture is migrating through the CMU.

Town Council approved WJE's proposal for investigation during the August 26, 2008 meeting. WJE has completed the investigation and provided a written report that documents their observations and recommendations.

Discussion: WJE's written report documents their investigation and provides recommendations for remediation. WJE documented deteriorating CMU walls, interior air pushing through the soffit vents, and, and mechanical controls out of calibration. Their opinion is that moisture laden air is being forced into the CMU block from the pool area.

Wiss Janey Elstner's report recommends making adjustments to the pool area mechanical system controls to maintain a negative pressure of .01" static pressure to the outdoors, investigating as-built conditions of exterior walls at the roof interface, determine air leakage into the pool envelope, and developing a repair detail based on the as-built conditions.

Staff has requested WJE provide a proposal for assistance with remediation efforts. The January 5, 2009 Additional Service proposal includes the following:

- Provide a description of work to allow a balancing contractor to determine current leakage rate of the pool area, observe the test, and provide a written summary.
- Investigate the cause of air leakage into the pool area. Inspection openings will be cut into the surrounding walls.
- Issue a written report of their findings, so we can agree upon a course of action for repairs
- Prepare construction documents that will allow bidding by a qualified contractor and repair to the exterior wall assemblies.
- Prepare construction documents that will enable the Town to revise the existing mechanical system to control the pressure in the pool area to a negative pressure.

Financial Implications: A new Capital Improvements Project (CIP) will be set up to pay for the investigation/design work and repair work. The 2009 CIP budget will be amended to appropriate funds for the new project.

Recommendation: Approve the January 5, 2009 Additional Services Proposal from Wiss, Janey, Elstner Associates, Inc. in the amount of \$27,000 for additional investigation of the Avon Recreation Center's deteriorating exterior masonry façade and preparing necessary construction documents for repair.

Proposed Motion: I move to approve the January 5, 2009 Additional Services Proposal from Wiss, Janey, Elstner Associates, Inc. for additional investigation of the Avon Recreation Center's deteriorating exterior masonry façade and preparing necessary construction documents for repair. for a fee not to exceed \$27,000 without prior written approval.

Town Manager Comments:

NOTES:

Exhibit A – WJE Additional Services Proposal, dated January 5, 2009



Wiss, Janney, Elstner Associates, Inc.
10881 West Asbury Avenue, Suite 110
Lakewood, Colorado 80227
720.962.8688 tel | 720.962.8488 fax
www.wje.com

Via E-mail and US Mail

January 5, 2009

Mr. Shane Pegram
Engineer
Town of Avon
PO Box 975
Avon, Colorado 81620

Re: Town of Avon Recreation Center
Additional Services Proposal (Revised)
WJE No. 2008.3414.1

Dear Mr. Pegram:

Wiss, Janney, Elstner Associates, Inc. (WJE) is pleased to submit this revised proposal for additional services for the Town of Avon Recreation Center. The additional services are based upon results from our initial investigation summarized in our report, dated October 9, 2008.

SCOPE OF SERVICES

The report outlined several repair items including; mechanical system work, investigative work to determine the air leakage of the building envelope, and building façade repair work. Based on discussions with you, it is our understanding that the primary focus of this next phase of work is two-fold; to minimize air leakage into the pool area from adjacent spaces and the exterior building envelope, and to modify the mechanical systems to drive the natatorium to a negative pressure. This will entail modifications to both the exterior building envelope and the building's mechanical systems. Our Mechanical Consultant, Mr. Mark Scott will assist with the mechanical aspects of the project. We envision the following scope of services for the next phase of work:

1. Provide a description of work which will allow the owner to engage a balancing contractor to determine the current leakage rate of the natatorium, and observe the actual test. A written summary of the test results will be provided. At this time, we have allowed for one leakage rate test.
2. Perform a one day site visit to investigate the cause(s) of air leakage into the pool area from the exterior and adjoining spaces. This will require the assistance of an outside contractor or Town of Avon employees to create and patch inspection openings to facilitate this work. This work may require the mechanical system to be driven to 100% outside air and the exhaust fan turned off. We will use smoke to identify the areas of leakage. At this time, we believe most of the air leakage is occurring between the underside of the roof deck and the exterior wall assemblies, thus we will focus our efforts on these areas.
3. Issue a written report summarizing our findings and recommendations for repair. After you have reviewed this report, we will discuss our findings with you and agree upon a course of action for repairs.

