

**TOWN OF AVON, COLORADO**  
**AVON REGULAR MEETING FOR TUESDAY, JUNE 8, 2010**  
**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 TOWN HALL 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. APPROVAL OF AGENDA**

**3. DISCLOSURE OF POTENTIAL CONFLICT OF INTEREST**

**4. COMMUNITY & CITIZEN INPUT**

- a. Summer Events Update (Danita Chirichillo, Special Events Coordinator) Review of Avon's 2010 summer special events
- b. Colorado Chapter of the American Public Works Association Award to Avon Public Works Administration for "Small Community Category: Avon's Community Heat Recovery Project" (Greg Hall, Public Works Director, Town of Vail) Present award to Jenny Strehler, Director PW&T for Community Heat Recovery Project

**5. CONSENT AGENDA**

- a. Minutes from May 25, 2010
- b. Revised Settlement Agreement Town of Avon Opposition To Case No. 05CW262 (Town of Minturn Application For Changes of Water Rights) And Case No. 05CW263 (Town of Minturn's Application for New Groundwater Rights) (Justin Hildreth, Town Engineer)
- c. First Amendment to Phase II Subdivision Improvements Agreement for Lots 2, 3 and 5, Buck Creek Planned Unit Development (Justin Hildreth, Town Engineer) An amendment to the Buck Creek PUD that would substitute a letter of credit with cash collateral for the project

**6. NEW BUSINESS**

- a. 2010 Intergovernmental Agreement for Building Inspection Services between the Town of Avon and the County of Eagle, Colorado (Sally Vecchio, Assistant Town Manager Community Development) Review IGA that supports using Eagle County Building Inspectors on occasion when Avon's Building Official is unable to perform the inspections

**7. ORDINANCES**

- a. Ordinance No 10-10, Series of 2010, First Reading, Ordinance Amending Chapter 3.12 of the Avon Municipal Code to Revise the Exemptions from Real Estate Transfer Taxes (Eric Heil, Town Attorney) Legislation that revises the exemptions from real estate transfer taxes

**8. RESOLUTIONS**

- a. Resolution No 10-15, Series of 2010, Resolution in Opposition of Statewide Ballot Measures Proposition 101, Amendment 60 and Amendment 61 (Scott Wright, Assistant Town Manager Finance) Resolution that states Avon's Council's position on November statewide ballot measures

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**9. TOWN MANAGER REPORT**

**10. TOWN ATTORNEY REPORT**

**11. MAYOR REPORT**

- a. Eagle Valley Multi Party Land Exchange Update

**12. EXECUTIVE SESSION**

- a. Receiving legal advice pursuant to Colorado Revised Statute §24-6-402(4)(b) and for developing a strategy for negotiations and instructing negotiators pursuant to Colorado Revised Statute §24-6-402(4)(d) specifically related to pending litigation and settlement discussions regarding Town of Avon v Traer Creek Metropolitan District, 2008 CV 0385
- b. Receiving legal advice pursuant to Colorado Revised Statute §24-6-402(4)(b) specifically related to pending litigation regarding Traer Creek, LLC, et.al. v Town of Avon 2010 CV 316

**13. ADJOURNMENT**

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**FUTURE COUNCIL AGENDA DATES & PROPOSED TOPICS:**

June 22<sup>nd</sup>: Statewide Economic and URA Update, Resolution approving Ballot Questions for Avon CAN Proposal

## MEMO

To: Honorable Mayor and Town Council  
Thru: Larry Brooks, Town Manager  
Legal Review: Eric Heil, Town Attorney  
Approved By: Meryl Jacobs – Director of Recreation and Cultural Services  
From: Danita Chirichillo – Special Events Supervisor *AC*  
Date: June 8, 2010  
Re: Special Events Update

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### Summary:

The Recreation Department is now in “special events mode” with a majority of events taking place in July. Following is a list of 2010 special events along with a brief description.

#### **Sunday, June 13: DOGGY DASH**

Fun run/walk with dogs in the park from 8:30 – 10:30 a.m.

#### **Sunday, June 20: BURGER KING FATHER’S DAY FISHING DERBY**

Just in time for Father’s Day, children under 15 are invited to get out and enjoy free fishing by entering in the annual Fishing Derby at Nottingham Lake. The Town of Avon, Holy Cross, Eagle Ranger Districts and the Colorado Division of Wildlife sponsor the event. A limited supply of FREE fishing poles will be available! **Event Time: 10:00 a.m. to 12:00 p.m.**

#### **Sunday, June 27 – June 30: VAIL LACROSSE SHOOTOUT TOURNAMENT**

One of the most prestigious annual Club Lacrosse Tournaments in the world. A number of the games are played in Avon’s in Harry A. Nottingham Park. The tournament runs through July 4. Details are on [www.vaillacrosse.com](http://www.vaillacrosse.com). **Event Time: 8:00 a.m. to 5:00 p.m.**

#### **Saturday, July 3: SALUTE TO THE USA**

Over 10,000 shells explode in the sky above Avon during the Colorado Rockies largest display that is choreographed to a musical score simulcast on local radio. The Family Zone, beer garden and vendors open at 5:00 p.m. Celebrity turntablist, DJ Logic takes the stage at 7:30 p.m. The grand finale fireworks display kicks-off at 9:45 over Nottingham Lake. **Event Time: 5:00 p.m. to 10:30 p.m. \*\*Paperwork has been submitted to request an F-16 Flyover.\*\***

#### **Saturday, July 10: TRIPLE BYPASS BICYCLE TOUR**

The T.B.B.T tour is a 120-mile ride with over 10,000 feet of elevation gain. And yet, over 3,000 riders dare it every year. It starts in Evergreen and climbs over Squaw Pass to Idaho Springs and on into Georgetown. From there it climbs over Loveland Pass to Frisco, and over Vail Pass to the finish line in Avon at Nottingham Park. **Event Time 8:00 a.m. to 8:00 p.m.**

**Saturday, July 10 – Sunday, July 11: IRONKIDS AVON**

IronKids will be an entire weekend of festivities with the main focus being the triathlon race. The triathlon will consist of age appropriate lengths of swim, bike and run. The race will take place in and around Harry A. Nottingham Park, and lake as well as the Avon Recreation Center. **Event Time: 7:00 a.m.**

**Wednesday, July 14: CAMP 911**

Emergency service agencies from around the county are providing a safety training camp for youth ages 9-11. This **FREE** one day camp targets kids who are experimenting with new freedoms and decision-making skills. The goal is to educate them with fun camp style activities that are geared toward safety as they begin to venture out exploring their emerging independence. **Event Time: 8:00 a.m. – 4:30 p.m.**

**Friday, July 16 – Sunday, July 18: THUNDERBIRD ARTS FESTIVAL**

This juried arts festival exhibits in outdoor settings throughout Arizona, Colorado and California. The show features paintings in all mediums, batiks, mixed media, clay, copper and stone sculptures, etched and stained glass, pottery & more. Wine tasting and food have been added to the event in the last two years as well. **Event Time: 10:00 a.m. to 5:00 p.m.**

**Saturday, July 17: XTERRA TRIATHLON SERIES**

The Beaver Creek XTERRA is part of XTERRA's Regional Point Series Schedule. The race will start with a 1km. swim in Avon Lake, then mountain bike 25km. up to and around Beaver Creek and finish with an 8km trail run on Beaver Creek Mountain.

