

CHAPTER 4

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ARTICLE 1

Fiscal Year

Sec. 4-1-10. Fiscal year established.

The fiscal year of the Town shall commence on January 1 of each year and shall extend through December 31 of the same year. (Ord. 1 §1, 2012)

ARTICLE 2

General and Special Funds

Sec. 4-2-10. Custody and management of funds.

Moneys in the funds created in this Chapter shall be in the custody of and managed by the Town Treasurer. The Town Treasurer shall maintain accounting records and account for all of said moneys as provided by law. Moneys in the funds of the Town shall be invested or deposited by the Town Treasurer in accordance with the provisions of law. All income from the assets of any fund shall become a part of the fund from which derived and shall be used for the purpose for which such fund was created; provided that, except as otherwise provided in this Code or by other ordinances or laws, the Board of Trustees may transfer out of any fund, other than any enterprise funds, any amount at any time to be used for such purpose as the Board of Trustees may direct. (Ord. 1 §1, 2012)

Sec. 4-2-20. General Fund created.

There is hereby created a fund, to be known as the General Fund, which shall consist of the following:

- (1) All cash balances of the Town not specifically belonging to any existing special fund of the Town.
- (2) All fixed assets of the Town (to be separately designated in an account known as the General Fund Fixed Assets) not specifically belonging to any existing special fund of the Town. (Ord. 1 §1, 2012)

Sec. 4-2-30. Conservation Trust Fund created.

There is hereby created a special fund, to be known as the Conservation Trust Fund, and the funds therein shall be used only for the purposes allowed by law. (Ord. 1 §1, 2012)

ARTICLE 3

Sales Tax

Sec. 4-3-10. Purpose.

The purpose of this Article is to impose a sales tax upon the sale at retail of tangible personal property and the furnishing of certain services in the Town, pursuant to the authority granted to incorporated towns of the State by Article 2 of Title 29, C.R.S. This Article shall be so construed and interpreted as to effectuate the general purpose of making it uniform with the sales tax of the State, levied by Article 26 of Title 39, C.R.S. (Ord. 15 §1, 1995; Ord. 1 §1, 2012)

Sec. 4-3-20. Definitions.

For the purposes of this Article, the definition of words herein contained shall be as said words are defined in Section 39-26-102, C.R.S., and said definitions are incorporated herein. (Ord. 15 §1, 1995; Ord. 1 §1, 2012)

Sec. 4-3-30. Property and services taxed.

(a) There is hereby levied and there shall be collected and paid a sales tax in the amount provided for in this Article, upon the sale at retail of tangible personal property and the furnishing of certain services, as provided in Section 39-26-104, C.R.S.

(b) The amount subject to tax shall not include the amount of any sales or use tax imposed by Article 26 of Title 39, C.R.S.

(c) The gross receipts from sales shall include delivery charges when such charges are subject to the state sales and use tax imposed by Article 26 of Title 39, C.R.S., regardless of the place to which delivery is made.

(d) No sales tax shall apply to the sale of construction and building materials, as the term is used in Section 29-2-109, C.R.S., if such materials are picked up by the purchaser and if the purchaser of such materials presents to the retailer a building permit or other documentation acceptable to such local government evidencing that a local use tax has been paid or is required to be paid.

(e) No sales or use tax shall apply to the sale of food purchased with funds provided by the special supplemental food program for women, infants and children, 42 U.S.C. Section 1786. For the purposes of this paragraph, "food" shall have the same meaning as provided in 42 U.S.C. Section 1786, as such section exists on October 1, 1987 or is thereafter amended.

(f) No sales tax shall apply to the sale of tangible personal property at retail or the furnishing of services if the transaction was previously subjected to a sales or use tax lawfully imposed on the purchaser or user by another statutory or home rule city and county, city or town equal to or in excess of that sought to be imposed by the Town. A credit shall be granted against the sales tax imposed by the Town with respect to such transaction equal in amount to the lawfully imposed local sales or use

tax previously paid by the purchaser or user to the previous statutory or home rule city and county, city or town. The amount of the credit shall not exceed the sales tax imposed by the Town.

(g) Notwithstanding any other provision of this Article, the value of construction and building material on which a use tax has previously been collected by an incorporated town, city or county shall be exempt from the town, city or county sales tax if the materials are delivered by the retailer or his agent to a site within the limits of such town, city or county. (Ord. 15 §1, 1995; Ord. 1 §1, 2012)

Sec. 4-3-40. Exemptions.