Headquarters & Laboratories—Northbrook, Illinois

Atlanta | Austin | Boston | Chicago | Cleveland | Dallas | Denver | Detroit | Honolulu | Houston
Los Angeles | Minneapolis | New Haven | New York | Princeton | San Francisco | Seattle | Washington, DC

4. Prepare construction documents sufficient for a qualified contractor to bid and perform the repair work to the exterior wall assemblies. We will assist the Town of Avon with identifying qualified bidders and performing construction administrative services. Per our conversations, these documents will concentrate on repairing the air breach in the exterior building envelope. It will not include documents for repair of the exterior CMU since it is our understanding that the Town of Avon may choose to modify the appearance of the building.
5. Prepare construction documents that will enable the Owner to revise the existing mechanical system to control the pressure in the natatorium to a negative pressure throughout the year. The first part of this work is to determine if the existing exhaust fan has the capacity to drive the natatorium to a negative pressure. The remaining work is based on the conclusion that the existing exhaust fan has the capacity required. If the fan does not have the required capacity, the mechanical scope will be adjusted at that time. The work anticipated is to adjust the variable frequency drive on the main pool exhaust and to revise the temperature control system to vary the speed of the exhaust fan to maintain negative natatorium pressure. We anticipate that the work will be performed by the Controls Contractor, Trane out of Grand Junction.
6. We will perform a total of three (3) site visits during the mechanical portion of the work and three (3) site visits during the exterior wall repair work to determine if the work is being performed in general conformance with the construction documents.

Costs associated with the temporary removal and repair of any finishes have not been included in our estimated budget. We will work with a contractor designated by you to make any required exploratory openings.

FEES, TERMS AND CONDITIONS

We will bill our services on a time and expense basis for the proposed scope as follows:

• WJE Fees and Expenses	\$16,000
• Mechanical Consultant Fees and Expenses	<u>\$11,000</u>
	Total \$27,000

It should also be understood that our proposal is based upon available information, readily observed conditions, and certain assumptions. This proposal does not include any costs associated with unforeseen conditions that may be discovered during our evaluation. Additional work will be billed at our current hourly rates listed below.

Schedule of Hourly Time Charges

Professional Staff		Professional Support Staff	
Principal	225.00	Senior Specialist	\$105.00
Associate Principal	185.00	Specialist	95.00
Senior Associate	160.00	Senior Technician	\$85.00
Associate III	145.00	Technician II	70.00
Associate II	120.00	Technician I	55.00
Associate I	100.00		

Our Standard Terms and Conditions, dated October 8, 2007 are part of this proposal and are enclosed for your review.

We are certainly available to discuss this proposal in greater detail. If you concur with the terms of this proposal, please sign in the space provided below and return one copy as our authorization to proceed.

Thank you for the opportunity to be of service. Please call if you have any questions.

Sincerely,

WISS, JANNEY, ELSTNER ASSOCIATES, INC.



Daniel A. Gach, AIA
Senior Associate

Authorization to Proceed

WJE No. 2008.3414.1

FOR: _____
(company)

(signature)

(printed signature)

(title)

(date)

These Standard Terms and Conditions shall continue in full force and effect during, and after the completion or termination of, Wiss, Janney, Elstner Associates, Inc. or WJE Engineers & Architects, P.C. (WJE) employment. These Standard Terms and Conditions shall control any conflicting term or condition unless WJE agrees otherwise in writing.

PERFORMANCE

WJE and its employees will exercise the degree of skill and care expected by customarily accepted practices and procedures. No warranties, expressed or implied, are made with respect to WJE's performance, unless agreed to in writing. WJE is not a guarantor of the project to which its services are directed, and its responsibility is limited to work performed for the client. WJE is not responsible for acts or omissions of the client, nor for third parties not under its direct control. WJE shall not be liable for any reason for any special, indirect or consequential damages including loss of use and loss of profit. WJE will take reasonable precautions to minimize any damage to the client's property during conduct of any WJE field work and testing. The client understands that in the normal course of this type of work some damage may occur, liability for which damage is not part of this agreement. WJE may rely upon information supplied by the client engaging WJE, or the contractors or consultants involved, or information available from generally accepted reputable sources, without independent verification. WJE services are being performed solely for client's benefit and no contractor, subcontractor, supplier, fabricator, manufacturer, tenant, occupant, consultant, or other third party shall have any claim against WJE as a result of its services.