**Friday, July 23, 30 & August 6, 13, 20: AVON'S LAKESIDE CINEMA**

Grab your friends and family and come out to Harry A. Nottingham Park in Avon to enjoy free movies, outdoors on the big screen! The feature film will start after the sun goes down (around 8:30 p.m.). Don't miss the excitement on Friday evenings at Nottingham Park. Come early to enjoy our natural resources; fishing on Nottingham Lake, paddle-boating or bring a picnic. Seating is on the grass field so bring a lawn chair or blanket and sit back, relax and enjoy! **Event Time: 8:00/8:30 p.m. until end of movie.**

**Monday, July 12, 19, 26 & August 2, 9: PLUM TV'S DUNK-N-DASH IN AVON**

Athletes can register for one event or for the entire series. Swimmers in the Dunk-N-Dash can opt to make one or two 800-yard loops around the Lake. The 5K run starts and finishes at the Lake's pump-house. The route runs north around Nottingham Lake, follows the path to Avon Elementary, and turns onto the scenic river recreation path. At "Bob" the bridge, runners turn around and return on the same path, detouring to the south side of the Lake for the finish line. **Event Time: 6:00 – 8:00 p.m. \*\*New cash prizes\*\***

**Saturday, July 31: ANGELS IN ACTION**

This race is to benefit Crissa Lea Swinford Memorial Scholarship Fund. The 5K race is a timed event as well as fun run/walk. Starting in Nottingham Park and continuing down the bike path and returning to the finish line in Nottingham Park. **Registration starts at 8:00 a.m. Run starts at 9:00 a.m.**

**Friday, August 13 through Sunday, August 15: AMERICAN CROWN CIRCUS**  
This Circus is great family entertainment. The bilingual MC's take the audience on a tour of acrobats, jugglers, aerialists, balancers and clowns. No exotic animals. **Two shows daily. First show at 5:00 p.m. Second show at 7:00 p.m. \*\*Starts Friday through Sunday instead of Monday through Wednesday\*\***

**Saturday, August 7: BEC TRI**

The second annual BecTri Sprint Triathlon in Harry A. Nottingham Park. The races starts with a 400 meter swim in the beautiful Nottingham Lake. The 15km bike portion takes off from the park and circles through the Singletree neighborhood. Hop off your bike and finish with a fast 5K run/walk along the Eagle River Path. This race is in memory of Becky Yarberry, a beautiful example of how to love and race with all of your heart.  
**Events Time: 8:00 a.m.**

**Saturday, October 2– Sunday, October, 3: VAIL VALLEY SOCCER INVITATIONAL TOURNAMENT**

Soccer fans come out and watch 80 Front Range and western slope youth soccer teams battle for the VVS Invitational cup. **Event Time: 8:00 a.m. to 6:00 p.m.**

**Friday, October 31: FALL FUN NIGHT**

Come out to Nottingham Park for games, treats and prizes galore. Fall Fun night is a community-minded, non-scary alternative for Halloween activities. This event is made possible through local churches. **Event Time: 4:00 – 8:00 p.m. \*\*Event cancelled last year; still tentative this year\*\***

**Friday, November 19 & December 17 – TEEN NIGHT AT THE REC. CENTER**

The Avon Recreation Center will be open to teens ages 13 – 15 for tons of fun! Activities may include fuse ball, Xbox games, Wii games pin pong competitions, pool games, open swim, etc. **Event Time: 6:00 p.m. – 8:45 p.m.**

**Saturday, December 11: ICING ON THE LAKE**

Celebrate winter opening day at the Log Cabin with \$1 skate rentals, children's entertainment and crafts, hot cocoa and goodies! **Event Time: 2:00 p.m. to 5:00 p.m**

**Financial Implications:**

All of the above listed events have been budgeted for during the 2010 budgeting process.

**Town Manager Comments:**



# Memo

**To:** Honorable Mayor and Town Council  
**Thru:** Larry Brooks, Town Manager  
Sally Vechio, Asst. Town Manager, Director of Community Development  
**From:** Justin Hildreth, P.E., Town Engineer  
**Date:** June 03, 2010  
**Re:** Proposed Revised Settlement Agreement, Water Court Case Nos. 05CW262 and 05CW263



**Summary:** The Town Council approved the Settlement Agreement for water court case Nos. 05CW262 and 05CW263 at its May 25, 2010 meeting. Since that time, the Town of Minturn and the Battle Mountain entities submitted one change to the first paragraph of the Agreement as follows: The affected portion of this paragraph now reads "Avon shall have all the rights and obligations that are common to all of the 'Objectors...'" The substantive effect of this change is to prevent Avon from opposing Minturn's application to obtain approval from the State of Colorado to use the Minturn Well Nos. 1 and 2 water rights consistent with the May 6, 2010 settlement agreements. Jay Montgomery, the Town's water attorney, does not see this change as problematic and therefore recommends that Council authorize the settlement of Case Nos. 05CW262 and 05CW263 in accordance with the proposed Settlement Agreement (Exhibit A). It is our understanding that the Minturn Town Council will approve this revision to the Settlement Agreement at its June 9, 2010 meeting.

**Discussion:** Previously, the Town of Avon (TOA) entered the above mentioned water court cases as an opposer but later agreed to let the Eagle River Water and Sanitation District (ERWSD) and the Upper Eagle Regional Water Authority (UERWA) take the lead in negotiating a settlement. Draft settlement agreements for the cases have been negotiated between the Town of Minturn and the Battle Mountain entities and the ERWSD and UERWA. Jay Montgomery is recommending that the Town also agree to the settlement agreements for water court case Nos. 05CW262 and 05CW263.

**Recommendation:** Approve the revised Settlement Agreement, Town of Avon Opposition to case No. 05CW262 (Town of Minturn Application for Changes to Water Rights) and Case No. 05CW263 (Town of Minturn's Application for New Groundwater Rights).

**Proposed Motion:** Move to Approve the revised Settlement Agreement, Town of Avon Opposition to case No. 05CW262 (Town of Minturn Application for Changes of Water Rights) and Case No. 05CS263 (Town of Minturn's Application for New Groundwater Rights).

**Town Manager Comments:**



**Attachments:**

Attachment A – Revised Settlement Agreement, Town of Avon Opposition to Case No. 05CW262 (Town of Minturn Application of Water Rights) and Case No. 05CW263 (Town of Minturn's Application for New Groundwater Rights)

**SETTLEMENT AGREEMENT**  
**TOWN OF AVON OPPOSITION TO CASE NO. 05CW262**  
**(TOWN OF MINTURN APPLICATION FOR CHANGES OF WATER RIGHTS)**  
**AND CASE NO. 05CW263**  
**(TOWN OF MINTURN'S APPLICATION FOR NEW GROUNDWATER RIGHTS)**

The parties to this agreement are the Town of Minturn ("Minturn") and opposers, Ginn Battle South, LLC; Ginn Battle North, LLC; Ginn Battle One, Ltd., LLLP; Ginn-LA Battle One A, LLC (together "Battle Mountain Entities") and the Town of Avon ("Avon").

**WHEREAS**, Minturn and the Battle Mountain Entities entered into settlement agreements with Arrowhead Metropolitan District and various other opposers in Case Nos. 05CW262 and 05CW263 (collectively the "Cases"), which settlement agreements were dated May 6, 2010 and provide for the inclusion of certain terms and conditions in judgments and decrees to be proposed by those parties in the Cases;

**WHEREAS**, the parties to this settlement agreement have agreed to resolve Avon's opposition in the Cases on terms substantially the same as those contained in the May 6, 2010 settlement agreements subject to certain clarifications contained in this settlement agreement.

**NOW THEREFORE**, the parties hereby stipulate and agree as follows:

1. The terms of the May 6, 2010 settlement agreements in Case Nos. 05CW262 and 05CW263 among Minturn, Battle Mountain Entities and Arrowhead Metropolitan District, et al. in the Cases, copies of which are attached hereto as Exhibits A and B, respectively, are hereby adopted and incorporated as terms of agreement among Minturn, the Battle Mountain Entities and Avon, subject to the additions or clarifications set forth in this settlement agreement. Pursuant to this Agreement, Avon shall have all the rights and obligations that are common to all of the "Objectors" who were signatory parties to the May 6, 2010 settlement agreements in the Cases. In the event of any conflict or discrepancy between the terms of this settlement agreement and any term of the May 6, 2010 settlement agreements, this settlement agreement shall control as between Avon on the one hand and Minturn and Battle Mountain Entities on the other.

a. The reference to "wastewater" in the last sentence of said paragraph 7 of the May 6, 2010 settlement agreement for Case No. 05CW262 was not intended to provide credit for municipal effluent returns at the regional wastewater treatment plant at Avon, which currently treats Minturn's municipal wastewater, to reduce any obligation of Minturn to provide augmentation water to a calling water right located upstream of said point of effluent discharge.