There shall be exempt from taxation under the provisions of the Article all of the tangible personal property and services which are exempt under the provisions set forth in Article 26, Title 39, C.R.S., which exemptions are incorporated here in by this reference. In addition, the following exemptions are expressly included as being exempt from the collection of sales tax in the Town: purchases of machinery and machine tools as provided in Section 39-26-114(11), C.R.S., as amended; sales and purchases of electricity, coal, gas, fuel, oil and coke as provided in Section 39-26-114(1)(a)(XXI), C.R.S.; and sales of food as provided in Section 39-26-114(1)(a)(XX), C.R.S. (Ord. 7 §1, 1996; Ord. 1 §1, 2012)

Sec. 4-3-50. Amount of tax.

There is hereby imposed upon all sales of tangible personal property and the furnishing of certain services, as specified in the Property and Services Taxed Section of this Article, a sales tax of three and three-quarters percent (3.75%) upon the sale at retail of tangible personal property and the furnishing of certain services as provided herein. (Ord. 15 §1, 1995; Ord. 9, 2003; Ord. 1 §1, 2012)

Sec. 4-3-60. General provisions.

(a) For the purposes of this Article, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to a destination outside the limits of the Town or to a common carrier for delivery to a destination outside the limits of the Town.

(b) In the event a retailer has no permanent place of business in the Town or has more than one (1) place of business, the place or places at which the retail sales are consummated for the purpose of the sales tax imposed by this Article shall be determined by the provisions of Article 26 of Title 39, C.R.S., and by the rules and regulations promulgated by the Colorado Department of Revenue. (Ord. 15 §1, 1995; Ord. 1 §1, 2012)

Sec. 4-3-70. Collection, administration and enforcement.

The collection, administration and enforcement of the sales tax imposed by this Article shall be performed by the Executive Director of the Colorado Department of Revenue in the same manner as the collection, administration and enforcement of the Colorado state sales tax. Accordingly, the provisions of Articles 26 and 21 of Title 39 and Article 2 of Title 29, C.R.S., and all rules and regulations promulgated by the Executive Director of the Colorado Department of Revenue pertaining to such collection, administration and enforcement, are incorporated herein by this reference. (Ord. 15 §1, 1995; Ord. 1 §1, 2012)

ARTICLE 4

Use Tax

Sec. 4-4-10. Surcharge.

The Town hereby imposes a surcharge of ten percent (10%) of the total use tax imposed, said fee to cover the administrative costs of collecting said use tax. Said surcharge shall be calculated based on the ten percent (10%) of the actual use tax imposed by the Town. (Ord. 1 §1, 2004; Ord. 1 §1, 2012)

Sec. 4-4-20. Use tax; imposed; amount.

There is imposed a tax of three percent (3%) as a use tax to be imposed only for the privilege of storing, using or consuming within the Town any construction and building materials greater than twenty thousand dollars (\$20,000.00). If a use tax is imposed, it shall be on the total value or the use, storage or consumption of building materials provided and not just on the amount over twenty thousand dollars (\$20,000.00). The tax imposed by this Article shall be in addition to any and all sales taxes imposed by ordinance. (Ord. 3 §1, 1996; Ord. 1 §1, 2012)

Sec. 4-4-30. Exemptions.

The use tax shall not apply to:

(1) The storage, use or consumption of any tangible personal property, the sale of which is subject to a retail sales tax imposed by the Town.

(2) The storage, use or consumption of any tangible personal property purchased for resale in the Town either in its original form or as an ingredient of a manufactured or compounded product in the regular course of business.

(3) The storage, use or consumption of tangible personal property brought into the Town by a nonresident thereof for his own storage, use or consumption while temporarily within the Town; however, this exemption does not apply to the storage, use or consumption of tangible personal property brought into this State by a nonresident to be used in the conduct of a business in this State.

(4) The storage, use or consumption of tangible personal property by the United States Government or the government of the State or its institutions or political subdivisions in their governmental capacities only or by religious or charitable corporations in the conduct of their regular religious or charitable functions.

(5) The storage, use or consumption of tangible personal property by a person engaged in the business of manufacturing or compounding for sale, profit or use any article, substance or commodity, which tangible personal property enters into the processing of or becomes an ingredient or component part of the product or services which is manufactured, compounded or furnished, and the container, label or the furnished shipping case thereof.