WJE shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and safety programs in connection with the project, since these are solely the responsibility of others. WJE shall not be responsible for the contractor's schedules or failure to carry out the project in accordance with contract documents. WJE shall not have control over or charge of acts or omissions of the contractor, subcontractor, or their agents or employees, or of any other non-WJE persons performing portions of the project.

USE OF REPORTS, DRAWINGS AND ELECTRONIC MEDIA

WJE retains ownership of letters, reports, drawings, specifications, photographs, test data, notes and other work product it has created. These documents or parts thereof may not be reproduced in advertisements, brochures, or sales material, nor used by the client for any purpose other than the purpose for which they were prepared, nor by third parties, without the written permission of WJE. Conclusions by WJE based on test results are limited to the specific conditions for which the tests were performed. In the event that WJE work product is stored or transmitted by some form of electronic media, the client agrees that WJE shall not be held liable for the completeness, transmission, accuracy or longevity of these materials, nor for misuse thereof.

PROPOSALS

Proposals expire 120 days after submission to a client unless a different expiration limit is included in the proposal. WJE may withdraw or modify a proposal at any time prior to acceptance by the client. All fees and

expenses quoted in proposals or stated in invoices are exclusive (net) of local or county excise and other business or business license taxes. The client represents it is aware of all such taxes and shall reimburse WJE upon presentation by WJE of the cost of such taxes by an invoice within one year of completion of services.

CLIENT DUTIES

In order for WJE to perform the services requested, the client shall, at no expense to WJE, (1) provide all necessary information regarding client's requirements as necessary for orderly progress of the work, (2) designate in writing a person to act as client's representative for services to be rendered under this Agreement, which person shall have authority to transmit instructions, receive instructions and information, interpret and define client's policies and requests for WJE's services, and (3) provide access to and make all provisions for WJE to enter, without cost, limitation or burden to WJE, publicly or privately owned property as required to perform the work, including the use of scaffolds or similar mechanical contrivances.

SAFETY

Field work of WJE will be performed only under conditions deemed safe by WJE personnel. Charges may be made for safety or security measures required by hazardous job conditions. WJE is not responsible for the safety of other persons or property.

HAZARDOUS MATERIALS

If WJE encounters, or reasonably suspects that it has encountered, hazardous materials in the project, WJE shall cease activity on the project and promptly notify the client. The client shall initiate action, where appropriate, to identify and investigate the nature and extent of hazardous materials in the project and to abate and/or remove the same as may be required by federal, state or local statute, ordinance, code, rule, or regulation now existing or hereinafter enacted or amended. Unless otherwise specially provided in writing, the services to be provided by WJE do not include identification of hazardous materials, and WJE has no duty to identify or attempt to identify the same within the area of the project.

It is further understood and agreed that services WJE will undertake for the client may be uninsurable obligations involving the presence or potential presence of hazardous materials. Therefore, the client agrees, except (1) such liability as may arise out of WJE's sole negligence in the performance of services under this agreement or (2) to the extent of insurance coverage available for the claim, to hold harmless, indemnify and defend WJE and its employees, subcontractors and agents from and against any and all claims, lawsuits, damages, liability and costs, including but not limited to, costs of defense, arising out of or in any way connected with the presence, discharge, release, or escape of hazardous materials. This indemnification applies only to existing conditions and not to conditions caused or

created by WJE. "Hazardous materials" includes, but is not limited to, any substance, waste, pollutant (including mold and mildew) or contaminant, in whatever form, now or hereafter included with such terms under any federal, state or local statute, ordinance, code, rule or regulation now existing or hereinafter enacted or amended.

SUSPENSION OF SERVICES

If the client fails to make payment when due for WJE's services and expenses, WJE may, upon seven days' written notice to the client, suspend performance of services under this Agreement. Unless payment in full is received by WJE within seven days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, WJE shall have no liability to the client for delay or damage caused the client because of such suspension of services.

FIXED PRICE CONTRACTS

Where WJE and the client have agreed to a fixed price contract, the following WJE Standard Terms and Conditions are specifically excluded: Time Charges, Expenses, Equipment Usage, Affiliated Consultants, and Subcontracted Services. Progress payments will be made monthly as a percent of completion unless otherwise arranged with the client. Other WJE Standard Terms and Conditions stated herein remain in effect.