2. Minturn shall prepare proposed decrees in the Cases incorporating the terms and conditions required by this settlement agreement and otherwise consistent with the applications in those Cases. The parties will enter a subsequent stipulation consenting to entry of

said proposed decrees. Avon shall not participate in trial or further proceedings in the Cases except to assure that any decree proposed by Minturn and adopted by the Court is consistent with this settlement agreement.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

TOWN OF MINTURN

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

BATTLE MOUNTAIN ENTITIES

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

Battle South, LLC (formerly known as Ginn Battle South, LLC), Battle North, LLC (formerly known as Ginn Battle North, LLC); Battle One Developer, LLLP (formerly known as Ginn-LA Battle One, Ltd., LLLP); Battle One A Developer, LLC (formerly known as Ginn-LA Battle One A, LLC)

TOWN OF AVON

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

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# Memo

To: Honorable Mayor and Town Council  
Thru: Larry Brooks, Town Manager  
Legal Review: Eric Heil, Town Attorney  
Approved by: Sally Vecchio, Assistant Town Mgr/Director of Comm. Dev.  
From: Justin Hildreth, P.E., Town Engineer  
Date: June 03, 2010  
Re: Revised Subdivision Improvement Agreements for Phase II Buck Creek PUD

Initials  
  
CV  
JH

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**Summary:** The applicant, Tanavon Corporation, has submitted a revised Phase II Subdivision Improvement Agreement (SIA) for Lots 2, 3, and 5 of the Buck Creek PUD (Attachment A.) The SIA provides for completion of improvements as depicted on the approved Buck Creek PUD plans.

The revisions to the SIA include: switching the surety from a letter of credit to a cash escrow account, and removing contradictory language dictating when permits can be issued for the project during construction.

**Previous Council Action:** December 08, 2009 - Town Council approved the Phase II Subdivision Improvement Agreement for Lots 2, 3 and 5, Buck Creek PUD First Amendment.

**Recommendation:** Approve the First Amendment to Phase II Subdivision Improvements Agreement for Lots 2, 3 and 5, Buck Creek PUD First Amendment.

**Proposed Motion:** I move to approve the First Amendment to Phase II Subdivision Improvements Agreement for Lots 2, 3 and 5, Buck Creek PUD First Amendment.

**Town Manager Comments:**



**Attachments:**

Attachment A - Revised Phase II SIA for lots 1A and 1B

**First Amendment  
To Phase II Subdivision Improvements Agreement  
For Lots 2, 3, and 5  
Buck Creek PUD First Amendment**

**THIS AGREEMENT**, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2010, is by and among **Tanavon Corporation**, a Colorado corporation, 108 S. Frontage Road, Suite 208, Vail, CO 81657 (“Tanavon”), **Gore Range Natural Science School Non-Profit Corporation**, 82 E. Beaver Creek Blvd., Suite 202, P.O. Box 9469, Avon, CO 81620 (“GRNSS”), and the **Town of Avon**, a Colorado municipality, by and through its Council (the “Town”).

**Recitals**

**Whereas**, Tanavon, GRNSS and the town entered into the Phase II Subdivision Improvements Agreement (“Agreement”) recorded December 30, 2009 at Reception No. 2009927823; and

**Whereas**, the parties hereto desire to make modifications to such Agreement; and

**Whereas**, Section 12 of the Agreement allows for such amendments.

**Agreement**

**Now therefore**, in consideration of the following mutual covenants, conditions and promises, the parties hereby agree as follows:

1. **Security for Completion of Improvements and Obligations Pursuant to Section 3 of the Agreement.**

In lieu of an Irrevocable Letter of Credit as set forth in Section 3 of the Agreement to secure Tanavon’s and GRNSS’s obligations under the Agreement, the Town hereby accepts a cash escrow to be held by and disbursed by GRNSS for the payment of costs of construction of such improvements in accordance with Section 16.24.100 of the Code, as more fully set forth in Exhibit A attached hereby and incorporated herein by this reference (“Cash Escrow”). The Cash Escrow shall be in an amount equal to one hundred ten percent (110%) of the estimated cost of completion of the improvements as accepted by the Town of Avon based upon the actual bid of the contractor selected to do the work. The additional ten percent (10%) over and above the costs of construction shall act as a contingency fund during the period of construction and to secure Tanavon’s and GRNSS’s Guarantee of the Improvements for two (2) years after the completion of the Improvements.

The Cash Escrow for all purposes shall be deemed to be the Collateral under the Agreement.

2. Modification to Section 3 of Exhibit C of the Agreement.

Section 3 of Exhibit C of the Agreement shall be deleted in its entirety and the following shall be inserted:

Prior to issuance of any building permit for Lot 2, Lot 3, or Lot 5, the Improvements for Lot 1A and Lot 1B pursuant to the Phase I Subdivision Improvements Agreement and the Improvements for Lots 2, 3, and 5 pursuant to the Phase II Subdivision Improvements Agreement shall have been started. The building permit for the construction of improvements on Lot 3 may be phased. Upon an acceptable application for a building permit, an excavation and foundation permit, may be issued for such work prior to the installation of the permanent road and water line to Lot 3. The building permit for improvements above the foundation will not be issued until there is a sufficient water supply and adequate access for emergency vehicles to the site.

3. Incorporation of Amendments into Agreement.

The above amendments shall be incorporated into the Agreement for all purposes. In the event of a conflict between the provisions of the Amendment and the Agreement, including previous exhibits, addendums and/or amendments, this Amendment shall control.

The parties have executed this Phase II Subdivision Improvements Agreement for Lots 2, 3, and 5, Buck Creek PUD Second Amendment as of the date first above written.

TOWN OF AVON, A Colorado  
Municipal Corporation ("Town")

ATTEST:

\_\_\_\_\_  
Town Clerk

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Town Attorney

TANAVON CORPORATION, a  
Colorado corporation (“Tanavon”)

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

GORE RANGE NATURAL  
SCIENCE SCHOOL NON-PROFIT  
CORPORATION (“GRNSS”)

By: \_\_\_\_\_  
Markian Feduschak  
Executive Director

**EXHIBIT A**

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**Subdivision Improvements Agreement for Lots 2, 3 and 5**

**AGREEMENT FOR CASH ESCROW**

**BUCK CREEK PUD**  
**AGREEMENT FOR CASH ESCROW**  
**FOR PHASE II**

**THIS AGREEMENT**, made and entered into this 18th day of May, 2010, is by and between **Buck Creek Associates Ltd.**, a Colorado corporation, 108 S. Frontage Road, Suite 208, Vail, CO 81657 ("Buck Creek") and **Gore Range Natural Science School Non-Profit Corporation**, 82 E. Beaver Creek Blvd., Suite 202, P.O. Box 9469, Avon, CO 81620 ("GRNSS"), (collectively the "Parties").

**RECITALS**

**WHEREAS**, the Parties have entered into a Phase II Subdivision Improvements Agreement ("SIA") for Lots 2, 3, and 5, Buck Creek PUD First Amendment, with the Town of Avon ("Town"), as provided for by Section 16.24.100 of the Avon Municipal Code, as amended (the "Code"); and

**WHEREAS**, pursuant to Section 16.24.100(2) of the Code, the Parties are required to provide collateral which is sufficient to make reasonable provision for the completion of the improvements ("Improvements") for Lots 2, 3, and 5 as depicted on the plans approved by the Town for the Buck Creek PUD First Amendment, dated December 30, 2009, ("Approved Plans") and as set forth in Exhibit A attached hereto and incorporated herein by reference, together with minor changes approved by the Town Engineer; and

**WHEREAS**, Buck Creek and GRNSS have agreed to create a cash escrow for payment of the parties' shared costs for Lots 2, 3, and 5 to be funded prior to commencement of construction ("Common Development Costs"). Currently the Common Development Costs for Lots 2, 3, and 5 are estimated to be \$457,343.77 ("Estimated Common Development Costs") as set forth on the attached Exhibit "A." Such costs shall be allocated as follows:

Buck Creek:	Forty Percent (40%)
GRNSS:	Sixty Percent (60%)

Exhibit A also contains an amount equal to a ten percent (10%) of the Estimated Common Development Costs as additional security ("Contingency Fund").

**WHEREAS**, the Parties have provided in the Second Amendment to the SIA that this funded cash escrow and the Contingency Fund shall serve as the collateral required by the Town to secure the completion of the Improvements for Lots 2, 3, and 5 in accordance with the design and time specifications agreed to by the Parties and Section 16.24.100(2).a of the Code.