(6) a. The storage, use or consumption of any article of tangible personal property, the sale or use of which has already been subjected to a sales or use tax of another statutory or home rule town, city or county equal to or in excess of that imposed by this Article. A credit shall be granted against the use tax imposed by this Article with respect to a person's storage, use or consumption in the Town of tangible personal property purchased by him in a previous statutory or home rule town, city or city and county. The amount of the credit shall be equal to the tax paid by him by reason of the imposition of a sales or use tax of the previous statutory or home rule town, city or county on his purchase or use of the property. The amount of the credit shall not exceed the tax imposed by this Article.

b. With respect to the use tax of a statutory or home rule county, to the storage, use or consumption of any article of tangible personal property the sale or use of which has already been subjected to a legally imposed sales or use tax of another statutory or home rule county equal to or in excess of that imposed by this Article. A credit shall be granted against the use tax imposed by this Article with respect to a person's storage, use or consumption in the subsequent statutory or home rule county of tangible personal property purchased by him in a previous statutory or home rule county. The amount of the credit shall be equal to the tax paid by him by reason of the imposition of a sales or use tax of the previous statutory or home rule county on his purchase or use of the property. The amount of the credit shall not exceed the tax imposed by this Article.

(7) The storage, use or consumption of tangible personal property and household effects acquired outside of the Town and brought into it by a nonresident acquiring residency.

(8) The storage, use or consumption of any construction and building materials if a written contract for the purchase thereof was entered into prior to June 1, 1996.

(9) The storage, use or consumption of any construction and building materials required or made necessary in the performance of any construction contract bid let or entered in at any time prior to June 1, 1996.

(10) The storage of construction and building materials.

(11) The use or consumption of tangible personal property within the Town which occurs more than three (3) years after the most recent sale of the property if, within the three (3) years following such sale, the property has been significantly used within the State for the principal purpose for which it was purchased.

(12) No use tax of any home rule city, town or city and county shall apply to the storage, use or consumption of any article of tangible personal property the sale or use of which has already been subjected to a sales or use tax of another statutory or home rule city, town or city and county legally imposed on the purchaser or user equal to or in excess of that imposed by the subsequent home rule city, town or city and county. A credit shall be granted against the use tax of the home rule city, town, or city and county with respect to the person's storage, use or consumption in the home rule city, town or city and county of tangible personal property, the amount of the credit to equal the tax paid by him by reason of the imposition of a sales or use tax of the previous statutory or home rule city, town or city and county on his purchase or

use of the property. The amount of the credit shall not exceed the tax imposed by the subsequent home rule city, town or city and county. (Ord. 3 §2, 1996; Ord. 1 §1, 2012)

Sec. 4-4-40. Formulation of tax brackets.

The exact tax brackets for the use tax imposed by this Article shall be identical to and correspond with the use tax brackets formulated by the Colorado Department of Revenue. (Ord. 3 §3, 1996; Ord. 1 §1, 2012)

Sec. 4-4-50. Collection, administration and enforcement.

The collection of the use tax for construction and building materials shall be administered by the Board of Trustees. Tax on the retail purchase price of such materials stored, used or consumed within the Town must be paid upon the storage, use or consumption of the materials within the Town. In no event shall any certificate of occupancy be issued, or no final inspection performed in the event a certificate of occupancy is not required, prior to the full payment to the Town of all use tax due and owing pursuant to this Article. (Ord. 3 §4, 1996; Ord. 1 §1, 2012)

Sec. 4-4-60. Calculation.

The amount of tax owed to the Town shall be calculated as follows: the use tax of the construction or building materials stored, used or consumed within the Town. It shall be the burden of the taxpayer to provide all the receipts for the actual cost of the construction and building materials. If the taxpayer is unable to prove the actual cost of the construction and building materials, the Town will make a good faith estimate of the cost of the construction and building materials. The good faith estimate shall be based upon one half (½) of the total cost of construction. (Ord. 3 §5, 1996; Ord. 1 §1, 2012)

Sec. 4-4-70. Collection; limitation of actions.