TIME CHARGES

Time charges are accrued on an hourly basis, unless other arrangements are established. Minimum time charges for personnel at a job site are 8 hours per day, unless time can be utilized on another job. Hourly rates are not increased for overtime. Billing rates may be increased annually.

EXPENSES

Public transportation, subsistence and out-of-pocket expenses incurred during travel, communications, reproduction and shipping charges will be billed at cost plus 5% (invoiced as an expense service fee.) Use of company or personal vehicles are billed at \$ 0.60 per mile.

Expended materials for field and laboratory investigations, rental equipment, and fees advanced on client's behalf will be billed at cost plus 10% (invoiced as an expense service fee.)

Clients may be charged for the cost of providing copies of receipts or detailed "back-up" information concerning expenses.

EQUIPMENT USAGE

WJE equipment used in field or laboratory work is billed at approximately 1% of the replacement cost per day, subject to adjustment for minimum or extended usage.

AFFILIATED CONSULTANTS

WJE retains certain affiliated consultants as independent contractors. These affiliated consultants are billed at rates equivalent to WJE employees of similar education and professional experience.

STORAGE

Material samples not consumed in WJE's work will be discarded 30 days after completion of the project unless

the client requests other disposition. Charges will be made for extended storage of materials, records, or equipment. WJE will exercise reasonable care in safeguarding materials, records, or equipment, but disclaims any liability for loss or damage.

SUBCONTRACTED SERVICES

Services are billed at cost plus 10% if the subcontracted firm has at least \$500,000 of Professional/General Liability Insurance, otherwise cost is marked up 20%.

SUBPOENAS AND COURT ORDERS

The client is responsible, after notification, for payment of time charges, attorney fees and other expenses resulting from a required response to subpoenas or court orders issued at the request of any party concerning any part of WJE's work. Charges are based on billing rates in effect at the time of WJE's response.

DISPUTE RESOLUTION

Any dispute that should arise between the client and WJE shall first try to be resolved through mediation. The mediator shall be mutually agreed upon and chosen from a list provided by the American Arbitration Association or other source of experienced professional mediators.

INSURANCE

WJE is protected for general, automobile, workers' compensation and employers' liability coverage by policies written by national insurance carriers rated by the A.M. Best Company. The primary limits are \$1,000,000 with a \$5,000,000 aggregate on general liability. Excess coverage applies to exposures over \$1,000,000. Endorsements are not allowed. Coverage is subject to annual renewal. Increased coverage will be sought if requested. Charges for additional coverage will be billed to the client.

BILLING TERMS

The firm or individual engaging WJE is responsible for payment of charges unless WJE is notified in writing, prior to the time that the charges are incurred, that the engagement is on behalf of another party. Accumulated charges will be billed in approximately monthly intervals. State and local sales and use tax will be included in the billing if applicable. Payment in full (in US dollars) is due upon receipt of the invoice. Invoices which are unpaid 30 days from the invoice date are considered past due and subject to an interest charge at the rate of 1 1/2% per month (or at a lower maximum legal rate) plus related attorneys' fees and collection expenses. The client is responsible for payment of all charges. Agents of the client who engage WJE are also responsible for payment of all charges unless WJE agrees otherwise in writing prior to the time that the charges are incurred.



WIDNER MICHOW & COX, LLP
ATTORNEYS AT LAW

MEMORANDUM

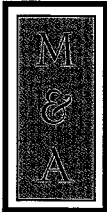
TO: Honorable Mayor Wolfe and Town Council Members
CC: Larry Brooks, Town Manager; Eric Heidemann, Community Development Director
FROM: Eric Heil, Town Attorney
DATE: 1-8-09
SUBJECT: Motion to Initiate Zoning Amendment Change

A handwritten signature in black ink, appearing to be 'E. Heil', written over the 'FROM' line of the memorandum.

Summary: Town Staff proposes revisions to the vested rights regulations in the Town of Avon zoning code. Amendments to the text of the zoning code may be initiated by the Town Council in accordance with sec. 17.28.020.

Requested Action: Town Staff requests that the Town Council initiate an amendment to the text of the zoning code by motion.