**AGREEMENT**

**NOW THEREFORE**, in consideration of the following mutual covenants, conditions and promises, the parties hereby agree as follows:

1. Escrow Agent for Cash Escrow. The Parties hereby designate the GRNSS as their Escrow Agent to hold the cash escrow, to disburse these funds to pay the Common Development Costs for Lots 2, 3, and 5, and to make regular reports to the Parties and to the Town of disbursements and funds available for payment of the Common Development Costs which the Parties have agreed to fund from the cash escrow. In acting as the Escrow Agent, GRNSS shall not receive any compensation for its services. No disbursements for the costs of actual construction of the Improvements shall be made from the cash escrow without written authorization from the Town Engineer. Submittal of Letters of Construction Acceptance shall be required from the deep utility provider for those facilities then under construction for which payment is then being requested before such a disbursement may be approved and other infrastructure constructed above such facilities. The Town Engineer shall approve or reject any disbursement request within six (6) working days of receipt or the requirement for approval is waived. In the event change orders or cost increases for the Improvements occur, the Town shall be notified within two (2) working days and the cash escrow shall be increased, if necessary, to maintain an amount equal to one hundred percent (100%) of the estimated costs of completion of the Improvements as set forth on Exhibit B, plus such cost increases. The Contingency Fund provided by the Buck Creek shall not be released until after completion of the Improvements and until after inspection and approval of the Improvements by the Town.

Upon completion of the Improvements and Final Payment of all costs, the GRNSS as Escrow Agent shall issue a Final Report for the cash escrow to the Parties and disburse any funds which may remain in the cash escrow to Buck Creek (40%) and to GRNSS (60%) and the cash escrow shall be closed. Buck Creek and GRNSS have agreed that if these Common Development Costs for Lots 2, 3, and 5 exceed \$457,343.77, Buck Creek shall pay Forty percent (40%) and GRNSS shall pay sixty percent (60%) of any amount in excess of \$457,343.77. Buck Creek and GRNSS agree to pay such excess amounts due by making additional payments of the necessary amounts to the cash escrow held by GRNSS as Escrow Agent.

2. Contingency Fund. In addition to the Estimated Common Development Costs to be held by GRNSS as Escrow Agent, Buck Creek and GRNSS shall transfer to the escrow fund the sum of \$45,734.38 which is the ten percent (10%) of the Estimated Common Development Costs. GRNSS shall hold the Contingency Fund during the period of construction and to secure the Guarantee of Improvements for two (2) years after the completion of the Improvements. In the alternative, Buck Creek and GRNSS may provide a separate Irrevocable Letter of Credit in the amount of ten percent (10%) of the actual Common Development Costs during the two (2) year Guarantee of Improvements period.

3. Completion of Work. GRNSS shall oversee the construction of the Improvements for Lots 2, 3, and 5 as set forth in the Approved Plans and all work shall be performed in accordance with the Approved Plans. GRNSS shall utilize the services of J & K Engineering and Agett, LLC, as Engineers and as the Construction Consultant to engineer, design, prepare cost estimates and a final construction budget, bid and supervise all of the construction of the Improvements for Lots 2, 3, and 5, including recommendations and approval of all disbursements by the Escrow Agent. GRNSS, through J & K Engineering and Agett, LLC, shall provide development reports on a regular basis to. Before awarding the bid for the construction of these Improvements, GRNSS shall provide copies of all bids to Buck Creek with notification of the party or parties that the GRNSS will award the bid to on the date provided in the Bid Specifications. Each contractor entering into a contract for construction of the Improvements shall be required to procure and maintain Commercial General Liability Insurance during the duration of such contract in the amount of at least \$2,000,000.00 each occurrence and \$4,000,000.00 general aggregate. These policies shall be applicable to all premises and operations. Such policies shall include Buck Creek and GRNSS as named insureds and shall include a provision prohibiting cancellation or termination without thirty (30) days prior written notice to the insureds. Such insurance shall provide protection from all claims for bodily injury, including death, property damage, contractual liability and completed operations. Each contractor shall be required to provide Builder's Risk Insurance with minimum limits of not less than the insurable value of its work to be performed. These policies shall be written on an "all risk" basis and shall name Buck Creek and GRNSS as insureds. These policies shall contain a waiver of subrogation by the issuer with respect to the insureds and their respective officers, agents and employees while acting within the scope of their employment.

GRNSS shall be required to encourage and consider the advice and recommendations of Buck Creek in the exercise of its obligation to oversee construction of the Improvements. The Parties agree to commence construction of the Improvements for Lots 2, 3, and 5 prior to the issuance of a building permit for any improvements on Lots 2, 3, and 5, and to complete the Improvements prior to the issuance of a Certificate of Occupancy for any building on any of the aforementioned Lots served by the Improvements.

4. Security for Completion of Improvements and Obligations. To secure completion of the Improvements and the Parties' obligations to the Town, GRNSS as Escrow Agent agrees to hold the cash escrow as the collateral required to secure the Parties' respective obligations under this Agreement and the Phase II Subdivision Improvements Agreement in accordance with Section 16.24.100 of the Code ("Collateral"). Buck Creek and the GRNSS agree to maintain the Contingency Fund as either a cash escrow or an Irrevocable Letter of Credit to secure its obligations to the Town.

5. Common Development Costs.



(a) Improvements for Lots 2, 3, and 5. Common Development Costs may include construction of a common pavement roadway system; utility extensions for water, sewer, gas, electric, telephone and television; construction of drainage and containment systems; construction of retaining walls; stream, flood and wetlands mitigation; site improvement, preparation and earthwork; and all common costs, administrative costs, fees, insurance and other expenses associated with the Improvements.

(b) Progress Payments on Improvements. Upon completion of itemized Improvements for which cost estimates have been set forth in Exhibit B and upon receipt of the certifications as specified in paragraph 6 below verifying that itemized portions of the Improvements have been completed, the amount of the cash escrow may be reduced periodically by GRNSS, acting as Escrow Agent, making payments from the cash escrow to those persons and firms that have performed and completed the work. No disbursements for the costs of actual construction of the Improvements shall be made from the cash escrow without written authorization from the Town Engineer. Submittal of Letters of Construction Acceptance shall be required from the deep utility provider for those facilities then under construction for which payment is then being requested before such a disbursement may be approved and other infrastructure constructed above such facilities. The Town Engineer shall approve or reject any disbursement request within six (6) working days of receipt or the requirement for approval is waived. Lien waivers shall be requested from the contractor when appropriate.

6. Warranty Period. The Bid Specifications shall require that the Improvements be warranted to be free from defects in workmanship or quality for a period of two (2) years after acceptance of all the work by the Town. Written warranties shall be obtained and maintained by the Parties during the warranty period. In the event of any such defect, GRNSS shall require the contractor warranting the work to correct the defect in material or workmanship. The Contingency Fund equal to at least ten percent (10%) of the actual cost of completion of all Improvements, or an Irrevocable Letter of Credit in the same amount, shall be provided to the Town as security during such two (2) year period as a guaranty of performance of any work required pursuant to the above described warranty. In the event any corrective work is performed during the two-year warranty period, then the warranty on said corrected work secured by the Contingency Fund shall be extended for two (2) years from the date on which the corrected work is completed in an amount equal to 125% of the cost of any corrected work, as estimated by the Town. If no defects in the corrected work are found, after two years GRNSS shall request release of the Contingency Fund by the Town.

7. Engineering Certification. Upon completion of portions of the Improvements, GRNSS will cause J & K Engineering to provide a written opinion, to the satisfaction of the Town Engineer, that based upon on-site observation, review of sufficient construction-observation reports, field test reports and material test reports and certifications by qualified personnel, the installation of the Improvements for Lots 2, 3, and 5, or portions thereof as may be completed from time to time, have been completed,

to the best of their knowledge and professional judgment, in conformance with all standards, plans and specifications as submitted to and previously approved by the Town, or the pertinent utility supplier, as depicted on the Approved Plans. Inspection reports, test results, as-constructed plans and other supporting documentation shall be submitted with the certification. The as-constructed plans shall be submitted on paper and in a digital format, either AutoCad DWG, AutoCad DXF, or ESRI GIS shapefile.

8. Letter Certifying Completion and Final Acceptance of Improvements.

When all Improvements have been completed and accepted by the Town, or the pertinent utility supplier, and the Warranty Period has expired and provided that the Parties are not in default under any of their other obligations to the Town, the Parties shall request that the Town issue a letter, in recordable form, certifying that all obligations of the Parties under the Phase II Subdivision Improvements Agreement have been satisfied.

9. Amendments. This Agreement may be amended from time to time,

provided that such amendment is in writing and signed by the Parties.

10. Covenants Running with the Land. This Agreement and the obligations

hereof shall be deemed to be covenants running with the land known as the Buck Creek PUD First Amendment and shall be binding on the successors and assigns of the parties hereto.