For transactions consummated on or after June 1, 1996:

(1) No use tax or interest thereon or penalties with respect thereto shall be assessed, nor shall any notice of lien be filed or distraint warrant issued or suit for collection be instituted, nor any other action to collect the same be commenced more than three (3) years after the date on which the tax was or is payable; nor shall any lien continue after such period except for taxes assessed before the expiration of such period, notice of lien with respect to which has been filed prior to the expiration of such period, in which case such lien shall continue only for one (1) year after the filing of notice thereof. In the case of a false or fraudulent return with intent to evade tax, the tax, together with interest and penalties thereon, may be assessed or proceedings for the collection of such taxes may be begun at any time. Before the expiration of such period of limitation, the taxpayer and the Town may agree in writing to an extension thereof, and the period so agreed on may be extended by subsequent agreements in writing.

(2) In the case of failure to file a return, the use tax may be assessed and collected at any time. (Ord. 3 §6, 1996; Ord. 1 §1, 2012)

Sec. 4-4-80. Refunds; limitation of actions.

(a) An application for refund of use tax paid under dispute by a purchaser or user who claims and exemption shall be made within sixty (60) days after the storage, use or consumption of the goods or services whereon an exemption is claimed.

(b) An application for refund of tax moneys paid in error or by mistake shall be made within three (3) years after the date of storage, use or consumption of the goods for which the refund is claimed. (Ord. 3 §7, 1996; Ord. 1 §1, 2012)

Sec. 4-4-90. Interest on underpayment, nonpayment or extensions of time for payment of tax.

(a) If any amount of use tax is not paid on or before the last date prescribed for payment, interest on such amount at the rate imposed under Section 4-4-150 of this Article shall be paid for the period from such last date to the date paid. The last date prescribed for payment shall be determined without regard to any extension of time for payment and shall be determined without regard to any notice and demand for payment issued, by reason of jeopardy, prior to the last date otherwise prescribed for such payment. In the case of a tax in which the last date for payment is not otherwise prescribed, the last date for payment shall be deemed to be the date the liability for the tax arises, and in no event shall it be later than the date notice and demand for the tax is made by the Town.

(b) Interest prescribed under this Section through Section 4-4-140 shall be paid upon notice and demand and shall be assessed, collected and paid in the same manner as the tax to which it is applicable.

(c) If any portion of a tax is satisfied by credit of an overpayment, then no interest shall be imposed under this Section on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowed with respect to such overpayment.

(d) Interest prescribed under this Section through Section 4-4-140 on any use tax may be assessed and collected at any time during the period within which the tax to which such interest relates may be assessed and collected. (Ord. 3 §8, 1996; Ord. 1 §1, 2012)

Sec. 4-4-100. Deficiency due to negligence.

If any part of the deficiency in payment of the use tax is due to negligence or intentional disregard of the ordinances or of authorized rules and regulations of the Town with knowledge thereof, but without intent to defraud, there shall be added ten percent (10%) of the total amount of the deficiency, and interest in such case shall be collected at the rate imposed under Section 4-4-130, in addition to the interest provided by Section 4-4-110, on the amount of such deficiency from the time the return was due, from the person required to file the return, which interest and addition shall become due and payable ten (10) days after written notice and demand to him by the Town. If any part of the deficiency is due to fraud with the intent to evade the tax, then there shall be added one hundred percent (100%) of the total amount of the deficiency and in such case the whole amount of the tax unpaid, including the additions, shall become due and payable ten (10) days after written notice and demand by the Town and an additional three percent (3%) per month on such amount shall be added from the date the return was due until paid. (Ord. 3 §9, 1996; Ord. 1 §1, 2012)

Sec. 4-4-110. Neglect or refusal to make return or to pay.

If a person neglects or refuses to make a return in payment of the use tax or to pay any use tax as required, the Town shall make an estimate, based upon such information as may be available, of the amount of taxes due for the period for which the taxpayer is delinquent and shall add thereto a penalty equal to ten percent (10%) thereof and interest on such delinquent taxes at the rate imposed under Section 4-4-150, plus one-half of one percent (.5%) per month from the date when due. (Ord. 3 §10, 1996; Ord. 1 §1, 2012)

Sec. 4-4-120. Penalty interest on unpaid use tax.

Any use tax due and unpaid shall be a debt to the Town and shall draw interest at the rate imposed under Section 4-4-130, in addition to the interest provided by Section 4-4-110, from the time when due until paid. (Ord. 3 §11, 1996; Ord. 1 §1, 2012)

Sec. 4-4-130. Rate of interest.