Proposed Motion: "I move to initiate an amendment to the vested rights regulation text of the Town of Avon zoning code and direct Town staff to take all actions necessary to prepare the proposed text amendments, prepare the application for amendment, and take such other actions as may be necessary to submit and process such application for text amendments to the zoning code."



MCMAHAN AND ASSOCIATES, L.L.C.

Certified Public Accountants and Consultants

SUITE 222/AVON CENTER
100 WEST BEAVER CREEK BLVD.
P.O. Box 5850 AVON, CO 81620

WEB SITE: WWW.MCMAHANCPA.COM
TELEPHONE: (970) 845-8800
FACSIMILE: (970) 845-0851
E-MAIL: MCMAHAN@MCMAHANCPA.COM

January 8, 2009

Town of Avon, Colorado
P.O. Box 975 P.O. Box 975
Avon, CO 81620

We are pleased to confirm our understanding of the services we are to provide Town of Avon, Colorado for the period or year ended December 31, 2008. We will audit the financial statements of the governmental activities, the business-type activities, the aggregate discretely presented component units, each major fund, and the aggregate remaining fund information, which collectively comprise the basic financial statements of Town of Avon, Colorado as of and for the period or year ended December 31, 2008. Accounting standards generally accepted in the United States provide for certain required supplementary information (RSI), such as management's discussion and analysis (MD&A), to accompany Town of Avon, Colorado's basic financial statements. As part of our engagement, we will apply certain limited procedures to your RSI. These limited procedures will consist principally of inquiries of management regarding the methods of measurement and presentation, which management is responsible for affirming to us in its representation letter. Unless we encounter problems with the presentation of the RSI or with procedures relating to it, we will disclaim an opinion on it. The following RSI is required by generally accepted accounting principles and will be subjected to certain limited procedures, but will not be audited:

- 1) Management's Discussion and Analysis.

Supplementary information other than RSI, such as combining and individual fund financial statements, also accompanies Town of Avon, Colorado's basic financial statements. We will subject the following supplementary information to the auditing procedures applied in our audit of the basic financial statements and will provide an opinion on it in relation to the basic financial statements:

- 1) Local Highway Finance Report

The following additional information accompanying the basic financial statements will not be subjected to the auditing procedures applied in our audit of the financial statements, and for which our auditor's report will disclaim an opinion.

- 1) Introductory information
- 2) Statistical information

Audit Objective

The objective of our audit is the expression of opinions as to whether your basic financial statements are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles and to report on the fairness of the additional information referred to in the first paragraph when considered in relation to the basic financial statements taken as a whole. Our audit will be conducted in accordance with U.S. generally accepted auditing standards and will include tests of the accounting records and other procedures we consider necessary to enable us to express such opinions. If our opinions on the financial statements are other than unqualified, we will fully discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed opinions, we may decline to express opinions or to issue a report as a result of this engagement.

Performing services for local governments throughout Colorado

D. Jerry McMahan, C.P.A.
Paul J. Backes, C.P.A.

Daniel R. Cudahy, C.P.A.
Michael N. Jenkins, C.A., C.P.A.

Members: American Institute of Certified Public Accountants/Colorado Society of Certified Public Accountants
National and Colorado Government Finance Officers Association/Colorado Municipal League

Management Responsibilities

Management is responsible for establishing and maintaining internal controls, including monitoring ongoing activities; for the selection and application of accounting principles; and for the fair presentation in the financial statements of the respective financial position of the governmental activities, the business-type activities, the aggregate discretely presented component units, each major fund, and the aggregate remaining fund information of the Town of Avon, Colorado and the respective changes in financial position and where applicable, cash flows, in conformity with U.S. generally accepted accounting principles. Management is responsible for the basic financial statements and all accompanying information as well as all representations contained therein. You are also responsible for management decisions and functions; for designating an individual with suitable skill, knowledge, or experience to oversee our financial statement preparation services and any other nonattest services we provide; and for evaluating the adequacy and results of those services and accepting responsibility for them.

Management is responsible for making all financial records and related information available to us and for the accuracy and completeness of that information. Management is responsible for adjusting the financial statements to correct material misstatements and for confirming to us in the representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud or illegal acts affecting the government involving (1) management, (2) employees who have significant roles in internal control, and (3) others where the fraud or illegal acts could have a material effect on the financial statements. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud affecting the government received in communications from employees, former employees, regulators, or others. In addition, you are responsible for identifying and ensuring that the entity complies with applicable laws and regulations.