11. Governing Law, Venue, and Enforcement. This Agreement shall be

governed by and interpreted according to the law of the State of Colorado. Venue for any action arising under this Agreement shall be in the appropriate court for Eagle County, Colorado. To reduce the cost of dispute resolution and to expedite the resolution of disputes under this Agreement, the Parties hereby waive any and all right either may have to request a jury trial in any civil action relating primarily to the enforcement of this Agreement. The Parties agree that the rule that ambiguities in a contract are to be construed against the drafting party shall not apply to the interpretation of this Agreement. If there is any conflict between the language of this Agreement and any exhibit or attachment, the language of this Agreement shall govern.

12. Incorporation of Exhibits. Unless otherwise stated in this Agreement,

exhibits, applications, or documents referenced in this Agreement shall be incorporated in this Agreement for all purposes. In the event of a conflict between any incorporated exhibit and this Agreement, the provisions of this Agreement shall govern and control.

13. No Third Party Beneficiaries. Nothing contained in this Agreement is

intended to or shall create a contractual relation with, cause of action in favor of, or claim for relief for, any third party, including any agent, sub-consultant or sub-contractor of the Buck Creek or GRNSS. Absolutely no third party beneficiaries are intended by this Agreement. Any third-party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.

**[ Signature pages follow ]**

The parties hereto have executed this Agreement as of the date first above written.

BUCK CREEK ASSOCIATES Ltd., a  
Colorado Corporation ("Buck Creek")

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

GORE RANGE NATURAL SCIENCE  
SCHOOL NON-PROFIT CORPORATION  
("GRNSS")

By: \_\_\_\_\_  
Markian Feduschak  
Executive Director

**EXHIBIT A**

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**Agreement for Cash Escrow**

**APPROVED PLANS:**

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Construction Drawings

Buck Creek PUD Lots 2, 3, and 5, Town of Avon, Colorado  
May 17, 2010

Sheets C0.1, C0.2, C1.1, C1.2, C1.3, C2.1, C2.2, C2.3, C3.1, C3.2, C3.3, C4.1, C4.2,  
C5.1, C6.1, C6.2, C7.1, C7.2, C7.3, C7.4, and C7.5

Release Date: May 17, 2010

Prepared by: J&K, Inc.

**EXHIBIT B**

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**Agreement for Cash Escrow**

**IMPROVEMENTS CONSTRUCTION COST ESTIMATE**

**Memo**

**To:** Honorable Mayor and Town Council  
**Thru:** Larry Brooks, Town Manager  
**From:** Sally Vecchio, Dir. Ass't Town Manager/Comm. Dev.  
**Date:** June 3, 2010  
**Re:** Intergovernmental Agreement For Building Inspection Services between the Eagle County and the Town of Avon.

---

Initials  
LB  
SV

**Summary**

For the past several months, Staff has been working with the Eagle County Building Department to develop the terms of an Intergovernmental Agreement (IGA) for building inspection services between the County and the Town. A copy of the proposed IGA is attached hereto.

**Background**

Executing an IGA for building inspection services between the Town and County has been discussed and endorsed by the elected officials from both jurisdictions.

The IGA provides that the County will make available to the Town building inspection services as requested by the Town Building Official from time to time. The Town will compensate the County for each inspection completed at a flat rate in the amount of \$75 per inspection. The IGA will be effective from the date the Agreement is fully executed and will terminate on December 31, 2011. Either party may terminate the Agreement without cause upon 30 days written notice.

The Town expects to utilize this service when the Town Building Official is unavailable or out of the office for extended periods of time. Having this IGA with the County is especially important in maintaining continuity of service now that the Town employs only one full-time building inspector.

The IGA has been referred to the County Attorney for review.

**Recommendation**

Staff recommends approval of the 2010 Intergovernmental Agreement for Building Inspection Services between the Town of Avon and County of Eagle, Colorado.

**2010 INTERGOVERNMENTAL AGREEMENT  
FOR BUILDING INSPECTION SERVICES  
BETWEEN THE TOWN OF AVON  
AND THE COUNTY OF EAGLE, COLORADO**

This Intergovernmental Agreement (“Agreement”) by and between the EAGLE COUNTY, a body politic and corporate of the State of Colorado (“County”) and the TOWN OF AVON, a Colorado municipal corporation (“Town”) (collectively the “Parties”) is made to be effective on the \_\_\_ day of \_\_\_\_\_, 2010.

**WHEREAS** §29-20-101 *et seq.*, C.R.S enables the Parties to enter into Intergovernmental Agreements and authorizes each of the Parties to perform the functions described herein, as provided in §29-20-105 CRS; and

**WHEREAS** the Avon Town Council has determined that it is in the best interest of the Town and its inhabitants to contract with Eagle County to providing building permit and inspections services within the boundaries of the Town specified under the terms of this Agreement; and

**WHEREAS**, Eagle County has determined that the County Building Official has the resources to provide building permit and inspection services to the Town of Avon in exchange for compensation to be provided by the Town of Avon under this Agreement, and upon the further terms and conditions contained herein; and

**WHEREAS**, the Parties design to enter into this Intergovernmental Agreement to provide building inspection services for the Town of Avon and to define the manner in which each of the Parties will participate in the provision of such services.

**NOW THEREFORE**, in consideration of the mutual rights and obligations as set forth below, the parties agree to the following:

**A. SERVICE TO BE PROVIDED.** County shall make available to the Avon Building Department personnel with the qualifications and State certifications necessary to perform the inspections requested by the Town. Inspectors shall be made available on those dates and at those times as are mutually agreed upon between the Town Building Official and County Building Official. The County Inspectors providing services to the Town pursuant to this Agreement shall have all jurisdiction, authority, powers, functions, and duties of the Town Inspectors with respect to any and violations of State Law and Town Ordinances. County will administer and enforce all applicable provisions of the Building Code adopted by the Town subject to the enforcement procedures adopted by the Town of Avon.

**B. COMPENSATION.** The Town shall promptly reimburse the County for each inspection completed. For the purposes of this Agreement, the cost shall be a flat rate in the amount of \$75.00 per inspection.



**C. PERSONNEL.** Every County officer and employee engaged in performing inspection services under the terms of this Agreement shall remain an officer or employee of Eagle County while performing the same and the relationship of the Eagle County Building Official to the Town of Avon under this Agreement is that of an independent contractor. In this capacity, and for the sole purpose of providing the services contracted for hereunder, the Eagle County Building Official and his employees provided under this Agreement shall be considered to be the agents of the Town of Avon. This Agreement does not change the status of any employee, contractor or officer of the Town or County.

**D. LIABILITY.** 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. 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.

**E. INSURANCE.** 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. 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. The Parties further agree, without waiving any governmental immunity protection to which they and their officials and employees are entitled under CRS 24-10-101 et seq., to procure and maintain current valid workers compensation insurance coverage for all subject workers throughout the period of this Agreement.

**F. NO WAIVER OF GOVERNMENTAL IMMUNITY.** Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to the Contractor, its officials, employees, contractors, or agents, or any other person acting on behalf of the Contractor and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.

**G. TERM AND TERMINATION.** This Agreement will be effective as of the effective date stated above and will terminate on December 31, 2011 unless either party fails to

substantially perform the duties and obligations in accordance herewith. In such an event, the other party may terminate this Agreement upon seven (7) days written notice to that party, unless that party cures the breach within the seven (7) day remedy period. Either party may terminate this Agreement without cause upon thirty (30) days written notice.

H. **NOTICES AND PAYMENTS.** All notices, bills and payments shall be made in writing and may be given by personal delivery or by mail. Notices, bills, payments sent by mail should be address as follows:

**Town of Avon**

Attn:  
Address: P.O. Box 975  
One Lake Street  
Avon, CO 81620

Phone:

**Eagle County**

Attn:  
Address: P.O. Box 850  
Eagle, CO 81631

Phone:

I. **MODIFICATION.** This Agreement contains the entire agreement between the parties, and no agreement shall be effective to change, modify, or terminate in whole or in part unless such agreement is in writing and duly signed by the party against whom enforcement of such change, modification, or termination is sought.

J. **NO THIRD PARTY BENEFICIARIES.** Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party, including any agent, sub-consultant or sub-contractor of Town or County. Absolutely no third party beneficiaries are intended by this Agreement. Any third-party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.

**IN WITNESS WHEREOF,** Each party, by signature below of its authorized representative, hereby acknowledges that it has read this Agreement, understands it and agrees to be bound by its terms and conditions.