When interest is required or permitted to be charged under any provisions of Section 4-4-110 through Section 4-4-140 of this Article, the annual rate of interest shall be that established by the State Commissioner of Banking pursuant to Section 39-21-110.5, C.R.S. (Ord. 3 §12, 1996; Ord. 1 §1, 2012)

Sec. 4-4-140. Other remedies.

Nothing in Sections 4-4-110 through 4-4-150 of this Chapter shall preclude the Town from utilizing any other applicable penalties or remedies for the collection or enforcement of use taxes. (Ord. 3 §13, 1996; Ord. 1 §1, 2012)

Sec. 4-4-150. Final decision of Town; appeals; posting of bonds.

For transactions consummated on or after June 1, 1996:

(1) Within fifteen (15) days after filing a notice of appeal, the taxpayer shall file with the district court a surety bond in twice the amount of the taxes, interest and other charges stated in the final decision by the Town which are contested on appeal. The taxpayer may, at his option, satisfy the surety bond requirement by a savings account or deposit in or a certificate of deposit issued by a state or national bank or by a state or federal savings and loan association, in accordance with the provisions of Section 11-35-101(1), C.R.S., equal to twice the amount of the taxes, interest and other charges stated in the final decision by the Town.

(2) The taxpayer may, at his option, deposit the disputed amount with the district court in lieu of posting a surety bond. If such amount is so deposited, no further interest shall accrue on the deficiency contested during the pendency of the action. At the conclusion of the action, after appeal to the Supreme Court or the Court of Appeals or after the time for such appeal has expired, the funds deposited shall be, at the direction of the Court, either directed to the Town and applied against the deficiency or returned in whole or in part to the taxpayer with interest at the rate imposed pursuant to Section 4-4-150 of this Article. No claim for refund of amounts

deposited with the Town need be made by the taxpayer in order for such amounts to be repaid in accordance with the direction of the Court. (Ord. 3 §14, 1996; Ord. 1 §1, 2012)

Sec. 4-4-160. Collection; map of municipal boundaries.

The Town Clerk shall make available to any requesting vendor a map showing the boundaries of the Town. For transactions consummated on or after June 1, 1996, the requesting vendor may rely on such map and any update thereof available to such vendor in determining whether to collect a use tax. No penalty shall be imposed or action for deficiency maintained against such a vendor who in good faith complies with the most recent map available to it. (Ord. 3 §15, 1996; Ord. 1 §1, 2012)

ARTICLE 5

Enhanced Sales Tax Incentive Program

Sec. 4-5-10. Established.

There is hereby established within the Town an Enhanced Sales Tax Incentive Program ("ESTIP"). (Ord. 6 §1, 2006; Ord. 1 §1, 2012)

Sec. 4-5-20. General purpose of ESTIP.

The purpose of the ESTIP is to encourage the establishment and/or substantial expansion of retail sales tax generating business within the Town, thereby stimulating the economy within the Town, providing employment for the residents of the Town and others, further expanding the goods available for purchase and consumption by residents of the Town, and further increasing the sales tax collected by the Town, which increased sales tax collection will enable the Town to provide expanded and improved municipal services to and for the benefit of the residents of the Town, while at the same time providing Public or Public-Related Purposes, as defined below, at no cost or at deferred cost, to the Town and its taxpayers and residents. (Ord. 6 §2, 2006; Ord. 1 §1, 2012)

Sec. 4-5-30. Definitions.

As used in this Article, the following phrases shall have the following meanings:

Enhanced Sales Tax or Taxes shall mean the amount of sales tax collected by the Town over and above a base amount negotiated by, and agreed upon by, the applicant and the Town, and which amount is approved by the Board of Trustees, which base amount shall never be lower than the amount of sales tax collected by the Town at the property in question in the previous twelve (12) months plus a reasonable and agreed upon percentage of anticipated increase in sales tax.

Owner or proprietor shall mean any of the following:

- a. The record owner or operator of an individual business;
- b. In the case of a shopping center, the owner of the real property upon which more than one (1) business is operated, provided that said owner (whether an individual,

corporation, partnership or other entity) is the owner or lessor of the individual business operated thereon; or

c. A special district which is or will be responsible for the expenses for Public or Public-Related Purposes, as defined below, that will further the general purposes of this ESTIP.