Audit Procedures—General

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. We will plan and perform the audit to obtain reasonable rather than absolute assurance about whether the financial statements are free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the entity or to acts by management or employees acting on behalf of the entity.

Because an audit is designed to provide reasonable, but not absolute, assurance and because we will not perform a detailed examination of all transactions, there is a risk that material misstatements may exist and not be detected by us. In addition, an audit is not designed to detect immaterial misstatements, or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements. However, we will inform you of any material errors and any fraudulent financial reporting or misappropriation of assets that come to our attention. We will also inform you of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any later periods for which we are not engaged as auditors.

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, and may include tests of the physical existence of inventories, and direct confirmation of receivables and certain other assets and liabilities by correspondence with selected individuals, creditors, and financial institutions. We will request written representations from your attorneys as part of the engagement, and they may bill you for responding to this inquiry. At the conclusion of our audit, we will also require certain written representations from you about the financial statements and related matters.

Audit Procedures—Internal Control

Our audit will include obtaining an understanding of the entity and its environment, including internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedures. An audit is not designed to provide assurance on internal control or to identify deficiencies in internal control. However, during the audit, we will communicate to management and those charged with governance internal control related matters that are required to be communicated under professional standards.

Audit Procedures—Compliance

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of Town of Avon, Colorado's compliance with applicable laws and regulations and the provisions of contracts and agreements. However, the objective of our audit will not be to provide an opinion on overall compliance and we will not express such an opinion.

Audit Administration, Fees, and Other

We understand that your employees will prepare all cash or other confirmations we request and will locate any documents selected by us for testing.

Our fee for these services will be at our standard hourly rates plus out-of-pocket costs (such as report reproduction, word processing, postage, copies, telephone, etc.) except that we agree that our gross fee, including expenses will not exceed the amount noted in our proposal. Our standard hourly rates vary according to the degree of responsibility involved and the experience level of the personnel assigned to your audit. Our invoices for these fees will be rendered each month as work progresses and are payable on presentation. In accordance with our firm policies, work may be suspended if your account becomes overdue and may not be resumed until your account is paid in full. If we elect to terminate our services for nonpayment, our engagement will be deemed to have been completed upon written notification of termination, even if we have not completed our report. You will be obligated to compensate us for all time expended and to reimburse us for all out-of-pocket costs through the date of termination. The above fee is based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the audit. If significant additional time is necessary, we will discuss it with you and arrive at a new fee estimate before we incur the additional costs.

We appreciate the opportunity to be of service to Town of Avon, Colorado and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign the enclosed copy and return it to us. This letter will remain in force until updated or cancelled by either party.

Very truly yours,

McMahan and Associates, L.L.C.

McMahan and Associates, L.L.C.

RESPONSE:

This letter correctly sets forth the understanding of Town of Avon, Colorado.

Signature

Title

Date

Memo

To: Honorable Mayor and Town Council
Thru: Larry Brooks, Town Manager
From: Brian Kozak, Chief of Police
Date: January 5, 2009
Re: Intergovernmental Agreement for Animal Control Service

Summary: The Police Department is recommending approval of the attached IGA to allow Eagle County Animal Control to continue to serve the Town of Avon.

Previous Council Action: The council previously approved an IGA with Animal Services on November 14, 2006. This revised IGA decreases the expected service while accordingly reducing the fees to the Town of Avon.

Background: This IGA will cause Animal Services to continue to serve the Town.

Discussion: Under the IGA the County will provide the following to the Town of Avon:

- Twenty-four Hours per day emergency on call service.
- Animal shelter service.
- Investigation and reporting of animal bite situations.
- Enforcement of the leash law by citing violators into the Municipal Court.
- Response to calls from the Police Department or from citizens.

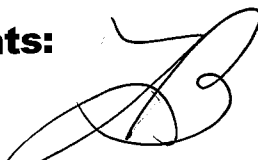
Animal Services will respond to calls; however, they will not provide routine patrol in Avon. A review of prior service revealed that Animal Services has not reported any self initiated activity as a result of patrol in the Town. Pro-active patrol will be conducted by the police service officer and police officers.

Financial Implications: The contract previously cost \$1,512.00 per month; however, it will be reduced to \$800.00 per month under this revised IGA.