**EAGLE COUNTY**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
[name, title]

Attest: \_\_\_\_\_  
[name, title]

**TOWN OF AVON**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Ronald C. Wolfe, Mayor

Attest: \_\_\_\_\_  
Patty McKenny, Town Clerk

## MEMORANDUM

**TO:** Honorable Mayor Wolfe and Town Council members  
**CC:** Larry Brooks, Town Manager  
**FROM:** Eric Heil, Town Attorney  
**DATE:** June 3, 2010  
**SUBJECT:** Ordinance No. 10-10 Amending Chapter 3.12

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**Summary:** Ordinance No. 10-10 amends Chapter 3.12 Real Property Transfer Tax. The two amendments include (1) updating the exemption for transfers to, from and between business entities where no consideration is provided, and (2) revising Section 3.12.070 regarding applications and appeals.

**3.12.060(5):** The revisions to Section 3.12.060(5) expand this definition to include transfers from a business entity to an individual where no change in the proportion of ownership occurs (i.e. 100% owner of property to 100% owner of entity which owns property). The Town has received numerous applications which include transfers to and from partnerships and limited liability companies that are related to estate planning and federal income tax planning but where no consideration is provided. The definition is also revised to acknowledge limited liability companies.

**3.12.070:** The revisions to Section 3.12.070 address the procedures and review criteria for processing applications for Exemption from Real Property Transfer Tax. The revisions are significant such that a red-line strike-out is not practical. Substantive revisions are highlighted as follows:

- 3.12.070(a) An application must be submitted and approved for all transfers which claim exemption. An absolute deadline to file an application is established as 75 days after the transfer.
- 3.12.070(b) The Town Manager may determine the form of the application (there is no need to include a draft of the form of application in the municipal code).
- 3.12.070(c) Town Manager has 30 days to review an application rather than the current 10 days. Failure to review no longer results in an automatic approval; however, failure to review will enable the applicant to appeal directly to the Town Council.
- 3.12.070(d) The timeframe for Town Council to act upon an appeal is revised to simply state that the Council shall act on an appeal within 45 days of receipt by the Town.

- 3.12.070(e) False/inaccurate information voids an approval of an application.
- 3.12.070(f) Duration of Approval is specified to address approvals which granted prior to a transfer.
- 3.12.070(g) The ability to adopt fees for the processing of applications has been added. Based upon our experience with review of RETT exemption applications, a fee in the range of \$75-\$125 would be appropriate to cover the Town's cost to process these applications.

**Legal Issues:** The amendments proposed in Ordinance No. 10-10 do not present any "tax policy changes" which would require voter authorization under TABOR.

**Requested Town Council Action:** Approval of first reading of Ordinance No. 10-10.

*Thanks, Eric*

**TOWN OF AVON, COLORADO  
ORDINANCE 10-10  
SERIES OF 2010**

**AN ORDINANCE CHAPTER 3.12 OF THE AVON MUNICIPAL CODE**

**WHEREAS**, the Town of Avon (“Town”) is a home rule authority municipal corporation and body politic organized under the laws of the State of Colorado and possessing the maximum powers, authority and privileges to which it is entitled under Colorado law; and

**WHEREAS**, the Town imposes a transfer tax on certain transfers of real property in the Town of Avon; and

**WHEREAS**, the Town desires to amend the exemption concerning transfers to and from business entities for no consideration to reflect business organization practices and desires to amend the requirements and procedures for processing of applications for exemptions; and

**WHEREAS**, it is the Town Council’s opinion that the health, safety and welfare of the citizens of the Town of Avon would be enhanced and promoted by the adoption of this ordinance through the orderly and efficient administration of real property transfer tax collections and processing of applications for exemption thereto;

**WHEREAS**, approval of this Ordinance on first reading is intended only to confirm that the Town Council desires to comply the requirements of the Avon Home Rule Charter by setting a public hearing in order to provide the public an opportunity to present testimony and evidence regarding the application and that approval of this Ordinance on first reading does not constitute a representation that the Town Council, or any member of the Town Council, supports, approves, rejects, or denies this ordinance;

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

**Section 1. Recitals Incorporated.** The above and foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the Town Council.

**Section 2. Amendments to Chapter 3.12.** Chapter 3.12 of the Avon Municipal Code is amended as follows:

**A.** Section 3.12.060(5) is repealed in its entirety and reenacted to read as follows:

“(5) Transfers made pursuant to capital investment, reorganization, merger, consolidation, liquidation, dissolution or termination of corporations, partnerships, limited liability companies, trusts, or other business entities recognized in Colorado for no consideration other than acquisition or cancellation or surrender of stock or percentage ownership interest in such business entity, if the relative ownership interest of such persons in the real property or in the

percentage ownership of the business entity are the same after the transfer as immediately before the transfer and there is no monetary consideration;”

B. Section 3.12.070 is repealed in its entirety and reenacted to read as follows:

**“3.12.070 Application for exemption – Appeal.**

(a) Application Required. No transfer of real property shall be exempt from the imposition of the real estate transfer tax imposed in Section 3.12.030 unless a complete application for exemptions is filed with the Town and such application is approved by the Town. An application may be filed prior to a transfer of real property or within seventy-five (75) days after the transfer of real property. No application for Exemption from Real Property Transfer Tax shall be received and no such application shall be approved if submitted to the Town more than seventy-five (75) after the date of transfer.

(b) Form of Application. The form of Application for Exemption from Real Property Transfer Tax, the form for an appeal, and any other forms related to this Chapter shall be determined by the Town Manager. The form of Application shall require the applicant to provide all information necessary to determine if such application complies with the definition and intent of the exemptions set forth in Section 3.12.060 above.

(c) Application Review. The Town Manager, or designee, shall review applications for Exemption from Real Property Transfer Tax within thirty (30) days of receipt of a complete application. The failure of the Town Manager, or designee, to review an application for Exemption from Real Property Transfer Tax within thirty (30) days shall not be deemed to constitute an approval of an application for Exemption from Real Property Transfer Tax; however, the application may elect to appeal the application directly to the Town Council according to the procedures set forth in sub-section (d) below. If the Town Manager, or designee, determines that the application does not include adequate information to determine whether the application complies with an exemption stated in Section 3.12.060 of the Avon Municipal Code, the Town shall send a communication to the applicant stating that the application can neither be approved nor denied unless the applicant provides additional information and shall state the required information necessary to complete review of the application. Once the additional information is received, the Town Manager, or designee, shall review the supplemented application within thirty (30) days of receipt. The Town Manager, or designee, shall approve, partially approve, or deny the application in writing based upon compliance with the exemptions, or the intent of the exemptions, set forth in Section 3.12.060. Inadequate or inaccurate information which does not demonstrate compliance with the exemptions set forth in Section 3.12.060 shall be grounds for denial of an application.

(d) Appeal to Council. Any person whose application for Exemption from Real Property Transfer Tax is denied or partially approved may appeal such decision to the Town Council in accordance with the procedures and requirements of this Section 3.12.070. The applicant shall file a written appeal in writing with the Town Clerk within thirty (30) days after the date of transmittal of the decision of the Town Manager, or designee, to deny such application. The failure to file a written appeal within thirty (30) days after the date of transmittal of the decision to deny the application shall bar any further consideration of the application, shall bar any appeal to the Town Council, and shall bar any judicial review by a Colorado court. The written appeal shall state the reasons for the appeal. An appeal which is filed timely shall be considered and acted upon by the Town Council within forty-five (45) days after the date of receipt. The Town shall provide at least three (3) days prior notice to the applicant stating the date, time and location where the Town Council will consider the appeal. The decision of the Town Council shall be in writing. The Town Council shall determine whether to approve, partially approve, or deny the application based on upon compliance with the exemptions, or the intent of the exemptions, set forth in Section 3.12.060. Inadequate or inaccurate information which does not demonstrate compliance with the exemptions set forth in Section 3.12.060 shall be grounds for denial of an application. The failure by the Town Council to hear and decide an appeal within forty-five (45) days after the receipt of the appeal shall result in the approval of the application.

(e) False or Inaccurate Information. Any approval of an application for Exemption from Real Property Transfer Tax which is based upon false or inaccurate information provided by the applicant shall be void *ab initio* and such transfer shall be subject to all real property transfer tax imposed along with penalties and interest calculated from the date of such transfer.

(f) Duration of Approval. An approval for Exemption from Real Property Transfer Tax which is granted prior to a transfer shall be valid for seventy-five (75) days and shall then expire if the transfer has not occurred.