Public or Public-Related Purposes ("PPRP") shall mean public activities and improvements, including but not limited to streets, sidewalks, curbs, gutters, pedestrian malls, street lights, drainage facilities, landscaping, statuary, fountains, identification signs, traffic safety devices, bicycle paths, off-street parking facilities, benches, sound walls, streets, traffic safety devices and improvements, park and recreational facilities, water lines, sewer lines, lift stations, and all necessary incidental and appurtenant activities, structures and improvements, together with the relocation and improvement of existing utility lines, and any other improvements of a similar nature which are specifically approved by the Town upon the Town's findings that said activities and/or improvements are PPRP, and that such activities and/or improvements shall benefit the economic health of the Town. If the applicant is a special district, PPRP shall specifically include all activities and/or improvements permitted by said special district. PPRP shall include those costs directly associated with the PPRP, including but not limited to design, engineering, surveying, financing, borrowing costs, issuance costs and interest. (Ord. 6 §3, 2006; Ord. 1 §1, 2012)

Sec. 4-5-40. Application requirements.

Participation in the ESTIP shall be based upon approval by the Town, exercising its legislative discretion in good faith. Any owner or proprietor of a newly established or proposed retail sales tax generating business location or development, or the owner or proprietor of an existing retail sales tax generating business or location which wishes to expand substantially, may apply to the Town for inclusion within the ESTIP, provided that the new or expanded business is reasonably expected to generate enhanced sales tax of at least twenty thousand dollars (\$20,000.00) in the first year of operation or the first year following completion of the PPRP. (Ord. 6 §4, 2006; Ord. 1 §1, 2012)

Sec. 4-5-50. Approval of agreement; conditions; effect.

Approval by the Town of an agreement implementing the ESTIP shall entitle the successful applicant to share in enhanced sales tax derived from the applicant's property or business in an amount which shall not exceed fifty percent (50%) of the enhanced sales taxes until a greater amount is approved by the voters of the Town; provided, however, that the applicant may use said amounts only for PPRP such as those specified herein and which are expressly approved by the Town. The time period in which said enhanced sales taxes may be shared shall not commence until all PPRP are completed, and shall be limited by the Town in its discretion, to a specified time or until a specified amount is reached. (Ord. 6 §5, 2006; Ord. 1 §1, 2012)

Sec. 4-5-60. Permitted use of funds.

The uses to which said shared enhanced sales tax may be put by an applicant shall be strictly limited PPRP. (Ord. 6 §6, 2006; Ord. 1 §1, 2012)

Sec. 4-5-70. Incremental payments.

The base amount for sales taxes (prior to the reasonable expected enhanced sales tax) shall be divided into twelve (12) monthly increments, which increments are subject to agreement between the parties and approval by the Town, and which increments shall be reasonably related to the average monthly performance of the business or property in question or similar businesses in the area (i.e., adjust for seasonal variations). If in any month the agreed-upon base amount is not met by the applicant for said month, no portion of the sales tax shall be shared until that deficit, and any other cumulative deficit, has been met, so that at the end of any twelve-month cycle, only sales taxes in excess of the base amount shall have been shared with any applicant. (Ord. 6 §7, 2006; Ord. 1 §1, 2012)

Sec. 4-5-80. Existing tax revenue sources unaffected.

It is an overriding consideration and determination of the Town that existing sources of Town sales tax revenues shall not be used, impaired or otherwise affected by this ESTIP. Therefore, it is hereby conclusively determined that only enhanced sales taxes generated by the property described in an application shall be subject to division or sharing under this ESTIP. It shall be the affirmative duty of the Town Treasurer to collect and hold all such enhanced sales taxes in a separate account apart from the existing sales taxes generated in and collected by the Town, and to provide an accounting system which accomplishes the overriding purpose of this Section. It is conclusively stated by the Town that this Article would not be adopted or implemented but for the provision of this Section. (Ord. 6 §8, 2006; Ord. 1 §1, 2012)

Sec. 4-5-90. Criteria for approval.