Recommendation: It is recommended that the attached IGA with Eagle County for animal control service be approved.

Alternatives: If the IGA is not approved the Avon Police Department will be required to provide limited service to the community.

Town Manager Comments:



**INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE COUNTY OF EAGLE, STATE OF COLORADO
AND
THE TOWN OF AVON**

This Agreement made this _____ day of _____, 2009 by and between the County of Eagle, State of Colorado, a body corporate and politic (the "County") and the Town of Avon, a municipal corporation (the "Town").

WITNESSETH

WHEREAS, the Town desires to contract with the County for the performance of the hereinafter described Animal Services on the terms and conditions hereinafter set forth; and

WHEREAS, the County is agreeable to rendering such Animal Services on the terms and conditions hereinafter set forth; and

WHEREAS, this Intergovernmental Agreement is authorized pursuant to Section 30-11-101, as amended.

AGREEMENT

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

SECTION 1. TERRITORY COVERED.

The territory covered by this Agreement is all of that certain property legally described as the **Town of Avon**.

SECTION 2. DEFINITIONS.

Emergency on Call services is defined as emergency calls received by the County for which Animal Services assistance is required and no Animal Service Officer is on duty to respond.

Shelter means The Eagle County Animal Shelter located at 1400 Fairgrounds Road, Eagle, Colorado, and any other shelter facility operated or designated by the County.

Unclaimed Day is defined as a calendar day or any part thereof during which an unclaimed animal is confined in Shelter on behalf of the Town.

SECTION 3. SCOPE OF SERVICES.

The County agrees to provide general Animal Services within the Town of Avon
The County shall provide:

- A) Twenty-four (24) hours per day Emergency On Call service.
- C) Administration and enforcement of the Eagle County Animal Service Resolution presently in effect and as may be subsequently amended as applied within the Town of Avon or the Municipal Ordinance as may apply.
- D) The County shall provide the Town with monthly reports and an annual report of services provided pursuant to this Agreement. Such reports shall include, by way of example only, the number of calls for service, number of animals sheltered, number of Unclaimed Days, and number of citations issued, as they apply to the Town of Avon.
- E) Emergency on Call service will be provided during the period when an Eagle County Animal Service Officer is not on duty. In the event that an Eagle County Animal Service Officer is not immediately available to respond to an incident or emergency, the Town of Avon will provide available personnel to secure the scene and administer control of the situation until the Eagle County Animal Service Officer arrives to resolve said incident.
- F) Animal sheltering services for animals attributable to the Town, of the nature and quality customarily provided at the Shelter. Animals attributable to the town are animals impounded within the Town of Avon and animals owned by persons dwelling, permanently or temporarily, in the Town of Avon.

SECTION 4. OFFICIAL STATUS.

For the purpose of performing the Animal Services and functions set forth in this agreement, Eagle County Animal Services shall enforce, as the Town's agent, the Municipal Ordinances relating to animals now in effect and as amended from time to time.

SECTION 5. EQUIPMENT.

The County shall furnish and supply, at its sole expense, all necessary labor, supervision, equipment, motor vehicles, office space, and operating and office supplies necessary to provide the services to be rendered hereunder.

SECTION 6. COMPENSATION.

The Town of Avon agrees to pay the County, monthly, the sum of \$800.00.

The Town of Avon agrees to pay the County, on or before the fifteenth of each month, for services rendered the previous month.

All fees and expenses recovered at or for the Shelter will remain with the County.

All court fines and costs will remain with the court of venue.

SECTION 7. PERSONNEL.

The Eagle County Animal Services Officer shall have full cooperation from the Town of Avon, its public works, its police officers and/or their respective officers, agents, and employees, so as to facilitate the performance of this Agreement.

The rendition of Animal Services provided for herein, the standards of performance, the discipline of officers, and other matters incident to the performance of such services and the control of personnel so employed, shall remain in the County.

All persons employed in the performance of such Animal Services for the Town of Avon, pursuant to this agreement, shall be County employees, except for Town personnel used to secure the scene as described in Section 3, above, and except for employees of the operator of the Shelter.

SECTION 8. LIABILITY AND INSURANCE.