(f) Fees. The Town Council may adopt a resolution setting fees for the processing and reviewing of applications and appeals as is determined reasonably necessary to recover the costs incurred by the Town.”

**Section 3. Codification Amendments.** The codifier of the Town’s Municipal Code, Colorado Code Publishing, is hereby authorized to make such numerical and formatting changes as may be necessary to incorporate the provisions of this Ordinance within the Avon Municipal Code. The Town Clerk is authorized to correct, or approve the correction by the codifier, of any typographical error in the enacted regulations, provided that such correction shall not substantively change any provision of the regulations adopted in this Ordinance. Such corrections may include spelling, reference, citation, enumeration, and grammatical errors.

**Section 4. Severability.** If any provision of this Ordinance, or the application of such provision to any person or circumstance, is for any reason held to be invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable. The Town Council hereby declares that it would have passed this Ordinance and each provision thereof, even though any one of the provisions might be declared unconstitutional or invalid. As used in this Section, the term “provision” means and includes any part, division, subdivision, section, subsection, sentence, clause or phrase; the term “application” means and includes an application of an ordinance or any part thereof, whether considered or construed alone or together with another ordinance or ordinances, or part thereof, of the Town.

**Section 5. Effective Date.** This Ordinance shall take effect seven days after public notice following final passage in accordance with Section 6.4 of the Avon Home Rule Charter.

**Section 6. Safety Clause.** The Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Avon, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

**Section 7. No Existing Violation Affected.** Nothing in this Ordinance shall be construed to release, extinguish, alter, modify, or change in whole or in part any penalty, liability or right or affect any audit, suit, or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing which may have been incurred or obtained under any ordinance or provision hereby repealed or amended by this Ordinance. Any such ordinance or provision thereof so amended, repealed, or superseded by this Ordinance shall be treated and held as remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions, for the enforcement of such penalty, liability, or right, and for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered, or made in such actions, suits or proceedings, or prosecutions imposing, inflicting, or declaring such penalty or liability or enforcing such right, and shall be treated and held as remaining in force for the purpose of sustaining any and all proceedings, actions, hearings, and appeals pending before any court or administrative tribunal.

**Section 8. Publication by Posting.** The Town Clerk is ordered to publish this Ordinance by posting notice of adoption of this Ordinance on final reading by title in at least three public places within the Town and posting at the office of the Town Clerk, which notice shall contain a statement that a copy of the ordinance in full is available for public inspection in the office of the Town Clerk during normal business hours.

*[signature page follows]*



**INTRODUCED, APPROVED, PASSED ON FIRST READING, ORDERED POSTED AND REFERRED TO PUBLIC HEARING** and setting such public hearing for June 22, 2010 at the Council Chambers of the Avon Municipal Building, located at One Lake Street, Avon, Colorado, on June 8, 2010.

\_\_\_\_\_  
Ronald C. Wolfe, Mayor

Published by posting in at least three public places in Town and posting at the office of the Town Clerk at least seven days prior to final action by the Town Council.

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Patty McKenny, Town Clerk

\_\_\_\_\_  
Eric Heil, Town Attorney

**INTRODUCED, FINALLY APPROVED, AND PASSED ON SECOND READING, AND ORDERED PUBLISHED BY POSTING** on June 8, 2010.

\_\_\_\_\_  
Ronald C. Wolfe, Mayor

Published by posting by title in at least three public places in Town and posting by title at the office of the Town Clerk.

ATTEST:

\_\_\_\_\_  
Patty McKenny, Town Clerk

# Memo

**To:** Honorable Mayor and Town Council

**Thru:** Larry Brooks, Town Manager

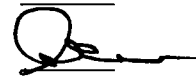
**Legal:** Eric Heil, Town Attorney

**From:** Scott Wright, Asst. Town Manager – Finance

**Date:** June 2, 2010

**Re:** Resolution No. 10-15 In Opposition of State-wide Ballot Measures Proposition 101, Amendment 60 and Amendment 61

Initials



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**Summary:**

Last Council worksession, Dee Wisor from Sherman and Howard gave a presentation on state-wide ballot measures Amendments 60 and 61 and Proposition 101. If passed, these initiatives will significantly limit property taxes, State and local government debt, and would reduce vehicle, income tax and telecommunication revenues.

At the Town Manager's direction, staff has prepared a resolution as a statement in opposition of these statewide ballot measures.

**Recommendation:**

Staff recommends the Council adopt Resolution No. 10-15, stating its opposition to Proposition 101 and Amendments 60 and 61.

**Town Manager Comments:**



**Attachments:**

Resolution No. 10-15

**TOWN OF AVON, COLORADO  
RESOLUTION NO. 10-15**

**SERIES OF 2010**

**A RESOLUTION IN OPPOSITION OF STATEWIDE BALLOT MEASURES  
PROPOSITION 101, AMENDMENT 60, AND AMENDMENT 61**

**WHEREAS**, state voters will have the opportunity at the November 2 statewide general election to protect the fiscal health of local government by defeating Proposition 101, Amendment 60, and Amendment 61; and

**WHEREAS**, during this current economic downturn the Town of Avon has already cut services and budgets dramatically; and

**WHEREAS**, these measures individually and collectively significantly reduce or otherwise restrict both state and local revenues in a number of different ways, including but not limited to: specific ownership taxes, telecommunication taxes, state income taxes, state-shared revenues to assist municipalities with local street and transit improvements, other state grants and loans to help local government, and property taxes; and

**WHEREAS**, the ability to finance long-term capital improvements like fire stations , parking structures, water and wastewater treatment plants, recreational facilities, and other public facilities are dramatically impaired by the restrictions on debt financing as proposed by Amendment 61; and

**WHEREAS**, various services and programs in the Town of Avon will be limited or curtailed because of the numerous restrictions and revenue reductions proposed by these three measures; and

**WHEREAS**, the Town of Avon is concerned about the impact these three measures will have on our ability to work effectively with other local governments in the form of intergovernmental agreements; and

**WHEREAS**, a number of prominent individuals, newspapers, and organizations including our own Colorado Municipal League are voicing opposition to these measures as not being in the best interests of Colorado and of local communities; and

**WHEREAS**, provisions of state law do allow the Town of Avon to put forth this resolution as a statement of opposition to the statewide ballot measures known as Proposition 101, Amendment 60, and Amendment 61;

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

**Section 1.** That the Town Council of the Town of Avon opposes Proposition 101, Amendment 60, and Amendment 61 and urges our citizens to vote against all three ballot measures.

**ADOPTED this 8<sup>th</sup> day of June, 2010.**

TOWN OF AVON, COLORADO

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Ronald C. Wolfe, Mayor

ATTEST:

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Patty McKenny  
Town Clerk



Town of Avon  
P.O. Box 975  
One Lake Street  
Avon, Colorado 81620  
970-748-4005

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Office of the Town Manager

**To: Honorable Mayor and Town Council**

**From: Larry Brooks, Town Manager**

**Date: June 2, 2010**

**Regarding: Eagle Valley Land Exchange Update**

**This past Tuesday, June 1, The Mayor and I met with representatives from the State Land Board and Western Land Group to confirm next steps in the multi-party land exchange and tasks or deliverables for each of the stakeholders involved. Among the business points discussed were milestone events and probable timetables for the project.**

**Attached to this memo is House Bill 10-1165 which will inform the trade protocol and the map of the potential properties involved in the trade. We all know that the Mayor has done the lion's share of the work on this project over the years, and he plans to give us the update of the discussions under Mayor's Update at the council meeting.**

NOTE: This bill has been prepared for the signature of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

# An Act

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HOUSE BILL 10-1165

BY REPRESENTATIVE(S) Merrifield, Benefield, Fischer, Labuda, McFadyen, Middleton, Pommer, Priola, Schafer S., Todd;  
also SENATOR(S) Tapia.

CONCERNING THE AUTHORITY OF THE STATE BOARD OF LAND  
COMMISSIONERS REGARDING STATE LAND.

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** 36-1-124 (1) and (2), Colorado Revised Statutes, are amended to read:

**36-1-124. Sale of state lands.** (1) The state board of land commissioners may at any time direct the sale of any state lands, except as provided in this article, in such parcels as the board deems proper. EXCEPT AS SPECIFIED IN SECTION 36-1-124.3, all sales under this article, except those to the United States, shall be advertised in four consecutive issues of a weekly paper of the county in which the land is situated, if there is a weekly paper in the county, and, if not, then in a paper published in an adjoining county and in other papers as the board may direct.