Approval of an application for inclusion in this ESTIP shall be granted by the Town, at a public hearing held as a portion of a regularly scheduled Town meeting, based upon the following criteria:

- (1) The amount of enhanced sales taxes which are reasonable to be anticipated to be derived by the Town through the expanded or new retail sales tax generating business or development;
- (2) The public benefits which are provided by the applicant through public works, public improvements, additional employment for Town residents, etc.;
- (3) The amount of expenditures which may be defined by the Town based upon PPRP to be performed and/or accomplished by the applicant;
- (4) The conformance of the applicant's property or project with the comprehensive plan and zoning ordinances or approved development plans of the Town;
- (5) The agreement required by Section 4-5-100 having been reached, which agreement shall contain and conform to all requirements of said Section 4-5-100. (Ord. 6 §9, 2006; Ord. 1 §1, 2012)

Sec. 4-5-100. Agreement with Town; required; contents.

Each application for approval submitted to the Town shall be subject to approval by the Town solely on its own merits. Approval of an application shall require that an agreement be executed by the Owner/Proprietor and the Town, which agreement shall, at a minimum, contain:

(1) A list of PPRP which justify the applicant's approval, and the amount which shall be spent on PPRP;

(2) The maximum amount of enhanced sales taxes to be shared, and the maximum time during which said agreement shall continue, it being expressly understood that any such agreement shall expire and be of no further force and affect upon the occurrence of the earlier to be reached of the maximum time of the agreement (whether or not the maximum amount to be shared has been reached of the maximum amount to be shared (whether or not the maximum time set forth has expired);

(3) A statement that this is a personal agreement which is not transferable and which does not run with the land;

(4) A statement that, except for enhanced sales taxes the sharing of which has been approved at a Town election, this agreement shall never constitute a debt of the Town within any constitutional or statutory provision;

(5) The base amount which is agreed upon by month, and the fact that if, in any month as specified, sales taxes received from the property do not at least equal said amount, there shall be no sharing of funds for said month;

(6) The base amount shall be agreed upon which shall consider the historic level of sales at the property in question or in the case of a newly established business, an amount of sales tax which could be generated from the new business without the participation by the applicant in the ESTIP created hereunder, and a reasonable allowance for increased sales due to the PPRP performed and/or accomplished as a result of inclusion within this ESTIP;

(7) A provision that any enhanced sales taxes subject to sharing shall be escrowed in the event there is a legal challenge to this ESTIP or the approval of any application therefor;

(8) Unless specifically agreed to the contrary, an affirmative statement that the obligations, benefits and/or provisions of this agreement may be not assigned in whole or in part without the expressed authorization of the Town, and further that no third party shall be entitled to rely upon or enforce any provision hereof;

(9) Unless the provisions of Section 20, Article X of the Colorado Constitution have been met that allow for multi-fiscal year financial obligations, the agreement shall be subject to the annual appropriation of sufficient funds for payments as provided in this Article.

(10) That the agreement shall provide that the successful applicant shall have no right, claim, lien or priority in or to the Town's sales tax revenue superior to or on parity with the rights, claims of liens of the holders as any sales tax revenue bonds, notes, certificates or

debentures payable from or secured by any sales taxes existing or hereafter issued by the Town; and that all rights of the successful applicant are, and at all times shall be, subordinate and inferior to the rights, claims and liens of the holder of any and all such sales tax revenue bonds, notes, certificates or debentures, payable from or secured by any sales taxes issued by the Town; and

(11) Any other provisions agreed upon by the parties and approved by the Town. (Ord. 6 §10, 2006; Ord. 1 §1, 2012)

Sec. 4-5-110. Findings.

(a) The Town has enacted this ESTIP for the purpose of:

(1) Providing the Town with increased sales tax revenues generated upon and by properties as a result of this ESTIP; and

(2) PPRP being performed and/or accomplished by the Owners/Proprietors with no debt obligation being incurred on the part of the Town except as approved by the voters within the Town.

(b) The Town specifically finds and determines that creation of this ESTIP is consistent with the Town's powers as a municipal corporation, and that exercise of said powers in the manner set forth herein is in furtherance of the public health, safety and welfare. Notwithstanding any provision hereof, no agreement entered pursuant to this ESTIP shall be interpreted to make the Town a joint venturer or partner with any public or private entity or activity which participates in this ESTIP, and the Town shall never be liable or responsible for any debt or obligation of any participant in ESTIP. (Ord. 6 §11, 2006; Ord. 1 §1, 2012)

Sec. 4-5-120. Voter approval.

The provisions and requirements of this Article may be amended or modified by initiated or referred ballot measure approved by the voters within the Town. (Ord. 6 §12, 2006; Ord. 1 §1, 2012)