- A. The County, its officers and employees, shall not be deemed to assume any liability for intentional or negligent acts, errors, or omissions of the Town or of any officer or employee thereof. Likewise, the Town, its officers and employees, shall not be deemed to assume any liability for intentional or negligent acts, errors or omissions of the County or by any officer or employee thereof.
- B. The County agrees to indemnify, defend and hold harmless to the extent allowed by law, the Town, its respective agents, officers, servants and employees of and from any and all loss, costs, damage, injury, liability, claims, liens, demands, action and causes of action whatsoever, arising out of or related to the County's intentional or negligent acts, errors or omissions or that of its agents, officers, servants, and employees, whether contractual or otherwise. Likewise, the Town agrees to indemnify, defend and hold harmless to the extent allowed by law, the County, its respective agents, officers, servants and employees of and from any and all loss,

costs, damage, injury, liability, claims, liens, demands, action and causes of action whatsoever arising out of or related to the Town's intentional or negligent acts errors or omissions or that of its agents officers, servants and employees, whether contractual or otherwise.

- C. The County and the Town shall respectively provide its own public liability, property damage, and errors and omissions insurance coverage as each party may deem adequate and necessary for any potential liability arising from this Agreement. Further, the County and the Town, respectively, shall name, subject to the approval of each respective party's insurance carriers, the other respective party as a co-insured under such insurance policies to the extent of any potential liability arising under this Agreement and, upon reasonable written request, shall furnish evidence of the same to the other respective party.

SECTION 9. TERM AND TERMINATION.

This Agreement is effective January 1, 2009 and shall end on the 30th day of June 2009. The parties will meet in May of 2009, to review this agreement prior to extending this agreement, modifying the agreement, or to terminate the agreement. The agreement shall run yearly from January 1, to December 31, each year, with a review by each parties in August of that year. Either party shall have the right to terminate this agreement with or without cause at any time by giving the other party thirty (30) days' prior written notice of termination. Upon termination, the County shall be entitled to compensation for services performed prior to such termination, and both parties shall be relieved of any and all duties and obligations under this Agreement.

Obligations of the Town of Avon and the County, respectively, after the current fiscal year, are contingent upon funds for the purpose set forth in this Agreement being appropriated, budgeted and otherwise made available.

SECTION 10. GENERAL PROVISIONS.

- A. Notices. All notices, requests, consents, approvals, written instructions, reports or other communication by the Town of Avon and the County, under this Agreement, shall be in writing and shall be deemed to have given or served, if delivered or if mailed by certified mail, postage prepaid or hand delivered to the parties as follows:

Town of Avon:

Town of Avon, Chief of Police
PO Box 975
Avon, CO 81620

County of Eagle:

Eagle County Attorney
P.O. Box 850
Eagle, CO 81631

Either party may change the address to which notices, requests, consents, approvals, written instructions, reports or other communications are to be given by a notice of change of address given in the manner set forth in this paragraph A.

- B. This Agreement does not and shall not be deemed to confer upon or grant to any third party any right to claim damages or to bring any lawsuit, action or other proceedings against either the Town or the County because of any breach hereof or because of any terms, covenants, agreements or conditions contained herein.
- C. No modification or waiver of this Agreement or of any covenant, condition, or provision herein contained shall be valid unless in writing and duly executed by the party to be charged therewith.
- D. This written Agreement embodies the whole agreement between the parties hereto and there are no inducements, promises, terms, conditions, or obligations made or entered into either by the County or the Town other than those contained herein.
- E. This Agreement shall be binding upon the respective parties hereto, their successors or assigns and may not be assigned by anyone without the prior written consent of the other respective party hereto.
- F. All agreements and covenants herein are severable, and in the event that any of them shall be held invalid by a court of competent jurisdiction, this Agreement shall be interpreted as if such invalid Agreement or covenant were not contained herein.
- G. The Town has represented to the County and, likewise, the County has represented to the Town, that it possesses the legal ability to enter into this Agreement. In the event that a court of competent jurisdiction determines that either of the parties hereto did not possess the legal ability to enter into this Agreement, this Agreement shall be considered null and void as of the date of such Court determination.

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

COUNTY OF EAGLE, STATE OF
COLORADO, By and Through Its
BOARD OF COUNTY COMMISSIONERS

ATTEST:

By: _____
Clerk to the Board of
County Commissioners

By: _____
Peter F. Runyon, Chairman

ATTEST:

TOWN OF AVON

Town Clerk

By: _____
Mayor