(2) EXCEPT AS SPECIFIED IN SECTION 36-1-124.3, the advertisement shall state the time, place, and terms of sale and the minimum price fixed

*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

by the STATE board OF LAND COMMISSIONERS for each parcel, lot, block, or tract below which no bid shall be received. All patents and certificates of purchase issued before March 31, 1919, are validated. If any land is sold on which authorized improvements have been made by lessees, the improvements shall be appraised under the direction of the ~~state board. of land commissioners.~~ When lands on which such improvements have been made are sold, the purchasers, if other than the owner of the improvements, shall pay the appraised value of the improvements to the owner thereof, taking a receipt therefor, and such purchaser shall deposit such receipt with the ~~state board of land commissioners~~ before such purchaser is entitled to a patent or certificate of purchase. All such receipts shall be filed and preserved in the office of the state board of land commissioners.

**SECTION 2.** Article 1 of title 36, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**36-1-124.3. Acquisition of state trust lands by governmental entities - repeal.** (1) THE GENERAL ASSEMBLY DECLARES THAT ITS INTENT IN ENACTING THIS SECTION IS TO AUTHORIZE THE TRANSFER OF INTERESTS IN LAND TO LOCAL GOVERNMENTS OR SPECIAL DISTRICTS IN EXCHANGE FOR FAIR AND ADEQUATE CONSIDERATION.

(2) IF THE STATE BOARD OF LAND COMMISSIONERS SEEKS TO DISPOSE OF A PARCEL OF LAND TO A LOCAL GOVERNMENT OR SPECIAL DISTRICT, THE BOARD SHALL GIVE PUBLIC NOTICE OF ITS INTENT PURSUANT TO SUBSECTION (3) OF THIS SECTION. NOT LESS THAN SIXTY DAYS AFTER THE DATE OF NOTICE, THE BOARD SHALL MEET IN PUBLIC SESSION TO HEAR AND RECEIVE TESTIMONY AND EVIDENCE CONCERNING THE PROPOSED DISPOSAL. AFTER GIVING FULL CONSIDERATION TO THE TESTIMONY AS WELL AS ITS LEGAL MANDATES, THE BOARD SHALL VOTE WHETHER TO APPROVE THE TRANSACTION.

(3) FOR PURPOSES OF PROPERTY DISPOSALS UNDER THIS SECTION, NOTICE SHALL BE PUBLISHED IN FOUR CONSECUTIVE ISSUES OF A WEEKLY PAPER OF THE COUNTY IN WHICH SUCH LAND IS SITUATED, IN SUCH OTHER PAPERS AS THE STATE BOARD OF LAND COMMISSIONERS MAY DIRECT, AND ON THE BOARD'S PUBLIC WEB SITE. THE BOARD SHALL DIRECTLY NOTIFY, BY EMAIL IF AVAILABLE, ALL LESSEES OF THE PROPERTY AND ALL GOVERNMENTAL ENTITIES WITHIN WHOSE BOUNDARIES THE PROPOSED TRANSACTION WILL TAKE PLACE. THE NOTICE SHALL IDENTIFY THE PARCEL,

THE LOCAL GOVERNMENT OR SPECIAL DISTRICT TO RECEIVE THE PROPERTY INTEREST, THE PURPOSE AND BENEFIT OF THE DISPOSAL, AND THE TIME AND LOCATION OF THE PUBLIC HEARING.

(4) THE STATE BOARD OF LAND COMMISSIONERS SHALL NOT COMPLETE MORE THAN TWO TRANSACTIONS PURSUANT TO THIS SECTION IN A FISCAL YEAR. ALL DISPOSALS PURSUANT TO THIS SECTION SHALL:

(a) BE BASED ON FAIR MARKET VALUE AS DETERMINED BY THE BOARD THAT IS CONSISTENT WITH AN INDEPENDENT APPRAISAL CONFORMING TO THE UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE STANDARDS; AND

(b) IDENTIFY THE PURPOSE OF THE DISPOSAL OF PROPERTY AS:

(I) ADDING VALUE TO ADJOINING OR NEARBY STATE TRUST PROPERTY;

(II) COMPLYING WITH VALID LOCAL LAND USE REGULATIONS AS REQUIRED BY SECTION 10 OF ARTICLE IX OF THE STATE CONSTITUTION; OR

(III) BENEFITTING BOARD OPERATIONS.

(5) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2015.

**SECTION 3.** 36-1-129, Colorado Revised Statutes, is amended to read:

**36-1-129. Bonds.** (1) When, in the judgment of the state board of land commissioners, a bond, A DAMAGE DEPOSIT, OR EARNEST MONEYS by the purchaser of state lands is necessary, the board shall require ~~such~~ THE purchaser to give ~~a bond~~ THE FINANCIAL WARRANTY upon such conditions as the board may determine.

(2) (a) In leasing state lands for nonagricultural purposes, the STATE board OF LAND COMMISSIONERS shall require of the lessee ~~such~~ a bond OR DAMAGE DEPOSIT securing the state against loss of rents or other loss or waste, or occupation of the land for more than thirty days after the cancellation or expiration of the lease of the lessee, unless the lessee becomes the purchaser of the land, and in no case shall the lessee be



allowed to cut or use more timber than is necessary for the improvement of the land or for fuel for the use of the family of the lessee; and the cutting and hauling of timber to sawmills, to be sawed on shares, is expressly prohibited.

(b) A lessee of state lands shall not be required to post a bond if such lessee is leasing state lands solely for agricultural purposes; EXCEPT THAT A BOND OR DAMAGE DEPOSIT MAY BE REQUIRED FOR STATE-OWNED IMPROVEMENTS EVEN IF LEASED SOLELY FOR AGRICULTURAL PURPOSES.

(3) ALL BONDS, DAMAGE DEPOSITS, AND EARNEST MONEYS COLLECTED PURSUANT TO THIS ARTICLE THAT THE STATE BOARD OF LAND COMMISSIONERS HAS DEEMED FORFEITED OR REQUIRED FOR REMEDIATION ACTIVITIES SHALL BE CREDITED TO THE FINANCIAL WARRANTY ACCOUNT OF THE STATE LAND BOARD TRUST ADMINISTRATION FUND CREATED IN SECTION 36-1-145 (2) (e). MONEYS IN THE ACCOUNT ARE CONTINUOUSLY APPROPRIATED FOR THE REMEDIATION OR OTHER ACTIVITIES ON THE AFFECTED PROPERTY.

**SECTION 4.** 36-1-145 (2) (c), Colorado Revised Statutes, is amended, and the said 36-1-145 (2) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

**36-1-145. Land commissioners' receipts - appropriation.**

(2) (c) Any moneys remaining in the state land board trust administration fund at the end of the state fiscal year shall be allocated to the trust funds under the control of the state board of land commissioners in an amount equal to the proportion of such moneys that would have been paid into such trust funds but for their allocation to the state land board trust administration fund; EXCEPT THAT MONEYS IN THE FINANCIAL WARRANTY ACCOUNT OF THE FUND CREATED IN PARAGRAPH (e) OF THIS SUBSECTION (2) SHALL REMAIN IN THE ACCOUNT UNTIL SPENT.

(e) THERE IS HEREBY CREATED IN THE STATE LAND BOARD TRUST ADMINISTRATION FUND THE FINANCIAL WARRANTY ACCOUNT, CONSISTING OF FINANCIAL WARRANTIES CREDITED TO THE ACCOUNT PURSUANT TO SECTION 36-1-129(3). THE BOARD SHALL EXPEND MONEYS IN THE ACCOUNT ONLY FOR PURPOSES SPECIFIED IN SECTION 36-1-129 (3).

**SECTION 5. Applicability.** This act shall apply to conduct

occurring on or after the effective date of this act.

**SECTION 6. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

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Terrance D. Carroll  
SPEAKER OF THE HOUSE  
OF REPRESENTATIVES

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Brandon C. Shaffer  
PRESIDENT OF  
THE SENATE

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Marilyn Eddins  
CHIEF CLERK OF THE HOUSE  
OF REPRESENTATIVES

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Karen Goldman  
SECRETARY OF  
THE SENATE

APPROVED \_\_\_\_\_

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Bill Ritter, Jr.  
GOVERNOR OF THE STATE OF COLORADO

